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Senate

The Senate met at 9:45 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O Lord, our Lord, how majestic is Your Name in all the Earth. You are the giver of everlasting life. Thank You that nothing can separate us from Your limitless love. Thank You that You are never disillusioned by us, although You know us better than we know ourselves. How great is Your love toward us, for You call us Your children. We praise You for Your tremendous power inside us that strengthens us to cope with life and to do Your will. Give our Senators today a faith that will not shrink, though pressed by many a foe. Make them more than conquerors of our Nation's challenges. Develop their gifts and enlarge their capacities that with confidence and joy they can do the work of freedom. Be at work in each of us, creating within our spirits both the desire and the power to do Your will. We pray this in Your loving Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today, we will be in a period of morning business for 1 hour. The first half of that time will be under the control of the majority leader, with the second half under the control of the minority side. Following that period, the Senate will begin consideration of H.R. 3104, the Afghanistan/Iraq campaign medals bill. Under the agreement, there will be 20 minutes for debate prior to a vote on passage of the bill. Senators can, therefore, expect the first vote of the day to occur sometime around 11 or 11:15 this morning.

Following that vote, we will resume the Defense authorization bill. We began that bill yesterday and made some progress by disposing of the Hutchison amendment regarding cadets and midshipmen. We will continue on that bill throughout the day with rollcall votes expected. I have mentioned our desire to finish the Defense bill this week, and I hope Members will cooperate with the managers of the bill so we may have an orderly consideration of amendments. Senators who intend to offer amendments should be contacting the chairman and ranking member at this time so they may begin scheduling amendments for this week.

Also, we have a cloture vote scheduled for 2:15 p.m. today on the nomination of Marcia Cooke to be U.S. District Judge for the Southern District of Florida. There is still hope we can work out an understanding as to when we will vote on some of the 32 pending judicial nominations and, therefore, there is a chance the cloture vote may be vitiated. We will alert all Members if there is a change with that vote.

Also this week we will continue to look for a way to consider and complete the bioshield bill. I hope we can pass that important measure before we conclude our business this week. The highway bill is another one we need to get to conference, and we will find a way to do that if at all humanly possible this week. I am reminded daily of the importance of this bill and the necessity of going to conference. I was talking to our colleague from Missouri, Senator BOND, who again underscores the importance of moving this bill forward as soon as possible.

It is going to be a very busy week. As we approach the recess, Senators can expect late nights, if necessary, to complete the legislative and executive items I have mentioned.

BROWN v. BOARD OF EDUCATION

Mr. FRIST. Mr. President, on leader time, I want to briefly comment on the fact that yesterday was the 50th anniversary of the monumental Brown v. Board of Education Supreme Court decision.

I had the wonderful opportunity of joining my colleagues from Kansas, Senators ROBERTS and BROWNBACK, in Topeka, KS yesterday around noon. As we stood in front of that two-story Monroe Elementary School, which was one of the four segregated schools in Topeka in 1954 which Black children were forced into, you couldn't help but appreciate how far indeed we have come, but also reflect on how far we must continue to go.

It was 50 years ago and 1 day, May 17, 1954, that the Supreme Court struck down the separate but equal doctrine that had been established around 60 years before by Plessy v. Ferguson. The Brown v. Board decision is considered by many to be one of the most, if not the most, important Supreme Court decisions of the last 100 years. It energized the civil rights movement and the victories that would follow, including the Civil Rights Act of 1964. It catalyzed a tectonic shift in our Nation's social consciousness.

The Brown v. Board story begins a little over 50 years ago in the city of Topeka, KS where we were yesterday. It was a third grader named Linda Brown who was barred from attending the neighborhood school because she was black. At that time she was 7 years old. She had to walk six blocks through a rail yard to meet her bus, and then

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she would be transported an additional 2 miles across town to the all-Black elementary school. That trip every day took about an hour. It was her dad, Rev. Oliver Leon Brown, for whom the Supreme Court case is named, who decided his child deserved to go to a school closer to home. He joined 13 other families in filing suit to end segregation in America's public schools.

Linda Brown recalls that, using her words:

> When the parents involved tried to enroll us in all white schools and we were denied, my mother explained that it was because of the color of our skin. As a child I did not comprehend what difference that could possibly make.

Indeed, as a child Linda knew the truth so many adults refused to recognize, that the color of a person's skin should not make any difference at all.

Despite the Supreme Court's ruling, many States were slow to integrate classrooms. When I look back to my State of Tennessee, initial compliance was mixed. While Nashville public schools, for example, began their first day of integration in 1957, the surrounding county didn't begin until 1960. And even 10 years after that in 1970, 40 metro schools in Nashville were still segregated. But since that point in time, Tennessee, as the rest of the Nation, has made great progress. I think of the Chattanooga School for Arts and Sciences, which is hailed in the State as a model for diversity and academic success. Indeed, 99 percent of its students, who come from all racial backgrounds across the country, go on to college. In 2003, the elementary and middle schools scored above the national average in the Tennessee Comprehensive Assessment Program tests.

That all leads me to the ultimate hope of the Brown v. Board decision: That not only will Black and White students learn together, but that they will succeed together. In this we have a long way to go. As we look ahead and as we celebrate that wonderful decision of 50 years ago, as we were celebrating yesterday in Topeka, we have a long way to go.

Most recently, the President's No Child Left Behind Act is one powerful tool we have in closing the educational gap that exists between White and Black students. It sets rigorous standards for learning and teacher qualifications. It does hold schools accountable for their academic success. No longer will students be passed from grade to grade without mastering those basic learning skills. No longer will schools be able to mask their results in broad averages. They will have to account for every group of students under that schoolhouse roof.

Fifty years on, American has undergone a dramatic transformation. No longer is segregation an accepted, let alone celebrated, way of life. We recoil at the pictures of the Little Rock nine being jeered and threatened by angry White protesters. We hail the courage of those who led us forward. We tell their story that we will always aspire to America's true purpose, that true purpose which is so powerfully expressed in our founding, that all men are created equal, and that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.

I yield the floor.

RESERVATION OF LEADER TIME

Mr. REID. Mr. President, I ask that the Chair reserve the leadership time of Senator DASCHLE.

The PRESIDENT pro tempore. Without objection, under the previous order, the unused leadership time will be reserved.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. SMITH). Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes. The first half of the time will be under the control of the majority leader or his designee, the second half of the time under the control of the Democratic leader or his designee.

Who yields time?

The Senator from Wyoming.

ENERGY

Mr. THOMAS. Mr. President, I appreciate the opportunity to take some time in morning business to talk about one of the things that impacts us all, that we all see as we come to work each day or whatever we do in our day, and that is the cost of energy, particularly gasoline. It has an impact on all of us, certainly, something that affects not only you and me in our cars trying to get to work, but also the cost of other services and merchandise we buy, because there is an additional cost to development of all those things when gas is as high as it is right now.

It is a difficult thing to deal with because it is an item that over time we have expanded in our use, and we have begun to use a good deal more than we have in the past. We have increased our consumption, but we have not done the same thing with the kind of support facilities necessary to meet those increased demands. Again, one of the issues is not only gas or electricity, but it is the whole issue of energy in a broad sense, certainly, and energy policy that has to do with the long-term availability of energy to meet the demands we have.

Again, I point to the fact we have not been able to move an energy policy in the Senate in order to deal with the future. We will hear a lot of complaints, probably today, about something that ought to be done. The real important thing is, we ought to do something about the policy so over time we can make some of the changes that need to be made to change the whole situation with energy over time. Obviously, there are a number of activities that need to be done.

A lot of factors affect fuel price and supply. One of them, obviously, is the cost of oil. Crude oil is at historic highs right now. In the past, we were accustomed to seeing crude oil at about $22 a barrel. We talk about it when we make plans. It is now nearly $41. It has increased a great deal over the last several months. It is very important to understand that the cost of oil represents almost 50 percent of the cost of gas at the pump. There are other costs, of course, but this is the major cost.

Interestingly enough, the cost of crude oil, plus the taxes, represents a little over 70 percent of the cost of gasoline. So when we talk about these costs, of course, that has to be one of the factors.

Also, there are less refined gasoline imports, as gas, not as oil, because of sulfur regulations. Over the years, we have had a reduction in the number of refineries. It seems strange, doesn't it; as demand has gone up substantially, the number of refineries has gone down. It is true that capacity has not changed that much because the refineries have gotten larger, but they have not increased the capacity over time. In the late eighties, we were using about 85 percent of capacity of refineries. Now it is about 94 percent of capacity being used, and the demand, of course, has gone up over that time. There has been a continual closure of refineries over the last 23 years, and so the system is now very tight.

In addition to capacity, we have had a lot of different regulations and different kinds of additions to gasoline in different parts of the country so that refining has been made much more expensive and much more difficult to market in that they have to have this kind of reduction here and another one for this State and so on. It has been very difficult. The reality is that there are a number of components to the price of gasoline. We have to review those in context.

We will be hearing probably soon that the Government ought to be taking oil out of the Strategic Petroleum Reserve, which is there to be a reserve and has been put together over a period of time. The fact is that the daily input into the Strategic Petroleum Reserve is about 170,000 barrels a day, and the consumption in this country is almost 9 million barrels a day. It is a relatively small amount. There may be some merit in diverting the daily input into this reserve, but I certainly think it would not make a lot of sense to extract from it. It will be interesting to see what happens with respect to this issue.

The fact is that the current price, when adjusted for GDP or growth in the economy and inflation, is not at a record high. In the 1980s, as a matter of fact, given the same economics, the price of gas was higher than it is today.

However, since it has gone up from $1.50 to $2, that is a sudden impact. The 1981 price, if it is measured against today's economy, would be over $3. We have to be realistic about where we are.

The most significant factor, of course, that affects gasoline prices is the cost of crude oil. As I mentioned, it represents almost 50 percent of the cost of a finished gallon of gasoline. Crude oil prices have increased about 60 percent since April a year ago. That is a great increase.

The other point is that we have become more dependent on imported crude oil as opposed to domestic production. We have, interestingly enough, less control over that production.

The high demand in Asia and the U.S., plus OPEC activities, has restrained production over the years. It is the most important factor affecting prices.

Another key factor is increased gasoline demand, and that continues to go up. We can see that each day on the street in the number of cars and SUVs that are using more gasoline per mile than they did in the past. It is interesting; as we are moving in one direction in use and consumption, we are moving in another direction in providing the supply.

We have had a crazy arrangement. We have had very little growth in the U.S. in refining capacity. Currently, there are 149 refineries with a capacity of 16.8 million barrels a day. In 1980, there were 321 refineries with a capacity of 18.6 million barrels per day. That has been a conflict in our situation. Of course, there are a number of reasons for that situation. There have been no new refineries built since 1976, and unlikely due, of course, to political considerations, including siting costs, environmental requirements, industrial profitability, and, most importantly, the ''not in my backyard'' attitude which we seem to see in energy. We have over here demand and consumption, we want this service, but over here we say: Oh, yes, but we do not want refineries in our midst, we do not want transmission lines, we do not want the things that are elements of energy, but at the same time we want more of the product. These are some of the problems. They are not easy to resolve, but they are resolvable.

We need to take a look at a policy for the future and begin to provide incentives to do what needs to be done, to take another look at some of the environmental controls we have put in place. That is not to say we do not want to protect the environment, but there are ways to do it that are less intrusive on production. There is no doubt that environmental regulations have played a part in increasing the cost of fuel. No one believes we ought to sacrifice the environment. That is not the issue. The question is how can we do it in a more environmentally secure way without putting limitations on production.

The environmental and energy policies are interlinked. We must remember, when we are considering new regulations and policies, what impact it is going to have on the result. We do not seem to consider those two issues at the same time. We put on regulations saying we are going to help the environment, not thinking about what impact it has. Now we are at the point where the impact is affecting us, and we say: My gosh, what have we done? What happened here? Why do we have these increased costs?

It is pretty clear we need to do some things that are different from what we have done in the past.

It is fair to say that many of the folks from the Northeast and California complain about the high prices; however, their delegations over time have supported unilateral disarmament of our energy security by refusing to accept the balance that has to be created. They have opposed offshore drilling, coal-fired plants, nuclear-fired plants, the development of ANWR, leasing and development of minerals on public lands, and hydro relicensing—just a few of the things that have to do with domestic production and transportation of energy.

I guess we have to ask, Where do they think energy fuel comes from? It does not come out of the sky. We have to produce it. It is kind of like that attitude that one thinks milk and eggs just come from Safeway. There are some animals behind it.

We have to consider the consequences when the Federal Government mandates a certain environmental equation such as a 2-percent oxygenate that is put into gas. We have to be sensitive and realize the consequences so that the decisions we make with regard to those issues have to be balanced with what we need.

I hear all of this complaining about it but then we do not seem to recognize the link between Federal regulations and the higher price of gas: the phase-out of MTBE, the tier II gasoline sulfur standards, diesel standards, regional haze. All of these Clean Air Act requirements are going to raise the price of gasoline.

There are some things we can do. We have to do something about conservation. We have to find ways that we can use energy more efficiently, and that is possible. It is starting to happen even in automobiles.

I come from a State where SUVs are necessary. Sometimes we need a four-wheel drive to get to my house. Where I stay in northern Virginia, pickups and SUVs are all over the place. I do not think they need four-wheel drives very often, but that is fine. We can still make those more efficient. We can take a look at it.

We have to do some things over time to fuel cars with other things—hydrogen, for example. In our energy policy we have the opportunity to take a look at more research and more opportunities to provide alternatives. Gas and oil are not going to be there forever at the same degree they are now. They will be for a good long time if we treat them properly, but there comes a time when we have to look at other kinds of things, and that is what this policy is about. That is why we need to be looking at more than just next week or next year. We have to take a look at what we are going to be doing. We have to modernize our energy structure to make it more efficient than it is now. We have to talk about renewables, whether it be electricity, wind energy, or Sun energy.

These are things we need to be doing. We know how to do them in small amounts now, but we have to find out how to do them in volume. We have to find out how to do them in a reasonable and bearable cost, but we can do that if we focus on doing it.

At the same time, we can protect the environment. My home State is one of the States where we have a great deal of energy production. We are the No. 1 producer of coal, for example. Well, in order to do that, we have to change things somewhat. We have to do some more research to find out how we can have clean burning coal, because it is the largest fossil fuel available to us.

We also are a producer of oil and gas. We have natural gas, of course, which has many uses as energy but we ought to be using coal or nuclear for the electric generation because natural gas is much more fluid. It can be used in other ways and for many other things, where coal cannot.

The point I am trying to make is that these are things that are out there in the future but they will not come about until we decide we are going to emphasize a policy with regard to energy and the impact it will have on us over the years.

The bill that we have is available to do these things. Unfortunately, we have had some problems of obstruction in getting it done. We need to work on that and acknowledge where we are and where our consumption is. Right now, it is reaching beyond where we are in terms of having a product to provide.

So it seems to me it is pretty clear that is the direction we need to move and it is the direction we can, indeed, move. We have a greater opportunity to do that now.

I will now take a second to look at some of the highlights of the energy policy bill that we do have. As far as oil and gas, we permanently authorized the Strategic Reserve. We have incentives for producing from marginal wells. As my colleagues can imagine, when wells produce a great deal of product each day everyone is interested in that. When they become marginal, there needs to be some incentives to continue to do that.

We have some royalty relief for deep water wells and for our greatest opportunity for these products offshore. We need to take into account the environmental status that we want there. We

have to do something about a gas pipeline from Alaska where some of our greatest reserves of energy are.

I already mentioned clean coal and certainly there are opportunities for us to ensure that the largest resource, fossil fuel, is available without being harsh on the environment. Indian energy, we have not allowed the tribes to be doing something on the reservations, which many of them would like to do. A lot of people resist nuclear energy. The fact is, we want clean generated electricity. Nuclear is probably the best opportunity that we have to do that.

The section is also there on renewables so, again, we can make some progress in terms of being able to utilize some renewable energy sources that will take some of the pressure off of the kind of production that we have now.

We have a great challenge. I think it is a challenge to this body to move forward on an energy policy and stop finding reasons to not have one and object to having one. It is the same people who complain about not having affordable energy, and that is kind of where we are. We can indeed change that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask unanimous consent that when the time for the Democrats comes, Senator DORGAN be recognized for 10 minutes and Senator DURBIN for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Georgia.

WINNING THE WAR IN IRAQ

Mr. CHAMBLISS. Mr. President, I rise this morning to talk about several issues relative to what is happening in Iraq today. First, the terrible offenses that occurred at the Abu Ghraib prison that came forth a couple of weeks ago have obscured some of the positive things that have been happening relative to the war on the ground in Iraq. We made some great strides over the last couple of weeks and, once again, we have every reason to be extremely proud of our brave men and women who are carrying out this war against terrorism, because we are winning this war.

We are seeing more of the bad guys taken out in Iraq today, and a lot of that has been obscured by what happened at Abu Ghraib and the revelations that have been forthcoming relative to those incidents over the past couple of weeks.

With respect to Abu Ghraib and to the individuals who were involved in the atrocities that took place there, our Army is doing exactly what it is supposed to do relative to issues such as this. We are doing a complete and thorough investigation of the facts. Those who committed offenses for which they need to be held accountable are going to be held accountable, irrespective of their level of management.

I say that because these atrocities may have been carried out by privates or sergeants or any other enlisted or officer personnel up the line. If they were, then they are going to be held accountable. If any of these atrocities were carried out by civilians, they are going to be held accountable likewise.

Major General Taguba produced a very professional and comprehensive report on what did take place at Abu Ghraib. He found what happened there was a total lack of discipline and a failure of leadership. Our military forces want to be held accountable because those who are doing the great job over there—and this is 99.99 percent of our military personnel—want us to get to the bottom of this, just as everybody in America and every other individual around the world wants us to do. And we are going to do that.

Second, there was an announcement yesterday that the coalition forces discovered sarin gas in an artillery round, and that is a very significant fact. I don't think we can overstate the significance of this, but by the same token we need to be careful as to how far we go. There was a lot of criticism leveled at this administration for conducting this war on the basis that weapons of mass destruction were in Iraq and in the possession of Saddam Hussein and that was the sole reason we went to war with Iraq. That simply was not the case. We debated that and will continue to debate that down the road. But the fact is those of us who kept saying we know the weapons of mass destruction are there because Saddam Hussein admitted he had them—and he never told us what he did with them so we know they are there—that theory has now been validated.

But is this the be-all and end-all relative to the issue of weapons of mass destruction? I don't think so. I don't think we need to get overexcited. I think we need to continue to allow the Iraq Survey Team to do their investigation and at the end of the day we will find out what did happen, how many weapons of mass destruction exist today, and where those weapons are. We will proceed with the destruction of those weapons that once belonged to Saddam Hussein. It is important that we find and destroy these weapons of mass destruction so they can't be used by terrorists, as they attempted to do last weekend.

Third, I want to mention the killing yesterday of the President of the Iraqi Governing Council, Mr. Izzedine Salim. Mr. Salim was a respected member of the IGC. His leadership will be missed. Our thoughts and prayers go out to his family.

However, his successor, Mr. Ajil al-Yawar, will lead the IGC over the next 6 weeks until political sovereignty is turned over to the new Iraqi government on June 30. The terrorists and anarchists fighting to keep Iraq from becoming a free and democratic state are not going to win. We are not going to let the killing of a fine individual such as Mr. Salim keep the people of Iraq from forming a new, free and independent government and obtaining their democracy.

The perspective on these events is very important. We will turn over sovereignty to Iraq on 30 June. We have discovered weapons of mass destruction and we need to continue our search for others. We need to let our investigation on Abu Ghraib be completed before making pronouncements on who was responsible.

Last, I would like to relate that about 4 weeks ago, I had the pleasure of visiting 14 of our military institutions in Europe within a 4-day period. During that period of time, Senator SESSIONS, Senator ENZI, and myself had the occasion to visit with individual members of our Armed Forces such as those who belong to the 173rd Airborne Brigade, who are stationed at Caserme Ederly in Vicenza, Italy, who spent a year in Kirkuk, Iraq. They were the original occupying troops in Kirkuk. We had the occasion to visit with spouses of our soldiers who, today, are deployed to Iraq. We also had the opportunity to visit at Landstuhl Hospital at Ramstein, Germany, individuals who have been injured in Iraq. I have to say, every time I am around those men and women, my heart beats a little faster because they are not only the finest young men and women America has to offer, but they are doing a fantastic job of representing America, whether it is doing their duty of being fighting men and women or whether it is doing what they probably do best, and that is being the greatest ambassadors America has right now in that part of the world.

The men and women in the 173rd Airborne Brigade, for example, said when they marched into Kirkuk, the Iraqi people viewed them as simply an occupying military force, which was not going to be supportive of the goals that the citizens of Kirkuk wanted to see carried out; that is, to have their children educated, to have hospitals, to have water and sewer and power restored.

As the weeks and months went on, however, the members of the 173rd Airborne Brigade did exactly what the local people didn't believe possible: They rebuilt the hospitals, they rebuilt and opened the schools, they fixed the power grid so electricity could be restored to the citizens of that community, as well as increasing the availability of water and sewer, so at the point in time when the 173rd needed to be returned home, there were tears shed on both sides. The bonding between our fighting men and women, these soldiers and goodwill ambassadors, and the people of Kirkuk was exactly as we envisioned it should be; that is, our men and women had done a great job of liberating those people and at the same time had made good friends and had been great ambassadors for the United States in that part of the world.

At Landstuhl, I will have to say the attitude of soldiers who had received, in some cases, very serious injuries was unbelievable. One young man who was from the home State of the Presiding Officer, as he and I discussed, who had his right leg shot off below the knee, made a comment to me as I walked in the room—and he had a big smile on his face. He said:

> Senator, I'm leaving here and I am going to Walter Reed Hospital and I am going to get a new leg and as soon as I get me that new leg I want you to know I am going back to be with my buddies in Iraq.

What greater attitude, commitment, and dedication can you have from any individual? That young man is simply a shining light out there today and should far overshadow the stories we see coming out of Abu Ghraib.

Also, the spouses of the soldiers who are deployed to Iraq today, the spouses we visited with, about 35 or 40 of them, had, again, an unbelievable attitude. Our military families are truly that. They are families. They stand side by side with their spouses and support their deployment to any part of the world. But particularly now with respect to this very difficult and complex deployment in Iraq, these spouses had the opportunity to engage with us and to come forward to complain about a number of things, but they never did. They were all positive and said they knew their husbands were doing the right thing, they were truly supportive of them, and once again our military families were a shining light of which we can all be very proud.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I ask unanimous consent that I be allowed to speak on Democratic time in morning business.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

FOREIGN AND DOMESTIC POLICY

Mr. DURBIN. Mr. President, let me agree with the Senator from Georgia. The men and women in uniform representing the United States of America are our best. I have had a chance to meet with them, both the guard units in my State and their families, and to go to Walter Reed Hospital to meet those who have been seriously injured in combat. I have attended the funerals of those who have died from my State. My heart goes out to every single one of them and their families. They have given this country all we can ask and they have given Iraq millions of acts of kindness and bravery and good will, which we as citizens back home could never, ever repay.

But, having said all that, we cannot look beyond the fact that the policy and the decisions made by this administration that brought us into this war have raised the most serious and profound questions with the American people and with the Members of Congress. We understand now, sadly, that, frankly, we were given the wrong reasons. We were wrong in the reasons the administration gave us for going to war. There were no weapons of mass destruction massed on our borders, poised to threaten our troops and poised to threaten others. There were no chemical and biological weapons, no nuclear weapons.

The administration was wrong when they talked about plutonium being shifted from Africa to Iraq. There was no evidence of that whatever.

There was no evidence whatever, despite the administration's statement, of the presence of al-Qaida in Iraq or any connection between Saddam Hussein and September 11.

This administration was wrong on the number of troops we needed. When General Shinseki boldly said we would need more forces to accomplish our goal, he faced derision from this administration. He has been proven right and, sadly, at a time when we were supposed to be bringing American troops home, we are bringing more troops into Iraq. We are escalating the number of forces that are necessary for us to protect even those who were on the ground.

We were wrong about our coalition. It was too thin and too weak at the start and still is today.

This is an American war, borne largely if not exclusively by American taxpayers, and almost exclusively by American troops. Despite the contributions by Great Britain and Poland and others, these are American forces whose lives are on the line.

We were wrong about the reaction of Iraqis who were supposed to greet us with parades and flowers as we liberated their country. Sadly, we see what is actually happening today. Now three-fourths of the Iraqis want Americans to leave. They are glad Saddam Hussein is gone, but now they want us to be gone. That was something that was not predicted.

We were wrong about the protection of our troops. The fact that our Humvees were not properly armored has meant that one out of four American lives were lost because of this lack of preparedness. We were wrong about body armor. A third of our troops in Iraq, as of last year, did not have body armor to protect them personally. We were wrong about protection when it came to the helicopters which sadly still do not have the necessary defensive equipment to fight off shoulder-fired missiles.

We have been wrong, as well, in terms of the human lives, the lives we have given; wrong in terms of the dollar costs. This administration in February said we need no more money to execute this war. As of last week, they said we need $25 billion. Mr. Wolfowitz said it might be $50 billion more to finish this war at least into the beginning of next year. And we were wrong in the prison at Abu Ghraib with improper personnel not properly trained, not properly supervised.

Frankly, we have been wrong on the impact of the war on terrorism. We believed somehow that standing our ground in Iraq would help us in the war on terrorism. It has made it more difficult. This has become a magnet for terrorists who come to Iraq to kill American soldiers and American civilians. That is something that was not predicted.

So this administration has been wrong—wrong in its policy, as we find every single day. The American people still stand foursquare behind our men and women in uniform. They are doing their patriotic duty and we are proud of them. But this administration has not prepared us, did not prepare us, for this invasion and, sadly, we are paying that price today.

There is another important element beyond foreign policy. It is the question of the domestic policies of this administration. The question which should be asked is not a question from a Democrat but one that was asked by President Ronald Reagan in 1980. It is very basic. The question you have to ask yourself every time we have an election is: Are you better off as an American today than you were 4 years ago?

Take a look at the state of our economy and you can understand we are not. The middle Americans across America have to say, frankly, we are not better off. In the first 2 years of the Bush administration, real income has dropped by almost $1,500 per household. Growth and wages, remarkably weak. After growing at a healthy rate during the Clinton administration, wages have barely kept up with inflation under President George W. Bush. In fact, the Labor Department recently reported that in the last 12 months, wages and salaries grew at the slowest rate in over 20 years.

At the same time, Americans are facing skyrocketing costs. Take a look at this. Flat wages during the period that the President has been in office, average weekly earnings, are up 1 percent. Gasoline prices are up 25 percent, college tuition prices are up 28 percent, and family health care premiums are up 36 percent. These are the real costs of families across America.

So when this administration says, We are in recovery, things are looking a lot better, take a look at the reality of the bills that American families have to pay. These are, sadly, families who are not doing better today under President George W. Bush's economic plan.

For many Americans the problem is even worse than flat wages and high costs. For millions, the problem is because they have lost their job. We have lost 2.2 million private sector jobs under President George W. Bush. Under President Clinton, we increased the number of people working in America by 21 million. Under President George W. Bush we have lost 2.2 million jobs.

The manufacturing sector has been devastated, with jobs lost in 36 out of the 39 months under this President. We

have lost 2.7 million manufacturing jobs not likely to ever be replaced by jobs paying as well.

In 2000, the unemployment rate was 4 percent when President Bush took office. Today it is 5.6 percent. There are 8.2 million Americans out of work, a third more than when the President took office.

In addition, long-term unemployment has nearly tripled under President George Bush. Look at the situation with long-term employment. When he took office, 649,000 people were out of work. Today, 1.9 million are out of work. There are long-term unemployed and the Republican administration refuses, still, to provide unemployment benefits for these people struggling to keep their families together while they are out of work.

In addition, what we have seen is this administration has also turned record surpluses under President Clinton into record deficits. When President Bush took office, we were on track for a 10-year surplus of over $5 trillion. Sadly, in this situation today, we are headed toward a 10-year deficit of over $3 trillion.

In 2000, we were saving every penny of the Social Security trust fund for those who needed it in the future. Since 2001, we have raided it every year to pay for President Bush's tax cut for the wealthiest Americans. That does not add up. It does not add up to income security for seniors. It does not add up to fiscal responsibility, which this administration promised.

In addition, because of the weak state of the economy, State taxes have been on the increase, rising by $14.5 billion in 2002 and 2003 after 7 straight years of going down.

So while the President may talk about tax cuts for wealthy people, State taxes and local taxes are increasing to make up the difference. Household debt has increased among families in America from $7.1 trillion in the year 2000 to $9.4 trillion at the end of last year, a 32.8-percent increase. Our public debt has reached record levels under this President and, unfortunately, that debt comes down to $20,000 for every American—a $20,000 mortgage we are carrying because this President insisted on tax cuts while we fought a war, the first President to ever ask for that. Consumer confidence has fallen by 20 percent under this President.

And we come back, again, to the famous question asked by President Reagan in 1980. That question—are you better off now than you were 4 years ago?—it is hard to see in any circumstance why families, on an economic basis, could be considered better off. Their wages are flat, jobs have escaped us, and the costs of doing business in America and raising a family in America continue to go up.

It is clearly a time for a new direction in America. We need strong leadership to point us in a new direction of fiscal responsibility and economic growth. For the next 4 years we need to dedicate ourselves to working families struggling to make ends meet and raise a family that in the future can enjoy even a better standard of living than their parents.

We are not better off than we were, but we can be.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

STATE OF THE ECONOMY

Mr. DASCHLE. Mr. President, I will use my leader time and save what Democratic morning business is still allocated to others. I compliment the distinguished Senator from Illinois for his comments this morning.

This week it will be our hope to discuss the question about how it is that Americans view themselves as we enter this critical decisionmaking period for our country, choosing its national leadership for the next 4 years.

Senator DURBIN has put his finger on the question that was so appropriately posed by then-candidate Reagan in 1980. The question he asked in 1980 to the American people was: Are you better off? In many cases, Americans had a right to say yes in 1980, but there was a perception that on many specific issues and circumstances they were not better off.

So we felt it was appropriate that we have some analysis of our circumstances today in the year 2004. Are we better off than we were in 2000? Are we better off in education today than we were back then, having passed but not funded the No Child Left Behind Act? Are we better off with our own national security and homeland security today than we were in 2000? Are we better off in our fiscal policy, our economic policy? Are we better off with regard to crime statistics? Are we better off with infrastructure? Where is it that we are better off?

I dare say no one could possibly say we are better off.

Well, this week, we hope to analyze a little bit of the lay of the land as the American people see it today. Wondering out loud, expressing concern, and certainly providing some of our own reaction to the question, Are you better off today?

Senator DURBIN, our distinguished colleague from Illinois, said it so well with regard to our circumstances for average working families. In asking the question, Are you better off than you were 4 years ago, when you look at the first 2 years of the Bush administration, real income actually dropped by $1,500 per household, and throughout the last 4 years growth in wages has actually been very weak.

After growing at a healthy rate during the Clinton administration, wages have barely kept up with inflation under the Bush administration. In fact, the Labor Department recently reported that in the last 12 months wages and salaries grew at the slowest rate in 20 years. At the same time, Americans are facing skyrocketing costs. Whether it is a 25-percent increase in gasoline prices at the pump, a 28-percent increase in college tuition, a 36-percent increase in family health care premiums, the middle class is being squeezed.

This chart says it as graphically as one can. Here you have the average weekly earnings for a typical American household. It has gone up 1 percent over this period of time. In that same timeframe, while wages have only gone up 1 percent, gasoline prices have gone up 25 percent; college tuition, 28 percent; health care premiums, a whopping 36 percent. So at times like these, the last thing you want to do is threaten wages, but that is exactly what the Bush administration is planning to do in August, by implementing rules that will actually strip millions of Americans of the ability to cope with this situation.

Here you have an increase in earnings of 1 percent. One of the ways Americans have historically coped with that situation is to say: OK, if I am only making a 1-percent increase, I am going to work harder and longer.

We already have the longest workweek in the world with regard to industrialized nations—the longest workweek in the world and Americans respond to these increasing pressures by saying: I am going to work longer. If they work longer, under current law, they are allowed overtime. But what the administration says is: We are going to make you work even harder and longer because we are going to take away some of your overtime. So the pressure is even greater.

For many Americans, the problem is even worse than just flat wages and high costs. For millions, the problem is no wages because they have lost their jobs. We have actually lost 2.2 million private sector jobs under President Bush, compared to 21 million jobs created during the time President Clinton was in office. The manufacturing sector has been particularly hard hit, with jobs lost in 36 out of 39 months under the Bush administration. In all, we have lost 2.7 million manufacturing jobs. And a net of 2.2 million private sector jobs lost—the first time since the Hoover administration we have actually seen an actual job loss over the 4 years of any one President's term in office.

So here you have it: During the Clinton administration, 21 million private sector jobs created; under the Bush administration, a loss of 2.2 million private sector jobs.

In 2000, the unemployment rate was 4 percent. Today, it is 5.6. Mr. President, 8.2 million Americans are actually out of work, a third more than when President Bush took office. In addition, long-term unemployment has nearly tripled in the last 4 years.

In 2000, the number of long-term unemployed people was 649,000. Now there are 1.9 million long-term unemployed people, three times what it was in 2000

when President Bush took office, chronically long-term unemployed people who have virtually given up any real prospect of gaining employment any time in the short term.

Put simply, the Bush administration has the worst jobs record since the Great Depression. As a result, millions of Americans are now worse off than they were 4 years ago.

It is not just jobs and unemployment, however. As I said, these cost pressures that American families are feeling go beyond their income and they go beyond their employment. They go to the very nuts and bolts of making ends meet on a weekly basis. There is no better illustration of the problem they are facing with pressure on prices than we have seen in gas prices over the last several months.

In 2001, gas prices were averaging $1.47 per gallon. Today, the nationwide average is $2.01 per gallon, and the Bush administration recently announced that it expects the average price to climb even higher by June. Unfortunately, the Bush administration has done nothing to help consumers relieve that pressure.

During the 2000 campaign then-candidate Bush urged President Clinton to put pressure on OPEC to increase oil production. But today, President Bush is actually refusing—refusing—to follow his own advice, and his administration has said it won't call on OPEC to increase production.

The administration has also failed to take other action that could help stem the rise in gasoline prices. It has refused to defer deliveries of oil to the Strategic Petroleum Reserve and, in fact, has not investigated anticompetitive actions in the gasoline market.

While Americans struggle to pay higher prices at the pump, oil companies are posting record profits. In the first quarter of 2004, British Petroleum reported a 165-percent increase in their profits; Chevron-Texaco reported a 294-percent increase in their profits; Conoco-Phillips, a 44-percent increase in their profits; and Exxon Mobil, a 125-percent increase in their profits.

The Bush administration has been totally unengaged, not providing one scintilla of leadership in addressing gasoline prices as these prices continue to flummox the American people and press them into longer working hours without the wage increases through overtime.

There is also a concern for fiscal irresponsibility. The Bush administration has turned record surplus into record deficit. When President Bush took office, we were on track for a 10-year surplus of $5 trillion. Now we are headed for a 10-year deficit of $3 trillion.

This graph shows the budget surplus/deficit just in the 4 short years President Bush has been in office. In 2000, we had a $236 billion surplus. This year, we are going to have the largest single deficit in our Nation's history.

We're now on track to take $2.9 trillion from the Social Security trust funds. On an individual basis, that means the Government will end up borrowing an average of $18,500 for every worker covered by Social Security last year. Much of that money, which belongs to the workers, will be used to finance the tax cuts we have heard so much about with this administration.

While millionaires get billions in Federal tax breaks, middle-class Americans are facing dramatic increases in their State taxes. State taxes actually rose by $14.5 billion in 2002 and 2003, after 7 straight years of decline. Household debt has climbed from $7.1 trillion in 2000 to $9.4 trillion at the end of last year. That is a 32-percent increase.

What does that tell you? What that tells you is that American households, because they are paying higher State taxes, higher gas prices, higher health insurance premiums, and higher tuition costs, what they are now doing is borrowing more and more. They are putting more of that debt on their credit cards, maxing out their credit cards at the very time when they do not have the ability to pay back that debt on a monthly basis.

By 2001, we had actually seen a reduction in the amount of public debt. It had fallen for 4 years, and we were on track to eliminate the debt by 2009. Now we are on track to reach $5.9 trillion in public debt by 2009. That is more than $20,000 for every American child, every American parent, every American family member.

We have heard a lot about the death tax, the so-called death tax, which is the estate tax paid by some who have large property transfers from one generation to the next. I do not hear my Republican colleagues talk about the birth tax.

There is now a birth tax of more than $20,000 because of fiscal irresponsibility and mismanagement. That birth tax is paid not just by people who inherit but by every single American child when they are born.

The consumer confidence index has fallen by 20 percent in the last 4 years. The NASDAQ has dropped over 30 percent. Standard & Poor's 500 has dropped by over 18 percent, and the Dow Jones by 5 percent.

We come back to the question posed famously by President Reagan: Are we better off? Are wages better off? Are gasoline prices better off? Are we better off with college tuition or health care costs? Do we have more or fewer jobs? Have we provided more or less tax relief when the entire picture of taxes paid by workers is taken into account? The question provides a simple and very obvious answer to all of us: We are not better off. Americans are not better off than they were 4 years ago.

But we can do better. We are a ''can do'' country. We can be stronger economically, stronger in national security. We can be strong in meeting the values and ideals of our heritage.

We proved during the Clinton administration that Federal deficits can be eliminated, that the stock market can boom, that 22 million jobs can be created, and that low interest and inflation rates could increase the quality of life for families from Maine to Washington. We are not better off than we were, but we can be and we will be with a new majority, with a change in administration policy, and new leadership in the White House.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, it is said that we inherit this great country of ours from our parents and we borrow it from our children. Yet, for all of us, it is what we do with this country, in what shape do we leave it for our children?

All of us aspire to give our children something more, leave a country to our children that is a better one, a stronger one, with better jobs and growth and opportunity.

My colleague asked the question: Are you better off today than 4 years ago? That was a question President Reagan asked repeatedly many years ago. It is a fair question. We have some serious challenges: the challenge of responding to the threat of terrorism; the challenge we now find in Iraq and Afghanistan; the challenge in this country of finding a way to create new jobs, to pay our bills and avoid running up very large deficits, and to deal with our trade imbalance. These are very significant challenges. In many ways the answer to these challenges relates to our values.

David McCullough wrote a wonderful book about John Adams, who traveled a great deal as they tried to put this new country together. He was in London and France. He would write right back to Abigail and he would ask the question in his letters plaintively: Where is the leadership? Where will the leadership come from to help put this country of ours together? Then he would answer his question by saying: There is really only us. There is Thomas Jefferson, Ben Franklin, George Washington, me, Mason, Madison.

In the rearview mirror of history we know the ''only us'' represents some of the greatest talent in human history. But for every generation, the question has been, Where will the leadership come from? Now more than ever the question is, Where will the leadership come from?

Let me talk for a moment about some of the challenges we face. I mentioned terrorism, the war in Iraq, Afghanistan. Let me talk about this country's fiscal policy and specifically trade policy with respect to large and growing and dangerous deficits.

This year we will have the largest Federal budget deficit in history, the largest ever in the world by any country. Last week we saw a story in the Washington Post that says: ''U.S. Trade Deficit Grows Unchecked,'' $46 billion gap in March is the biggest monthly trade deficit in our history. Think of that, $46 billion in 1 month,

over $10 billion of it to China alone. This is at a time when the dollar is weakening, and they expect that our trade deficit will begin to shrink. Our trade deficit grows.

We have the largest budget deficit in history, the largest trade deficit in history, and the administration acts as if this is just routine. They say: What problem? This is not a big issue. What problem?

Ultimately, our children will repay this trade deficit with a lower standard of living. They will inherit the budget deficit and have to repay it. As important as that is, the combination of these deficits that are choking our economy mean we will have fewer jobs and less opportunity and a less robust economic growth in the future. That is a fact.

Where are the values that deal with these questions? Should we not as a country begin to address this? Where is the leadership?

I know conservatives who say this is not true. It is true. The President says: Let's increase spending. He says: Let's increase defense spending by well over $100 billion a year. Let's increase homeland security spending. Let's increase spending on health care issues because health care spending is increasing. He proposes we pay that. So we have very large spending increases and at the same time he says, Let's cut taxes and cut taxes again. Yesterday's CQ Daily talks again about an additional tax cut campaign.

The question is, How do you pay for all this? Does it add up to have budgets proposed by this President that say, let's increase spending in category after category and then, by the way, let's cut revenue and let's have the kids pay for all this?

Now we have a proposal for $25 billion in additional funding for Iraq. That is on top of the nearly over $80 billion we appropriated recently just months ago. Part of that money, incidentally, which is not paid for and that is charged to the kids, is to reconstruct Iraq.

We have a program in this country offered to us by the administration for Iraq, a domestic program. They have a roads program for Iraq. They have a jobs program. They have a health care program for Iraq. They have an energy program for Iraq—all paid for by the American taxpayer. Is that what we ought to be doing?

Iraq has the second largest reserves of oil in the world. I had a soldier tell me he was standing on some sand in a low spot one day in Iraq and his boots got black with oil. It was seeping out of the sand. They have the second largest reserves of oil in the world. I believe the Iraqi people ought to sell Iraqi oil to pay for Iraq reconstruction. That is not the job of the American taxpayer. Yet this administration again, even on this issue, says: Let's borrow money and let the kids pay for it in order to provide a domestic program to reconstruct Iraq. In my judgment, it is fundamentally wrong. It means fewer jobs in our country, less economic growth, and less opportunity here.

Unless we get our hands around these issues, a reckless fiscal policy that has now given us the largest budget deficit in history and a trade policy that seems oblivious to fairness for American producers and workers, when you hear people talk about trade policy who espouse these things, you wonder whether the tongue is in any way connected to the brain. What on Earth could they be talking about, setting up trade policies with other countries that undercut our producers and undercut our workers?

I could give you examples. I have done it in recent weeks. Huffy bicycles are made in China; the little red wagon, that is made in China, not in America. You want to buy Mexican food, go buy a Fig Newton. Fig Newton used to be an all-American cookie. That is now made in Mexico; Fig Newton is Mexican food. You wear Fruit of the Loom underwear? You are not wearing American underwear anymore. It is made in Mexico and China. And Levis, that isn't all-American. They are gone, too.

This country has to have a trade policy that begins to ratchet these huge deficits down. Instead, they are going up. This administration doesn't care. Their interest? Go do another trade deal with another country, just do another deal. It undercuts the interests of our country. It is perfectly appropriate, as the Democratic leader said, to ask: Are you better off now than you were 4 years ago? The answer with respect to this country's economy and long-term outlook is, no, we are not.

The answer to John Adams' question, Where will the leadership come from, is the leadership needs to come from an administration that says we have to pay for that which we consume. Why are we not asking in this country that we begin to pay for that which we are spending? If we want to increase defense spending $100 billion a year, as the administration has done and Congress has approved, should someone pay for that? If homeland security needs, in order to deal with the threat of terrorism, have increased, we must increase spending in homeland security, should someone pay for that, or is this all the obligation of our children?

We need leadership, and we need it now. This administration understands, or should understand, that in fiscal policy and trade policy, these large deficits—large, abiding, and growing deficits—will choke this economy, and that is not what we should aspire to want for our country's future. We can do better than that.

Mr. President, how much time is remaining on our side in morning business?

The PRESIDING OFFICER (Mr. ENZI). There is 10 minutes 45 seconds remaining.

Mr. DORGAN. Mr. President, I yield back that time.

The PRESIDING OFFICER. All time is yielded back.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

ESTABLISHMENT OF CAMPAIGN MEDALS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 3104, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3104) to provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom.

The PRESIDING OFFICER. Debate is controlled. Who yields time?

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I yield myself 6 minutes off of the time on this side, and then the remaining 4 minutes will be reserved for the Senator from Arkansas who is in the Chamber to speak. I know Senator WARNER intends to speak as well.

First, I thank the majority leader, the Democratic leader, Senator WARNER, and Senator LEVIN for their leadership in bringing this legislation to the Senate floor today for a vote.

H.R. 3104 is a bill to honor our service men and women in Iraq and Afghanistan with campaign medals that recognize—appropriately recognize, in my view—their service and their sacrifice.

A few days from now we will all honor those who have given their lives in defense of this great Nation. That is, of course, Memorial Day. This year it takes on special meaning since we clearly are engaged in two wars in which we have suffered many losses. Many fathers and mothers, sons and daughters will spend this Memorial Day not with family and friends but instead in Afghanistan or in Iraq. It is for them and their families that I believe we need to pass this legislation.

Over the last 2 weeks, we have been flooded with horrific images of Iraqi prisoners mistreated at the hands of a few soldiers. This set of incidents has cast a dark shadow over the honorable and courageous service of over 2 million men and women in uniform. Today, we have an opportunity to send a strong, unequivocal message of support for our brave young men and women who have served and continue to serve both in Iraq and in Afghanistan.

H.R. 3104 will provide the special recognition to these soldiers that, in my view, is long overdue.

The administration made a decision to award a generic global war on terrorism expeditionary medal to all of the men and women who have served in

those two theaters of war. In my view, that is an effort to essentially practice a one-size-fits-all solution. I think it missed the mark. I think we can do better. This legislation will do better.

A campaign medal, such as is contemplated in this legislation, is different from an expeditionary medal. We can look back into the history of campaign medals and expeditionary medals awarded by our Department of Defense in previous campaigns and see that the campaign medals are reserved for those engaged in actual combat, or duty that is equally hazardous as combat duty, during the operation with armed opposition. That is what our men and women are facing today both in Iraq and Afghanistan. Clearly, service in those two locations warrants the authorization of campaign medals.

I am very pleased to see many of my colleagues have chosen to cosponsor the Senate version of this bill. This bill now has 24 cosponsors, including Senators LUGAR, LOTT, LANDRIEU, INHOFE, GREGG, JOHNSON, ROCKEFELLER, PRYOR, REID, DASCHLE, LINCOLN, BOXER, DURBIN, BIDEN, AKAKA, EDWARDS, KERRY, CLINTON, BAYH, FEINGOLD, NELSON, CONRAD, KENNEDY, STABENOW, DOLE, and BYRD. And, of course, I wish to thank the chairman and the ranking member of the Armed Services Committee again for their important leadership in getting this legislation enacted.

Also, I wish to acknowledge the very hard work and good work that was done by Representative VIC SNYDER, who was the sponsor of this measure in the House.

This measure we are going to vote on is identical to the bill we introduced in the Senate, and Representative SNYDER deserves great credit for his hard work in getting it enacted there.

Mr. President, I am informed there is some additional time. I have been informed we do not expect to start the vote until about 11:30 a.m.

Let me continue for another minute and say that after a particularly dangerous and brutal April, America now mourns the deaths of nearly 800 service men and women in Iraq, as well as 119 in Afghanistan. There have been nearly 3,000 Americans injured in those campaigns.

More than a year after the initial Iraqi invasion, the administration has announced plans to maintain a force of at least 135,000 troops in Iraq through 2005. Despite the assurances we would be able to handle this with an $87 billion supplement through this fiscal year, we now see that is not going to be possible. This is a significant military occupation. It is a significant reconstruction effort. In fact, it is the most significant we have ventured into since World War II. We must not underestimate the importance of the sacrifice these men and women are making.

The PRESIDING OFFICER. The Senator has used his time.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I be allowed another 2 minutes.

Mr. WARNER. Mr. President, I certainly will not object, but we should clarify that the vote will now go off at 11:30 a.m. Therefore, why don't we equally divide the time and the Senator from New Mexico take such time as he wishes, and our distinguished colleague from Arkansas wishes to speak. I do not think there is any rush. The Senator can take the time he wishes.

Mr. BINGAMAN. Mr. President, I concur with that assessment, and ask the additional time between now and 11:30 a.m. be split equally between the two sides.

The PRESIDING OFFICER. The time will be divided equally, after subtracting the time that has already been consumed, I suspect.

Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, I will conclude. This legislation and the establishment of these campaign medals will also serve to honor those who will not return home from these conflicts, including those who have fallen from my home State of New Mexico: Army SP James Prittle from Carlsbad, NM; Air Force Special Operations pilot, CPT Tamara Archuleta from Albuquerque, NM, a single mother whose helicopter crashed in Afghanistan; Marine PFC Christopher Ramos of Albuquerque, NM; and Marine Cpl Aaron Austin of Lovington, NM.

These heroes gave their lives for this Nation. This medal will honor that sacrifice as well. The great men and women of our military forces are doing their jobs every day in Iraq and Afghanistan. It is appropriate that we honor them with an award that truly stands for their heroic service. The Iraq and Afghanistan campaign medals will do that.

As I indicated before, I will now yield time to my colleague from Arkansas, and he can take as much time as he would like of that which remains on our side.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I rise to indicate my full support for the passage of this legislation, H.R. 3104, which requires the President to establish separate campaign medals for service members who participate in Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom. My good friend and colleague, Congressman VIC SNYDER of Arkansas, has worked tirelessly to pass this measure in the House. Congressman SNYDER is a man of character and conviction, and he has worked to develop a bill that rightly recognizes the service of our men and women in Operation Iraqi Freedom and Operation Enduring Freedom.

This bill truly is a credit to his leadership and his ability, and once again he is demonstrating his effectiveness in the Congress.

I am a cosponsor of S. 2262, the Senate companion measure offered by Senator BINGAMAN, who has also shown great leadership on this issue. I want to acknowledge that and thank him for championing this measure in this distinguished body.

This is a solid measure. The Senate Armed Services Committee, whose chairman is in the Chamber today, Senator JOHN WARNER, my distinguished colleague from Virginia, has shown tremendous leadership over the last several months and even over the last years as chairman of the Senate Armed Services Committee. The committee has passed identical language in the Defense authorization during the committee markup. The committee also reported favorably H.R. 3104.

This bill was not intended to replace the administration's Global War on Terrorism Expeditionary Medal and the Global War on Terrorism Service Medal. Instead, it complements the Global War on Terrorism Medals by providing additional separate campaign medals that would be awarded to qualified service members.

As we view and read about the difficulties that our troops are facing in Iraq, we see the camaraderie that exists between people who have served in the same war. There is definitely a unique bond. Separate campaign medals for Operation Iraqi Freedom and Operation Enduring Freedom honor those two distinct and separate military campaigns.

Separate campaign medals provide our men and women in uniform who serve in these operations with tangible acknowledgment of their duty to their country. I think this humble token of acknowledgment is the least we can do, and I urge my colleagues to support this very important bill.

I yield the floor.

Ms. LANDRIEU. Mr. President, I rise today to support this legislation, as it recognizes America's fighting men and women serving today in Iraq and Afghanistan. These soldiers, sailors, airmen, and marines are serving their country, in harms way, in two distinct theaters, and it is time that we recognize them appropriately.

The armed forces of this country have defended us valiantly for the last two hundred and twenty nine years. When our Nation has been challenged, each generation has risen to the occasion. And I do need to inform anybody in this chamber that the current generation has done the same, and that they are fighting valiantly in Iraq and Afghanistan. America knows all too well that many of our troops have given what President Lincoln called the ''last full measure of devotion.''

The generation that fought in Vietnam was given a medal for their service, as were the men and women who served in Korea. The generation that fought in World War II was awarded with a medal commemorating the victory, as well as service in the Pacific, European/African, and American theaters. And today we bestow the same honors upon the current generation that their fathers and grandfathers received.

This legislation is the right thing to do, and I am proud to join my colleague, Senator BINGAMAN, in this effort.

Mr. AKAKA. Mr. President, I rise today as a proud cosponsor to express my support of legislation introduced by Senators BINGAMAN, INHOFE, LANDRIEU, and LUGAR which would establish separate campaign medals to be awarded to those members of the Armed Forces who participate in Operation Enduring Freedom, OEF, and Operation Iraqi Freedom, OIF.

Campaign medals in the United States have a long history and date back to George Washington's time when he received a gold medal from Congress for the recovery of Boston on March 17, 1776. By 1907, members of the Army were wearing newly issued campaign medals, and by 1908, the Navy and Marine Corps began to recognize exemplary service with campaign medals.

During World War II a series of area campaign medals were authorized for service in the American Theater, the Asiatic-Pacific Theater, and the European-African-Middle Eastern Theater of the war. These medals were the same for all services and inaugurated a trend that exists today by recognizing the valor and service of military members involved in specific difficult deployments.

I had the privilege of traveling to Iraq and Afghanistan in March 2004 where I met many of our men and women proudly serving our nation. It was an honor for me to witness their dedication to duty and country. While our Nation is engaged in a global war on terrorism, it is clear that our soldiers, sailors, airmen, and marines are engaged in distinct operations in Afghanistan and Iraq. Some of them have served in both operations and deserve separate medals.

Campaign medals were specifically designed to recognize the service of military members in specific operations during a period of active hostilities. Service men and women deployed in Iraq and Afghanistan deserve this distinctive honor. I fully support this bill which would establish campaign medals for members of the Armed Forces who participate in Operation Enduring Freedom or Operation Iraqi Freedom.

The PRESIDING OFFICER. Who yields time? The Senator from Virginia.

Mr. WARNER. Mr. President, I express my appreciation to Senator BINGAMAN and Senator PRYOR and acknowledge our colleague in the House, Mr. SNYDER. I would like to add to that Congressman Ike SKELTON. He talked to me about it. He feels very strongly. He is a marvelous man. He is the ranking member of the House Armed Services Committee.

So I think this is a splendid initiative. I strongly urge Members of this Senate to support it. It is H.R. 3104, the act to provide for the establishment of separate campaign medals for those uniformed services participating in Operation Enduring Freedom and Operation Iraqi Freedom.

The bill before us passed the House in late March by a vote of 423 to 0. During the markup of the Defense Authorization Act for fiscal year 2005 on May 6, the committee unanimously decided to include the text of this provision in the bill as section 542. At the same time, in order to expedite its enactment, the committee also voted favorably to report out this bill. So we covered it in both ways in the Armed Services Committee, again showing our strong support.

I will touch on a little bit of history. Going back to World War II, we had a campaign medal called the Asiatic/Pacific Campaign Medal, and that covered all of the operations in the Pacific region. There was another separate medal for the Philippine campaign, to my recollection, but basically it was one to cover the many actions in the Pacific. Likewise, a second was the European/African/Middle Eastern Campaign Medal awarded to those who served between 1941 and 1946, which covered all of the operations in those three theaters.

There was a third medal which was sort of a medal that covered those who saw service, but their training and other duties did not require them to go overseas. They were largely in the continental limits of the United States and participated in actions along the coastlines of America, the Atlantic side, and, of course, the Pacific side.

Then when we came down to the campaigns in Korea, there was the Korean Service Medal given from 1950 to 1954. My distinguished colleague, Senator BINGAMAN, worked on a slight revision for the qualifications, which I supported, expanding the period of time, which I thought was a wise decision.

Then when we came down to the question of the service in Vietnam, again, we had the Vietnam Service Medal. So there are many precedents for this type of action regarding the very important recognition of the individuals who participate.

These particular categories of decorations indicate the geographic area where that individual saw service during the periods of conflict. Through experience I have found that the men and women of the Armed Forces—again, I say with the deepest humility I was entitled to the Korean Service Medal for very modest service—but I remember this weekend, as other Members do, where we traveled back to our States to seek out those who saw service in Iraq, and I met with six individuals in connection with a graduation speech. They had been reservists at this small college. They had been called back into active duty, and coincidentally with my visit they had just gotten home from their year obligation of service in Iraq.

The first question they asked me was, What sort of recognition do we get for service over there? Now, two of them had been wounded and, of course, received the Purple Heart, but they were anxious to know was recognition forthcoming. That is why I have joined in total support of this effort to bring to the attention of those people in this country the remarkable service that has been performed in both these theaters of operation in the past year or so.

So I strongly support this bill. The superb service rendered by our Nation's fighting forces since September 11 fully warrants the establishment of campaign medals for service in Operation Enduring Freedom and Operation Iraqi Freedom. I urge all of my colleagues to vote for it.

I again thank those who have taken a leadership role, our distinguished colleagues Senators BINGAMAN and PRYOR, and the two individuals on the House side.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, how much time remains?

The PRESIDING OFFICER. There remains 2 minutes 45 seconds.

Mr. BINGAMAN. Mr. President, let me take another minute to conclude the discussion. Again, I thank Senator WARNER particularly for his leadership in getting this bill up for a vote today, and, of course, Senator PRYOR, who was here a few minutes ago to speak; I appreciate his efforts. Of course, the majority leader and Senator DASCHLE on the Democratic side have both participated in helping do this.

This is an important step for us to take, to honor the brave men and women who are serving our country in distant locations. I have had a similar experience to the one Senator WARNER described, talking to service men and women who have returned—in the case of my State, from Afghanistan, the ones I spoke to, 2 weeks ago. They are very proud of what they have done. They have great reason to be proud of what they have done. This awarding of these campaign medals will help us to recognize that.

Let me also indicate my appreciation to David Montotya of my staff for the consistent work he has done trying to move this legislation ahead, both last year and again this year. I think the dedicated efforts of our staffs often go unrecognized. He deserves credit. Trudy Vincent, my staff legislative director, also deserves credit.

Mr. WARNER. Mr. President, I ask unanimous consent that I can proceed for a minute or two in a colloquy with my distinguished friend from Nevada.

Mr. REID. I agree we need 2 minutes on our side, also.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. We do not need the time now.

Mr. WARNER. If I could have a brief colloquy, the leadership needs to focus on working with Senator LEVIN and myself, as we always do each year on this bill. We are hopeful to finish this bill this week. I think that is shared by the other side of the aisle.

Our Members are going back for the Memorial Day weekend, and the provisions in this bill are provisions that relate to so many of the men and women in the Armed Forces with whom they will undoubtedly be associating over the course of this weekend. It is definitely in the interest of Members to move forward on this bill.

While we have a hearing in the Armed Services Committee tomorrow morning on the questions related to prison abuse, the bill is going forward. Members of our committee will be in the Senate intermittently as the hearing is going on. That will not in any way, I hope, be viewed as an impediment to forward progress.

I, personally, am willing to stay here as long into the evenings as desired by our leadership to get this done. In years past, my distinguished colleague from Nevada has been most helpful in moving this piece of legislation.

Mr. REID. Mr. President, through you to the distinguished Senator, first, on behalf of the people of the State of Nevada, and I think I speak for the country, the way the Senator has handled this committee with Senator LEVIN during this very difficult time has been admirable. The Senator is my stereotype of the Senate. The Senator is a proud member of the Republican Party, yet the Senator has the wisdom and the experience to be able to set those partisan desires to one side. That is good for the country. The Senator has certainly indicated that during the past few days. We respect the Senator for that.

Mr. President, we will be happy to cooperate with the distinguished chairman in attempting to finish this bill this week. It is a big ''ask,'' because we have on our side, and the Senator has on their side, Members offering amendments. I see the distinguished junior Senator from Mississippi is shopping an amendment. We have a number of bipartisan amendments being talked about.

We are in the mode of wanting to cooperate. We understand the importance of this legislation. It may be very difficult to finish. We have Tuesday, we have Wednesday, we have Thursday, and Friday.

As the Senator knows, this is the Friday before the Memorial Day recess. The Senator is more experienced than I, but come Thursday night, Friday morning, Members will have parades and things to do so it will be very difficult to finish this bill. However, the Senator should understand that on this side we will cooperate in any way we can to finish the bill.

Mr. WARNER. I thank my distinguished colleague. I emphasize tomorrow morning's hearings will not interfere with progress on the bill. We have three of our combatant commanders, coincidentally, in Washington for a variety of reasons.

The letter Senator LEVIN and I sent to the Secretary of Defense scheduling additional witnesses offered the option of a teleconference hearing, thinking they would not be back, but we are fortunate they have returned for not only this hearing but a wide range of additional duties they are performing in Washington by way of consultation. That will not be an impediment. We will move forward tomorrow as scheduled with our work on the committee.

Mr. President, we are prepared to move ahead.

The PRESIDING OFFICER. All time has expired. The question is on third reading and passage of the bill.

The bill was ordered to a third reading and was read the third time.

Mr. WARNER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 96 Leg.]

YEAS—98

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (FL)	Reed
Bunning	Graham (SC)	Reid
Burns	Grassley	Roberts
Byrd	Gregg	Rockefeller
Campbell	Hagel	Santorum
Cantwell	Harkin	Sarbanes
Carper	Hatch	Schumer
Chafee	Hollings	Sessions
Chambliss	Hutchison	Shelby
Clinton	Inhofe	Smith
Cochran	Jeffords	Snowe
Coleman	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lieberman	Wyden
DeWine	Lincoln	

NOT VOTING—2

Inouye	Kerry

The bill (H.R. 3104) was passed.

Mr. LOTT. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The journal clerk read as follows:

A bill (S. 2400) 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.

Pending:

Lautenberg amendment No. 3151, to clarify the application of Presidential action under the International Emergency Economic Powers Act.

The PRESIDING OFFICER. The Senator from Mississippi.

AMENDMENT NO. 3158

Mr. LOTT. Mr. President, I call up amendment No. 3158, which is at the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The journal clerk read as follows:

The Senator from Mississippi [Mr. LOTT], for himself, Mr. DORGAN, Ms. SNOWE, Mrs. FEINSTEIN, Mr. COCHRAN, and Mr. DASCHLE, proposes an amendment numbered 3158.

Mr. LOTT. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide that the 2005 base closure round shall apply solely to military installations located outside the United States and to provide for expedited consideration by Congress of a proposal for a base closure round in 2007 on military installations located inside the United States)

At the end of title XXVIII, add the following:

Subtitle E—Defense Base Closure and Realignment

SEC. 2861. MODIFICATION OF 2005 BASE CLOSURE ROUND TO APPLY SOLELY TO MILITARY INSTALLATIONS OUTSIDE THE UNITED STATES.

The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by adding at the end the following new section:

''SEC. 2915. APPLICABILITY OF 2005 ROUND SOLELY TO MILITARY INSTALLATIONS OUTSIDE THE UNITED STATES.

''(a) IN GENERAL.—(1) Notwithstanding any other provision of this part, the military installations covered by activities under this part in 2005 shall consist solely of military installations outside the United States.

''(2) Except as otherwise provided in this section, for purposes of activities under this part in 2005 any reference to military installations inside the United States shall be deemed to be a reference to military installations outside the United States.

''(b) INAPPLICABILITY OF SELECTION CRITERIA FOR 2005.—The final selection criteria prepared under section 2913 shall not be used in making recommendations for the closure

or realignment of military installations under this part in 2005.

''(c) RECOMMENDATIONS OF SECRETARY OF DEFENSE.—(1) In lieu of any information otherwise required under paragraph (1) or (2) of subsection (b) of section 2914, the recommendations of the Secretary of Defense under subsection (a) of that section shall include the following:

''(A) A detailed plan for eliminating any physical capacity at military installations outside the United States that requires the unnecessary diversion of scarce resources for operation and maintenance, sustainment, or recapitalization of such capacity.

''(B) A list of the military installations outside the United States that are proposed for closure or realignment under this part, and a schedule for the closure or realignment of such installations.

''(C) A list of the military installations to which personnel or equipment will be relocated from military installations included in the list under subparagraph (B), including for each military installation so listed, the new infrastructure to be required for such personnel or equipment and the cost of such infrastructure.

''(D) An estimate of the cost savings to be achieved by the closure or realignment of military installations under subparagraph (B).

''(E) A certification whether or not a round in 2007 for the closure or realignment of military installations inside the United States is advisable.

''(2) In making recommendations referred to in paragraph (1), the Secretary shall take into account the final report of the Commission on the Review of the Overseas Military Facility Structure of the United States under section 128 of the Military Construction Appropriations Act, 2004 (Public Law 108–132; 117 Stat. 1382; 10 U.S.C. 111 note).

''(d) COMMISSION REVIEW AND RECOMMENDATIONS.—(1) In addition to the requirements specified in section 2914(d), the Commission shall include in its report under paragraph (1) of that section the following:

''(A) An assessment by the Commission of the extent to which the recommendations of the Secretary under subsection (c) take into account the final report referred to in subsection (c)(2).

''(B) An assessment by the Commission whether or not the recommendations of the Secretary under subsection (c) maximize the amount of savings that can be achieved by the United States through the closure or realignment of military installations outside the United States.

''(C) An assessment by the Commission whether or not a round in 2007 for the closure or realignment of military installations inside the United States is advisable.

''(2) Paragraph (5) of section 2914(d) shall not apply to the review and recommendations of the Commission, under such section and this subsection, of the recommendations of the Secretary under subsection (c).

''(e) COMPLETION OF CLOSURE OR REALIGNMENT ACTIONS.—The closure or realignment of military installations outside the United States under this part pursuant to activities under this part in 2005 shall be completed not later than December 31, 2010.''.

SEC. 2862. BASE CLOSURE ROUND IN 2007 RELATING TO INSTALLATIONS INSIDE THE UNITED STATES.

(a) TWO-YEAR EXTENSION OF BASE CLOSURE LAW FOR PURPOSES OF ROUND IN 2007.—Section 2909(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking ''April 15, 2006,'' and inserting ''April 15, 2008,''.

(b) EXPEDITED CONSIDERATION BY CONGRESS OF ROUND IN 2007.—That Act, as amended by section 2861 of this Act, is further amended by adding at the end the following new section:

''SEC. 2916. REQUIREMENTS AND LIMITATIONS ON BASE CLOSURE ROUND IN 2007 RELATING TO INSTALLATIONS INSIDE THE UNITED STATES.

''(a) EXPEDITED CONSIDERATION BY CONGRESS OF AUTHORIZATION FOR ROUND.—The consideration by Congress of a joint resolution for a round of defense base closure and realignment under this part in 2007 relating to military installations inside the United States shall be governed by the provisions of section 2908.

''(b) JOINT RESOLUTION.—For purposes of this section and the application of section 2908 to the joint resolution referred to in subsection (a), the term 'joint resolution' means a joint resolution which is introduced within the 10-day period beginning on the date in 2005 on which the President transmits to Congress an approval and certification described in paragraph (2) or (4) of section 2903(e) in accordance with section 2914(e), and—

''(1) which does not have a preamble;

''(2) the matter after the resolving clause of which is as follows: 'That a round of defense base closure and realignment is authorized to occur under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) in 2007, with such round to apply to military installations inside the United States'; and

''(3) the title of which is as follows: 'Joint Resolution to authorize a round of defense base closure and realignment in 2007 with respect to military installations inside the United States.'.

''(c) CRITERIA AND SCHEDULE FOR 2007 ROUND.—Not later than 15 days after the date of the enactment of the joint resolution, the Secretary of Defense shall publish in the Federal Register the following:

''(1) The selection criteria to be utilized in the round of defense base closure and realignment under this part in 2007, which criteria shall be the final selection criteria developed under section 2913(e), together with such modifications of such final selection criteria as the Secretary considers appropriate in light of changes in circumstances since March 15, 2004.

''(2) The schedule in 2007 for actions on recommendations and consideration of recommendations in the round of defense base closure and realignment under this part under section 2914, which schedule shall, to the maximum extent practicable, be the schedule for 2005 as specified under that section together with such modifications as the Secretary considers appropriate to take into account changes in the calendar between 2005 and 2007.''.

Mr. LOTT. Mr. President, first I have a couple of housekeeping items. I am delighted to join in support of a truly bipartisan amendment. The lead sponsors of the amendment are Senator DORGAN of North Dakota, Senator SNOWE of Maine, Senator FEINSTEIN of California, Senator COCHRAN of Mississippi, and Senator DASCHLE of South Dakota. We do have broad bipartisan support as original sponsors.

I would like to begin by describing the amendment. This will take approximately 10 minutes, and then perhaps Senator DORGAN can have 10 minutes and then Senator COCHRAN would like to be recognized. We will try to get the opening statements in before we break for the policy luncheons, and then we can discuss during the break the timing on the amendment and how we proceed from there.

Does the manager of the legislation have a comment?

Mr. WARNER. Mr. President, I thank my good friend and leader for bringing up this amendment at this time. I approached him on the floor saying we are anxious to get the bill moving, and he accepted the challenge. I am not sure If I am going to support him on this amendment, but, nevertheless, we will have a good and thorough debate.

My distinguished colleague, Senator LEVIN, and I conferred earlier this morning. We are both of a frame of mind that we want to move with tremendous momentum. Today is a good day to move on. I urge Senators to bring their amendments to the floor. We are willing to stay here into the evening and participate in the process.

During the hearing of the Armed Services Committee tomorrow morning at 8:30 to sometime midday, we will have members of the committee on the floor. We will not lose a step in moving forward on this bill. It is important to have this hearing tomorrow. We are fortunate that the Department of Defense brought back commanders for a variety of reasons, not just our hearing. Senator LEVIN and I had made the offer to do it by telephone conferences. It is important we continue the continuity of the hearings of our committee.

The point of this is, I would hope, if I can frankly say to our leadership, that perhaps we could get a unanimous consent agreement later tonight to lock in those amendments that we know are out there on this bill. I hope we can do that. I have seen a list of 50 amendments. Yet I think it is an incomplete list. Perhaps within the course of the day we can explore that option with our leadership.

Mr. LEVIN. Will the chairman yield?

Mr. WARNER. Yes.

Mr. LOTT. Mr. President, I believe I have the floor. I will be glad to yield.

Mr. LEVIN. If the Senator from Mississippi will yield, forgive me, I join our chairman in urging all of our colleagues to bring the amendments to the floor, share the language with us, and allow us to move expeditiously on this bill by doing that.

We are going to proceed, as the chairman indicated, tomorrow morning on the floor to consider amendments at the same time that we are holding a hearing with the three generals who have been outlined. We can do both at the same time with the cooperation of all of our Members. We have the cooperation of all of our Members.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I am delighted we are moving forward with this amendment. I know how much the managers like to get the process started and consider major amendments. I believe this is an issue that deserves some consideration and some debate

during the day and early on. We will be prepared to work with the managers to get a reasonable time agreement and get to a vote because I think this is the best way to proceed on legislation such as this. We are not interested in delaying tactics.

I rise to offer this amendment which would modify the Base Realignment and Closure Act of 1990, BRAC, to first consider our needs overseas before we move forward with closing more bases at home.

Let me emphasize what this amendment is not. This is not an amendment that would eliminate or terminate the next BRAC round. This is not an amendment that would even delay it for 2 years, as the House Armed Services Committee language now provides. I believe they would delay the next base closure round until 2007. No, this amendment specifically says let's go forward with the realignment overseas. Let's look at our force structure. Let's determine how many installations are truly needed and required overseas, what their missions are, and what will the future call for.

We have talked about needing a more mobile, lighter force with a lot of prepositioning, but as we found out in Iraq, that may not be all that we need.

Then the question is, if we decide to bring back some of these divisions, such as the 1st Armored Division now based in Germany, where would we put them? The question is, before we go to the next domestic round, let's get this decision on realignment and changing of force structure overseas, see what we are going to need over there, where we are going to put our troops, and what are we going to do with them when they come home. Then the BRAC Commission would go forward with the domestic round.

I want to emphasize a couple of points about how this would work.

It would make clear that section 2913, the selection criteria, for the 2005 round does not apply in that we would have the overseas realignment first and then the domestic. It would keep the existing schedule for the Pentagon's mission of a list and for a BRAC consideration of that list. It specifies that the Secretary's May 16, 2005, submission to the BRAC Commission should include a number of items.

The Secretary's May 16, 2005 submission to the BRAC commission should include a detailed plan for eliminating excess physical capacity at the overseas bases and facilities of the Department of Defense, the operation, sustainment, and recapitalization of which diverts scarce resources from defense capability; a list of overseas bases and facilities that will be closed or realigned during the period 2005–2010 and a schedule for implementing each base closure or realignment; where the personnel and equipment from each base on the list will be relocated to; the infrastructure investments that are required at each receiving base; an estimate of the annual net savings for each of the military departments that will result from the closures and realignments; and a certification whether the need exists for an additional round of domestic base closures and realignments in 2007.

It also says in developing the overseas base closure plan, the Secretary shall take into consideration the report of the Commission on review of overseas military structures of the United States that is due to report its findings by December 31, 2004. In other words, this process is underway, but we need to get those Commission reports. They need to take into consideration the overseas decision before they go to the next domestic round. That is basically what this amendment does.

I want to cite, though, why I feel so concerned about this. The record is clear that I have never thought BRAC was a good idea. I think the way it should be done is the way it was done always up until the 1980s. The Pentagon determines where they have overlap or duplication, they send up foreclosure recommendations to the Congress, and Congress acts.

The argument might be that Congress wouldn't act. They did. Congress acted in the 1950s, the 1960s, the 1970s, and up to the midpart of the 1980s and numerous bases throughout the country were closed. It is an assumption we cannot assume our rightful role in this Government or in that process. So that is something that is clear.

There are other factors now. As I have looked at domestic bases and looked at overseas bases, the very idea we are now going to move forward with a base closure round that would close up to 25 percent of our existing bases is a real concern, if that is going to be done domestically. As a matter of fact, CBO says the four—count them, the four BRAC rounds we have already had resulted in little or no excess capacity in the United States—little or no excess capacity. Yet the Pentagon is insisting on moving forward with this BRAC at this time.

Let me assure my colleagues, too, they are doing it differently this time. The list is not being compiled by uniformed services, but it is being pulled up to the Office of the Secretary of Defense level. That does worry me.

We are doing this at a time when we have our troops all over the world, in combat situations in Afghanistan and Iraq. The American people are concerned about our troops, concerned about our capacity to have sufficient numbers there. We have National Guard and reservists serving now and doing a tremendous job, I think, up to perhaps as much as 40 percent of the troops are deployed in those locations. Keep this in mind. The next BRAC round will include National Guard. We didn't have that in the past. But National Guard facilities will probably—will, under the definition they are going forward with, be included in this process.

These are communities all over America, in almost every State. I have here a list of the bases that have been on earlier BRAC closure lists or would probably be on the list, based on the criteria as we now understand them. All over America, communities and States are worried about the situation. They are employing consultants to represent the communities or the States. It is running into the millions of dollars because of this sheer uncertainty: Is it going forward or not? Are we going to be affected or not? And, by the way, the Secretaries of Defense—and I say Secretaries because I have talked to three of them about it—refuse to set up this criterion in such a way where you look at the places where you know you have duplication or overlap. Why put everybody on the list, everybody in an uproar, when you know as a matter of fact the duplication is in this place or that place? No, they don't want to define it in that sort of limited way.

Here is the point. We need to decide what we are going to do overseas first. We need to be careful about what we do domestically because it could be affected by what we do overseas. At a time when we are at war in Afghanistan and Iraq, at a time when our people are already concerned about what the future is for their military men and women in their communities and in fact their families, let's do this in such a way that people will feel comfortable we are going about it in the right way.

There have been some bases eliminated overseas since the wall came down. In fact, I think 700 facilities in Europe have been closed. But we still have 200,000 troops stationed overseas—80,000 in Germany alone, and that doesn't count some of the reservists and civilians. I suspect there are as many as 100,000 in Germany alone. Let me give an example here with this chart of what we are talking about. This is Germany—unified Germany, surrounded by Belgium, France, Switzerland, Austria, Czech Republic, Denmark. I don't think they are threatened by any of those countries.

You will see on this chart the sites where we have Army and Air Force bases in Germany. They are, of course, right across the central part, but they are also now in what was East Germany. There are 310 installations, an estimated 100,000 people in Germany alone. Do we need 310 installations? Some of them are small, but let me assure you on my recent trip to Berlin it was clear they wanted to keep all these bases and it was clear why. Because economically it is helpful—economically helpful to Germany. Yet we are talking about closing bases here at home, when we have 310 bases there.

By the way, this is also a country that has recently said they would no longer provide 2,500 troops to guard our installations in Germany while the troops ordinarily stationed there are in Iraq not even 2,500 troops.

I am saying let's take a strong look at Germany. It is not only Germany. I don't want to pick on Germany. We have, I think, 18 installations in Belgium, 12 in The Netherlands. Let me

make sure I have the exact numbers—18 in Belgium, 310 in Germany, 12 in The Netherlands, 101 in South Korea, 54 in the United Kingdom. There is a list here of what we have overseas, a total of 721 facilities overseas.

Do we need to have a hospital or Air Force bases in Germany? Sure. Do we need to have naval bases in Spain? Sure. Do we need to have prepositioning at various places around the world? Absolutely. We have heard a lot of talk about this restructuring or realignment overseas, but we still have not gotten it done. In fact, if you look at the force structure plan for BRAC 2005, based on the Pentagon's forecast, it assumes the same forces as now, from 2005 to 2009. It apparently assumes the forces that are based overseas now will remain based overseas.

Are we going to have a realignment and bring some home or not?

I think this amendment makes good sense. It does not stop BRAC. It allows it to go forward. But it puts the horse before the cart. Let's look at the overseas situation. Let's assess what we need there. Let's find out what we are going to do with them if we do bring them back home and then go forward with the next step.

I talked with Senator DORGAN a lot about this. We thought about it carefully. We want to do the right thing. Surely there are some bases we could close and installations in the United States that could be closed. But I think we should do it in an orderly way and I think the timing of doing it now could not be worse.

I don't trust this process. Some people say if you do the commission, it takes it out of politics. Who believes that? Commissions are beyond politics? Take a look at the last commission. We got in a terrible conflict based on a decision that involves the States of Texas and California. I am not picking on those States, but it happened.

Let's take more time. Let's do the overseas situation first and then go forward with the domestic bases a year or two from now, when we will have a better feel for what is happening in the world.

Since we are limited on time, I would like to withhold further comments at this time so Senator WARNER or Senator DORGAN could speak and perhaps Senator COCHRAN wishes to be heard on this issue, too.

I yield the floor.

Mr. WARNER. I thank my colleague. We are off to a very good start.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I ask unanimous consent that the hour for purposes of discussing these opening remarks be extended to 12:45.

Mr. LEVIN. I wonder——

Mr. WARNER. We could have some division between Senator LEVIN and myself. Perhaps if we could——

Mr. LEVIN. I wonder if the Senator would amend that to 12:40?

Mr. WARNER. You have 12:40. Why don't we reserve, say, 5 minutes within that period, or 6 minutes for the Senator from Michigan and myself and allocate the remainder of the time to our other two colleagues.

With that, I yield the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. Time has been extended until 12:40.

The Senator from North Dakota.

Mr. DORGAN. It sounds to me as though we are left with 3 or 4 minutes, as I understood it. I don't think that accomplishes it. I will speak only 2 or 3 minutes at the moment. I know I have two colleagues who perhaps would like to speak for a couple of minutes. I would be glad to come back after our caucuses——

Mr. WARNER. Mr. President, we certainly could come back after the caucuses. I am trying to help to get a little bit of time.

Mr. DORGAN. Let me do 3 minutes, and then I will yield the floor so my colleagues might also say a word or so. My colleague, Senator LOTT, explained the reason for this.

Let me explain what this bill is not. This amendment is not an amendment that would obliterate or abolish next year's BRAC Commission. It does not do that. It does say next year's BRAC Commission should make judgments and recommendations to the Congress on the overseas base structure.

It makes good sense that we would understand and try to think through what our basing structure should be internationally before we decide what our needs are here at home. If, for example, at some point we do not have 100,000 troops in Germany and we bring home 50,000 of those troops to this country—incidentally, we ought to consider that because it is very expensive to keep 100,000 troops in Germany—if we did that, where would we put 50,000 troops? At which base? What set of bases?

So we propose something that would make good sense, make judgments in next year's BRAC Commission about the overseas bases, where we should retain overseas bases.

Since we authorized the BRAC round, we have had the continuing war on terrorism, a war in Afghanistan, and a war in Iraq. We have had a series of things that have altered in many ways what our responsibilities are around the world. The cold war is over. We have new challenges and new responsibilities.

The question we should answer first is, What should our base structure be internationally and from that, then, what kind of needs do we have to house troops at home?

My colleague mentioned several other features of this bill. Let me leave it at that. I will come back this afternoon after the caucus lunch and discuss in greater detail why we have offered this amendment. We do not intend to trip up the Pentagon or trip up the managers of the bill. We intend to see if we cannot have the base-closing process happen in an orderly way, figure out what the overseas structure should be, and from that, then if the Congress considers a 2007 round, have an affirmative vote to do that and make that judgment with respect to domestic bases.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I will defer my statement until after the policy luncheon at 2:15, but I want to say I truly appreciate the leadership of Senator DORGAN and Senator LOTT in this matter. It is critical we concentrate on this particular issue in terms of the impact for the future.

Senator LOTT indicated so eloquently that there is no question there is a problem with this process. It is not transparent. We are in a different threat environment than we have ever been. Clearly, we have to reevaluate, reassess the base-closing process in that light.

I will defer all of my comments until 2:15.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. This is a very significant amendment, in light of the history of the Senate now for consecutive years, deciding to go forward with the BRAC process that is well underway.

I share the viewpoints expressed by Senator LOTT, Senator SNOWE, and the Senator from North Dakota, the need to address the overseas situation. When time permits later on, I will explain what has been done to date by the Department of Defense in conjunction with the ongoing BRAC Commission regarding these bases. It is very significant.

The Department of Defense has moved forward. I think shortly they will submit to the Congress drawing down forces and bases in both the areas referred to by Senator LOTT and others; I might add also significant drawing down of forces inside Korea. That is underway.

Part of this proposed legislation in this amendment is the 2-year delay. I draw on the very comment made by my distinguished colleague, the Senator from Mississippi, Mr. LOTT, of the turbulence in the communities engendered by the existing law as they are struggling to get high-powered assistance and expert advice from every possible source, depending on the community budget, to try to preserve their military installation. That process is now continued for another 2 years. This is a somewhat heavy burden on many of these small communities to try to do the best they can to fight the existing law.

That is the key question Members have to consider: Are they going to extend these hardships under the existing law for 2 more years as we address the overseas situation, which I can assure Members later this afternoon is being thoroughly addressed by the Department of Defense in the context of the existing law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, we have received now a letter from the Chairman of the Joint Chiefs of Staff representing all of the chiefs urging the Senate to continue their unequivocalness to continue the 2005 round of base realignment and closures as authorized by Congress. They are pleading with us not to leave this issue unresolved because the savings which are essential for the transformation of our military are savings they want to achieve. They are working very hard on the transformation of our military. They clearly intend there be a global posture review, and there will be a global posture review, taking into account the closing of bases overseas.

There is a commission that must be created this year and is required to report to us on the review of the overseas military facility structure. This is referred to in the amendment. As I understand it, they have not yet been appointed, but it is required that the leadership appoint that commission, and it is required, obviously, that the Secretary of Defense and Department of Defense next year, in making their recommendations, take into account the very report this amendment says should be taken into account.

So we have a global posture review which is underway. It will be completed. We have a commission to review overseas military facilities. That is all in place. It is all ongoing. It is all in order. There is a logic to it all in terms of looking at the overseas bases first.

I could not agree more with the Senator from Mississippi and the Senator from North Dakota. Of course, you will look at overseas bases first. That is what is going on now. That is the global posture review. That is the commission on the review of the overseas military facility structure which is in the process of being appointed and will report this year.

But to disrupt all that and to leave every base in the United States in limbo for another 2 years is not doing a favor either to our military structure or to the bases around our country. We all have bases. Are we going to leave them nervous? Are we going to leave them in limbo for 2 more years? That is not doing them a favor and it is doing a significant disfavor to our military posture and the requirement that we transform, as the chief said, the combat capability of the Department of Defense.

I hope this amendment would be rejected.

Mr. WARNER. I simply add that right in this letter, and I ask unanimous consent this letter be printed in the RECORD at this point, a comprehensive overseas basing review is nearly complete. It is significant.

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

CHAIRMAN OF THE
JOINT CHIEFS OF STAFF,
Washington, DC, May 18, 2004.

Hon. JOHN WARNER,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We are writing this letter to emphasize our continued and unequivocal support for conducting a 2005 round of base realignment and closure (BRAC), as authorized by the Congress. The convergence of ongoing strategy and overseas basing actions, the transformational direction in all the Services and force structure changes together afford us a once-in-a-generation opportunity to truly transform the Department's combat capability in an enduring way. A delay of this BRAC round, or a modification of the legislation that limits the Department's flexibility to execute it, will seriously undermine our ability to fundamentally reconfigure our infrastructure to best support the transformation of our forces to meet the security challenges we face now and will continue to face for the foreseeable future.

A comprehensive overseas basing review is nearly complete. The continued concentration of forces in Cold War locations highlights the need for a global repositioning to locations that best support our strategic goals. In order to ensure that the Department examines its entire infrastructure, the rationalization of our domestic infrastructure as conducted by the BRAC process must closely follow the Global Posture Review. Both efforts are necessary for a genuine capabilities-based infrastructure rationalization and to further transformation of our warfighting capabilities.

We ask for your careful consideration of the importance we place on conducting a 2005 BRAC round as currently authorized. BRAC has proven to be the only comprehensive, fair, and effective process for accomplishing this imperative. We assure you that the Department will conduct BRAC 2005 in a way that ensures it maintains force structure and infrastructure that is flexible enough to surge and respond to changing threats to our national security.

PETER PACE,
General, USMC, Vice Chairman of the Joint Chiefs of Staff.
RICHARD B. MYERS,
Chairman of the Joint Chiefs of Staff.
PETER J. SCHOOMAKER,
General, U.S. Army, Chief of Staff, U.S. Army.
VERN CLARK,
Admiral, U.S. Navy, Chief of Naval Operations.
JOHN P. JUMPER,
General, USAF, Chief of Staff, U.S. Air Force.
MICHAEL W. HAGEE,
General, U.S. Marine Corps, Commandant of the Marine Corps.

Mr. WARNER. I yield the floor.

Mr. DORGAN. How much time remains?

The PRESIDING OFFICER. There is 1½ minutes.

Mr. DORGAN. I will respond, of course.

I must point out, to proceed as current law anticipates, we should anticipate it will cost us money in the short term. We are struggling around here to find money but we will actually expend more money in the short term with respect to the 2005 BRAC round, and we do not propose we obliterate this entire process.

What we propose is to establish an order that makes sense. The order that would make sense would be to evaluate where we would house overseas troops, given the new realities of the world, and then from that understand what our domestic needs are. That seems to me to be the logical and right approach. I don't think it poses any additional risk for anyone.

The current 20-year plan, the unclassified portion of the 20-year forecast for the threat and for basing, apparently assumes the same size force as we now have and apparently assumes the same forces that are based overseas, which largely remain based overseas. I don't think that is likely to be the case.

We are proposing a structure which would put the horse in front of the cart. That is the amendment we have offered.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that I be given 5 minutes, not on this subject.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. No objection.

Mr. WARNER. First, Mr. President, I yield back all time on our side. I believe that completes the debate, at this point, on this side.

The PRESIDING OFFICER (Ms. SNOWE). All time has expired.

Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Madam President, I thank my dear colleagues for allowing me this time. I apologize for taking a little extra time today, but I think it is important.

(The remarks of Mr. HATCH are printed in today's RECORD under "Executive Session.")

Mr. HATCH. Madam President, I appreciate your patience and I appreciate this extra time. I yield the floor.

RECESS

The PRESIDING OFFICER. The Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:46 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The majority leader.

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, earlier today Senator DASCHLE and I had a

productive meeting with Andy Card, the President's chief of staff. At that meeting, Mr. Card committed that there would be no further circuit and district judicial recess appointments during the remainder of the President's term, and the Democratic leader committed to vote on, by the end of June, 25 judicial nominations now pending on the Executive Calendar.

I ask Senator DASCHLE if I have correctly summarized where we now stand on these nominations.

Mr. DASCHLE. Mr. President, the majority leader is correct. With these 25, we will have confirmed 198 of the President's judicial nominees, 100 of which were confirmed thanks to the efforts of Senator LEAHY and the other members of the Judiciary Committee while the Democrats controlled the Senate. In return for the President's commitment, which Mr. Card has conveyed to us, that there will be no further judicial recess appointments for the remainder of his term, we have committed to confirm now 25 of the judicial nominations currently on the Executive Calendar by the end of June. Some may entail more floor time than others, but there will be a vote on each of the 25 nominations and, if necessary, I will support cloture on any of these 25 that should be necessary.

EXECUTIVE SESSION

NOMINATION OF MARCIA G. COOKE TO BE UNITED STATES DISTRICT JUDGE

Mr. FRIST. I ask unanimous consent that the cloture vote be vitiated and the Senate proceed to executive session for the consideration of Calendar No. 606, the nomination of Marcia Cooke to be a United States district judge for the Southern District of Florida.

I further ask that the Senate proceed to vote on the nomination and that following the vote the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the nomination.

The assistant legislative clerk read the nomination of Marcia G. Cooke, to be United States District Judge for the Southern District of Florida.

Mr. HATCH. Mr. President, I want my remarks to be thought of as constructive remarks rather than not constructive.

Yet another week has gone by without this body confirming a judicial nominee. That makes more than 9 weeks since the last judicial confirmation. Only four judges have been confirmed this year, and that is hardly a record of progress.

It is not enough for the minority to point out how many nominees were confirmed under their watch 2 years ago. We must also look at what is going on now, and this is a dismal record even for a Presidential election year.

Over the last six Presidential election years, both Republicans and Democrats won the White House and both Republicans and Democrats controlled the Senate. On average, the Senate has confirmed 45 judicial nominees in the six most recent Presidential election years, and continued confirmations until October in four of the last six Presidential election years. At this same point in the last six Presidential election years, the Senate confirmed, on average, 21 judicial nominees by now. I repeat, so far this year we have confirmed just four judges.

This is not for any lack of activity on the part of the Judiciary Committee. The committee is actually one-third ahead of the average for recent Presidential election years in voting out judicial nominees to the full Senate. We have held 10 nomination hearings this year alone.

Yet 32 nominees languish on the Senate calendar in a minority-imposed limbo despite the fact that we all know that if we took the simple up-or-down votes on each and every one of these nominees that the Constitution contemplates, it is probable that virtually all 32 of these nominees would be confirmed.

Fully 22 of the 32 nominees on the calendar were reported out of the Judiciary Committee without even one negative vote in the Judiciary Committee. And that is saying something because our committee is known to be the home of some of the most vigorous debates and debaters in the Senate. As anyone who has ever attended one of our markups can verify, no one on the Judiciary Committee is shy about expressing an opinion on most any subject or reticent to reflect or register a dissenting point of view.

When a nominee goes through the Judiciary Committee without opposition, the nominee is truly a consensus candidate of high qualifications and deserves prompt consideration by the full Senate.

For me and many others, a nominee's American Bar Association rating is a factor to consider. I do not think it is the be all and end all of the confirmation process, but it is something that can be helpful in evaluating a nominee's qualifications. During the Clinton administration, I can recall that some of my friends on the other side of the aisle took the position that the ABA rating was the ''gold standard'' with respect to judicial confirmations.

Well, where are they now when 24 of the 32 nominees on the Executive Calendar have received the highest rating, ''well qualified,'' by the ABA? And what is more, 14 of the 24 nominees rated ''well qualified'' by the ABA received this ''well qualified'' rating by a unanimous vote of the ABA evaluators.

The Constitution requires, and this body has traditionally provided, a vote for every judicial nominee reaching the full Senate. Every Clinton nominee that reached the Senate floor got a vote, and President Clinton nearly broke the all-time confirmation record set by President Reagan who set this record with 6 years of a Republican-controlled Senate, while President Clinton only had 2 years of a Democratic-controlled Senate to help him. President Bush's nominees should receive the same treatment and get a vote on the floor.

I remain hopeful that this body will not abandon past practice and extend the recent spate of unprecedented filibusters of appellate court nominees to district court nominees. That is why I have continued to encourage the leadership on both sides of the aisle and the White House to arrive at an acceptable compromise on the 32 judges on the Senate Calendar.

I fully support the nomination of Ms. Marcia Cooke to serve as a District Judge on the Southern District of Florida.

Before the Senate votes on the Cooke nomination, it is only appropriate that we spend a few minutes considering her qualifications. Currently serving as Miami Dade County's Assistant County Attorney, Ms. Cooke is one of those nominees who received the ABA's highest ''well-qualified'' rating. Her experience includes service as both a public defender and prosecutor, a plaintiff's attorney and defense counsel, a private practitioner and public servant, and both an advocate and a jurist. I might add that Ms. Cooke is a graduate of Georgetown University and is an active leader in that fine school's alumni association.

Marcia Cooke served for 8 years as a Federal magistrate in Michigan. She has been an Assistant U.S. Attorney in Michigan and Florida. She has served as Florida's Chief Inspector General. Both of Florida's Democrat Senators support her. The position to which she has been nominated has been vacant so long it is now considered a judicial emergency. If confirmed she would be the first African-American woman to serve as a Federal judge in the Southern District of Florida.

It is no wonder why the Judiciary Committee approved her without a single dissenting vote. Today, the full Senate should act to support her.

I am pleased that a more reasonable and responsible atmosphere has returned to the Senate and this cloture vote has been vitiated as part of a larger agreement on judges.

We should all recognize that a cloture vote on a highly qualified, highly respected district court nominee such as Marcia Cooke is not a positive sign. It indicates that our friends across the aisle may be prepared to extend their policy of delay and filibusters to even district court nominees.

Many believe that the true target of these unprecedented filibusters of judicial nominees is to set the stage for the next Supreme Court vacancies. What

they are trying to do is to, in effect, rewrite article II, section II, clause II, of the Constitution to require a 60-vote supermajority for Supreme Court vacancies. In the process, these misguided efforts have greatly damaged the confirmation process and diminished our efforts to work together on all judicial nominees.

Despite many challenges this year on the Judiciary Committee, Senator LEAHY and his Democratic colleagues have worked with us to approve many highly qualified consensus candidates.

I hope that the progress that we have made in the committee will not be derailed on the Senate floor.

Mr. President, I wish to express my appreciation to my colleagues for moving forward on this nomination, and other nominations to follow over the next few weeks.

I know these have been difficult negotiations. So I express my thanks to the President, to his chief of staff, Andrew Card, to Senator FRIST and to Senator DASCHLE for bringing this agreement to the Senate. I also thank Senator LEAHY and other members of the Judiciary Committee for their cooperation. I look forward to continuing the work of the Committee, and this agreement will help us in that effort.

Mr. President, I ask unanimous consent that an editorial published today by the Miami Herald in support of the confirmation of Marcia Cooke be printed in the RECORD.

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

[From the Miami Herald, May 18, 2004]

NOMINATION FACES KEY VOTE; IF CONFIRMED, MARCIA COOKE WOULD BECOME THE FIRST BLACK WOMAN APPOINTED TO A FEDERAL JUDGESHIP IN FLORIDA.; U.S. COURTS

(By Gary Fineout, Frank Davies and Tere Figueras)

Republicans trying to nudge along judicial nominations made by President Bush will force Democrats today to take a potentially embarrassing vote on stalling the appointment of the first black woman to a Federal judgeship in Florida.

Last week, Senate Republicans set in motion today's scheduled vote to close off debate on the appointment of Marcia Cooke, an assistant Miami-Dade County Attorney and the former chief inspector general for Gov. Jeb Bush.

A successful vote for the Republicans would force a final vote on Cooke's nomination, hastening her ascent to bench of the Southern District of Florida, which stretches from Fort Pierce to Key West.

Cooke is caught in a Democratic fight to gain more control over judicial nominations by blocking confirmation votes on even noncontroversial nominees like Cooke.

In Tallahassee, the younger brother of the president called on Democrats to support Cooke's nomination.

''This is ridiculous,'' said Gov. Jeb Bush, who spoke to reporters following a ceremony marking the 50th anniversary of the landmark Brown vs. Board of Education Supreme Court decision. ''Marcia, who served here in Tallahassee, did a great job as inspector general, is well qualified to be a Federal judge. If the Democrats hold this up for political purposes, it stinks.''

The nomination of Cooke has become a small part of a raging battle over judgeships in the Senate. Cooke is backed by Sens. Bob Graham and Bill Nelson, both Democrats.

REGISTERED DEMOCRAT

And Cooke, a Bay Harbor Island resident, is herself a registered Democrat.

But Senate Democrats, angered by Bush administration ''recess appointments'' of other judges, have tried to block confirmations until an agreement can be reached with the GOP on how to handle controversial nominees.

Leaders of both parties were still negotiating Monday, trying to reach some agreement on the process of appointments. If Cooke is confirmed, she would fill a vacancy left by the death of pioneering jurist U.S. District Judge Wilkie D. Ferguson Jr., the first black man appointed to the Miami-Dade Circuit bench and the Third District Court of Appeal.

Cooke, 49 and a native of South Carolina, was unanimously approved by the Senate Judiciary Committee.

A spokesman for Graham said Monday the senator was hopeful that the nomination would be ultimately approved. ''Sen. Graham has been very pleased to support Marcia Cooke and considers her an outstanding nominee,'' said Paul Anderson from his Washington office. ''He hopes some agreement can be reached to avoid partisan gamesmanship on the floor tomorrow.''

It takes 60 votes for the motion to close debate to succeed. There are 51 Republicans in the U.S. Senate, meaning the nine Democrats would have to support the motion in order for it to pass.

Anderson predicted that when Cooke's name went before the full Senate that she would be ''overwhelmingly'' approved.

''There should be no need for a procedural vote,'' said Anderson. ''We hope the opportunity will present itself soon for an up or down vote. When that vote comes, she should pass overwhelmingly.''

TAPPED BY GOV. BUSH

Cooke earned a degree from Georgetown University in Washington D.C. and a law degree from Wayne State University in Michigan. She worked for legal aid and neighborhood legal services in Michigan before earning a spot as a Federal magistrate judge in the Eastern District of Michigan. She worked seven years for the U.S. Attorney's Office in Miami before Gov. Bush tapped her as his chief inspector general in 1999.

She has been an assistant county attorney for Miami-Dade County since 2002, and has also served as an adjunct professor at the University of Miami law school.

''She will be an excellent addition to that Federal bench,'' said former U.S. Attorney Roberto Martinez. ''That she would be the first African American female Federal judge in the state is important. but her qualities and attributes go beyond her ethnic background.''

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Marcia G. Cooke, of Florida, to be United States District Judge for the Southern District of Florida?

Mr. FRIST. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kentucky (Mr. BUNNING) is necessarily absent.

I further announce that if present and voting the Senator from Kentucky (Mr. BUNNING) would vote ''yea.''

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 97 Ex.]

YEAS—96

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (FL)	Reed
Burns	Graham (SC)	Reid
Byrd	Grassley	Roberts
Campbell	Gregg	Rockefeller
Cantwell	Hagel	Santorum
Carper	Harkin	Sarbanes
Chafee	Hatch	Schumer
Chambliss	Hollings	Sessions
Clinton	Hutchison	Shelby
Cochran	Inhofe	Smith
Coleman	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Cornyn	Kohl	Stevens
Corzine	Kyl	Sununu
Craig	Landrieu	Talent
Crapo	Leahy	Thomas
Daschle	Levin	Voinovich
Dayton	Lieberman	Warner
DeWine	Lincoln	Wyden

NOT VOTING—4

Bunning	Kerry
Inouye	Lautenberg

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I want to commend our two leaders. I have been working with Senator DASCHLE for months, as well as with the White House, to find a way out of the impasse in judicial confirmations. Senator FRIST and I have spoken at length about this, and he has been working on it, as well.

I was delighted to see the meeting that Senator DASCHLE, Senator FRIST, and Mr. Card had today in which the White House agreed to no more recess appointments of judges. I think we have demonstrated our good faith. In the 17 months that the Democrats were in charge of the Senate, we confirmed 100 of President Bush's nominees to lifetime positions on the Federal bench. And the Republicans, during the 23 months that they have been in charge of the Senate, they have confirmed another 73 plus one today. With this agreement, I think we should be in

a position to confirm another two dozen judicial nominees and achieve a total this is outstanding for a Presidential term. So I commend my friend from Tennessee. I commend my friend from South Dakota. And I appreciate their work in helping achieve this arrangement.

I am pleased that the Senate has now received assurances from the White House that the President will not further abuse the recess appointment power by making judicial recess appointments this presidential term. It was the White House's refusal to reach a reasonable accommodation of the concerns of many Senators about the unilateral approach of the President regarding his recess appointments to the federal courts that complicated our efforts to reach agreement regarding votes on less controversial judicial nominees. Thanks to the work of the Democratic leader and the Republican leader, we have now received a firm commitment from the White House in that regard.

I supported the nomination of Marcia Cooke. The Florida Senators supported the nomination of Marcia Cooke. All Democratic members of the Senate Judiciary Committee supported the nomination of Marcia Cooke. I am pleased to vote today to confirm the nomination of Marcia Cooke.

The selection of Ms. Cooke to be a judicial nominee for the Southern District of Florida serves as an example of how the judicial nominations process should work. She was interviewed and recommended by Florida's bipartisan judicial selection commission. This selection commission was created by Senators GRAHAM and NELSON in a negotiated agreement with the White House and it has produced talented and well-respected attorneys for the lifetime appointments on the district courts in Florida.

Ms. Cooke currently serves as an assistant county attorney in Miami-Dade County. She previously worked for 3 years as Governor Jeb Bush's Inspector General in Florida with oversight responsibilities regarding Florida administrative agencies. Ms. Cooke also was selected as a Federal Magistrate Judge in Detroit, after serving as a Federal prosecutor and also as a public defender.

I acted to report her nomination unanimously from the Judiciary Committee and welcome her confirmation today. Marcia Cooke is highly regarded. I congratulate Ms. Cooke and her family on her unanimous confirmation vote today.

I note that President Bush has nominated only 16 African Americans to the Federal courts, only about a quarter of the number of African Americans nominated by President Clinton to the federal bench. In fact, this President has put more people actively involved in the Federalist Society on the bench than African Americans, Hispanics and members of other minority groups combined.

With today's confirmation vote on Marcia Cooke to the U.S. District Court in Florida, the Senate has already confirmed 174 judicial nominees of President George W. Bush in 3½ years and blocked only a handful of the most extreme. Due to Democratic cooperation and bipartisanship, the Senate has confirmed more judges for this President than in President Ronald Reagan's entire first 4 years in office—and it was President Reagan who ultimately appointed more judges than any other President in U.S. history. In fact, we have cooperated in reducing the 110 vacancies we inherited from Republican obstruction of President Clinton's judicial nomination to near 40 and attained the lowest vacancy level in 14 years.

Today, the Senate and the White House reached an agreement regarding 25 of this President's judicial nominations pending on the floor, including Judge Cooke. Not all of these nominees are uncontroversial and some may require significant debate before their confirmation vote. With this agreement, the Senate is poised to confirm 198 judicial nominees of President Bush for lifetime positions on the Federal courts, including 35 circuit court nominees.

We have already confirmed 30 circuit court nominees of President Bush. More of his circuit nominees have been confirmed than President Reagan had confirmed by this point in his first term. Recall that from the time Republicans assumed majority control of the Senate in 1995 until Democratic control in the summer of 2001, circuit court vacancies more than doubled from 16 to 33. We have worked to cut those vacancies in half by confirming 30 of President Bush's circuit court nominees. With five additional circuit court nominees part of the agreement, President Bush will exceed the number of circuit court appointments during President Reagan's first term, as well.

Republicans rarely acknowledge that 100 of President Bush's judicial nominees to the bench were confirmed under Democratic Senate leadership during 17 months. During the 23 months I have not served as Chairman of the Judiciary Committee and Republicans have been in control, the Senate has confirmed 74 additional judges. So in 30 percent more time, Senate Republicans have confirmed 26 percent fewer judges.

With the agreement reached today, the Senate will confirm a total of 29 judicial nominees of President Bush this year, including five circuit court nominees. With the progress we have already made this year and under the action agreed to today, the Senate will reach this mark before the July 4th recess. This is 29 times more judicial nominees than were allowed to be confirmed by Republicans before July during 1996, the last time an incumbent President was seeking reelection. During that session, Senate Republicans did not allow a single judicial nominee of President Clinton's to be confirmed before July. During that entire session Republicans allowed only 17 judicial nominees to be confirmed, none of them for the circuit courts. During that session when Republicans were in control of the Senate, they made sure that none of President Clinton's circuit court nominees were confirmed all session, not a single one. With our fifth judicial confirmation this year, we are well ahead of 1996.

Republicans have made no apology for the way in which they acted in 1996 but seek to employ a double standard now that a Republican occupies the White House.

All told, Republicans blocked more than 60 of President Clinton's judicial nominees. Yet Republicans Senators now routinely claim that every judicial nominee of President Bush is entitled to a confirmation vote. Suddenly, without regard to history, including their own very recent history, they claim that the Constitution requires a confirmation vote, at least for Republican nominees. The Constitution certainly does not say that. Republicans seem to have ''confirmation amnesia'' when they complain that Senate Democrats have filibustered six judicial nominees of President Bush after Republicans defeated by delay 10 times more judicial nominees of President Clinton through anonymous holds and without accountability.

Republicans know that they filibustered Justice Abe Fortas' Supreme Court nomination and several Clinton nominees. Republicans cannot erase their history, try as they might. Republicans defeated more than 60 Clinton judicial nominees and more than 200 of his executive branch nominees through delay. One judicial nomination was defeated when the Republican caucus took the unprecedented action of voting lockstep along party lines against confirmation of Judge Ronnie White.

With the agreement reached today, we are likely to adjourn with fewer vacancies than at any time in nearly a quarter of a century, since President Reagan's first term and well below the level of vacancies tolerated by Republicans during President Clinton's two terms. Having defeated more than 60 of President Clinton's nominees, including almost two dozen circuit court nominees, through concerted inaction, Senate Republicans have no standing to complain about the way in which the Senate is acting on President Bush's nominees. We have acted more fairly, more quickly and on more nominees than Republicans would allow when President Clinton was making much more moderate nominations.

I am pleased that the White House has promised to refrain from any more abuses of the recess appointment power. With that commitment, we have agreed to vote on two dozen judicial nominees this year. Even with the historically low vacancy levels we will reach as a result, I have no doubt that some partisan Republicans will still

complain that they did not get 100 percent of their judicial nominees confirmed. Something no President in memory has achieved. This Congress we reached the lowest level of vacancies since 1990. There are more federal judges on the bench now than at any time in U.S. history.

Unfortunately, we are faced with continued White House defiance of the Senate's role as part of the checks and balances established by our Constitution. President Bush defied the Senate by recess appointing William Pryor and Charles Pickering, who were widely opposed due to their records of activism and poor ethics. No American President has ever abused the recess appointment power to put judges on the bench whose nominations were debated at length by the Senate and on which it had withheld its consent. The President's appointment of Charles Pickering was unprecedented, yet we noted our objection, turned the other cheek and continued to cooperate in the confirmation of judicial nominees. When the President abused his power a second time and appointed William Pryor, we had no alternative but to make our objection meaningful by seeking assurances from the White House that such abuse would not happen again.

Over the past several weeks, I have shared with the Senate information about a number of divisive developments regarding judicial nominations including the Pickering recess appointment during the weekend for commemorating Dr. Martin Luther King Jr. In spite of all the affronts, Senate Democrats cooperated in confirming four additional judicial nominees this year and continued to participate in hearings for judicial nominees.

The President's recess appointment of William Pryor was the last straw. It was properly termed an abuse of power by the Senate Democratic Leader. It was an abuse of the constitutional authority of the Executive to make necessary recess appointments during the unavailability of the Senate. The judicial recess appointments of nominees debated at length by the Senate was unprecedented.

Actions like this showed the American people that this White House was determined to try to turn the independent federal judiciary into an arm of the Republican Party. Doing this further erodes the White House's credibility as well as the respect and confidence that the American people have for the courts.

This is an administration that promised to unite the American people but that has chosen time and again to act in ways that divide us, to disrespect the Senate and our representative democracy. This is an administration that squandered the good will and good faith that Democrats showed in the aftermath of September 11, 2001. This is an administration that refused to acknowledge the strides we made in filling 100 judicial vacancies under Democratic Senate leadership during 17 difficult months in 2001 and 2002, while overcoming the September 11 attacks, the subsequent anthrax attacks and in spite of Republican mistreatment of scores of qualified, moderate judicial nominees of President Clinton.

This is an administration that has time and time again demonstrated its unilateralism, arrogance and intention to divide the American people and the Senate with its controversial judicial nominations. With its recess appointments, the President acted—as he has in so many areas over the past 3½ years—unilaterally, overextending and expanding his power, with disregard for past practice and tradition, and the rule of law.

The recess appointment of Mr. Pryor threatens both the independence of the judiciary and the constitutional balance of power between the legislative and executive branches. We entrust to the stewardship of lifetime judges in our independent Federal judiciary the rights that all of us are guaranteed by our Constitution and laws. That is an awesome responsibility. Accordingly, the Constitution was designed so that it would only be extended after the President and the Senate agreed on the suitability of the nomination. The President chose for the second time in as many months to circumvent this constitutional design and impose his will unilaterally.

I have sought in good faith to work with this administration for the last 3½ years in filling judicial vacancies, including so many left open by Republican obstruction of President Clinton's qualified nominees. When Chairman, I made sure that President Bush's nominees were not treated the way his predecessor's had been. They were treated far more fairly, as I had promised. Republicans had averaged only 37 confirmations a year while vacancies rose from 65 to 110 and circuit vacancies more than doubled from 16 to 33. Under Democratic leadership, we reversed those trends and opened the system to public accountability and debate by making home-State Senators' objections public for the first time. We openly debated and voted on nominations. We were able to confirm 100 judges in just 17 months and virtually doubled the Republican annual average of 37 with 72 confirmations in 2002, alone.

I have urged that we work together, that we cooperate, and that the President live up to the promise he made to the American people during the last campaign when he said he would act as a uniter and not a divider. I have offered to consult and made sure we explained privately and in the public record why this President's most extreme and controversial nominations were unacceptable.

Both his recess appointments are troubling. The President says that he wants judges who will ''follow the law'' and complains about what he calls ''judicial activism.'' Yet, he has acted—with disregard for the constitutional balance of powers and the Senate's advice and consent authority—unilaterally to install on the Federal bench two nominees from whom the Senate withheld its consent precisely because they are seen by so many as likely to be judicial activists, who will insert their personal views in decisions and will not follow the law.

In the case of Mr. Pryor, he is among the most extreme and ideologically committed and opinionated nominees ever sent to the Senate. Mr. PRYOR's nomination to a lifetime appointment on the Federal bench was opposed by every Democratic member on the Senate Judiciary Committee after hearings and debate. It was opposed on the Senate floor because he appears to have extreme—some might say ''radical''—ideas about what the Constitution should provide with regard to federalism, criminal justice and the death penalty, violence against women, the Americans with Disabilities Act, and the Government's ability to protect the environment on behalf of the American people. He has been a crusader for the ''federalist'' revolution. He has urged that Federal laws on behalf of the disabled, the aged, women, minorities, and the environment all be limited. His comments have revealed insensitivity to the barriers that disadvantaged persons and members of minority groups and women continue to face in the criminal justice system. He has testified before Congress in support of dropping a crucial part of the Voting Rights Act and has repeatedly described the Supreme Court and certain justices in overtly political terms. He received the lowest possible qualified rating from the American Bar Association—a partial rating of ''Not Qualified''—underscoring his unfitness for the bench. In sum, Mr. Pryor demonstrated that he is committed to an ideological agenda that puts corporate interests over the public's interests and that he would roll back the hard-won rights of consumers, minorities, women, and others.

Mr. Pryor's nomination was considered in committee and on the Senate floor. The Senate debated his nomination, and had enough concerns about his fitness for a lifetime appointment that two motions to end debate on his nomination failed. That is the constitutional right of the Senate.

But President Bush decided to use the recess appointment clause of the Constitution to end-run the Senate. As far as I know, this power has never been used this way before this President. Of course this is the first President in our Nation's history to renominate someone rejected after hearings, debate and a fair vote by the Senate Judiciary Committee. He did that twice. He has now twice overridden the Senate's withholding of its consent after hearings and debate on judicial nominees. This demonstrates contempt for the Constitution and the Senate. The New York Times editorialized about ''President Bush . . . stacking the courts with right-wing judges of dubious judicial qualifications'' and even

the Washington Post observed that recess appointments of judges ''should never be used to mint judges who cannot be confirmed on their merits.''

The recess appointments clause of the Constitution was not intended to change the balance of power between the Senate and the President that is established as part of the fundamental set of checks and balances in our Government. Indeed, the appointments clause in the Constitution requires the consent of the Senate as just such a fundamental check on the Executive. This was meant to protect against the ''aggrandizement of one branch at the expense of the other.'' The clause was debated at the Constitutional Convention, and the final language—with shared power—is intended to be a check upon favoritism of the President and prevent the appointment of unfit characters.

The President's claimed power to make a unilateral appointment of a nominee the Senate considered and effectively rejected, slights the Framers' deliberate and considered decision to share the appointing power equally between the President and the Senate. This President's appointment of Mr. Pryor to the Eleventh Circuit—after he was considered by the full Senate seems irreconcilable with the original purpose of the appointments and recess appointment clauses in the Constitution. Perhaps that explains why the Pryor and Pickering recess appointments by this President are the first times in our centuries-long history that the recess appointment power has been so abused. No other President has engaged in this manner. No other President sought such unilateral authority without balance from the Senate.

The President chose to sully the Martin Luther King Jr. weekend with his unilateral appointment of Judge Pickering. Sadly, he chose the Presidents' Day congressional break unilaterally to appoint Mr. Pryor. After the Presidents' Day weekend, we resumed our proceedings in the Senate with the traditional reading of President's George Washington's Farewell Address. The Senate proceeds in this way every year. I urge this President and those in his administration to recall the wisdom of our first President. George Washington instructs us on the importance of not abusing the power each branch is given by the Constitution. He urges the three branches of our Government to ''confine themselves within their respective constitutional spheres.'' He said more than 200 years ago words that ring true to this day:

> The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism . . . The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositaries, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern. . . To preserve them must be as necessary as to institute them.

The current occupant of the White House might do well to take this wisdom to heart and respect the constitutional allocations of shared authority that have protected our nation and our rights for more than 200 years so brilliantly and effectively.

The recess appointments power was intended as a means to fill vacancies when the Senate was not available to give its consent; it was intended to ensure effective functioning of the government when the Senate adjourned for months at a time. It was never intended as an alternative means of appointment by the Executive when the President chose to serve some partisan short-term goal by simply overriding the will of the Senate to employ his own—especially with respect to our third branch of Government, the Federal judiciary.

This administration and its partisan enablers have demonstrated their disdain for the constitutional system of checks and balances and for shared power among the three branches of our Federal Government. By such actions, this Administration shows that it seeks all power consolidated in the Executive and that it wants a Judiciary that will serve its narrow ideological purposes.

Such overreaching by this administration hurts the courts and the country. President Bush and his partisans have disrespected the Senate, its constitutional role of advice and consent on lifetime appointments to the Federal courts, the Federal courts, and the representative democracy that is so important to the American people. It is indicative of the confrontational and ''by any means necessary'' attitude that underlies so many actions by this administration and that created a climate on the Judiciary Committee in which Republican staff felt justified in spying upon their counterparts and stealing computer files.

After 8 years in office in which more than 60 judicial nominees had been stalled from consideration by Republican partisans, President Clinton made his one and only recess appointment of a judge. Contrast that appointment with the actions of the current President:

President Clinton acted to bring diversity to the Fourth Circuit, the last federal circuit court not to have had an African-American member. Judge Roger Gregory was subsequently approved by the Senate for a lifetime appointment under Democratic Senate leadership in the summer of 2001. This was made possible by the steadfast support of Senator JOHN WARNER, the senior Senator from Virginia, and I have commended my friend for his actions in this regard. When Judge Gregory's nomination was finally considered by the Senate, it passed by consensus and with only one negative vote. Senator LOTT explained his vote as a protest vote against President Clinton's use of the recess appointment power. How ironic then that Judge Pickering now serves based on President Bush's abuse of that power.

Judge Gregory was one of scores of highly qualified judicial nominations stalled under Republican Senate leadership. Indeed, Judge Gregory and so many others were prevented from having a hearing, from ever being considered by the Judiciary Committee and from ever being considered by the Senate. Sadly, others, such as the nominations of Bonnie Campbell, Christine Arguello, Allen Snyder, Kent Markus, Kathleen McCree Lewis, Jorge Rangel, Carlos Moreno, and so many more, have not been reinstated and considered. But President Clinton did not abuse his recess appointment power. Instead, his appointment of Judge Gregory was in keeping with traditional practices and his use of that power with respect to judicial appointments was limited to that one occasion.

By contrast, the current President made two circuit recess appointments in 2 months and his White House had threatened that more were on the way. These appointments are from among the most controversial and contentious nominations this administration has sent the Senate. After reviewing their records and debating at length, the Senate withheld its consent. The reasons for opposing these nominations were discussed in hearings and open debate during which the case was made that these nominees were among the handful that a significant number of Senators determined had not demonstrated their fairness and impartiality to serve of judges.

Contrast Roger Gregory's recess appointment, which fit squarely in the tradition of President's exercising such authority in order to expand civil rights and to bring diversity to the courts, with that of Mr. Pryor. Four of the five first African American appellate judges were recess-appointed to their first Article III position, including Judge William Hastie in 1949, Judge Thurgood Marshall in 1961, Judge Spottswood Robinson in 1961, and Judge Leon Higginbotham in 1964. The recent appoints of Judge Pickering and Mr. Pryor stand in sharp contrast to these outstanding nominees and the public purposes served by their appointments.

The nominations of Judge Pickering and Mr. Pryor were opposed by individuals, organizations and editorial pages across the Nation. Organizations and individuals concerned about justice before the Federal courts, such as Log Cabin Republicans, the Leadership Conference on Civil Rights, and many others opposed the Pryor nomination. The opposition extended to include organizations that rarely take positions on nominations but felt so strongly about Mr. Pryor that they were compelled to lodge their opposition in the record, such as the National Senior Citizens Law Center, Anti-Defamation League, and Sierra Club. Rather than bring people together and move the

country forward, this President's recess appointments are more examples of unnecessarily divisive action.

Further, the legality of this President's use of the recess appointments power, without precedent and during such a short Senate break, is itself now a source of division and dispute. Recent Attorneys General have all opined that a recess of 10 days or less does not justify the President's use of the recess appointments power and would be considered unconstitutional. Starting in 1921, Attorney General Daugherty advised the President that he could make recess appointments during a mid-session adjournment of approximately four weeks but two days was not sufficient ''nor do I think an adjournment for five or even 10 days can be said to constitute the recess intended by the Constitution.'' More recently, a memo from the Reagan administration Justice Department concluded: ''Under no circumstances should the President attempt to make recess appointment during intrasession recess of less than 10 days.'' This year, a Federalist Society paper noted the dubious constitutionality of appointments during short intrasession breaks.

We will not resolve the question of legality of these recess appointments here today, but we can all anticipate challenges to rulings in which Mr. Pryor participates. Thus, we can expect this audacious action by the administration will serve to spawn litigation and uncertainty for months and years to come.

I thank the Democratic leader for the statements he made and the actions that he took in connection with the abuse of the recess appointment power by this President. I remind the Senate that a few years ago when President Clinton used his recess appointment power with regard to a short-term Executive appointment of James Hormel to serve as Ambassador to Luxembourg, Senator INHOFE responded by saying that President Clinton had ''shown contempt for Congress and the Constitution'' and declared that he would place ''holds on every single Presidential nomination.'' Republicans continued to block nominations until President Clinton agreed to make recess appointments only after Congress was notified in advance. On November 10, 1999, 17 Republican Senators sent a letter to President Clinton telling him that if he violated the agreement, they would ''put holds for the remaining of the term of your Presidency on all of the judicial nominees.''

In November 1999, President Clinton sent a list of 13 positions to the Senate that he planned to fill through recess appointments. In response, Senator INHOFE denounced 5 of the 13 civilian nominees with a threat that if they went forward, he would personally place a hold on every one of President Clinton's judicial nominees for the remainder of his term. That led to more delays and to the need for a floor vote on a motion to proceed to consider the next judicial nomination, in order to override Republican objections.

When President Clinton appointed Judge Gregory at the end of 2000, Senator INHOFE called it ''outrageously inappropriate for any president to fill a federal judgeship through a recess appointment in a deliberate way to bypass the Senate.'' When the Gregory nomination was confirmed with near unanimity under Senate Democratic leadership in 2001, Senator LOTT's spokesperson indicated that Senator LOTT's solitary opposition was to underscore his position that ''any appointment of federal judges during a recess should be opposed.''

Democrats have been measured in our response. Indeed, we continued our work after the unprecedented recess appointment of Judge Pickering. It was only with the repeated abuse of the recess appointment power to place Mr. Pryor on the Federal bench and the threat of additional recess appointments that we acted. I urged the White House to renounce this abuse of the recess appointment power so that we could resume Senate consideration of judicial nominations and increase our record number of confirmations before the end of the year. I am glad that the White House has finally decided to make a firm commitment against any additional judicial recess appointments.

We are defending fair courts. We have acted to protect the Senate's role as a check on excessive White House power grabs and to block the lifetime appointments of a handful of nominees for lifetime seats, nominees who have records of extremism. The American people deserve a Federal judiciary with fair judges who will enforce their rights and uphold the law. Rather than work with all Senators, the White House has fixated on forcing through the most divisive people for these lifetime jobs. This White House has the wrong priorities and is taking the country in the wrong direction.

President Bush ran as a ''uniter'' but has consciously chosen to send divisive nominees to the Senate. As a Presidential candidate, Bush promised the American people he would have ''no litmus test'' for Federal judges on reproductive rights ''or any other issue'' and that he would choose ''competent judges'' who would ''not use the bench for writing social policy.'' As President, he has broken these and other promises repeatedly.

President Bush's choices for the only lifetime jobs in our system of Government show that he views the Federal courts as a spoils system for partisan activists, including some whose records prove that they will not be fair and impartial judges, but would use the Federal bench to write social policies they prefer into the law. Under our Constitution, the power to make lifetime appointments to the courts is shared: the President has the power to nominate or propose judges, but only the Senate has the power to confirm or reject those nominations. Throughout American history, the Senate has rejected judicial nominees. Not even President Washington saw all of his nominees confirmed. Senate Democrats have opposed only the most troubling judicial nominees of President Bush.

In his judicial appointments, President Bush has sought out judicial activists, often quite young, with the hope that these judges will rule for decades to come in ways that advance the Republican Party's narrow and partisan political and social agenda. President Bush has proposed many nominees to the federal courts, especially the appellate courts, who have records of extreme partisanship, activism or just plain poor ethics.

For example, President Bush nominated 41-year-old William Pryor for the appeals court after Mr. Pryor led the effort to undermine protections against age, sex and disability discrimination, to limit the reach of the Clean Water Act, to repeal the Voting Rights Act, to overturn Roe v. Wade, and to oppose lawsuits for tobacco-related deaths and illnesses. Mr. Pryor himself believes that President Bush should not appoint moderate judges to the federal courts, stating: ''I'm probably the only one who wanted [Bush v. Gore] 5–4.'' He said, ''I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.''

Justice Souter's apparent ''offense'' was to be more faithful to the Constitution than to the partisan politics of the party of the President who nominated him to the highest court. Mr. Pryor was rejected under the Senate's longstanding Rules after extensive debate. But President Bush put him on the bench anyway. He is now sitting on the Court of Appeals for the Eleventh Circuit temporarily.

President Bush also appointed Judge Charles Pickering to the appeals court even though the Senate refused consent to his nomination. Judge Pickering was opposed due to the low quality of his judging, his habit of inserting his personal views into his decisions, and his questionable ethics. Judge Pickering willfully violated judicial ethics by his extraordinary campaign to get around a mandatory prison sentence for a man convicted by a jury of his peers of burning a cross on an interracial couple's lawn. His record was criticized by civil rights leaders and organizations. Numerous African Americans in Mississippi and from across the country wrote in opposition to his nomination. President Bush recess appointed him to the Fifth Circuit on the weekend designated to honor the memory of Dr. Martin Luther King Jr.

President Bush also nominated to the D.C. Circuit Justice Janice Rogers Brown of California who has a reputation for injecting her political views into her judicial opinions. In speeches and decisions, she literally advocated turning back the clock 100 years to the

era when worker protections were declared unconstitutional by activist judges. Justice Brown has even described the year 1937—when her brand of judicial activism was repudiated—as ''the triumph of our own socialist revolution.'' Her views are so extreme and rigid she has suggested: ''There are so few true conservatives left in America that we probably should be included on the endangered species list.'' The Senate refused to grant consent to her nomination at the end of the 40-hour talkathon Republicans engineered to shut down the Senate last year.

President Bush also selected State Judge Carolyn Kuhl for an appellate judgeship after she spearheaded a failed effort to give tax-exempt status to racially discriminatory schools like Bob Jones University, led the effort to get the Reagan Justice Department to seek the reversal of Roe v. Wade, sought to curtail discrimination laws, and tried to limit protections for whistleblowers. Before she was nominated to the Federal bench, Judge Kuhl also ruled in a case that a breast cancer patient had no privacy claims against a doctor who allowed a drug salesman to watch her breast examination without her permission. Both California Senators opposed Judge Kuhl's nomination and the Senate withheld its consent.

Additionally, President Bush chose Texas Supreme Court Justice Priscilla Owen for the federal bench after statements by her fellow judges in a wide range of cases—from environmental regulation to personal injury law to privacy to discrimination—that she was injecting her personal views into her opinions. Her opinions were called, among other things, ''nothing more than inflammatory rhetoric'' and an approach that ''defies the Legislature's clear and express limits on our jurisdiction.'' One opinion in which she tried to write her preferred social policies into law was called ''an unconscionable act of judicial activism'' by then Justice Alberto Gonzales, who is now President Bush's White House Counsel. The Senate withheld its consent from her nomination after extensive debate.

The nomination of Miguel Estrada, who was 39 when nominated to the nation's second highest court, is another example of President Bush's practice of dividing instead of uniting Americans. Despite concerns that were raised whether Mr. Estrada could keep his personal views out of his legal work at the Justice Department and the ample precedent for the Senate's request for legal memos in nominations. President Bush decided to stonewall the Senate. This stonewalling, combined with Mr. Estrada's refusal to answer numerous questions about his views prompted the extended debate that led to his withdrawal.

Currently pending are William James Haynes, II and Brett Kavanaugh. Mr. Haynes has been less than forthcoming about his actions as the general counsel at the Department of Defense and his role in subverting legal protections in ways that may have contributed to the breakdown of compliance with the Geneva Conventions, our treaties against torture and the Constitution. Mr. Kavanaugh is another youthful nominee whose background as an aide to Kenneth Starr and in the White House is among the more partisan we have seen, even among this President's very partisan nominees.

For doing their job and upholding their constitutional responsibilities, Democratic Senators have been wrongly attacked as anti-woman, anti-Hispanic, anti-Christian and anti-Catholic. Those charges are reprehensible, ad hominem attacks without basis. This is partisan sniping at its worst. Republican Senators have been all too willing to fuel such baseless claims and the President has shown his willingness to play partisan politics with judicial nominations.

Some of this President's appointments have already started using their seat on the Federal bench to write their political, social or cultural views into law, despite promises that they would not do so. We are now seeing the impact of the Bush judges the Senate has confirmed in courts all over the country where a radically narrow view of the power of Congress, informed by a Federalist Society philosophy, is beginning to take hold. Let me give you a few examples of the ways in which these judges are attempting to remake the legal landscape in their own reactionary ideological image.

Judge Jeffrey Sutton has written a dissent in a federal arson case putting forward a distressingly narrow interpretation of Congress' power under the Commerce Clause. Judge Sutton was an extremely controversial Bush nominee who promised the Senate that he would not have an agenda on the bench to narrow congressional power and he was confirmed by one of the smallest number and proportion of positive votes in history, 52–41.

Judge John Roberts, another controversial nominee of President Bush, has questioned the constitutionality of the Endangered Species Act under a similar theory, showing his willingness to curtail Congress's ability to protect the environment. He has also ruled for the administration in the ongoing case seeking more transparency and accountability from Vice President CHENEY and his Energy Task Force.

Judge Edith Clement of the Fifth Circuit, another Bush circuit court nominee, has also showed her Federalist bent by voting to limit the Hobbs Act, also under the reasoning that Congress' ability to legislate under the Commerce Clause is more narrow than legal precedent actually shows. Other Bush judges have taken extreme positions and been criticized by their peers, often other conservatives, for overstepping bounds or substituting their views for the trial court's. Their tenure on the federal bench has so far been short, but even these few examples show that as it lengthens, the number of ideological opinions will grow.

While Democrats have not imposed ideological litmus tests on the Bush nominees, it is clear that President Bush has. President Bush has named to the bench many who have been leaders in the right-to-life movement and none who have been leaders on the other side of that social issue. The President has sought out people he hopes share his social agenda for our Federal courts.

President Bush has also used federal judgeships to reward lawyers who worked closely with Ken Starr or on the Florida recount, including some for lifetime seats who were as young as 34 years old. Many of his nominees have been drawn from a select group of neoconservatives whose views are surprisingly rigid given their youth. Indeed, more than half of President Bush's circuit court nominees have been involved with the Federalist Society and overall almost a quarter of all of his judicial nominees have been associated with this organization whose mission is to ''reorder the legal priorities'' along ideological lines. In fact, President Bush has chosen more judicial nominees involved in the Federalist Society than nominees who are Hispanic, African American or Asian Pacific combined.

No one is entitled to a lifetime job as a judge, entrusted with making decisions that affect the lives, liberties and property of millions of Americans. I will continue to oppose judicial nominees who I do not think will be fair, independent Federal judges. We are committed to defending the rights guaranteed by the Constitution and to ensuring that our Federal courts have fair judges who will be faithful to the Constitution and its precedents, not loyal to the partisan political agenda of President Bush. The fairness of the Federal judiciary is indivisible from our American ideal of justice for all.

Whether Congress may regulate lead in our water, whether we can provide leave for families during medical crises, and whether fundamental protections for our liberty, equality and privacy will be preserved, all these matters will be reviewed and decided by Federal judges. Our freedoms are the fruit of too much sacrifice to confirm those who will not fully enforce Federal protections.

It is imperative that there be fair judges for all people—poor or rich, Republican or Democrat, of any race or religion. A number of President Bush's nominees have records that do not demonstrate that they will be impartial. Democrats have refused to rubber-stamp judicial activists. We know that the Federal courts should not be an arm of the Republican Party.

There are any number of issues and bills that the Senate could and should be addressing instead of arguing over cloture petitions for judicial nominees. Judicial vacancies is about the only number going in the right direction.

With the deficit up, the debt up, the numbers of uninsured, unemployed and impoverished Americans up, but the number of Federal court vacancies going down, the Senate has much more to do.

Of course, April 15 was the legal deadline for adoption of a Federal budget. Even though Republicans have excluded congressional Democrats from the discussion, they have not been able to agree even among themselves on the Federal budget resolution. That statutory requirement is being violated daily.

The transportation bill is long overdue. Again, it is Republicans who cannot agree on a transportation bill that will fix our roads, bridges and provide for public transportation. That bill would mean hundreds of billions of dollars to our local communities and States all across the country.

A supposed priority this year was going to be welfare legislation. Republicans have not agreed on a welfare reform extension.

We have no legislation to confront the soaring gas prices that affect all Americans, nor will the Republican leadership schedule action on the bipartisan NOPEC bill that was unanimously reported by the Judiciary Committee to clarify that OPEC cannot act collusively with impunity from the law.

This week we mark the 50th anniversary of the Supreme Court's decision in Brown v. Board of Education, a landmark decision of the United States Supreme Court. It offered African-Americans throughout our Nation hope that the Government of the United States was prepared to make real Jefferson's declaration that ''all men are created equal.'' It made good on Justice Harlan's famous words of dissent in Plessy v. Ferguson: ''In view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here.''

Of course, the decision in Brown was not universally celebrated at the time. It was condemned from some quarters and sparked defiance in many parts of this nation. It was the beginning, not the end, of a long process of desegregation that was fought vigorously in many communities. Even today, 50 years later, there is still significant work to be done to ensure equal educational opportunity for all of our children. Schools in our cities are all too often in disrepair, both physically and in the quality of education they can offer to the most vulnerable children among us.

As we commemorate Brown, we must also note that the Republican Congress has funded Title I—the Federal program most directly targeted toward those schools and toward reducing educational inequality—at $6.3 billion below its authorized level for the current year.

We should celebrate the brave families who desegregated our schools, and the accomplished lawyers, including Thurgood Marshall, who led the fight. We should commemorate the nine Justices who were unanimous in their dedication to the constitutional principle of equality. And we should remember the many leaders who have continued the battle for justice in the decades since.

This anniversary should not be the cause of complacency or self-congratulation—our work is not done. There is much else we could be doing—but are not—in the area of civil rights. The Voting Rights Act is slated to expire in 2007, and the Majority Leader and the Chairman of the Judiciary Committee have said they want to make its key provisions permanent. I have said that I support this goal and want to make sure we achieve it in the way most likely to survive an inevitable constitutional challenge before a Supreme Court that shows little deference to Acts of Congress. Senator KENNEDY and I have both said we want to work with Senators FRIST and HATCH to begin committee consideration of the Voting Rights Act and build the legislative history that would justify making it permanent to the judicial branch. Up until now, we have received no response.

We have been fighting now for many years to pass hate crimes legislation that would both improve our existing hate crimes laws and apply them against criminals who target gay and lesbian Americans. I am one of 49 cosponsors of S. 966, the Local Law Enforcement Enhancement Act. This bill has passed the Senate before, only to be blocked by the Republican leadership in the House. In recent years, however, we have been unable to get the Senate to adopt it. In the last Congress, almost every Republican Senator voted against cloture on the hate crimes bill, dooming it to failure. In the current Congress, we have not considered the bill.

Meanwhile, the bipartisan Employment Non-Discrimination Act (''ENDA'') of 2003 (S. 1705) is bottled up in the HELP Committee. This bill has 43 cosponsors. It would prohibit workplace discrimination based on sexual orientation. One might think that opposing firing people simply because they are gay is a rather commonplace position in 2004. In the Senate, however, we cannot get a vote on ENDA.

The Development, Relief, and Education for Alien Minors Act (''DREAM Act'') S. 1545, continues to languish on the Senate calendar. This is a bill that the Judiciary Committee approved last November. It has 46 cosponsors, including a dozen Republicans. Its lead sponsors are Senator HATCH and Senator DURBIN. It would restore to States the right to provide in-state tuition to undocumented aliens who graduate from U.S. high schools.

The beneficiaries would be young people who came here as children, not of their own volition. They would be people like Jazmin Segura, a Los Angeles high school senior from a high-crime neighborhood with a 3.88 GPA. Ms. Segura, who came to the United States from Mexico when she was nine years old, was featured in a Wall Street Journal article last month. She had been accepted at the University of California at Berkeley and at UCLA, but did not know whether she would be able to afford to go.

We have legislation at the ready that could help Ms. Segura and many others like her. If we held a vote on this bill right now, it would undoubtedly pass by a wide margin. But the Republican leadership—eager to reach out only rhetorically to the Hispanic community—has refused to bring it up for a vote.

I came to the floor nearly two weeks ago to decry the Senate's failure to consider legislation to respond to a crisis affecting industries throughout the economy that depend on temporary labor. More than 2 months ago the Department of Homeland Security announced that for the first time ever the annual cap for H–2B visas had been met. These visas are used by a wide range of industries throughout the nation to fill temporary labor needs. In my home State of Vermont, they are used primarily by the tourist industry.

In response to this announcement, I joined with a substantial bipartisan coalition in introducing S. 2252, the Save Summer Act of 2004. Senator KENNEDY is the lead sponsor of this bipartisan bill, which has 18 cosponsors, including 8 Republicans. Our bill would add 40,000 visas for the current fiscal year, providing relief to those summer-oriented businesses that had never even had the opportunity to apply for visas. Senator HATCH introduced a competing bill sponsored only by Republicans, S. 2258. I do not think that bill is as good as our bipartisan bill, but it is certainly better than nothing. Unfortunately, a small minority of the Republican caucus has demanded we do nothing, and the Republican leadership has acceded to that demand. Either the Save Summer Act of Senator HATCH's bill would command the support of an overwhelming majority of Senators, but the majority leader has brought neither forward for a vote.

When it comes to immigration, the Republican leadership has ignored not only the concerns of the tourism industry and other businesses that depend on temporary summer workers, but even to the needs of farmers. Senators CRAIG and KENNEDY joined together in introducing S. 1645, the Agricultural Job, Opportunity, Benefits, and Security Act. This bill has 62 cosponsors, including 25 Republicans. It would solve problems in the H–2A program that have plagued American farmers for years, while also providing a path to legalization for farm workers who have been working here illegally for years. It has the vociferous support of both farmers and farm workers; it is indeed an example of the sort of compromise legislation that used to be a

hallmark of this body. But we cannot get a vote on this bill.

So while the Republican leadership has devoted time last week and this to an impasse over judicial nominees caused by the President's abuse of the recess appointment power, we have seen little effort to work on matters of significance that can and should be considered and acted upon by the Senate to make bipartisan progress for all Americans.

While we celebrate progress today on judicial nomination, I hope that we will also soon see progress on these legislative matters. Through bipartisan action we can do much to serve the American people.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

Mr. LOTT. Mr. President, is the pending business amendment No. 3158?

The PRESIDING OFFICER. The Senator is right. That amendment is pending.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have confirmed with Senator SNOWE and Senator LOTT that they would permit me to set their amendments aside for 3 minutes so that I could offer a nonproliferation amendment. I ask the Senate for that privilege.

The PRESIDING OFFICER. Without objection, it is so ordered.

The pending amendment will be set aside.

Mr. DOMENICI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

Mr. KENNEDY. Reserving the right to object, and I will not object, I ask consent my amendment be in order, as well.

Mr. LOTT. Reserving the right to object, do we have the amendment? Have the managers had a chance to view that? I don't know that there is a problem.

Mr. KENNEDY. It is report language. All I want to do is have the same kind of courtesies. If I could ask, then, at least it be considered after the floor managers have an opportunity to review the amendment.

If there is an objection, that would be satisfactory with me. But it is relevant. Otherwise, I will insist on the reading of the amendment.

Mr. LOTT. Mr. President, reserving the right to object, and I don't intend to, I don't even believe it is my role, I don't know that anyone has had a chance to look at it.

Mr. KENNEDY. I was waiting for my time. You were next to offer your amendment and were going to take 90 minutes. I was prepared to remain here and, hopefully, we are alternating amendments. This is directly germane. My good friend from New Mexico offered his amendment and asked for consent to do it. I was trying to get the same courtesies.

I am glad to play by whatever rules the Senator wants to play by, but if we are waiting our turn to get here and someone asks consent to be able to advance their amendment, all I am asking is to get the same kind of consideration. That is the only thing.

Mr. REID. Mr. President, is there a unanimous consent agreement to set aside an amendment?

The PRESIDING OFFICER (Mr. CRAPO). To dispense with the reading of the amendment.

Mr. REID. Has there been an agreement to set the pending amendment aside to offer this amendment?

The PRESIDING OFFICER. That is correct, there has been.

Mr. REID. I am sorry, Mr. President, if that question was put to the Senate, I certainly did not hear it.

The PRESIDING OFFICER. The request was made.

Mr. DOMENICI. I made the request and the Lott amendment was pending and I asked it be set aside for 3 minutes so I could offer an amendment. That was granted.

Mr. REID. I heard the Senator from New Mexico. I thought he said there had been an agreement to that effect. If you check the record, that is what it said.

Mr. DOMENICI. And I said, and I ask the Senate grant me that privilege, after I made that statement to which you are referring.

Mr. KENNEDY. I ask for the same privilege.

The PRESIDING OFFICER. Is there objection to the Senator from——

Mr. WARNER. Reserving the right to object, might I suggest, and I ask my good friend—and the Senator knows I will support him—could you withdraw that at this time so Senator LEVIN and I, together with the leaders, can determine the order in which we will take amendments?

Mr. KENNEDY. I withdraw my request, in courtesy to my friend from New Mexico.

I ask consent that I be recognized to offer an amendment at the conclusion of the Senator from Mississippi and the Senator——

Mr. LOTT. Mr. President, I thank the Senator from Massachusetts in his typical courteous manner for the way he has handled it. I know the managers will work with him.

Mr. REID. So the consent now before the body is, following the disposition of the pending amendment—that is, the amendment of the Senators from Mississippi and North Dakota—Senator KENNEDY be recognized to offer his amendment?

Mr. WARNER. I have to object. I fervently asked that the two managers work with our respective leadership and those desiring to bring up amendments. So I suggest that we continue with the Lott amendment and you be ever so kind to hold yours in abeyance.

Mr. DOMENICI. They have already agreed on mine and it will take 3 minutes. I don't doubt that.

Mr. LEVIN. No. There has been no agreement on the Domenici amendment.

Mr. DOMENICI. What?

Mr. LEVIN. As I understand, Senator DOMENICI—and I was distracted—asked he be allowed to offer the amendment. As I understand it, there has been no agreement to the amendment, the time agreement on the amendment. The manager is asking the Senator from New Mexico would he now withhold that amendment so we can sort this out.

Mr. WARNER. Correct.

Mr. DOMENICI. I will be glad to do that.

Mr. WARNER. I thank the Senator.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. WARNER. Mr. President, and I ask that we pursue the opportunity to have a time agreement on the Lott-Dorgan amendment.

First, I ask the distinguished Senator from Mississippi how much time the Senator desires—and we will talk about it in terms of it being equally divided.

Mr. LOTT. Mr. President, we have talked back and forth and we think that 45 minutes a side should be sufficient.

Mr. WARNER. I ask my distinguished colleague.

Mr. LEVIN. An hour and a half equally divided.

Mr. WARNER. Forth-five minutes to the side?

Mr. LOTT. An hour and a half equally divided.

Mr. WARNER. Well, we want to keep moving with this bill. It seems to me the subject is pretty well understood. I was hoping maybe an hour.

Mr. LOTT. Mr. President, if I could respond, we do have Senators who have not been heard.

Mr. WARNER. Very well, I am agreeable if the——

Mr. LOTT. If we have time and we do not need it all, we can always yield it back—an idea I like.

Mr. WARNER. This issue has an intensity of its own.

If an hour and a half is agreeable to the Senator from Virginia and the Senator from Michigan.

Mr. LEVIN. No objection.

Mr. REID. Mr. President, if the Senators would be willing to modify their amendment, it is my understanding following the hour and a half that there would be a vote on or in relation to that amendment with no second-degree amendments in order.

Mr. WARNER. That is correct.

Mr. REID. I ask that be part of the consent agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Without objection, the original consent is so ordered.

Mr. LOTT. Mr. President, Senator SNOWE and Senator FEINSTEIN have

been patiently waiting, Senator COCHRAN wishes to speak, as well as Senator DORGAN.

Would the Senator from New Hampshire have a question?

Mr. GREGG. I would like to get 3 minutes.

Mr. LOTT. Would the Senator be willing to withhold so we can proceed with the Senator from Maine?

Mr. GREGG. Certainly, unless the Senator from Maine——

The PRESIDING OFFICER. The Senator from Maine.

AMENDMENT NO. 3158

Ms. SNOWE. Mr. President, I rise today to speak in support of the amendment that has been offered by Senator DORGAN, Senator LOTT, Senator FEINSTEIN, and myself to refocus the provisions that are included in the underlying legislation that authorizes a base closure round in 2005 from our domestic installation to our overseas military infrastructure.

I do so because I am firmly convinced today in this unprecedented era of global war on terrorism, as we continue operations in Afghanistan to root out the seeds of terror, as we are engaged in ensuring a free Iraq in the heart of the Middle East, it makes no sense to consider closing nearly a quarter of our domestic military infrastructure in addition to the 21 percent that has already been lost over the past 15 years in America.

I arrive at this debate as a veteran of a number of issues that are key to our deliberations. First, I have been all too intimately acquainted with every base closure round since the first occurred in 1987, as well as the accompanying pitfalls, failures, and foibles of each—and there are many.

Also, in my capacity of both the House and the Senate, as ranking member of the Operations Subcommittee on the Foreign Affairs Committee of the House that oversaw terrorism and in my position in the Senate Armed Services Committee and former Chair of the Seapower Subcommittee.

I cannot and will not ignore the pattern I have discerned of the failure to ''connect'' the critical ''dots'' in the past, and the implications of these shortfalls on our ability to project into the future.

What most concerns me is the inadequacy of the military's threat assessment projections time after time accompanying the requirement, including enacting BRAC legislation in 1991 that stipulates the Secretary of Defense ''shall include a force structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made.''

It is very important to understand the requirements and the obligations of the Defense Department. They have to make those projections. Unfortunately, whether they make those projections 20 years into the future or 6-year projections, the track record has been poor.

I can say this because I have reviewed the military threat assessments not only contained in the force structure plans the Department provided, along with their justifications for the 1991 base-closing round, but also the 1993 and 1995 BRAC rounds, as well as other key assessments made by the Department during that time, such as the 1993 Bottom-Up Review, the 1997 Quadrennial Review, and the 2001 Quadrennial Review.

Specifically, I wondered how actual events and results matched their expectations. How did their threat assessments dovetail with the new realities, such as terrorism, asymmetric threat, and homeland security or homeland defense?

I then went back a little more than 21 years ago to the bombing of the U.S. Embassy in Beirut, and looked at significant terrorist events directed against Americans throughout the world, as chronicled by the State Department. I put it on this chart because I think it is important to recall exactly what the events have been over the last 20 years with respect to terrorism.

A defining moment in 1983 was when our marines were under attack, when 242 brave marines were lost because of a suicide bomber.

In 1985, TWA flight 847 was hijacked, and U.S. Navy diver Robert Stethem was killed. Then, of course, we had the Achille Lauro. Then we had, of course, the Berlin disco that was bombed, and a number of American soldiers were killed or injured. We also know what happened with Pan Am flight 103 that was destroyed over Lockerbie.

These are a few of the significant events that occurred throughout the 1980s. In fact, I am illustrating only a few of the 17 events that were identified by the State Department where Americans were the target of terrorists.

Yet, after all these events, let's look at what was identified in these base-closing reports that are required under the legislation. We had a four-page report that was a result of the 1991 base-closing round, and they submitted a military assessment for the years, because they have to project out. In this case, it was 1992 to 1997. What did it have to say?

> The most enduring concern for U.S. leadership is that the Soviet Union remains the one country in the world capable of destroying the U.S. with a single devastating attack. . . .
>
> [T]he Soviet state still will have millions of well armed men in uniform and will remain the strongest military force on the Eurasian landmass.

But when it came to terrorism, they said: Our efforts to promote regional stability and to enhance the spread of democracy will continue to be challenged by insurgencies and terrorism.

So there was only a passing mention of this issue as an impediment to regional stability and the enhancement of democracy worldwide. But there was no discussion of it as a context, as a threat to the United States. There was no mention, as you can see, of it as an asymmetric threat or as a threat to our homeland security. And then what happened?

On February 26, 1993, we had the bombing of the World Trade Center. It was badly damaged, and 1,000 people were injured, leaving 6 people dead. Yet the military threat assessment, issued less than 1 month later—it would have been a matter of weeks later—in the 1993 base-closing round report again referred to the regional crises with North and South Korea, India and Pakistan, the Middle East, and Persian Gulf States. It went on to say:

> [T]he future world military situation will be characterized by regional actors with modern destructive weaponry, including chemical and biological weapons, modern ballistic missiles and, in some cases, nuclear weapons.

But note in this report there was suddenly, once again, no mention of terrorism after the World Trade Center bombing less than a few weeks later, maybe a month. And as to an asymmetric threat? Nothing. And homeland security? No reference whatsoever to homeland security.

Furthermore, the bottom-up review that occurs within the Defense Department, which is a wide-ranging review of strategy, resources, and programs to delineate our national defense strategy for the future, that was signed out in October of 1993—and, of course, that was about 8 months later—described four new dangers to U.S. interests after the end of the cold war. Again, no mention of particular asymmetric threats, homeland security, or anything with respect to terrorism. Even at that point, they did mention state-sponsored terrorism as a reference, but, again, they stated the World Trade Center bombing in 1993 was the result of the mastermind Sheikh Omar Rahman, who was a non-state-sponsored terrorist.

But, as you can see, in 1993, then, we had two Defense Department reports, one in response to the requirements under the base-closing process, and the second one was a bottom-up review by the Defense Department within the same year, having the foreknowledge of what happened and what transpired at the World Trade Center, and nothing was referenced with respect to terrorism, asymmetric threat, or homeland security.

The timeline continues to 1995. We have the Tokyo subway with the sarin gas. Ironically, that is sarin gas equivalent to what was discovered in Iraq last week. I was stunned then to look at what happened in the 1995 force structure report that was also required in response to the base closure round of 1995 that had to address the threats between 1995 and 2001. Other than the removal of a few sentences, it was exactly identical, the same as the 1993 -

BRAC threat assessment. So much for rigorous analysis. Still there was no mention of terrorism, no mention of asymmetric threat, and no references to homeland security. And this is less—less—than 6 years before September 11, when we had those catastrophic and devastating events.

Remember, this particular base closure round is required to project out 20 years. So now we are referring to a base-closing force structure plan in 1995, given all the preceding events of terrorism in which Americans were victims and a target, and there was no identification of terrorism being a major threat to the United States, or that there was an asymmetric threat, or that there was a threat to our homeland security. This was 6 years out.

After the 1995 report, we go to 1996. We have Khobar Towers. We have the East Africa Embassies in Tanzania and Kenya. Then, of course, we have the USS *Cole* in the year 2000. Again, we do not have any identification that we are now being threatened, in these base-closing force structure plans, in our homeland security, or by the threat of worldwide terrorism.

By 1997, the Department was acknowledging the fact terrorists using asymmetric means might attack the homeland. Again, I might add, yet it still remained a fourth-tier concern in their Quadrennial Defense Review—a fourth-tier concern—in spite of the continuing onslaught of terrorism around the world.

Then, of course, we have all the preceding events. So this, in my opinion, raises some serious concerns about the ability of the Defense Department to project into the future, and particularly when talking about projecting 20 years out.

I happened to review the Quadrennial Defense Review report issued in 2001. Mind you, that was issued 19 days after the attack of the World Trade Center on September 11, and it obviously identified that we were being challenged by adversaries who possessed a wide range of capabilities regarding asymmetric approaches. Obviously, at that point it was not an astute observation. But interestingly, in examining the QDR, there was a lack of mentioning al-Qaida by name—not once. In the 70-page report, there is not one mention of al-Qaida, when we are talking about 19 days after the events at the World Trade Center on September 11.

I think this all indicates the significant dose of skepticism with which we should examine the current force structure plan and the accompanying threat assessment submitted by the Department to justify the base-closing rounds of 2005. Considering that we now base decisions on a 20-year assessment—never mind just 6, and even the 6-year projections proved spotty at best—and considering the volatile times in which we live, I have to say that what we received, over a month later than was required by the base-closing legislation—and I might add it is about what we expected, not much—indeed, my sense is they took these assumptions that were made for the Future Year Defense Plan that the Department submits as part of their overall budget authorization and simply extended it to 2009.

But even after 20 years of constant assault, of terrorism on Americans either here or abroad, the Defense Department still has not matched its force structure with those assumptions. Indeed, they have avoided the entire issue of these threats that the Nation will face over the next 20 years by claiming that today's security environment ''is impossible to predict with any confidence which nations, combination of nations, or non-state actors may threaten U.S. interests at home and abroad.''

And when the Department claims they have adopted an approach to force development based on capabilities rather than threat-based requirements and will need a flexible, adaptive, and joint capability that can operate across the full spectrum of military contingencies, exactly what does that mean? That is a very good question. What does that mean? Clearly, it indicates an uncertainty upon which we should be considering closing military bases.

It is obvious that the Defense Department is not certain, and this is not the basis upon which we can make decisions that are irreversible when it comes to our military infrastructure. Indeed, a retired Navy captain, Ralph Dean, succinctly placed a column in a Maine newspaper where he said:

> Surprisingly it showed—

In reference to this force structure plan that was recently submitted by the Defense Department—

> virtually no changes in overall force structure during that long period. This may indicate the Department of Defense is unable to make projections about the future threat with any degree of certainty. This uncertainty must be addressed, because BRAC actions are irreversible.

Exactly. And therein lies the problem. We are required to make decisions on force structure, on threat assessments based on plans that are submitted to the Congress and to the base-closing commission. We are going to make permanent decisions. We cannot retreat from those decisions once they are made. You cannot retract those decisions once they are put in motion.

Let's look at the overall picture in the context of the threat environment in which we live today. How can we possibly project out 20 years to ascertain our military requirements? We are learning in Iraq that the quantity of troops matters, as DOD is forced to recalibrate and send an additional 20,000 troops there. Moreover, this underlying legislation, the Department of Defense reauthorization legislation we are currently considering, is actually increasing the Army's end strength of more than 30,000 soldiers. Yet at the same time we are suggesting that we are going to reduce the number of our bases at home? Indeed, the BRAC force structure plan of 2005 addresses neither the potential surge requirements that we may confront in these protracted struggles, nor the need for more troops.

Indeed, there seems to be some confusion within the Defense Department between DOD and the services. I saw a report the other day that interested me that appeared in the Boston Globe making reference to the fact that the Navy is planning to inactivate a number of submarines over the next few years. It was reported that the Navy is conducting a study that might reduce the attack submarine force substantially downward for the fiscal year 2006 budget submission, and we are told there are no changes, as indicated in the Future Year Defense Plan, upon which the force structure plan that was submitted for this base-closing round was predicated. So how can we be certain of the type of projections the Defense Department is going to make beyond the year 2009?

There is no mention of any changes up to 2009 in terms of its force structure requirements. How then are we going to base the kind of decisions within the base-closing process when we have not had an adequate projection of threat assessment for the next 20 years and what it will require in terms of force and also infrastructure? And what are the joint warfighting plans that are still being developed? If BRAC decisions are based on untested joint concepts, then the Department of Defense could well face limited options down the road because of the limitations of facilities.

I think it doesn't make any sense at this point to continue with the domestic base-closing round without a complete understanding and evaluation of our overseas basing requirements. This amendment will allow Congress time to conduct adequate oversight to ensure that these invaluable decisions that we will be making, permanent decisions, irreversible decisions, do not have implications for the future of our capacity to respond to the changing threat environment in which we currently are.

I am hoping that Members of this Senate, however they felt in the past about the base-closing process, will understand there is an enormous gap between threat assessments and force structure projections by the Defense Department and all of the previous base-closure rounds, and that is a serious problem in the world in which we live and certainly in the context of needing more flexibility when we are conducting a war on terrorism. As the President said, this is going to be an ongoing struggle for a long time in the foreseeable future. Therefore, we have to reconsider and look abroad for our overseas facilities as opposed to those at home.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I yield myself such time as I may take.

I ask my distinguished colleague from Maine, have you had an opportunity to examine the letter that was sent by the Chairman of the Joint Chiefs of Staff and all of the other Chiefs in which they say ''a comprehensive overseas basing review is nearly complete.'' I have other documentation. They have done a conscientious job on the overseas base structure. They are coming forward with a very balanced program to work with the existing law.

My concern is, if we dislodge the existing law by adopting this amendment, it would have the effect of delaying the process another 2 years and putting on to the Department of Defense the added cost of continuing to maintain structure that they simply do not need for today's and the foreseeable military strength of our country.

I have to tell my distinguished colleague, in the course of the lunch period, I talked with a number of individuals. They said: JOHN, the most persuasive case to me is that I have called home and talked to several of the communities that have hired the lobbyists, and they pleaded with me: We can't afford this infrastructure that we felt necessary to defend our base under the existing 205 BRAC procedure. You add another 2 years, you are going to draw down those precious small amounts of tax dollars in those communities by another 2 years. Is the sentiment in your State to go on for another 2 years with all of the uncertainty?

A lot of communities cannot attract new business for fear that the base may leave. They have to have a decision and get on with this.

Ms. SNOWE. Mr. President, I appreciate the chairman's comments. First, with respect to overseas facilities, in this legislation, under the current law, it requires the Department of Defense to submit that report only 4½ months prior to when the base-closure commission's final decisions are completed. I think that is going to be a totally inadequate period of time in which to make a current examination as to whether or not to close the facilities. You can have an impact at home on domestic installations. We are talking about increasing the number of troops in the underlying legislation. Where are they going to be housed? There are a lot of decisions. We have never thoroughly evaluated overseas installations. I think that needs a thorough examination. We deserve that.

Frankly, I do not have confidence in the process. I can tell my colleague, as the Senator from Mississippi has indicated, I have no confidence in the integrity of the process. They have not been in position to ever not only provide a credible force structure plan in identifying the future threats, they have not been accurate in their projections.

Secondly, if you talk about the examination of savings—and I did not get into that subject because that is a wide-ranging subject—GAO, in a report yesterday, said the Department of Defense does not have any adequate methodology by which to ascertain whether they have made or achieved any savings. In fact, there may be one base closing round that has achieved any savings in the first 6 years—maybe.

We are going to be talking about spending a lot of money before we even get to that process even if we do because it costs so much in remediation in the cost of closing down those facilities, in conjunction with the war on terror, in conjunction with the conflict in Iraq, and all the potential costs associated with that which remain unknown in the foreseeable future.

That is why I say to the chairman, I think it is important, not for the sake of expediency and efficiency, but for the sake of fairness in looking abroad as to exactly what we need. We have more than 700 facilities that have not heretofore been examined. With regard to forward-deployed forces, many nations would not allow us to put our troops there when it came to the conflict—Saudi Arabia and Turkey.

The time has come to look at this situation very differently. We are in a very different environment, as the chairman well knows, and I appreciate that. But I think the time has come to understand there are huge gaps in understanding what our future threat environment is going to be all about, and that has enormous implications for the future.

Finally, may I mention, in this legislation there is a joint resolution of approval by the Congress in 1997 to make a decision as to whether to proceed to an additional base-closing round.

Mr. WARNER. I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I know the Senator from California has been waiting to speak. Will 10 minutes be sufficient, or if she does not need all that time, we will reallocate the time. I yield up to 10 minutes to the Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator.

I had the privilege of listening to the Senator from Maine. I feel very privileged to join in this effort along with the Senator from Mississippi and the Senator from North Dakota. The Senator from Maine made an excellent case, and I concur wholeheartedly.

Specifically, what we are trying to do with this amendment are two simple things: modify the 2005 base closure round to make it apply solely to military installations outside the United States. As Senator SNOWE said, we need to begin to look at the 700 operations and installations we have around the globe and make some decisions with respect to them in this new asymmetrical war on terror we face.

Secondly, provide for expedited consideration of a request for a domestic base closure round in 2007.

I thought the Senator made the excellent point that Congress authorized the 2005 base closure round in 2001. Our military and our Nation have been confronted by several new challenges since that time: 9/11, the war on terror, the overthrow of the Taliban and the Hussein regime, and the reconstruction of Afghanistan and Iraq. We now know our enemy may well be rogue states, may well be nonstate entities who seek to find weapons of mass destruction. They may well be international groups which have replaced the Soviet Union as the greatest threat to American interests and security.

These challenges, we believe, mandate us to reexamine the role and composition of our military in this new era: What kind of force structure will be needed? How many troops will be sufficient? And, yes, what sort of infrastructure and basing needs will be required to meet these new threats?

It seems very shortsighted to me to proceed with a new round of domestic base closures that was approved before 9/11 took place and before any of these questions were raised. In fact, the criteria for the 2005 base closure round is almost identical to the criteria for the past four rounds. How can we be sure this process will be fair and balanced and in the best interest of our military and our national security interests if it is based on criteria appropriate for 1995?

For example, as Senator SNOWE pointed out, there was no Department of Homeland Security in 1995. We are only beginning to understand how our domestic military infrastructure can play a role in providing for the actual defense of our homeland. That is a very important point. I do not think there is anyone who would say our homeland is beyond attack. As a matter of fact, I think a majority of us, certainly on the Intelligence Committee, would say there are very good chances that there will be another attack; therefore, domestic military has a new and different role to play in our country.

I do not think now is the time to rush forward. We still have 112,000 troops based in Europe, 37,000 in Korea, 45,000 in Japan in bases designated, devised, and intended for cold-war-era threats. Those threats have changed.

We see on the Military Construction Subcommittee how the thinking is now changing with respect to force structure, the location of force structure in Korea, as well as in Europe, moving more of the European components south of the Alps so that we may be able to move them more rapidly into the Middle East and into Africa.

Suppose after the 2005 round is completed it is determined several overseas bases need to be closed and the troops relocated to the United States. Where will they go? Will closed bases have to be reopened?

Let us also remember there is an economic impact on a community that must be taken into consideration. When a base is closed, jobs are lost, economic growth is stunted. Even the threat of a base closure is enough to scare away investment.

Should we not take a look at our overseas basing structure first before we ask our communities to make additional sacrifices?

Senator HUTCHISON, who is the chairman of the Military Construction Subcommittee, and I, as ranking member, introduced legislation last year to create a congressional commission to take an objective and thorough look at our overseas bases. We met with that commission last week and gave them their charge to look at the mission and then make some recommendations to us with respect to the placement of bases needed by that mission.

It seems to me the way one approaches this issue is to build on that legislation and first look at overseas basing needs in 2005, since they are, in fact, changing, and then turn to domestic bases, if necessary, in 2 years' time.

I also want very briefly to mention the impact of base closures on my home State of California. California has had 29 military bases closed. It has cost the State more than 93,000 jobs, of which 40,000 were civilian positions.

According to the executive director of the California Institute for Federal Policy Research, California lost more jobs than all of the other States combined in the last four rounds. While at the time we had only 15 percent of the Nation's military personnel, we shouldered 60 percent of the net personnel cuts. I believe we have sacrificed enough.

If California is called on to make additional sacrifices and additional bases are closed in a future domestic BRAC round, we should know that our Government did a complete and thorough examination of the threats our country will face in the future and the military capabilities we will need to face those threats.

While we are mentioning this, I also want to raise another real problem and that is the gross underfunding of cleanup and remediation of the bases. This has been short funded by literally billions of dollars. Let me make a couple of points.

It is estimated it will cost $1.3 billion to clean up the former McClellan Air Force Base in Sacramento. That process will not be finished until 2033. The cleanup of Fort Ord will not be finished until 2031. Castle Air Force Base will not be completed until 2038, and the list goes on.

What is the rush to close more bases that cannot be rapidly transitioned into civilian use because of the inability to fund remediation and cleanup of environmental hazards?

So I think Senator SNOWE made an excellent argument with respect to the need to take a good look at the overseas bases first—700 of them—and make some decisions with respect to where we are going in this new asymmetric war on terror and to leave intact America's bases for the next 2 years and then, in 2007, to consider an expedited round.

I am very proud to join with Senators DORGAN, LOTT, and SNOWE in this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. I rise in opposition to the Lott amendment and I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator may proceed.

Mr. ALLARD. Mr. President, we have to keep in mind that the main mission is to secure the safety of Americans both at home and abroad. I believe we are responding to the terrorist threat. We have stood up Northern Command in the military. We have set up a whole new Department dealing with homeland security.

At the very beginning of his administration, President Bush made it a priority to build and transform our military after 8 years of operation and maintenance funding shortfalls under the previous administration. Where does one get the money? If the bases and mission are being transformed, savings have to be figured somewhere. I think it is entirely appropriate, both at home and abroad, to review our mission.

I agree with many of the points that are being made on this amendment. We have to look at our bases overseas. Certainly our mission has changed considerably over there. As opposed to a large frontal assault, we are now dealing with a terrorist problem which requires a more mobile and modern military to address that threat.

We have the same threat at home, and we also need to look at whether bases at home are meeting the mission of the modern threat from terrorism. Those of us in the Senate have heeded the call of the President and I am pleased we are about to take the next step in maintaining a military fully capable of defending our Nation and meeting our foreign policy goals.

I continue to support the President's plan to transform our military. This authorization bill builds on the work we in the Congress have already accomplished toward that end. This amendment tends to undermine that effort.

I will take this opportunity to review where we are with BRAC. Congress granted the administration the authority in fiscal year 2002, that is the National Defense Authorization Act, to conduct a BRAC round in 2005, providing a critical opportunity to eliminate excess capacity and achieve additional savings that could be used to modernize and transform our Armed Forces to address emerging global threats.

The fiscal year 2002 National Defense Authorization Act improved the BRAC language from previous rounds to ensure future infrastructure satisfies emerging national security requirements and to correct earlier abuses of the process.

A 2002 GAO report on the 387 closures and realignments in four previous rounds; that is, in 1988, 1991, 1993, and 1995, reaffirmed that the Department of Defense generated a substantial net savings of somewhere around $17.6 billion, and expects the annual savings of $6.6 billion in fiscal year 2003 to grow.

DOD further estimated in March of 2004 that a BRAC round in 2005 will save $5 billion in 2011 and $8 billion annually thereafter. Now, BRAC is a key enabler for DOD transformation initiatives, including global basing and the rebalancing of Active and Reserve Forces.

I believe a delay of the 2005 BRAC round already underway delays the effort for us to modernize our forces. I cannot accept the argument that if we do not close bases that somehow or another we are better off. I think we need to have some savings. We need to save money. In the long run, there is going to be more money available for us to meet the changing threat from the terrorists that we now face today.

If we are serious about modernizing our facilities and being ready to meet the changing mission, we need to defeat the Lott amendment and we need to move forward with the provision that we have currently in the Defense authorization bill.

I ask my colleagues to join me in opposing the Lott amendment.

I yield back my time.

Mr. LOTT. Mr. President, how much time do we have remaining in support of the amendment?

The PRESIDING OFFICER. Those in support of the amendment have 16 minutes. The opposition to the amendment has 36 minutes.

Mr. LOTT. Mr. President, does Senator DORGAN wish to use some of the time at this point?

Mr. DORGAN. Mr. President, I would be happy to but I wonder if the opponents might want to use some of their time.

Mr. LOTT. How much time remains on the opposition side?

The PRESIDING OFFICER. There is 36 minutes.

Mr. LOTT. Senator LEVIN has not spoken and Senator INHOFE is here, so perhaps we could take some more time off the opposition.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I rise to speak in opposition to the amendment of Senator LOTT and Senator DORGAN. The first argument they make is that we ought to look first at overseas bases before we have our commission next year look at the domestic bases. I agree with that. I think it does make more sense to look at the overseas bases before we look at ours, and that is exactly what we provided for by law.

We have created a commission which will look at overseas bases and report back to the Department of Defense and to the Nation by the end of this year. That commission has now met and I believe they had their first meeting, in fact, this month and they have already scheduled a second meeting.

In terms of the argument that we should surely look at these bases all around the world before the commission which will be appointed next year looks at domestic bases, I think the argument is a good one, and we have provided for that argument.

The Global Posture Review, which is a requirement that the Department of Defense is now meeting, which is to see whether our forces are properly deployed around the world in order of addressing where the likely hotspots are, that Global Posture Review is also going to be completed this year. So there is a logic, there is a chronology, which meets the supporters' argument, the proponents of the amendment of Senator LOTT, that there is a sequence which should be followed.

We should first look at the overseas facilities before looking at ours is a sequence which we now have placed in law for many years. This, of course, has been in law and is now unfolding, as it was projected to unfold by law.

The Chairman of the Joint Chiefs and all of the chiefs have written us a letter. That letter has been printed in the RECORD. It is dated May 18, but I just quote from it to emphasize the importance of going through with a base realignment and closure round as authorized in the year 2001, and the importance to our uniformed military leadership.

The letter is addressed to Chairman WARNER. It says:

> We are writing this letter to emphasize our continued and unequivocal support for conducting a 2005 round of base realignment and closure (BRAC), as authorized by the Congress.
>
> The convergence of ongoing strategy and overseas basing actions, the transformational direction in all the services and force structure changes together afford us a once-in-a-generation opportunity to truly transform the Department's combat capability in an enduring way. A delay of this BRAC round, or a modification of the legislation that limits the Department's flexibility to execute it, will seriously undermine our ability to fundamentally reconfigure our infrastructure to best support the transformation of our forces to meet the security challenges we face now and will continue to face for the foreseeable future.

There is transformation going on. We are shifting to meet new threats—the best that we can foresee them. It has been argued that you can't perfectly foresee future threats. That is true. But that is surely no argument for not attempting to make the assessments in a thorough way, in a conscientious way, and then to structure your forces and to structure your infrastructure in a way that will most readily and most effectively meet those projected threats.

How can we reconfigure our military, which I think everybody recognizes is necessary in a new world of new threats, if we freeze into place the infrastructure that we have in this country? Somehow or other, the argument is made that because there are changes in the world, therefore we should not change, we should not allow our structures here to change. The opposite, it seems to me, is the case. The world has changed and changed dramatically, and the threats are very different. Surely we should not be frozen into our current structures here or around the world in response to a changing threat environment.

So the more we point out, and accurately so, and the more we argue how different the threats are following 9/11, it seems to me the more we should be willing to allow a process to work which first looks at our structures, our infrastructure, our base structure around the world, and then next year, after the foreign structures are looked at and the foreign bases are looked at, then our base-closing commission will look at the domestic bases.

I believe one of the Senators who spoke argued that the vote in 2001 came prior to 9/11 and that everything has changed since then. According to the information I have, our vote took place on September 25, 2001, 2 weeks after 9/11, the vote to sustain the title in the bill which authorized an additional round of base realignments and closures. I believe that vote—maybe my records are wrong here—took place after 9/11 and not before 9/11.

We also had a vote last year as to whether we should not proceed with another round of base closings. That vote last year also surely came after 9/11. We went through the same arguments, essentially, on our vote last year, whether the world has changed as to whether there are really savings that are created by the closing of bases.

On the savings point, I would simply give the best information available to us relative thereto. We have talked about the necessary closing of and realigning of bases in order to meet the new threats. But there is also a significant savings issue here as well. Here quoting from the Department of Defense report of March 2004, which we required, on page 55, this is the conclusion:

> The four prior rounds of base realignments and closures have generated significant savings for the Department of Defense. Through fiscal year 2001, the end of the four prior rounds' implementation period, the Department had accumulated net savings of about $17 billion over BRAC implementation costs from the closure and realignment actions approved in those four rounds.

Then the report goes on to say that:

> These BRAC-created savings continue, and the Department realizes recurring savings of almost $7 billion each year. These savings were realized even after environmental restoration funding was processed through BRAC accounts.

So the savings here are real. The necessity of closing unnecessary bases in order to meet new threats is real. It seems to me, as difficult as it is for all of us to confront the reality that some of our bases are in excess and do not meet the current threat situation, that we ought to proceed.

The amendment as written would require a new act on the part of Congress in order to restore a round of base closing. This is not a situation where the base closing is automatically going to take place. The commission would be allowed to recommend base closings in a future year. According to this amendment, it would require a subsequent act of Congress in order to restore a round of base closings in order to have a commission which would have the power to make those recommendations, both to the executive branch and to the Congress.

So this is not just simply a matter of delay, even though I think that would be a serious mistake. This is a matter of eliminating the round of base closings which is scheduled unless there is a subsequent enactment by Congress of a bill which would set up a round of base closing in the year 2007.

If we delay it or if we take the action that is proposed—technically more than a delay but actually a repeal in the absence of, subsequently, Congressional legislation—we will be leaving the bases in this country in limbo. It is hard enough. We all have bases in our States. It is difficult enough for our bases to go through this process, and we know that. We have all suffered some pain, some States more than others—my State a lot. But there is still a lot of real concern about the existing bases we do have in our State. But to simply say we are going to leave you in limbo for a few more years and then see whether Congress in 2007 adopts another round it seems to me is the worst of all worlds for everybody.

We have a need to realign bases. We have new threats. We have costs we cannot afford. It seems to me we have a process in place, which is a logical process looking first at the bases overseas, doing that this year through a Global Posture Review and through a report of a commission which specifically has been placed by law in operation to look at foreign bases, and then next year, according to a law which we passed in 2001, the next President, whether it is President Bush or whether it is President KERRY, would then appoint a commission that would look, in an objective way, at all of the bases, having before it the work of the commission which is looking at the foreign bases this year and having before it the Global Posture Review, which is being now adopted by the Department of Defense.

I want to close with another paragraph from this letter from the Joint Chiefs of Staff. Again, this was signed by every one of the Chiefs. It reads, in the second paragraph, as follows:

> A comprehensive overseas basing review is nearly complete. The continued concentration of forces in Cold War locations highlights the need for a global repositioning to locations that best support our strategic goals. In order to ensure that the Department examines its entire infrastructure, the rationalization of our domestic infrastructure as conducted by the BRAC process must closely follow the Global Posture Review.

In other words, we have a Global Posture Review which is being adopted

this year, and for the BRAC process to be delayed or to be rendered uncertain at least until the year 2007 means there will be a disconnect between the Global Posture Review, which looks at our force structure around the world, a disconnect between that and the decision as to which bases to close.

Our chiefs say both efforts are necessary. Both efforts are necessary—the Global Posture Review as well as a BRAC process—for a genuine capabilities-based infrastructure rationalization and for further transformation of our war-fighting capabilities.

I yield the floor.

Mr. LOTT. Mr. President, I yield to the distinguished Senator from New Hampshire.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from New Hampshire.

Mr. GREGG. Mr. President, I rise in support of the amendment of the Senator from Mississippi. I believe it is the proper process by which we should go forward with BRAC. BRAC is an extraordinarily complicated undertaking. I participated in four prior BRAC events and I can tell you from personal experience that it is intense, it is complicated, and it requires a great deal of planning and thought before it should go forward.

The Senator from Mississippi is proposing we make the logical step at taking what is the first first; specifically, that we look at those overseas bases and see how many should be addressed relative to closure; and if we decide that a series of bases overseas should be closed, it is more than likely that much of what they do and what they are responsible for will have to be moved back to the United States. When that returning of troops, materiel, and mission comes to the United States, that is going to adjust how we should approach the BRAC process here in the United States.

We all recognize there is excess in the military, although the last four BRAC processes have significantly reduced that. But we also should go forward in addressing that excess in an orderly and thoughtful manner. An orderly and thoughtful manner means you look at overseas bases first and decide which ones should be closed, and then look at domestic bases to determine whether they are going to have to take on new responsibility as a result of the closures overseas or whether they should also be closed.

It is, therefore, an extremely constructive proposal and one which I strongly support and look forward to voting for, and hopefully it will pass.

I yield the floor and reserve the time to Senator LOTT.

Mr. LEVIN. Mr. President, I yield 5 minutes to Senator MCCAIN.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, here we go again. We have now been through this on several occasions in the past. These are tough decisions. I think people realize this could have significant impact on the economies of their States, and of their districts in the case of Members of the House.

But I think we need to again remind people that we are in a situation where the defense spending increases and our requirements to fight the war on terror in general and increased costs of the war in Iraq absolutely mandate that we do everything we can to institute savings for the American taxpayers as far as the expenditure of their tax dollars are concerned.

I don't in any way dispute the fact that when a base is closed it has a very significant and sometimes short-term devastating impact on a State or locality in which that base is located.

I do think it is well to point out that Taxpayers With Common Sense and the Center for Defense Information prepared an independent report which was released in October of 2001. There may be some surprise by those of my colleagues who are citing economic concerns as to why they oppose further base closure rounds. Of the 97 bases closed in four base closure rounds, 88 percent experienced per capita personal income growth as high as 36 percent, and averaging nearly 10 percent; 75 percent experienced gains in average earnings per job; 87 percent had positive employment rates; 68 percent beat the national average; the average job replacement rate of all bases closed is 102 percent; by the beginning of 2001, only 3 of the 97 counties had higher unemployment rates than the BRAC announcement year; and 53 percent had unemployment rates lower than the national average. I think it is important to put it in that economic context.

Far, far more important than that is the fact that we are going through a significant realignment to meet the post-cold-war needs and challenges.

The Department of Defense is well on its way to establishing an integrated commonsense basing strategy that will feed directly into the BRAC process. The Office of the Secretary of Defense is finalizing the decisions in the integrated global presence and basing strategy that will specify who will be coming back and who will be going forward as we transition away from a cold-war posture to a global war on terror posture.

The decisions from the new global lay-down would be precursors to and will greatly influence the BRAC process. It will take both processes acting in a close manner to optimize the deployment of our forces around the world. Delaying BRAC or disrupting the symbiotic relationship between the integrated global presence, basing strategy, and BRAC processes will ultimately minimize our efficiency in the combat effectiveness of our forces in fighting the global war on terrorism.

That is why the Joint Chiefs of Staff and the Secretary of Defense—all knowledgeable people who could be viewed as objective outside observers—agree that we have to move forward with this process. We have voted on it before. We will vote on it again, maybe, although I hope not between now and the time that is appointed. I don't think there is any doubt that at this particular time it would be a serious mistake for us to delay.

I add again that the economic benefits associated with base closure are generally very much more positive than negative. I hope my colleagues will understand the views of the Chairman of the Joint Chiefs of Staff, the Secretary of Defense, the President of the United States, and all others who strongly feel that we need to move forward with this process.

I look forward to seeing a list of the bases in my State when the Senator from Mississippi hands it out. As he handed out a list the last time, he left my State off the list. I hope he corrects that oversight this time.

Mr. VOINOVICH. Mr. President, I rise today to express my opposition to Senate amendment No. 3158, which intends to delay for 2 years the process of base realignments and closures that is set to begin in 2005.

Nearly 3 years ago, the Senate passed legislation calling for a round of base closures in 2005. I strongly supported that legislation, and I continue to believe it is important that we move forward with plans to realign and eliminate excess military infrastructure.

In March, the Defense Department estimated that we support a defense infrastructure that is in excess of 24 percent. Rather than continuing to pay for unneeded or duplicative facilities, our limited defense dollars can and should be better spent to meet the most pressing needs of our Armed Forces.

United States military forces remain engaged in Iraq and Afghanistan. An American military presence remains important in Asia, including Korea, and U.S. soldiers are deployed to support peacekeeping operations in Southeast Europe and other parts of the world. With such demands on our men and women in uniform, it is imperative that our military resources are directed to meet our most critical defense needs.

I agree with the chairman and ranking member of the Senate Armed Services Committee, Senator WARNER and Senator LEVIN, that we must move forward with implementation of the BRAC legislation that was passed during consideration of the fiscal year 2002 Defense Authorization Act.

Two years ago, the Armed Services Committee concluded:

> The committee believes that the arguments for allowing the closure of additional facilities are clear and compelling. The department has excess facilities. Closing bases saves money, and the military services have higher priority uses that could be funded with those savings.

This remains true today. The fact that we remain engaged in efforts to fight the global war on terrorism and promote peace and stability in Iraq, Afghanistan and other parts of the world,

does not mean that we should put the BRAC process on hold. To the contrary, it makes action even more important. Now, more than ever, we need the resources that are spent to maintain excess infrastructure to meet more pressing defense needs.

Our highest-ranking military official, Chairman of the Joint Chiefs of Staff General Richard Myers, agrees with this assessment. In a letter to the Chairman and Ranking Member of both the Senate and House Armed Services Committees dated May 18, 2004, General Myers and the Joint Chiefs concluded:

> A delay of the BRAC round, or a modification of the legislation that limits the Department's flexibility to execute it, will seriously undermine our ability to fundamentally reconfigure our infrastructure to best support the transformation of our forces to meet the security challenges we face now and will continue to face for the foreseeable future.

Our highest-ranking men and women in uniform are requesting this authority so that we can best transform our military, moving beyond the cold war and preparing for current and future threats to U.S. national security interests at home and abroad.

Last week, I joined four of my Senate colleagues for a breakfast meeting with Secretary of Defense Donald Rumsfeld. During the meeting, Secretary Rumsfeld shared with us his vision for our global footprint. In an effort to better meet challenges to national security, the United States is changing its deployment of forces overseas. As the Secretary of Defense confirmed at that meeting, the realignment and closure of military installations, both at home and abroad, is critical as we look to continue that process.

As a result of prior rounds of base realignments and closures, through fiscal year 2001, the Department of Defense had accumulated net savings of approximately $17 billion. Savings continue annually, freeing up nearly $7 billion each year. These resources have been reinvested to meet urgent defense needs.

Given the fact that we still have a military infrastructure that is in excess of 24 percent, we can continue to generate even more savings with an additional round of base closures. The Defense Department estimates that an additional round of base closures could save more than $3 billion, with savings of $5 billion annually thereafter. Given these savings, there should be little doubt that additional rounds of closures will help to redirect expenditures where we need them the most.

As I have long advocated during my time in public office, I believe we should work harder and smarter and do more with less. That is what we are being asked to do. By maintaining excess and unneeded military installations, we are keeping scarce and critical resources from more important defense priorities. It just doesn't make sense.

Given the looming budget deficit, ongoing military operations in Iraq and Afghanistan, and other spending needs here at home, it does not make sense to spend billions of dollars each year on defense infrastructure that is not needed. We simply cannot afford it.

While I strongly support the BRAC process, I believe that every facility in Ohio can justify its existence on the merits, and I will work hard as a partner with local communities and my colleagues in Ohio's congressional delegation to support Ohio's defense installations.

I believe that base closures are essential to allowing our men and women in uniform to best serve the strategic and national security interests of the United States, and I strongly oppose any amendment that would delay the base realignments and closures process, or attempt to stop the process in its entirety.

Mrs. BOXER. Mr. President, I am proud to be a cosponsor of this important amendment to look at closing excess overseas military bases before moving forward on any future round of base closures in this country.

Over the past several years, I have consistently opposed additional rounds of base closures. The loss of a military base can have a devastating impact on local communities. This is not the time to subject our fragile national economy to the impact of another round—especially when the DoD is threatening to close one-quarter of our domestic bases.

In addition, I object the Department of Defense request for more base closures when it has failed to clean up former military bases shuttered during the previous four rounds. It will be decades before environmental remediation is complete at some former bases in California. The DoD must meet its responsibilities to the people of California before moving forward with any future rounds of base closures.

Given the ongoing war on terrorism and our current military operations in Iraq, now is not the time to close more bases. We must ensure that we have sufficient military assets to meet our growing challenges. At a time that our forces are stretched thin, it does not make any sense to waste resources in going forward with next year's round of base closures. These are uncertain times and it is impossible to know what the force structure of the U.S. military will be in the near future.

This amendment is a compromise. It allows the base closure process to move forward next year—but only for our installations overseas. It is logical to look at excess capacity overseas before looking at our domestic bases here at home.

I am proud to cosponsor this important amendment and urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Will the Presiding Officer kindly advise the Senate as to the time allocation remaining?

The PRESIDING OFFICER. The Senator from Mississippi has 14 minutes.

Mr. WARNER. And the Senator from Virginia?

The PRESIDING OFFICER. The Senator from Virginia has 18 minutes.

Mr. LOTT. Mr. President, would Senator WARNER be willing to yield 2 minutes to the Senator from Mississippi?

Mr. WARNER. Of course; whatever time our distinguished colleague wants.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank my distinguished friend and colleague for yielding to me, but especially I thank him for his leadership on this issue.

We have had experience with base realignment and closure rounds in my State over a period of years, and not ad infinitum but ad nauseam.

Economically, these have been disasters for the communities and the States because they required the hiring of consultants and advisers to try to come in and prepare the defense for the bases that are located there. It is a flawed process. It has not worked well. It needs to be changed.

Senator LOTT has pointed to a very real and important concern; that is, the enormous expenditures we are making overseas for bases and facilities, many of which are outdated, many of which were placed there because of cold-war concerns and NATO responsibilities which no longer exist.

We are seeing troops shifted from European facilities to new facilities in Italy because that is closer to where the action is in the Persian Gulf area or the Middle East.

We see changes being made, and the Congress has a role to play annually to authorize expenditures and to appropriate the funds for these changes. At any time, if the Congress believes we need to change those policies, we can make those changes legislatively. If the President believes that is inappropriate, he has the veto power. We do not need to turn this over to an unelected commission with no direction from the Congress.

This amendment gives some direction. First, look at our bases overseas, and let's make decisions about how we can improve and make more proficient our deployments there, and then consider proceeding to a base closure and realignment in the United States.

This amendment makes good sense. I compliment my friend, and I urge Senators to support the amendment.

Mr. WARNER. Mr. President, some colleagues have represented that this BRAC, which is law today, preceded September 11. The record is very clear: Congress authorized BRAC in December of 2001. After careful discussion with DOD as to whether we still require and should proceed, eight former Secretaries of Defense wrote Congress in 2002 that support for another round is unequivocal in light of the terrorist attacks of September 11, 2001.

I hope that is right in the RECORD. I hope it does not influence the earlier statements some of my colleagues made. This situation is extremely serious. If we were now to virtually repeal that law in many respects and thrust upon these communities the enormous expense to continue to try and work their cases such that BRAC does not take their case, I commend them for it. It is essential they do that. But the cost is enormous to so many small communities.

This question of the overseas bases, we all recognize that structure has to be brought down. Our Nation's basic defense policy for years has been to engage our adversaries beyond our shores. To do that, we had to have a base structure. We are now addressing how with terrorism there are no boundaries to the threats. This country no longer is protected by two mighty oceans. It is a one-world terrorist threat, and every single American citizen is on the front line in the war on terrorism. No one is behind any barricade anymore.

The Pentagon recognizes this and is beginning to restructure our overseas base forces in such a way as to reduce and bring the forces back home and to have fewer and fewer installations. But they have to integrate that into the various procedures now going on, consistent with the law of the land, the BRAC that we passed. For instance, General Jones and General LaPorte testified before the Armed Services Committee this year on their plans in Europe and South Korea, respectively, to draw down and consolidate forces at each location.

The committee has also received testimony from department heads to submit their Global Posture Review to Congress within the next 3 weeks. It is on target.

I wish to accord the opportunity for other Members to speak, including the Senator from Alabama, a valued member of our subcommittee.

Mr. INHOFE. I ask unanimous consent I be allowed to speak after the Senator from Alabama.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, it has been a great pleasure for me to work with Senator WARNER, the chairman of this committee, and Senator LEVIN, the ranking member.

This BRAC issue has been one we have debated for quite a number of years, and one to which all Members have given serious consideration.

Like a lot of Senators, we have military bases in my State. Year after year, month after month, we had the top military officers in the country telling members we needed to be able to spend our money more effectively; that they should be allowed to reconfigure our base structure; that it could save money and make this Nation stronger.

I became convinced that was true. And that is why—in December of 2001 we had that vote—I voted for this idea.

I led a delegation last month to Europe. We visited 12 installations in Europe. We talked with GEN Jimmy Jones, the Supreme Allied Commander of Europe, and heard from him about his vision for major drawdowns of our force strength in Europe, consolidation of bases. We could reduce that number by two-thirds. A huge number needs to be reduced and consolidated in Europe.

We can bring home, in my view, both infantry divisions and probably other troops, too. Troops from the Pacific can be brought home and maintained in the United States so we can keep expeditionary bases around the world.

That is part of what they are planning this very moment. It will not be long, and we will hear their report. I think it will be bold. I don't think it will be a little-bitty deal. I think they will recommend substantial alterations of past policy.

We do not have the threats in Germany that we had when the Soviet Union existed. It is not there. We can be much lighter in Europe, and we can be much more effective in our deployment of forces, keeping much larger numbers of people in the United States. I don't see a conflict between allowing this to happen at the same time.

In fact, General Jones said to us in our conversation, he envisioned it happening at the same time. In other words, we would reconfigure American bases while we were drawing down the foreign bases, and we would make our decisions about where they will go as we restructure and transform existing defense basing structure in the United States. That is the right way to go.

I have been checking in my State, and some other Senators have heard from their States. People are ready to get this over with. It has been out there for several years. The communities have worked on their bases. They have developed plans and arguments and ideas to demonstrate to the Department of Defense why they have an enduring installation. That has been good and healthy and they are prepared to do it. To delay again is not wise. We voted this down before.

I have the greatest respect for the Senator from Mississippi, my neighboring State, but this is the right thing to do. I take no pleasure in it, but it is not like in the mid-1990s when we were reducing the number of personnel in the military by 40 percent and reducing equipment and capabilities at the same time. We are still increasing our Defense Department.

What General Schoomaker envisions is a young person enlisting in the Army. They can stay at a major enduring base for 7 years without having to move his or her family around. They can be promoted and be trained. Units can remain with their integrity and their training capability for much longer periods of time than we have today.

Fewer, more properly configured bases can help strengthen the Nation's defense. That is why I have concluded it is right for America. It is the right way to strengthen our national defense.

Do not let anyone say this BRAC process in some way weakens defense. I would never vote for it if I thought that was so. In fact, all the uniform commanders say this will help make us a stronger America.

I thank Chairman WARNER for his leadership and courage in this matter. He certainly has bases in his State, as I do. But we believe it is the right procedure, after having heard the testimony in the Armed Services Committee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague. Yes, we are very proud of our base structure. Almost every one of our communities now has engaged the lobbyists, and so forth. Listen to this, I say to the Senator. Delaying BRAC benefits one group; and that is, the lobbyists and the consultants paid by these communities and, indeed, State taxpayers.

The Congressional Research Service has estimated over $23 million will be spent in fiscal 2004 to pay lobbyists and consultants for services to defend installations. A delay of BRAC by 2 years will cost the taxpayers of one State, that is paying a firm $50,000 a month, over $1.2 million.

There is the debate.

Mr. SESSIONS. Will the Senator yield for a question?

Mr. WARNER. Yes. We better check on the time.

Mr. President, how much time, please, does the Senator from Virginia have?

The PRESIDING OFFICER. There is 6 minutes.

Mr. WARNER. There is 6 minutes. My distinguished colleague from Mississippi?

The PRESIDING OFFICER. There is 14 minutes.

Mr. WARNER. There is 14 minutes.

Mr. INHOFE. Mr. President, under a unanimous consent agreement, I am to be recognized, so I do have the floor now, but I will yield to the Senator from Virginia.

Mr. WARNER. I beg your pardon. I say to the Senator, you have the floor now?

Mr. INHOFE. Yes.

Mr. LOTT. He had a unanimous consent earlier to go after Senator SESSIONS.

Mr. INHOFE. I will be glad to let you go first.

Mr. WARNER. I will step down.

Mr. SESSIONS. I will yield the floor.

Mr. INHOFE. No. That is fine. I want to be sure I keep my UC in place. I do not want to lose it.

Mr. SESSIONS. I was going to suggest for the lobbyists, it is time to bring that to an end. As some wise person told me in Alabama, they exist to blame the politicians if they close the base, and to claim credit if it is not closed.

Mr. LOTT. Mr. President, I yield 4 minutes to the Senator from Oklahoma, if he needs that time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I wish the Senator from Alabama would stay on the floor for a minute.

First of all, I direct this statement to my chairman, whom I deeply respect. There are three amendments floating around right now. There is a lot of confusion as to which one we are voting on now.

I say to the Senator, your statement, the statement from the Senator from Virginia, and the Senator from Alabama, if, in fact, this is a 2-year delay, I would agree wholeheartedly. For all the lobbyists in there—and I have five major installations in my State of Oklahoma—if this is a 2-year delay, as I have said publicly before, and as I said as recently as our policy meeting, I would say let's go ahead and do it, and do it now.

It is my understanding—and I would certainly yield to anyone who disagrees with this—this is killing this BRAC round; that if it should become necessary to have it, you would have to reauthorize it in 2007. That is now my understanding. It is not a delay. This is not the House language. I would like to ask if there is anyone who would correct me. If I am wrong, I need to know it.

Apparently, I am not.

Let me ask the author of the amendment.

Mr. WARNER. Let's ask Senator LOTT, who authored it. As I read it, there is a 2-year delay.

Mr. LOTT. This amendment is not the same as the House language, which is a 2-year delay.

Mr. INHOFE. That I realize.

Mr. LOTT. This amendment says when you get the global review, you would go forward with a BRAC for overseas bases, and then have the domestic round, presuming that is completed. It is not a 2-year delay. It could be that we would go forward with it after only 1 year. If the realignment in force restructuring that is going on globally would occur next year, then it could go forward next year.

Mr. INHOFE. This kills it, and it has to be reauthorized; is that correct?

Mr. LOTT. That is correct.

Mr. INHOFE. All right. Mr. President, I ask that time not be taken away from my time because I feel very awkward about this. The Senator from Alabama talked about spending time with General Jones, which I did over there. I have spent quite a bit of time, and I think I have a pretty good idea of what is going on. I have actually been to Bulgaria and Romania and Ukraine, looking at how we are going to restructure and bring home our troops who are stationed for these 2- and 3-year periods with their families, so we could actually get out there and have short deployments so they would not have to take their families with them. I think General Jones is right on target. That is going to have a tremendous effect on what we do in terms of base closures.

I answered a whip check, and I want to correct it right now, so everyone knows that whip check was not worded properly. It said: Would you support defeating a 2-year delay? I would support defeating a 2-year delay for the very reasons that have been outlined here, that we do not want our communities to have to continue to go through that.

But if you will remember the debate we had when I vigorously opposed having this fifth round, I used the argument that we are going to be changing our force structure, that we are going to be making changes that might make us relook as to what we are going to do in our installations here in the United States.

I was elected to the House in 1986, so I was there during the formulation of the BRAC process. I was a staunch supporter for the first three rounds. For the last one, I did not like the way it went. It became political. I have had the fear that would happen again. We closed some 97 installations in the last four rounds, and that is not only low-hanging fruit; a lot of great installations that were closed.

I believe, if this amendment kills it, and it would have to be reauthorized after such time that we know what the restructuring looks like, that I will support this amendment. I am going to find out between now and when the vote takes place if I am correct. But I believe my understanding now is correct.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LOTT. Mr. President, since we have more time, I believe, remaining on this side, the side of the proponents of the amendment, I yield such time as he may consume—the remainder of that time—to Senator DORGAN, who has been very much involved and a leader in this process for several years.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I thank my colleague from Mississippi for his leadership on this amendment.

Let me address a few of the issues that have been discussed. First of all, 5 days before September 11, 2001—5 days before September 11—the first vote occurred in the Senate on this BRAC round. It was September 6, and it was a vote in the Senate Defense Authorization Committee. That first committee vote, 5 days before September 11, 2001, is what propelled a base-closing commission proposal to the floor of the Senate.

The opponents of this amendment are quite correct when they say the final vote of the Congress occurred after September 11. But the origin of this, including the vote in the authorizing committee, occurred before September 11.

The reason I make that point is this: Things are changing. The world has changed. I will bet on September 6, 2001, there was not one member of the Armed Services Committee or a Member of the Senate, and I will bet not one person serving in the Pentagon, who would have predicted that within a matter of months we would be occupying an old Soviet air base in Uzbekistan in order to house our troops to prosecute a war in Afghanistan. No one would have predicted that. No one would have had the foggiest idea that was in front of us. Yet the world has changed.

We now fight a war against terrorism. We fought a war in Afghanistan, quite successfully. We are now fighting a war in Iraq. The world is changing. So our force structure will likely change. Our basing decisions will change. We no longer have a cold war with the Soviet Union. The Soviet Union is gone, it has disappeared.

So what next? Well, my feeling, and the reason I support this amendment and have worked on this amendment, is we ought to do first things first. I have voted for four previous base-closing rounds. My colleague from Oklahoma said we have voted to close some 97—nearly 100—military installations. I have voted for all of that, as I believe have most of my colleagues. So I am not a bit unwilling to vote to close military installations. We have done that on four occasions.

In this case, however, as I said, the world is changing very rapidly. I would ask the question of my colleagues if, in fact, there has been all of this activity about reevaluating overseas bases, given the changes in the world, and the fact we are no longer in a cold war, why, then, do we have nearly 100,000 troops still in Germany? Why?

My colleague from Alabama said, well, we could bring a lot of those folks back. I think he said we could probably bring a half to two-thirds of them back to this country.

Well, here is what the Congressional Budget Office said. It said: The U.S. Army has little or no excess capacity at bases in the United States. The need to house forces in the U.S. that are now stationed overseas could preclude some base closures.

So if that is the case—and it is—wouldn't you do first things first? Wouldn't you decide what it is you are going to do with overseas bases first so you understand what your obligation is with respect to bases here at home? If you are going to bring 50,000 Army troops from Germany back to American soil, where are you going to put them? Wouldn't you want to make those decisions before you have a base-closing commission here for domestic bases?

And one other point, I wonder if perhaps, with respect to the international war on terrorism, and the substantial need for homeland security, which we did not spend so much time thinking about years ago, I wonder if when we talk about domestic military installations whether we might not think about them in a slightly different way.

Perhaps we need more. I don't know. I would sure like all of these to be handled and discussed and debated and thought about in a logical way. Frankly, that has not been the case.

We have a very large Federal budget deficit. We are now going to be asked for a $25 billion reserve fund to fund the war in Iraq. The Congress is going to provide that. We are not going to ask the American men and women in uniform to go in harm's way and then not provide the funds that are necessary. But at a time when we have a very large Federal budget deficit and the need to provide funding to prosecute the war in Iraq, a base-closing commission next year will result in us spending more money, not saving money, spending more money. If you question that, look at all the previous rounds and ask yourself what the result has been of those rounds in the years following the round. It cost us more money to proceed with the recommendations of the BRAC Commission.

The Senator from Oklahoma asked the question: What is this amendment? The amendment is very simple. The amendment says the 2005 BRAC round shall proceed, but it shall proceed to evaluate and recommend realignment and closure only with respect to overseas bases. Why is that the case? Because that ought to be done first. First things first, but put the horse in front of the cart, evaluate what are the international, what are the worldwide needs and interests of our country with respect to our military troops and installations, and then from that you will determine what kind of military installations and needs you have in this country domestically.

That is what our amendment does. It provides for the 2005 round to proceed with respect to overseas bases. Then secondly it says, following that report and disposition of its recommendations by the Senate, a motion will be in order by someone who wishes to propose a motion for a new BRAC round. Under expedited procedures, that motion shall be considered, and there shall be a vote of the Senate on whether to implement another BRAC round. The Senator from Oklahoma, with respect to the question he asked, was absolutely correct.

I have great respect for the chairman and ranking member of this committee. They do outstanding work. They are both wonderful legislators, and I regret that we find ourselves on different sides of this question. I have great respect for their position. But I believe, as do many of my colleagues who have spoken today, that the better course for this country, given what we face, our challenges and the circumstances that now exist, would be to proceed with the amendment, have an overseas BRAC round next year, decide what it is we want to do internationally with overseas bases, and then proceed from that basis and make further judgments.

I yield the floor and reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I say to my good friend, he has correctly described how this operates, but the reality is, by killing the domestic BRAC program and putting it in abeyance subject to a future vote by the Congress—and mind you, any Member of Congress can trigger that vote; am I not correct?

Mr. DORGAN. That is correct.

Mr. WARNER. All Presidents have supported BRAC. You know that message is coming up. So what happens to the lobbyist? He tells the community: Keep me on the payroll, that vote is coming, and you do not know which way that vote is going to go. They will breathe fear into these communities, unlike anything before, to keep those lobbyists on the payroll. Those communities will be shelling out the money year after year.

I will close with the following comment: We are to soon receive a letter which will have this statement in it: Base Realignment and Closure, BRAC—the administration strongly opposes any provision to modify, delay, or repeal the BRAC authority passed by the Congress 3 years ago. If the President is presented a bill that modifies, delays, or repeals the BRAC authority, the Secretary of Defense, joining with other senior advisers, would recommend that the President veto the bill. Rather than waiting for the resolution of infrastructure issues as proposed by the committee, BRAC needs to move forward so it can be done in concert with such a resolution. A delay would postpone the achievement of a basing structure more suited to 21st century threats and delay billions and billions of dollars in savings. The current excesses in base and facility capacity create unnecessary demands on the Department of Defense resources needed to maintain military readiness and transform for the future.

I yield to my distinguished colleague from Michigan.

Mr. DORGAN. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Mississippi controls 2 minutes 22 seconds. The Senator from Virginia has 3 minutes 55 seconds.

Mr. WARNER. I yield that to my distinguished colleague from Michigan.

Mr. LEVIN. Mr. President, there has been a number of votes on BRAC. Just to clarify, it was not just that the Congress voted to keep a BRAC process going after 9/11; the Senate itself, on September 25, 2001, voted to table an amendment which struck the BRAC title. That was after 9/11. It was the Senate itself that voted on that.

Secondly, the point about first things first, it seems to me, is right. We ought to consider overseas bases first. That is why we created a commission last year in the 2004 appropriations bill, the MILCON appropriations bill. We appointed the Commission on Review of Overseas Military Facility Structures of the United States. That commission is meeting now. That commission is going to make a report this year. First things first, that is exactly what we are doing with that commission—reporting first on overseas structures.

The real question is whether we get to the second thing. This amendment kills BRAC. I think the sponsors have clarified it. This kills BRAC unless there is, as the Senator from Virginia points out, a vote in 2005 to have a BRAC process. That will be the vote that all of the lobbyists will be pointing to. Every one of our States has bases. A lot of those bases are nervous. They have hired people to lobby us. Now the focus will be on a 2005 vote. So the cost to the communities to keep this pot boiling will continue. The communities will be left in limbo because these bases' future will be uncertain.

The vote in 2005 will be certain. The outcome will not be certain, but there will be a vote in 2005. We know that because of the amendment language. So the beneficiaries of this amendment are the lobbyists and representatives of the communities, the communities kept nervous, kept in limbo. Keep the pot boiling; don't resolve this issue. The only argument to do that is first things first.

We did that. We have our overseas basing commission in place, appointed, meeting. That is the logical process. We ought to let it play out.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I yield 1 minute to the Senator from Texas.

Mrs. HUTCHISON. Mr. President, I think the administration has begun to address the overseas basing issue. I have visited bases, as have many of my colleagues. I have seen training constraints where you don't have the airspace to stay in training or you don't have the artillery range to stay in training. We have not had enough time to fully look at overseas bases and also know what our end strength is going to be. We don't know right this minute what our end strength is going to be and our force structure because we are having to adapt to some incredible changes in our security environment.

We are going to have the last round of BRAC at some point, but it needs to be at the right time, and it needs to be done right. The Lott amendment would give us that extra time to make sure we do it right.

The PRESIDING OFFICER. Who yields time?

Mr. LOTT. Mr. President, I yield myself the remainder of the time.

This commission on overseas bases is a Global Posture Review. It is not a closure or realignment process. It is a review of requirements that should then inform an overseas base process. But it is not a base closure. This commission which reports in December guarantees that nothing will happen. I

want to make sure everybody understands that. We are trying to get an overseas realignment and base closure process.

Secondly, I am shocked with all this talk about the key factor here is the lobbyists: We don't want our communities or States to keep these lobbyists who are going to be working to try to keep the commission from closing this base or that base. I really can't really believe that has been the argument.

I have an answer to that. Take them off the payroll. I know how it has been working. Some of these people have been paid for 4 years, and there has not been a BRAC process underway. That is why we are here. We are here as representatives of the people. We do not need these people on the payroll. Surely, that is not the best argument.

I guarantee this: Some of the communities, some of the bases, some of the people will say this will give us 2 more years, at least, on life. We will take those 2 years. The very idea of ''shoot me and get it over with'' when, as a matter of fact, some of these bases are really needed—CBO has said there is not excess capacity.

My last point is, if we are going to have a base-closure process, target the excess bases; do not target every base in America. I urge we adopt this amendment.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. WARNER. All time has expired?

The PRESIDING OFFICER. The Senator from Virginia has 1 minute 26 seconds remaining.

Mr. WARNER. Mr. President, I simply say to my good friend, a very valuable adviser for these many years, this BRAC legislation is to take Congress and remove it, once we make the decision to go forward with a BRAC, because the very essence of BRAC was so distorted by a certain political individual some years ago.

I have to tell my dear friend, it took a lot of effort to get this law in place. To dislodge it and terminate it, as this amendment does—this is a killer amendment to BRAC—and then leave in limbo these communities with 2 years of uncertainty, not being able to attract business, not being able to do things in their community, with this cloud over their head as to the probability or improbability of their base remaining, is a dangerous situation.

Mr. LOTT. Mr. President, has all time expired?

Mr. WARNER. I will be happy to grant my good friend——

Mr. LOTT. Mr. President, I ask unanimous consent that I have an additional 30 minutes.

Mr. WARNER. Thirty minutes?

Mr. LOTT. Thirty seconds, to wrap up this debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I want to emphasize again, think about what we are doing. Think about the time. Think about how much has happened in the last 2 years. Think of the troops, the Reserve and Guard forces in Iraq and Afghanistan. Think about the families, the mothers, and communities already very much concerned about the future of our military men and women, where they are going to be, and now add this to it. I think the timing is wrong. To say we are not going to even identify what bases will be subject to this review is not the way to go.

I say again, think about these issues. I do not think we have any guarantee overseas bases will be realigned. I have evidence to indicate they will have the same numbers overseas in 2025. We have heard a lot of talk about realignment overseas and restructuring. It has not happened. This will make sure we first have overseas bases realigned and a new structure and then the domestic bases.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LOTT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 3158. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kentucky (Mr. BUNNING) is necessarily absent.

I further announce that if present and voting the Senator from Kentucky (Mr. BUNNING) would vote ''yea.''

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

The PRESIDING OFFICER (Mr. SMITH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 49, as follows:

[Rollcall Vote No. 98 Leg.]

YEAS—47

Baucus	Daschle	Landrieu
Bayh	Dayton	Lott
Bennett	Dodd	Mikulski
Bingaman	Domenici	Murkowski
Boxer	Dorgan	Murray
Breaux	Durbin	Nelson (FL)
Burns	Edwards	Nelson (NE)
Campbell	Feinstein	Pryor
Chafee	Fitzgerald	Sarbanes
Clinton	Frist	Schumer
Cochran	Gregg	Snowe
Collins	Hatch	Specter
Conrad	Hollings	Stabenow
Corzine	Hutchison	Stevens
Craig	Inhofe	Sununu
Crapo	Johnson	

NAYS—49

Akaka	Chambliss	Grassley
Alexander	Coleman	Hagel
Allard	Cornyn	Harkin
Allen	DeWine	Jeffords
Biden	Dole	Kennedy
Bond	Ensign	Kohl
Brownback	Enzi	Kyl
Byrd	Feingold	Leahy
Cantwell	Graham (FL)	Levin
Carper	Graham (SC)	Lieberman
Lincoln	Reid	Talent
Lugar	Roberts	Thomas
McCain	Rockefeller	Voinovich
McConnell	Santorum	Warner
Miller	Sessions	Wyden
Nickles	Shelby	
Reed	Smith	

NOT VOTING—4

Bunning	Kerry
Inouye	Lautenberg

The amendment (No. 3158) was rejected.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SMITH). Without objection, it is so ordered.

Mr. WARNER. Mr. President, I thank all Senators for their cooperation today. We made some progress on the bill. But at this time, on behalf of the leader, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, reserving the right to object, and I will not object, I want the RECORD to reflect we were prepared to go ahead with our amendment this evening for debate and discussion. I understood the Senator from New Mexico had an amendment. We were here at 3:30 or so, 4 o'clock. I was reminded by our ranking member about the desire to move ahead on the Defense authorization bill, so I want to be sure the ranking member and the floor manager of the bill, my friend and colleague, knows we are here ready to go with an amendment. It is an amendment of very significant importance about the Iraq policy. We were prepared to debate that amendment this evening and have discussion about this matter. I want to say, I certainly want to cooperate with the floor manager.

We are all looking forward to the hearing tomorrow morning at 8:30, when we will have General Abizaid and General Sanchez, and others—General Miller—who are going to be there, which will necessitate my attendance. I want to cooperate in every way, and will certainly, but I do want to indicate many of us who feel strongly about this issue and the importance of it were prepared to deal with this through the evening time. But it is evidently the wish of the floor manager to bring us into morning business. I would like to ask if I cannot at least have my amendment pending after the Senator

from—as I understand, the Senator from New Mexico had intended to offer an amendment. As the floor managers remember, I tried to follow that Senator, considering the fact we had the Lott amendment, and then the Domenici amendment, that we might have an amendment from over on this side.

I want to try to work it out, but I do want to try to at least find out if we can get in the queue on this issue so we can notify our Members. I am inquiring from the manager if we cannot at least get the amendment pending after the disposition of the amendment of the Senator from New Mexico, before we go into morning business.

Mr. WARNER. Mr. President, in reply to my distinguished colleague on the Armed Services Committee, at this time I am not in a position to suggest how we proceed tomorrow, other than to say we, as a matter of comity, will rotate one amendment to another. The pending business, of course, at this time on this bill is the Lautenberg amendment. I would presume if that is disposed of tomorrow, then we would go to an amendment on our side, and we would then come back to your side.

But at this time I would not be able to participate in trying to line up with certainty any amendments other than the fact that the Lautenberg amendment is the pending amendment.

Mr. KENNEDY. Mr. President, I will not object, although it is perfectly satisfactory with the Senator from New Jersey for us to move ahead in the way I have outlined here, but if the chairman, the Senator from Virginia, wants to proceed in that way, it is obviously his right to do so. I am going to ask at least that my amendment get sent to the desk, not that it be in order but that it be sent to the desk prior to the time we go into morning business, if that is agreeable with the Senator, so it can be printed in the RECORD.

Mr. WARNER. Mr. President, at this time I am not prepared to enter into any unanimous consent request.

Mr. KENNEDY. Well, Mr. President, then I object.

Mr. WARNER. Filing is a Senator's right.

Mr. KENNEDY. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

The Senator from Virginia has the floor.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. WARNER. He can file, but I did not hear the word ''file.''

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. There is no quorum call.

Mr. REID. I apologize. I thought there was. Will the Senator yield so the Senator can send his amendment to the desk?

Mr. WARNER. The Senator participates in the withdrawal of the quorum call. Yes, the quorum call can now be withdrawn. I ask unanimous consent that the quorum call——

The PRESIDING OFFICER. There is no quorum call. The Senator from Virginia has the floor.

Mr. REID. Mr. President, there is a unanimous consent request pending?

Mr. WARNER. That is correct.

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. Mr. President, I ask unanimous consent that my amendment to this legislation be printed at the appropriate place at the end of the discussion on this legislation here today.

Mr. WARNER. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

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

AMENDMENT NO. 3174

(Purpose: To require a report on the efforts of the President to stabilize Iraq and relieve the burden on members of the Armed Forces of the United States deployed in Iraq and the Persian Gulf region)

On page 247, between lines 13 and 14, insert the following:

SEC. 1022. REPORT ON THE STABILIZATION OF IRAQ.

Not later than two weeks after the date of the enactment of this Act, the President shall submit to the congressional defense committees an unclassified report (with classified annex, if necessary) on the strategy of the United States for stabilizing Iraq. The report shall contain a detailed explanation of the strategy together with the following information:

(1) A description of the efforts of the President to work with the United Nations and the North Atlantic Treaty Organization to provide relief for the nearly 150,000 members of the Armed Forces of the United States who were serving in Iraq as of May 2004, including efforts to ensure that—

(A) more military forces of other countries are deployed to Iraq;

(B) more police forces of other countries are deployed to Iraq; and

(C) more financial resources of other countries are provided for the stabilization and reconstruction of Iraq.

(2) As a result of such efforts—

(A) a list of the countries that have committed to deploying military and police forces;

(B) with respect to each such country, the schedule and level of such deployments; and

(C) an estimate of the number of members of the Armed Forces that will be able to return to the United States as a result of such deployments.

(3) A description of the efforts of the President to develop the police and military forces of Iraq to provide relief for the nearly 150,000 members of the Armed Forces of the United States who were serving in Iraq as of May 2004.

(4) As a result of such efforts—

(A) the number of members of the police and military forces of Iraq that have been trained;

(B) the number of members of the police and military forces of Iraq that have been deployed; and

(C) an estimate of the number of members of the Armed Forces of the United States that will be able to return to the United States as a result of such training and deployment.

(5) An estimate of—

(A) the number of members of the Armed Forces that will be required to serve in Iraq during each of the first five years following the date of the enactment of this Act; and

(B) the percentage of that force that will be composed of members of the National Guard and Reserves.

MORNING BUSINESS

Mr. WARNER. Mr. President, I repeat, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. WARNER. Mr. President, I would like to say, with regard to our distinguished colleague from New Mexico, he had an amendment, and I would hope tomorrow in the course of the day, that amendment could be cleared. I do not believe it would require a rollcall vote. I wish to give that assurance to the Senator from New Mexico.

Am I correct on that?

Mr. LEVIN. Mr. President, if I could respond to my good friend from Virginia, we are hoping to clear that amendment. I believe it can be cleared. I hope it can be cleared. But apparently——

Mr. DOMENICI. Mr. President, I was going to say, frankly, I never withdrew it. We had a discussion about it, and you asked me something, but I do not think I ever formally said it. They said at 3:05 it was withdrawn. I do not remember at 3:05 being on the floor.

Mr. WARNER. Anyway, I say to the Senator, you have my assurances I will endeavor tomorrow to have that amendment adopted.

Mr. DOMENICI. Fine. And I have no doubt you will.

Mr. WARNER. Mr. President, I say to the Senator, thank you very much. I thank my colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

PROMPT TRIAL OF SADDAM HUSSEIN

Mr. SPECTER. Mr. President, I have sought recognition to discuss a matter which I have talked to executive officials about, and my colleagues in the Senate about, and that is to urge consideration for a prompt trial of Saddam Hussein.

The judgment, I think, is correct to try Saddam Hussein in Iraq so the people of Iraq and the people of the world will have confidence in what happens at a trial. It has obviously been difficult to constitute a judicial tribunal to try Saddam Hussein. But now, as we are approaching June 30 and the prospect of the transfer of sovereignty—and there is proceeding for an interim government and a constitution—I think

the time has come to lay the groundwork for a trial of Saddam Hussein.

I believe it would be very salutary to have on the public record the atrocities where Saddam has been charged: crimes against humanity; genocide; murder; torture; embezzlement; public corruption; conspiracy to murder Israelis by soliciting suicide bombers and paying their families once the suicide bombing was completed.

There is no doubt the United States and the coalition of the willing—Great Britain and others who have supported the United States—have been subjected to a great deal of criticism in world public opinion, and especially in the Arab world. It is my thought that much of that criticism would be dissipated if there was presented in a public trial the evidence of Saddam Hussein's atrocities.

We have had a great deal of speculation on the issue of weapons of mass destruction. Just yesterday, a casing was found which contained chemical substances, a question as to whether that weapon of mass destruction was in Saddam's hands immediately before the war began.

We know with certainty that Saddam Hussein had weapons of mass destruction in December of 1998 before he kicked out the United Nations. This may have been an old shell or it may have been a recent shell. The issue of weapons of mass destruction is still subject to speculation. Yet evidence may be established that Saddam did, in fact, have weapons of mass destruction when the United States and Great Britain and the coalition of the willing moved against Saddam Hussein. Once the evidence is submitted of the atrocities of Saddam Hussein, I believe the issue of weapons of mass destruction, while still important, will recede into the background.

We have had the issue raised, and properly so, of the abusive treatment of Iraqi prisoners. Those investigations have to be pursued and the guilty have to be punished. We have seen the brutal assassination, murder and beheading of Nicholas Berg, and we have seen the Secretary of State Colin Powell roundly criticize the Arab world for not condemning that brutal assassination.

I have had an opportunity recently to view a video which purports to be atrocities by Saddam Hussein on film, the ghastly, ghoulish beheading of a man purportedly in Saddam's custody. I say ''purportedly'' because I haven't seen the authentication of the tape as acts committed by Saddam's henchmen or Saddam's subordinates. But a trial would bring out the evidence as to what Saddam did on genocide. A trial would bring out the specifics of the use of weapons of mass destruction against the Kurds, Saddam's own people. A trial would bring out the use by Saddam Hussein of chemical weapons against Iran in the Iran-Iraq war. I had occasion to talk to a man, an Iranian who recounted an incident where he was the victim of a chemical attack by Iraqi forces under the control of Saddam Hussein. A trial of Saddam Hussein would disclose the specifics on the torture he committed and the embezzlement and secreting of vast wealth which belonged to Iraq, deposited in foreign accounts, great sums of cash which were found by U.S. forces when Iraq was invaded.

It would be my hope that plans would be made now for the prosecution of Saddam. A prosecution will take some time to prepare. We couldn't proceed to have a trial realistically before June 30. But if we set in motion now the works to establish a court, security would be a matter of considerable concern. Judges have to be designated. Prosecutors have to be designated. There would be the opportunity for defense counsel. There has been some speculation as to some counsel already having been designated or in the process of being designated. But this would be something that ought to be accomplished at a very early date.

I have had some experience in the criminal process. From the experience I have had, it would not be all that complicated, once you have the provisional government established, a court, give it criminal jurisdiction, which it could be granted under the appropriate Iraqi procedures, and the designation of the trial judge or the designation of prosecutors, to move on with the trial.

I think once the details of Saddam's brutality are put on the public record, it would have a very profound effect on world public opinion, including Arab public opinion. I think it would put in an understandable light the action by the United States in toppling Saddam Hussein in the interest of stability in the Mideast and in the interest of bringing a violent perpetrator to justice. There is no doubt that it is very painful to see the casualties and fatalities of our service men and women in Iraq, the brutal assassination yesterday of the Iraqi leader, but I submit that if we are able to succeed with establishing a democracy in Iraq, it will be a historic achievement.

It will put great pressure on Iran, where there is an interest in developing nuclear weapons, which is a separate subject that we have to move against on the international front with the United Nations. Hopefully when the G–8 meets in the near future, they will take action to impose international safeguards, standards, and inspections to be sure Iran does not develop nuclear weapons. It will put a lot of pressure on Saudi Arabia to stop the tyranny on the Saudis and the terrible degradation of Arab women throughout the entire region, lend security to the Mideast. It would be very helpful to security for Israel, and that is a lofty goal worth our very resolute efforts.

But in the interim, I would like to see consideration started and a debate progress and thought given to the trial of Saddam Hussein, which would be very helpful to reinforce the position of the United States and influence world public opinion, especially the Arab world, of the justification for U.S. military action to bring down Saddam Hussein.

Mr. DOMENICI. Will the Senator yield?

Mr. SPECTER. I do.

Mr. DOMENICI. I want to take a minute to compliment the Senator. Actually, a lot is going on with reference to Iraq, but it seems that somehow or another, once Saddam was captured—whatever is happening to him, I hope it is humane, and we have every reason to think that it is—it seemed to pale in the background. It kind of went away—I am sure not in your mind, I am sure not in many minds, but in a sense because other things have happened that are somewhat gruesome. The enormity of Saddam Hussein's actions versus those kinds of events is actually inconceivable.

We talk about a prison. We talk about, even from their standpoint, Berg being decapitated. We talk about those four people they drug down the road. But imagine what he did to his people in comparison. I think the Senator is right. To put in perspective the conduct in that part of the world and the difficulty in changing things and the difficulty in bringing people together, which we are trying to do, would begin to put itself together. If we had him there with adequate prosecutors and evidence and people, I would assume some witnesses—you would have a lot of pictures—as to what he did, it would be a tremendous improvement in balancing what is going on. I commend the Senator.

I wish we had a way—this body—of expediting that.

But we don't. I think what you are doing helps. I commend you for it. I don't think a resolution here urging it would have much effect. It might have the reverse effect. I don't know. I thought maybe we would have one saying what we think. But in a sense they want to do their thing, and I think that is correct.

I do believe, while we turn their government over to them, turn over the governance, we ought not forget the issue of a judiciary and a criminal jurisdictional court for that purpose.

That is big enough to be considered even in the transfer of governance because it has to happen. We do not want to do it, but we want it done right.

I understand what the Senator from Pennsylvania is saying. They can do it right. Actually, we ought to be able, in the transfer, to in some way indicate the gravity of the situation and how we feel about it.

I thank the Chair.

Mr. SPECTER. Mr. President, I thank the Senator from New Mexico for his support and comments. I have considered and still am considering the possibility of a Senate resolution on this subject. We pass resolutions with some rapidity around here, and it may well be that most of the resolutions do not accomplish a whole lot. But it is

time, in my judgment, that we spoke out on this issue.

The Senator from New Mexico is exactly right. Saddam was captured in mid-December. Five months have passed, and it is time to proceed. Mr. President, 9/11 has occurred and thousands of Americans were killed in that brutal attack by flying hijacked planes into the World Trade Center, the Pentagon, and one probably was headed for the Capitol but went down in western Pennsylvania.

While many of us are worried on a daily basis, the President receives a CIA briefing every morning, and there is great concern about homeland security. In the public mind, the threat recedes. Understandably, it is human nature to have a short attention span. But what is going on in Iraq today is enormously problemsome.

The United States is taking it on the chin in world public opinion and especially in the Arab world. When you have the brutal assassination of Nicholas Berg—his head was cut off in public view—and the Secretary of State has to remonstrate, criticize the Arab world for not condemning that act of brutality, and meanwhile we are subjected to all sorts of criticism—and the criticism on the mistreatment of Iraqi prisoners is well placed, it is justified. But we are acting on it, and we acknowledge the problems, the President has and the Secretary of State has—people forget why we are there. It is very painful to have the casualties and fatalities, but we are dealing with large stakes in establishing a democracy there.

If Saddam's defalcations and crimes were put on the public record, people would understand why we are there and how important it is to change. When the Iraqi resistance comes up and the Iraqi terrorists come up, let them understand that when there is a change in sovereignty, that they are acting against their own people, a duly constituted Iraq Government which would bring Saddam to trial. We cannot bring him to trial. Nobody would trust a trial by the United States, as good and fair as our system is, and as just as we are with procedural due process.

We ought to let it be known that it is our recommendation that the Iraqis will have to make the final decision.

I would like to start consideration, which is why I have taken a few minutes of our time today, not that there is any rush on the Senate floor. The Senator from New Mexico and I are the only ones here.

I thank my colleague, Senator DOMENICI, for his support and comments. I yield the floor, Mr. President, and in the absence of any Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The journal clerk proceeded to call the roll.

Mr. ALLARD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate is in a period for morning business, with Senators permitted to speak for up to 10 minutes each.

Mr. ALLARD. Mr. President, I ask unanimous consent that I be allowed to speak for 35 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF DEFENSE AUTHORIZATION

Mr. ALLARD. Mr. President, I rise today in support of the Defense authorization bill and ask that we proceed quickly to pass this legislation.

I thank Chairman WARNER for his leadership throughout this session. Clearly, the outcome of the bill reflects his commitment to our military men and women. We live in a very complicated world, and our national security depends on understanding that complexity, reacting to it appropriately when we must, and keeping ahead of it when we can. I commend Senator WARNER for a job well done, both during the committee markup and with the full committee in responding to the recent prisoner abuses in Iraq.

I also wish to take a moment to thank the ranking member of the Strategic Forces Subcommittee, Senator BILL NELSON, for his efforts on our portion of the bill. While we do not always see eye to eye, there is much on which we agree, and I appreciate the opportunity to work with Senator NELSON on important issues that confront us.

I am also pleased by the work the Armed Services Committee has done on both sides of the aisle and fully support the passage of the Defense authorization bill.

At the very beginning of his administration, President Bush made it a priority to rebuild and transform our military after 8 years of operation and maintenance funding shortfalls under the previous administration. Those of us in the Senate have heeded this call, and I am pleased that we are about to take the next step in maintaining a military fully capable of defending our Nation and meeting our foreign policy goals.

I continue to support the President's plan to transform our military, and this authorization bill builds on the work we in the Congress have already accomplished toward that end.

In fact, since 2001, President Bush and Congress have given the Department of Defense the tools to accomplish the following: Fight the war on terror on the offensive; remove threats to our security in Afghanistan and Iraq; liberate nearly 50 million people; provide a more than 21-percent pay raise to our service men and women; expand the use of targeted pay and bonuses; begin to transform our Nation's defenses; improve readiness rates; increase research and development funding by 56 percent; improve the quality of housing for military personnel and their families through privatization and new construction; double investments in missile defense systems; and deploy the first ever land- and sea-based system this fall.

Overall, the Committee tackled the difficult task of simultaneously maintaining the transformational efforts in the department, while ensuring enough resources are available to guarantee success for our deployed soldiers overseas. The defense authorization bill includes more than $422 billion in budget authority for Defense programs and represents an increase of 3.4 percent in spending over the last fiscal year. I believe that this bill helps to maintain the high state of readiness that is expected of our military, and also focuses the Department on the future in terms of research and development programs and technologies.

Specifically, the more than $68 billion in research and development and the $11 billion directed toward science and technology programs will continue to ensure that our military is the best equipped and prepared force in the future. These increases over fiscal year 2004 have supported a wide range of new systems including the F–22 and the Joint Strike Fighter, the destroyer DDX program, unmanned aerial vehicle programs, the Army's future combat system, satellites, communications equipment, and intelligence systems designed to accelerate the availability and capability of future weapons programs. We must continue to make these research and development investments in order to skip a generation of weapons and transform our military into the 21st century fighting force it must become. Investing 3 percent of the budget toward science and technology has long been our goal and with the bill before us, we move a step closer to that goal.

While I am pleased at the focus on the weapons and technology available to our warfighters, it is heartening that the committee has not neglected our most valuable resource—the service members themselves.

The authorization includes a 3.5 percent pay increase across the board, and also permanently authorizes family separation and imminent danger pay created originally for Operation Enduring Freedom and continuing to Operation Iraqi Freedom.

The men and women in the military make great sacrifices for us all as do their dependents and families. The continued progress of improving their quality of life, compensation, and family housing programs should not be overshadowed by any weapons program. As I stated before, our most valuable resource is the personnel in the armed forces, and we must continue to provide the best possible environment for them.

In addition to the resources available for personnel and their families, the authorization also provides the near-term readiness and protection equipment needed for the war on terror. Specifically, force protection measures for

our troops in Iraq and Afghanistan were given considerable attention by committee members. No resource should be spared to ensure that our warfighters have the equipment and training in place to provide for their safety.

To that end, $107 million was added for the rapid fielding initiative, $603 million was devoted toward protection gear and combat clothing, and $925 million was added for additional up-armored Humvees and add-on ballistic armor. Clearly this reflects the committee's concern that our soldiers have all the tools they need to be successful while they fight the war on terror.

Turning to the Strategic Forces Subcommittee, which I have the pleasure of serving as chairman, we exercised oversight for the Department of Defense budget request for strategic, space, intelligence, surveillance and reconnaissance, and intelligence support activities. The DOD budget request in these areas included $8.9 billion in procurement, $28.2 billion in research and development, and $3.1 billion in operations and maintenance. The administration budget request also included $15.4 billion for the Department of Energy nuclear weapons and environmental management programs and activities.

The committee bill reflects a net increase of about $80 million in research and development and procurement, and the amount requested in operations and maintenance. It also reflects the requested level of funding for Department of Energy programs and activities. The program supports the development and fielding of transformational capabilities, enhanced readiness, and capabilities directly relevant to defending the homeland from current and anticipated forms of attack.

The reductions reflect a thorough examination of the administration's budget request. A number of programs were identified in which excess funds were requested or the requested funds were not executable. Others were based on unrealistic schedules or showed unjustified program growth. The committee reduced these funding requests appropriately.

As the chairman of the Strategic Forces Subcommittee, ensuring full support of missile defense is my most important priority. As I have stated on the floor many times before, it is abundantly clear how important missile defense is to our country. The development of this program is central to homeland defense and to the protection of our friends, allies and deployed forces against growing threats.

Overall, $10.2 billion was requested, and the markup reduces that by a net of about $40 million. Significant funding actions in the markup include an increase of $75 million for the ground-based missile defense element to enhance the ability to operate and test concurrently; a $35 million reduction for long lead items for some GMD interceptors; an increase of $90 million for additional PAC–3 missiles; and a reduction of $200 million for the ballistic missile defense system interceptor project, also known as the kinetic energy interceptor, or KEI.

The markup includes two missile defense legislative provisions, including one identical to a provision last year that authorizes the use of this year's missile defense R&D funds to field an initial missile defense capability. The other provision of interest relates to the role of the director of the Missile Defense Agency in the Army's Patriot-MEADS program. The provision is intended to ensure that the Patriot MEADS program remains thoroughly integrated in the ballistic missile defense system.

Concerning Department of Defense space programs, the markup sustains the amount requested, but does shift some of the funding. Significant reductions are recommended in the transformational communications satellite, or T–SAT, to try to put the program on a healthier development track; and to the EELV launch program because of a delay in one of the launches for which services were being procured in fiscal year 2005.

Significant increases recommended include: $35 million in the advanced EHF program, $35 million in the space based infrared program, $25 million for a new operationally responsive satellite payload effort, $15 million for the wideband gapfiller satellite program, and $15 million for ballistic missile range safety technology.

The markup includes three space-related provisions, including one that would establish a panel to examine the future of military space launch, and another establishing a new program element for operationally responsive satellite payloads.

The markup includes minor adds for strategic forces and intelligence programs, and no significant legislative initiatives in these areas.

Related to the Department of Energy, the markup includes $15.4 billion for the Department of Energy Atomic Energy Act programs for fiscal year 2005, the amount requested by the administration. Of this amount, $7.8 billion is for the National Nuclear Security Administration, NNSA, a $117.9 million increase above the budget request.

Key NSSA increases in the subcommittee mark include:

$62.9 million for the Readiness in Technical Base and Facilities, RTBF, program, which will help NNSA continue to reduce the amount of deferred maintenance and repair;

$20.0 million for the Facilities and Infrastructure Recapitalization Program, FIRP, to help revitalize the infrastructure of the nuclear weapons complex. This additional funding will reduce the cost and accelerate the completion of the FIRP program;

$35 million for safeguards and security. After the attacks of September 11, 2001, the Secretary of Energy developed and issued a new design basis threat, which added security requirements across the nuclear weapons complex. This additional funding is to help address the increased needs for safeguards and security, including force multiplying technologies.

The subcommittee mark provides adequate funding for the National Nuclear Security Administration to advance directed stockpile work, science-based campaigns, and naval reactors programs. These efforts have been funded at the budget request for fiscal year 2005, a $367.0 million increase over the fiscal year 2004 appropriated levels.

The subcommittee mark includes authorization at the budget request for several of the continuing nuclear weapons initiatives, including the feasibility study on the robust nuclear earth penetrator, RNEP, the advanced concepts initiative, ACI, the NEPA study on the modern pit facility, and test readiness enhancements. No funding was requested nor authorized for the engineering development, production or deployment of a new or modified nuclear weapon. As was enacted in the National Defense Authorization Act for fiscal year 2004, there can be no engineering development, or subsequent phase of development, of a low-yield nuclear weapon nor a robust nuclear earth penetrator without a specific authorization from Congress. No such authorization was requested in the fiscal year 2005 budget request and no authorization is included in the subcommittee mark.

Turning to the Environmental Management, EM, program, the subcommittee mark includes $7 billion for these activities. This will be the last full fiscal year of funding for the first three major closure sites, including the Rocky Flats Site, the Fernald Closure Project, and the Mound Closure Project. The planned 2006 closure of the these three sites is very good news for DOE and for the United States. The early closure of these sites is expected to result in a cost savings of over $12 billion.

Now that DOE will begin shifting the oversight of the closure sites from the Environmental Management program to the Office of Legacy Management, LM, new challenges emerge. Environmental stewardship responsibilities, pension and health care needs, and community concerns will all require a high level of attention to ensure a smooth transition.

The subcommittee mark includes a provision that would authorize the Secretary of Energy to exclude from treatment as high-level radioactive waste, that which is stored Department of Energy, DOE, radioactive material resulting from the reprocessing of spent nuclear fuel as long as the waste can be appropriately characterized as low-level or transuranic waste.

The subcommittee mark also includes $566.6 million for other defense activities, a reduction of $97 million

below the budget request for fiscal year 2005, and $108 million for the defense nuclear waste disposal, a reduction of $23 million below the budget request for fiscal year 2005. These amounts authorized include a $92.4 million reduction to the defense related administrative support account. The committee has consistently rejected funding for this account because the funding is for non-defense activities.

Once again, I thank my chairman for his superb leadership. I believe that the defense authorization bill is a good one, and that programs that fall under the purview of the Strategic Forces Subcommittee have been dealt with in a measured and responsible way. The Armed Service Committee and its staff have worked diligently and in a bipartisan manner to ensure our military remains the best equipped and best trained fighting force in the world. I would ask my colleagues that we proceed quickly with the Defense authorization, and urge support of the bill.

Mr. President, I yield the floor and my remaining time.

50TH ANNIVERSARY OF BROWN VERSUS BOARD OF EDUCATION

Mr. REID. Mr. President, yesterday marked the 50th anniversary of the Supreme Court's decision to reverse the long-standing principle of ''separate but equal'' in our public schools. The ruling handed down in Brown v. Board of Education was the great catalyst America needed to move toward equal opportunities for all children.

On May 17th, 1954, the Supreme Court spoke unanimously: ''. . . in the field of public education the doctrine of 'separate but equal' has no place.''

When we talk about Brown v. Board of Education, it is natural to think about its application and enforcement in the South, because that was where the most publicized acts of segregation and discrimination took place.

But it is naïve to think that the South was the only region of America grappling with the new educational and racial standard of equality. Western states like Nevada struggled to adapt as well.

Nevada was not a place widely associated with having a large population of African Americans back in 1954 . . . but in fact it was home to many African Americans who migrated from Arkansas, Louisiana, and Texas—primarily seeking employment in Law Vegas' hospitality industry.

Clark County's classrooms were segregated before the Brown Decision—and they remained so afterward. While there were no written laws segregating schools in Clark County, there were impenetrable school zoning laws that made it pretty clear that children could only go to school where they lived . . . and because of housing discrimination, most black people lived in concentrated areas.

Brown v. Board of Education was decided in 1954, yet Clark County schools were not officially integrated until much later, when attorney Charles Kellar arrived in Nevada in 1959. Thurgood Marshall, then head of the NAACP Bar Representation Program, solicited Mr. Kellar to move to Nevada to establish a chapter and legal representation.

At the time, one had to live in Nevada for one year before sitting for the bar exam. So, to establish residency, most white law students would engage in paralegal work, Mr. Kellar spent his year studying real estate at an unknown little college called UNLV in order to qualify for residency.

When he was finally eligible to sit for the exam, the hotel he reserved for his stay refused to admit him. He had to spend his two nights sleeping in the airport. To add insult to injury, Mr. Kellar was accused of cheating on his exam, for his results were near perfect. He had to sue the Nevada State Bar in order to gain admission, which he was finally granted in 1965.

The first case he filed was a class action suit against the Clark County School District in 1968, charging that access to an equal, public education was denied to African American students—in spite of the Brown v. Board of Education ruling 14 years earlier. Despite the fact that he won the case, the school district decided to convert the West Las Vegas schools to sixth grade centers, which would be fully integrated. However, the white students would be bused to the schools while the black students would have to walk.

Mr. President, the landscape of Clark County is much different today in the sense that we now publicly educate a much more diverse population of students. But there are still factors in our school system that separate and discriminate against certain groups of students: economic status, English language learners, students with learning disabilities, and so on.

I am concerned about these barriers, just as I am concerned about the gap in academic achievement between different groups of students. This gap says to me that we still have a lot of work to do in terms of providing truly equal opportunities for all of our children.

And even after 50 years, in spite of the law, segregation itself is still alive and well.

Taylor County High School in Butler, Georgia, held its first integrated prom in 31 years last year—in 2003. This year, the white students decided to return to their old tradition of holding their own private party—a segregated prom. It is disappointing to realize that segregation is still preferred by some people. But it just goes to show that we still have work to do.

The Brown decision truly was a landmark . . . it showed that America had come a long way since Plessy v. Ferguson. Before Brown, we knew that segregation was wrong. After Brown, we knew that it was illegal.

That was a tremendous step, and I am certainly grateful for it . . . but we cannot rest on our laurels.

We must keep struggling until we can live up to the spirit of the Brown ruling, and to the letter of the Civil Rights Act that followed 10 years later. Until we provide every child with an equal—not separate—opportunity to get a good education.

Mrs. DOLE. Mr. President, 50 years ago our Nation witnessed a significant step in providing equal education for every child of every race. On May 17, 1954, the United States Supreme Court ruled in favor of a young girl who had been denied enrollment in her neighborhood school simply because of the color of her skin. On the 50th Anniversary of the Supreme Court's Brown vs. the Board of Education ruling, I want to recognize the courage, vision and boldness of that decision and celebrate how far our country has come—and focus on a new bold vision that will lead us into the future.

The Brown decision not only called for an end to segregation—it began a process of healing in America, still needed almost 100 years after the Civil War. The Brown decision affirmed the constitutional promise of equality for all Americans. It overturned laws that denied millions of school children freedom and choice in education and set this country on a new course, affirming civil and human rights while demanding the full respect and protection of the law for all people. Brown vs. the Board of Education was a decision of courage and conviction and was one of the finest moments of the American judicial system. But while this decision paved the way for the establishment of equal learning environments, today there is evidence of work yet to be done.

Unfortunately, 50 years later, we still have a relatively two-tiered education system. Many students are in schools where they are receiving an incredible education; other children are in mediocre classrooms, emerging at the end of each school year barely even able to read at the levels of their peers. The reality is disheartening: nationally, at the fourth-grade level, the achievement gap in reading between blacks and whites is 28 percentage points. And consider this: only one in six African-Americans can read proficiently after graduating from high school. It truly is hard to believe such disparity exists today.

Years after opening the doors of opportunity to every child—regardless of their race—we have yet to truly take advantage of the possibilities Brown vs. Board created. Breaking through prejudice in school enrollment was the first step—educating each and every student to his or her full potential is the next. I give President Bush much credit for recognizing this problem and applaud his willingness to make it an issue in the last national election. He said that, if elected, he would institute change, and he did. Within four days of assuming office, he provided a blueprint that became the No Child Left Behind Act of 2001—an act that was passed with wide bipartisan support.

With this law our country is beginning to address the achievement gap. The ''old ways'' will no longer be tolerated. Along with many mothers, fathers, teachers and school administrators, we are demanding equity, justice and inclusion for every child.

This significant piece of legislation raises academic standards, holds schools accountable for performance, requires that every child learn to read, works to ensure that there is a quality teacher in every classroom, and provides more choices and flexibility for parents.

Accountability is the cornerstone of what makes No Child Left Behind so bold and visionary. In the past, the Federal Government would send checks to fund education and hope something good might happen. Now the Government is sending checks—at record levels, contrary to partisan charges—and asking school systems to show what progress they are making and what problems remain to be addressed.

While many years passed before the Brown vs. Board decision made a visible difference in our classrooms, it took far less time to see the changes initiated by No Child Left Behind. I am pleased to say we have witnessed this progress in my home State of North Carolina. In Charlotte, our State's largest city, reading levels have risen significantly. Dr. Jim Pugsley, superintendent of Charlotte-Mecklenburg Schools, has a lot to be proud of. Just a few years ago, only 35 percent of African-American fifth graders in his district were reading at grade level, but today, that number has more than doubled to 78 percent of African American fifth graders reading at grade level.

Schools all over the country are celebrating similar results. The Chicago Sun Times recently reported that Chicago public school children who transferred from schools in need of improvement to higher performing schools under NCLB showed an 8 percent greater learning gain in reading and math than the national average.

Granted, you cannot set lofty goals for thousands of schools without providing the funding to back it up. I am pleased to say president Bush, along with this Congress, is working to secure significant amounts for our school system. In fact, the United States spends more money in our K–12 education system than any other country in the world with the exception of Switzerland. This year, the President has requested unprecedented funding increases for education in his overall fiscal year 2005 budget. Never before has a President invested so much in education. Total spending for K–12 education has gone up $9.7 billion since No Child Left Behind was signed into law. In fact, the President's 2005 budget requests $2.5 billion for North Carolina education—that is 54 percent more than when President Bush took office. The 2005 budget also increases title I funding to $290.5 million to help our State's neediest children. That is more than $113 million above 2001 levels. Funding for schools in North Carolina and throughout the country is finally tied to real accountability for real results. I will continue to work with the education leaders in my home State to ensure that each child receives the best education possible—and to ensure that No Child Left Behind continues to build on the foundation the Brown Decision laid for closing the opportunity gap in classrooms across America.

Our classrooms are the training ground for America's future, and our schools and teachers are entrusted with the minds of tomorrow. We must guarantee that those minds are being challenged, educated and encouraged to their greatest potential. Together with the standard of excellence provided by the No Child Left Behind Act, teachers, parents and students have the opportunity to continue the dream first realized 50 years ago through the Brown vs. the Board of Education ruling. A dream where every child has the right to be educated—and none of them will be left behind.

Mr. EDWARDS. Mr. President, 50 years ago on a Monday in May, the Supreme Court revealed the soul of our Constitution when it said, ''. . . in the field of education, separate but equal has no place.'' It was a moral decision just as much as it was a legal decision that ended discrimination in every place across America.

Some of you remember that day. I was just born and can only imagine what it was like to experience that moment of truth. To hear those words ''has no place'' To see those headlines, ''Supreme Court bans . . . '' To feel the advance of justice. It was a glorious day in America and for all those families, children, teachers, and heroes of the last two centuries who risked their lives to move America to that moment.

All of that effort and success and history was wrapped in the family name, Brown. But we can never forget that there were other families involved in that case.

One of these cases began in my birth state of South Carolina. The African-American kids had to walk up to nine miles each way between their homes and their only school in Summerton. The white kids had 30 school buses to take them back and forth to their schools. The African American parents went to the Clarendon County School Board with a simple request—one school bus.

The school board said no. So J.A. De Laine, a minister, convinced a humble farmer named Levi Pearson to sue the Clarendon County school district for buses. That case was Briggs v. Elliott and became one of the five cases from around the country that were consolidated and eventually became known as Brown v. Board of Education.

The long journey from the back roads of South Carolina to the chambers of the Supreme Court was mapped out and led by attorney Charles Hamilton Houston. Together with his protégé Thurgood Marshall, Charlie Houston patiently, painstakingly and brilliantly used the Constitution to correct itself and end legal segregation forever.

And the other cases were from Delaware, Virginia, and the District of Columbia. The other names were Belton, Davis, and Bolling. And in Topeka, there were 12 other families involved, nearly 200 total. This wasn't one case and one person and one school, but the cause of millions, and ultimately a cause for all of America.

You and I know that this country has made progress. The ''White Only Signs'' have come down. Thurgood Marshall went on to serve on the Supreme Court. We have Congressman and women and Senators who have taken their place in our national leadership. And we have doctors and lawyers and storeowners in every neighborhood and in any town.

We have come far, but we're not there yet.

I grew up in an America that was growing up too with this landmark decision. This is something I've lived with my entire life living in the South in the '50s and '60s.

We all have a responsibility when it comes to issues of race and equality and civil rights, but as a Southerner, I feel an especially enormous responsibility to lead on this issue. We Southerners have this special responsibility, not only because we know America's tragic and painful history on race, but also because we have led the way in breaking free from that history.

From the time I was very young, I saw up close the ugly face of segregation and discrimination. I saw young African-American kids shuttled upstairs in movie theaters. I saw white only signs on restaurant doors and luncheon counters. When I was in the sixth grade, my teacher walked into the classroom and said he wouldn't teach in an integrated school.

But even in the struggle's darkest days, countless Southerners stood as profiles in courage. For every George Wallace, we had a Terry Sanford. There were four Southern Justices on the Court that decided Brown. And it was Lyndon Johnson, a Texan, who told a joint session of Congress in 1965, ''We SHALL overcome!''

I have heard some of these pundits and politicians on television debate where and when in America we can talk about this issue. They think it is fine to stop and pat ourselves on the back on special days like today or Martin Luther King Day or during Black History Month. But they don't think we should talk about race and equality and civil rights any other time. But we need to talk about this everyday and everywhere.

Why? Because this is not an African-American issue. This is not a Hispanic-American issue or an Asian-American issue. This is an American issue. It is about who we are. What our values are. What kind of country we want to live

in. What kind of country we want our children and grandchildren to live in.

We have come far, but we are not there yet.

We need leaders who not only talk the talk of civil rights and equality, but are willing to DO something about it. We need leaders who understand that 50 years after Brown v. Board of Education we still have two public school systems in America: one for students who live in affluent communities and another for students who don't. There are still students in our rural areas and in our cities who try to learn in a crowded trailer, learn to read under a crumbling ceiling, and try to study science with equipment that ought to be seen only in their history books.

Yes, there are signs of hope. In my own State, for example, schools in Charlotte and Durham and elsewhere are raising test scores while also closing the achievement gap.

But the truth is that while our best public schools are among the best in the world—the state of many of our schools remains the shame of our Nation.

Education has made all the difference in my life. I was the first member of my family to go to college. But millions of our children are being denied the opportunities I had.

Poor and minority students come to school with greater challenges, and our education system then turns around and gives them less of everything that matters. We spend less in their classrooms. We give them fewer qualified teachers. And we teach them a weaker curriculum. One Washington, DC, high school enrolls three times more students in ''office reprographics''—training on photocopiers—than in pre-calculus and calculus combined.

Millions of our young people drop out, turning their backs on their futures. Minority students have only a 50–50 chance of finishing high school.

Those who do make it to their senior year are four years behind their peers in reading and math. That's right—minority seniors test at the same level as white eighth-graders.

And just last week, a judge in Topeka, KS, of all places, ordered the public schools shut down because the funding was so inequitable that it utterly failed to serve the needs of poor, minority, disabled and non-English speaking children.

In his opinion, Judge Bullock quoted directly from Brown: ''Today, education is perhaps the most important function of State and local governments. . . . It is required in the performance of our most basic public responsibilities, even service in the armed forces. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, must be made available to all on equal terms.''

We have come far, but we are not there yet.

Fifty years later, we are still fighting that fight. But thank God we have some courageous judges who uphold our civil rights laws and ensure equal justice for all. We have to continue to fight for judges who will enforce our civil rights laws and stand up for equality in America. We have so much work to do with economic equality and educational equality. That takes leadership, not slogans and photo ops.

The administration can talk about ''No Child Left Behind'' all they want. It is great rhetoric.

But the reality is that children are being left behind all over the country. They sit in the back of the classroom, wishing they could do better, but no one hears them, no one sees them. They walk the halls and go unnoticed because our schools are so crowded now that no one knows their names. They try their best, but drop out of high school—they give up on their education because the education system has given up on them.

None of us would tolerate that for our own children. Well, these ARE our children. Every single one of them. Their failure is our failure. And their success is our success. We've got to do better by them. Yes we must have high expectations of them. But as David Broder noted in a recent column, we also have to provide the resources they need to meet those standards.

And that takes real leadership not rhetoric. Real leadership is courage, and commitment, and action. It means doing everything we can to make equality a reality—not only in our laws, but in our lives, in communities where poverty and discrimination remain a scar on our Nation.

More than anything, leadership means recognizing that social justice is not a zero-sum game where ''we'' give something to ''them''—whether it's women or minorities or immigrants. The Brown decision was not about some ''them.'' It was about ''us.'' All of us.

We have come so far, but we are not there yet.

I believe that the best way to mark the 50th anniversary of the Brown decision is to push onward with all of the strength and determination we can muster to ensure that the promise of Brown is finally realized. It is time to honor those heroes who would not quit, who would not settle for anything less than the right book to read, a school bus to ride on, and a great teacher to guide them.

In moving forward, we honor the Little Rock Nine who walked passed angry mobs, and inspired the Nation with their grace. We honor James Meredith, who persevered despite the full weight of Mississippi demanding that he stay home. We honor little Ruby Bridges, who needed U.S. Marshals to protect her from the wall of human hate that stood between her and her new school—a scene so compelling that Norman Rockwell used it as the basis for his painting, ''The Problem We All Live With'' that I have hanging in one of my Senate offices. And all of the families who joined the NAACP to take down Plessy vs. Ferguson once and for all.

When those walls were raised; when all the doors and gates were locked, the African American community found its own gateway to a good education. Despite all of the odds, despite those in power who said, ''You can't have this chance,'' ordinary people stood together tall and strong and said, ''Yes we can!''

These moments of history shadow us today. These heroes are looking right over our shoulders. They are urging us to move forward. They are telling us, ''we've brought you this far, but you're not there yet.''

Our journey to one America is the greatest mission of our history. Our work, our effort, our commitment must be constant. I know mine is. Together, from the heights of national power to every local Head Start center, we must strive to open doors, to make sure that there's always a seat at the table, and the voices of all Americans will be heard.

I believe that wherever you live, whoever your family is, and whatever the color of your skin is, if you are willing to work hard, you ought to be able to go as far as your God-given talents and hard work will take you. We believe in bringing people together. What we believe, what I believe, is that the family you are born into and the color of your skin will never control what you are able to do or how far you can go in this, our America.

That is the America we should all believe in. That is the promise of the Brown decision. And that is the America we can create, not just for a precious few, but for everyone.

We have come far and we are not done, but I do believe that we WILL get there yet.

I ask unanimous consent to print an article from the Washington Post written by David Broder entitled ''Still Separate and Unequal.''

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

[From the Washington Post, May 13, 2004]

STILL SEPARATE AND UNEQUAL

(By David S. Broder)

In his ''two Americas'' stump speech—the single most powerful message anyone delivered in the Democratic primaries this winter—Sen. John Edwards of North Carolina talked bluntly about the differences between the education, health care, housing and other basics available to the well-off and the working poor in this country.

''We have two different school systems,'' Edwards said in countless appearances, ''one for people in the most affluent communities and another for everyone else.'' That message—largely dismissed by the Bush White House and de-emphasized by John Kerry in his reach for middle-class votes—is of special relevance as the nation prepares to note the 50th anniversary on Monday of the supreme Court decision that formally ended racial segregation in our schools.

Brown v. Board of Education was a legal landmark, but the reason that the anniversary is being observed, rather than celebrated, is what Edwards had the courage to point out. In far too many places, the notion of equal opportunity in education is still far from reality.

In ''Beyond Brown v. Board: The Final Battle for Excellence in American Education.'' written for the Rockefeller Foundation and published this week, Ellis Cose of Newsweek cities example after example of the holes that remain in the system. ''[B]lacks (and Puerto Ricans and Mexican-Americans) do not, for the most part, go to the same schools, or even the same types of schools, as do the majority of non-Hispanic whites,'' Cose wrote. ''They are more likely to go to schools such as those found in parts of rural South Carolina; schools that, were it not for the American flags proudly flying over the roofs, might have been plucked out of some impoverished country that see education as a luxury it can barely afford.''

The law firm headed by Richard Riley, the former secretary of education in the Clinton Cabinet, represents parents and school officials in several of those poor South Carolina counties in a lawsuit seeking to force the state to provide more funds for those schools. With integration—the original goal for the Brown decision—thwarted in many places by residential segregation, resistance to busing and the growing reluctance of federal courts to impose their orders, Cose points out that the new legal battleground has become state court lawsuits seeking ''adequacy'' in school funding.

The suits, which have begun to win scattered success in states as diverse as New York, North Carolina, Arizona and Idaho since the first breakthrough in Kentucky in 1989, ask the courts to require that the state determine what it takes to educate a child adequately—in staff, facilities, books and equipment—and come up with the money to provide it.

The movements fits logically with the standards set in President Bush's No Child Left Behind education reform. The 2002 law aims at either rescuing or shuttering low-performing schools and especially at helping students who have been shuffled through grades without really getting an education.

By measuring youngsters' competence in basic skills at regular intervals and requiring adequate progress for all parts of the school population—not just the bright students—NCLB pressures states and districts to take steps to eliminate education failures. And that in turn sets up a demand for better principals and teachers and materials.

But standards by themselves will not end the two-track education system. Resources have to flow to the schools and districts that lack the tools they need. A recently published ''Look Inside 33 School Districts'' by the Center on Education Policy, an independent advocate for more effective public schools, draws the contrast.

The Romulus, N.Y., school system, a small suburban district between Rochester and Syracuse, has found no difficulty meeting the first two years of NCLB requirements. ''The district has taken steps to not only recruit well-qualified teachers for any vacancies that arise, but also retain them,'' the report says. ''Romulus has established an extensive mentoring program that taps the expertise of retired teachers by matching them in mentor relationships with new teachers'' that continue for a full year. No surprise, then, that ''Romulus students perform at high levels.''

A few pages later in the report one finds the Cleveland Municipal School District, whose officials ''applaud the spirit of NCLB and agree that schools should be held accountable'' but where ''implementation has been rocky.'' The district could not reach its mandated improvement goals, with 27 schools on a watch list for failing to meet standards. Officials cannot say how many Cleveland teachers rate as ''highly qualified.'' And state budget cuts cost Cleveland schools $33 million in the current biennium.

The Romulus schools are 97 percent white; the Cleveland schools, 80 percent non-white. Fifty years after Brown, John Edwards' description still applies.

Mr. SCHUMER. Mr. President, I commemorate the 50th anniversary of the landmark United States Supreme Court decision, Brown v. Board of Education.

On May 17, 1954, Justice Earl Warren read the unanimous decision of the United States Supreme Court, which stated, ''We conclude that, in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.''

The decision made a statement about the course that this country needed to take to achieve the greatness that we, as a Nation, are capable of achieving. Brown v. Board of Education became the measure of equality—and a platform on which the civil rights era was born.

In December 1955, Rosa Parks refused to give up her seat on a Montgomery, AL, bus to a white person and was arrested. This sparked an outrage in the African American community, who decided to boycott the city's buses as a way to challenge the city's segregation laws. The boycott led to a 1956 Supreme Court decision that banned segregated buses.

In September 1957, the commitment to equality in education was reiterated in Little Rock, AK, when President Eisenhower sent troops to Central High School to uphold the Supreme Court's desegregation order protecting the rights of the ''Little Rock Nine.''

In 1960, four freshmen from North Carolina Agricultural and Technical College in Greensboro, NC, were refused service at a lunch counter at the F.W. Woolworth Store. They sat quietly, without being served, until the store's closing. The next day, they returned with 25 more students from the college. Peaceful protests at lunch counters across the country were initiated and lasted for weeks. The lunch counter protests resulted in a number of stores integrating prior to the passage of the Civil Rights Act of 1964.

On October 1, 1962, federal officials escorted James Meredith, as he became the first African American to enroll at, and later graduate from, the University of Mississippi.

On August 28, 1963, hundreds of thousands of marchers—of all races—descended on Washington, DC to urge Congress to pass legislation to provide equal access to public facilities, quality education, sufficient employment and housing options for African Americans.

The Brown decision and the events flowing from it were major catalysts that led the way for the passage of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968.

While we must never lose sight of the benefit and the power of the Brown v. Board of Education decision, we must not believe that the fight for true equality is over and won.

Fifty years later, our country is struggling along the path toward a truly equal society. Unfortunately, today, in many areas, we are still separate and unequal. Individuals come to work in integrated environments and return home to segregated neighborhoods. Parents send their children to schools that seem to be returning to those reminiscent of the days of segregation.

The road to Brown v. Board of Education was not an easy one, nor was it swift. So, on this, the 50th Anniversary of the Brown v. Board of Education decision, it is important that we not only recognize the struggle behind the Civil Rights movement, but that we rededicate ourselves to the goal of providing equal opportunity for all.

VOTE EXPLANATION

Mr. BIDEN. Mr. President, as was announced yesterday, I was not able to be here for the vote on the amendment offered by Senator HUTCHISON, No. 3152, which includes service academy cadets and midshipmen in the military's disability discharge and retirement system and allows ROTC cadets to use TRICARE supplemental health care programs when they are injured during training. This amendment makes an important improvement to the health care of our future military leaders, and I would like the record to reflect that, had I been here, I would have voted for that amendment which passed unanimously.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On January 15, 2001, a man was killed in a ninja-like stabbing in Prospect Park, NY, near a popular area for gay men. The victim was slashed across the throat and stabbed in the chest and back. Because nothing was stolen from the victim, police believe he was killed because he was believed to be gay.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

VOTE EXPLANATION

Mr. BROWNBACK. Mr. President, I regret that I was unable to vote yesterday afternoon on the very significant amendment offered by my colleague from Texas. As my colleagues know, yesterday marked the 50th anniversary of the landmark Supreme Court decision Brown v. Topeka Board of Education. We in Kansas were very pleased that President Bush and Education Secretary Paige joined with us in Topeka to commemorate this important date. While I intended to arrive here in time for the vote following the special events of this day in Kansas, the plane I was riding was, unfortunately, delayed.

Truly, providing for the health needs of our military's cadets and midshipmen when they are placed in harm's way is a duty of this Nation. I am grateful to the Senator from Texas for raising this issue, and I am pleased that the Senate adopted this amendment to S. 2400, the fiscal year 2005 Department of Defense Authorization bill. Mr. President, I ask that the record reflect that, had I been here, I would have voted in favor of Senator HUTCHISON's amendment No. 3152 yesterday afternoon.

100TH BIRTHDAY OF LATE SENATOR JACOB JAVITS

Mr. SCHUMER. Mr. President, I rise today to remember and pay tribute to the late Senator Jacob Javits on what would have been his 100th birthday. I have the honor of currently serving in his Senate seat and I remember Jack with the deepest admiration and affection. We shared many passions, and one true love—New York and its citizens.

Jack did both jobs of Senator so well. He was a big thinker, a compassionate and visionary legislator, an important actor in global affairs. But when an ordinary citizen or a non-profit group or struggling company in New York needed his help, he was there. And that was his legacy; he made all our lives better.

Born in a tenement on the lower east side of Manhattan on May 18, 1904, Jack was the son of Jewish immigrant parents from Galicia and the Turkish Empire. He was educated in New York City's public schools, attended night classes at Columbia University and graduated from New York University Law School in 1926. From there he practiced law in New York City until joining the Army in 1941. Javits served in both Europe and the Pacific during World War II and was discharged as a lieutenant colonel in 1945. After the war, Jack resumed practicing law until he ran for office in 1946.

In 1946, Jack was elected to the U.S. House of Representatives in New York's traditionally Democratic 21st District, which included Manhattan's upper west side, home to Columbia University. He served in the House for 8 years and had a seat on the Foreign Affairs Committee. He then served as New York's attorney general from 1954 to 1956. In 1956, Jack won election to the United States Senate, defeating New York City Mayor Robert F. Wagner, Jr. He would go on to serve 24 years in the Senate, tied with Senator Moynihan for the longest service of any New York Senator.

He served on the Senate Foreign Relations Committee in 1969, later attaining the position of ranking Republican member. His service on that committee would spur a lifelong interest and involvement with foreign affairs and particularly Israel. He also served as ranking member of the Labor and Human Resources Committee and the Committee on Governmental Affairs.

Although he had a long and distinguished Senate career, Jack was most beloved and admired for his courageous efforts in the civil rights struggle. From his very first days in the Senate, Jack was a courageous leader in the fight against segregation and racial discrimination. He campaigned passionately for passage of the 1957 Civil Rights Act and played a major role in the passage of the landmark Civil Rights Act of 1964 and in other civil rights legislation that followed.

During the Vietnam era, Jack became a major critic of the war, and subsequently, one of his major concerns became the question of who has the power to make war. Jack was a primary sponsor of the War Powers Resolution of 1973, which reestablished congressional responsibility, rather than presidential, to commit U.S. armed forces abroad in the absence of a formal declaration of war.

He was deeply troubled that the Congress had in many ways abdicated its proper role during the Vietnam War. I think many of us today share the very same concerns that Jack had some 30 years ago. For Jack cared deeply about the U.S. Senate, its debates, its constitutional authority. Its Members were his best friends. It did not matter whether he agreed with them or if they challenged or even attacked him—they were all his colleagues.

Jack once said of the Senate, ''I was stimulated by the ebb and flow of debate and the philosophic tensions of the work we did—balancing lofty principles against sectional or selfish interests, welding together antagonistic human and economic and ideological forces into the coherent schemes of governance that we call laws.'' Jack respected the Members of the Senate with a full heart and his great affection for them was returned in full measure.

A 1981 New York Times article remarked, ''whether or not you agreed with him on a given issue, you always knew that Mr. Javits was one of the brightest, hardest working and most effective elected officials in Washington in our time.''

After leaving the Senate in 1980, Jack visited and corresponded with many of his former political colleagues and maintained his interest in foreign affairs. In 1981, he served as special advisor on foreign policy issues of then Secretary of State Alexander M. Haig, Jr. He was a member of the American Jewish Commission on the Holocaust and wrote numerous articles on international matters in publications such as the New York Times, Newsday, and Foreign Affairs.

The last project of his final, heroic years combined those elements that meant most to him. Jack created the concept of the Javits Senate Fellowship, a program that made available to the Senate many of the finest graduate students in public policy that our country could produce.

He asked these students of outstanding academic background to carry out his commitment to excellence in public service, to learn firsthand about the Senate and to bring to their own lives the values and experience which they had gained in the Senate. Many of these young people have gone on to very distinguished careers and accomplishments.

Jack knew that, in truth, the best way to be remembered would be through the accomplishments of the next generation, through those who would carry forward his spirit, his commitment to public service, and his abiding respect for, and love of, the United States Senate.

We remember Jack with deep admiration on what would have been his 100th birthday. His accomplishments for New York and the Nation will long be honored and remembered.

NOMINATION OF MAJOR GENERAL DAVID H. PETRAEUS

Mr. BUNNING. Mr. President, I want to spend a few moments to talk about the nomination of Major General David H. Petraeus to be Lieutenant General in the U.S. Army.

I believe President Bush and Secretary Rumsfeld have made an excellent decision to promote General Petraeus and assign him to chief of the Office of Security Transition in Iraq. I congratulate General Petraeus and wholeheartedly support his nomination.

I am pleased that the Senate has moved so quickly on his nomination. We received it 2 weeks ago and he was confirmed yesterday. This is fitting because last Friday he transferred command of the 101st Airborne Division, Air Assault, to his successor at the helm of the Screaming Eagles.

General Petraeus led the 101st Airborne to stunning success in Iraq. His division performed superbly in combat, and is responsible for bringing Saddam Hussein's two ruthless sons to justice. Unfortunately, the division also suffered the largest number of combat casualties in Operation Iraqi Freedom.

Equally impressive to the combat performance of the division under General Petraeus were the successes in rebuilding the governing structures and the hope of the Iraqi people in a significant portion of the country. Six days

after occupying the northern part of Iraq the first meetings were held to set up Province Council elections and those elections were held one week later. The division worked with Iraqis to quickly restore power, water, fuel, transportation, and industry. They set the model for cooperating with the local leaders and population to create a stable and prosperous Iraq. This all happened because of the leadership of General Petraeus.

I visited General Petraeus and the Screaming Eagles in Iraq earlier this year. I saw firsthand the results of his careful preparation and skillful execution of a plan to bring order and governance to the people of northern Iraq. I was, and remain, impressed by what I saw.

Because he was so successful leading the 101st Airborne in Iraq, General Petraeus has been assigned back to Iraq for the transition of power to the interim Iraqi government. I have no doubts that he is the right man for the job and will help the Iraqi transition to self-government proceed smoothly.

Again, I want to congratulate General Petraeus and wish him well in his new assignment. He is blessed with a wonderful family at home who will be eagerly awaiting his return. I thank him for his service.

COMMENDING AUSTRALIA FTA

Mr. SMITH. Mr. President, today, May 18, 2004, is a historic day for U.S.-Australia bilateral relations. A landmark agreement on free trade was reached today between the United States and Australia.

I believe the U.S.-Australia Free Trade Agreement is good for America. An FTA with the world's 15th largest economy will bring substantial benefits to my state of Oregon and to the whole U.S. economy. Australia is an industrialized nation with a high standard of living that is already a large market for U.S. exports valued at over $23 billion annually. The Australia FTA will boost U.S. manufacturing and create U.S. manufacturing jobs by reducing 99 percent of all Australian tariffs to zero. For the first time, the United States will have a significant advantage over European and Japanese competitors in the Australian market. U.S. goods and services will be able to compete fairly with other foreign exports in the lucrative Australian marketplace. This will be worth over $2 billion a year to U.S. manufacturers.

U.S. agricultural exports to Australia will grow by $700 million, as tariffs on all agricultural goods are zeroed out under the FTA; this is money in the bank for U.S. farmers.

Australia is an important market for my home State of Oregon. Australia is the 10th largest export market, and is particularly important for high quality manufactured goods. Western Star—a subsidiary of DaimlerChrysler—located in Portland, OR would save nearly $2 million a year in eliminated tariffs and duties that average $4,000 per truck exported to Australia. This money could be reinvested in expanded production and opportunities for workers in my home State of Oregon.

Trade with Australia also supports numerous other high-paying jobs in areas such as transportation, finance and advertising. Furthermore, Oregon exports over $39 million per year in computers and electronic products. Access to 19 million potential customers is no small deal for Oregon businesses.

Furthermore, Australia is the ideal trading partner for the United States. It is an advanced, efficient high wage economy with dependable legal and financial regimes. It has labor and environment standards comparable to the United States. A free trade agreement with Australia just simply makes good sense.

The FTA will only strengthen our relationship with a close ally. Australia and the United States have been true allies through good times and bad. We have fought together in every major conflict in the last 100 years to defend peace and security. We must stand steadfast with our ally, not only in the defense of peace, but also in the prospect and benefits of free trade.

ADDITIONAL STATEMENTS

JASON METCALFE

• Mr. NELSON of Florida. Mr. President, I rise today to commend an exceptional young Floridian, who is raising money to build an ALS clinic in Jacksonville. Jason Metcalfe may only be a fourth grader at Tynes Elementary school, but his story can teach us all—young and old alike—a lesson in the spirit of giving.

Jason's good friend and confidant, Mr. Chapman, was diagnosed with ALS, a debilitating condition commonly called Lou Gehrig's disease. After learning Mr. Chapman was stricken with the devastating disease, he took action.

Jason made a long-term goal to become a scientist and help find a cure for ALS. He has already improved his grades and is now receiving top marks in school. In addition to his commitment to education, Jason decided to help in the short term by collecting money to support ALS research and treatment facilities. He has been saving his allowance, selling candy and taking donations. And I am proud to report that he has already shattered his original goal of raising $500 and has collected in excess of $11,000.

Mr. Chapman passed away on February 1, 2004, but Jason's dream to become an ALS researcher and to build a clinic in Jacksonville lives on. Jason's hard work, determination and leadership is an example to us all. I am proud of the work he is doing to give back to people like Mr. Chapman, who suffer from ALS.

Thank you, Mr. President, for allowing me to recognize the efforts of an exceptional young Floridian.•

BRAIN INJURY RESEARCH

• Mr. CORZINE. Mr. President, I rise today to pay tribute to the Benigno family of Clinton, NJ, for their tireless efforts to advance the cause of brain injury research.

Nearly 20 years ago, Dennis and Rosalind Benigno's 15-year old son, Dennis John, was struck by a car while walking home from a football physical. Dennis John suffered severe, long-term brain injuries in the accident. Now 34, Dennis John cannot walk or talk. He communicates with his eyes and laughter, and seems to understand when his parents talk to him. Dennis and Rosalind have made a life of caring for their injured son.

Their personal tragedy, however, is not the end of the story. Mr. Benigno has turned tragedy into action. He has been a passionate advocate on behalf of his son, raising awareness and promoting research efforts that offer the prospect of a cure for traumatic brain injury. The Benigno's founded the Coalition for Brain Injury Research, which has donated more than $125,000 in the past 2 years to the study of brain cell repair. They raise funds through walkathons and a lecture series, and Mr. Benigno has traveled throughout the country for research dollars.

Mr. Benigno has also turned to his elected representatives in New Jersey and Washington, DC. His efforts have led to the creation of the Congressional Brain Injury Task Force, co-chaired by my good friend Congressman BILL PASCRELL. For the last 6 years, Mr. Benigno has also lobbied local, State, and Federal legislators to support legislation that would create a dedicated source of funding for medical research into traumatic brain injuries.

His work has begun to pay off. On January 2 of this year, Governor McGreevey signed the Brain Injury Research Act into law. With this legislation, New Jersey becomes the first State in the Nation to create a funding stream for researchers devising treatments and cures for brain injuries. The act is expected to raise more than $3 million a year for brain injury research from a $1 surcharge on motor vehicle penalties.

Dennis John is one of more than 5.3 million Americans who currently suffer disabilities from brain injury, according to the Centers for Disease Control, CDC. Every year, 200,000 people sustain brain injuries, a number that exceeds the incidence of HIV/AIDS and breast cancer. Right now, there is no cure. In fact, brain injuries are the only catastrophic illness for which scientists have yet to readily identify a cure as their research goal. The Brain Injury Research Act, finally, offers hope to the hundreds of thousands who suffer from brain injuries that an effective therapy may be in sight.

While religious authorities, ethics scholars, and we here in the halls of government continue to debate the implications of stem and fetal cell research, the Benigno's remain focused

on one thing—supporting the research efforts that may find a cure for their son and others like him. As we make decisions that have the power to spark or extinguish the hopes of millions that the cures they pray for may be found, we should keep the Benigno's in mind.

One point is very clear—this new law and the hope it nurtures are a credit to Mr. Benigno's dedication, courage, and perseverance. He is an inspiration to all of us, and a testament to what one determined citizen can achieve in our democracy.●

TRIBUTE TO MR. WILLIAM B. SCHATZ

● Mr. VOINOVICH. Mr. President, I rise today in honor of Mr. William B. Schatz, General Counsel of the Northeast Ohio Regional Sewer District, NEORSD, in Cleveland, OH. Mr. Schatz currently serves as the District's representative to the Association of Metropolitan Sewerage Agencies, AMSA, and on May 24, 2004, will become president of this organization. Mr. Schatz was elected AMSA president based on his exemplary commitment and dedication to the clean water community in Ohio and throughout our Nation.

AMSA's mission is to effectively maintain a strong leadership role in the development and implementation of scientifically sound, cost-effective, and environmentally friendly policies for the protection of public health and the environment. This month, AMSA celebrates 34 years of dedicated service to improving water quality nationwide.

Mr. Schatz has served with distinction at NEORSD since 1979 and for over 20 years has been a leader in the water quality arena, working on many projects on behalf of NEORSD and AMSA. He has served as the ad hoc legal advisor to the Association of Ohio Metropolitan Wastewater Agencies, a member of the Advisory Board of the National Enforcement Training Institute, and a member of the U.S. Environmental Protection Agency's Quality Review Committee on Grant Audits. At AMSA, Mr. Schatz has served as chairman of both the Legal Affairs Committee and Joint AMSA-Association of Metropolitan Water Agencies Insurance Committee, a leader of the Wastewater Infrastructure Funding Task Force, and as a member of AMSA's Board of Directors.

Mr. Schatz was instrumental in establishing NEORSD as a leading agency in the wastewater industry and in helping to guide its capital programs. Mr. Schatz was also an influential leader in convincing Congress to fund the conversion of NEORSD's physical chemical Westerly Plant in Cleveland, Ohio, to a conventional biological process. Throughout his career, Mr. Schatz has played an important role in helping to shape critical national policy issues on infrastructure funding, enforcement, and construction grant audit appeals.

Mr. Schatz has been of great assistance to me in my efforts in the United States Senate to bring attention to our Nation's vital water infrastructure needs. He is a well-known leader and someone who, day in and day out, goes above and beyond the call of duty. William B. Schatz has made a significant contribution to improving water infrastructure programs across America.

On behalf of the people of Ohio, I am pleased to commend William B. Schatz for his extraordinary efforts to improve public health and the environment and I congratulate him on being elected president of the Association of Metropolitan Sewerage Agencies.●

PIONEER HIGH SCHOOL AND ITS AWARD-WINNING MUSIC PROGRAM

● Mr LEVIN. Mr. President, it is my great pleasure to congratulate the staff and students of Pioneer High School in Ann Arbor, Michigan, for the school's designation as a 2004 GRAMMY Signature School. Pioneer is one of 41 high schools nationwide being honored by the GRAMMY Foundation for making an outstanding commitment to music education during the 2003–2004 school year. I am also pleased to note that Pioneer's program was placed in the gold category, making it among the seven best in the Nation.

Established in 1989, the GRAMMY Foundation engages in programs and activities that cultivate the understanding and appreciation of recorded music and its impact on American culture. The GRAMMY Signature School program, with the most enthusiastic support of Dr. Pepper/7 Up, Inc., honors schools that recognize the positive effects that the arts and music have on young people and rewards these schools with a financial grant that assists them in continuing their exemplary music programs into the following school year.

Last fall, the foundation contacted more than 20,000 public high schools to learn more about each school's music program. Competing with large and small institutions situated in rural and urban communities across America, Pioneer High School submitted its application to a panel comprised of top music educators and professionals. Its vocal and instrumental repertoire distinguished Pioneer as a secondary school committed to providing its students with an exceptional music education. As one of the gold category schools, Pioneer will receive a grant of $5,000 that will help the music department preserve and enhance its already remarkable music program.

Providing an excellent music education for students enriches the entire learning experience. It is my honor to thank the staff and administrators at Pioneer who are responsible for supporting a solid foundation of music appreciation. I also wish to thank the young musicians who willingly dedicate their time and energy toward enhancing their own music abilities and urge them to share their love of music with the following generations. I am confident my colleagues will join me in offering our heartfelt congratulations for this outstanding achievement.●

AMERICAN LUNG ASSOCIATION'S TRUDEAU MEDAL WINNER

● Mrs. BOXER. Mr. President, I rise today to offer my congratulations to Dr. Philip C. Hopewell, MD. The American Lung Association has awarded Hopewell the Edward Livingston Trudeau Medal for his life-long achievements in the prevention, research treatment and cure of lung-related diseases. The Trudeau Medal is awarded by the American Lung Association in honor of the distinguished scientist, Edward Livingston Trudeau, founder of the American Lung Association and its first president.

Dr. Hopewell is a world-renowned expert in tuberculosis control. He has literally traveled the globe offering technical advice and hands on practical guidance to tuberculosis control programs in developing nations. Dr. Hopewell has seen extended service in Peru and Nigeria and has worked with the PanAmerican Health Organization and the World Health Organization to advance TB control efforts around the world.

While Dr. Hopewell's work has been a boon to many countries, he has also worked hard to protect the health of Americans. As a leading researcher on the interaction between TB and HIV-AIDS infection, Dr. Hopewell and his colleagues at UCSF are credited with for the dramatic 60 percent reduction in TB cases in San Francisco in the past decade.

Dr. Hopewell is a teacher, a scientist and a healer. But he is also an advocate. Dr. Hopewell is equally at home sharing his expertise with members of Congress, as he is with health-workers in Peru. In part because of his advocacy, the U.S. has significantly increased its commitment to global TB control over the past 5 years.

I am pleased to say that I have played a role in supporting the work of Dr. Hopewell and his colleagues around the globe to identify, treat and prevent TB. As a member of the Senate Foreign Relations Committee, I have worked to increase the U.S. contribution for global TB control by supporting increased funding for TB programs at the US Agency for International Development. Increased support at USAID has lead to the development of a country specific plan to eliminate TB in high burden countries and is achieving results in many high burden TB countries.

While we still have a long way to go to effectively control and prevent TB in the U.S. and around the globe, it is important to recognize and celebrate those individuals who have helped achieve the advances we have made so far. Please join me in honoring Dr. Hopewell for his leadership, passion and tireless work to eliminate tuberculosis.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 2:17 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 2201. An act to authorize the establishment of a national database for purposes of identifying, locating, and cataloging the many memorials and permanent tributes to America's veterans.

H.R. 3505. An act to amend the Bend Pine Nursery Land Conveyance Act to specify the recipients and consideration for conveyance of the Bend Pine Nursery, and for other purposes.

H.R. 3768. An act to expand the Timucuan Ecological and Historic Preserve, Florida.

H.R. 4193. An act to amend the Internal Revenue Code of 1986 to allow for the expansion of areas designated as renewal communities based on 2000 census data and to treat certain census tracts with low populations as low-income communities for purposes of the new markets tax credit.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 403. Concurrent resolution condemning the Government of the Republic of the Sudan for its attacks against innocent civilians in the impoverished Darfur region of western Sudan.

H. Con. Res. 4420. Concurrent resolution applauding the men and women who keep America moving and recognizing National Transportation Week.

H. Con. Res. 423. Concurrent resolution authorizing the use of the Capitol Grounds for activities associated with the dedication of the National World War II Memorial.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2201. An act to authorize the establishment of a national database for purposes of identifying, locating, and cataloging the many memorials and permanent tributes to America's veterans; to the Committee on Energy and Natural Resources.

H.R. 3768. An act to expand the Timucuan Ecological and Historic Preserve, Florida; to the Committee on Energy and Natural Resources.

H.R. 4193. An act to amend the Internal Revenue Code of 1986 to allow for the expansion of areas designated as renewal communities based on 2000 census data and to treat certain census tracts with low populations as low-income communities for purposes of the new markets tax credit; to the Committee on Finance.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 403. Concurrent resolution condemning the Government of the Republic of the Sudan for its attacks against innocent civilians in the impoverished Darfur region of western Sudan; to the Committee on Foreign Relations.

H. Con. Res. 420. Concurrent resolution applauding the men and women who keep America moving and recognizing National Transportation Week; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 4275. An act to amend the Internal Revenue Code of 1986 to permanently extend the 10-percent individual income tax rate bracket.

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3505. An act to amend the Bend Pine Nursery Land Conveyance Act to specify the recipients and consideration for conveyance of the Bend Pine Nursery, and for other purposes.

PETITIONS AND MEMORIALS

POM–444. A resolution adopted by the Cleburne Independent School District of the State of Texas relative to the social security system; to the Committee on Finance.

POM–445. A resolution adopted by the Board of Commissioners of the County of Cook of the State of Illinois relative to discrimination against women; to the Committee on Foreign Relations.

POM–446. A joint memorial adopted by the Legislature of the State of Maine relative to the United States Postal Service; to the Committee on Governmental Affairs.

JOINT RESOLUTION

Whereas, the United States Postal Service, founded in 1775, provides a means for commerce and communications and provides postal services to all communities, rich and poor, urban and rural, with uniform postage rates and it has for nearly 230 years provided dependable, affordable mail service. The United States Postal Service remains an important part of our nation's economic infrastructure through which nearly $1 trillion of economic activity is conducted each year and in which 9,000,000 people are employed; and

Whereas, Americans currently enjoy the most extensive postal service at the lowest postage rates of any major industrialized nation in the world, and excessive below-cost postage discounts to large business and advertising mailers unnecessarily drain billions of dollars of revenue from the United States Postal Service and ultimately cause small businesses and ordinary citizens to subsidize those discounts through higher postage rates. Millions of older, disabled and economically disadvantaged Americans do not have easy access to the Internet or to electronic banking and bill paying and therefore are heavily dependent on the United States Postal Service for communication and the conducting of business transactions; and

Whereas, the President created the President's commission on the United States Postal Service, which has recommended far-reaching changes to postal operations and services, including severing postal employees from federal employee health, retirement and workers' compensation programs, and the repeal of certain existing laws, which would pave the way towards reducing rank-and-file wages and benefits while eliminating the current salary cap on executive-level postal positions in order to raise postal executive pay on par with that of corporate CEOs and the commission has recommended a new President-appointed, corporate-style board of directors and the new Postal Regulatory Board that would give these new politically appointed governing bodies broad authority to set rates without prior approval, review and refine the scope of the United States Postal Service's universal service obligation and uniform rate structure and change and restrict the scope of services currently protected under postal monopoly regulations; and

Whereas, this broad authority would allow post offices to be closed without community input and prices to be set with a complicated postage rate structure or would even turn over postal operations to private for-profit enterprises despite a recent survey whose respondents had an overwhelmingly favorable view of the United States Postal Service, with 3 out of 4 saying no major changes are needed and 3 out of 10 saying the United States Postal Service works extremely well as is; and

Whereas, replacing the United States Postal Service's public service obligation with a profit-seeking mandate would undermine the United States Postal Service's historical ''universal service'' obligation, weaken its national infrastructure and divide our nation politically and economically, and here in the District of Maine, the United States Postal Service has unilaterally implemented a cost-saving reduction of hours and access that restricts customer service by curtailing hours; and

Whereas, this program has reduced hours of service at over 50% of post offices in Maine, severely affecting customer service, without regard to customers' input and complaints. Maine is a rural state and our elderly and disabled citizens depend on postal services: Now, therefore, be it

Resolved, That We, your Memorialists, request that the President of the United States, Congress and the United States Postal Service continue to maintain affordable, dependable mail service at current levels because of its social and economic importance to our nation; and be it further

Resolved, That we oppose any effort to undermine the United States Postal Service's universal service obligation and its uniform rate structure, that the service hours be returned to where they were before the report of the President's Commission on the United States Postal Service and prior to the implementation of the Small Post Office Reviews and Standardization Program and that any recommendation from the presidential commission that curtails public services related to our current postal service be rejected; and be it further

Resolved, That We, your Memorialists, go on record against any changes that would harm the workers of the United States Postal Service, including legislation to close small offices, take away or modify the collective bargaining system of postal workers or change the current bargaining system for employees benefits; and be it further

Resolved, That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable George W. Bush, President of the United

States; the Postmaster General, United States Postal Service; the Honorable Richard Cheney, President of the United States Senate; the Honorable Dennis Hastert, Speaker of the United States House of Representatives; and each Member of the Maine Congressional Delegation.

POM–447. A concurrent resolution adopted by the Senate of the Legislature of the State of Louisiana relative to the Louisiana University of Medical Services, Inc., College of Primary Care Medicine; to the Committee on Health, Education, Labor, and Pensions.

SENATE CONCURRENT RESOLUTION NO. 40

Whereas, Louisiana suffers with one of the worst health environments in the country, including a high infant mortality rate, a high rate of low birth weight babies, and an incidence of stroke that is 1.3 times that of the rest of the country, outside of the ''stroke belt''; and

Whereas, despite the best efforts of medical education institutions in Louisiana, the deficit of primary care physicians continues; and

Whereas, less than one-half of the 1998 graduates of medical education institutions in Louisiana selected a primary care specialty; and

Whereas, Louisiana University of Medical Services, Inc., College of Primary Care Medicine, is a non-profit organization designed to address the shortage of primary care physicians in small town, rural areas, and underserved areas; and

Whereas, the faculty and staff of the College of Primary Care Medicine are committed to a teaching program that addresses the shortage of primary care physicians both in Louisiana and nationwide; and

Whereas, throughout the educational experience at the College of Primary Care Medicine of the Louisiana University of Medical Services, Inc., the student will be exposed to a wide variety of primary health care settings; and

Whereas, through the program at the College of Primary Care Medicine of the Louisiana University of Medical Services, Inc., the traditional basic medical sciences will be thoroughly presented, and students will be given all the tools necessary to be successful on the United States Medical Licensing Examination: Therefore, be it

Resolved, That the Legislature of Louisiana hereby memorializes the Congress of the United States to provide funding for the Louisiana University of Medical Services, Inc., College of Primary Care Medicine, and be it further

Resolved, That a copy of this Resolution be transmitted to the president of the United States, the secretary of the United States Senate, the clerk of the United States House of Representatives, and each member of the Louisiana delegation to the Congress of the United States.

POM–448. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to the Lifespan Respite Care Act of 2003; to the Committee on Health, Education, Labor, and Pensions.

HOUSE RESOLUTION NO. 113

Whereas, An estimated 26,000 Americans care for one or more adult family members or friends who are disabled, chronically ill, or terminally ill. In addition, almost 25 percent of the nation's elderly experience multiple chronic disabling conditions that make it necessary to rely on others for help in meeting their daily needs; and

Whereas, Every year approximately 600,000 Americans die at home and many of these individuals rely on extensive family caregiving before their deaths. The family caregiver role is personally rewarding, but it can result in substantial emotional, physical, and financial hardship. Of those individuals needing assistance in daily living, nearly 42 percent are under the age of 65; and

Whereas, Current respite care programs are insufficient to meet the needs of this underserved population. Moreover, the limited available respite care programs find it difficult to recruit appropriately trained respite workers; and

Whereas, The Lifespan Respite Care Act of 2003 will encourage the creation of state and local lifespan care programs. It will help improve the coordination and dissemination of respite care information and resources to family caregivers. It will also support evaluative research to identify effective respite care services that alleviate, reduce, or minimize any negative consequences of caregiving. Further, the act will promote innovative, flexible, and comprehensive approaches to respite care delivery and support training programs helping family caregivers to make informed decisions about respite care services; and

Whereas, The Michigan House of Representatives has begun work on legislation that complements the Lifespan Respite Care Act. With its passage, Michigan will be better prepared to assist individuals in caregiving: Now, therefore, be it

Resolved by the House of Representatives, That we urge the United States Congress to support the Lifespan Respite Care Act of 2003; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–449. A resolution adopted by the Senate of the Legislature of the State of Vermont relative to the No Child Left Behind Act; to the Committee on Health, Education, Labor and Pensions.

SENATE RESOLUTION NO. 23

Whereas, Vermont has established high academic standards for its students in the areas of reading, language arts, mathematics, social sciences, science and technology, civics, arts, and health, and

Whereas, Vermont has established and implemented rigorous tests to measure achievement of its standards in reading, language arts, and mathematics and consequences for schools whose students fail to do well on the tests, and

Whereas, as a result of Vermont's insistence on rigorous standards and testing, Vermont students do very well on national tests; for example, Vermont students scored as follows on the National Assessment of Education Progress tests in 2003: 4th grade math—highest average score in the nation, 4th grade reading—second highest average score in the nation, 8th grade math—3rd highest average score in the nation, 8th grade reading—2nd highest average score in the nation, and

Whereas, the federal No Child Left Behind (NCLB) Act of 2001 requires all states to develop high academic standards in reading and math only, and to hold schools accountable for student achievement of only those standards, and

Whereas, Congress has not provided sufficient funds for Vermont schools to successfully implement NCLB, thereby forcing them to direct resources away from Vermont's system of comprehensive standards and assessments, a system which has resulted in some of the highest test scores in the nation, and

Whereas, NCLB represents sweeping federal intrusion into state and local control of education, violating the time-honored American principle of balanced federalism and respect for state and local prerogatives, especially in the crucial area of education: Now therefore be it

Resolved by the Senate, That Congress be asked to amend the No Child Left Behind Act immediately to include a mechanism for a waiver from its provisions for school acountablity that shall automatically be granted to states whose systems of standards and accountability result in high student achievement; and be it further

Resolved, That such waiver be available to these states so long as they maintain their successful standards and accountability programs; and be it further

Resolved, That the Secretary of the Senate shall transmit copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and the member of the Vermont Congressional Delegation.

POM–450. A resolution adopted by the Senate of the Legislature of the State of Hawaii relative to the Employee Free Choice Act; to the Committee on Health, Education, Labor, and Pensions.

SENATE RESOLUTION NO. 77

Whereas, in 1935, the United States established, by law, that workers must be free to form unions; and

Whereas, the freedom to form or join a union is internationally recognized as a fundamental human right; and

Whereas, union membership provides workers better wages and benefits, and protection from discrimination and unsafe workplaces; and

Whereas, unions benefit communities by strengthening tax bases, promoting equal treatment, and enhancing civic participation; and

Whereas, workers want to organize, but are unable to, since more than forty million United States workers say they would join a union now if they had the opportunity; and

Whereas, even though, on paper, America's workers have the freedom to choose for themselves whether to have a union, in reality, workers across the nation are routinely denied that right; and

Whereas, when the right of workers to form a union is violated, wages fall, race and gender pay gaps widen, workplace discrimination increases, and job safety standards disappear; and

Whereas, many thousands of America's workers are routinely threatened, coerced, or fired each year because they attempt to form a union; and

Whereas, most violations of workers' freedom to choose a union occur behind closed doors and each year millions of dollars are spent to frustrate workers' efforts to form unions; and

Whereas, a worker's fundamental right to choose a union is a public issue that requires public policy solutions, including legislative remedies; and

Whereas, the Employee Free Choice Act (S. 1925 and H.R. 3619) has been introduced in the United States Congress in order to restore workers freedom to join a union; and

Whereas, the Employee Free Choice Act has received broad bipartisan support with over two hundred congressional members as co-sponsors; and

Whereas, at its March 17 meeting, the Hawaii State AFL–CIO Executive Board unanimously endorsed the Employee Free Choice Act: Now, therefore, be it

Resolved by the Senate of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2004, That this body supports the Employee Free Choice Act (S. 1925 and H.R. 3619), which would:

(1) Authorize the National Labor Relations Board to certify a union as the bargaining representative when a majority of employees voluntarily sign authorizations designating that union to represent them;

(2) Provide for first contract mediation and arbitration; and

(3) Establish meaningful penalties for violations of a worker's freedom to choose a union; and be it further

Resolved, That this body urges Hawaii's congressional delegation to support the Employee Free Choice Act and to impel the United States Congress to pass this measure to protect America's workers and preserve their freedom to choose for themselves whether or not to form a union; and be it further

Resolved, That certified copies of this Resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Hawaii's congressional delegation.

POM–451. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to Christopher Kangas; to the Committee on the Judiciary

HOUSE RESOLUTION NO. 579

Whereas, On September 11, 2002, Hearing Examiner Doug Dodge of the Bureau of Justice Assistance in the Department of Justice determined that Christopher Kangas was not a public safety officer within the meaning of the Public Safety Officers' Benefits Act of 1976; and

Whereas, This ruling denies his survivors benefits under the act and means that Christopher is ineligible to be memorialized on the wall of the National Fallen Firefighter's Memorial in Emmitsburg, Maryland; and

Whereas, The ruling has shocked and dismayed the Brookhaven Fire Department in Delaware County, Pennsylvania, whose fire chief, Rob Montella, has claimed: ''He was a firefighter . . . what he was legally allowed to do, Chris did''; and

Whereas, When his last fire alarm sounded, Christopher Kangas, a junior firefighter for Brookhaven and 14 years of age, hopped on his bicycle to answer the call; and

Whereas, When he died of head injuries after being hit by a car while answering that call on May 4, 2002, he received a full hero's send-off and was laid to rest in a Class A fireman's uniform at a funeral steeped in honor and fire service tradition and attended by firemen from as far away as Massachusetts; and

Whereas, Flags at the National Fallen Firefighter's Memorial flew at half-staff in his honor and memory; and

Whereas, Rob Montella himself, State Fire Commissioner Ed Mann and Brookhaven line officers Dave Zamonski and Charles Leslie, first and second assistant chiefs, respectively, began their volunteer firefighting service answering fire calls as junior firefighters on bicycles, and Mr. Montella has said that Christopher was a firefighter who had a full set of gear, attended all training sessions, answered the calls and was in compliance with the Pennsylvania Junior Emergency Service Compliance Manual; and

Whereas, Upon Christopher's death, his mother became eligible for and received State and borough benefits because he had died in the line of duty, but under Hearing Examiner Dodge's September 11, 2002, opinion, he was denied Federal benefits; and

Whereas, This decision has concerned all firefighters who have learned of it, as it narrows the definition of firefighter and restricts their benefits; Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania memorialize the President of the United States and the Pennsylvania Congressional Delegation to do all in their power to encourage the United States Department of Justice to review its September 11, 2002, refusal to classify Christopher Kangas as a ''public safety officer'' under the Public Safety Benefits Act of 1976; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States and to each member of Congress from Pennsylvania.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. CLINTON (for herself, Mr. TALENT, and Mr. SCHUMER):

S. 2430. A bill to provide for improved medical readiness of the members of the Armed Forces, and for other purposes; to the Committee on Armed Services.

By Mr. NELSON of Nebraska (for himself and Mrs. HUTCHISON):

S. 2431. A bill to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by designating certified diabetes educators recognized by the National Certification Board of Diabetes Educators as certified providers for purposes of outpatient diabetes education services under part B of the medicare program; to the Committee on Finance.

By Mr. TALENT:

S. 2432. A bill to expand the boundaries of Wilson's Creek Battlefield National Park, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BINGAMAN (for himself and Mr. THOMAS):

S. 2433. A bill to amend the Internal Revenue Code of 1986 to allow self-employed individuals to deduct health insurance costs in computing self-employment taxes; to the Committee on Finance.

By Mr. HATCH (for himself, Mrs. BOXER, Mrs. HUTCHISON, and Mr. BINGAMAN):

S. 2434. A bill to establish the Commission to Study the Potential Creation of a National Museum of the American Latino Community to develop a plan of action for the establishment and maintenance of a National Museum of the American Latino Community in Washington, D.C., and for other purposes; to the Committee on Energy and Natural Resources.

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

S. 2435. A bill to permit Inspectors General to authorize staff to provide assistance to the National Center for Missing and Exploited Children, and for other purposes; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 2436. A bill to reauthorize the Native American Programs Act of 1974; to the Committee on Indian Affairs.

By Mr. ENSIGN:

S. 2437. A bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes; to the Committee on Rules and Administration.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SCHUMER (for himself, Mr. KENNEDY, Ms. STABENOW, Ms. MIKULSKI, Mr. WYDEN, Mr. DURBIN, Mr. CORZINE, Mrs. BOXER, Mr. LEVIN , Mr. LAUTENBERG, Mr. LEAHY, Mr. HARKIN, Mr. DODD, Mrs. FEINSTEIN, Mrs. CLINTON, Mr. SARBANES, Mr. REED, Mr. DASCHLE, Mrs. MURRAY, Mr. LIEBERMAN, Mr. ROCKEFELLER, Mr. AKAKA, Mr. FEINGOLD, Mr. REID, Mr. JOHNSON, and Mr. DAYTON):

S. Res. 364. A resolution expressing the sense of the Senate concerning oil markets; to the Committee on Energy and Natural Resources.

ADDITIONAL COSPONSORS

S. 98

At the request of Mr. ALLARD, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 98, a bill to amend the Bank Holding Company Act of 1956, and the Revised Statutes of the United States, to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

S. 333

At the request of Mr. BREAUX, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 333, a bill to promote elder justice, and for other purposes.

S. 623

At the request of Mr. WARNER, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 623, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 646

At the request of Mr. CORZINE, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 646, a bill to amend title XVIII of the Social Security Act to expand and improve coverage of mental health services under the medicare program.

S. 845

At the request of Mr. GRAHAM of Florida, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 845, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children's health insurance programs.

S. 976

At the request of Mr. WARNER, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 976, a bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

S. 979

At the request of Mr. ENSIGN, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 979, a bill to direct the Securities and Exchange Commission to require

enhanced disclosures of employee stock options, to require a study on the economic impact of broad-based employee stock option plans, and for other purposes.

S. 1197

At the request of Mr. ENZI, the names of the Senator from Oregon (Mr. WYDEN), the Senator from North Dakota (Mr. CONRAD) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1197, a bill to amend the Public Health Service Act to ensure the safety and accuracy of medical imaging examinations and radiation therapy treatments.

S. 1333

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1333, a bill to amend the Internal Revenue Code of 1986 to provide for the treatment of certain expenses of rural letter carriers.

S. 1491

At the request of Mr. CORNYN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1491, a bill to amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use.

S. 1509

At the request of Mr. COLEMAN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1509, a bill to amend title 38, United States Code, to provide a gratuity to veterans, their spouses, and children who contract HIV or AIDS as a result of a blood transfusion relating to a service-connected disability, and for other purposes.

S. 1792

At the request of Mr. DOMENICI, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 1792, a bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 1887

At the request of Mr. HATCH, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1887, a bill to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices.

S. 1909

At the request of Mr. COCHRAN, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 1909, a bill to amend the Public Health Service Act to improve stroke prevention, diagnosis, treatment, and rehabilitation.

S. 1916

At the request of Ms. LANDRIEU, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 1916, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes.

S. 1980

At the request of Mr. GRAHAM of Florida, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1980, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S. 2163

At the request of Mr. DURBIN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 2163, a bill to establish a national health program administered by the Office of Personnel Management to offer health benefits plans to individuals who are not Federal employees, and for other purposes.

S. 2262

At the request of Mr. CORNYN, his name was added as a cosponsor of S. 2262, a bill to provide for the establishment of campaign medals to be awarded to members of the Armed Forces who participate in Operation Enduring Freedom or Operation Iraqi Freedom.

S. 2305

At the request of Mr. LIEBERMAN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2305, a bill to authorize programs that support economic and political development in the Greater Middle East and Central Asia and support for three new multilateral institutions, and for other purposes.

S. 2313

At the request of Mr. GRAHAM of Florida, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2313, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S. 2351

At the request of Mr. FEINGOLD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2351, a bill to establish a Federal Interagency Committee on Emergency Medical Services and a Federal Interagency Committee on Emergency Medical Services Advisory Council, and for other purposes.

S. 2372

At the request of Mr. CORZINE, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 2372, a bill to amend the Trade Act of 1974 regarding identifying trade expansion priorities.

S. 2383

At the request of Mr. COLEMAN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 2383, a bill to amend title 10, United States Code, to require the registration of contractors' taxpayer identification numbers in the Central Contractor Registry database of the Department of Defense, and for other purposes.

S. 2389

At the request of Mr. ENSIGN, the name of the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor of S. 2389, a bill to require the withholding of United States contributions to the United Nations until the President certifies that the United Nations is cooperating in the investigation of the United Nations Oil-for-Food Program.

S. 2411

At the request of Mr. DODD, the name of the Senator from Alaska (Mr. STEVENS) 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.J. RES. 28

At the request of Mr. CAMPBELL, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S.J. Res. 28, a joint resolution recognizing the 60th anniversary of the Allied landing at Normandy during World War II.

S.J. RES. 36

At the request of Mrs. FEINSTEIN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S.J. Res. 36, a joint resolution approving the renewal of import restrictions contained in Burmese Freedom and Democracy Act of 2003.

S.J. RES. 37

At the request of Mr. BROWNBACK, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S.J. Res. 37, a bill to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian Tribes and offer an apology to all Native Peoples on behalf of the United States.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the name of the Senator from Wisconsin (Mr. KOHL) 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.

S. RES. 221

At the request of Mr. BUNNING, his name 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.

AMENDMENT NO. 3154

At the request of Mr. FEINGOLD, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of amendment No. 3154 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. NELSON of Nebraska (for himself and Mrs. HUTCHINSON):

S. 2431. A bill to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by designating certified diabetes educators recognized by the National Certification Board of Diabetes Educators as certified providers for purposes of outpatient diabetes education services under part B of the medicare program; to the Committee on Finance.

Mr. NELSON of Nebraska. Mr. President, today I introduce an important piece of legislation that will correct an oversight from the Balanced Budget Act of 1997. In 1997, Congress created a new diabetes benefit under Medicare—diabetes self-management training—but did not create a new provider group to deliver it. Congress assumed that the existing diabetes education programs in hospitals would be able provide services to all who were in need.

Certified Diabetes Educators, CDEs, were not given the ability to bill Medicare directly for diabetes self-management training when Congress passed the new benefit in 1997 because they did not feel there was a need to create a new provider since CDEs could work within a hospital setting and receive reimbursement through hospital billing. However, due to changing health care economics, hospital diabetes self-management training programs have been closing at an alarming rate, forcing patients to seek other avenues for obtaining diabetes self-management training, such as clinics and stand-alone programs.

While small in scope, the Diabetes Self-Management Training Act of 2004 will correct this oversight to ensure our Nation's seniors with diabetes have access to this important benefit.

Diabetes education is very important in my State of Nebraska. According to the Nebraska Health and Human Services System, about five percent of Nebraska's adults have diagnosed diabetes—or about 60,000 people. An additional 20,000 Nebraskans probably have diabetes but have not been diagnosed. While diabetes rates continue to grow at an alarming rate, lack of access to diabetes-self management training, which is critical to controlling diabetes and preventing secondary complications, has also become a chronic problem. Despite the fact that twenty percent of Medicare patients have diabetes, and about a quarter of all Medicare spending goes to treat diabetes and diabetes-related conditions, less than one-third of eligible patients are currently receiving the benefit.

Because CDEs are not able to bill Medicare directly for diabetes self-management training, patients have limited options for obtaining the training they need to successfully manage their disease and prevent expensive and debilitating complications. The potential for complications is enormous. If patients with diabetes cannot gain access to diabetes self-management training, serious complications will arise, such as kidney disease, amputations, vision loss, and severe cardiac disease. In fact, half of all Medicare dialysis patients suffer from diabetes.

By improving access to this important benefit, I believe we will take an important step toward helping patients control their diabetes, which will not only save the Medicare program the significant costs associated with the complications from uncontrolled diabetes, but more importantly it will dramatically improve the quality of life for the millions of Medicare beneficiaries with diabetes. That is why I am so proud to introduce this bi-partisan legislation, the Diabetes Self-Management Training Act of 2004, along with my colleague Senator HUTCHISON.

Throughout the Medicare debate last year, one of the top considerations for all Senators was the cost of the legislation and the long-term solvency of the Medicare program. In fact, we passed new programs in that legislation to begin studying new health care delivery models like Medicare that will improve the outcomes for beneficiaries with chronic diseases. While I strongly supported those new demonstration programs, we need not wait to begin helping our seniors.

With diabetes already directly affecting so many seniors, and the baby boomers on the horizon, we cannot afford to deny seniors access to proven programs like diabetes self-management training any longer. I look forward to working to pass this legislation and help those with diabetes.

Mrs. HUTCHISON. Mr. President, I rise today with Senator NELSON to introduce an important piece of legislation that will dramatically improve the quality of diabetes care under the Medicare program.

Diabetes is a serious, debilitating chronic illness that afflicts more than 18 million Americans, including eight million Medicare beneficiaries. An additional eight million seniors suffer from a condition known as ''pre-diabetes'' that, when left untreated, will develop into diabetes. Diabetes' devastating complications—kidney failure, blindness, lower extremity amputation, heart disease and stroke—result in significant costs to the program. Although beneficiaries with diabetes comprise only 20 percent of the Medicare population, diabetes related complications account for more than 30 percent of medicare expenditures.

This is indeed troubling, and there is much that can be done to reduce the burden of diabetes and prevent these costly complications. Diabetes self-management training, DSMT, helps people with diabetes learn the skills they need to manage the daily regimen of diet, exercise, meal planning, medication and monitoring necessary to keep blood sugar under control. Certified Diabetes Educators, CDEs, are highly trained healthcare professionals—often nurses, pharmacists, or dieticians—who specialize in helping people with diabetes develop these skills. A CDE must be a licensed health care professional, possess a minimum of two years of professional practice experience in DSMT, have provided a minimum of 1,000 hours of DSMT to patients in the past five years, and have passed a rigorous national examination.

The value of DSMT is well documented. The Diabetes Prevention Program study of 2002 demonstrated that participants, all of whom were at increased risk for developing type 2 diabetes, were able to reduce that risk by implementing the lifestyle changes taught as part of DSMT. Additional studies have found that patients with diabetes achieved significantly better outcomes when taking part in comprehensive diabetes management programs.

Congress recognized the value of DSMT when it provided for this benefit under the Balanced Budget Act of 1997. At that time, CDEs were able to provide DSMT through hospital-based programs, billing under the hospital's provider number. Unfortunately, hospital-based DSMT programs are closing at a rate of two to five per month, leaving people with diabetes without access to this life-saving benefit. Our legislation would correct this problem by allowing CDEs to be recognized as providers under the Medicare program for the purposes of providing DSMT. This would provide CDEs with the flexibility they need to ensure that beneficiaries can access these critical services.

As it is, the Centers for Medicaid and Medicare Services, CMS, estimates that only 30 percent of beneficiaries are utilizing the benefit. More must be done to increase access to life-saving DSMT programs. Our legislation will help to accomplish that goal.

Diabetes already poses a serious burden for the Medicare program. As the 76 million baby-boomers age into the Medicare program, the cost of diabetes related complications could seriously undermine the financial stability of the Medicare program. We must act now to strengthen Medicare to ensure that beneficiaries with diabetes have the tools they need to prevent diabetes complications.

By Mr. BINGAMAN (for himself and Mr. THOMAS):

S. 2433. A bill to amend the Internal Revenue Code of 1986 to allow self-employed individuals to deduct health insurance costs in computing self-employment taxes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, today my colleague, Senator THOMAS, and I are introducing the ''Equity for Our Nation's Self-Employed Act of 2004.'' This legislation would reduce the cost of health insurance for the self-employed by allowing these workers to exclude the cost of their health insurance from their income for purposes of calculating their payroll taxes. Although the self-employed are now allowed an income tax deduction for the amount they pay for health insurance, they must still calculate their payroll taxes as if they were not allowed this income tax deduction. Essentially, the self-employed are paying payroll taxes on the amount they pay for health insurance. The legislation we are introducing today would stop this inequitable tax treatment and allow the self-employed to deduct the amount they pay for health insurance from their calculation of payroll taxes.

This problem affects all self-employed who provide health insurance to their families. According to the Census Bureau, there are almost 74,000 self-employed workers in New Mexico. While we have no idea how many of these people in New Mexico have health insurance, we do know that roughly 3.6 million working families in the United States paid self-employment tax on their health insurance premiums. Estimates indicate that roughly 60 percent of our Nation's uninsured are either self-employed or work for a small business. According to the Kaiser Family Foundation, self-employed workers spend more than $9,000 per year to provide health insurance for their family. Because they cannot deduct this as an ordinary business expense, those that spend this amount will pay a 15.3 percent payroll tax on their premiums resulting in almost $1,400 of taxes annually.

This problem was identified by the National Taxpayer Advocate in several of her annual reports to Congress and is supported by a variety of groups including the National Association for the Self-employed, the National Small Business Association, the National Federation of Independent Businesses, the U.S. Chamber of Commerce, the U.S. Hispanic Chamber of Commerce, and the Small Business Legislative Council.

I look forward to working with my colleagues to get this important legislation passed.

By Mr. HATCH (for himself, Mrs. BOXER, Mrs. HUTCHISON, and Mr. BINGAMAN):

S. 2434. A bill to establish the Commission to Study the Potential Creation of a National Museum of the American Latino Community to develop a plan of action for the establishment and maintenance of a National Museum of the American Latino Community in Washington, D.C., and for other purposes; to the Committee on Energy and Natural Resources.

Mr. HATCH. Mr. President, today I am introducing legislation to create a national commission to study the potential establishment of a National Museum of the American Latino Community in Washington, D.C.

I am pleased to introduce this measure today, and I am joined by my colleagues Senators BARBARA BOXER, KAY BAILEY HUTCHISON, and JEFF BINGAMAN, all of whom have worked extensively with the Hispanic community on issues of importance.

The Hispanic community is the fastest growing ethnic group in the United States, and in my home State of Utah, Hispanics now account for nearly 10 percent of the population. Utah is a wonderful mosaic, encompassing a diverse number of peoples and cultures, and in fact, the latest census shows that Utah's Hispanic population has nearly doubled since 1990. But this phenomenon is not just happening in Utah.

It is clear we are seeing remarkable growth in our Nation's Hispanic population. And with this growth, we need to recognize and find ways to better highlight the accomplishments of Latinos over their rich history in America. We need to express the importance of diversity, pride, and the sharing of the cultures that contribute to the vibrancy and splendor of our Nation.

Every day we are reminded of the fact that Latinos are among our Nation's largest minorities, and numbers do have meaning. It is my belief that Latinos in America exhibit a strong desire—a commitment to building a nation where people are judged by their actions and not by their accents. They believe in the work ethic, patriotism, the importance of families, the free enterprise system, and the value of faith; they believe in these things and they experience these tenets, as they live them day in and day out here in America.

I believe strongly in preserving the sanctity of the heritage of cultures, and we should treasure these gifts. I believe that all Americans are enriched by learning to view the history of our Nation through the prisms of other cultures and languages.

When American and foreign tourists visit Washington, They expect to gain a better understanding of our collective history and culture. They see exhibits that educate visitors about our Nation's miraculous technological achievements, our military sacrifices and accomplishments, and the documents establishing the most sacred tenets of our democratic traditions. Yet, as demonstrated by the efforts to establish the National Museum of the American Indian and the National Museum of African American History and Culture, the lessons taught by our institutions are incomplete.

Children who visit museums in Washington should have the opportunity to learn the full history of who we are and who we are becoming as Americans. Nearly 40 million U.S. residents share a cultural heritage that is only beginning to be understood as wholly American, yet few of the exhibits in the Smithsonian's and other museums in Washington commemorate American Latino cultural contributions.

This legislation would take the next step toward ensuring that the lessons taught by our premier institutions for the arts and humanities include a better representation of American Latino cultural contributions. I hope that we will soon be able to say that the Nation's Capital truly exhibits America's rich cultural diversity.

I would like to note that Representative XAVIER BECERRA has introduced a companion bill in the House of Representatives, and I am honored to introduce this companion legislation in the Senate. I hope this measure will be approved by the Senate in short order.

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

S. 2435. A bill to permit Inspectors General to authorize staff to provide assistance to the National Center for Missing and Exploited Children, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I rise today to introduce ''The Missing Child Cold Case Review Act of 2004,'' which will allow an Inspector General to authorize his or her staff to provide assistance on and conduct reviews of the inactive case files, or ''cold cases,'' involving children stored at the National Center for Missing & Exploited Children (NCMEC) and to develop recommendations for further investigations.

I am pleased that Senator GRASSLEY joins me as the lead cosponsor of this bipartisan legislation. I thank him for his leadership in this area.

Speed is everything in homicide investigations. As a former prosecutor in Vermont, I know firsthand that speed is of the essence when trying to solve a homicide. This focus on speed, however, has led the law enforcement community to generally believe that any case not solved within the first 72 hours or lacking significant leads and witness participation has little likelihood of being solved, regardless of the expertise and resources deployed. With time, such unsolved cases become ''cold,'' and these are among the most difficult and frustrating cases detectives face because they are, in effect, cases that other investigators, for whatever reason, failed to solve.

Our Nation's law enforcement agencies, regardless of size, are not immune to rising crime rates, staff shortages and budget restrictions. Such obstacles have strained the investigative and administrative resources of all agencies.

More crime often means that fewer cases are vigorously pursued, fewer opportunities arise for follow-up and individual caseloads increase for already overworked detectives.

All the obstacles that hamper homicide investigations in their early phases contribute to cold cases. The National Center for Missing and Exploited Children—our Nation's top resource center for child protection—presently retains a backlog of cold cases involving children that law enforcement departments nationwide have stopped investigating primarily due to all these obstacles. NCMEC serves as a clearinghouse for all cold cases in which a child has not been found and/or the suspect has not been identified.

The bill that Senator GRASSLEY and I introduce today would allow an Inspector General to provide staff support to NCMEC for the purpose of conducting reviews of inactive case files to develop recommendations for further investigation and similar activities. The Inspector General community has one of the most diverse and talented criminal investigative cadres in the Federal government. A vast majority of these special agents have come from traditional law enforcement agencies, and are highly-trained and extremely capable of dealing with complex, criminal cases.

Under current law, an Inspector General's duties are limited to activities related to the programs and operations of an agency. Our bill would allow an Inspector General to permit criminal investigators under his or her supervision to review cold case files, so long as doing so would not interfere with normal duties. An Inspector General would not conduct actual investigations, and any Inspector General would only commit staff when the office's mission-related workloads permitted. At no time would these activities be allowed to conflict with or delay the stated missions of an Inspector General.

From time to time a criminal investigator employed by an Inspector General may be between investigations or otherwise available for brief periods of time. This act would also allow those resources to be provided to the National Center for Missing & Exploited Children. Commitment of resources would be at a minimum and would not materially affect the budget of any office.

We have before us the type of bipartisan legislation that should be moved easily through the Senate and House. It is supported by the Department of Justice Office of the Inspector General. I applaud the ongoing work of the National Center for Missing & Exploited Children and hope both the Senate and the House will promptly pass this bill to provide NCMEC with the resources it requires to solve cold cases involving missing children.

I ask unanimous consent that the text of the Missing Child Cold Case Review 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. 2435

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 ''Missing Child Cold Case Review Act of 2004''.

SEC. 2. AUTHORITY OF INSPECTORS GENERAL.

Title XXXVII of the Crime Control Act of 1990 (42 U.S.C. 5779 et seq.) is amended by inserting after section 3701 the following:

''SEC. 3701A. AUTHORITY OF INSPECTORS GENERAL.

''(a) IN GENERAL.—An Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) may authorize staff to assist the National Center for Missing and Exploited Children—

''(1) by conducting reviews of inactive case files to develop recommendations for further investigations; and

''(2) by engaging in similar activities.

''(b) LIMITATIONS.—

''(1) PRIORITY.—An Inspector General may not permit staff to engage in activities described in subsection (a) if such activities will interfere with the duties of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.).

''(2) FUNDING.—No additional funds are authorized to be appropriated to carry out this section.''.

By Mr. INOUYE:

S. 2436. A bill to reauthorize the Native American Programs Act of 1974; to the Committee on Indian Affairs.

Mr. INOUYE. Mr. President, I rise to introduce a bill to reauthorize the Native American Programs Act.

This act is administered by the Administration for Native Americans within the Department of Health and Human Services. Funds appropriated for the Administration for Native Americans enable the provision of grants for social and economic development initiatives addressing the needs of Native communities, for Native language preservation, and to provide support for environmental initiatives.

By Mr. ENSIGN:

S. 2437. A bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes; to the Committee on Rules and Administration.

Mr. ENSIGN. Mr. President, I rise today to speak about an issue that is fundamental to our democracy. That issue is the right for each American to know that their vote has been cast and accurately counted. Earlier today, I introduced legislation, the Voting Integrity and Verification Act, which would provide each American with those assurances.

The United States Constitution is sacred to Americans and it is the envy of the free world. It preserves the rights and freedoms that Americans hold so dear. Our Constitution also guarantees the right of each American to vote. Central to the integrity of our democracy is the right for each American to participate in our democracy.

Democracy works best when each eligible voter participates. As a Nation, we learned in 2000 that even a Presidential election can be determined by handfuls of votes. I learned this lesson in my own 1998 U.S. Senate campaign against incumbent Senator HARRY REID. In one of the closest Federal elections that year, a mere 428 votes separated us after all votes had been counted statewide.

After the election I requested a recount in Clark County, the only county at the time using electronic voting machines. The result of the recount was identical to the first count. That is because there was nothing to recount. After rerunning a computer program, the computer produced the same exact tally.

I conceded to Senator REID and was elected to Nevada's other Senate seat in 2000, but I was still troubled by the fact that Clark County voters had no assurance that their votes had been accurately counted. Innocent computer malfunctions or intentional tampering could have altered their votes without anyone ever knowing.

That is why I led the fight for voter verification paper trails in the Help American Vote Act (HAVA) that President Bush signed into law in 2002. A voter-verified paper trail would allow a voter to review a physical printout of their ballot and correct any errors before leaving the voting booth. This printout would be preserved at the polling for use in any recounts.

Unfortunately, the language that is contained in HAVA has not resolved this issue. Now, I am working to address this issue once and for all. By introducing the Voting Integrity and Verification Act, I want to ensure that HAVA is clear—voters must be assured that their votes will be accurate and will be counted properly. A paper trail provides just such an assurance.

A paper trail is not just a hypothetical answer to electronic ballot mishaps that may not ever happen. On January 6, 2004, a special election was held in Broward County, FL, for House District Seat 91. The margin of victory was 12 votes, but the machine failed to record the votes of 134 ballots. The results of this election have to be called into question, because the House seat was the only item on the ballot. It is doubtful that 134 voters would go to the polling place, stand in line, enter the voting booth but leave without casting a vote. Yet that was the explanation offered to explain the failure of the electronic voting machines to record 134 votes. This triggered an automatic recount under Florida law but there were no paper records with which to conduct a recount. Election workers were left to rerun the computer program. Just as happened in my Senate race, rerunning a computer program to conduct a manual ''recount'' did not change the outcome.

In Maryland on November 5, 2002, and in Fairfax County, VA, on November 4,

2003, voters who used electronic ''touch screen'' voting machines watched as the ''X'' they placed on the video screen next to one candidate's name appeared in a box for the other candidate. There were no verified paper ballots, so a recount was not possible. The voters who witnessed such an irregularity, and all voters who used those voting machines, have no assurances that the machine accurately recorded their vote. This calls into question any results determined by these machines and shows that there is no limit as to the number of votes that may have been miscounted.

It's not written in the Constitution this way, but it seems to me quite obvious that the right of citizens of the United States to vote shall not be denied on account of a lack of a paper trail. We must uphold the sanctity of our vote by making sure there is an accurate way to confirm and recount votes. I call on Congress to act swiftly to preserve America's faith in our election process and enact the Voting Integrity and Verification Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 364—EXPRESSING THE SENSE OF THE SENATE CONCERNING OIL MARKETS

Mr. SCHUMER (for himself, Mr. KENNEDY, Ms. STABENOW, Ms. MIKULSKI, Mr. WYDEN, Mr. DURBIN, Mr. CORZINE, Mrs. BOXER, Mr. LEVIN, Mr. LAUTENBERG, Mr. LEAHY, Mr. HARKIN, Mr. DODD, Mrs. FEINSTEIN, Mrs. CLINTON, Mr. SARBANES, Mr. REED, Mr. DASCHLE, Mrs. MURRAY, Mr. LIEBERMAN, Mr. ROCKEFELLER, Mr. AKAKA, Mr. FEINGOLD, Mr. REID, Mr. JOHNSON, and Mr. DAYTON) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 364

Whereas the prices of gasoline and crude oil have a direct and substantial impact on the financial well-being of American families, the potential for national economic recovery, and the economic security of the United States;

Whereas on Friday, May 7, 2004, crude oil prices reached a 13-year high of $40 per barrel, the weighted national average retail price of gasoline was $1.96 per gallon, and the average retail price of gasoline has broken all-time record highs for 2 consecutive months;

Whereas despite the fact that crude oil prices were already approaching record highs, the Organization of Petroleum Exporting Countries (OPEC) announced on April 1, 2004, its commitment to reduce oil production by 1,000,000 barrels per day;

Whereas the Strategic Petroleum Reserve (SPR) was created to enhance the physical and economic security of the United States, and the law allows the SPR to be used to provide relief when oil and gasoline supply shortages cause economic hardship;

Whereas the proper management of the resources of the SPR could provide gasoline price relief to American families and provide the United States with a tool to counterbalance OPEC supply management policies;

Whereas it has been reported that the Administration's current policy of filling the SPR at a rate of hundreds of thousands of barrels per day, despite the fact that the SPR is more than 94 percent full, has contributed to record high gasoline contract prices on the New York Mercantile Exchange;

Whereas in order to combat high gasoline prices during the summer and fall of 2000, President Clinton released 30,000,000 barrels of oil from the SPR, stabilizing the retail price of gasoline;

Whereas the Administration has failed to manage the SPR in a manner that would provide gasoline price relief to working families; and

Whereas the Administration has failed to adequately demand that OPEC immediately increase oil production in order to lower crude oil prices and safeguard the world economy: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF THE SENATE CONCERNING OIL MARKETS.

It is the sense of the Senate that—

(1) the President should directly confront OPEC and challenge OPEC to immediately increase oil production;

(2) the President should direct the Federal Trade Commission and Attorney General to exercise vigorous oversight over the oil markets to protect the American people from price gouging and unfair practices at the gasoline pump; and

(3) to lower the burden of gasoline prices on the American economy and to circumvent OPEC's efforts to reap windfall crude oil profits, the President should suspend deliveries of oil to the SPR and release 1,000,000 barrels of oil per day from the SPR for 30 days following the date of adoption of this resolution, and if necessary, for an additional 30 days beyond that.

Mr. KENNEDY. Mr. President, gasoline prices in Massachusetts just passed the two-dollar mark, and are expected to go even higher in the months ahead. A year ago, the average price of regular gas in Massachusetts was $1.53 per gallon. That means that the average two-car middle class family is paying $56 more per month for gasoline than they were last year. That's the same as a $660 middle class pay cut for the year.

In addition, the high price of gasoline is causing the prices of other consumer goods to go up as well, including groceries and other necessities.

But while middle class families are hurting, the Bush Administration stands on the sidelines. They are doing nothing to encourage OPEC nations to increase production to bring down oil prices.

They are doing nothing to prevent price gouging by the Administration's friends in the oil industry. The profits of the top five oil companies jumped 300 percent in just the past year. That's money taken right out of the pockets of middle class America, and the administration is doing nothing about it.

The President has failed the American consumer with his weak gasoline policies and by pandering to the big oil companies.

Today, I stand with my colleagues and demand that President Bush take immediate action to bring down prices at the pump that impose such a heavy burden on consumers. The President should confront OPEC and demand an increase in oil production. And the President should stop filling the Strategic Petroleum Reserve and release a million barrels of oil a day until prices stabilize.

President Clinton released 30 million barrels in 2000 and this was effective in lowering the price of gasoline.

The Reserve was created for times of crisis, and I believe strongly that it should be used sparingly and for true emergencies. Because the Reserve is almost full today, I believe we can draw down on it without jeopardizing our strategic interests. And the law allows it to be used when supply shortages cause economic hardships for the American people.

Finally, the President should direct the Attorney General to intervene with the big oil companies to prevent price gouging.

This is a crisis that is harming middle class families right now. We need action and we need it now. Every day that the White House continues to turn a blind eye to Big Oil, the worse it gets for the pocketbooks of average families. This legislation would call on the White House to reverse course and take immediate steps to provide some relief to American consumers.

Mr. ROCKEFELLER. Mr. President, it is my pleasure today to join with 25 of my colleagues in calling on the President to delay scheduled deposits to our Nation's Strategic Petroleum Reserve (SPR), and to release some of the crude currently there to alleviate our current record-high gasoline prices. It is important for families in West Virginia and across the country to have affordable gasoline, and it is crucial that our economy not be dragged down further by spiraling inflation fueled by high prices at the pump.

It has been more than a month since I joined with many of the same Senators who have cosponsored this resolution in a letter to the President calling on him to help reduce skyrocketing gasoline prices by putting further deliveries of petroleum into the marketplace instead of the national reserve. Since then, crude oil prices have reached a thirteen-year high of nearly $42 per barrel, which has led to a rise in the price of gasoline to $2.01 a gallon nationally. This is more than 50 cents higher than a year ago. The burden of high gas prices is being felt by all Americans, and is eating away at any ''relief'' the Bush tax cuts may have promised.

West Virginia has little or no public transportation, so for most West Virginians the family car is the only lifeline to jobs, school, shopping, and healthcare. The relatively long distances and unforgiving topography that West Virginians have to travel in the normal course of their lives makes an increase of just a few cents at the pump a crushing blow to withstand. Today, from Beckley to Martinsburg, West Virginians can expect to pay close to, or in most cases, well over $2

per gallon. In East Lynn, WV they are paying $2.19 a gallon; in Morgantown they're paying $2.11 a gallon; and in Ripley, my constituents are lucky to find gas going for $2.05 a gallon.

In 2003, 56 percent of West Virginians received less than $100 from the 2003 tax bill. This ''relief'' is offset greatly by the current trend in gas prices. The current price spikes mean that the majority of West Virginians will end up spending at least three times as much buying gasoline than in any tax return they will have received.

And it is not just short-term affects, or the concerns of our constituents that we have to contend with, but long term consequences as well. On May 12, the International Energy Agency (IEA) released a study stating that higher oil prices have hurt the global economy and will further depress economic growth, fuel inflation, and increase unemployment over the next 2 years if the prices stay near current levels.

Knowing all of this, the Bush administration has yet to even address the explosion of high gasoline prices here at home. In fact, Scott McClellan, the White House Press Secretary said today that ''We will continue to do what we've been doing that is to stay in close contact with producers around the world to urge them not to take action that would harm our economy or hurt consumers here in America.'' This means that the administration is content with the status quo and in doing more of the same. That is why I stand with my colleagues in agreement with this resolution on our Nation's oil reserves.

This resolution does three things: one) It asks the President to confront OPEC directly; two) it asks the President to have the Attorney General and the Federal Trade Commission exercise vigorous oversight over the oil markets to protect the American people from price gouging; and three) it asks the President to suspend deliveries of oil to the SPR and release a million barrels of oil per day from the SPR for 30 days following the adoption of this resolution. All of these actions would go a long way in reducing the burden of high gasoline prices on all Americans.

We have faced similar circumstances before and taken action. Four years ago, President Clinton halted deposits to the national reserve and that action lowered the burden of high gasoline prices on the American people without compromising our country's stockpile of oil. The current administration needs to be engaged. It needs to take a role and provide leadership at a time when West Virginians and all Americans are feeling a pinch at that pump.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3157. Mr. BAYH submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table.

SA 3158. Mr. LOTT (for himself, Mr. DORGAN, Ms. SNOWE, Mrs. FEINSTEIN, Mr. COCHRAN, Mr. DASCHLE, Mr. CONRAD, Mrs. BOXER, Mr. CORZINE, Ms. COLLINS, and Mr. GREGG) proposed an amendment to the bill S. 2400, supra.

SA 3159. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3160. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3161. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3162. Mr. DOMENICI (for himself, Mrs. FEINSTEIN, Mr. LUGAR, Mr. BIDEN, Mr. ALEXANDER, Mr. BINGAMAN, Mr. REED, and Mr. AKAKA) proposed an amendment to the bill S. 2400, supra.

SA 3163. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3164. Mr. GREGG submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3165. Mr. COLEMAN submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3166. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3167. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3168. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3169. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3170. Mr. GRAHAM, of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3171. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3172. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3173. Mr. ALEXANDER submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3174. Mr. KENNEDY (for himself and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3175. Mr. REID (for himself, Mr. DASCHLE, Ms. COLLINS, and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3157. Mr. BAYH submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 217. ADVANCED MANUFACTURING TECHNOLOGIES AND RADIATION CASUALTY RESEARCH.

(a) ADDITIONAL AMOUNT FOR ADVANCED MANUFACTURING STRATEGIES.—Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, the amount available for Advanced Manufacturing Technologies (PE 0708011S) is hereby increased by $2,000,000.

(b) AMOUNT FOR RADIATION CASUALTY RESEARCH.—Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, $3,000,000 shall be available for Radiation Casualty Research (PE 0603002D8Z).

(c) OFFSET.—Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, the amount available in Program Element PE 0305199D8Z for horizontal fusion is hereby decreased by $5,000,000.

SA 3158. Mr. LOTT (for himself, Mr. DORGAN, Ms. SNOWE, Mrs. FEINSTEIN, Mr. COCHRAN, Mr. DASCHLE, Mr. CONRAD, Mrs. BOXER, Mr. CORZINE, Ms. COLLINS, and Mr. GREGG) proposed an amendment to the bill S. 2400, 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; as follows:

At the end of title XXVIII, add the following:

Subtitle E—Defense Base Closure and Realignment

SEC. 2861. MODIFICATION OF 2005 BASE CLOSURE ROUND TO APPLY SOLELY TO MILITARY INSTALLATIONS OUTSIDE THE UNITED STATES.

The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by adding at the end the following new section:

"SEC. 2915. APPLICABILITY OF 2005 ROUND SOLELY TO MILITARY INSTALLATIONS OUTSIDE THE UNITED STATES.

''(a) IN GENERAL.—(1) Notwithstanding any other provision of this part, the military installations covered by activities under this part in 2005 shall consist solely of military installations outside the United States.

''(2) Except as otherwise provided in this section, for purposes of activities under this part in 2005 any reference to military installations inside the United States shall be deemed to be a reference to military installations outside the United States.

''(b) INAPPLICABILITY OF SELECTION CRITERIA FOR 2005.—The final selection criteria prepared under section 2913 shall not be used in making recommendations for the closure or realignment of military installations under this part in 2005.

''(c) RECOMMENDATIONS OF SECRETARY OF DEFENSE.—(1) In lieu of any information otherwise required under paragraph (1) or (2) of subsection (b) of section 2914, the recommendations of the Secretary of Defense under subsection (a) of that section shall include the following:

''(A) A detailed plan for eliminating any physical capacity at military installations outside the United States that requires the unnecessary diversion of scarce resources for operation and maintenance, sustainment, or recapitalization of such capacity.

''(B) A list of the military installations outside the United States that are proposed for closure or realignment under this part, and a schedule for the closure or realignment of such installations.

''(C) A list of the military installations to which personnel or equipment will be relocated from military installations included in the list under subparagraph (B), including for each military installation so listed, the new infrastructure to be required for such personnel or equipment and the cost of such infrastructure.

''(D) An estimate of the cost savings to be achieved by the closure or realignment of military installations under subparagraph (B).

''(E) A certification whether or not a round in 2007 for the closure or realignment of military installations inside the United States is advisable.

''(2) In making recommendations referred to in paragraph (1), the Secretary shall take into account the final report of the Commission on the Review of the Overseas Military Facility Structure of the United States under section 128 of the Military Construction Appropriations Act, 2004 (Public Law 108–132; 117 Stat. 1382; 10 U.S.C. 111 note).

''(d) COMMISSION REVIEW AND RECOMMENDATIONS.—(1) In addition to the requirements specified in section 2914(d), the Commission shall include in its report under paragraph (1) of that section the following:

''(A) An assessment by the Commission of the extent to which the recommendations of the Secretary under subsection (c) take into account the final report referred to in subsection (c)(2).

''(B) An assessment by the Commission whether or not the recommendations of the Secretary under subsection (c) maximize the amount of savings that can be achieved by the United States through the closure or realignment of military installations outside the United States.

''(C) An assessment by the Commission whether or not a round in 2007 for the closure or realignment of military installations inside the United States is advisable.

''(2) Paragraph (5) of section 2914(d) shall not apply to the review and recommendations of the Commission, under such section and this subsection, of the recommendations of the Secretary under subsection (c).

''(e) COMPLETION OF CLOSURE OR REALIGNMENT ACTIONS.—The closure or realignment of military installations outside the United States under this part pursuant to activities under this part in 2005 shall be completed not later than December 31, 2010.''.

SEC. 2862. BASE CLOSURE ROUND IN 2007 RELATING TO INSTALLATIONS INSIDE THE UNITED STATES.

(a) TWO-YEAR EXTENSION OF BASE CLOSURE LAW FOR PURPOSES OF ROUND IN 2007.—Section 2909(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking ''April 15, 2006,'' and inserting ''April 15, 2008,''.

(b) EXPEDITED CONSIDERATION BY CONGRESS OF ROUND IN 2007.—That Act, as amended by section 2861 of this Act, is further amended by adding at the end the following new section:

''SEC. 2916. REQUIREMENTS AND LIMITATIONS ON BASE CLOSURE ROUND IN 2007 RELATING TO INSTALLATIONS INSIDE THE UNITED STATES.

''(a) EXPEDITED CONSIDERATION BY CONGRESS OF AUTHORIZATION FOR ROUND.—The consideration by Congress of a joint resolution for a round of defense base closure and realignment under this part in 2007 relating to military installations inside the United States shall be governed by the provisions of section 2908.

''(b) JOINT RESOLUTION.—For purposes of this section and the application of section 2908 to the joint resolution referred to in subsection (a), the term 'joint resolution' means a joint resolution which is introduced within the 10-day period beginning on the date in 2005 on which the President transmits to Congress an approval and certification described in paragraph (2) or (4) of section 2903(e) in accordance with section 2914(e), and—

''(1) which does not have a preamble;

''(2) the matter after the resolving clause of which is as follows: 'That a round of defense base closure and realignment is authorized to occur under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) in 2007, with such round to apply to military installations inside the United States'; and

''(3) the title of which is as follows: 'Joint Resolution to authorize a round of defense base closure and realignment in 2007 with respect to military installations inside the United States.'.

''(c) CRITERIA AND SCHEDULE FOR 2007 ROUND.—Not later than 15 days after the date of the enactment of the joint resolution, the Secretary of Defense shall publish in the Federal Register the following:

''(1) The selection criteria to be utilized in the round of defense base closure and realignment under this part in 2007, which criteria shall be the final selection criteria developed under section 2913(e), together with such modifications of such final selection criteria as the Secretary considers appropriate in light of changes in circumstances since March 15, 2004.

''(2) The schedule in 2007 for actions on recommendations and consideration of recommendations in the round of defense base closure and realignment under this part under section 2914, which schedule shall, to the maximum extent practicable, be the schedule for 2005 as specified under that section together with such modifications as the Secretary considers appropriate to take into account changes in the calendar between 2005 and 2007.''.

SA 3159. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

TITLE ____—UNEMPLOYMENT COMPENSATION

SEC. ____01. EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.

(a) IN GENERAL.—Section 208 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30), as amended by Public Law 108–1 (117 Stat. 3) and the Unemployment Compensation Amendments of 2003 (Public Law 108–26; 117 Stat. 751), is amended—

(1) in subsection (a)(2), by striking ''December 31, 2003'' and inserting ''November 30, 2004'';

(2) in subsection (b)(1), by striking ''December 31, 2003'' and inserting ''November 30, 2004'';

(3) in subsection (b)(2)—

(A) in the heading, by striking ''DECEMBER 31, 2003'' and inserting ''NOVEMBER 30, 2004''; and

(B) by striking ''December 31, 2003'' and inserting ''November 30, 2004''; and

(4) in subsection (b)(3), by striking ''March 31, 2004'' and inserting ''February 28, 2005''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21) and shall apply with respect to payments for weeks of unemployment beginning on or after the date of enactment this Act.

SEC. ____02. ADDITIONAL REVISION TO CURRENT TEUC–X TRIGGER.

(a) IN GENERAL.—Section 203(c)(2)(B) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended to read as follows:

''(B) such a period would then be in effect for such State under such Act if—

''(i) section 203(d) of such Act were applied as if it had been amended by striking '5' each place it appears and inserting '4'; and

''(ii) with respect to weeks of unemployment beginning after December 27, 2003—

''(I) paragraph (1)(A) of such section 203(d) did not apply; and

''(II) clause (ii) of section 203(f)(1)(A) of such Act did not apply.''.

(b) APPLICATION.—Section 203(c)(2)(B)(ii) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30), as added by subsection (a), shall apply with respect to payments for weeks of unemployment beginning on or after the date of enactment this Act.

SEC. ____03. TEMPORARY STATE AUTHORITY TO WAIVE APPLICATION OF LOOKBACKS UNDER THE FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970.

For purposes of conforming with the provisions of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note), a State may, during the period beginning on the date of enactment of this Act and ending on November 30, 2004, waive the application of either subsection (d)(1)(A) of section 203 of such Act or subsection (f)(1)(A)(ii) of such section, or both.

SA 3160. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

On page 394, after line 22, insert the following:

SEC. 3122. REPORT ON EFFORTS OF THE NATIONAL NUCLEAR SECURITY ADMINISTRATION TO UNDERSTAND PLUTONIUM AGING.

(a) STUDY.—(1) Not later than 60 days after the date of the enactment of this Act, the

Administrator of the National Nuclear Safety Administration shall enter into a contract providing for a study group of scientists to carry out a study to assess the efforts of the National Nuclear Security Administration to understand the aging of plutonium in nuclear weapons. In contracting for the performance of such services, the Administrator shall seek to enter into that contract with the study group of scientists that is affiliated with MITRE Corporation and known as the JASON group.

(2) The Administrator shall make available to the contractor under this subsection all information that is necessary for the contractor to successfully complete a meaningful study on a timely basis.

(b) REPORT REQUIRED.—(1) Not later than one year after the date on which the Administrator enters into the contract required under subsection (a), the Administrator shall submit to Congress a report on the findings of the contractor regarding the efforts of the National Nuclear Security Administration to understand the aging of plutonium in nuclear weapons.

(2) The report shall include the recommendations of the contractor for improving the knowledge, understanding, and application of the fundamental and applied sciences related to the study of plutonium aging.

(3) The report under this subsection shall be submitted in unclassified form, but may include a classified annex.

SA 3161. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

On page 365, between lines 18 and 19, insert the following:

SEC. 2830. LAND CONVEYANCE, LOUISIANA ARMY AMMUNITION PLANT, DOYLINE, LOUISIANA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey to the State of Louisiana (in this section referred to as the ''State'') all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 14,949 acres located at the Louisiana Army Ammunition Plant, Doyline, Louisiana, for the purpose of using such property for military training.

(b) CONSIDERATION.—As consideration for the conveyance of property under subsection (a), the State shall—

(1) accommodate the use of such property, at no cost or fee, for meeting the present and future training needs of Armed Forces units, including units of the Louisiana National Guard and the other reserve components of the Armed Forces, on those areas of the Louisiana Army Ammunition Plant that were being used to support such training needs prior to the conveyance under subsection (a);

(2) assume, starting on the date that is five years after the date of the conveyance of such property, responsibility for any monitoring, sampling, or reporting requirements that are associated with the environmental restoration activities of the Army on the Louisiana Army Ammunition Plant, and shall bear such responsibility until such time as such monitoring, sampling, or reporting is no longer required; and

(3) assume responsibility for any obligations of the Army under real estate agreements made by the Army and the facility use contractor with respect to the Louisiana Army Ammunition Plant in accordance with the terms of those agreements in effect at the time of the conveyance.

(c) EXEMPTION FROM FEDERAL SCREENING.—The conveyance under subsection (a) is exempt from the requirement to screen the property for other Federal use under section 2696 of title 10, United States Code, and the authority to make such conveyance shall not be considered to render the property excess or underutilized.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary. The cost of each survey shall be borne by the State.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SA 3162. Mr. DOMENICI (for himself, Mrs. FEINSTEIN, Mr. LUGAR, Mr. BIDEN, Mr. ALEXANDER, Mr. BINGAMAN, Mr. REED, and Mr. AKAKA) proposed an amendment to the bill S. 2400, 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; as follows:

At the end of subtitle C of title XXXI, add the following:

SEC. 3132. ACCELERATION OF REMOVAL OR SECURITY OF FISSILE MATERIALS, RADIOLOGICAL MATERIALS, AND RELATED EQUIPMENT AT VULNERABLE SITES WORLDWIDE.

(a) SENSE OF CONGRESS.—(1) It is the sense of Congress that the security, including the rapid removal or secure storage, of high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment at vulnerable sites worldwide should be a top priority among the activities to achieve the national security of the United States.

(2) It is the sense of Congress that the President may establish in the Department of Energy a task force to be known as the Task Force on Nuclear Materials to carry out the program authorized by subsection (b).

(b) PROGRAM AUTHORIZED.—The Secretary of Energy may carry out a program to undertake an accelerated, comprehensive worldwide effort to mitigate the threats posed by high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment located at sites potentially vulnerable to theft or diversion.

(c) PROGRAM ELEMENTS.—(1) Activities under the program under subsection (b) may include the following:

(A) Accelerated efforts to secure, remove, or eliminate proliferation-attractive fissile materials or radiological materials in research reactors, other reactors, and other facilities worldwide.

(B) Arrangements for the secure shipment of proliferation-attractive fissile materials, radiological materials, and related equipment to other countries willing to accept such materials and equipment, or to the United States if such countries cannot be identified, and the provision of secure storage or disposition of such materials and equipment following shipment.

(C) The transportation of proliferation-attractive fissile materials, radiological materials, and related equipment from sites identified as proliferation risks to secure facilities in other countries or in the United States.

(D) The processing and packaging of proliferation-attractive fissile materials, radiological materials, and related equipment in accordance with required standards for transport, storage, and disposition.

(E) The provision of interim security upgrades for vulnerable, proliferation-attractive fissile materials and radiological materials and related equipment pending their removal from their current sites.

(F) The utilization of funds to upgrade security and accounting at sites where proliferation-attractive fissile materials or radiological materials will remain for an extended period of time in order to ensure that such materials are secure against plausible potential threats and will remain so in the future.

(G) The management of proliferation-attractive fissile materials, radiological materials, and related equipment at secure facilities.

(H) Actions to ensure that security, including security upgrades at sites and facilities for the storage or disposition of proliferation-attractive fissile materials, radiological materials, and related equipment, continues to function as intended.

(I) The provision of technical support to the International Atomic Energy Agency (IAEA), other countries, and other entities to facilitate removal of, and security upgrades to facilities that contain, proliferation-attractive fissile materials, radiological materials, and related equipment worldwide.

(J) The development of alternative fuels and irradiation targets based on low-enriched uranium to convert research or other reactors fueled by highly-enriched uranium to such alternative fuels, as well as the conversion of reactors and irradiation targets employing highly-enriched uranium to employment of such alternative fuels and targets.

(K) Accelerated actions for the blend down of highly-enriched uranium to low-enriched uranium.

(L) The provision of assistance in the closure and decommissioning of sites identified as presenting risks of proliferation of proliferation-attractive fissile materials, radiological materials, and related equipment.

(M) Programs to—

(i) assist in the placement of employees displaced as a result of actions pursuant to the program in enterprises not representing a proliferation threat; and

(ii) convert sites identified as presenting risks of proliferation regarding proliferation-attractive fissile materials, radiological materials, and related equipment to purposes not representing a proliferation threat to the extent necessary to eliminate the proliferation threat.

(2) The Secretary of Energy shall, in coordination with the Secretary of State, carry out the program in consultation with, and with the assistance of, appropriate departments, agencies, and other entities of the United States Government.

(3) The Secretary of Energy shall, with the concurrence of the Secretary of State, carry out activities under the program in collaboration with such foreign governments, nongovernmental organizations, and other international entities as the Secretary considers appropriate for the program.

(d) REPORTS.—(1) Not later than March 15, 2005, the Secretary shall submit to Congress a classified interim report on the program under subsection (b).

(2) Not later than January 1, 2006, the Secretary shall submit to Congress a classified final report that includes the following:

(A) A survey by the Secretary of the facilities and sites worldwide that contain proliferation-attractive fissile materials, radiological materials, or related equipment.

(B) A list of sites determined by the Secretary to be of the highest priority, taking into account risk of theft from such sites, for removal or security of proliferation-attractive fissile materials, radiological materials, or related equipment, organized by level of priority.

(C) A plan, including activities under the program under this section, for the removal, security, or both of proliferation-attractive fissile materials, radiological materials, or related equipment at vulnerable facilities and sites worldwide, including measurable milestones, metrics, and estimated costs for the implementation of the plan.

(3) A summary of each report under this subsection shall also be submitted to Congress in unclassified form.

(e) FUNDING.—Amounts authorized to be appropriated to the Secretary of Energy for defense nuclear nonproliferation activities shall be available for purposes of the program under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''fissile materials'' means plutonium, highly-enriched uranium, or other material capable of sustaining an explosive nuclear chain reaction, including irradiated items containing such materials if the radiation field from such items is not sufficient to prevent the theft or misuse of such items.

(2) The term ''radiological materials'' includes Americium-241, Californium-252, Cesium-137, Cobalt-60, Iridium-192, Plutonium-238, Radium-226 and Strontium-90, Curium-244, Strontium-90, and irradiated items containing such materials, or other materials designated by the Secretary of Energy for purposes of this paragraph.

(3) The term ''related equipment'' includes equipment useful for enrichment of uranium in the isotope 235 and for extraction of fissile materials from irradiated fuel rods and other equipment designated by the Secretary of Energy for purposes of this section.

(4) The term ''highly-enriched uranium'' means uranium enriched to or above 20 percent in isotope 235.

(5) The term ''low-enriched uranium'' means uranium enriched below 20 percent in isotope 235.

(6) The term ''proliferation-attractive'', in the case of fissile materials and radiological materials, means quantities and types of such materials that are determined by the Secretary of Energy to present a significant risk to the national security of the United States if diverted to a use relating to proliferation.

SA 3163. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

On page 296, between lines 14 and 15, insert the following:

TITLE XIII—MEDICAL READINESS AND TRACKING

SEC. 1300. SHORT TITLE.

This title may be cited as the ''Medical Readiness and Tracking Act of 2004''.

Subtitle A—Reserve Component Personnel

SEC. 1301. STUDY OF HEALTH OF RESERVES ORDERED TO ACTIVE DUTY FOR OPERATIONS ENDURING FREEDOM AND IRAQI FREEDOM.

(a) REQUIREMENT FOR GAO STUDY.—The Comptroller General of the United States shall carry out a study of the health of the members of the reserve components of the Armed Forces who have been called or ordered to active duty for a period of more than 30 days in support of Operation Enduring Freedom and Operation Iraqi Freedom. The Comptroller General shall commence the study not later than 180 days after the date of the enactment of this Act.

(b) PURPOSES.—The purposes of the study under this section are as follows:

(1) To review the health status and medical fitness of the activated Reserves when they were called or ordered to active duty.

(2) To review the effects, if any, on logistics planning and the deployment schedules for the operations referred to in subsection (a) that resulted from deficiencies in the health or medical fitness of activated Reserves.

(3) To review compliance of the responsible Department of Defense personnel with Department of Defense policies on routine medical and physical fitness examinations that are applicable to the reserve components of the Armed Forces.

(4) To review in the case of activated Reserves deployed to the theater of an operation referred to in subsection (a), the medical care that was provided to such personnel in the theater during the first six months after arrival in the theater.

(c) REPORT.—The Comptroller General shall, not later than 18 months after the date of the enactment of this Act, submit a report on the results of the study under this section to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the following matters:

(1) With respect to the matters reviewed under paragraph (1) of subsection (b)—

(A) the percentage of activated Reserves who were determined to be medically unfit for deployment, together with an analysis of the medical illnesses or conditions most commonly found among the activated Reserves that were grounds for determinations of medical unfitness for deployment; and

(B) the percentage of the activated Reserves who, before being deployed, needed medical care for health conditions identified when called or ordered to active duty, together with an analysis of the types of care that were provided for such conditions.

(2) With respect to the matters reviewed under paragraph (2) of subsection (b)—

(A) the delays and other disruptions in deployment schedules that resulted from deficiencies in the health status or medical fitness of activated Reserves; and

(B) an analysis of the extent to which it was necessary to merge units or otherwise alter the composition of units, and the extent to which it was necessary to merge or otherwise alter objectives, in order to compensate for limitations on the deployability of activated Reserves resulting from deficiencies in the health status or medical fitness of activated Reserves.

(3) With respect to the matters reviewed under paragraph (3) of subsection (b), an assessment of the extent of the compliance of the responsible Department of Defense personnel with Department of Defense policies on routine medical and physical fitness examinations that are applicable to the reserve components of the Armed Forces.

(4) With respect to the matters reviewed under paragraph (4) of subsection (b), an analysis of the extent to which the medical care provided to activated Reserves in each theater of operations referred to in subsection (a) related to preexisting conditions that were not adequately addressed before the deployment of such personnel to the theater.

(d) DEFINITIONS.—In this section:

(1) The term ''activated Reserves'' means the members of the Armed Forces referred to in subsection (a).

(2) The term ''active duty for a period of more than 30 days'' has the meaning given such term in section 101(d) of title 10, United States Code.

(3) The term ''health condition'' includes a dental condition.

(4) The term ''reserve components of the Armed Forces'' means the reserve components listed in section 10101 of title 10, United States Code.

SEC. 1302. PHYSICAL EXAMINATIONS.

(a) REQUIREMENT.—Section 10206(a) of title 10, United States Code, is amended by striking ''shall—'' and all that follows and inserting ''shall be examined as to his physical fitness every 30 months, or more often as the Secretary concerned considers necessary.''.

(b) EFFECTIVE DATE.—This section and the amendment made by subsection (a) shall take effect on October 1, 2004.

SEC. 1303. RETRAINING OR SEPARATION OF MEDICALLY UNFIT MEMBERS.

(a) REQUIREMENT.—Chapter 1007 of title 10, United States Code, is amended by inserting after section 10206 the following new section:

''§ 10206a. Required actions for members not medically fit

''(a) IN GENERAL.—The Secretary of a military department shall take action under subsection (b) in the case of each member of a reserve component under the Secretary's jurisdiction who—

''(1) as a result of an examination under section 10206 of this title or any other physical or medical examination performed under regulations prescribed by the Secretary, is determined not medically qualified for the performance of the duties of such member's position; and

''(2) either—

''(A) as of the date that is 180 days after the date of that determination, is not making progress to become medically qualified in accordance with a plan approved under regulations prescribed by the Secretary; or

''(B) does not become medically qualified for the position within the period covered by such a plan.

''(b) REQUIRED ACTIONS.—A member of a reserve component described in subsection (a)—

''(1) shall be reassigned to a position in such reserve component for which the member is medically and otherwise qualified; or

''(2) if there is no position in such reserve component for which the member is medically and otherwise qualified, shall be separated from such reserve component.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 10206 the following new item:

''10206a. Required actions for members not medically fit.''.

SEC. 1304. POLICY ON DEFERRAL OF MEDICAL TREATMENT PENDING DEPLOYMENT TO THEATERS OF OPERATION.

(a) REQUIREMENT FOR POLICY.—(1) Chapter 1007 of title 10, United States Code, as amended by section 1303, is further amended by inserting after section 10206a the following new section:

''§ 10206b. Members ordered to active duty: treatment of medical conditions

''(a) POLICY REQUIRED.—The Secretary of Defense shall prescribe a policy that specifies for members of the reserve components

called or ordered to active duty for a period of more than 30 days under a provision of law referred to in section 101(a)(13)(B) of this title—

(1) the circumstances under which treatment for medical conditions may be deferred to be provided within a theater of operations in order to prevent delay or other disruption of a deployment to that theater; and

(2) the circumstances under which medical conditions are to be treated before deployment to that theater.

''(b) FACTORS TO BE CONSIDERED.—The policy under subsection (a) shall specify the factors to be considered in a determination of deferral or initiation of treatment of a medical condition of a member to be deployed to a theater of operations, including the following factors:

''(1) Severity of the condition, including the extent of risk of significant aggravation of the condition if treatment is delayed or inadequate.

''(2) Medical treatment capabilities available to the member for such condition in the theater of operations.

''(3) The cost of treatment of the condition in such theater as compared to the cost of treatment of the condition under chapter 55 of this title at or in the vicinity of the facility or installation from which the member is to be deployed.''.

(2) The table of sections at the beginning of such chapter, as amended by section 1303(b), is further amended by inserting after the item relating to section 10206a the following new item:

''10206b. Members ordered to active duty: treatment of medical conditions.''.

(b) TIME FOR ISSUANCE OF POLICY.—The Secretary of Defense shall issue the policy required by section 10206b of title 10, United States Code (as added by subsection (a)), not later than 180 days after the date of the enactment of this Act.

Subtitle B—All Armed Forces Personnel

PART I—HEALTH SCREENING

SEC. 1311. RECRUIT ASSESSMENT PROGRAM.

(a) BASELINE HEALTH DATA.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1092 the following new section:

''§ 1092a. Persons entering the armed forces: baseline health data

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall, for the purposes set forth in subsection (b), carry out a program for—

''(1) the routine collection of baseline health data from all persons entering the armed forces;

''(2) computerized compilation and maintenance of the baseline health data; and

''(3) analysis of the data.

''(b) PURPOSES.—The program under this section shall be designed to achieve the following purposes:

''(1) To facilitate understanding of how exposures related to service in the armed forces affect health.

''(2) To facilitate development of early intervention and prevention programs to protect health and readiness.

''(c) BASELINE HEALTH DATA DEFINED.—In this section, the term 'baseline health data', with respect to a person entering any of the armed forces, means comprehensive information on the health of that person upon entry.

''(d) APPLICABILITY TO COAST GUARD.—(1) The program under this section shall apply to members of the Coast Guard to the extent approved by the Secretary of Homeland Security.

''(2) Nothing in paragraph (1) shall be construed to limit the application of the program under this section to a member of the Coast Guard in that member's capacity as a person entering a reserve component of the Army, Navy, Air Force, or Marine Corps.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1092 the following new item:

''1092a. Persons entering the armed forces: baseline health data.''.

(b) TIME FOR IMPLEMENTATION.—The Secretary of Defense shall implement the program required under section 1092a of title 10, United States Code (as added by paragraph (1)), not later than two years after the date of the enactment of this Act.

SEC. 1312. FURTHER REFINEMENT OF MEDICAL TRACKING SYSTEM FOR MEMBERS DEPLOYED OVERSEAS.

(a) ESTABLISHMENT OF ADVISORY WORKING GROUP.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall convene a working group to improve the medical tracking system for members deployed overseas established under section 1074f of title 10, United States Code.

(2) The working group under paragraph (1) shall be composed of any number of members, not less than 12 and not more than 20, that the Secretary of Defense determines appropriate for the working group to carry out its duties effectively, including members appointed by the Secretary as follows:

(A) One or more representatives of the Assistant Secretary of Defense for Health Affairs.

(B) One or more representatives of the Secretary of Veterans Affairs, with the consent of the Secretary.

(C) One or more civilian health professionals who have expertise in public health and epidemiology.

(D) Three or more civilian health professionals who have been involved in military health research or treatment.

(E) Three or more civilian health professionals who have been involved in environmental health research or treatment.

(F) Three or more civilians who are representative of veterans and military health advocacy organizations.

(3) The working group shall—

(A) analyze the strengths and weaknesses of the medical tracking system administered under section 1074f of title 10, United States Code, as a means for detecting—

(i) any health problems (including mental health conditions) of members of the Armed Forces contemporaneous with the performance of the assessment under the system; and

(ii) exposures of the assessed members to environmental hazards that potentially lead to future health problems;

(B) analyze the strengths and weaknesses of such medical tracking system as a means for supporting future research on health issues presenting in the years following the deployment of the members of the Armed Forces assessed under the system; and

(C) identify and develop recommended changes to such medical tracking system that strengthen the system as a means for—

(i) detecting health problems and exposures to environmental hazards as described in subparagraph (A); and

(ii) supporting future research as described in subparagraph (B).

(4) Not later than 180 days after convening, the working group shall submit to the Secretary a report setting forth the analyses and recommendations of the working group.

(b) ACTIONS BY SECRETARY OF DEFENSE.—Not later than 180 days after receipt of the report under subsection (a)(4), the Secretary of Defense shall prescribe regulations to implement the recommendations of the working group to the extent that the Secretary considers appropriate. The regulations shall include policies and standards for drawing blood samples for effective assessment and tracking of the medical conditions of personnel before deployment, upon the end of a deployment, and for a follow-up period of appropriate length.

(c) INTERIM STANDARDS FOR BLOOD SAMPLING.—(1) The Secretary of Defense shall require that, under the medical tracking system administered under section 1074f of title 10, United States Code—

(A) the blood samples necessary for the predeployment medical examination of a member of the Armed Forces required under subsection (b) of such section be drawn not earlier than 30 days before the date of the deployment;

(B) the blood samples necessary for the postdeployment medical examination of a member of the Armed Forces required under such subsection be drawn not later than 30 days after the date on which the deployment ends; and

(C) annually, for the first three years after the deployment of a member ends, blood samples be drawn from that person for the purpose of assessing the medical condition of such person under such system.

(2) In the case of a person who is no longer a member of the Armed Forces when a blood sample is to be drawn from such person under paragraph (1)(C), the blood may be drawn at any medical facility of the uniformed services designated by the Secretary of Defense. The Secretary shall attempt to accommodate the convenience of that person in selecting a facility for the drawing of that person's blood sample.

(3) The requirements of paragraph (1) shall cease to be effective on the date on which the regulations prescribed under subsection (b) take effect.

PART II—MEDICAL CARE IN THEATER OF OPERATIONS

SEC. 1315. MEDICAL SERVICES PROVIDED IN ALLIED HEALTH FACILITIES.

Not later than one year after the date of the enactment of this Act, the Assistant Secretary of Defense for Health Affairs shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report on the extent and types of medical services that were provided to members of the Armed Forces in facilities of allies of the United States during previous and current deployments of the Armed Forces, including Operations Desert Shield, Desert Storm, Joint Endeavor, Joint Forge, Joint Guardian, Enduring Freedom, and Iraqi Freedom.

SEC. 1316. DEVELOPMENT OF POLICY ON PERSONNEL LOCATION DATA.

(a) REQUIREMENT FOR POLICY.—The Secretary of Defense shall prescribe a Department of Defense policy on the collection and dissemination of in-theater individual personnel location data for the following purposes:

(1) To facilitate health care research and informed health care policy making for the Armed Forces.

(2) To enhance the capabilities of the Armed Forces to recognize and meet the health care needs of members of the Armed Forces returning to home stations from deployment to a theater of operations.

(b) ADVISORY WORKING GROUP.—(1) The Secretary shall establish a working group to advise the Secretary on the development of the policy under subsection (a). The working group shall include the following:

(A) One or more representatives of the Assistant Secretary of Defense for Health Affairs.

(B) One or more representatives of the Secretary of Veterans Affairs, with the consent of the Secretary.

(C) One or more representatives of the program manager for the Global Combat Support System.

(D) One or more representatives of the defense manpower data center.

(E) One or more representatives of the program manager for the Land Warrior System.

(F) One or more civilian health professionals who have been involved in research and treatment of Gulf War Syndrome.

(G) One or more representatives of the Joint Staff.

(2) In developing the policy recommendations, the working group shall take into consideration—

(A) traditional medical requirements for complete and open access to specific, individual personnel location data to provide for—

(i) adequate and independent peer review by all interested parties; and

(ii) an open and transparent process for setting scientifically rigorous health policy and formulating clinical guidelines for care;

(B) traditional operational requirements for securing personnel location data so as to prevent—

(i) compromise of mission objectives; or

(ii) unauthorized disclosure of tactical and logistical planning; and

(C) existing practical limitations on the collection of such data, together with solutions for eliminating such limitations.

SEC. 1317. REPORT ON TRAINING OF FIELD MEDICAL PERSONNEL.

(a) REQUIREMENT FOR REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the training on environmental hazards that is provided by the Armed Forces to medical personnel of the Armed Forces who are deployable to the field in direct support of combat personnel.

(b) CONTENT.—The report under subsection (a) shall include the following:

(1) An assessment of the adequacy of the training regarding—

(A) the identification of—

(i) common environmental hazards; and

(ii) exposures to such hazards; and

(B) the prevention and treatment of adverse health effects of such exposures.

(2) A discussion of the actions taken and to be taken to improve such training.

PART III—MEDICAL CARE AFTER RETURN FROM DEPLOYMENT

SEC. 1321. FINDINGS.

Congress makes the following findings:

(1) One out of every nine members of the Armed Forces returning to home station from a deployment overseas listed on the member's post-deployment self-reported health assessment under the Health Evaluation Assessment Review program of the United States Army Center for Health Promotion and Preventive Medicine a concern about possibly having been exposed to environmental hazards deleterious to the member's health during the deployment, according to an article in the edition of the Medical Surveillance Monthly Report published for July and August 2003 by the Army Medical Surveillance Activity of the Directorate of Epidemiology and Disease Surveillance of the United States Army Center for Health Promotion and Prevention of Disease.

(2) This constitutes a high proportion of members who might have suffered exposure to environmental hazards that potentially lead to immediate or future health problems.

SEC. 1322. REPORT ON RESPONSES TO HEALTH CONCERNS OF MEMBERS.

(a) REQUIREMENT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act, the Assistant Secretary of Defense for Health Affairs shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report on Department of Defense responses to expressions of concerns made as described in section 221(1).

(b) CONTENT.—The report regarding health concerns submitted under subsection (a) shall include the following:

(1) A discussion of the actions taken by Department of Defense officials to investigate the circumstances underlying such concerns in order to determine the validity of the concerns.

(2) A discussion of the actions taken by Department of Defense officials to evaluate or treat members and former members of the Armed Forces who are confirmed to have been exposed to environmental hazards deleterious to their health during deployments of the Armed Forces.

SEC. 1323. RESPONSIBILITIES OF INSTALLATION COMMANDERS.

(a) PREPARATIONS TO MEET HEALTH CARE NEEDS.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1074k the following new section:

"§ 1074l. Care of members redeploying from overseas deployment

"(a) NEEDS ASSESSMENT.—The Secretary of Defense shall require the commander of each military installation at which members of the armed forces are to be processed upon redeployment from an overseas deployment—

"(1) to identify and analyze the anticipated health care needs of such members before the arrival of such members at that installation; and

"(2) to report such needs to the Secretary.

"(b) DATA SOURCES.—To carry out the duties imposed under subsection (a), the commander of an installation shall obtain the necessary information from the sources available to the commander, including the following information:

"(1) Information on schedules and locations from transportation and logistics personnel.

"(2) Information on disease and nonbattle injuries from the Surgeon General of the armed force concerned.

"(3) Information collected from environmental surveillance of the theater of military operations from which members are redeploying.

"(4) Information on the prevalence of combat and noncombat injuries, to the extent relevant.

"(c) HEALTH CARE TO MEET NEEDS.—The Secretary of Defense shall prescribe in regulations procedures for the commander of each military installation described in subsection (a) to meet the anticipated health care needs that are identified by the commander in the performance of duties under this section. The procedures shall include the following:

"(1) Arrangements for health care provided by the Secretary of Veterans Affairs.

"(2) Procurement of services from local health care providers.

"(3) Temporary employment of health care personnel to provide services at such installation.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1074k the following new item:

"1074l. Care of members redeploying from overseas deployment.".

Subtitle C—Policy Compliance Assurance

SEC. 1331. SERUM REPOSITORY AUDITS.

(a) REQUIREMENT FOR BIENNIAL AUDIT.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1073a the following new section:

"§ 1073b. Serum repository audits

"(a) PERIODIC AUDITS.—The Secretary of Defense shall require the director of the serum repository of the Department of Defense to audit at least twice every two years the records of blood samples stored in such repository to determine the percentage of members of the armed forces who are in compliance with the applicable Department of Defense and military department policies on the collection of blood samples from members of the armed forces. The Secretary may impose any higher minimum number of periodic audits under this section that the Secretary considers appropriate.

"(b) REPORT.—(1) Upon completion of an audit under subsection (a), the director of the serum repository shall submit a report on the audit to the Secretary of Defense. The report shall include the following information:

"(A) The compliance percentage determined under such subsection.

"(B) A discussion of the most common compliance problems identified.

"(C) Any recommendations for actions to improve compliance.

"(2) The Secretary shall transmit the report received under paragraph (1) to the Committees on Armed Services of the Senate and the House of Representatives. The Secretary may include any comments and recommendations that the Secretary considers appropriate.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1073a the following new item:

"1073b. Serum repository audits.".

(b) INITIAL AUDIT.—The first audit under section 1073b of title 10, United States Code (as added by subsection (a)), shall be completed not later than 180 days after the date of the enactment of this Act.

SEC. 1332. DEPLOYMENT-RELATED HEALTH ASSESSMENT AUDITS.

(a) REQUIREMENT FOR BIENNIAL AUDIT.—Section 1074f(d) of title 10, United States Code, is amended—

(1) by inserting "(1)" after "(d) QUALITY ASSURANCE.—"; and

(2) by adding at the end the following:

"(2)(A) The Secretary of Defense shall require the director of the Defense Medical Surveillance System to audit, every two years, the predeployment and postdeployment health assessment database maintained by the director in order to determine the percentage of members of the armed forces who are in compliance with the applicable Department of Defense and military department policies on the collection of predeployment and postdeployment health assessment data.

"(B) Upon completion of the biennial audit under subparagraph (A), the director of the Defense Medical Surveillance System shall submit a report on the audit to the Secretary of Defense. The report shall include the following information:

"(i) The compliance percentage determined under such audit.

"(ii) A discussion of the most common compliance problems identified.

"(iii) Any recommendations for actions to improve compliance.

"(C) The Secretary shall transmit the report received under subparagraph (B) to the Committees on Armed Services of the Senate and the House of Representatives. The Secretary may include any comments and recommendations that the Secretary considers appropriate.".

(b) INITIAL AUDIT.—The first audit under section 1074f(d)(2) of title 10, United States Code (as added by subsection (a)), shall be completed not later than 180 days after the date of the enactment of this Act.

SEC. 1333. DECLASSIFICATION OF INFORMATION ON EXPOSURES TO ENVIRONMENTAL HAZARDS.

(a) REQUIREMENT FOR REVIEW.—The Secretary of Defense shall review and, as determined appropriate, revise the classification policies of the Armed Forces Medical Intelligence Center with a view to facilitating the declassification of data that is potentially useful for the monitoring and assessment of the health of members of the Armed Forces who have been exposed to environmental hazards during deployments overseas, including the following data:

(1) In-theater injury rates.

(2) Data derived from environmental surveillance.

(3) Health tracking data.

(b) PARTICIPATION OF DIRECTOR OF ARMED FORCES MEDICAL INTELLIGENCE CENTER.—The Secretary may act through or consult with the Director of the Armed Forces Medical Intelligence Center in carrying out the review and revising policies under subsection (b).

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any changes to policies described in subsection (a) that have been made as a result of the review under such subsection.

SEC. 1334. ACCESSIBILITY OF HEALTH ASSESSMENT INFORMATION TO ARMY MEMBERS ON THE INTERNET.

Not later than one year after the date of the enactment of this Act, the Chief Information Officer of the Department of the Army shall ensure that the Army Knowledge Online portal website includes the following health-assessment related information:

(1) Information on the Department of Defense policies regarding predeployment and postdeployment health assessments, including policies on the following matters:

(A) Health surveys.

(B) Physical examinations.

(C) Collection of blood samples and other tissue samples.

(2) Procedural information on compliance with such policies, including the following information:

(A) Information for determining whether a member is in compliance.

(B) Information on how to comply.

(3) Health assessment surveys that are either—

(A) web-based; or

(B) accessible (with instructions) in printer-ready form by download.

SEC. 1335. FULL IMPLEMENTATION OF FORCE HEALTH PROTECTION AND READINESS PROGRAM.

(a) IMPLEMENTATION AT ALL LEVELS.—The Secretary of Defense, in conjunction with the Secretaries of the military departments, shall take such actions as are necessary to ensure that each of the Armed Forces fully implements at all levels the Force Health Protection and Readiness Program of the Department of Defense (relating to the prevention of injury and illness and the reduction of disease and noncombat injury threats).

(b) ACTION OFFICIAL.—The Secretary of Defense may act through the Deputy Assistant Secretary of Defense for Force Health Protection and Readiness in carrying out subsection (a).

SA 3164. Mr. GREGG submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

On page 280, after line 22, insert the following:

SEC. 1068. COORDINATION OF USERRA WITH OTHER FEDERAL LAWS.

(a) TREATMENT OF DIFFERENTIAL PAYMENT AS WAGES FOR PURPOSES OF INCOME TAX WITHHOLDING.—Section 4302 of title 38, United States Code, is amended by adding at the end the following:

''(c)(1) For purposes of chapter 24 of the Internal Revenue Code of 1986 (relating to collection of income tax at source on wages), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

''(2) For purposes of paragraph (1), the term 'differential wage payment' means any payment which—

''(A) is made by an employer to an employee with respect to any period during which the employee is performing service in the uniformed services while on active duty for a period of more than 30 days, and

''(B) represents all or a portion of the difference between the wages the employee would have received from the employer if not performing service in the uniformed services and the wages paid for performing such service.''.

(b) CONTINUED CONTRIBUTIONS TO PENSION PLANS.—Section 4318 of title 38, United States Code, is amended by adding at the end the following:

''(c) For purposes of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986, any employer or employee contributor to an employee pension benefit plan to which this section applies with respect to any period during which the employee is performing service in the uniformed services while on active duty for a period of more than 30 days shall be treated as a contribution with respect to a current employee of the employer.''.

SA 3165. Mr. COLEMAN submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

On page 247, between lines 13 and 14, insert the following:

SEC. 1022. STUDY OF ESTABLISHMENT OF MOBILIZATION STATION AT CAMP RIPLEY NATIONAL GUARD TRAINING CENTER, LITTLE FALLS, MINNESOTA.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall carry out and complete a study on the feasibility of the use of Camp Ripley National Guard Training Center, Little Falls, Minnesota, as a mobilization station for reserve components ordered to active duty under provisions of law referred to in section 101(a)(13)(B) of title 10, United States Code. The study shall include consideration of the actions necessary to establish such center as a mobilization station.

SA 3166. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

On page 25, between lines 15 and 16, insert the following:

SEC. 142. REPORT ON MATURITY AND EFFECTIVENESS OF THE GLOBAL INFORMATION GRID BANDWIDTH EXPANSION (GIG-BE) NETWORK.

(a) REPORT REQUIRED.—Not later that 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on a test to demonstrate the maturity and effectiveness of the Global Information Grid-Bandwidth Expansion (GIG-BE) network architecture, using end-to-end evaluation capabilities independently monitored by the Director of Operational Test and Evaluation.

(b) CONTENTS OF REPORT.—The report under subsection (a) shall—

(1) certify whether the results of the test described in subsection (a) demonstrate compliance of the GIG-BE architecture with the overall goals of the GIG-BE program;

(2) identify—

(A) the extent to which the GIG-BE architecture does not meet the overall goals of the program; and

(B) the components that are not yet sufficiently developed to achieve the goals required for certification of compliance under paragraph (1);

(3) include a plan and cost estimates for achieving compliance; and

(4) document the equipment and network configuration used to demonstrate real-world scenarios, including the use of mixtures of secure voice, secure video, teleconferencing, and secure high volume data exchanges (at not less than 10 gigabytes per second) between the continental United States and other theaters of operation, including Europe and the Persian Gulf; and

(5) document, with respect to the test—

(A) the number of simulated users and network routers used;

(B) information with respect to network loads; and

(C) the metrics used to test performance, such as quality of service, signal to noise ratios, bit error performance, and data latencies measures.

SA 3167. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

At the end of subtitle C of title X, add the following:

SEC. 1022. REPORT ON AVAILABILITY OF LAUNCH SITES PERMITTING REALISTIC OVERLAND TEST FLIGHTS FOR DEFENSES AGAINST SHORT-RANGE BALLISTIC MISSILE SYSTEMS.

(a) FINDING.—Congress finds that the testing of defenses against short-range ballistic missile systems require overland flights of such systems of at least 1,000 kilometers in order to accurately simulate realistic environmental conditions that affect such defenses.

(b) REPORT ON AVAILABILITY OF LAUNCH SITES.—The Secretary of Defense shall submit to Congress a report assessing the availability to the Department of Defense of launch sites that permit overland flights of short-range ballistic missile systems of at least 1,000 kilometers in order to accurately simulate realistic environmental conditions that affect such defenses.

SA 3168. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

At the end of subtitle C of title X, add the following:

SEC. 1022. REPORT ON CENTER FOR JOINT ANALYSIS AND ASSESSMENT OF MILITARY EQUIPMENT BY THE MILITARY DEPARTMENTS.

(a) FINDING.—Congress finds that joint research, development, test, and evaluation on military equipment by the military departments is critical to improving the quality and survivability of such equipment.

(b) REPORT.—The Secretary of Defense shall submit to Congress a report that sets forth the following:

(1) Locations identified by the Secretary as appropriate locations for a center for the joint research, development, test, and evaluation on military equipment by the military departments.

(2) A proposal for an organizational structure of the center described in paragraph (1).

SA 3169. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

Strike section 3144 and insert the following:

SEC. 3144. SUPPORT FOR PUBLIC EDUCATION IN THE VICINITY OF LOS ALAMOS NATIONAL LABORATORY, NEW MEXICO.

The Secretary of Energy shall require that the primary management and operations contract for Los Alamos National Laboratory, New Mexico, that involves Laboratory operations after September 30, 2005, shall contain terms requiring the contractor under such contract to provide support to the Los Alamos Public School District, New Mexico, for the elementary and secondary education of students by the School District in the amount of $8,000,000 in each fiscal year.

SA 3170. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

Strike section 3119 and insert the following:

SEC. 3119. TREATMENT OF WASTE MATERIAL.

(a) AVAILABILITY OF FUNDS FOR TREATMENT.—Of the amount authorized to be appropriated by section 3102(a)(1) for environmental management for defense site acceleration completion, $350,000,000 shall be available for the following purposes at the sites referred to in subsection (b):

(1) The safe management of tanks or tank farms used to store waste from reprocessing activities.

(2) The on-site treatment and storage of wastes from reprocessing activities and related waste.

(3) The consolidation of tank waste.

(4) The emptying and cleaning of storage tanks.

(5) Actions under section 3116.

(b) SITES.—The sites referred to in this subsection are as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho.

(2) The Savannah River Site, Aiken, South Carolina.

(3) The Hanford Site, Richland, Washington.

SA 3171. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

At the end of subtitle H of title V, insert the following:

SEC. 574. APPEARANCE OF VETERANS SERVICE ORGANIZATIONS AT PRESEPARATION COUNSELING PROVIDED BY THE DEPARTMENT OF DEFENSE.

(a) APPEARANCE TO COUNSELING FOR DISCHARGE OR RELEASE FROM ACTIVE DUTY.—Section 1142 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(d) APPEARANCE BY VETERANS SERVICE ORGANIZATIONS.—(1) The Secretary concerned may permit a representative of a veterans service organization to appear at and participate in any preseparation counseling provided to a member of the armed forces under this section.

''(2) For purposes of this subsection, a veterans service organization is any organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38.''.

(b) MEETING WITH RESERVES RELEASED FROM ACTIVE DUTY FOR FURTHER SERVICE IN THE RESERVES.—(1) A unit of a reserve component on active duty in the Armed Forces may, upon release from active duty in the Armed Forces for further service in the reserve components, meet with a veterans service organization for information and assistance relating to such release if the commander of the unit authorizes the meeting.

(2) The time of a meeting for a unit under paragraph (1) may be scheduled by the commander of the unit for such time after the release of the unit as described in that paragraph as the commander of the unit determines appropriate to maximize the benefit of the meeting to the members of the unit.

(3) For purposes of this subsection, a veterans service organization is any organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38, United States Code.

SA 3172. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

On page 48, between lines 7 and 8, insert the following:

SEC. 326. SENSE OF SENATE ON PERCHLORATE CONTAMINATION OF GROUND AND SURFACE WATER.

(a) FINDINGS.—The Senate makes the following findings:

(1) Because finite water sources in the United States are stretched by regional drought conditions and increasing demand for water supplies, there is increased need for safe and dependable supplies of fresh water for drinking and use for agricultural purposes.

(2) Perchlorate, a propellant used in munitions and jet fuels, has contaminated fresh water sources intended for use as drinking water and water necessary for the production of agricultural commodities.

(3) If ingested, perchlorate interferes with thyroid metabolism, and scientific evidence suggests that this effect can impair the normal development of the brain in fetuses, infants, and toddlers, and permanently impairs cognitive abilities and brain function in affected children.

(4) The National Academy of Sciences is conducting an assessment of the state of science regarding the effects on human health of perchlorate ingestion that will aid in understanding the effect of perchlorate exposure on sensitive populations.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) perchlorate has been identified as a contaminant of drinking water sources or in the environment in 34 States and has been used or manufactured in 36 States;

(2) perchlorate exposure at or above a certain level adversely affects public health, particularly the health of vulnerable and sensitive populations; and

(3) to help reduce the risk of perchlorate exposure, the Secretary of Defense should develop and implement a plan to remediate perchlorate contamination of the environment resulting from Department of Defense activities in areas at which levels of perchlorate pose the risk of hazardous exposure to perchlorate.

SA 3173. Mr. ALEXANDER submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

On page 127, between the matter following line 5 and line 6, insert the following:

SEC. 621. TREATMENT OF CERTAIN SPECIAL PAYS AND ALLOWANCES FOR PURPOSES OF CERTAIN FEDERAL ASSISTANCE PROGRAMS.

(a) RECEIPT NOT TO AFFECT ELIGIBILITY.—(1) Chapter 17 of title 37, United States Code, is amended by adding at the end the following new section:

"§ 909. Treatment of certain special pays and allowances for purposes of eligibility under certain Federal assistance programs

''(a) RECEIPT NOT TO AFFECT ELIGIBILITY.—Receipt of special pays specified in subsection (b) shall not be considered in determining eligibility of members of the uniformed services for benefits under the provisions of law specified in subsection (c).

''(b) COVERED SPECIAL PAYS AND ALLOWANCES.—The special pays and allowances referred to in subsection (a) are as follows:

''(1) The assignment incentive special pay under section 307a of this title

''(2) The special pay under section 310 of this title, relating to duty subject to hostile fire or imminent danger.

''(3) The family separation allowance under section 427 of this title.

''(c) FEDERAL ASSISTANCE PROGRAMS.—The benefits referred to in subsection (a) are as follows:

''(1) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

''(2) Free lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

''(3) Assistance under the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

''(4) Assistance under the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).

''(5) Free breakfasts under the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

''(6) Services under the Head Start Act (42 U.S.C. 9831 et seq.).

''(7) Assistance under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

''(8) Assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.).

''(9) Assistance under section 521 of the Housing Act of 1949 (42 U.S.C. 1490a).

''(10) Assistance under title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), including assistance under section 8 of such Act (42 U.S.C. 1437f).''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''909. Treatment of certain special pays and allowances for purposes of eligibility under certain Federal assistance programs.''.

(b) SENSE OF CONGRESS.—It is the sense of Congress that pay and allowances other than basic pay under section 204 of title 37, United States Code, and compensation under section 206 of such title should not be taken into account in determinations of eligibility of members of the uniformed services and their families for benefits under general assistance programs administered by States.

(c) EFFECTIVE DATE.—Section 909 of title 37, United States Code (as added by subsection (a)), shall take effect on October 1, 2004.

SA 3174. Mr. KENNEDY (for himself and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

On page 247, between lines 13 and 14, insert the following:

SEC. 1022. REPORT ON THE STABILIZATION OF IRAQ.

Not later than two weeks after the date of the enactment of this Act, the President shall submit to the congressional defense committees an unclassified report (with classified annex, if necessary) on the strategy of the United States for stabilizing Iraq. The report shall contain a detailed explanation of the strategy together with the following information:

(1) A description of the efforts of the President to work with the United Nations and the North Atlantic Treaty Organization to provide relief for the nearly 150,000 members of the Armed Forces of the United States who were serving in Iraq as of May 2004, including efforts to ensure that—

(A) more military forces of other countries are deployed to Iraq;

(B) more police forces of other countries are deployed to Iraq; and

(C) more financial resources of other countries are provided for the stabilization and reconstruction of Iraq.

(2) As a result of such efforts—

(A) a list of the countries that have committed to deploying military and police forces;

(B) with respect to each such country, the schedule and level of such deployments; and

(C) an estimate of the number of members of the Armed Forces that will be able to return to the United States as a result of such deployments.

(3) A description of the efforts of the President to develop the police and military forces of Iraq to provide relief for the nearly 150,000 members of the Armed Forces of the United States who were serving in Iraq as of May 2004.

(4) As a result of such efforts—

(A) the number of members of the police and military forces of Iraq that have been trained;

(B) the number of members of the police and military forces of Iraq that have been deployed; and

(C) an estimate of the number of members of the Armed Forces of the United States that will be able to return to the United States as a result of such training and deployment.

(5) An estimate of—

(A) the number of members of the Armed Forces that will be required to serve in Iraq during each of the first five years following the date of the enactment of this Act; and

(B) the percentage of that force that will be composed of members of the National Guard and Reserves.

SA 3175. Mr. REID (for himself, Mr. DASCHLE, Ms. COLLINS, and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 2400, 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; which was ordered to lie on the table; as follows:

At the end of subtitle D of title VI, add the following:

SEC. 642. CONCURRENT PAYMENT OF BOTH RETIRED PAY AND COMPENSATION TO MILITARY RETIREES WITH ANY SERVICE-CONNECTED DISABILITY.

(a) EXTENSION TO MILITARY RETIREES WITH SERVICE-CONNECTED DISABILITIES RATED LESS THAN 50 PERCENT.—Subsection (a)(2) of section 1414 of title 10, United States Code, is amended by striking ''not less than 50 percent disabling'' and inserting ''zero percent or more disabling''.

(b) CONFORMING AND CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

"§ 1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent payment of retired pay and veterans' disability compensation".

(2) The table of sections at the beginning of chapter 71 of such title is amended by striking the item relating to section 1414 and inserting the following:

''1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent payment of retired pay and veterans' disability compensation.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of January 1, 2005, and shall apply to payments for months beginning on or after that date.

SEC. 643. COORDINATION OF ELIGIBILITY UNDER COMBAT-RELATED SPECIAL COMPENSATION AUTHORITY AND DISABLED MILITARY RETIREE COMPENSATION AUTHORITY FOR CHAPTER 61 DISABILITY RETIREES.

(a) COORDINATION OF ELIGIBILITY.—Paragraph (3) of subsection (b) of section 1413a of title 10, United States Code, is amended to read as follows:

''(3) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—

''(A) CAREER RETIREES.—In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title with 20 or more years of service otherwise creditable under section 1405 of this title, or at least 20 years of service computed under section 12732 of this title, the amount of the payment under paragraph (1) for any month shall be reduced by the amount (if any) by which the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

''(B) DISABILITY RETIREES WITH LESS THAN 20 YEARS OF SERVICE.—Paragraph (1) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title, or with less than 20 years of service computed under section 12732 of this title, at the time of the member's retirement.''.

(b) CONFORMING AMENDMENT.—Subsection (c) of section 1413a is amended by striking ''is a member of the uniformed services entitled to retired pay'' and all that follows and inserting ''is a member of the uniformed services (other than a member described by subsection (b)(3)(B)) entitled to retired pay who has a combat-related disability.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of January 1, 2005, and shall apply to payments for months beginning on or after that date.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, May 19, 2004, at 10 a.m. in room 485 of the Russell Senate Office Building to conduct a business meeting on S.J. Res. 37, a resolution to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian tribes and offer an apology to all native Peoples on behalf of the United States, and S. 2277, a bill to amend the act of November 2, 1966 (80 Stat. 1112), to allow binding arbitration clauses to be included in all contracts affecting the land within the Salt River Pima-Maricopa Indian Reservation; to be followed immediately by a hearing on S. 1696, a bill to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, May 20, 2004, at 10 a.m. in room 485 of the Russell Senate Office Building to conduct a hearing on S. 2382, the Native American Connectivity Act. Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources.

The hearing will be held on Wednesday, June 16, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on: (1) the grounding of multi-engine fire-retardant aircraft, (2) steps the Forest Service and Department of the Interior have taken to provide alternative aerial support for initial attack and extended attack fire fighting operations in the short run, and (3) the feasibility and desirability of designing and implementing an inspection process to allow the use of multi-engine fire-retardant aircraft in the future.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Frank Gladics at 202–224–2878 or Amy Millet at 202–224–2876.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Banking, Housing and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, May 18, 2004, at 10 a.m., to conduct a hearing on ''Oversight of the Terrorism Risk Insurance Program.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY, AND NATURAL RESOURCES

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, May 18th, at 10 a.m.

The purpose of this hearing is to evaluate implications of a recent change in reporting of small business contracts by the Department of Energy. This change has the effect of increasing the number of small business contracts issued directly by the Department and decreasing the number of contracts issued by the Department's Management and operating contractors.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 18, 2004, at 9:30 a.m., to hold a hearing on ''Iraq's Transition—The Way Ahead.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 18, 2004, at 2 p.m., to hold a Nomination hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, May 18, 2004, at 10 a.m., on ''Animal Rights: Activism vs. Criminality'' in the Dirksen Senate Office Building, Room 226.

Panel I: McGregor W. Scott, U.S. Attorney, Eastern District of California, Sacramento, CA; and John E. Lewis, Deputy Assistant Director, Counterterrorism Division, Federal Bureau of Investigation, Department of Justice, Washington, DC.

Panel II: William Green, Senior Vice President and General Counsel, Chiron Corporation, Emeryville, CA; Jonathan Blum, Senior Vice President, Government Affairs, Yum! Brands Inc., Louisville, KY; and Dr. Stuart Zola, Director, Yerkes Primate Center, Emory University, Atlanta, GA.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL COMMITTEE ON AGING

Mr. LOTT. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet Tuesday, May 18, 2004, from 10 a.m.–12 p.m., in Dirksen 628 for the purpose of conducting a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AVIATION

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, Subcommittee on Aviation be authorized to meet on Tuesday, May 18, 2004, at 9:30 a.m., on FAA Oversight.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. WARNER. Mr. President, I ask unanimous consent that Mr. Rick Stroyan, a military fellow, and Mr. Shay Webster, both of Senator CORNYN's office, be granted floor privileges.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I ask unanimous consent, on behalf of Senator BINGAMAN, that Jonathan Epstein, a fellow in his office, be afforded floor privileges during consideration of this DOD authorization.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I ask unanimous consent that Kate Kaufer, a detailee with the Defense Appropriations Subcommittee, be granted floor privileges during consideration of the fiscal year 2005 Defense Authorization and Defense Appropriations bills.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I ask unanimous consent that a legislative fellow, Marie Lage, from Senator SNOWE's office be granted floor privileges for the remainder of the debate on S. 2400, the fiscal year 2005 Department of Defense Authorization bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I ask unanimous consent that John Ulrich, a military fellow with Senator DOLE, be given floor privileges for the duration of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. I ask unanimous consent our Air Force fellow, Mr. Lee Erickson, be given floor privileges during consideration of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT

On Tuesday, May 11, 2004, the Senate passed S. 1637, as follows:

S. 1637

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Jumpstart Our Business Strength (JOBS) Act''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME

Sec. 101. Repeal of exclusion for extraterritorial income.
Sec. 102. Deduction relating to income attributable to United States production activities.
Sec. 103. Deduction for United States production activities includes income related to certain architectural and engineering services.

TITLE II—INTERNATIONAL TAX PROVISIONS

Subtitle A—International Tax Reform

Sec. 201. 20-year foreign tax credit carryover; 1-year foreign tax credit carryback.
Sec. 202. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.
Sec. 203. Foreign tax credit under alternative minimum tax.
Sec. 204. Recharacterization of overall domestic loss.
Sec. 205. Interest expense allocation rules.
Sec. 206. Determination of foreign personal holding company income with respect to transactions in commodities.

Subtitle B—International Tax Simplification

Sec. 211. Repeal of foreign personal holding company rules and foreign investment company rules.
Sec. 212. Expansion of de minimis rule under subpart F.
Sec. 213. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.
Sec. 214. Application of uniform capitalization rules to foreign persons.
Sec. 215. Repeal of withholding tax on dividends from certain foreign corporations.
Sec. 216. Repeal of special capital gains tax on aliens present in the United States for 183 days or more.

Subtitle C—Additional International Tax Provisions

Sec. 221. Active leasing income from aircraft and vessels.
Sec. 222. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.
Sec. 223. Look-thru treatment for sales of partnership interests.
Sec. 224. Election not to use average exchange rate for foreign tax paid other than in functional currency.
Sec. 225. Treatment of income tax base differences.
Sec. 226. Modification of exceptions under subpart F for active financing.
Sec. 227. United States property not to include certain assets of controlled foreign corporation.
Sec. 228. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.
Sec. 229. Clarification of treatment of certain transfers of intangible property.
Sec. 230. Modification of the treatment of certain REIT distributions attributable to gain from sales or exchanges of United States real property interests.
Sec. 231. Toll tax on excess qualified foreign distribution amount.
Sec. 232. Exclusion of income derived from certain wagers on horse races and dog races from gross income of nonresident alien individuals.
Sec. 233. Limitation of withholding tax for Puerto Rico corporations.
Sec. 234. Report on WTO dispute settlement panels and the appellate body.
Sec. 235. Study of impact of international tax laws on taxpayers other than large corporations.
Sec. 236. Delay in effective date of final regulations governing exclusion of income from international operation of ships or aircraft.
Sec. 237. Interest payments deductible where disqualified guarantee has no economic effect.

TITLE III—DOMESTIC MANUFACTURING AND BUSINESS PROVISIONS

Subtitle A—General Provisions

Sec. 301. Expansion of qualified small-issue bond program.
Sec. 302. Expensing of broadband Internet access expenditures.
Sec. 303. Exemption of natural aging process in determination of production period for distilled spirits under section 263A.
Sec. 304. Modification of active business definition under section 355.
Sec. 305. Modified taxation of imported archery products.
Sec. 306. Modification to cooperative marketing rules to include value added processing involving animals.
Sec. 307. Extension of declaratory judgment procedures to farmers' cooperative organizations.
Sec. 308. Temporary suspension of personal holding company tax.
Sec. 309. Increase in section 179 expensing.
Sec. 310. Five-year carryback of net operating losses.
Sec. 311. Extension and modification of research credit.
Sec. 312. Expansion of research credit.
Sec. 313. Manufacturer's jobs credit.
Sec. 314. Brownfields Demonstration Program for qualified green building and sustainable design projects.

Subtitle B—Manufacturing Relating to Films

Sec. 321. Special rules for certain film and television productions.
Sec. 322. Modification of application of income forecast method of depreciation.

Subtitle C—Manufacturing Relating to Timber

Sec. 331. Expensing of certain reforestation expenditures.
Sec. 332. Election to treat cutting of timber as a sale or exchange.
Sec. 333. Capital gain treatment under section 631(b) to apply to outright sales by landowners.
Sec. 334. Modification of safe harbor rules for timber REITS.

TITLE IV—ADDITIONAL PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

Sec. 401. Clarification of economic substance doctrine.
Sec. 402. Penalty for failing to disclose reportable transaction.
Sec. 403. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
Sec. 404. Penalty for understatements attributable to transactions lacking economic substance, etc.
Sec. 405. Modifications of substantial understatement penalty for nonreportable transactions.
Sec. 406. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
Sec. 407. Disclosure of reportable transactions.
Sec. 408. Modifications to penalty for failure to register tax shelters.
Sec. 409. Modification of penalty for failure to maintain lists of investors.
Sec. 410. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
Sec. 411. Understatement of taxpayer's liability by income tax return preparer.
Sec. 412. Penalty on failure to report interests in foreign financial accounts.
Sec. 413. Frivolous tax submissions.
Sec. 414. Regulation of individuals practicing before the Department of Treasury.
Sec. 415. Penalty for promoting abusive tax shelters.
Sec. 416. Statute of limitations for taxable years for which required listed transactions not reported.
Sec. 417. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.
Sec. 418. Authorization of appropriations for tax law enforcement.
Sec. 419. Penalty for aiding and abetting the understatement of tax liability.
Sec. 420. Study on information sharing among law enforcement agencies.

Subtitle B—Other Corporate Governance Provisions

Sec. 421. Affirmation of consolidated return regulation authority.
Sec. 422. Declaration by chief executive officer relating to Federal annual income tax return of a corporation.
Sec. 423. Denial of deduction for certain fines, penalties, and other amounts.
Sec. 424. Disallowance of deduction for punitive damages.
Sec. 425. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.

Subtitle C—Enron-Related Tax Shelter Provisions

Sec. 431. Limitation on transfer or importation of built-in losses.
Sec. 432. No reduction of basis under section 734 in stock held by partnership in corporate partner.
Sec. 433. Repeal of special rules for FASITs.
Sec. 434. Expanded disallowance of deduction for interest on convertible debt.
Sec. 435. Expanded authority to disallow tax benefits under section 269.

Sec. 436. Modification of interaction between subpart F and passive foreign investment company rules.

Subtitle D—Provisions To Discourage Expatriation

Sec. 441. Tax treatment of inverted corporate entities.
Sec. 442. Imposition of mark-to-market tax on individuals who expatriate.
Sec. 443. Excise tax on stock compensation of insiders of inverted corporations.
Sec. 444. Reinsurance of United States risks in foreign jurisdictions.
Sec. 445. Reporting of taxable mergers and acquisitions.

Subtitle E—International Tax

Sec. 451. Clarification of banking business for purposes of determining investment of earnings in United States property.
Sec. 452. Prohibition on nonrecognition of gain through complete liquidation of holding company.
Sec. 453. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
Sec. 454. Effectively connected income to include certain foreign source income.
Sec. 455. Recapture of overall foreign losses on sale of controlled foreign corporation.
Sec. 456. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.

Subtitle F—Other Revenue Provisions

PART I—FINANCIAL INSTRUMENTS

Sec. 461. Treatment of stripped interests in bond and preferred stock funds, etc.
Sec. 462. Application of earnings stripping rules to partners which are C corporations.
Sec. 463. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest.
Sec. 464. Modification of straddle rules.
Sec. 465. Denial of installment sale treatment for all readily tradeable debt.

PART II—CORPORATIONS AND PARTNERSHIPS

Sec. 466. Modification of treatment of transfers to creditors in divisive reorganizations.
Sec. 467. Clarification of definition of nonqualified preferred stock.
Sec. 468. Modification of definition of controlled group of corporations.
Sec. 469. Mandatory basis adjustments in connection with partnership distributions and transfers of partnership interests.

PART III—DEPRECIATION AND AMORTIZATION

Sec. 471. Extension of amortization of intangibles to sports franchises.
Sec. 472. Class lives for utility grading costs.
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SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Section 114 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) Subpart E of part III of subchapter N of chapter 1 (relating to qualifying foreign trade income) is hereby repealed.

(B) The table of subparts for such part III is amended by striking the item relating to subpart E.

(2) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 114.

(3) The second sentence of section 56(g)(4)(B)(i) is amended by striking ''114 or''.

(4) Section 275(a) is amended—

(A) by inserting ''or'' at the end of paragraph (4)(A), by striking ''or'' at the end of paragraph (4)(B) and inserting a period, and by striking subparagraph (C), and

(B) by striking the last sentence.

(5) Paragraph (3) of section 864(e) is amended—

(A) by striking:

''(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—

''(A) IN GENERAL.—For purposes of''; and inserting:

''(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—For purposes of'', and

(B) by striking subparagraph (B).

(6) Section 903 is amended by striking ''114, 164(a),'' and inserting ''164(a)''.

(7) Section 999(c)(1) is amended by striking ''941(a)(5),''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act.

(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any transaction in the ordinary course of a trade or business which occurs pursuant to a binding contract—

(A) which is between the taxpayer and a person who is not a related person (as defined in section 943(b)(3) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act), and

(B) which is in effect on September 17, 2003, and at all times thereafter.

(d) REVOCATION OF SECTION 943(e) ELECTIONS.—

(1) IN GENERAL.—In the case of a corporation that elected to be treated as a domestic corporation under section 943(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act)—

(A) the corporation may, during the 1-year period beginning on the date of the enactment of this Act, revoke such election, effective as of such date of enactment, and

(B) if the corporation does revoke such election—

(i) such corporation shall be treated as a domestic corporation transferring (as of such date of enactment) all of its property to a foreign corporation in connection with an exchange described in section 354 of such Code, and

(ii) no gain or loss shall be recognized on such transfer.

(2) EXCEPTION.—Subparagraph (B)(ii) of paragraph (1) shall not apply to gain on any asset held by the revoking corporation if—

(A) the basis of such asset is determined in whole or in part by reference to the basis of such asset in the hands of the person from whom the revoking corporation acquired such asset,

(B) the asset was acquired by transfer (not as a result of the election under section 943(e) of such Code) occurring on or after the 1st day on which its election under section 943(e) of such Code was effective, and

(C) a principal purpose of the acquisition was the reduction or avoidance of tax (other than a reduction in tax under section 114 of such Code, as in effect on the day before the date of the enactment of this Act).

(e) GENERAL TRANSITION.—

(1) IN GENERAL.—In the case of a taxable year ending after the date of the enactment of this Act and beginning before January 1, 2007, for purposes of chapter 1 of such Code, a current FSC/ETI beneficiary shall be allowed a deduction equal to the transition amount determined under this subsection with respect to such beneficiary for such year.

(2) CURRENT FSC/ETI BENEFICIARY.—The term ''current FSC/ETI beneficiary'' means any corporation which entered into one or more transactions during its taxable year beginning in calendar year 2002 with respect to which FSC/ETI benefits were allowable.

(3) TRANSITION AMOUNT.—For purposes of this subsection—

(A) IN GENERAL.—The transition amount applicable to any current FSC/ETI beneficiary for any taxable year is the phaseout percentage of the base period amount.

(B) PHASEOUT PERCENTAGE.—

(i) IN GENERAL.—In the case of a taxpayer using the calendar year as its taxable year, the phaseout percentage shall be determined under the following table:

Years:	The phaseout percentage is:
2005	80
2006	60.

(ii) SPECIAL RULE FOR 2004.—The phaseout percentage for 2004 shall be the amount that bears the same ratio to 80 percent as the number of days after the date of the enactment of this Act bears to 366.

(iii) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxpayer not using the calendar year as its taxable year, the phaseout percentage is the weighted average of the phaseout percentages determined under the preceding provisions of this paragraph with respect to calendar years any portion of which is included in the taxpayer's taxable year. The weighted average shall be determined on the basis of the respective portions of the taxable year in each calendar year.

(C) SHORT TAXABLE YEAR.—The Secretary shall prescribe guidance for the computation of the transition amount in the case of a short taxable year.

(4) BASE PERIOD AMOUNT.—For purposes of this subsection, the base period amount is the average FSC/ETI benefit for the taxpayer's taxable years beginning in calendar years 2000, 2001, and 2002.

(5) FSC/ETI BENEFIT.—For purposes of this subsection, the term ''FSC/ETI benefit'' means—

(A) amounts excludable from gross income under section 114 of such Code, and

(B) the exempt foreign trade income of related foreign sales corporations from property acquired from the taxpayer (determined without regard to section 923(a)(5) of such Code (relating to special rule for military property), as in effect on the day before the date of the enactment of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000).

In determining the FSC/ETI benefit there shall be excluded any amount attributable to a transaction with respect to which the taxpayer is the lessor unless the leased property was manufactured or produced in whole or in significant part by the taxpayer.

(6) SPECIAL RULE FOR AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—Determinations under this subsection with respect to an organization described in section 943(g)(1) of such Code, as in effect on the day before the date of the enactment of this Act, shall be made at the cooperative level and the purposes of this subsection shall be carried out in a manner similar to section 199(h)(2) of such Code, as added by this Act. Such determinations shall be in accordance with such requirements and procedures as the Secretary may prescribe.

(7) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 41(f) of such Code shall apply for purposes of this subsection.

(8) COORDINATION WITH BINDING CONTRACT RULE.—The deduction determined under paragraph (1) for any taxable year shall be reduced by the phaseout percentage of any FSC/ETI benefit realized for the taxable year by reason of subsection (c)(2) or section 5(c)(1)(B) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, except that for purposes of this paragraph the phaseout percentage for 2004 shall be treated as being equal to 100 percent.

(9) SPECIAL RULE FOR TAXABLE YEAR WHICH INCLUDES DATE OF ENACTMENT.—In the case of a taxable year which includes the date of the enactment of this Act, the deduction allowed under this subsection to any current FSC/ETI beneficiary shall in no event exceed—

(A) 100 percent of such beneficiary's base period amount for calendar year 2004, reduced by

(B) the FSC/ETI benefit of such beneficiary with respect to transactions occurring during the portion of the taxable year ending on the date of the enactment of this Act.

SEC. 102. DEDUCTION RELATING TO INCOME ATTRIBUTABLE TO UNITED STATES PRODUCTION ACTIVITIES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end the following new section:

"SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

''(a) ALLOWANCE OF DEDUCTION.—

''(1) IN GENERAL.—There shall be allowed as a deduction an amount equal to 9 percent of the qualified production activities income of the taxpayer for the taxable year.

''(2) PHASEIN.—In the case of taxable years beginning in 2004, 2005, 2006, 2007, or 2008, paragraph (1) shall be applied by substituting for the percentage contained therein the transition percentage determined under the following table:

"Taxable years beginning in:	The transition percentage is:
2004, 2005, or 2006	5
2007	6
2008	7.

''(b) DEDUCTION LIMITED TO WAGES PAID.—

''(1) IN GENERAL.—The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W–2 wages of the employer for the taxable year.

''(2) W–2 WAGES.—For purposes of paragraph (1), the term 'W–2 wages' means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the taxpayer's taxable year.

''(3) SPECIAL RULES.—

''(A) PASS-THRU ENTITIES.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity, the limitation under this subsection shall apply at the entity level. The preceding sentence shall not apply to any entity all of the ownership interests of which are held directly or indirectly by members of the same expanded affiliated group.

''(B) ACQUISITIONS AND DISPOSITIONS.—The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

''(c) QUALIFIED PRODUCTION ACTIVITIES INCOME.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified production activities income' means an amount equal to the portion of the modified taxable income of the taxpayer which is attributable to domestic production activities.

''(2) REDUCTION FOR TAXABLE YEARS BEGINNING BEFORE 2013.—The amount otherwise determined under paragraph (1) (the 'unreduced amount') shall not exceed—

''(A) in the case of taxable years beginning before 2010, the product of the unreduced amount and the domestic/worldwide fraction, and

''(B) in the case of taxable years beginning in 2010, 2011, or 2012, an amount equal to the sum of—

''(i) the product of the unreduced amount and the domestic/worldwide fraction, plus

''(ii) the applicable percentage of an amount equal to the unreduced amount minus the amount determined under clause (i).

For purposes of subparagraph (B)(ii), the applicable percentage is 25 percent for 2010, 50 percent for 2011, and 75 percent for 2012.

''(d) DETERMINATION OF INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes of this section—

''(1) IN GENERAL.—The portion of the modified taxable income which is attributable to domestic production activities is so much of the modified taxable income for the taxable year as does not exceed—

''(A) the taxpayer's domestic production gross receipts for such taxable year, reduced by

''(B) the sum of—

''(i) the costs of goods sold that are allocable to such receipts,

''(ii) other deductions, expenses, or losses directly allocable to such receipts, and

''(iii) a proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.

''(2) ALLOCATION METHOD.—The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.

''(3) SPECIAL RULES FOR DETERMINING COSTS.—

''(A) IN GENERAL.—For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its fair market value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

''(B) EXPORTS FOR FURTHER MANUFACTURE.—In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

''(4) MODIFIED TAXABLE INCOME.—The term 'modified taxable income' means taxable income computed without regard to the deduction allowable under this section.

''(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—For purposes of this section—

''(1) IN GENERAL.—The term 'domestic production gross receipts' means the gross receipts of the taxpayer which are derived from—

''(A) any sale, exchange, or other disposition of, or

''(B) any lease, rental, or license of,

qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

''(2) SPECIAL RULES FOR CERTAIN PROPERTY.—In the case of any qualifying production property described in subsection (f)(1)(C)—

''(A) such property shall be treated for purposes of paragraph (1) as produced in significant part by the taxpayer within the United States if more than 50 percent of the aggregate development and production costs are incurred by the taxpayer within the United States, and

''(B) if a taxpayer acquires such property before such property begins to generate substantial gross receipts, any development or production costs incurred before the acquisition shall be treated as incurred by the taxpayer for purposes of subparagraph (A) and paragraph (1).

''(3) GROSS RECEIPTS FROM USE OF FILMS AND VIDEO TAPE.—In the case of any qualifying production property which is property described in section 168(f)(3) produced in whole or in significant part by the taxpayer within the United States (determined after application of paragraph (2)), domestic production gross receipts shall include gross receipts derived by the taxpayer from the use of the property by the taxpayer.

''(f) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

''(1) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'qualifying production property' means—

''(A) any tangible personal property,

''(B) any computer software, and

''(C) any property described in section 168(f) (3) or (4), including any underlying copyright or trademark.

''(2) EXCLUSIONS FROM QUALIFYING PRODUCTION PROPERTY.—The term 'qualifying production property' shall not include—

''(A) consumable property that is sold, leased, or licensed by the taxpayer as an integral part of the provision of services,

''(B) oil or gas,

''(C) electricity,

''(D) water supplied by pipeline to the consumer,

''(E) utility services, or

''(F) any film, tape, recording, book, magazine, newspaper, or similar property the market for which is primarily topical or otherwise essentially transitory in nature.

Subparagraph (F) shall not apply to property described in section 168(f)(3) to the extent of the gross receipts from the use of the property to which subsection (e)(3) applies (determined after application of this sentence).

''(g) DOMESTIC/WORLDWIDE FRACTION.—For purposes of this section—

''(1) IN GENERAL.—The term 'domestic/worldwide fraction' means a fraction (not greater than 1)—

''(A) the numerator of which is the value of the domestic production of the taxpayer, and

''(B) the denominator of which is the value of the worldwide production of the taxpayer.

''(2) VALUE OF DOMESTIC PRODUCTION.—The value of domestic production is the excess (if any) of—

''(A) the domestic production gross receipts, over

''(B) the cost of purchased inputs allocable to such receipts that are deductible under this chapter for the taxable year.

''(3) PURCHASED INPUTS.—

''(A) IN GENERAL.—Purchased inputs are any of the following items acquired by purchase:

''(i) Services (other than services of employees) used in manufacture, production, growth, or extraction activities.

''(ii) Items consumed in connection with such activities.

''(iii) Items incorporated as part of the property being manufactured, produced, grown, or extracted.

''(B) SPECIAL RULE.—Rules similar to the rules of subsection (d)(3) shall apply for purposes of this subsection.

''(4) VALUE OF WORLDWIDE PRODUCTION.—

''(A) IN GENERAL.—The value of worldwide production shall be determined under the principles of paragraph (2), except that—

''(i) worldwide production gross receipts shall be taken into account, and

''(ii) paragraph (3)(B) shall not apply.

''(B) WORLDWIDE PRODUCTION GROSS RECEIPTS.—The worldwide production gross receipts is the amount that would be determined under subsection (e) if such subsection were applied without any reference to the United States.

''(h) DEFINITIONS AND SPECIAL RULES.—

''(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity—

''(A) subject to the provisions of paragraph (2) and subsection (b)(3)(A), this section shall be applied at the shareholder, partner, or similar level, and

''(B) the Secretary shall prescribe rules for the application of this section, including rules relating to—

''(i) restrictions on the allocation of the deduction to taxpayers at the partner or similar level, and

''(ii) additional reporting requirements.

''(2) PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—

''(A) IN GENERAL.—If any amount described in paragraph (1) or (3) of section 1385 (a)—

''(i) is received by a person from an organization to which part I of subchapter T applies which is engaged—

''(I) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or

''(II) in the marketing of agricultural or horticultural products, and

''(ii) is allocable to the portion of the qualified production activities income of the organization which, but for this paragraph, would be deductible under subsection (a) by the organization and is designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

then such person shall be allowed a deduction under subsection (a) with respect to such amount. The taxable income of the organization shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

''(B) SPECIAL RULES.—For purposes of applying subparagraph (A), in determining the qualified production activities income of the organization under this section—

''(i) there shall not be taken into account in computing the organization's modified taxable income any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions), and

''(ii) in the case of an organization described in subparagraph (A)(i)(II), the organization shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

''(3) SPECIAL RULE FOR AFFILIATED GROUPS.—

''(A) IN GENERAL.—All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

''(B) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a), determined—

''(i) by substituting '50 percent' for '80 percent' each place it appears, and

''(ii) without regard to paragraphs (2) and (4) of section 1504(b).

For purposes of determining the domestic/worldwide fraction under subsection (g), clause (ii) shall be applied by also disregarding paragraphs (3) and (8) of section 1504(b).

''(4) COORDINATION WITH MINIMUM TAX.—The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, alternative minimum taxable income shall be taken into account in determining the deduction under this section.

''(5) ORDERING RULE.—The amount of any other deduction allowable under this chapter shall be determined as if this section had not been enacted.

''(6) TRADE OR BUSINESS REQUIREMENT.—This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

''(7) POSSESSIONS, ETC.—

''(A) IN GENERAL.—For purposes of subsections (d) and (e), the term 'United States' includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

''(B) SPECIAL RULES FOR APPLYING WAGE LIMITATION.—For purposes of applying the limitation under subsection (b) for any taxable year—

''(i) the determination of W–2 wages of a taxpayer shall be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in a jurisdiction described in subparagraph (A), and

''(ii) in determining the amount of any credit allowable under section 30A or 936 for the taxable year, there shall not be taken into account any wages which are taken into account in applying such limitation.

''(8) COORDINATION WITH TRANSITION RULES.—For purposes of this section—

''(A) domestic production gross receipts shall not include gross receipts from any transaction if the binding contract transition relief of section 101(c)(2) of the Jumpstart Our Business Strength (JOBS) Act applies to such transaction, and

''(B) any deduction allowed under section 101(e) of such Act shall be disregarded in determining the portion of the taxable income which is attributable to domestic production gross receipts.

''(9) SEPARATE APPLICATION TO FILMS AND VIDEOTAPE.—

''(A) IN GENERAL.—In the case of qualifying production property described in section 168(f)(3), the deduction under this section shall be determined separately with respect to qualified production activities income of the taxpayer allocable to each of the following markets with respect to such property:

''(i) Theatrical.

''(ii) Broadcast television (including cable, foreign, pay-per-view, and syndication).

''(iii) Home video.

''(B) RULES FOR SEPARATE DETERMINATION.—Except as provided in subparagraph (C)—

''(i) any computation required to determine the amount of the deduction with respect to any of the markets described in subparagraph (A) shall be made by only taking into account items properly allocable to such market, including the computation of qualified production activities income, modified taxable income, and the domestic/worldwide fraction, and

''(ii) such items shall not be taken into account in determining the deduction with respect to either of the other 2 markets or with respect to qualified production activities income of the taxpayer not allocable to any of such markets.

''(C) WAGE LIMITATION.—This paragraph shall not apply for purposes of subsection (b) and subsection (b) shall be applied after the application of this paragraph.''

(b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to disallowance of items not deductible in computing earnings and profits) is amended by adding at the end the following new clause:

''(v) DEDUCTION FOR DOMESTIC PRODUCTION.—Clause (i) shall not apply to any amount allowable as a deduction under section 199.''.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 199. Income attributable to domestic production activities.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) APPLICATION OF SECTION 15.—Section 15 of the Internal Revenue Code of 1986 shall apply to the amendments made by this section as if they were changes in a rate of tax.

SEC. 103. DEDUCTION FOR UNITED STATES PRODUCTION ACTIVITIES INCLUDES INCOME RELATED TO CERTAIN ARCHITECTURAL AND ENGINEERING SERVICES.

(a) IN GENERAL.—Paragraph (1) of section 199(e) (relating to domestic production gross receipts), as added by section 102, is amended to read as follows:

''(1) IN GENERAL.—

''(A) RECEIPTS FROM QUALIFYING PRODUCTION PROPERTY.—The term 'domestic production gross receipts' means the gross receipts of the taxpayer which are derived from—

''(i) any sale, exchange, or other disposition of, or

''(ii) any lease, rental, or license of,

qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

''(B) RECEIPTS FROM CERTAIN SERVICES.—

''(i) IN GENERAL.—Such term also includes the applicable percentage of gross receipts of the taxpayer which are derived from any engineering or architectural services performed in the United States for construction projects in the United States.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined under the following table:

''In the case of any taxable year beginning in—	**The applicable percentage is—**
2004, 2005, 2006, 2007, or 2008	25
2009, 2010, 2011, or 2012	50
2013 or thereafter	100.

(b) LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES WITH RESPECT TO COVERED EMPLOYEES.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

''(2) EXPENSES TREATED AS COMPENSATION.—Expenses for goods, services, and facilities—

''(A) in the case of a covered employee (within the meaning of section 162(m)(3)), to the extent that the expenses do not exceed the amount of the expenses treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to such covered employee on the taxpayer's return of tax under this chapter and as wages to such covered employee for purposes of chapter 24 (relating to withholding of income tax at source on wages), and

''(B) in the case of any other employee, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to such employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act, and section 15 of the Internal Revenue Code of 1986 shall apply to the amendment made by this subsection as if it were a change in the rate of tax.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to expenses incurred after the date of the enactment of this Act and before January 1, 2006.

TITLE II—INTERNATIONAL TAX PROVISIONS

Subtitle A—International Tax Reform

SEC. 201. 20-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-YEAR FOREIGN TAX CREDIT CARRYBACK.

(a) GENERAL RULE.—Section 904(c) (relating to carryback and carryover of excess tax paid) is amended—

(1) by striking ''in the second preceding taxable year,'', and

(2) by striking '', and in the first, second, third, fourth, or fifth'' and inserting ''and in any of the first 20''.

(b) EXCESS EXTRACTION TAXES.—Paragraph (1) of section 907(f) is amended—

(1) by striking ''in the second preceding taxable year,'',

(2) by striking '', and in the first, second, third, fourth, or fifth'' and inserting ''and in any of the first 20'', and

(3) by striking the last sentence.

(c) EFFECTIVE DATE.—

(1) CARRYBACK.—The amendments made by subsections (a)(1) and (b)(1) shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act.

(2) CARRYOVER.—The amendments made by subsections (a)(2) and (b)(2) shall apply to excess foreign taxes which (without regard to the amendments made by this section) may be carried to any taxable year ending after the date of the enactment of this Act.

SEC. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.

(a) IN GENERAL.—Section 904(d)(4) (relating to look-thru rules apply to dividends from noncontrolled section 902 corporations) is amended to read as follows:

''(4) LOOK-THRU APPLIES TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.—

''(A) IN GENERAL.—For purposes of this subsection, any dividend from a noncontrolled section 902 corporation with respect to the taxpayer shall be treated as income described in a subparagraph of paragraph (1) in proportion to the ratio of—

''(i) the portion of earnings and profits attributable to income described in such subparagraph, to

''(ii) the total amount of earnings and profits.

''(B) EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS.—In the case of any distribution from a controlled foreign corporation to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income in a separate category.

''(C) SPECIAL RULES.—For purposes of this paragraph—

''(i) EARNINGS AND PROFITS.—

''(I) IN GENERAL.—The rules of section 316 shall apply.

''(II) REGULATIONS.—The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer's acquisition of the stock to which the distributions relate.

''(ii) INADEQUATE SUBSTANTIATION.—If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

''(iii) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

''(iv) LOOK-THRU WITH RESPECT TO CARRYOVER OF CREDIT.—Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation to such a taxable year for purposes of allocating such dividend among the separate categories in effect for such taxable year.''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 904(d)(1) is hereby repealed.

(2) Section 904(d)(2)(C)(iii) is amended by adding ''and'' at the end of subclause (I), by striking subclause (II), and by redesignating subclause (III) as subclause (II).

(3) The last sentence of section 904(d)(2)(D) is amended to read as follows: ''Such term does not include any financial services income.''.

(4) Section 904(d)(2)(E) is amended—

(A) by inserting ''or (4)'' after ''paragraph (3)'' in clause (i), and

(B) by striking clauses (ii) and (iv) and by redesignating clause (iii) as clause (ii).

(5) Section 904(d)(3)(F) is amended by striking ''(D), or (E)'' and inserting ''or (D)''.

(6) Section 864(d)(5)(A)(i) is amended by striking ''(C)(iii)(III)'' and inserting ''(C)(iii)(II)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 203. FOREIGN TAX CREDIT UNDER ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—

(1) Subsection (a) of section 59 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Section 53(d)(1)(B)(i)(II) is amended by striking ''and if section 59(a)(2) did not apply''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 204. RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.

(a) GENERAL RULE.—Section 904 is amended by redesignating subsections (g), (h), (i), (j), and (k) as subsections (h), (i), (j), (k), and (l) respectively, and by inserting after subsection (f) the following new subsection:

''(g) RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.—

''(1) GENERAL RULE.—For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

''(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

''(B) 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year,

shall be treated as income from sources without the United States (and not as income from sources within the United States).

''(2) OVERALL DOMESTIC LOSS DEFINED.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'overall domestic loss' means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term 'domestic loss' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

''(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term 'overall domestic loss' shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.

''(3) CHARACTERIZATION OF SUBSEQUENT INCOME.—

''(A) IN GENERAL.—Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

''(B) INCOME CATEGORY.—For purposes of this paragraph, the term 'income category' has the meaning given such term by subsection (f)(5)(E)(i).

''(4) COORDINATION WITH SUBSECTION (f).—The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 535(d)(2) is amended by striking ''section 904(g)(6)'' and inserting ''section 904(h)(6)''.

(2) Subparagraph (A) of section 936(a)(2) is amended by striking ''section 904(f)'' and inserting ''subsections (f) and (g) of section 904''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to losses for taxable years beginning after December 31, 2006.

SEC. 205. INTEREST EXPENSE ALLOCATION RULES.

(a) ELECTION TO ALLOCATE ON WORLDWIDE BASIS.—Section 864 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) ELECTION TO ALLOCATE INTEREST, ETC. ON WORLDWIDE BASIS.—For purposes of this subchapter, at the election of the worldwide affiliated group—

''(1) ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE.—

''(A) IN GENERAL.—The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

''(B) TREATMENT OF WORLDWIDE AFFILIATED GROUP.—The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic members to such income in an amount equal to the excess (if any) of—

''(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

''(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

''(C) WORLDWIDE AFFILIATED GROUP.—For purposes of this paragraph, the term 'worldwide affiliated group' means a group consisting of—

''(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

''(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

''(2) ALLOCATION AND APPORTIONMENT OF OTHER EXPENSES.—Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes of the preceding sentence, the term 'affiliated group' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

''(3) TREATMENT OF TAX-EXEMPT ASSETS; BASIS OF STOCK IN NONAFFILIATED 10-PERCENT OWNED CORPORATIONS.—The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

''(4) TREATMENT OF CERTAIN FINANCIAL INSTITUTIONS.—

''(A) IN GENERAL.—For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

''(B) DESCRIPTION.—A corporation is described in this subparagraph if—

''(i) such corporation is a financial institution described in section 581 or 591,

''(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

''(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

''(C) TREATMENT OF BANK AND FINANCIAL HOLDING COMPANIES.—To the extent provided in regulations—

''(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

''(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

''(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (B).

''(5) ELECTION TO EXPAND FINANCIAL INSTITUTION GROUP OF WORLDWIDE GROUP.—

''(A) IN GENERAL.—If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

''(i) are members of such worldwide affiliated group, but

''(ii) are not corporations described in paragraph (4)(B),

shall be treated as described in paragraph (4)(B) for purposes of applying paragraph (4)(A). This subsection (other than this paragraph) shall apply to any such group in the same manner as this subsection (other than this paragraph) applies to the pre-election worldwide affiliated group of which such group is a part.

''(B) FINANCIAL CORPORATION.—For purposes of this paragraph, the term 'financial corporation' means any corporation if at least 80 percent of its gross income is income described in section 904(d)(2)(C)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

''(C) ANTIABUSE RULES.—In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

''(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-election worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

''(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

''(II) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

''(ii) deals with any person in any manner not clearly reflecting the income of the corporation (as determined under principles similar to the principles of section 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

''(D) ELECTION.—An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2008, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

''(E) DEFINITIONS RELATING TO GROUPS.—For purposes of this paragraph—

''(i) PRE-ELECTION WORLDWIDE AFFILIATED GROUP.—The term 'pre-election worldwide affiliated group' means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

''(ii) ELECTING FINANCIAL INSTITUTION GROUP.—The term 'electing financial institution group' means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

''(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

''(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

''(ii) preventing assets or interest expense from being taken into account more than once, and

''(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group for purposes of this subsection.

''(6) ELECTION.—An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.''.

(b) EXPANSION OF REGULATORY AUTHORITY.—Paragraph (7) of section 864(e) is amended—

(1) by inserting before the comma at the end of subparagraph (B) ''and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection'', and

(2) by striking ''and'' at the end of subparagraph (E), by redesignating subparagraph (F) as subparagraph (G), and by inserting after subparagraph (E) the following new subparagraph:

''(F) preventing assets or interest expense from being taken into account more than once, and''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 206. DETERMINATION OF FOREIGN PERSONAL HOLDING COMPANY INCOME WITH RESPECT TO TRANSACTIONS IN COMMODITIES.

(a) IN GENERAL.—Clauses (i) and (ii) of section 954(c)(1)(C) (relating to commodity transactions) are amended to read as follows:

''(i) arise out of commodity hedging transactions (as defined in paragraph (4)(A)),

''(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or''.

(b) DEFINITION AND SPECIAL RULES.—Subsection (c) of section 954 is amended by adding after paragraph (3) the following new paragraph:

''(4) DEFINITION AND SPECIAL RULES RELATING TO COMMODITY TRANSACTIONS.—

''(A) COMMODITY HEDGING TRANSACTIONS.—For purposes of paragraph (1)(C)(i), the term 'commodity hedging transaction' means any transaction with respect to a commodity if such transaction—

''(i) is a hedging transaction as defined in section 1221(b)(2), determined—

''(I) without regard to subparagraph (A)(ii) thereof,

''(II) by applying subparagraph (A)(i) thereof by substituting 'ordinary property or property described in section 1231(b)' for 'ordinary property', and

''(III) by substituting 'controlled foreign corporation' for 'taxpayer' each place it appears, and

''(ii) is clearly identified as such in accordance with section 1221(a)(7).

''(B) TREATMENT OF DEALER ACTIVITIES UNDER PARAGRAPH (1)(C).—Commodities with respect to which gains and losses are not

taken into account under paragraph (2)(C) in computing a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

''(C) REGULATIONS.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.''.

(c) MODIFICATION OF EXCEPTION FOR DEALERS.—Clause (i) of section 954(c)(2)(C) is amended by inserting ''and transactions involving physical settlement'' after ''(including hedging transactions''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after December 31, 2004.

Subtitle B—International Tax Simplification

SEC. 211. REPEAL OF FOREIGN PERSONAL HOLDING COMPANY RULES AND FOREIGN INVESTMENT COMPANY RULES.

(a) GENERAL RULE.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding companies).

(2) Section 1246 (relating to gain on foreign investment company stock).

(3) Section 1247 (relating to election by foreign investment companies to distribute income currently).

(b) EXEMPTION OF FOREIGN CORPORATIONS FROM PERSONAL HOLDING COMPANY RULES.—

(1) IN GENERAL.—Subsection (c) of section 542 (relating to exceptions) is amended—

(A) by striking paragraph (5) and inserting the following:

''(5) a foreign corporation,'',

(B) by striking paragraphs (7) and (10) and by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively,

(C) by inserting ''and'' at the end of paragraph (7) (as so redesignated), and

(D) by striking ''; and'' at the end of paragraph (8) (as so redesignated) and inserting a period.

(2) TREATMENT OF INCOME FROM PERSONAL SERVICE CONTRACTS.—Paragraph (1) of section 954(c) is amended by adding at the end the following new subparagraph:

''(I) PERSONAL SERVICE CONTRACTS.—

''(i) Amounts received under a contract under which the corporation is to furnish personal services if—

''(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

''(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

''(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1(h) is amended—

(A) in paragraph (10), by inserting ''and'' at the end of subparagraph (F), by striking subparagraph (G), and by redesignating subparagraph (H) as subparagraph (G), and

(B) by striking ''a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or'' in paragraph (11)(C)(iii).

(2) Section 163(e)(3)(B), as amended by section 453(a) of this Act, is amended by striking ''which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or'' and inserting ''which is a controlled foreign corporation (as defined in section 957) or''.

(3) Paragraph (2) of section 171(c) is amended—

(A) by striking '', or by a foreign personal holding company, as defined in section 552'', and

(B) by striking '', or foreign personal holding company''.

(4) Paragraph (2) of section 245(a) is amended by striking ''foreign personal holding company or''.

(5) Section 267(a)(3)(B), as amended by section 453(a) of this Act, is amended by striking ''to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or'' and inserting ''to a controlled foreign corporation (as defined in section 957) or''.

(6) Section 312 is amended by striking subsection (j).

(7) Subsection (m) of section 312 is amended by striking '', a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)''.

(8) Subsection (e) of section 443 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(9) Subparagraph (B) of section 465(c)(7) is amended by adding ''or'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(10) Paragraph (1) of section 543(b) is amended by inserting ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(11) Paragraph (1) of section 562(b) is amended by striking ''or a foreign personal holding company described in section 552''.

(12) Section 563 is amended—

(A) by striking subsection (c),

(B) by redesignating subsection (d) as subsection (c), and

(C) by striking ''subsection (a), (b), or (c)'' in subsection (c) (as so redesignated) and inserting ''subsection (a) or (b)''.

(13) Subsection (d) of section 751 is amended by adding ''and'' at the end of paragraph (2), by striking paragraph (3), by redesignating paragraph (4) as paragraph (3), and by striking ''paragraph (1), (2), or (3)'' in paragraph (3) (as so redesignated) and inserting ''paragraph (1) or (2)''.

(14) Paragraph (2) of section 864(d) is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(15)(A) Subparagraph (A) of section 898(b)(1) is amended to read as follows:

''(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and''.

(B) Subparagraph (B) of section 898(b)(2) is amended by striking ''and sections 551(f) and 554, whichever are applicable,''.

(C) Paragraph (3) of section 898(b) is amended to read as follows:

''(3) UNITED STATES SHAREHOLDER.—The term 'United States shareholder' has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).''.

(D) Subsection (c) of section 898 is amended to read as follows:

''(c) DETERMINATION OF REQUIRED YEAR.—

''(1) IN GENERAL.—The required year is—

''(A) the majority U.S. shareholder year, or

''(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

''(2) 1-MONTH DEFERRAL ALLOWED.—A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

''(3) MAJORITY U.S. SHAREHOLDER YEAR.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'majority U.S. shareholder year' means the taxable year (if any) which, on each testing day, constituted the taxable year of—

''(i) each United States shareholder described in subsection (b)(2)(A), and

''(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such clause.

''(B) TESTING DAY.—The testing days shall be—

''(i) the first day of the corporation's taxable year (determined without regard to this section), or

''(ii) the days during such representative period as the Secretary may prescribe.''.

(16) Clause (ii) of section 904(d)(2)(A) is amended to read as follows:

''(ii) CERTAIN AMOUNTS INCLUDED.—Except as provided in clause (iii), the term 'passive income' includes, except as provided in subparagraph (E)(iii) or paragraph (3)(I), any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).''.

(17)(A) Subparagraph (A) of section 904(g)(1), as redesignated by section 204, is amended by adding ''or'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(B) The paragraph heading of paragraph (2) of section 904(g), as so redesignated, is amended by striking ''FOREIGN PERSONAL HOLDING OR''.

(18) Section 951 is amended by striking subsections (c) and (d) and by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

(19) Paragraph (3) of section 989(b) is amended by striking '', 551(a),''.

(20) Paragraph (5) of section 1014(b) is amended by inserting ''and before January 1, 2005,'' after ''August 26, 1937,''.

(21) Subsection (a) of section 1016 is amended by striking paragraph (13).

(22)(A) Paragraph (3) of section 1212(a) is amended to read as follows:

''(3) SPECIAL RULES ON CARRYBACKS.—A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

''(A) for which it is a regulated investment company (as defined in section 851), or

''(B) for which it is a real estate investment trust (as defined in section 856).''.

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 2004.

(23) Section 1223 is amended by striking paragraph (10) and by redesignating the following paragraphs accordingly.

(24) Subsection (d) of section 1248 is amended by striking paragraph (5) and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(25) Paragraph (2) of section 1260(c) is amended by striking subparagraphs (H) and (I) and by redesignating subparagraph (J) as subparagraph (H).

(26)(A) Subparagraph (F) of section 1291(b)(3) is amended by striking ''551(d), 959(a),'' and inserting ''959(a)''.

(B) Subsection (e) of section 1291 is amended by inserting ''(as in effect on the day before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act)'' after ''section 1246''.

(27) Paragraph (2) of section 1294(a) is amended to read as follows:

''(2) ELECTION NOT PERMITTED WHERE AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION 951.—The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.''.

(28) Section 6035 is hereby repealed.

(29) Subparagraph (D) of section 6103(e)(1) is amended by striking clause (iv) and redesignating clauses (v) and (vi) as clauses (iv) and (v), respectively.

(30) Subparagraph (B) of section 6501(e)(1) is amended to read as follows:

''(B) CONSTRUCTIVE DIVIDENDS.—If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.''.

(31) Subsection (a) of section 6679 is amended—

(A) by striking ''6035, 6046, and 6046A'' in paragraph (1) and inserting ''6046 and 6046A'', and

(B) by striking paragraph (3).

(32) Sections 170(f)(10)(A), 508(d), 4947, and 4948(c)(4) are each amended by striking ''556(b)(2),'' each place it appears.

(33) The table of parts for subchapter G of chapter 1 is amended by striking the item relating to part III.

(34) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the items relating to sections 1246 and 1247.

(35) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6035.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(2) SUBSECTION (c)(29).—The amendments made by subsection (c)(29) shall apply to disclosures of return or return information with respect to taxable years beginning after December 31, 2004.

SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUBPART F.

(a) IN GENERAL.—Clause (ii) of section 954(b)(3)(A) (relating to de minimis, etc., rules) is amended by striking ''$1,000,000'' and inserting ''$5,000,000''.

(b) TECHNICAL AMENDMENTS.—

(1) Clause (ii) of section 864(d)(5)(A) is amended by striking ''$1,000,000'' and inserting ''$5,000,000''.

(2) Clause (i) of section 881(c)(5)(A) is amended by striking ''$1,000,000'' and inserting ''$5,000,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 213. ATTRIBUTION OF STOCK OWNERSHIP THROUGH PARTNERSHIPS TO APPLY IN DETERMINING SECTION 902 AND 960 CREDITS.

(a) IN GENERAL.—Subsection (c) of section 902 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) CONSTRUCTIVE OWNERSHIP THROUGH PARTNERSHIPS.—Stock owned, directly or indirectly, by or for a partnership shall be considered as being owned proportionately by its partners. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person. The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including rules to account for special partnership allocations of dividends, credits, and other incidents of ownership of stock in determining proportionate ownership.''.

(b) CLARIFICATION OF COMPARABLE ATTRIBUTION UNDER SECTION 901(b)(5).—Paragraph (5) of section 901(b) is amended by striking ''any individual'' and inserting ''any person''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act.

SEC. 214. APPLICATION OF UNIFORM CAPITALIZATION RULES TO FOREIGN PERSONS.

(a) IN GENERAL.—Section 263A(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(7) FOREIGN PERSONS.—Except for purposes of applying sections 871(b)(1) and 882(a)(1), this section shall not apply to any taxpayer who is not a United States person if such taxpayer capitalizes costs of produced property or property acquired for resale by applying the method used to ascertain the income, profit, or loss for purposes of reports or statements to shareholders, partners, other proprietors, or beneficiaries, or for credit purposes.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2004.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by this section to change its method of accounting for its first taxable year beginning after December 31, 2004—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account in such first year.

SEC. 215. REPEAL OF WITHHOLDING TAX ON DIVIDENDS FROM CERTAIN FOREIGN CORPORATIONS.

(a) IN GENERAL.—Paragraph (2) of section 871(i) (relating to tax not to apply to certain interest and dividends) is amended by adding at the end the following new subparagraph:

''(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2004.

SEC. 216. REPEAL OF SPECIAL CAPITAL GAINS TAX ON ALIENS PRESENT IN THE UNITED STATES FOR 183 DAYS OR MORE.

(a) IN GENERAL.—Subsection (a) of section 871 is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(b) CONFORMING AMENDMENT.—Section 1441(g) is amended is amended by striking ''section 871(a)(3)'' and inserting ''section 871(a)(2)''.

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

Subtitle C—Additional International Tax Provisions

SEC. 221. ACTIVE LEASING INCOME FROM AIRCRAFT AND VESSELS.

(a) IN GENERAL.—Section 954(c)(2) is amended by adding at the end the following new subparagraph:

''(D) CERTAIN RENTS, ETC.—

''(i) IN GENERAL.—Foreign personal holding company income shall not include qualified leasing income derived from or in connection with the leasing or rental of any aircraft or vessel.

''(ii) QUALIFIED LEASING INCOME.—For purposes of this subparagraph, the term 'qualified leasing income' means rents and gains derived in the active conduct of a trade or business of leasing with respect to which the controlled foreign corporation conducts substantial activity, but only if—

''(I) the leased property is used by the lessee or other end-user in foreign commerce and predominantly outside the United States, and

''(II) the lessee or other end-user is not a related person (as defined in subsection (d)(3)).

Any amount not treated as foreign personal holding income under this subparagraph shall not be treated as foreign base company shipping income.''.

(b) CONFORMING AMENDMENT.—Section 954(c)(1)(B) is amended by inserting ''or (2)(D)'' after ''paragraph (2)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2005, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 222. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY INCOME RULES.

(a) IN GENERAL.—Subsection (c) of section 954, as amended by this Act, is amended by adding after paragraph (4) the following new paragraph:

''(5) LOOK-THRU IN THE CASE OF RELATED CONTROLLED FOREIGN CORPORATIONS.—For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person (as defined in subsection (b)(9)) shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is not subpart F income (as defined in section 952). For purposes of this paragraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 223. LOOK-THRU TREATMENT FOR SALES OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 954(c) (defining foreign personal holding company income), as amended by this Act, is amended by adding after paragraph (5) the following new paragraph:

''(6) LOOK-THRU RULE FOR CERTAIN PARTNERSHIP SALES.—

''(A) IN GENERAL.—In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which

such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

''(B) 25-PERCENT OWNER.—For purposes of this paragraph, the term '25-percent owner' means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 224. ELECTION NOT TO USE AVERAGE EXCHANGE RATE FOR FOREIGN TAX PAID OTHER THAN IN FUNCTIONAL CURRENCY.

(a) IN GENERAL.—Paragraph (1) of section 986(a) (relating to determination of foreign taxes and foreign corporation's earnings and profits) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

''(D) ELECTIVE EXCEPTION FOR TAXES PAID OTHER THAN IN FUNCTIONAL CURRENCY.—

''(i) IN GENERAL.—At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency.

''(ii) APPLICATION TO QUALIFIED BUSINESS UNITS.—An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

''(iii) ELECTION.—Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 225. TREATMENT OF INCOME TAX BASE DIFFERENCES.

(a) IN GENERAL.—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

''(H) TREATMENT OF INCOME TAX BASE DIFFERENCES.—

''(i) IN GENERAL.—A taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

''(ii) ELECTION IRREVOCABLE.—Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 226. MODIFICATION OF EXCEPTIONS UNDER SUBPART F FOR ACTIVE FINANCING.

(a) IN GENERAL.—Section 954(h)(3) is amended by adding at the end the following:

''(E) DIRECT CONDUCT OF ACTIVITIES.—For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

''(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

''(ii) the activity is performed in the home country of the related person, and

''(iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.

SEC. 227. UNITED STATES PROPERTY NOT TO INCLUDE CERTAIN ASSETS OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 956(c)(2) (relating to exceptions from property treated as United States property) is amended by striking ''and'' at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting a semicolon, and by adding at the end the following new subparagraphs:

''(L) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

''(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

''(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

''(M) an obligation of a United States person which—

''(i) is not a domestic corporation, and

''(ii) is not—

''(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

''(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.''.

(b) CONFORMING AMENDMENT.—Section 956(c)(2) is amended by striking ''and (K)'' in the last sentence and inserting '', (K), and (L)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 228. PROVIDE EQUAL TREATMENT FOR INTEREST PAID BY FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS.

(a) IN GENERAL.—Paragraph (1) of section 861(a) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following new subparagraph:

''(C) in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.''.

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

SEC. 229. CLARIFICATION OF TREATMENT OF CERTAIN TRANSFERS OF INTANGIBLE PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 367(d)(2) is amended by adding at the end the following new sentence: ''For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.

SEC. 230. MODIFICATION OF THE TREATMENT OF CERTAIN REIT DISTRIBUTIONS ATTRIBUTABLE TO GAIN FROM SALES OR EXCHANGES OF UNITED STATES REAL PROPERTY INTERESTS.

(a) IN GENERAL.—Paragraph (1) of section 897(h) (relating to look-through of distributions) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year.''.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 857(b) (relating to capital gains) is amended by adding at the end the following new subparagraph:

''(F) CERTAIN DISTRIBUTIONS.—In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be included in computing long-term capital gains for such shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

''(i) shall not be included in computing such shareholder's long-term capital gains, and

''(ii) shall be included in such shareholder's gross income as a dividend from the real estate investment trust.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 231. TOLL TAX ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.

(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new section:

''SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.

''(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.—If a corporation elects the application of this section, a tax shall be imposed on the taxpayer in an amount equal to 5.25 percent of—

''(1) the taxpayer's excess qualified foreign distribution amount, and

''(2) the amount determined under section 78 which is attributable to such excess qualified foreign distribution amount.

Such tax shall be imposed in lieu of the tax imposed under section 11 or 55 on the amounts described in paragraphs (1) and (2) for the taxable year.

''(b) EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The term 'excess qualified foreign distribution amount' means the excess (if any) of—

''(A) the aggregate dividends received by the taxpayer during the taxable year which are—

''(i) from 1 or more corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder on the date such dividends are paid, and

''(ii) described in a domestic reinvestment plan which—

''(I) is approved by the taxpayer's president, chief executive officer, or comparable official before the payment of such dividends and subsequently approved by the taxpayer's board of directors, management committee, executive committee, or similar body, and

''(II) provides for the reinvestment of such dividends in the United States (other than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation, over

''(B) the base dividend amount.

''(2) BASE DIVIDEND AMOUNT.—The term 'base dividend amount' means an amount designated under subsection (c)(7), but not less than the average amount of dividends received during the fixed base period from 1 or more corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder on the date such dividends are paid.

''(3) FIXED BASE PERIOD.—

''(A) IN GENERAL.—The term 'fixed base period' means each of 3 taxable years which are among the 5 most recent taxable years of the taxpayer ending on or before December 31, 2002, determined by disregarding—

''(i) the 1 taxable year for which the taxpayer had the highest amount of dividends from 1 or more corporations which are controlled foreign corporations relative to the other 4 taxable years, and

''(ii) the 1 taxable year for which the taxpayer had the lowest amount of dividends from such corporations relative to the other 4 taxable years.

''(B) SHORTER PERIOD.—If the taxpayer has fewer than 5 taxable years ending on or before December 31, 2002, then in lieu of applying subparagraph (A), the fixed base period shall include all the taxable years of the taxpayer ending on or before December 31, 2002.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) DIVIDENDS.—The term 'dividend' has the meaning given such term by section 316, except that the term shall include amounts described in section 951(a)(1)(B), but shall not include amounts described in sections 78 and 959.

''(2) CONTROLLED FOREIGN CORPORATIONS AND UNITED STATES SHAREHOLDERS.—The term 'controlled foreign corporation' has the meaning given such term by section 957(a) and the term 'United States shareholder' has the meaning given such term by section 951(b).

''(3) FOREIGN TAX CREDITS.—The amount of any income, war, profits, or excess profit taxes paid (or deemed paid under sections 902 and 960) or accrued by the taxpayer with respect to the excess qualified foreign distribution amount for which a credit would be allowable under section 901 in the absence of this section, shall be reduced by 85 percent. No deduction shall be allowed under this chapter for the portion of any tax for which credit is not allowable by reason of the preceding sentence.

''(4) FOREIGN TAX CREDIT LIMITATION.—For purposes of section 904, there shall be disregarded 85 percent of—

''(A) the excess qualified foreign distribution amount,

''(B) the amount determined under section 78 which is attributable to such excess qualified foreign distribution amount, and

''(C) the amounts (including assets, gross income, and other relevant bases of apportionment) which are attributable to the excess qualified foreign distribution amount which would, determined without regard to this section, be used to apportion the expenses, losses, and deductions of the taxpayer under section 861 and 864 in determining its taxable income from sources without the United States.

For purposes of applying subparagraph (C), the principles of section 864(e)(3)(A) shall apply.

''(5) TREATMENT OF ACQUISITIONS AND DISPOSITIONS.—Rules similar to the rules of section 41(f)(3) shall apply in the case of acquisitions or dispositions of controlled foreign corporations occurring on or after the first day of the earliest taxable year taken into account in determining the fixed base period.

''(6) TREATMENT OF CONSOLIDATED GROUPS.—Members of an affiliated group of corporations filing a consolidated return under section 1501 shall be treated as a single taxpayer for purposes of this section.

''(7) DESIGNATION OF DIVIDENDS.—Subject to subsection (b)(2), the taxpayer shall designate the particular dividends received during the taxable year from 1 or more corporations which are controlled foreign corporations in which it is a United States shareholder which are dividends excluded from the excess qualified foreign distribution amount. The total amount of such designated dividends shall equal the base dividend amount.

''(8) TREATMENT OF EXPENSES, LOSSES, AND DEDUCTIONS.—Any expenses, losses, or deductions of the taxpayer allowable under subchapter B—

''(A) shall not be applied to reduce the amounts described in subsection (a)(1), and

''(B) shall be applied to reduce other income of the taxpayer (determined without regard to the amounts described in subsection (a)(1)).

''(d) ELECTION.—

''(1) IN GENERAL.—An election under this section shall be made on the taxpayer's timely filed income tax return for the first taxable year (determined by taking extensions into account) ending 120 days or more after the date of the enactment of this section, and, once made, may be revoked only with the consent of the Secretary.

''(2) ALL CONTROLLED FOREIGN CORPORATIONS.—The election shall apply to all corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder during the taxable year.

''(3) CONSOLIDATED GROUPS.—If a taxpayer is a member of an affiliated group of corporations filing a consolidated return under section 1501 for the taxable year, an election under this section shall be made by the common parent of the affiliated group which includes the taxpayer and shall apply to all members of the affiliated group.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary and appropriate to carry out the purposes of this section, including regulations under section 55 and regulations addressing corporations which, during the fixed base period or thereafter, join or leave an affiliated group of corporations filing a consolidated return.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

''Sec. 965. Toll tax imposed on excess qualified foreign distribution amount.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply only to the first taxable year of the electing taxpayer ending 120 days or more after the date of the enactment of this Act.

SEC. 232. EXCLUSION OF INCOME DERIVED FROM CERTAIN WAGERS ON HORSE RACES AND DOG RACES FROM GROSS INCOME OF NONRESIDENT ALIEN INDIVIDUALS.

(a) IN GENERAL.—Subsection (b) of section 872 (relating to exclusions) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and inserting after paragraph (4) the following new paragraph:

''(5) INCOME DERIVED FROM WAGERING TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race or dog race in the United States.''.

(b) CONFORMING AMENDMENT.—Section 883(a)(4) is amended by striking ''(5), (6), and (7)'' and inserting ''(6), (7), and (8)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to wagers made after the date of the enactment of this Act.

SEC. 233. LIMITATION OF WITHHOLDING TAX FOR PUERTO RICO CORPORATIONS.

(a) IN GENERAL.—Subsection (b) of section 881 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

''(2) COMMONWEALTH OF PUERTO RICO.—If dividends are received during a taxable year by a corporation—

''(A) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

''(B) with respect to which the requirements of subparagraphs (A), (B), and (C) of paragraph (1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting '10 percent' for '30 percent'.''.

(b) WITHHOLDING.—Subsection (c) of section 1442 (relating to withholding of tax on foreign corporations) is amended—

(1) by striking ''For purposes'' and inserting the following:

''(1) GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For purposes'', and

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

''(2) COMMONWEALTH OF PUERTO RICO.—If dividends are received during a taxable year by a corporation—

''(A) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

''(B) with respect to which the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for the taxable year, subsection (a) shall be applied for such taxable year by substituting '10 percent' for '30 percent'.''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 881 is amended by striking ''GUAM AND VIRGIN ISLANDS CORPORATIONS'' in the heading and inserting ''POSSESSIONS''.

(2) Paragraph (1) of section 881(b) is amended by striking ''IN GENERAL'' in the heading and inserting ''GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dividends paid after the date of the enactment of this Act.

SEC. 234. REPORT ON WTO DISPUTE SETTLEMENT PANELS AND THE APPELLATE BODY.

Not later than March 31, 2004, the Secretary of Commerce, in consultation with the United States Trade Representative, shall transmit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, regarding whether dispute settlement panels and the Appellate Body of the World Trade Organization have—

(1) added to or diminished the rights of the United States by imposing obligations or restrictions on the use of antidumping, countervailing, and safeguard measures not agreed to under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards;

(2) appropriately applied the standard of review contained in Article 17.6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994; or

(3) exceeded their authority or terms of reference under the Agreements referred to in paragraph (1).

SEC. 235. STUDY OF IMPACT OF INTERNATIONAL TAX LAWS ON TAXPAYERS OTHER THAN LARGE CORPORATIONS.

(a) STUDY.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study of the impact of Federal international tax rules on taxpayers other than large corporations, including the burdens placed on such taxpayers in complying with such rules.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of the study conducted under subsection (a), including any recommendations for legislative or administrative changes to reduce the compliance burden on taxpayers other than large corporations and for such other purposes as the Secretary determines appropriate.

SEC. 236. DELAY IN EFFECTIVE DATE OF FINAL REGULATIONS GOVERNING EXCLUSION OF INCOME FROM INTERNATIONAL OPERATION OF SHIPS OR AIRCRAFT.

Notwithstanding the provisions of Treasury regulation §1.883–5, the final regulations issued by the Secretary of the Treasury relating to income derived by foreign corporations from the international operation of ships or aircraft (Treasury regulations §1.883–1 through §1.883–5) shall apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning after December 31, 2004.

SEC. 237. INTEREST PAYMENTS DEDUCTIBLE WHERE DISQUALIFIED GUARANTEE HAS NO ECONOMIC EFFECT.

(a) IN GENERAL.—Section 163(j)(6)(D)(ii) (relating to exceptions to disqualified guarantee) is amended—

(1) by striking ''or'' at the end of subclause (I),

(2) by striking the period at the end of subclause (II) and inserting '', or'',

(3) by inserting after subclause (II) the following new subclause:

''(III) in the case of a guarantee by a foreign person, to the extent of the amount that the taxpayer establishes to the satisfaction of the Secretary that the taxpayer could have borrowed from an unrelated person without the guarantee.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to guarantees issued on or after the date of the enactment of this Act.

TITLE III—DOMESTIC MANUFACTURING AND BUSINESS PROVISIONS

Subtitle A—General Provisions

SEC. 301. EXPANSION OF QUALIFIED SMALL-ISSUE BOND PROGRAM.

(a) IN GENERAL.—Subparagraph (F) of section 144(a)(4) (relating to $10,000,000 limit in certain cases) is amended to read as follows:

''(F) ADDITIONAL CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—With respect to any issue, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 302. EXPENSING OF BROADBAND INTERNET ACCESS EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 190 the following new section:

''SEC. 191. BROADBAND EXPENDITURES.

''(a) TREATMENT OF EXPENDITURES.—

''(1) IN GENERAL.—A taxpayer may elect to treat any qualified broadband expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction.

''(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may prescribe by regulation.

''(b) QUALIFIED BROADBAND EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified broadband expenditure' means, with respect to any taxable year, any direct or indirect costs incurred and properly taken into account with respect to—

''(A) the purchase or installation of qualified equipment (including any upgrades thereto), and

''(B) the connection of such qualified equipment to any qualified subscriber.

''(2) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any costs incurred with respect to the launching of any satellite equipment.

''(3) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of qualified equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in paragraph (1).

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified broadband expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

''(A) current generation broadband services are provided through such equipment to qualified subscribers, or

''(B) next generation broadband services are provided through such equipment to qualified subscribers.

''(2) LIMITATION.—

''(A) IN GENERAL.—Qualified expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

''(i) the original use of which commences with the taxpayer, and

''(ii) which is placed in service, after the date of the enactment of this Act.

''(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

''(i) is originally placed in service after the date of the enactment of this Act by any person, and

''(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in clause (ii).

''(d) SPECIAL ALLOCATION RULES.—

''(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified broadband expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas and the underserved areas which the equipment is capable of serving with current generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

''(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which next generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of—

''(i) the number of potential qualified subscribers within the rural areas and underserved areas, plus

''(ii) the number of potential qualified subscribers within the area consisting only of residential subscribers not described in clause (i),

which the equipment is capable of serving with next generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with next generation broadband services.

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

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

''(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

''(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband

service' means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber and at least 5,000,000 bits per second from the subscriber.

''(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means any person who purchases broadband services which are delivered to the permanent place of business of such person.

''(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the radio transmission of energy.

''(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of any digitized transmission signal which is assembled into packets or cells.

''(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment—

''(A) a cable operator,

''(B) a commercial mobile service carrier,

''(C) an open video system operator,

''(D) a satellite carrier,

''(E) a telecommunications carrier, or

''(F) any other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

''(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to 1 or more subscribers if—

''(A) such a subscriber has been passed by the provider's equipment and can be connected to such equipment for a standard connection fee,

''(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making more than an insignificant investment with respect to such subscriber,

''(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

''(D) such services have been purchased by 1 or more such subscribers, and

''(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

''(13) QUALIFIED EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified equipment' means equipment which provides current generation broadband services or next generation broadband services—

''(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

''(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

''(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

''(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

''(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

''(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

''(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

''(14) QUALIFIED SUBSCRIBER.—The term 'qualified subscriber' means—

''(A) with respect to the provision of current generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) any residential subscriber residing in a dwelling located in a rural area or underserved area which is not a saturated market, and

''(B) with respect to the provision of next generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) any residential subscriber.

''(15) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means any individual who purchases broadband services which are delivered to such individual's dwelling.

''(16) RURAL AREA.—The term 'rural area' means any census tract which—

''(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

''(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(17) RURAL SUBSCRIBER.—The term 'rural subscriber' means any residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

''(18) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-multipoint distribution.

''(19) SATURATED MARKET.—The term 'saturated market' means any census tract in which, as of the date of the enactment of this section—

''(A) current generation broadband services have been provided by a single provider to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

''(B) such services can be utilized—

''(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

''(20) SUBSCRIBER.—The term 'subscriber' means any person who purchases current generation broadband services or next generation broadband services.

''(21) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include a commercial mobile service carrier.

''(22) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(23) UNDERSERVED AREA.—The term 'underserved area' means—

''(A) any census tract which is located in—

''(i) an empowerment zone or enterprise community designated under section 1391, or

''(ii) the District of Columbia Enterprise Zone established under section 1400, or

''(B) any census tract—

''(i) the poverty level of which is at least 30 percent (based on the most recent census data), and

''(ii) the median family income of which does not exceed—

''(I) in the case of a census tract located in a metropolitan statistical area, 70 percent of the greater of the metropolitan area median family income or the statewide median family income, and

''(II) in the case of a census tract located in a nonmetropolitan statistical area, 70 percent of the nonmetropolitan statewide median family income.

''(24) UNDERSERVED SUBSCRIBER.—The term 'underserved subscriber' means any residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.

''(f) SPECIAL RULES.—

''(1) PROPERTY USED OUTSIDE THE UNITED STATES, ETC., NOT QUALIFIED.—No expenditures shall be taken into account under subsection (a)(1) with respect to the portion of the cost of any property referred to in section 50(b) or with respect to the portion of

the cost of any property specified in an election under section 179.

''(2) BASIS REDUCTION.—

''(A) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a)(1).

''(B) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a)(1) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

''(3) COORDINATION WITH SECTION 38.—No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a)(1).''.

(b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 512(b) (relating to modifications) is amended by adding at the end the following new paragraph:

''(18) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—A mutual or cooperative telephone company which for the taxable year satisfies the requirements of section 501(c)(12)(A) may elect to reduce its unrelated business taxable income for such year, if any, by an amount that does not exceed the qualified broadband expenditures which would be taken into account under section 191 for such year by such company if such company was not exempt from taxation. Any amount which is allowed as a deduction under this paragraph shall not be allowed as a deduction under section 191 and the basis of any property to which this paragraph applies shall be reduced under section 1016(a)(29).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1) (relating to capital expenditures) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'', and by adding at the end the following new subparagraph:

''(I) expenditures for which a deduction is allowed under section 191.''.

(2) Section 1016(a) of such Code is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', and'', and by adding at the end the following new paragraph:

''(29) to the extent provided in section 191(f)(2).''.

(3) The table of sections for part VI of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 190 the following new item:

''Sec. 191. Broadband expenditures.''.

(d) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (16), (22), and (23) of section 191(e) of the Internal Revenue Code of 1986 (as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(19) of such section 191—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(e) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or ratemaking procedures that would have the effect of eliminating or reducing any deduction or portion thereof allowed under section 191 of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the election to deduct qualified broadband expenditures under section 191 of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 191 of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified broadband expenditures satisfies the requirements of section 191 of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 191 of such Code.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after the date of the enactment of this Act and before the date which is 12 months after the date of the enactment of this Act.

SEC. 303. EXEMPTION OF NATURAL AGING PROCESS IN DETERMINATION OF PRODUCTION PERIOD FOR DISTILLED SPIRITS UNDER SECTION 263A.

(a) IN GENERAL.—Section 263A(f) of the Internal Revenue Code of 1986 (relating to general exceptions) is amended by adding at the end the following new paragraph:

''(5) EXEMPTION OF NATURAL AGING PROCESS IN DETERMINATION OF PRODUCTION PERIOD FOR DISTILLED SPIRITS.—For purposes of this subsection, the production period for distilled spirits shall be determined without regard to any period allocated to the natural aging process.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to production periods beginning after the date of the enactment of this Act.

SEC. 304. MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.

(a) IN GENERAL.—Section 355(b) (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULES RELATING TO ACTIVE BUSINESS REQUIREMENT.—

''(A) IN GENERAL.—For purposes of determining whether a corporation meets the requirement of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as one corporation. For purposes of the preceding sentence, a corporation's separate affiliated group is the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

''(B) CONTROL.—For purposes of paragraph (2)(D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as one distributee corporation.''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 355(b)(2) is amended to read as follows:

''(A) it is engaged in the active conduct of a trade or business,''.

(2) Section 355(b)(2) is amended by striking the last sentence.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply—

(A) to distributions after the date of the enactment of this Act, and

(B) for purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (b)(1)) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(3) ELECTION TO HAVE AMENDMENTS APPLY.—Paragraph (2) shall not apply if the distributing corporation elects not to have such paragraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

SEC. 305. MODIFIED TAXATION OF IMPORTED ARCHERY PRODUCTS.

(a) BOWS.—Paragraph (1) of section 4161(b) (relating to bows) is amended to read as follows:

''(1) BOWS.—

''(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

''(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

''(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

''(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.''.

(b) ARROWS.—Subsection (b) of section 4161 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

''(3) ARROWS.—

''(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.

''(B) EXCEPTION.—In the case of any arrow of which the shaft or any other component has been previously taxed under paragraph (1) or (2)—

''(i) section 6416(b)(3) shall not apply, and

''(ii) the tax imposed by subparagraph (A) shall be an amount equal to the excess (if any) of—

''(I) the amount of tax imposed by this paragraph (determined without regard to this subparagraph), over

''(II) the amount of tax paid with respect to the tax imposed under paragraph (1) or (2) on such shaft or component.

''(C) ARROW.—For purposes of this paragraph, the term 'arrow' means any shaft described in paragraph (2) to which additional components are attached.''.

(c) CONFORMING AMENDMENTS.—Section 4161(b)(2) is amended—

(1) by inserting ''(other than broadheads)'' after ''point'', and

(2) by striking ''ARROWS.—'' in the heading and inserting ''ARROW COMPONENTS.—''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after the date which is 30 days after the date of the enactment of this Act.

SEC. 306. MODIFICATION TO COOPERATIVE MARKETING RULES TO INCLUDE VALUE ADDED PROCESSING INVOLVING ANIMALS.

(a) IN GENERAL.—Section 1388 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

''(k) COOPERATIVE MARKETING INCLUDES VALUE-ADDED PROCESSING INVOLVING ANIMALS.—For purposes of section 521 and this subchapter, the marketing of the products of members or other producers shall include the feeding of such products to cattle, hogs, fish, chickens, or other animals and the sale of the resulting animals or animal products.''.

(b) CONFORMING AMENDMENT.—Section 521(b) is amended by adding at the end the following new paragraph:

''(7) CROSS REFERENCE.—

''For treatment of value-added processing involving animals, see section 1388(k).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 307. EXTENSION OF DECLARATORY JUDGMENT PROCEDURES TO FARMERS' COOPERATIVE ORGANIZATIONS.

(a) IN GENERAL.—Section 7428(a)(1) (relating to declaratory judgments of tax exempt organizations) is amended by striking ''or'' at the end of subparagraph (B) and by adding at the end the following new subparagraph:

''(D) with respect to the initial classification or continuing classification of a cooperative as an organization described in section 521(b) which is exempt from tax under section 521(a), or''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pleadings filed after the date of the enactment of this Act.

SEC. 308. TEMPORARY SUSPENSION OF PERSONAL HOLDING COMPANY TAX.

(a) IN GENERAL.—Section 541 (relating to imposition of personal holding company tax) is amended by adding at the end the following new sentence: ''The preceding sentence shall not apply with respect to any taxable year to which section 1(h)(11) (as in effect on the date of the enactment of this sentence) applies.''.

(b) COORDINATION WITH ACCUMULATED EARNINGS TAX.—Section 532(b) is amended by adding at the end the following flush sentence:

''Paragraph (1) shall not apply to any taxable year to which section 541 does not apply.''

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

SEC. 309. INCREASE IN SECTION 179 EXPENSING.

(a) IN GENERAL.—Section 179(b)(2) (relating to reduction in limitation) is amended by inserting ''50 percent of'' before ''the amount''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 310. FIVE-YEAR CARRYBACK OF NET OPERATING LOSSES.

(a) IN GENERAL.—Subparagraph (H) of section 172(b)(1) is amended—

(1) by inserting ''5-YEAR CARRYBACK OF CERTAIN LOSSES.—'' after ''(H)'', and

(2) by striking ''or 2002'' and inserting '', 2002, or 2003''.

(b) RULES RELATING TO CERTAIN EXTENDED NET OPERATING LOSSES.—Section 172 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

''(k) RULES RELATING TO CERTAIN EXTENDED NET OPERATING LOSSES.—In the case of a taxpayer which has a net operating loss for any taxable year ending during 2003 and does not make an election under subsection (j), such taxpayer shall be treated as having made an election under paragraphs (4)(E) and (2)(C)(iii) of section 168(k) with respect to all classes of property for such taxable year.

(c) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT ON CERTAIN NOL CARRYOVERS.—Section 56(d)(1)(A)(ii)(I) (relating to general rule defining alternative tax net operating loss deduction) is amended—

(1) by striking ''or 2002'' and inserting '', 2002, or 2003'', and

(2) by striking ''and 2002'' and inserting '', 2002, and 2003''.

(d) TECHNICAL CORRECTIONS.—

(1) Subparagraph (H) of section 172(b)(1) is amended by striking ''a taxpayer which has''.

(2) Section 102(c)(2) of the Job Creation and Worker Assistance Act of 2002 (Public Law 107–147) is amended by striking ''before January 1, 2003'' and inserting ''after December 31, 1990''.

(3)(A) Subclause (I) of section 56(d)(1)(A)(i) is amended by striking ''attributable to carryovers''.

(B) Subclause (I) of section 56(d)(1)(A)(ii) is amended—

(i) by striking ''for taxable years'' and inserting ''from taxable years'', and

(ii) by striking ''carryforwards'' and inserting ''carryovers''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to net operating losses for taxable years ending after December 31, 2002.

(2) TECHNICAL CORRECTIONS.—The amendments made by subsection (d) shall take effect as if included in the amendments made by section 102 of the Job Creation and Worker Assistance Act of 2002.

(3) ELECTION.—In the case of a net operating loss for a taxable year ending during 2003—

(A) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before November 15, 2004, and

(B) any election made under section 172(j) of such Code shall (notwithstanding such section) be treated as timely made if made before November 15, 2004.

(4) SPECIAL RULE FOR TAXPAYERS WITH TAXABLE YEARS ENDING DURING JANUARY.—Any taxpayer which has a taxable year ending during January may elect under this paragraph to apply section 172(b)(1)(H) of the Internal Revenue Code of 1986 (as amended by this section) to its taxable year ending in 2004 rather than its taxable year ending in 2003. If such election is made, then section 172(k) of such Code (as added by this section) shall be applied to the taxpayer's taxable year ending in 2004. Such election shall be made in such manner and at such time as may be prescribed by the Secretary of the Treasury. Such election, once made, shall be irrevocable.

SEC. 311. EXTENSION AND MODIFICATION OF RESEARCH CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Section 41(h)(1)(B) (relating to termination) is amended by striking ''June 30, 2004'' and inserting ''December 31, 2005''.

(2) CONFORMING AMENDMENT.—Section 45C(b)(1)(D) is amended by striking ''June 30, 2004'' and inserting ''December 31, 2005''.

(b) INCREASE IN RATES OF ALTERNATIVE INCREMENTAL CREDIT.—Subparagraph (A) of section 41(c)(4) (relating to election of alternative incremental credit) is amended—

(1) by striking ''2.65 percent'' and inserting ''3 percent'',

(2) by striking ''3.2 percent'' and inserting ''4 percent'', and

(3) by striking ''3.75 percent'' and inserting ''5 percent''.

(c) ALTERNATIVE SIMPLIFIED CREDIT FOR QUALIFIED RESEARCH EXPENSES.—

(1) IN GENERAL.—Subsection (c) of section 41 (relating to base amount) is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

''(5) ELECTION OF ALTERNATIVE SIMPLIFIED CREDIT.—

''(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 12 percent of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

''(B) SPECIAL RULE IN CASE OF NO QUALIFIED RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAXABLE YEARS.—

''(i) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any 1 of the 3 taxable years preceding the taxable year for which the credit is being determined.

''(ii) CREDIT RATE.—The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

''(C) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.''

(2) COORDINATION WITH ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

(A) IN GENERAL.—Section 41(c)(4)(B) (relating to election) is amended by adding at the end the following: ''An election under this paragraph may not be made for any taxable year to which an election under paragraph (5) applies.''

(B) TRANSITION RULE.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes the date of the enactment of this Act, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by paragraph (1)) for such year.

(f) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to amounts paid

or incurred after the date of the enactment of this Act.

(2) SUBSECTIONS (b) AND (c).—The amendments made by subsections (b) and (c) shall apply to taxable years beginning after December 31, 2004.

SEC. 312. EXPANSION OF RESEARCH CREDIT.

(a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.—

(1) IN GENERAL.—Section 41(a) (relating to credit for increasing research activities) is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to a research consortium.''.

(2) RESEARCH CONSORTIUM DEFINED.—Section 41(f) (relating to special rules) is amended by adding at the end the following new paragraph:

''(6) RESEARCH CONSORTIUM.—

''(A) IN GENERAL.—The term 'research consortium' means any organization—

''(i) which is—

''(I) described in section 501(c)(3) or 501(c)(6) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct research, or

''(II) organized and operated primarily to conduct research in the public interest (within the meaning of section 501(c)(3)),

''(ii) which is not a private foundation,

''(iii) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for research, and

''(iv) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for research.

''(B) TREATMENT OF PERSONS.—All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (A)(iii) and as a single person for purposes of subparagraph (A)(iv).''.

(3) CONFORMING AMENDMENT.—Section 41(b)(3)(C) is amended by inserting ''(other than a research consortium)'' after ''organization''.

(b) REPEAL OF LIMITATION ON CONTRACT RESEARCH EXPENSES PAID TO SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—Section 41(b)(3) (relating to contract research expenses) is amended by adding at the end the following new subparagraph:

''(D) AMOUNTS PAID TO ELIGIBLE SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—

''(i) IN GENERAL.—In the case of amounts paid by the taxpayer to—

''(I) an eligible small business,

''(II) an institution of higher education (as defined in section 3304(f)), or

''(III) an organization which is a Federal laboratory,

for qualified research, subparagraph (A) shall be applied by substituting '100 percent' for '65 percent'.

''(ii) ELIGIBLE SMALL BUSINESS.—For purposes of this subparagraph, the term 'eligible small business' means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

''(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

''(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

''(iii) SMALL BUSINESS.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'small business' means, with respect to any calendar year, any person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

''(II) STARTUPS, CONTROLLED GROUPS, AND PREDECESSORS.—Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.

''(iv) FEDERAL LABORATORY.—For purposes of this subparagraph, the term 'Federal laboratory' has the meaning given such term by section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)), as in effect on the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2004.

SEC. 313. MANUFACTURER'S JOBS CREDIT.

(a) 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. 45S. MANUFACTURER'S JOBS CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible taxpayer, the manufacturer's jobs credit determined under this section is an amount equal to 50 percent of the lesser of the following:

''(1) The excess of the W–2 wages paid by the taxpayer during the taxable year over the W–2 wages paid by the taxpayer during the preceding taxable year.

''(2) The W–2 wages paid by the taxpayer during the taxable year to any employee who is an eligible TAA recipient (as defined in section 35(c)(2)) for any month during such taxable year.

''(3) 22.4 percent of the W–2 wages paid by the taxpayer during the taxable year.

''(b) LIMITATION.—

''(1) IN GENERAL.—If there is an excess described in paragraph (2)(A) for any taxable year, the amount of credit determined under subsection (a) (without regard to this subsection)—

''(A) if the value of domestic production determined under section 199(g)(2) for the taxable year does not exceed such value for the preceding taxable year, shall be zero, and

''(B) if subparagraph (A) does not apply, shall be reduced (but not below zero) by the applicable percentage of such amount.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means, with respect to any taxable year, the percentage equal to a fraction—

''(A) the numerator of which is the excess (if any) of the modified value of worldwide production of the taxpayer for the taxable year over such modified value for the preceding taxable year, and

''(B) the denominator of which is the excess (if any) of the value of worldwide production of the taxpayer for the taxable year over such value for the preceding taxable year.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) VALUE OF WORLDWIDE PRODUCTION.—The value of worldwide production for any taxable year shall be determined under section 199(g)(4).

''(B) MODIFIED VALUE.—The term 'modified value of worldwide production' means the value of worldwide production determined by not taking into account any item taken into account in determining the value of domestic production under section 199(g)(2).

''(c) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means any taxpayer—

''(1) which has domestic production gross receipts for the taxable year and the preceding taxable year, and

''(2) which is not treated at any time during the taxable year as an inverted domestic corporation under section 7874.

''(d) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

''(1) IN GENERAL.—Any term used in this section which is also used in section 199 shall have the meaning given such term by section 199.

''(2) SPECIAL RULE FOR W–2 WAGES.—Notwithstanding paragraph (1), the amount of W–2 wages taken into account with respect to any employee for any taxable year shall not exceed $50,000.

''(e) CERTAIN RULES MADE APPLICABLE.—For purposes of this section, rules similar to the rules of section 52 shall apply.

''(f) TERMINATION.—This section shall not apply to any taxable year beginning after December 31, 2005.''.

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', plus'', and by adding at the end the following:

''(31) the manufacturer's jobs credit determined under section 45S.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following:

''Sec. 45S. Manufacturer's jobs credit.''.

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

SEC. 314. BROWNFIELDS DEMONSTRATION PROGRAM FOR QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to the definition of exempt facility bond) is amended by striking ''or'' at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting '', or'', and by inserting at the end the following new paragraph:

''(14) qualified green building and sustainable design projects.''.

(b) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—Section 142 (relating to exempt facility bonds) is amended by adding at the end thereof the following new subsection:

''(l) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—

''(1) IN GENERAL.—For purposes of subsection (a)(14), the term 'qualified green building and sustainable design project' means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

''(2) DESIGNATIONS.—

''(A) IN GENERAL.—Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the

projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

''(B) MINIMUM CONSERVATION AND TECHNOLOGY INNOVATION OBJECTIVES.—The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

''(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

''(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

''(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

''(iv) use at least 25 megawatts of fuel cell energy generation.

''(3) LIMITED DESIGNATIONS.—A project may not be designated under this subsection unless—

''(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

''(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

''(4) APPLICATION.—

''(A) IN GENERAL.—A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

''(i) GREEN BUILDING AND SUSTAINABLE DESIGN.—At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification. For purposes of determining LEED certification as required under this clause, points shall be credited by using the following:

''(I) For wood products, certification under the Sustainable Forestry Initiative Program and the American Tree Farm System.

''(II) For renewable wood products, as credited for recycled content otherwise provided under LEED certification.

''(III) For composite wood products, certification under standards established by the American National Standards Institute, or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.

''(ii) BROWNFIELD REDEVELOPMENT.—The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

''(iii) STATE AND LOCAL SUPPORT.—The project receives specific State or local government resources which will support the project in an amount equal to at least $5,000,000. For purposes of the preceding sentence, the term 'resources' includes tax abatement benefits and contributions in kind.

''(iv) SIZE.—The project includes at least one of the following:

''(I) At least 1,000,000 square feet of building.

''(II) At least 20 acres.

''(v) USE OF TAX BENEFIT.—The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

''(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

''(II) Compliance with certification standards cited under clause (i).

''(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

''(vi) PROHIBITED FACILITIES.—An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

''(vii) EMPLOYMENT.—The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project's economic impact, including the amount of projected employment.

''(B) PROJECT DESCRIPTION.—Each application described in subparagraph (A) shall contain for each project a description of—

''(i) the amount of electric consumption reduced as compared to conventional construction,

''(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

''(iii) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts, and

''(iv) the amount, in megawatts, of the project's fuel cell energy generation.

''(5) CERTIFICATION OF USE OF TAX BENEFIT.—No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) RURAL STATE.—The term 'rural State' means any State which has—

''(i) a population of less than 4,500,000 according to the 2000 census,

''(ii) a population density of less than 150 people per square mile according to the 2000 census, and

''(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

''(B) LOCAL GOVERNMENT.—The term 'local government' has the meaning given such term by section 1393(a)(5).

''(C) NET BENEFIT OF TAX-EXEMPT FINANCING.—The term 'net benefit of tax-exempt financing' means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

''(7) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING.—

''(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

''(B) LIMITATION ON AMOUNT OF BONDS.—The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding $2,000,000,000.

''(8) TERMINATION.—Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2009.

''(9) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2009, if—

''(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).''.

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) (relating to exception for certain bonds) is amended—

(1) by striking ''or (13)'' and inserting ''(13), or (14)'', and

(2) by striking ''and qualified public educational facilities'' and inserting ''qualified public educational facilities, and qualified green building and sustainable design projects''.

(d) ACCOUNTABILITY.—Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(l)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(l)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 2004.

Subtitle B—Manufacturing Relating to Films

SEC. 321. SPECIAL RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by inserting after section 180 the following new section:

''SEC. 181. TREATMENT OF QUALIFIED FILM AND TELEVISION PRODUCTIONS.

''(a) ELECTION TO TREAT CERTAIN COSTS OF QUALIFIED FILM AND TELEVISION PRODUCTIONS AS EXPENSES.—

''(1) IN GENERAL.—A taxpayer may elect to treat the cost of any qualified film or television production as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

''(2) DOLLAR LIMITATION.—

''(A) IN GENERAL.—The aggregate cost which may be taken into account under paragraph (1) with respect to each qualified

film or television production shall not exceed $15,000,000.

''(B) HIGHER DOLLAR LIMITATION FOR PRODUCTIONS IN CERTAIN AREAS.—In the case of any qualified film or television production the aggregate cost of which is significantly incurred in an area eligible for designation as—

''(i) a low-income community under section 45D, or

''(ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa–1 of title 7, United States Code,

subparagraph (A) shall be applied by substituting '$20,000,000' for '$15,000,000'.

''(b) AMORTIZATION OF REMAINING COSTS.—

''(1) IN GENERAL.—If an election is made under subsection (a) with respect to any qualified film or television production, that portion of the basis of such production in excess of the amount taken into account under subsection (a) shall be allowed as a deduction ratably over the 36-month period beginning with the month in which such production is placed in service.

''(2) NO OTHER DEDUCTION OR AMORTIZATION DEDUCTION ALLOWABLE.—With respect to the basis of any qualified film or television production described in paragraph (1), no other depreciation or amortization deduction shall be allowable.

''(c) ELECTION.—

''(1) IN GENERAL.—An election under subsection (a) with respect to any qualified film or television production shall be made in such manner as prescribed by the Secretary and by the due date (including extensions) for filing the taxpayer's return of tax under this chapter for the taxable year in which costs of the production are first incurred.

''(2) REVOCATION OF ELECTION.—Any election made under subsection (a) may not be revoked without the consent of the Secretary.

''(d) QUALIFIED FILM OR TELEVISION PRODUCTION.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified film or television production' means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

''(2) PRODUCTION.—

''(A) IN GENERAL.—A production is described in this paragraph if such production is property described in section 168(f)(3). For purposes of a television series, only the first 44 episodes of such series may be taken into account.

''(B) EXCEPTION.—A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production.

''(3) QUALIFIED COMPENSATION.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'qualified compensation' means compensation for services performed in the United States by actors, directors, producers, and other relevant production personnel.

''(B) PARTICIPATIONS AND RESIDUALS EXCLUDED.—The term 'compensation' does not include participations and residuals (as defined in section 167(g)(7)(B)).

''(e) APPLICATION OF CERTAIN OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

''(f) TERMINATION.—This section shall not apply to qualified film and television productions commencing after December 31, 2008.''.

(b) CONFORMING AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after the item relating to section 180 the following new item:

''Sec. 181. Treatment of qualified film and television productions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified film and television productions (as defined in section 181(d)(1) of the Internal Revenue Code of 1986, as added by this section) commencing after the date of the enactment of this Act.

SEC. 322. MODIFICATION OF APPLICATION OF INCOME FORECAST METHOD OF DEPRECIATION.

(a) IN GENERAL.—Section 167(g) (relating to depreciation under income forecast method) is amended by adding at the end the following new paragraph:

''(7) TREATMENT OF PARTICIPATIONS AND RESIDUALS.—

''(A) IN GENERAL.—For purposes of determining the depreciation deduction allowable with respect to a property under this subsection, the taxpayer may include participations and residuals with respect to such property in the adjusted basis of such property for the taxable year in which the property is placed in service, but only to the extent that such participations and residuals relate to income estimated (for purposes of this subsection) to be earned in connection with the property before the close of the 10th taxable year referred to in paragraph (1)(A).

''(B) PARTICIPATIONS AND RESIDUALS.—For purposes of this paragraph, the term 'participations and residuals' means, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property.

''(C) SPECIAL RULES RELATING TO RECOMPUTATION YEARS.—If the adjusted basis of any property is determined under this paragraph, paragraph (4) shall be applied by substituting 'for each taxable year in such period' for 'for such period'.

''(D) OTHER SPECIAL RULES.—

''(i) PARTICIPATIONS AND RESIDUALS.—Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

''(ii) COORDINATION WITH OTHER RULES.—Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B) or sections 263, 263A, 404, 419, or 461(h).

''(E) AUTHORITY TO MAKE ADJUSTMENTS.—The Secretary shall prescribe appropriate adjustments to the basis of property and to the look-back method for the additional amounts allowable as a deduction solely by reason of this paragraph.''.

(b) DETERMINATION OF INCOME.—Section 167(g)(5) (relating to special rules) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and inserting after subparagraph (D) the following new subparagraph:

''(E) TREATMENT OF DISTRIBUTION COSTS.—For purposes of this subsection, the income with respect to any property shall be the taxpayer's gross income from such property.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

Subtitle C—Manufacturing Relating to Timber

SEC. 331. EXPENSING OF CERTAIN REFORESTATION EXPENDITURES.

(a) IN GENERAL.—So much of subsection (b) of section 194 (relating to amortization of reforestation expenditures) as precedes paragraph (2) is amended to read as follows:

''(b) TREATMENT AS EXPENSES.—

''(1) ELECTION TO TREAT CERTAIN REFORESTATION EXPENDITURES AS EXPENSES.—

''(A) IN GENERAL.—In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall treat reforestation expenditures which are paid or incurred during the taxable year with respect to such property as an expense which is not chargeable to capital account. The reforestation expenditures so treated shall be allowed as a deduction.

''(B) DOLLAR LIMITATION.—The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703)).''.

(b) NET AMORTIZABLE BASIS.—Section 194(c)(2) (defining amortizable basis) is amended by inserting ''which have not been taken into account under subsection (b)'' after ''expenditures''.

(c) CONFORMING AMENDMENTS.—

(1) Section 194(b) is amended by striking paragraphs (3) and (4).

(2) Section 194(b)(2) is amended by striking ''paragraph (1)'' both places it appears and inserting ''paragraph (1)(B)''.

(3) Section 194(c) is amended by striking paragraph (4) and inserting the following new paragraphs:

''(4) TREATMENT OF TRUSTS AND ESTATES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), this section shall not apply to trusts and estates.

''(B) AMORTIZATION DEDUCTION ALLOWED TO ESTATES.—The benefit of the deduction for amortization provided by subsection (a) shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under subsection (a) to such beneficiary.

''(5) APPLICATION WITH OTHER DEDUCTIONS.—No deduction shall be allowed under any other provision of this chapter with respect to any expenditure with respect to which a deduction is allowed or allowable under this section to the taxpayer.''.

(4) The heading for section 194 is amended by striking ''**AMORTIZATION**'' and inserting ''**TREATMENT**''.

(5) The item relating to section 194 in the table of sections for part VI of subchapter B of chapter 1 is amended by striking ''Amortization'' and inserting ''Treatment''.

(d) REPEAL OF REFORESTATION CREDIT.—

(1) IN GENERAL.—Section 46 (relating to amount of credit) is amended—

(A) by adding ''and'' at the end of paragraph (1),

(B) by striking '', and'' at the end of paragraph (2) and inserting a period, and

(C) by striking paragraph (3).

(2) CONFORMING AMENDMENTS.—

(A) Section 48 is amended—

(i) by striking subsection (b),

(ii) by striking ''this subsection'' in paragraph (5) of subsection (a) and inserting ''subsection (a)'', and

(iii) by redesignating such paragraph (5) as subsection (b).

(B) The heading for section 48 is amended by striking ''**; REFORESTATION CREDIT**''.

(C) The item relating to section 48 in the table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by striking '', reforestation credit''.

(D) Section 50(c)(3) is amended by striking ''or reforestation credit''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect

to expenditures paid or incurred after the date of the enactment of this Act.

SEC. 332. ELECTION TO TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.

Any election under section 631(a) of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether the taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account.

SEC. 333. CAPITAL GAIN TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES BY LANDOWNERS.

(a) IN GENERAL.—The first sentence of section 631(b) (relating to disposal of timber with a retained economic interest) is amended by striking ''retains an economic interest in such timber'' and inserting ''either retains an economic interest in such timber or makes an outright sale of such timber''.

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 631(b) is amended by striking ''The date of disposal'' and inserting ''In the case of disposal of timber with a retained economic interest, the date of disposal''.

(2) The heading for section 631(b) is amended by striking ''WITH A RETAINED ECONOMIC INTEREST''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after the date of the enactment of this Act.

SEC. 334. MODIFICATION OF SAFE HARBOR RULES FOR TIMBER REITS.

(a) EXPANSION OF PROHIBITED TRANSACTION SAFE HARBOR.—Section 857(b)(6) (relating to income from prohibited transactions) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new subparagraph:

''(D) CERTAIN SALES NOT TO CONSTITUTE PROHIBITED TRANSACTIONS.—For purposes of this part, the term 'prohibited transaction' does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) if—

''(i) the trust held the property for not less than 4 years in connection with the trade or business of producing timber,

''(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

''(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

''(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland,

do not exceed 30 percent of the net selling price of the property,

''(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

''(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

''(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

''(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

''(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year,

''(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, and

''(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

TITLE IV—ADDITIONAL PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

''(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

''(I) depreciation,

''(II) any tax credit, or

''(III) any other deduction as provided in guidance by the Secretary, and

''(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

"SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction,

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) DISCLOSURE BY SECRETARY.—

(1) IN GENERAL.—Section 6103 is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

''(q) DISCLOSURE RELATING TO PAYMENTS OF CERTAIN PENALTIES.—Notwithstanding any other provision of this section, the Secretary shall make public the name of any person required to pay a penalty described in section 6707A(e)(2) and the amount of the penalty.''.

(2) RECORDS.—Section 6103(p)(3)(A) is amended by striking ''or (n)'' and inserting ''(n), or (q)''.

(c) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

"SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).

''(5) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained,

''(IV) has an arrangement with respect to the transaction which provides that contractual disputes between the taxpayer and the advisor are to be settled by arbitration or which limits damages by reference to fees paid to the advisor for such transaction, or

''(V) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts,

''(IV) is not signed by all individuals who are principal authors of the opinion, or

''(V) fails to meet any other requirement as the Secretary may prescribe.''.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

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

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

''SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer

an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 405. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''.

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''.

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''.

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''.

(3)(A) The heading for section 6708 is amended to read as follows:

''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''.

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''.

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

''For purposes of this section, the identity of any person on such list shall not be privileged.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

''SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to

any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, which is—

''(1) subject to penalty under section 6700, 6701, 6707, or 6708, or

''(2) in violation of any requirement under regulations issued under section 320 of title 31, United States Code.''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''.

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 411. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $10,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $100,000, or

''(II) 50 percent of the amount determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 413. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''.

SEC. 415. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively,

(2) by striking ''a penalty'' and all that follows through the period in the first sentence of subsection (a) and inserting ''a penalty determined under subsection (b)'', and

(3) by inserting after subsection (a) the following new subsections:

''(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

''(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 100 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty.

''(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

''(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to such activity, all such persons shall be jointly and severally liable for the penalty under such subsection.

''(c) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be deductible by the person who is subject to such penalty or who makes such payment.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

''(A) the date on which the Secretary is furnished the information so required; or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

SEC. 419. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting ''the tax liability or'' after ''respect to,'' in paragraph (1),

(2) by inserting ''aid, assistance, procurement, or advice with respect to such'' before ''portion'' both places it appears in paragraphs (2) and (3), and

(3) by inserting ''instance of aid, assistance, procurement, or advice or each such'' before ''document'' in the matter following paragraph (3).

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

''(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

''(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 100 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

''(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

''(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.''.

(c) PENALTY NOT DEDUCTIBLE.—Section 6701 is amended by adding at the end the following new subsection:

''(g) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be deductible by the person who is subject to such penalty or who makes such payment.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 420. STUDY ON INFORMATION SHARING AMONG LAW ENFORCEMENT AGENCIES.

(a) STUDY.—The Secretary of the Treasury shall, jointly with the Attorney General, the Securities and Exchange Commission, and the Commissioner of Internal Revenue, study the effectiveness of, and ways to improve, the sharing of information related to the promotion of prohibited tax shelters or tax avoidance schemes and other potential violations of Federal laws.

(b) REPORT.—The Secretary shall, not later than 1 year after the date of the enactment of this Act, report to the appropriate committees of the Congress the results of the study under subsection (a), including any recommendations for legislation.

Subtitle B—Other Corporate Governance Provisions

SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.''.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 422. DECLARATION BY CHIEF EXECUTIVE OFFICER RELATING TO FEDERAL ANNUAL INCOME TAX RETURN OF A CORPORATION.

(a) IN GENERAL.—The Federal annual tax return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary of the Treasury may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the corporation has in place processes and procedures to ensure that such return complies with the Internal Revenue Code of 1986 and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851 of such Code).

(b) EFFECTIVE DATE.—This section shall apply to the Federal annual tax return of a corporation with respect to income for taxable years ending after the date of the enactment of this Act.

SEC. 423. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

''(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

''(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which the taxpayer establishes constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

''(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

''(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

''(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

''(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

''(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

SEC. 424. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

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

(B) by striking ''If'' and inserting:

''(1) TREBLE DAMAGES.—If'', and

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

''(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).''.

(2) CONFORMING AMENDMENT.—The heading for section 162(g) is amended by inserting ''OR PUNITIVE DAMAGES'' after ''LAWS''.

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

''SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

''Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.''.

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

''(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.''.

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 91. Punitive damages compensated by insurance or otherwise.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 425. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

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

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

Subtitle C—Enron-Related Tax Shelter Provisions

SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATIONS ON BUILT-IN LOSSES.—

''(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

''(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

''(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

''(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

''(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

''(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

''(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

''(A) IN GENERAL.—If—

''(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

''(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

''(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

''(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.''.

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

''(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to transactions after December 31, 2003.

(2) LIQUIDATIONS.—The amendment made by subsection (b) shall apply to liquidations after December 31, 2003.

SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

''(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

''(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership, and

''(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after February 13, 2003.

SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,'' and inserting ''or a REMIC to which part IV of subchapter M applies,''.

(3) Paragraph (1) of section 582(c) is amended by striking '', and any regular interest in a FASIT,''.

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: ''An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.''.

(B) The last sentence of section 860G(a)(3) is amended by inserting '', and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property'' before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding ''and'' at the end of subparagraph (B), by striking '', and'' at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: ''For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''.

(8)(A) Section 860G(a)(3)(A) is amended by striking ''or'' at the end of clause (i), by inserting ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

''(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

''(II) occurs after the startup day, and

''(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.''.

(B) Section 860G(a)(7)(B) is amended to read as follows:

''(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to—

''(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

''(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of this subparagraph.''.

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(10) Clause (xi) of section 7701(a)(19)(C) is amended—

(A) by striking ''and any regular interest in a FASIT,'', and

(B) by striking ''or FASIT'' each place it appears.

(11) Subparagraph (A) of section 7701(i)(2) is amended by striking ''or a FASIT''.

(12) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on February 14, 2003.

(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by inserting ''or equity held by the issuer (or any related party) in any other person'' after ''or a related party''.

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

''(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.''.

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

''(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475.''.

(d) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(l) is amended—

(1) by striking ''or a related party'' in the material preceding subparagraph (A) and inserting ''or any other person'', and

(2) by striking ''or interest'' each place it appears.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

''(a) IN GENERAL.—If—

''(1)(A) any person or persons acquire, directly or indirectly, control of a corporation, or

''(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

''(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

''Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

Subtitle D—Provisions to Discourage Expatriation

SEC. 441. TAX TREATMENT OF INVERTED CORPORATE ENTITIES.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

''SEC. 7874. RULES RELATING TO INVERTED CORPORATE ENTITIES.

''(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

''(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

''(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

''(A) the entity completes after March 20, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

''(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

''(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

''(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

''(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (A) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.

''(b) PRESERVATION OF DOMESTIC TAX BASE IN CERTAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION (a) DOES NOT APPLY.—

''(1) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation with respect to an acquired entity if either—

''(A) subsection (a)(2)(A) were applied by substituting 'after December 31, 1996, and on or before March 20, 2002' for 'after March 20, 2002' and subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent', or

''(B) subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent',

then the rules of subsection (c) shall apply to any inversion gain of the acquired entity during the applicable period and the rules of subsection (d) shall apply to any related party transaction of the acquired entity during the applicable period. This subsection shall not apply for any taxable year if subsection (a) applies to such foreign incorporated entity for such taxable year.

''(2) ACQUIRED ENTITY.—For purposes of this section—

''(A) IN GENERAL.—The term 'acquired entity' means the domestic corporation or partnership substantially all of the properties of which are directly or indirectly acquired in an acquisition described in subsection (a)(2)(A) to which this subsection applies.

''(B) AGGREGATION RULES.—Any domestic person bearing a relationship described in section 267(b) or 707(b) to an acquired entity shall be treated as an acquired entity with respect to the acquisition described in subparagraph (A).

''(3) APPLICABLE PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The term 'applicable period' means the period—

''(i) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(A) to which this subsection applies, and

''(ii) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

''(B) SPECIAL RULE FOR INVERSIONS OCCURRING BEFORE MARCH 21, 2002.—In the case of any acquired entity to which paragraph (1)(A) applies, the applicable period shall be the 10-year period beginning on January 1, 2003.

''(c) TAX ON INVERSION GAINS MAY NOT BE OFFSET.—If subsection (b) applies—

''(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

''(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—

''(A) the amount of the inversion gain for the taxable year, and

''(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901 inversion gain shall be treated as from sources within the United States.

''(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—

''(A) the limitations of this subsection shall apply at the partner rather than the partnership level,

''(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

''(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

''(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the foreign incorporated entity, and

''(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).

''(4) INVERSION GAIN.—For purposes of this section, the term 'inversion gain' means any income or gain required to be recognized under section 304, 311(b), 367, 1001, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

''(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

''(B) after such acquisition to a foreign related person.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.

''(5) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.

''(6) STATUTE OF LIMITATIONS.—

''(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term 'pre-inversion year' means any taxable year if—

''(i) any portion of the applicable period is included in such taxable year, and

''(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(A) is completed.

''(d) SPECIAL RULES APPLICABLE TO ACQUIRED ENTITIES TO WHICH SUBSECTION (b) APPLIES.—

''(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an acquired entity to which subsection (b) applies—

''(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

''(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

''(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, section 163(j) shall be applied—

''(A) without regard to paragraph (2)(A)(ii) thereof, and

''(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.

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

''(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:

''(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B)—

''(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

''(ii) stock of such entity which is sold in a public offering or private placement related to the acquisition described in subsection (a)(2)(A).

''(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B) are met with respect to such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

''(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

''(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

''(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

''(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

''(ii) to treat stock as not stock.

''(2) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(3) FOREIGN INCORPORATED ENTITY.—The term 'foreign incorporated entity' means any entity which is, or but for subsection (a)(1) would be, treated as a foreign corporation for purposes of this title.

''(4) FOREIGN RELATED PERSON.—The term 'foreign related person' means, with respect to any acquired entity, a foreign person which—

''(A) bears a relationship to such entity described in section 267(b) or 707(b), or

''(B) is under the same common control (within the meaning of section 482) as such entity.

''(5) SUBSEQUENT ACQUISITIONS BY UNRELATED DOMESTIC CORPORATIONS.—

''(A) IN GENERAL.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly any properties of one or more acquired entities in a transaction with respect to which the requirements of subparagraph (B) are met, this section shall cease to apply to any such acquired entity with respect to which such requirements are met.

''(B) REQUIREMENTS.—The requirements of the subparagraph are met with respect to a transaction involving any acquisition described in subparagraph (A) if—

''(i) before such transaction the domestic corporation did not have a relationship described in section 267(b) or 707(b), and was not under common control (within the meaning of section 482), with the acquired entity, or any member of an expanded affiliated group including such entity, and

''(ii) after such transaction, such acquired entity—

''(I) is a member of the same expanded affiliated group which includes the domestic corporation or has such a relationship or is under such common control with any member of such group, and

''(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which before such acquisition included such entity.

''(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

''(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or

''(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.''.

(b) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary's authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as added by subsection (a)) applies to report to the Secretary, shareholders, partners, and such other persons as the Secretary may prescribe such information as is necessary to ensure the proper tax treatment of such transactions.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

''Sec. 7874. Rules relating to inverted corporate entities.''.

(d) TRANSITION RULE FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—Notwithstanding section 7874 of the Internal Revenue Code of 1986 (as added by subsection (a)), a regulated investment company, or other pooled fund or trust specified by the Secretary of the Treasury, may elect to recognize gain by reason of section 367(a) of such Code with respect to a transaction under which a foreign incorporated entity is treated as an inverted domestic corporation under section 7874(a) of such Code by reason of an acquisition completed after March 20, 2002, and before January 1, 2004.

(e) DISCLOSURE OF CORPORATE EXPATRIATION TRANSACTIONS.—

(1) IN GENERAL.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

''(i) PROXY SOLICITATIONS IN CONNECTION WITH CORPORATE EXPATRIATION TRANSACTIONS.—

''(1) DISCLOSURE TO SHAREHOLDERS OF EFFECTS OF CORPORATE EXPATRIATION TRANSACTION.—The Commission shall, by rule, require that each domestic issuer shall prominently disclose, not later than 5 business days before any shareholder vote relating to a corporate expatriation transaction, as a

separate and distinct document accompanying each proxy statement relating to the transaction—

''(A) the number of employees of the domestic issuer that would be located in the new foreign jurisdiction of incorporation or organization of that issuer upon completion of the corporate expatriation transaction;

''(B) how the rights of holders of the securities of the domestic issuer would be impacted by a completed corporate expatriation transaction, and any differences in such rights before and after a completed corporate expatriation transaction; and

''(C) that, as a result of a completed corporate expatriation transaction, any taxable holder of the securities of the domestic issuer shall be subject to the taxation of any capital gains realized with respect to such securities, and the amount of any such capital gains tax that would apply as a result of the transaction.

''(2) DEFINITIONS.—In this subsection, the following definitions shall apply:

''(A) CORPORATE EXPATRIATION TRANSACTION.—The term 'corporate expatriation transaction' means any transaction, or series of related transactions, described in subsection (a) or (b) of section 7874 of the Internal Revenue Code of 1986.

''(A) DOMESTIC ISSUER.—The term 'domestic issuer' means an issuer created or organized in the United States or under the law of the United States or of any State.''

(2) EFFECTIVE DATE.—Section 14(i) of the Securities Exchange Act of 1934 (as added by this subsection) shall apply with respect to corporate expatriation transactions (as defined in that section 14(i)) proposed on and after the date of enactment of this Act.

SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

''SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

''(a) GENERAL RULES.—For purposes of this subtitle—

''(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

''(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

''(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

''(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

''(3) EXCLUSION FOR CERTAIN GAIN.—

''(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

''(B) COST-OF-LIVING ADJUSTMENT.—

''(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2004, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2003' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

''(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

''(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

''(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

''(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

''(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

''(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

''(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

''(iii) complies with such other requirements as the Secretary may prescribe.

''(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

''(b) ELECTION TO DEFER TAX.—

''(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

''(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

''(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

''(4) SECURITY.—

''(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

''(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

''(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

''(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

''(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

''(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

''(7) INTEREST.—For purposes of section 6601—

''(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

''(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(c) COVERED EXPATRIATE.—For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

''(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

''(A) the individual—

''(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

''(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

''(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

''(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

''(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

''(1) EXEMPT PROPERTY.—This section shall not apply to the following:

''(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

''(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

''(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

''(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

''(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

''(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

''(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A),

the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

''(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

''(D) APPLICABLE PLANS.—This paragraph shall apply to—

''(i) any qualified retirement plan (as defined in section 4974(c)),

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

''(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

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

''(1) EXPATRIATE.—The term 'expatriate' means—

''(A) any United States citizen who relinquishes citizenship, and

''(B) any long-term resident of the United States who—

''(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

''(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

''(2) EXPATRIATION DATE.—The term 'expatriation date' means—

''(A) the date an individual relinquishes United States citizenship, or

''(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

''(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

''(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

''(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

''(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

''(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

''(4) LONG-TERM RESIDENT.—The term 'long-term resident' has the meaning given to such term by section 877(e)(2).

''(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

''(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

''(A) the individual shall not be treated as having sold such interest,

''(B) such interest shall be treated as a separate share in the trust, and

''(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

''(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

''(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

''(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

''(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

''(i) paragraph (1) and subsection (a) shall not apply, and

''(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

''(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

''(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

''(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

''(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

''(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

''(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

''(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

''(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

''(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

''(E) TAX DEDUCTED AND WITHHELD.—

''(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

''(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

''(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

''(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

''(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

''(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

''(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

''(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

''(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

''(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

''(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

''(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

''(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

''(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

''(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

''(B) OTHER DETERMINATIONS.—For purposes of this section—

''(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be

the trust beneficiaries for purposes of this section.

''(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

''(I) the methodology used to determine that taxpayer's trust interest under this section, and

''(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

''(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

''(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

''(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

''(h) IMPOSITION OF TENTATIVE TAX.—

''(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

''(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

''(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

''(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

''(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

''(1) IMPOSITION OF LIEN.—

''(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

''(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

''(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

''(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

''(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

''(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

''(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

''(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

''(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

''(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

''(A) the gift, bequest, devise, or inheritance is—

''(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

''(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

''(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.''.

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

''(48) TERMINATION OF UNITED STATES CITIZENSHIP.—

''(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

''(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.''.

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

''(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).''.

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

''(19) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).''.

(B) SAFEGUARDS.—

(i) TECHNICAL AMENDMENTS.—Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18)''.

(ii) CONFORMING AMENDMENTS.—Section 6103(p)(4) (relating to safeguards), as amended by clause (i), is amended by striking ''or (18)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''(18), or (19)''.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(B) TECHNICAL AMENDMENTS.—The amendments made by paragraph (2)(B)(i) shall take effect as if included in the amendments made by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961).

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

''(g) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after January 1, 2004.''.

(2) Section 2107 is amended by adding at the end the following new subsection:

''(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.''.

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

''(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.''.

(4)(A) Paragraph (1) of section 6039G(d) is amended by inserting ''or 877A'' after ''section 877''.

(B) The second sentence of section 6039G(e) is amended by inserting ''or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))'' after ''877(a))''.

(C) Section 6039G(f) is amended by inserting ''or 877A(e)(2)(B)'' after ''877(e)(1)''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

''Sec. 877A. Tax responsibilities of expatriation.''.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after January 1, 2004.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after January 1, 2004, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

(a) IN GENERAL.—Subtitle D is amended by adding at the end the following new chapter:

"CHAPTER 48—STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS

''Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

"SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

''(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any inverted corporation, there is hereby imposed on such person a tax equal to 20 percent of the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the inversion date.

''(b) VALUE.—For purposes of subsection (a)—

''(1) IN GENERAL.—The value of specified stock compensation shall be—

''(A) in the case of a stock option (or other similar right) or any stock appreciation right, the fair value of such option or right, and

''(B) in any other case, the fair market value of such compensation.

''(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

''(A) in the case of specified stock compensation held on the inversion date, on such date,

''(B) in the case of such compensation which is canceled during the 6 months before the inversion date, on the day before such cancellation, and

''(C) in the case of such compensation which is granted after the inversion date, on the date such compensation is granted.

''(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an inverted corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(A) (determined by substituting 'July 10, 2002' for 'March 20, 2002') with respect to such corporation.

''(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

''(1) any stock option which is exercised on the inversion date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the inversion date with respect to the stock acquired pursuant to such exercise, and

''(2) any specified stock compensation which is exercised, sold, exchanged, distributed, cashed out, or otherwise paid during such period in a transaction in which gain or loss is recognized in full.

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

''(1) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the inversion date—

''(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

''(B) would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

''(2) INVERTED CORPORATION; INVERSION DATE.—

''(A) INVERTED CORPORATION.—The term 'inverted corporation' means any corporation to which subsection (a) or (b) of section 7874 applies determined—

''(i) by substituting 'July 10, 2002' for 'March 20, 2002' in section 7874(a)(2)(A), and

''(ii) without regard to subsection (b)(1)(A).

Such term includes any predecessor or successor of such a corporation.

''(B) INVERSION DATE.—The term 'inversion date' means, with respect to a corporation, the date on which the corporation first becomes an inverted corporation.

''(3) SPECIFIED STOCK COMPENSATION.—

''(A) IN GENERAL.—The term 'specified stock compensation' means payment (or right to payment) granted by the inverted corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

''(B) EXCEPTIONS.—Such term shall not include—

''(i) any option to which part II of subchapter D of chapter 1 applies, or

''(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

''(4) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

''(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the inverted corporation or by any member of the expanded affiliated group which includes such corporation—

''(A) shall be treated as specified stock compensation, and

''(B) shall not be allowed as a deduction under any provision of chapter 1.

''(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

''(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

''(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting ''48,'' after ''46,''.

(2) $1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

''(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 5000A directly or indirectly by the inverted corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.''.

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period ''or to any specified stock compensation (as defined in section 5000A) on which tax is imposed by section 5000A''.

(2) The table of chapters for subtitle D is amended by adding at the end the following new item:

''Chapter 48. Stock compensation of insiders in inverted corporations.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 11, 2002; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 5000A of the Internal Revenue Code of 1986, as added by this section.

SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking ''source and character'' and inserting ''amount, source, or character''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after April 11, 2002.

SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

"SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.

''(a) IN GENERAL.—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

''(1) a description of the acquisition,

''(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

''(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

''(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

''(b) NOMINEE REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

''(c) TAXABLE ACQUISITION.—For purposes of this section, the term 'taxable acquisition' means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

''(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person required to make such return,

''(2) the information required to be shown on such return with respect to such shareholder, and

''(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.''.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (defining information return) is amended by redesignating clauses (ii) through (xviii) as clauses (iii) through (xix), respectively, and by inserting after clause (i) the following new clause:

''(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),''.

(2) Paragraph (2) of section 6724(d) (relating to definitions) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:

''(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

''Sec. 6043A. Returns relating to taxable mergers and acquisitions.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

Subtitle E—International Tax

SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

''(A) obligations of the United States, money, or deposits with persons described in paragraph (4);''.

(b) ELIGIBLE PERSONS.—Section 956(c) (relating to exceptions to definition of United States property) is amended by adding at the end the following new paragraph:

''(4) FINANCIAL SERVICES PROVIDERS.—

''(A) IN GENERAL.—For purposes of paragraph (2)(A), a person is described in this paragraph if at least 80 percent of the person's income is income described in section 904(d)(2)(C)(ii) (and the regulations thereunder) which is derived from persons who are not related persons.

''(B) SPECIAL RULES.—For purposes of subparagraph (A)—

''(i) all related persons shall be treated as 1 person in applying the 80-percent test, and

''(ii) there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of a person as a person described in this paragraph.

''(C) RELATED PERSON.—For purposes of this paragraph, the term 'related person' has the meaning given such term by section 954(d)(3).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF HOLDING COMPANY.

(a) IN GENERAL.—Section 332 is amended by adding at the end the following new subsection:

''(d) RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.—

''(1) IN GENERAL.—In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

''(A) subsection (a) and section 331 shall not apply to such distribution, and

''(B) such distribution shall be treated as a distribution to which section 301 applies.

''(2) APPLICABLE HOLDING COMPANY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'applicable holding company' means any domestic corporation—

''(i) which is a common parent of an affiliated group,

''(ii) stock of which is directly owned by the distributee foreign corporation,

''(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

''(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

''(B) AFFILIATED GROUP.—For purposes of this subsection, the term 'affiliated group' has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) 0f section 1504(b)).

''(3) COORDINATION WITH SUBPART F.—If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

''(4) REGULATIONS.—The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act.

SEC. 453. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

''(i) IN GENERAL.—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount (reduced by properly allowable deductions and qualified deficits under section 952(c)(1)(B)) is includible during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

''(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.''.

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking ''The Secretary'' and inserting:

''(A) IN GENERAL.—The Secretary'', and

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

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), in the case of any item payable to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item (reduced by properly allowable deductions and qualified deficits under section 952(c)(1)(B)) is includible during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

''(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments accrued on or after the date of the enactment of this Act.

SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE CERTAIN FOREIGN SOURCE INCOME.

(a) IN GENERAL.—Section 864(c)(4)(B) (relating to treatment of income from sources without the United States as effectively connected income) is amended by adding at the end the following new flush sentence:

''Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON SALE OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 904(f)(3) (relating to dispositions) is amending by adding at the end the following new subparagraph:

''(D) APPLICATION TO CERTAIN DISPOSITIONS OF STOCK IN CONTROLLED FOREIGN CORPORATION.—

''(i) IN GENERAL.—This paragraph shall apply to an applicable disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.

''(ii) APPLICABLE DISPOSITION.—For purposes of clause (i), the term 'applicable disposition' means any disposition of any share of stock in a controlled foreign corporation in a transaction or series of transactions if, immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation.

''(iii) EXCEPTION.—A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

''(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(44)), and

''(II) immediately after which, the transferor owns (by vote or value) at least the

same percentage of stock in the controlled foreign corporation (or, if the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in which was received by the transferor in exchange for stock in the controlled foreign corporation) as the percentage of stock in the controlled foreign corporation which the taxpayer owned immediately before such transaction or series of transactions.

Clause (i) shall apply to any gain recognized on any disposition to which this clause applies.

''(iv) CONTROLLED FOREIGN CORPORATION.—For purposes of this subparagraph, the term 'controlled foreign corporation' has the meaning given such term by section 957.

''(v) STOCK OWNERSHIP.—For purposes of this subparagraph, ownership of stock shall be determined under the rules of subsections (a) and (b) of section 958.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after the date of the enactment of this Act.

SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.

(a) IN GENERAL.—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

''(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS ETC.—

''(1) IN GENERAL.—In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

''(A) such property is held by the recipient of the item for 15 days or less during the 30-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

''(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

''(2) EXCEPTION FOR TAXES PAID BY DEALERS.—

''(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

''(B) QUALIFIED TAX.—For purposes of subparagraph (A), the term 'qualified tax' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

''(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

''(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

''(C) DEALER.—For purposes of subparagraph (A), the term 'dealer' means—

''(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof if such security were stock, and

''(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

''(D) REGULATIONS.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

''(3) EXCEPTIONS.—The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

''(5) DETERMINATION OF HOLDING PERIOD.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.''.

(b) CONFORMING AMENDMENT.—The heading of subsection (k) of section 901 is amended by inserting ''ON DIVIDENDS'' after ''TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

Subtitle F—Other Revenue Provisions

PART I—FINANCIAL INSTRUMENTS

SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.''.

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

''(7) CROSS REFERENCE.—

''For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE C CORPORATIONS.

(a) IN GENERAL.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

''(A) the corporation's allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

''(B) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation's allocable share of such interest expense.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

''(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

''(A) a debtor corporation transfers stock, or

''(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

SEC. 464. MODIFICATION OF STRADDLE RULES.

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

''(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

''(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

''(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

''(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.''.

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following:

''(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and'', and

(B) by adding at the end the following new flush sentence:

''The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.''.

(3) UNRECOGNIZED GAIN.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position

at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.''.

(4) CONFORMING AMENDMENT.—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

''(A) terminated the position for its fair market value immediately before the settlement, and

''(B) sold the property so delivered by the taxpayer at its fair market value.''.

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Paragraph (3) of section 1092(d) (relating to definitions and special rules) is amended to read as follows:

''(3) SPECIAL RULES FOR STOCK.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'personal property' includes—

''(i) any stock which is a part of a straddle at least 1 of the offsetting positions of which is a position with respect to such stock or substantially similar or related property, or

''(ii) any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

''(B) RULE FOR APPLICATION.—For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.''.

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking ''; except that the term 'personal property' shall include stock''.

(d) MODIFICATIONS OF QUALIFIED COVERED CALL EXCEPTION.—

(1) MARKETS ON WHICH OPTIONS MAY BE TRADED.—

(A) IN GENERAL.—Section 1092(c)(4)(B)(i) is amended by striking ''or other market which the Secretary determines has rules adequate to carry out the purposes of this paragraph''.

(B) REGULATIONS.—Section 1092(c)(4)(H) is amended by adding at the end the following new sentence: ''Such regulations shall not add any exchange or market not described in subparagraph (B)(i) to the exchanges or markets on which qualified covered call options may be traded.''

(2) HOLDING PERIOD FOR DIVIDEND EXCLUSION.—The last sentence of section 246(c) is amended by inserting: '', other than a qualified covered call option to which section 1092(f) applies'' before the period at the end.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADEABLE DEBT.

(a) IN GENERAL.—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradeable) is amended by striking ''is issued by a corporation or a government or political subdivision thereof and''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

PART II—CORPORATIONS AND PARTNERSHIPS

SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) IN GENERAL.—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: ''In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.''.

(b) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting ''with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355'' after ''section 368(a)(1)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 467. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: ''Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking ''possessing—'' and all that follows through ''(B)'' and inserting ''possessing''.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

''(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

''(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

'' '(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

'' '(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

'' '(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.'

''(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNECTION WITH PARTNERSHIP DISTRIBUTIONS AND TRANSFERS OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 754 is repealed.

(b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY.—Section 734 is amended—

(1) by striking '', with respect to which the election provided in section 754 is in effect,'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking ''(as adjusted by section 732(d))'' both places it appears in subsection (b),

(3) by striking the last sentence of subsection (b),

(4) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively, and

(5) by striking ''**optional**'' in the heading.

(c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.—Section 743 is amended—

(1) by striking ''with respect to which the election provided in section 754 is in effect'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively,

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

''(c) ELECTION TO ADJUST BASIS FOR TRANSFERS UPON DEATH OF PARTNER.—Subsection (a) shall not apply and no adjustments shall be made in the case of any transfer of an interest in a partnership upon the death of a partner unless an election to do so is made by the partnership. Such an election shall apply with respect to all such transfers of interests in the partnership. Any election under section 754 in effect on the date of the enactment of this subsection shall constitute an election made under this subsection. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.'', and

(4) by striking ''**optional**'' in the heading.

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 732 is repealed.

(2) Section 755(a) is amended—

(A) by striking ''section 734(b) (relating to the optional adjustment'' and inserting ''section 734(a) (relating to the adjustment'', and

(B) by striking ''section 743(b) (relating to the optional adjustment'' and inserting ''section 743(a) (relating to the adjustment''.

(3) Section 755(c), as added by this Act, is amended by striking ''section 734(b)'' and inserting ''section 734(a)''.

(4) Section 761(e)(2) is amended by striking ''optional''.

(5) Section 774(a) is amended by striking ''743(b)'' both places it appears and inserting ''743(a)''.

(6) The item relating to section 734 in the table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(7) The item relating to section 743 in the table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transfers and distributions made after the date of the enactment of this Act.

(2) REPEAL OF SECTION 732(d).—The amendments made by subsections (b)(2) and (d)(1) shall apply to—

(A) except as provided in subparagraph (B), transfers made after the date of the enactment of this Act, and

(B) in the case of any transfer made on or before such date to which section 732(d) applies, distributions made after the date which is 2 years after such date of enactment.

PART III—DEPRECIATION AND AMORTIZATION

SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

SEC. 472. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) initial clearing and grading land improvements with respect to gas utility property.''.

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

''(F) 20-YEAR PROPERTY.—The term '20-year property' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.''.

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting ''or (E)(iv)'' after ''(E)(iii)'', and

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

''(F) ..... 25''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 473. EXPANSION OF LIMITATION ON DEPRECIATION OF CERTAIN PASSENGER AUTOMOBILES.

(a) IN GENERAL.—Section 179(b) of the Internal Revenue Code of 1986 (relating to limitations) is amended by adding at the end the following new paragraph:

''(6) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

''(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

''(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—The term 'sport utility vehicle' means any 4-wheeled vehicle—

''(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

''(II) which is not subject to section 280F, and

''(III) which is rated at not more than 14,000 pounds gross vehicle weight.

''(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

''(I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,

''(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

''(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 474. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

''(i) the amount of start-up expenditures with respect to the active trade or business, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

''(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking ''AMORTIZE'' and inserting ''DEDUCT'' in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

''(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

''(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

''(A) the amount of organizational expenditures with respect to the taxpayer, or

''(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

''(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.''.

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

''(i) the amount of organizational expenses with respect to the partnership, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

''(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

''(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking ''AMORTIZATION'' and inserting ''DEDUCTION'' in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 475. REFORM OF TAX TREATMENT OF LEASING OPERATIONS.

(a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subparagraph (A) of section 168(g)(3) (relating to special rules for determining class life) is amended by inserting ''(notwithstanding any other subparagraph of this paragraph)'' after ''shall''.

(b) LIMITATION ON DEPRECIATION PERIOD FOR SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Paragraph (1) of section 167(f) is amended by adding at the end the following new subparagraph:

''(C) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).''

(c) LEASE TERM TO INCLUDE RELATED SERVICE CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relating to lease term) is amended by striking ''and'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

''(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

''(II) which is with respect to the property subject to the lease or substantially similar property, and''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to leases entered into after December 31, 2003.

SEC. 476. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by adding at the end the following new section:

"SEC. 470. LIMITATIONS ON LOSSES FROM TAX-EXEMPT USE PROPERTY.

''(a) LIMITATION ON LOSSES.—Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

''(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

''(c) DEFINITIONS.—For purposes of this section—

''(1) TAX-EXEMPT USE LOSS.—The term 'tax-exempt use loss' means, with respect to any taxable year, the amount (if any) by which—

''(A) the sum of—

''(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

''(ii) the aggregate deductions for interest properly allocable to such property, exceed

''(B) the aggregate income from such property.

''(2) TAX-EXEMPT USE PROPERTY.—The term 'tax-exempt use property' has the meaning given to such term by section 168(h) (without regard to paragraph (1)(C) or (3) thereof and determined as if property described in section 167(f)(1)(B) were tangible property). Such term shall not include property with respect to which the credit under section 42 is allowed and which, but for this sentence, would be tax-exempt property solely by reason of section 168(h)(6).

''(d) EXCEPTION FOR CERTAIN LEASES.—This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

''(1) PROPERTY NOT FINANCED WITH TAX-EXEMPT BONDS OR FEDERAL FUNDS.—A lease of property meets the requirements of this paragraph if no part of the property was financed (directly or indirectly) from—

''(A) the proceeds of an obligation the interest on which is exempt from tax under section 103(a) and which (or any refunding bond of which) is outstanding when the lease is entered into, or

''(B) Federal funds.

The Secretary may by regulations provide for a de minimis exception from this paragraph.

''(2) AVAILABILITY OF FUNDS.—

''(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if (at any time during the lease term) not more than an allowable amount of funds are—

''(i) subject to any arrangement referred to in subparagraph (B), or

''(ii) set aside or expected to be set aside,

to or for the benefit of the lessor or a lender, or to or for the benefit of the lessee to satisfy the lessee's obligations or options under the lease. Funds shall be treated as described in clause (ii) only if a reasonable person would conclude, based on the facts and circumstances, that such funds are so described.

''(B) ARRANGEMENTS.—The arrangements referred to in this subparagraph are—

''(i) a defeasance arrangement, a loan by the lessee to the lessor or a lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, a lease prepayment, a sinking fund arrangement, or any similar arrangement (whether or not such arrangement provides credit support), and

''(ii) any other arrangement identified by the Secretary in regulations.

''(C) ALLOWABLE AMOUNT.—

''(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'allowable amount' means an amount equal to 20 percent of the lessor's adjusted basis in the property at the time the lease is entered into.

''(ii) HIGHER AMOUNT PERMITTED IN CERTAIN CASES.—To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the credit-worthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

''(iii) OPTION TO PURCHASE.—If under the lease the lessee has the option to purchase the property for a fixed price or for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

''(iv) NO ALLOWABLE AMOUNT FOR CERTAIN ARRANGEMENTS.—The allowable amount shall be zero in the case of any arrangement which involves—

''(I) a loan from the lessee to the lessor or a lender,

''(II) any deposit, letter of credit, or payment undertaking agreement involving a lender, or

''(III) any credit support made available to the lessor in which a lender (if any) does not have a claim which is senior to the lessor.

For purposes of subclause (I), the term 'loan' shall not include any amount treated as a loan under section 467 with respect to a section 467 rental agreement.

''(3) LESSOR MUST MAKE SUBSTANTIAL EQUITY INVESTMENT.—A lease of property meets the requirements of this paragraph if—

''(A) the lessor—

''(i) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor's adjusted basis in the property as of that time, and

''(ii) maintains such investment throughout the term of the lease, and

''(B) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

Subparagraphs (A)(ii) and (B) shall not apply if the lease term is described in section 168(h)(1)(C)(ii), or in the case of qualified technological equipment, is described in section 168(h)(3). For purposes of subparagraph (B), the fair market value at the end of the lease term shall be reduced to the extent that a person other than the lessor bears a risk of loss in the value of the property.

''(4) LESSEE MAY NOT BEAR MORE THAN MINIMAL RISK OF LOSS.—

''(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if there is no arrangement under which more than a minimal risk of loss (as determined under regulations) in the value of the property is borne by the lessee.

''(B) CERTAIN ARRANGEMENTS FAIL REQUIREMENT.—In no event will the requirements of this paragraph be met if there is any arrangement under which the lessee bears—

''(i) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than its reasonably expected fair market value at the time the lease is terminated, or

''(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

''(5) PROPERTY WITH MORE THAN 7-YEAR CLASS LIFE.—In the case of a lease—

''(A) of property with a class life (as defined in section 168(i)(1)) of more than 7 years, and

''(B) under which the lessee has the option to purchase the property,

the lease meets the requirements of this paragraph only if the purchase price under the option equals the fair market value of the property (determined at the time of exercise).

''(6) REGULATORY REQUIREMENTS.—A lease of property meets the requirements of this paragraph if such lease of property meets such requirements as the Secretary may prescribe by regulations.

''(e) SPECIAL RULES.—

''(1) TREATMENT OF FORMER TAX-EXEMPT USE PROPERTY.—

''(A) IN GENERAL.—In the case of any former tax-exempt use property—

''(i) any deduction allowable under subsection (b) with respect to such property for any taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

''(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as allowable under subsection (b) with respect to such property in the next taxable year.

''(B) FORMER TAX-EXEMPT USE PROPERTY.—For purposes of this subsection, the term 'former tax-exempt use property' means any property which—

''(i) is not tax-exempt use property for the taxable year, but

''(ii) was tax-exempt use property for any prior taxable year.

''(2) DISPOSITION OF ENTIRE INTEREST IN PROPERTY.—If during the taxable year a taxpayer disposes of the taxpayer's entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

''(3) COORDINATION WITH SECTION 469.—This section shall be applied before the application of section 469.

''(f) OTHER DEFINITIONS.—For purposes of this section—

''(1) RELATED PARTIES.—The terms 'lessor', 'lessee', and 'lender' include any related party (within the meaning of section 197(f)(9)(C)(i)).

''(2) LEASE TERM.—The term 'lease term' has the meaning given to such term by section 168(i)(3).

''(3) LENDER.—The term 'lender' means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

''(4) LOAN.—The term 'loan' includes any similar arrangement.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulation which—

''(1) allow in appropriate cases the aggregation of property subject to the same lease, and

''(2) provide for the determination of the allocation of interest expense for purposes of this section.''

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end the following new item:

''Sec. 470. Limitations on losses from tax-exempt use property.''

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to leases entered into after November 18, 2003.

(2) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this section shall apply to taxable years beginning after January 31, 2004, with respect to leases entered into on or before November 18, 2003.

PART IV—ADMINISTRATIVE PROVISIONS

SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) IN GENERAL.—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: ''The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 482. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''September 30, 2013''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENT.

(a) DETERMINATION OF PENALTY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement to which any initiative described in paragraph (2) applied, or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (2), shall be made without regard to section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection, the term ''applicable taxpayer'' means a taxpayer eligible to participate in—

(A) the Department of the Treasury's Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury's voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer's underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A).

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term ''applicable penalty'' means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term ''Voluntary Offshore Compliance Initiative'' means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 485. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''March 1, 2005'' and inserting ''September 30, 2013''.

SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

''(d) PAYMENT OF INTEREST.—

''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

''(i) has a reasonable basis for its treatment of such item, and

''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

''(e) USE OF DEPOSITS.—

''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.—

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

''SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

''(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

''(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the

term 'qualified tax collection contract' means any contract which—

''(1) is for the services of any person (other than an officer or employee of the Treasury Department)—

''(A) to locate and contact any taxpayer specified by the Secretary,

''(B) to request full payment from such taxpayer of an amount of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 3 years, and

''(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

''(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services,

''(3) prohibits subcontractors from—

''(A) having contacts with taxpayers,

''(B) providing quality assurance services, and

''(C) composing debt collection notices, and

''(4) permits subcontractors to perform other services only with the approval of the Secretary.

''(c) FEES AND EXPENSES.—The Secretary may retain and use—

''(1) an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract, and

''(2) an amount not in excess of 25 percent of such amount collected for collection enforcement activities of the Internal Revenue Service.

The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

''(d) NO FEDERAL LIABILITY.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

''(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

''(f) APPLICATION OF SECTION.—In no event may the term of any qualified tax collection contract extend beyond the date which is 5 years after the date of the enactment of this section.

''(g) CROSS REFERENCES.—

''(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

''(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(a)(4).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 7809(a) is amended by inserting ''6306,'' before ''7651''.

(B) The table of sections for subchapter A of chapter 64 is amended by adding at the end the following new item:

''Sec. 6306. Qualified Tax Collection Contracts.''.

(b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.—

(1) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by inserting after section 7433 the following new section:

''SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.

''(a) IN GENERAL.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

''(b) MODIFICATIONS.—For purposes of subsection (a)—

''(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

''(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

''(3) Such civil action shall not be an exclusive remedy with respect to such person.

''(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

''Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract.''.

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

''(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.''.

(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

''(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.''.

(e) BIENNIAL REPORT.—The Secretary of the Treasury shall biennially submit (beginning in 2005) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report with respect to qualified tax collection contracts under section 6306 of the Internal Revenue Code of 1986 (as added by this section) which includes—

(1) a complete cost benefit analysis,

(2) the impact of such contracts on collection enforcement staff levels in the Internal Revenue Service,

(3) the amounts collected and the collection costs incurred (directly and indirectly),

(4) an evaluation of contractor performance,

(5) a disclosure safeguard report in a form similar to that required under section 6103(p)(5) of such Code, and

(6) a measurement plan which includes a comparison of the best practices used by the private collectors with the Internal Revenue Service's own collection techniques) and mechanisms to identify and capture information on successful collection techniques used by the contractors which could be adopted by the Internal Revenue Service.

(f) EFFECTIVE DATE.—The amendments made to this section shall take effect on the date of the enactment of this Act.

SEC. 488. WHISTLEBLOWER REFORMS.

(a) IN GENERAL.—Section 7623 (relating to expenses of detection of underpayments and fraud, etc.) is amended—

(1) by striking ''The Secretary'' and inserting ''(a) IN GENERAL.—The Secretary'',

(2) by striking ''and'' at the end of paragraph (1) and inserting ''or'',

(3) by striking ''(other than interest)'', and

(4) by adding at the end the following new subsections:

''(b) AWARDS TO WHISTLEBLOWERS.—

''(1) IN GENERAL.—If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.

''(2) AWARD IN CASE OF LESS SUBSTANTIAL CONTRIBUTION.—

''(A) IN GENERAL.—In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual's information and the role of such individual and any legal representative of such individual in contributing to such action.

''(B) NONAPPLICATION OF PARAGRAPH WHERE INDIVIDUAL IS ORIGINAL SOURCE OF INFORMATION.—Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

''(3) APPEAL OF AWARD DETERMINATION.—Any determination regarding an award under paragraph (1) or (2) shall be subject to the filing by the individual described in such paragraph of a petition for review with the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute) and such review shall be subject to the rules under section 7461(b)(1).

''(4) APPLICATION OF THIS SUBSECTION.—This subsection shall apply with respect to any action—

''(A) against any taxpayer, but in the case of any individual, only if such individual's

gross income exceeds $200,000 for any taxable year subject to such action, and

''(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $20,000.

''(5) ADDITIONAL RULES.—

''(A) NO CONTRACT NECESSARY.—No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

''(B) REPRESENTATION.—Any individual described in paragraph (1) or (2) may be represented by counsel.

''(C) AWARD NOT SUBJECT TO INDIVIDUAL ALTERNATIVE MINIMUM TAX.—No award received under this subsection shall be included in gross income for purposes of determining alternative minimum taxable income.

''(c) WHISTLEBLOWER OFFICE.—

''(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Whistleblower Office' which—

''(A) shall analyze information received from any individual described in subsection (b) and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office,

''(B) shall monitor any action taken with respect to such matter,

''(C) shall inform such individual that it has accepted the individual's information for further review,

''(D) may require such individual and any legal representative of such individual to not disclose any information so provided,

''(E) may ask for additional assistance from such individual or any legal representative of such individual, and

''(F) shall determine the amount to be awarded to such individual under subsection (b).

''(2) FUNDING FOR OFFICE.—From the amounts available for expenditure under subsection (a), the Whistleblower Office shall be credited with an amount equal to the awards made under subsection (b). These funds shall be used to maintain the Whistleblower Office and also to reimburse other Internal Revenue Service offices for related costs, such as costs of investigation and collection.

''(3) REQUEST FOR ASSISTANCE.—

''(A) IN GENERAL.—Any assistance requested under paragraph (1)(E) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under subparagraph (A). To the extent the disclosure of any returns or return information to the individual or legal representative is required for the performance of such assistance, such disclosure shall be pursuant to a contract entered into between the Secretary and the recipients of such disclosure subject to section 6103(n).

''(B) FUNDING OF ASSISTANCE.—From the funds made available to the Whistleblower Office under paragraph (2), the Whistleblower Office may reimburse the costs incurred by any legal representative in providing assistance described in subparagraph (A).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to information provided on or after the date of the enactment of this Act.

SEC. 489. PROTECTION OF OVERTIME PAY.

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(k)(1) The Secretary shall not promulgate any rule under subsection (a)(1) that exempts from the overtime pay provisions of section 7 any employee who earns less than $23,660 per year.

''(2) The Secretary shall not promulgate any rule under subsection (a)(1) concerning the right to overtime pay that is not as protective, or more protective, of the overtime pay rights of employees in the occupations or job classifications described in paragraph (3) as the protections provided for such employees under the regulations in effect under such subsection on March 31, 2003.

''(3) The occupations or job classifications described in this paragraph are as follows:

''(A) Any worker paid on an hourly basis.

''(B) Blue collar workers.

''(C) Any worker provided overtime under a collective bargaining agreement.

''(D) Team leaders.

''(E) Computer programmers.

''(F) Registered nurses.

''(G) Licensed practical nurses.

''(H) Nurse midwives.

''(I) Nursery school teachers.

''(J) Oil and gas pipeline workers.

''(K) Oil and gas field workers.

''(L) Oil and gas platform workers.

''(M) Refinery workers.

''(N) Steel workers.

''(O) Shipyard and ship scrapping workers.

''(P) Teachers.

''(Q) Technicians.

''(R) Journalists.

''(S) Chefs.

''(T) Cooks.

''(U) Police officers.

''(V) Firefighters.

''(W) Fire sergeants.

''(X) Police sergeants.

''(Y) Emergency medical technicians.

''(Z) Paramedics.

''(AA) Waste disposal workers.

''(BB) Day care workers.

''(CC) Maintenance employees.

''(DD) Production line employees.

''(EE) Construction employees.

''(FF) Carpenters.

''(GG) Mechanics.

''(HH) Plumbers.

''(II) Iron workers.

''(JJ) Craftsmen.

''(KK) Operating engineers.

''(LL) Laborers.

''(MM) Painters.

''(NN) Cement masons.

''(OO) Stone and brick masons.

''(PP) Sheet metal workers.

''(QQ) Utility workers.

''(RR) Longshoremen.

''(SS) Stationary engineers.

''(TT) Welders.

''(UU) Boilermakers.

''(VV) Funeral directors.

''(WW) Athletic trainers.

''(XX) Outside sales employees.

''(YY) Inside sales employees.

''(ZZ) Grocery store managers.

''(AAA) Financial services industry workers.

''(BBB) Route drivers.

''(CCC) Assistant retail managers.

''(4) Any portion of a rule promulgated under subsection (a)(1) after March 31, 2003, that modifies the overtime pay provisions of section 7 in a manner that is inconsistent with paragraphs (2) and (3) shall have no force or effect as it relates to the occupation or job classification involved.''.

SEC. 490. PROTECTION OF OVERTIME PAY.

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(k) Notwithstanding the provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly referred to as the Administrative Procedures Act) or any other provision of law, any portion of the final rule promulgated on April 23, 2004, revising part 541 of title 29, Code of Federal Regulations, that exempts from the overtime pay provisions of section 7 any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003 remained in effect, shall have no force or effect and that portion of such regulations (as in effect on March 31, 2003) that would prevent such employee from being exempt shall remain in effect. Notwithstanding the preceding sentence, the increased salary requirements provided for in such final rule at section 541.600 of such title 29, shall remain in effect.''.

PART V—MISCELLANEOUS PROVISIONS

SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

''(I) Any vaccine against hepatitis A.''.

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking ''October 18, 2000'' and inserting ''the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act''.

(c) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

''(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 493. MODIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) PREMIUMS AS PERCENTAGE OF GROSS RECEIPTS INCREASED.—Section 501(c)(15)(A)(i)(II) is amended by striking ''50 percent'' and inserting ''60 percent''.

(b) LIMITATION ON NET WRITTEN PREMIUMS INCREASED.—Section 831(b)(2) (relating to companies to which this subsection applies) is amended—

(1) by striking ''$1,200,000'' and inserting ''$1,890,000'', and

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

''(C) INFLATION ADJUSTMENTS.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2005, the dollar amount in subparagraph (A)(i) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING.—If the amount in subparagraph (A)(i) as increased under clause (i) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2004.

(2) TRANSITION RULE FOR COMPANIES IN RECEIVERSHIP OR LIQUIDATION.—In the case of a company or association which—

(A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and

(B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court,

the amendments made by this section shall apply to taxable years beginning after the earlier of the date such proceeding ends (or, if later, December 31, 2004) or December 31, 2007.

SEC. 494. TREATMENT OF CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

(a) IN GENERAL.—Section 170(e)(1)(B) (relating to certain contributions of ordinary income and capital gain property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) of any patent, copyright, trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property,''.

(b) ADDITIONAL DEDUCTION FOR CERTAIN CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—Section 170(e) is amended by adding at the end the following new paragraph:

''(7) ADDITIONAL DEDUCTION FOR CERTAIN CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—

''(A) IN GENERAL.—In the case of a charitable contribution of any property described in paragraph (1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in paragraph (1)(B)(ii)), if—

''(i) the lesser of—

''(I) 5 percent of the fair market value of such property (determined at the time of such contribution), or

''(II) $1,000,000, exceeds

''(ii) the amount of such contribution as determined under paragraph (1),

then the amount of the charitable contribution of such property otherwise taken into account under this section shall equal the amount determined under clause (i).''.

(c) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—Section 170 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—

''(1) TREATMENT AS ADDITIONAL CONTRIBUTION.—In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a) for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

''(2) QUALIFIED DONEE INCOME.—For purposes of this subsection, the term 'qualified donee income' means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

''(3) ALLOCATION OF QUALIFIED DONEE INCOME TO TAXABLE YEARS OF DONOR.—For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

''(4) 10-YEAR LIMITATION.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

''(5) BENEFIT LIMITED TO LIFE OF INTELLECTUAL PROPERTY.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

''(6) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

"Taxable Year of Donor Ending On or After Date of Contribution:	Applicable Percentage:
1st or 2d	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th or 12th	10.

''(7) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTION.—For purposes of this subsection, the term 'qualified intellectual property contribution' means any charitable contribution of qualified intellectual property—

''(A) the amount of which taken into account under this section—

''(i) is reduced by reason of subsection (e)(1), or

''(ii) determined under subsection (e)(7), and

''(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

''(8) QUALIFIED INTELLECTUAL PROPERTY.—For purposes of this subsection, the term 'qualified intellectual property' means property described in subsection (e)(1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

''(9) OTHER SPECIAL RULES.—

''(A) APPLICATION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Any increase under this subsection of the deduction provided under subparagraph (a) shall be treated for purposes of subsection (b) as a deduction which is attributable to a charitable contribution to the donee to which such increase relates.

''(B) NET INCOME DETERMINED BY DONEE.—The net income taken into account under paragraph (2) shall not exceed the amount of such income reported under section 6050L(b)(1).

''(C) DEDUCTION LIMITED TO 12 TAXABLE YEARS.—Except as may be provided under subparagraph (D)(i), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

''(D) REGULATIONS.—The Secretary may issue regulations or other guidance to carry out the purposes of this subsection, including regulations or guidance—

''(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

''(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee's exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.''.

(d) REPORTING REQUIREMENTS.—Section 6050L (relating to returns relating to certain dispositions of donated property) is amended to read as follows:

"SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED PROPERTY.

''(a) DISPOSITIONS OF DONATED PROPERTY.—

''(1) IN GENERAL.—If the donee of any charitable deduction property sells, exchanges, or otherwise disposes of such property within 2 years after its receipt, the donee shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

''(A) the name, address, and TIN of the donor,

''(B) a description of the property,

''(C) the date of the contribution,

''(D) the amount received on the disposition, and

''(E) the date of such disposition.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) CHARITABLE DEDUCTION PROPERTY.—The term 'charitable deduction property' means any property (other than publicly traded securities) contributed in a contribution for which a deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to 1 or more donees) exceeds $5,000.

''(B) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

''(b) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTIONS.—

''(1) IN GENERAL.—Each donee with respect to a qualified intellectual property contribution shall make a return (at such time and in such form and manner as the Secretary may by regulations prescribe) with respect to each specified taxable year of the donee showing—

''(A) the name, address, and TIN of the donor,

''(B) a description of the qualified intellectual property contributed,

''(C) the date of the contribution, and

''(D) the amount of net income of the donee for the taxable year which is properly allocable to the qualified intellectual property (determined without regard to paragraph (9)(B) of section 170(m) and with the modifications described in paragraphs (4) and (5) of such section).

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) IN GENERAL.—Terms used in this subsection which are also used in section 170(m)

have the respective meanings given such terms in such section.

''(B) SPECIFIED TAXABLE YEAR.—The term 'specified taxable year' means, with respect to any qualified intellectual property contribution, any taxable year of the donee any portion of which is part of the 10-year period beginning on the date of such contribution.

''(c) STATEMENT TO BE FURNISHED TO DONORS.—Every person making a return under subsection (a) or (b) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.''.

(e) PROCESSING FEE.—Section 170, as amended by subsection (b), is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) PROCESSING FEE.—In the case of a deduction allowed for any taxable year under this section with respect to a charitable contribution of any property described in subsection (e)(1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)), the taxpayer shall include, with the taxpayer's return of tax including such deduction, a fee equal to 1 percent of the amount of such deduction. Such fee shall be credited by the Secretary to the operations of the Exempt Organizations unit within the Internal Revenue Service.''.

(f) MODIFICATION OF SUBSTANTIAL VALUATIONS MISSTATEMENT PENALTY FOR CHARITABLE CONTRIBUTIONS OF PROPERTY.—

(1) SUBSTANTIAL MISSTATEMENTS.—Section 6662(e)(1)(A) (relating to substantial valuation misstatements under chapter 1) is amended by inserting ''(50 percent or more in the case of a charitable contribution of any property described in section 170(e)(1)(B)(iii))'' after ''200 percent or more''.

(2) GROSS MISSTATEMENTS.—Section 6662(h)(2)(A) (defining gross valuation misstatements) is amended by striking clause (ii) and inserting the following new clauses:

''(ii) '100 percent or more' for '50 percent or more',

''(iii) '25 percent or less' for '50 percent or less', and''.

(g) ANTI-ABUSE RULES.—The Secretary of the Treasury—

(1) may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of paragraphs (1)(B)(iii) and (7) of section 170(e) of the Internal Revenue Code of 1986 (as added by subsections (a) and (b)), including preventing—

(A) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(B) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(C) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply, and

(2) shall prescribe guidance on appraisal standards for contributions of property described in section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by this section).

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after the date of the enactment of this Act.

SEC. 495. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking ''age 14'' and inserting ''age 18''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 496. HOLDING PERIOD FOR PREFERRED STOCK.

(a) IN GENERAL.—Section 1(h)(11)(B)(iii)(I) is amended to read as follows:

''(I) with respect to which the holding period requirements of section 246(c) are not met, determined by substituting '60 days' for '45' days each place it appears, by substituting '120-day' for '90-day' each place it appears, and by substituting '120 days' for '90 days' and '240-day' for '180-day' in paragraph (2).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 497. SUBSTANTIAL PRESENCE TEST REQUIRED TO DETERMINE BONA FIDE RESIDENCE IN UNITED STATES POSSESSIONS.

(a) SUBSTANTIAL PRESENCE TEST.—

(1) IN GENERAL.—Subpart D of part III of subchapter N of chapter 1 (relating to possessions of the United States) is amended by adding at the end the following new section:

''SEC. 937. BONA FIDE RESIDENT.

''For purposes of this subpart, section 865(g)(3), section 876, section 881(b), paragraphs (2) and (3) of section 901(b), section 957(c), section 3401(a)(8)(C), and section 7654(a), the term 'bona fide resident' means a person who satisfies a test, determined by the Secretary, similar to the substantial presence test under section 7701(b)(3) with respect to Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be.''.

(2) CONFORMING AMENDMENTS.—

(A) The following provisions are amended by striking ''during the entire taxable year'' and inserting ''for the taxable year'':

(i) Paragraph (3) of section 865(g).

(ii) Subsection (a) of section 876(a).

(iii) Paragraphs (2) and (3) of section 901(b).

(iv) Subsection (a) of section 931.

(v) Paragraphs (1) and (2) of section 933.

(B) Section 931(d) is amended by striking paragraph (3).

(C) Section 932 is amended by striking ''at the close of the taxable year'' and inserting ''for the taxable year'' each place it appears.

(3) CLERICAL AMENDMENT.—The table of sections of subpart D of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

''Sec. 937. Bona fide resident.''.

(b) REPORTING REQUIREMENTS FOR BONA FIDE RESIDENTS OF THE VIRGIN ISLANDS.—Paragraph (2) of section 932(c) (relating to treatment of Virgin Islands residents) is amended to read as follows:

''(2) FILING REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding paragraph (4), each individual to whom this subsection applies for the taxable year shall file an income tax return for the taxable year with—

''(i) the Virgin Islands, and

''(ii) the United States.

''(B) FILING FEE.—The Secretary shall charge a processing fee with respect to the return filed under subparagraph (A)(ii) of an amount appropriate to cover the administrative costs of the requirements of subparagraph (A)(ii) and the enforcement of the purposes of subparagraph (A)(ii).''.

(c) PENALTIES.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 is amended by adding at the end the following new section:

''SEC. 6717. FAILURE OF VIRGIN ISLANDS RESIDENTS TO FILE RETURNS WITH THE UNITED STATES.

''(a) PENALTY AUTHORIZED.—The Secretary may impose a civil money penalty on any person who violates, or causes any violation of, the requirements of section 932(c)(2)(A)(ii).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in subsection (c), the amount of any civil penalty imposed under subsection (a) shall not exceed $5,000.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subsection (a) with respect to any violation if such violation was due to reasonable cause and the taxpayer acted in good faith.

''(c) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any requirement of section 932(c)(2)(A)(ii)—

''(1) the maximum penalty under subsection (b)(1) shall be increased to $25,000 and

''(2) subsection (b)(2) shall not apply.''.

(2) CLERICAL AMENDMENT.—The table of sections for Part I of subchapter B of chapter 68 is amended by adding at the end the following new item:

''Sec. 6717. Failure of Virgin Islands residents to file returns with the United States.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

TITLE V—PROTECTION OF UNITED STATES WORKERS FROM COMPETITION OF FOREIGN WORKFORCES

SEC. 501. LIMITATIONS ON OFF-SHORE PERFORMANCE OF CONTRACTS.

(a) LIMITATIONS.—

(1) IN GENERAL.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by adding at the end the following new section:

''SEC. 42. LIMITATIONS ON OFF-SHORE PERFORMANCE OF CONTRACTS.

''(a) CONVERSIONS TO CONTRACTOR PERFORMANCE OF FEDERAL ACTIVITIES.—An activity or function of an executive agency that is converted to contractor performance under Office of Management and Budget Circular A–76 may not be performed by the contractor or any subcontractor at a location outside the United States except to the extent that such activity or function was previously performed by Federal Government employees outside the United States.

''(b) OTHER FEDERAL CONTRACTS.—(1) A contract that is entered into by the head of an executive agency may not be performed outside the United States except to meet a requirement of the executive agency for the contract to be performed specifically at a location outside the United States.

''(2) The prohibition in paragraph (1) does not apply in the case of a contract of an executive agency if—

''(A) the President determines in writing that it is necessary in the national security interests of the United States for the contract to be performed outside the United States; or

''(B) the head of such executive agency makes a determination and reports such determination on a timely basis to the Director of the Office of Management and Budget that—

''(i) the property or services needed by the executive agency are available only by means of performance of the contract outside the United States; and

''(ii) no property or services available by means of performance of the contract inside the United States would satisfy the executive agency's need.

''(3) Paragraph (1) does not apply to the performance of a contract outside the United States under the exception provided in subsection (a).

''(c) STATE CONTRACTS.—(1) Except as provided in paragraph (2), funds appropriated for financial assistance for a State may not be disbursed to or for such State during a fiscal year unless the chief executive of that State has transmitted to the Administrator for Federal Procurement Policy, not later than April 1 of the preceding fiscal year, a written certification that none of such funds will be expended for the performance outside the United States of contracts entered into by such State.

''(2) The prohibition on disbursement of funds to or for a State under paragraph (1) does not apply with respect to the performance of a State contract outside the United States if—

''(A) the chief executive of such State—

''(i) determines that the property or services needed by the State are available only by means of performance of the contract outside the United States and no property or services available by means of performance of the contract inside the United States would satisfy the State's need; and

''(ii) transmits a notification of such determination to the head of the executive agency of the United States that administers the authority under which such funds are disbursed to or for the State; and

''(B) the head of the executive agency receiving the notification of such determination—

''(i) confirms that the facts warrant the determination;

''(ii) approves the determination; and

''(iii) transmits a notification of the approval of the determination to the Director of the Office of Management and Budget.

''(3) In this subsection, the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

''(d) Subsections (b) and (c) shall not apply to procurement covered by the World Trade Organization Government Procurement Agreement.

''(e) NATIONAL SECURITY EXEMPTION.—Subsection (b) shall not apply to any procurement for national security purposes entered into by—

''(1) the Department of Defense or any agency or entity thereof;

''(2) the Department of the Army, the Department of the Navy, the Department of the Air Force, or any agency or entity of any of the military departments;

''(3) the Department of Homeland Security;

''(4) the Department of Energy or any agency or entity thereof, with respect to the national security programs of that Department; or

''(5) any element of the intelligence community.

''(f) RESPONSIBILITIES OF OMB.—The Director of the Office of Management and Budget shall—

''(1) maintain—

''(A) the waivers granted under subsection (b)(2), together with the determinations and certifications on which such waivers were based; and

''(B) the notifications received under subsection (c)(2)(B)(iii); and

''(2) submit to Congress promptly after the end of each quarter of each fiscal year a report that sets forth—

''(A) the waivers that were granted under subsection (b)(2) during such quarter; and

''(B) the notifications that were received under subsection (c)(2)(B)(iii) during such quarter.

''(g) ANNUAL GAO REVIEW.—The Comptroller General shall—

''(1) review, each fiscal year, the waivers granted during such fiscal year under subsection (b)(2) and the disbursements of funds authorized pursuant to the exceptions in subsections (c)(2) and (e); and

''(2) promptly after the end of such fiscal year, transmit to Congress a report containing a list of the contracts covered by such waivers and exception together with a brief description of the performance of each such contract to the maximum extent feasible outside the United States.''.

(2) CLERICAL AMENDMENT.—The table of sections in section 1(b) of such Act is amended by adding at the end the following new item:

''Sec. 42. Limitations on off-shore performance of contracts.''.

(b) INAPPLICABILITY TO STATES DURING FIRST TWO FISCAL YEARS.—Section 42(c) of the Office of Federal Procurement Policy Act (as added by subsection (a)) shall not apply to disbursements of funds to a State during the fiscal year in which this Act is enacted and the next fiscal year.

SEC. 502. REPEAL OF SUPERSEDED LAW.

Section 647 of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108–199) is amended by striking subsection (e).

SEC. 503. EFFECTIVE DATE AND APPLICABILITY.

(a) IN GENERAL.—This title and the amendments made by this title shall take effect 30 days after the Secretary of Commerce certifies that the amendments made by this title will not result in the loss of more jobs than it will protect and will not cause harm to the United States economy. The initial certification shall be made by the Secretary of Commerce no later than 90 days after the enactment of this Act. Such certification must be renewed on or before January 1 of each year in order for the amendments made by this title to be in effect for that year.

(b) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—The provisions of this title shall not apply to the extent that they may be inconsistent with obligations under international agreements. Within 90 days of this legislation, the Office of Management and Budget, in consultation with the Office of the United States Trade Representative, shall develop guidelines for the implementation of this provision.

TITLE VI—OTHER PROVISIONS

Subtitle A—Provisions Relating to Housing

SEC. 601. TREATMENT OF QUALIFIED MORTGAGE BONDS.

(a) YEAR HOLIDAY.—Section 143(a)(2)(A)(iv) of the Internal Revenue Code of 1986 shall not apply to amounts received during the 1-year period beginning on the date of the enactment of this Act with respect to any bond outstanding on such date.

(b) REPEAL OF REQUIRED USE OF CERTAIN PRINCIPAL REPAYMENTS ON MORTGAGE SUBSIDY BOND FINANCINGS TO REDEEM BONDS.—

(1) IN GENERAL.—Subparagraph (A) of section 143(a)(2) (defining qualified mortgage issue) is amended by adding ''and'' at the end of clause (ii), by striking '', and'' at the end of clause (iii) and inserting a period, and by striking clause (iv) and the last sentence.

(2) CONFORMING AMENDMENT.—Clause (ii) of section 143(a)(2)(D) is amended by striking ''(and clause (iv) of subparagraph (A))''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to bonds originally issued after the date of the enactment of this Act.

SEC. 602. PREMIUMS FOR MORTGAGE INSURANCE.

(a) IN GENERAL.—Paragraph (3) of section 163(h) (relating to qualified residence interest) is amended by adding after subparagraph (D) the following new subparagraph:

''(E) MORTGAGE INSURANCE PREMIUMS TREATED AS INTEREST.—

''(i) IN GENERAL.—Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this subsection as qualified residence interest.

''(ii) PHASEOUT.—The amount otherwise allowable as a deduction under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).''.

(b) DEFINITION AND SPECIAL RULES.—Paragraph (4) of section 163(h) (relating to other definitions and special rules) is amended by adding at the end the following new subparagraphs:

''(E) QUALIFIED MORTGAGE INSURANCE.—The term 'qualified mortgage insurance' means—

''(i) the Home Loan Guaranty Program of the Department of Veterans Affairs, and mortgage insurance provided by the Federal Housing Administration or the Rural Housing Administration, and

''(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

''(F) SPECIAL RULES FOR PREPAID QUALIFIED MORTGAGE INSURANCE.—Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Department of Veterans Affairs or the Rural Housing Administration.''.

(c) INFORMATION RETURNS RELATING TO MORTGAGE INSURANCE.—Section 6050H (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding at the end the following new subsection:

''(h) RETURNS RELATING TO MORTGAGE INSURANCE PREMIUMS.—

''(1) IN GENERAL.—The Secretary may prescribe, by regulations, that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance aggregating $600 or more for any calendar year, shall make a return with respect to each such individual. Such return shall be in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

''(2) STATEMENT TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under paragraph (1) shall furnish to each individual with respect to whom a return is made a written statement showing such information as the Secretary may prescribe. Such written statement shall be furnished on or before January 31 of the year

following the calendar year for which the return under paragraph (1) was required to be made.

''(3) SPECIAL RULES.—For purposes of this subsection—

''(A) rules similar to the rules of subsection (c) shall apply, and

''(B) the term 'mortgage insurance' means—

''(i) the Home Loan Guaranty Program of the Department of Veterans Affairs, and mortgage insurance provided by the Federal Housing Administration or the Rural Housing Administration, and

''(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued in taxable years beginning after December 31, 2004, and ending before January 1, 2006.

SEC. 603. INCREASE IN HISTORIC REHABILITATION CREDIT FOR CERTAIN LOW-INCOME HOUSING FOR THE ELDERLY.

(a) IN GENERAL.—Section 47 (relating to rehabilitation credit) is amended by adding at the end the following new subsection:

''(e) SPECIAL RULE REGARDING CERTAIN HISTORIC STRUCTURES.—In the case of any qualified rehabilitation expenditure with respect to any certified historic structure—

''(1) which is placed in service after the date of the enactment of this subsection,

''(2) which is part of a qualified low-income building with respect to which a credit under section 42 is allowed, and

''(3) substantially all of the residential rental units of which are used for tenants who have attained the age of 65,

subsection (a)(2) shall be applied by substituting '25 percent' for '20 percent'.''.

(b) APPLICATION OF MACRS.—The Internal Revenue Code of 1986 shall be applied and administered as if paragraph (4)(X) of section 251(d) of the Tax Reform Act of 1986 as applied to the amendments made by section 201 of such Act had not been enacted with respect to any property described in such paragraph and placed in service after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property placed in service after the date of the enactment of this Act.

Subtitle B—Provisions Relating to Bonds

SEC. 611. EXPANSION OF NEW YORK LIBERTY ZONE TAX BENEFITS.

(a) ADDITIONAL EXTENSION OF TAX-EXEMPT BOND FINANCING.—Section 1400L(d)(2)(D), as amended by this Act, is amended by striking ''2006'' and inserting ''2010''.

(b) EXTENSION OF ADVANCE REFUNDINGS.—Section 1400L(e)(1) is amended by striking ''2005'' and inserting ''2006''.

SEC. 612. MODIFICATIONS OF TREATMENT OF QUALIFIED ZONE ACADEMY BONDS.

(a) PROCEEDS OF BONDS MAY BE USED FOR CONSTRUCTION AND LAND ACQUISITION.—Paragraph (5) of section 1397E(d) (defining qualified purpose) is amended—

(1) by striking ''rehabilitating or repairing'' in subparagraph (A) and inserting ''constructing, rehabilitating, or repairing'', and

(2) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively, and by inserting after subparagraph (A) the following:

''(B) acquiring the land on which the facility is to be constructed,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2003.

SEC. 613. MODIFICATIONS OF AUTHORITY OF INDIAN TRIBAL GOVERNMENTS TO ISSUE TAX-EXEMPT BONDS.

(a) IN GENERAL.—Paragraph (1) of section 7871(c) (relating to Indian tribal governments treated as States for certain purposes) is amended to read as follows:

''(1) IN GENERAL.—Subsection (a) of section 103 shall apply to any obligation issued by an Indian tribal government (or subdivision thereof) only if—

''(A) such obligation—

''(i) is part of an issue 95 percent or more of the net proceeds of which are to be used to finance any facility located on an Indian reservation, and

''(ii) is issued before January 1, 2006, or

''(B) such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.''.

(b) SPECIAL RULES AND DEFINITIONS.—Subsection (c) of section 7871 is amended by inserting at the end the following new paragraph:

''(4) SPECIAL RULES AND DEFINITIONS.—

''(A) EXCLUSION OF GAMING.—An obligation described in subparagraph (A) or (B) of paragraph (1) may not be used to finance any portion of a building in which class II or III gaming (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2702)) is conducted or housed.

''(B) INDIAN RESERVATION.—For purposes of paragraph (1), the term 'Indian reservation' means—

''(i) a reservation, as defined in section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and

''(ii) lands held under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) by a Native corporation as defined in section 3(m) of such Act (43 U.S.C. 1602(m)).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 614. DEFINITION OF MANUFACTURING FACILITY FOR SMALL ISSUE BONDS.

(a) IN GENERAL.—Section 144(a)(12) (relating to termination dates) is amended by striking subparagraph (C) and inserting the following new subparagraphs:

''(C) MANUFACTURING FACILITY.—For purposes of this paragraph, the term 'manufacturing facility' means any facility which is used in—

''(i) the manufacture of tangible personal property (including processing which results in a change in the condition of such property),

''(ii) the manufacture or development of any software product or process if—

''(I) it takes more than 6 months to manufacture or develop such product,

''(II) the manufacture or development could not with due diligence be reasonably expected to occur in less than 6 months, and

''(III) the software product or process comprises programs, routines, and attendant documentation developed and maintained for use in computer and telecommunications technology, or

''(iii) the manufacture or development of any biobased product or bioenergy if—

''(I) it takes more than 6 months to manufacture or develop, and

''(II) the manufacture or development could not with due diligence be reasonably expected to occur in less than 6 months.

''(D) RELATED FACILITIES.—For purposes of subparagraph (C), the term 'manufacturing facility' includes a facility which is directly and functionally related to a manufacturing facility (determined without regard to subparagraph (C)) if—

''(i) such facility, including an office facility and a research and development facility, is located on the same site as the manufacturing facility, and

''(ii) not more than 40 percent of the net proceeds of the issue are used to provide such facility.

''(E) OTHER DEFINITIONS.—For purposes of subparagraph (C)(iii)—

''(i) BIOBASED PRODUCT.—The term 'biobased product' means a commercial or industrial product (other than food or feed) which utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

''(ii) BIOENERGY.—The term 'bioenergy' means biomass used in the production of energy, including liquid, solid, or gaseous fuels, electricity, and heat.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 615. CONSERVATION BONDS.

(a) TAX-EXEMPT BOND FINANCING.—

(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, any qualified forest conservation bond shall be treated as an exempt facility bond under section 142 of such Code.

(2) QUALIFIED FOREST CONSERVATION BOND.—For purposes of this section, the term ''qualified forest conservation bond'' means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3) of such Code) of such issue are to be used for qualified project costs,

(B) such bond is issued for a qualified organization, and

(C) such bond is issued before December 31, 2006.

(3) LIMITATION ON AGGREGATE AMOUNT ISSUED.—

(A) IN GENERAL.—The maximum aggregate face amount of bonds which may be issued under this subsection shall not exceed $1,500,000,000 for all projects (excluding refunding bonds).

(B) ALLOCATION OF LIMITATION.—The limitation described in subparagraph (A) shall be allocated by the Secretary of the Treasury among qualified organizations based on criteria established by the Secretary not later than 180 days after the date of the enactment of this section, after consultation with the Chief of the Forest Service.

(4) QUALIFIED PROJECT COSTS.—For purposes of this subsection, the term ''qualified project costs'' means the sum of—

(A) the cost of acquisition by the qualified organization from an unrelated person of forests and forest land which at the time of acquisition or immediately thereafter are subject to a conservation restriction described in subsection (c)(2),

(B) capitalized interest on the qualified forest conservation bonds for the 3-year period beginning on the date of issuance of such bonds, and

(C) credit enhancement fees which constitute qualified guarantee fees (within the meaning of section 148 of such Code).

(5) SPECIAL RULES.—In applying the Internal Revenue Code of 1986 to any qualified forest conservation bond, the following modifications shall apply:

(A) Section 146 of such Code (relating to volume cap) shall not apply.

(B) For purposes of section 147(b) of such Code (relating to maturity may not exceed 120 percent of economic life), the land and standing timber acquired with proceeds of qualified forest conservation bonds shall have an economic life of 35 years.

(C) Subsections (c) and (d) of section 147 of such Code (relating to limitations on acquisition of land and existing property) shall not apply.

(D) Section 57(a)(5) of such Code (relating to tax-exempt interest) shall not apply to interest on qualified forest conservation bonds.

(6) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (2)(C) and (3) shall not apply to any bond (or series of bonds) issued to refund a qualified forest conservation bond issued before December 31, 2006, if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) of such Code.

(7) EFFECTIVE DATE.—This subsection shall apply to obligations issued on or after the date which is 180 days after the enactment of this Act.

(b) ITEMS FROM QUALIFIED HARVESTING ACTIVITIES NOT SUBJECT TO TAX OR TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Income, gains, deductions, losses, or credits from a qualified harvesting activity conducted by a qualified organization shall not be subject to tax or taken into account under subtitle A of the Internal Revenue Code of 1986.

(2) LIMITATION.—The amount of income excluded from gross income under paragraph (1) for any taxable year shall not exceed the amount used by the qualified organization to make debt service payments during such taxable year for qualified forest conservation bonds.

(3) QUALIFIED HARVESTING ACTIVITY.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term ''qualified harvesting activity'' means the sale, lease, or harvesting, of standing timber—

(i) on land owned by a qualified organization which was acquired with proceeds of qualified forest conservation bonds,

(ii) with respect to which a written acknowledgement has been obtained by the qualified organization from the State or local governments with jurisdiction over such land that the acquisition lessens the burdens of such government with respect to such land, and

(iii) pursuant to a qualified conservation plan adopted by the qualified organization.

(B) EXCEPTIONS.—

(i) CESSATION AS QUALIFIED ORGANIZATION.—The term ''qualified harvesting activity'' shall not include any sale, lease, or harvesting for any period during which the organization ceases to qualify as a qualified organization.

(ii) EXCEEDING LIMITS ON HARVESTING.—The term ''qualified harvesting activity'' shall not include any sale, lease, or harvesting of standing timber on land acquired with proceeds of qualified forest conservation bonds to the extent that—

(I) the average annual area of timber harvested from such land exceeds 2.5 percent of the total area of such land or,

(II) the quantity of timber removed from such land exceeds the quantity which can be removed from such land annually in perpetuity on a sustained-yield basis with respect to such land.

The limitations under subclauses (I) and (II) shall not apply to post-fire restoration and rehabilitation or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophes, or which are in imminent danger from insect or disease attack.

(4) TERMINATION.—This subsection shall not apply to any qualified harvesting activity of a qualified organization occurring after the date on which there is no outstanding qualified forest conservation bond with respect to such qualified organization or any such bond ceases to be a tax-exempt bond.

(5) PARTIAL RECAPTURE OF BENEFITS IF HARVESTING LIMIT EXCEEDED.—If, as of the date that this subsection ceases to apply under paragraph (3), the average annual area of timber harvested from the land exceeds the requirement of paragraph (3)(B)(ii)(I), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be increased, under rules prescribed by the Secretary of the Treasury, by the sum of the tax benefits attributable to such excess and interest at the underpayment rate under section 6621 of such Code for the period of the underpayment.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED CONSERVATION PLAN.—The term ''qualified conservation plan'' means a multiple land use program or plan which—

(A) is designed and administered primarily for the purposes of protecting and enhancing wildlife and fish, timber, scenic attributes, recreation, and soil and water quality of the forest and forest land,

(B) mandates that conservation of forest and forest land is the single-most significant use of the forest and forest land, and

(C) requires that timber harvesting be consistent with—

(i) restoring and maintaining reference conditions for the region's ecotype,

(ii) restoring and maintaining a representative sample of young, mid, and late successional forest age classes,

(iii) maintaining or restoring the resources' ecological health for purposes of preventing damage from fire, insect, or disease,

(iv) maintaining or enhancing wildlife or fish habitat, or

(v) enhancing research opportunities in sustainable renewable resource uses.

(2) CONSERVATION RESTRICTION.—The conservation restriction described in this paragraph is a restriction which—

(A) is granted in perpetuity to an unrelated person which is described in section 170(h)(3) of such Code and which, in the case of a nongovernmental unit, is organized and operated for conservation purposes,

(B) meets the requirements of clause (ii) or (iii)(II) of section 170(h)(4)(A) of such Code,

(C) obligates the qualified organization to pay the costs incurred by the holder of the conservation restriction in monitoring compliance with such restriction, and

(D) requires an increasing level of conservation benefits to be provided whenever circumstances allow it.

(3) QUALIFIED ORGANIZATION.—The term ''qualified organization'' means an organization—

(A) which is a nonprofit organization substantially all the activities of which are charitable, scientific, or educational, including acquiring, protecting, restoring, managing, and developing forest lands and other renewable resources for the long-term charitable, educational, scientific and public benefit,

(B) more than half of the value of the property of which consists of forests and forest land acquired with the proceeds from qualified forest conservation bonds,

(C) which periodically conducts educational programs designed to inform the public of environmentally sensitive forestry management and conservation techniques,

(D) which has at all times a board of directors—

(i) at least 20 percent of the members of which represent the holders of the conservation restriction described in paragraph (2),

(ii) at least 20 percent of the members of which are public officials, and

(iii) not more than one-third of the members of which are individuals who are or were at any time within 5 years before the beginning of a term of membership on the board, an employee of, independent contractor with respect to, officer of, director of, or held a material financial interest in, a commercial forest products enterprise with which the qualified organization has a contractual or other financial arrangement,

(E) the bylaws of which require at least two-thirds of the members of the board of directors to vote affirmatively to approve the qualified conservation plan and any change thereto, and

(F) upon dissolution, is required to dedicate its assets to—

(i) an organization described in section 501(c)(3) of such Code which is organized and operated for conservation purposes, or

(ii) a governmental unit described in section 170(c)(1) of such Code.

(4) UNRELATED PERSON.—The term ''unrelated person'' means a person who is not a related person.

(5) RELATED PERSON.—A person shall be treated as related to another person if—

(A) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or 707(b)(1), of such Code, determined by substituting ''25 percent'' for ''50 percent'' each place it appears therein, and

(B) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

SEC. 616. INDIAN SCHOOL CONSTRUCTION.

(a) DEFINITIONS.—In this section:

(1) BUREAU.—The term ''Bureau'' means the Bureau of Indian Affairs of the Department.

(2) DEPARTMENT.—The term ''Department'' means the Department of the Interior.

(3) ESCROW ACCOUNT.—The term ''escrow account'' means the tribal school modernization escrow account established under subsection (b)(6)(B)(i).

(4) INDIAN.—The term ''Indian'' means any individual who is a member of an Indian tribe.

(5) INDIAN TRIBE.—

(A) IN GENERAL.—The term ''Indian tribe'' has the meaning given the term ''Indian tribal government'' by section 7701(a)(40) of the Internal Revenue Code of 1986 (including the application of section 7871(d) of that Code).

(B) INCLUSION.—The term ''Indian tribe'' includes a consortium of Indian tribes approved by the Secretary.

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

(7) TRIBAL SCHOOL.—The term ''tribal school'' means an elementary school, secondary school, or dormitory that—

(A) is operated by a tribal organization or the Bureau for the education of Indian children; and

(B) under a contract, a grant, or an agreement, or for a Bureau-operated school, receives financial assistance to pay the costs of operation from funds made available under—

(i) section 102, 103(a), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(a), 458d); or

(ii) the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.).

(b) ISSUANCE OF BONDS.—

(1) IN GENERAL.—The Secretary shall establish a pilot program under which eligible Indian tribes may issue qualified tribal school

modernization bonds to provide funding for the construction, rehabilitation, or repair of tribal schools (including the advance planning and design of tribal schools).

(2) ELIGIBILITY.—

(A) IN GENERAL.—To be eligible to issue any qualified tribal school modernization bond under the program under paragraph (1), an Indian tribe shall—

(i) prepare and submit to the Secretary a plan of construction that meets the requirements of subparagraph (B);

(ii) provide for quarterly and final inspection of the project by the Bureau; and

(iii) pledge that the facilities financed by the bond will be used primarily for elementary and secondary educational purposes for not less than the period during which the bond remains outstanding.

(B) PLAN OF CONSTRUCTION.—A plan of construction referred to in subparagraph (A)(i) meets the requirements of this subparagraph if the plan—

(i) contains a description of the construction to be carried out with funding provided under a qualified tribal school modernization bond;

(ii) demonstrates that a comprehensive survey has been completed to determine the construction needs of the tribal school involved;

(iii) contains assurances that funding under the bond will be used only for the activities described in the plan;

(iv) contains a response to the evaluation criteria contained in Instructions and Application for Replacement School Construction, Revision 6, dated February 6, 1999; and

(v) contains any other reasonable and related information determined to be appropriate by the Secretary.

(C) PRIORITY.—In determining whether an Indian tribe is eligible to participate in the program under this subsection, the Secretary shall give priority to an Indian tribe that, as demonstrated by the relevant plans of construction, will fund projects—

(i) described in the Education Facilities Replacement Construction Priorities List, as of fiscal year 2000, of the Bureau (65 Fed. Reg. 4623);

(ii) described in any subsequent priorities list published in the Federal Register; or

(iii) that meet the criteria for ranking schools as described in Instructions and Application for Replacement School Construction, Revision 6, dated February 6, 1999.

(D) ADVANCE PLANNING AND DESIGN FUNDING.—

(i) IN GENERAL.—An Indian tribe may propose in the plan of construction of the Indian tribe to receive advance planning and design funding from the escrow account.

(ii) CONDITIONS ON ALLOCATION OF FUNDS.—As a condition to the allocation to an Indian tribe of advance planning and design funds from the escrow account under clause (i), the Indian tribe shall agree—

(I) to issue qualified tribal school modernization bonds after the date of receipt of the funds; and

(II) as a condition of each bond issuance, that the Indian tribe will deposit into the escrow account, or a fund managed by the trustee as described in paragraph (4)(C), an amount equal to the amount of funds received from the escrow account.

(3) PERMISSIBLE ACTIVITIES.—In addition to the use of funds permitted under paragraph (1), an Indian tribe may use amounts received through the issuance of a qualified tribal school modernization bond—

(A) to enter into and make payments under contracts with licensed and bonded architects, engineers, and construction firms—

(i) to determine the needs of the tribal school; and

(ii) for the design and engineering of the tribal school;

(B) enter into and make payments under contracts with financial advisers, underwriters, attorneys, trustees, and other professionals who would be able to provide assistance to the Indian tribe in issuing bonds; and

(C) carry out other activities determined to be appropriate by the Secretary.

(4) BOND TRUSTEE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, any qualified tribal school modernization bond issued by an Indian tribe under this subsection shall be subject to a trust agreement between the Indian tribe and a trustee.

(B) TRUSTEE.—Any bank or trust company that meets requirements established by the Secretary may be designated as a trustee under subparagraph (A).

(C) CONTENT OF TRUST AGREEMENT.—A trust agreement entered into by an Indian tribe under this paragraph shall specify that the trustee, with respect to any bond issued under this subsection, shall—

(i) act as a repository for the proceeds of the bond;

(ii) make payments to bondholders;

(iii) receive, as a condition to the issuance of the bond, a transfer of funds from the escrow account, or from other funds furnished by or on behalf of the Indian tribe, in an amount that (including interest earnings from the investment of the funds in obligations of, or fully guaranteed by, the United States, or from other investments authorized by paragraph (10)) will produce funds sufficient to timely pay in full the entire principal amount of the bond on the stated maturity date of the bond;

(iv) invest the funds transferred under clause (iii) in an investment described in that clause; and

(v)(I) hold and invest the funds transferred under clause (iii) in a segregated fund or account under the agreement; and

(II) use the fund or account solely for payment of the costs of items described in paragraph (3).

(D) REQUIREMENTS FOR MAKING DIRECT PAYMENTS.—

(i) PAYMENTS.—

(I) IN GENERAL.—Notwithstanding any other provision of law, the trustee shall make any payment referred to in subparagraph (C)(v) in accordance with such requirements as the Indian tribe shall prescribe in the trust agreement entered into under subparagraph (C).

(II) INSPECTION.—Before making a payment for a project to a contractor under subparagraph (C)(v), to ensure completion of the project, the trustee shall require an inspection of the project by—

(aa) a local financial institution; or

(bb) an independent inspecting architect or engineer.

(ii) CONTRACTS.—Each contract referred to in paragraph (3) shall specify, or be renegotiated to specify, that payments under the contract shall be made in accordance with this paragraph.

(5) PAYMENTS OF PRINCIPAL AND INTEREST.—

(A) PRINCIPAL.—

(i) IN GENERAL.—No principal payment on any qualified tribal school modernization bond shall be required under this subsection until the final, stated date on which the bond reaches maturity.

(ii) MATURITY; OUTSTANDING PRINCIPAL.—With respect to a qualified tribal school modernization bond issued under this subsection—

(I) the bond shall reach maturity not later than 15 years after the date of issuance of the bond; and

(II) on the date on which the bond reaches maturity, the entire outstanding principal under the bond shall become due and payable.

(B) INTEREST.—There shall be awarded a tax credit under section 1400M of the Internal Revenue Code of 1986 in lieu of interest on a qualified tribal school modernization bond issued under this subsection.

(6) BOND GUARANTEES.—

(A) IN GENERAL.—Payment of the principal portion of a qualified tribal school modernization bond issued under this subsection shall be guaranteed solely by amounts deposited with each respective bond trustee as described in paragraph (4)(C)(iii).

(B) ESTABLISHMENT OF ACCOUNT.—

(i) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may—

(I) establish a tribal school modernization escrow account; and

(II) beginning in fiscal year 2005, from amounts made available for school replacement under the construction account of the Bureau, deposit not more than $30,000,000 for each fiscal year into the escrow account.

(ii) TRANSFERS OF EXCESS PROCEEDS.—Excess proceeds held under any trust agreement that are not needed for any of the purposes described in clauses (iii) and (v) of paragraph (4)(C) shall be transferred, from time to time, by the trustee for deposit into the escrow account.

(iii) PAYMENTS.—The Secretary shall use any amounts deposited in the escrow account under clauses (i) and (ii)—

(I) to make payments to trustees appointed and acting in accordance with paragraph (4); or

(II) to make payments described in paragraph (2)(D).

(7) LIMITATIONS.—

(A) OBLIGATION TO REPAY.—

(i) IN GENERAL.—Notwithstanding any other provision of law, the principal amount on any qualified tribal school modernization bond issued under this subsection shall be repaid only to the extent of any escrowed funds provided under paragraph (4)(C)(iii).

(ii) NO GUARANTEE.—No qualified tribal school modernization bond issued by an Indian tribe under this subsection shall be an obligation of, and no payment of the principal of such a bond shall be guaranteed by—

(I) the United States;

(II) the Indian tribe; or

(III) the tribal school for which the bond was issued.

(B) LAND AND FACILITIES.—No land or facility purchased or improved with amounts derived from a qualified tribal school modernization bond issued under this subsection shall be mortgaged or used as collateral for the bond.

(8) SALE OF BONDS.—A qualified tribal school modernization bond may be sold at a purchase price equal to, in excess of, or at a discount from, the par amount of the bond.

(9) TREATMENT OF TRUST AGREEMENT EARNINGS.—No amount earned through the investment of funds under the control of a trustee under any trust agreement described in paragraph (4) shall be subject to Federal income taxation.

(10) INVESTMENT OF SINKING FUNDS.—A sinking fund established for the purpose of the payment of principal on a qualified tribal school modernization bond issued under this subsection shall be invested in—

(A) obligations issued by or guaranteed by the United States; or

(B) such other assets as the Secretary of the Treasury may by regulation allow.

(c) EXPANSION OF INCENTIVES FOR TRIBAL SCHOOLS.—Chapter 1 is amended by adding at the end the following new subchapter:

"Subchapter Z—Tribal School Modernization Provisions

"Sec. 1400M. Credit to holders of qualified tribal school modernization bonds.

"SEC. 1400M. CREDIT TO HOLDERS OF QUALIFIED TRIBAL SCHOOL MODERNIZATION BONDS.

"(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified tribal school modernization bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tribal school modernization bond is 25 percent of the annual credit determined with respect to such bond.

"(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified tribal school modernization bond is the product of—

"(A) the applicable credit rate, multiplied by

"(B) the outstanding face amount of the bond.

"(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (1), the applicable credit rate with respect to an issue is the rate equal to an average market yield (as of the date of sale of the issue) on outstanding long-term corporate obligations (as determined by the Secretary).

"(4) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits).

"(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

"(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION BOND; OTHER DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED TRIBAL SCHOOL MODERNIZATION BOND.—

"(A) IN GENERAL.—The term 'qualified tribal school modernization bond' means, subject to subparagraph (B), any bond issued as part of an issue under section 616(b) of the Jumpstart Our Business Strength (JOBS) Act, as in effect on the date of the enactment of this section, if—

"(i) 95 percent or more of the proceeds of such issue are to be used for the construction, rehabilitation, or repair of a school facility funded by the Bureau of Indian Affairs of the Department of the Interior or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

"(ii) the bond is issued by an Indian tribe,

"(iii) the issuer designates such bond for purposes of this section, and

"(iv) the term of each bond which is part of such issue does not exceed 15 years.

"(B) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

"(i) NATIONAL LIMITATION.—There is a national qualified tribal school modernization bond limitation for each calendar year. Such limitation is—

"(I) $200,000,000 for 2005,

"(II) $200,000,000 for 2006, and

"(III) zero after 2006.

"(ii) ALLOCATION OF LIMITATION.—The national qualified tribal school modernization bond limitation shall be allocated to Indian tribes by the Secretary of the Interior subject to the provisions of section 616 of the Jumpstart Our Business Strength (JOBS) Act, as in effect on the date of the enactment of this section.

"(iii) DESIGNATION SUBJECT TO LIMITATION AMOUNT.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (d)(1) with respect to any Indian tribe shall not exceed the limitation amount allocated to such government under clause (ii) for such calendar year.

"(iv) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

"(I) the limitation amount under this subparagraph, exceeds

"(II) the amount of qualified tribal school modernization bonds issued during such year,

the limitation amount under this subparagraph for the following calendar year shall be increased by the amount of such excess. The preceding sentence shall not apply if such following calendar year is after 2012.

"(2) CREDIT ALLOWANCE DATE.—The term 'credit allowance date' means—

"(A) March 15,

"(B) June 15,

"(C) September 15, and

"(D) December 15.

Such term includes the last day on which the bond is outstanding.

"(3) BOND.—The term 'bond' includes any obligation.

"(4) TRIBE.—The term 'tribe' has the meaning given the term 'Indian tribal government' by section 7701(a)(40), including the application of section 7871(d). Such term includes any consortium of tribes approved by the Secretary of the Interior.

"(e) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

"(f) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any qualified tribal school modernization bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

"(g) TREATMENT FOR ESTIMATED TAX PURPOSES.—Solely for purposes of sections 6654 and 6655, the credit allowed by this section to a taxpayer by reason of holding a qualified tribal school modernization bonds on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.

"(h) CREDIT TREATED AS ALLOWED UNDER PART IV OF SUBCHAPTER A.—For purposes of subtitle F, the credit allowed by this section shall be treated as a credit allowable under part IV of subchapter A of this chapter.

"(i) REPORTING.—Issuers of qualified tribal school modernization bonds shall submit reports similar to the reports required under section 149(e).".

(d) CONFORMING AMENDMENT.—The table of subchapters for chapter 1 is amended by adding at the end the following new item:

"SUBCHAPTER Z. Tribal school modernization provisions.".

(e) ADDITIONAL PROVISIONS.—

(1) SOVEREIGN IMMUNITY.—This section and the amendments made by this section shall not be construed to impact, limit, or affect the sovereign immunity of the Federal Government or any State or tribal government.

(2) APPLICATION.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act with respect to bonds issued after December 31, 2004, regardless of the status of regulations promulgated thereunder.

Subtitle C—Provisions Relating to Depreciation

SEC. 621. SPECIAL PLACED IN SERVICE RULE FOR BONUS DEPRECIATION PROPERTY.

(a) IN GENERAL.—Section 168(k)(2)(D) (relating to special rules) is amended by adding at the end the following new clause:

"(iii) SYNDICATION.—For purposes of subparagraph (A)(ii), if—

"(I) property is originally placed in service after September 10, 2001, by the lessor of such property,

"(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date so placed in service (or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

"(III) the user of such property after the last sale during such 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale, so long as no previous owner of such property elects the application of this subsection with respect to such property.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales after the date of the enactment of this Act.

SEC. 622. MODIFICATION OF DEPRECIATION ALLOWANCE FOR AIRCRAFT.

(a) AIRCRAFT TREATED AS QUALIFIED PROPERTY.—

(1) IN GENERAL.—Paragraph (2) of section 168(k) is amended by redesignating subparagraphs (C) through (F) as subparagraphs (D) through (G), respectively, and by inserting after subparagraph (B) the following new subparagraph:

"(C) CERTAIN AIRCRAFT.—The term 'qualified property' includes property—

"(i) which meets the requirements of clauses (ii) and (iii) of subparagraph (A),

"(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

"(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

"(I) 10 percent of the cost, or

"(II) $100,000, and

"(iv) which has—

"(I) an estimated production period exceeding 4 months, and

"(II) a cost exceeding $200,000.".

(2) PLACED IN SERVICE DATE.—Clause (iv) of section 168(k)(2)(A) is amended by striking

''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''.

(b) CONFORMING AMENDMENTS.—

(1) Section 168(k)(2)(B) is amended by adding at the end the following new clause:

''(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall not apply to any property which is described in subparagraph (C).''.

(2) Section 168(k)(4)(A)(ii) is amended by striking ''paragraph (2)(C)'' and inserting ''paragraph (2)(D)''.

(3) Section 168(k)(4)(B)(iii) is amended by inserting ''and paragraph (2)(C)'' after ''of this paragraph)''.

(4) Section 168(k)(4)(C) is amended by striking ''subparagraphs (B) and (D)'' and inserting ''subparagraphs (B), (C), and (E)''.

(5) Section 168(k)(4)(D) is amended by striking ''Paragraph (2)(E)'' and inserting ''Paragraph (2)(F)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 623. MODIFICATION OF CLASS LIFE FOR CERTAIN TRACK FACILITIES.

(a) 7-YEAR PROPERTY.—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

''(ii) any motorsports entertainment complex, and''.

(b) DEFINITION.—Section 168(i) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(15) MOTORSPORTS ENTERTAINMENT COMPLEX.—

''(A) IN GENERAL.—The term 'motorsports entertainment complex' means a racing track facility which—

''(i) is permanently situated on land, and

''(ii) during the 36-month period following the first day of the month in which the asset is placed in service, is scheduled to host 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

''(B) ANCILLARY AND SUPPORT FACILITIES.—Such term shall include, if owned by the complex and provided for the benefit of patrons of the complex—

''(i) ancillary grounds and facilities and land improvements in support of the complex's activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

''(ii) support facilities (including food and beverage retailing, souvenir vending, and other nonlodging accommodations), and

''(iii) appurtenances associated with such facilities and related attractions and amusements (including ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).

''(C) EXCEPTION.—Such term shall not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to any property placed in service after the date of the enactment of this Act and before January 1, 2008.

(2) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to affect the treatment of expenses incurred on or before the date of the enactment of this Act.

SEC. 624. MINIMUM TAX RELIEF FOR CERTAIN TAXPAYERS.

(a) ELECTION TO INCREASE MINIMUM TAX CREDIT LIMITATION IN LIEU OF BONUS DEPRECIATION.—

(1) IN GENERAL.—Section 53 (relating to credit for prior year minimum tax liability) is amended by adding at the end the following new subsection:

''(e) ADDITIONAL CREDIT IN LIEU OF BONUS DEPRECIATION.—

''(1) IN GENERAL.—In the case of a corporation making an election under this subsection for a taxable year, the limitation under subsection (c) shall be increased by an amount equal to 50 percent of the bonus depreciation amount.

''(2) BONUS DEPRECIATION AMOUNT.—For purposes of paragraph (1), the bonus depreciation amount for any taxable year is an amount (not in excess of $25,000,000) equal to the product of—

''(A) 30 percent, and

''(B) the excess (if any) of—

''(i) the aggregate amount of depreciation which would be determined under section 168 for property placed in service during such taxable year if no election under this subsection were made, over

''(ii) the aggregate allowance for depreciation allowable with respect to such property placed in service for such taxable year.

''(3) AGGREGATION RULE.—All members of the same controlled group of corporations shall be treated as 1 corporation for purposes of this subsection.

''(4) ELECTION.—Sections 168(k) (other than paragraph (2)(F) thereof) shall not apply to any property placed in service during a taxable year by a corporation making an election under this subsection for such taxable year. An election under this subsection may only be revoked with the consent of the Secretary.

''(5) CREDIT REFUNDABLE.—The aggregate increase in the credit allowed by this section for any taxable year by reason of this subsection shall for purposes of this title (other than subsection (b)(2) of this section) be treated as a credit allowed to the taxpayer under subpart C.''.

(2) CONFORMING AMENDMENTS.—Subsection (k) of section 168 is amended by adding at the end the following new paragraph:

''(5) CROSS REFERENCE.—For an election to claim certain minimum tax credits in lieu of the allowance determined under this subsection, see section 53(e).''.

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

(b) USE OF GENERAL BUSINESS CREDITS AGAINST ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 38(c) (relating to limitations based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) SPECIAL RULE FOR 2004.—Notwithstanding the preceding provisions of this paragraph, in the case of any taxable year beginning in 2004, the credit allowed under subsection (a) shall not exceed the greater of—

''(A) the amount determined under this subsection without regard to this paragraph, or

''(B) 50 percent of the lesser of—

''(i) the amount which would be determined under this subsection if the tentative minimum tax were treated as being zero in applying paragraph (1) to such credit, or

''(ii) the amount of the current year business credit.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning in 2004.

Subtitle D—Expansion of Business Credit

SEC. 631. NEW MARKETS TAX CREDIT FOR NATIVE AMERICAN RESERVATIONS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by redesignating sections 45E and 45F as sections 45F and 45G, respectively, and by inserting after section 45D the following new section:

''SEC. 45E. NEW MARKETS TAX CREDIT FOR NATIVE AMERICAN RESERVATIONS.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the Native American new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the reservation development entity for such investment at its original issue.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

''(A) 5 percent with respect to the first 3 credit allowance dates, and

''(B) 6 percent with respect to the remainder of the credit allowance dates.

''(3) CREDIT ALLOWANCE DATE.—For purposes of paragraph (1), the term 'credit allowance date' means, with respect to any qualified equity investment—

''(A) the date on which such investment is initially made, and

''(B) each of the 6 anniversary dates of such date thereafter.

''(b) QUALIFIED EQUITY INVESTMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified equity investment' means any equity investment in a reservation development entity if—

''(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

''(B) substantially all of such cash is used by the reservation development entity to make qualified low-income reservation investments, and

''(C) such investment is designated for purposes of this section by the reservation development entity.

Such term shall not include any equity investment issued by a reservation development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

''(2) LIMITATION.—The maximum amount of equity investments issued by a reservation development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

''(3) SAFE HARBOR FOR DETERMINING USE OF CASH.—The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the reservation development entity are invested in qualified low-income reservation investments.

''(4) TREATMENT OF SUBSEQUENT PURCHASERS.—The term 'qualified equity investment' includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

''(5) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

''(6) EQUITY INVESTMENT.—The term 'equity investment' means—

''(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

''(B) any capital interest in an entity which is a partnership.

''(c) RESERVATION DEVELOPMENT ENTITY.—For purposes of this section—

''(1) IN GENERAL.—The term 'reservation development entity' means any domestic corporation or partnership if—

''(A) the primary mission of the entity is serving, or providing investment capital for, low-income reservations,

''(B) the entity maintains accountability to residents of low-income reservations through their representation on any governing board of the entity or on any advisory board to the entity, and

''(C) the entity is certified by the Secretary for purposes of this section as being a reservation development entity.

''(2) EXCEPTION.—For purposes of subparagraph (C) of paragraph (1), the Secretary shall not certify an entity as a reservation development entity if such entity is also certified as a qualified community development entity under section 45D(c).

''(d) QUALIFIED LOW-INCOME RESERVATION INVESTMENTS.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified low-income reservation investment' means—

''(A) any capital or equity investment in, or loan to, any qualified active low-income reservation business,

''(B) the purchase from another reservation development entity of any loan made by such entity which is a qualified low-income reservation investment,

''(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income reservations, and

''(D) any equity investment in, or loan to, any reservation development entity.

''(2) QUALIFIED ACTIVE LOW-INCOME RESERVATION BUSINESS.—

''(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualified active low-income reservation business' means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

''(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income reservation,

''(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income reservation,

''(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income reservation,

''(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

''(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

''(B) PROPRIETORSHIP.—Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

''(C) PORTIONS OF BUSINESS MAY BE QUALIFIED ACTIVE LOW-INCOME RESERVATION BUSINESS.—The term 'qualified active low-income reservation business' includes any trades or businesses which would qualify as a qualified active low-income reservation business if such trades or businesses were separately incorporated.

''(3) QUALIFIED BUSINESS.—For purposes of this subsection, the term 'qualified business' has the meaning given to such term by section 45D(d)(3).

''(e) LOW-INCOME RESERVATION.—For purposes of this section, the term 'low-income reservation' means any Indian reservation (as defined in section 168(j)(6)) which has a poverty rate of at least 40 percent.

''(f) NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED.—

''(1) IN GENERAL.—There is a Native American new markets tax credit limitation of $50,000,000 for each of calendar years 2004 through 2007.

''(2) ALLOCATION OF LIMITATION.—The limitation under paragraph (1) shall be allocated by the Secretary among reservation development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity—

''(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

''(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income reservation investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

''(3) CARRYOVER OF UNUSED LIMITATION.—If the Native American new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2014.

''(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

''(1) IN GENERAL.—If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a reservation development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

''(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

''(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

''(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

''(3) RECAPTURE EVENT.—For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a reservation development entity if—

''(A) such entity ceases to be a reservation development entity,

''(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

''(C) such investment is redeemed by such entity.

''(4) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

''(h) BASIS REDUCTION.—The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1202, 1400B, and 1400F.

''(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations—

''(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

''(2) which prevent the abuse of the purposes of this section,

''(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

''(4) which impose appropriate reporting requirements, and

''(5) which apply the provisions of this section to newly formed entities.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38 is amended by redesignating paragraphs (14) and (15) as paragraphs (15) and (16), respectively, and by inserting after paragraph (13) the following new paragraph:

''(14) the Native American new markets tax credit determined under section 45E(a),''.

(2) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

''(10) NO CARRYBACK OF NATIVE AMERICAN NEW MARKETS TAX CREDIT BEFORE JANUARY 1, 2004.—No portion of the unused business credit for any taxable year which is attributable to the credit under section 45E may be carried back to a taxable year ending before January 1, 2004.''.

(c) DEDUCTION FOR UNUSED CREDIT.—Subsection (c) of section 196 is amended by redesignating paragraph (10) as paragraph (11), by striking ''and'' at the end of paragraph (9), and by inserting after paragraph (9) the following new paragraph:

''(10) the Native American new markets tax credit determined under section 45E(a), and''.

(d) CONFORMING AMENDMENTS.—

(1) Section 38(b)(15), as redesignated by subsection (b)(1), is amended—

(A) by striking ''45E(c)'' and inserting ''45F(c)'', and

(B) by striking ''45E(a)'' and inserting ''45F(a)''.

(2) Section 38(b)(16), as redesignated by subsection (b)(1), is amended by striking ''45F(a)'' and inserting ''45G(a)''.

(3) Section 39(d)(11), as redesignated by subsection (b)(2), is amended by striking ''section 45E'' and inserting ''section 45F''.

(4) Section 196(c)(11), as redesignated by subsection (c), is amended by striking ''45E(a)'' and inserting ''45F(a)''.

(5) Section 1016(a)(28) is amended—

(A) by striking ''under section 45F'' and inserting ''under section 45G'', and

(B) by striking ''section 45F(f)(1)'' and inserting ''section 45G(f)(1)''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by striking the items relating to sections 45E and 45F and inserting the following:

''Sec. 45E. New markets tax credit for Native American reservations.

''Sec. 45F. Small employer pension plan startup costs.

''Sec. 45G. Employer-provided child care credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to investments made after December 31, 2003.

(f) GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate shall issue guidance which specifies—

(1) how entities shall apply for an allocation under section 45E(f)(2) of the Internal Revenue Code of 1986, as added by this section;

(2) the competitive procedure through which such allocations are made; and

(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities.

(g) AUDIT AND REPORT.—Not later than January 31 of 2007 and 2010, the Comptroller General of the United States shall, pursuant to an audit of the Native American new markets tax credit program established under section 45E of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all reservation development entities that receive an allocation under the Native American new markets credit under such section.

(h) GRANTS IN COORDINATION WITH CREDIT.—

(1) IN GENERAL.—The Secretary of the Treasury is authorized to award a grant of not more than $1,000,000 to the First Nations Oweesta Corporation.

(2) USE OF FUNDS.—The grant awarded under paragraph (1) may be used—

(A) to enhance the capacity of people living on low-income reservations (within the meaning of section 45E(e) of the Internal Revenue Code of 1986, as added by this section) to access, apply, control, create, leverage, utilize, and retain the financial benefits to such low-income reservations which are attributable to qualified low-income reservation investments (within the meaning of section 45E(d) of such Code), and

(B) to provide access to appropriate financial capital for the development of such low-income reservations.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for fiscal years 2004 through 2014 to carry out the provisions of this subsection.

SEC. 632. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT AND READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.

(a) READY RESERVE-NATIONAL GUARD 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. 45H. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the Ready Reserve-National Guard employee credit determined under this section for any taxable year with respect to each Ready Reserve-National Guard employee of an employer is an amount equal to 50 percent of the lesser of—

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

''(2) $30,000.

''(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term 'actual compensation amount' means the amount of compensation paid or incurred by an employer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

''(c) LIMITATIONS.—No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' means—

''(A) active duty, other than the training duty specified in section 10147 of title 10, United States Code (relating to training requirements for the Ready Reserve), or section 502(a) of title 32, United States Code (relating to required drills and field exercises for the National Guard), in connection with which an employee is entitled to reemployment rights and other benefits or to a leave of absence from employment under chapter 43 of title 38, United States Code, and

''(B) hospitalization incident to such duty.

''(2) 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) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 52 shall apply.

''(e) PORTION OF CREDIT REFUNDABLE.—

''(1) IN GENERAL.—In the case of an employer of a qualified first responder, the aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

''(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 38(c), or

''(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 38(c) for any taxable year were increased by the amount of employer payroll taxes imposed on the taxpayer during the calendar year in which the taxable year begins.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of the credit otherwise allowable under subsection (a) without regard to section 38(c).

''(2) EMPLOYER PAYROLL TAXES.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'employer payroll taxes' means the taxes imposed by—

''(i) section 3111(b), and

''(ii) sections 3211(a) and 3221(a) (determined at a rate equal to the rate under section 3111(b)).

''(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

''(3) QUALIFIED FIRST RESPONDER.—For purposes of this subsection, the term 'qualified first responder' means any person who is—

''(A) employed as a law enforcement official, a firefighter, or a paramedic, and

''(B) a Ready Reserve-National Guard employee.''.

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following:

''(17) the Ready Reserve-National Guard employee credit determined under section 45H(a).''.

(3) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) (relating to rule for employment credits) is amended by inserting ''45H(a),'' after ''45A(a),''.

(4) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45G the following:

''Sec. 45H. Ready Reserve-National Guard employee credit.''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(b) READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.—

(1) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding after section 30C the following new section:

''SEC. 30D. READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—In the case of an eligible taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the sum of the employment credits for each qualified replacement employee under this section.

''(2) EMPLOYMENT CREDIT.—The employment credit with respect to a qualified replacement employee of the taxpayer for any taxable year is equal to 50 percent of the lesser of—

''(A) the individual's qualified compensation attributable to service rendered as a qualified replacement employee, or

''(B) $12,000.

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

''(1) 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),

''(2) 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

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

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

''(1) IN GENERAL.—The term 'qualified replacement employee' means an individual who is hired to replace a Ready Reserve-National Guard employee or a Ready Reserve-National Guard self-employed taxpayer, but only with respect to the period during which such Ready Reserve-National Guard employee or Ready Reserve-National Guard self-employed taxpayer participates in qualified active duty, including time spent in travel status.

''(2) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' has the meaning given such term by section 45H(d)(3).

''(3) READY RESERVE-NATIONAL GUARD SELF-EMPLOYED TAXPAYER.—The term 'Ready Reserve-National Guard self-employed taxpayer' means a taxpayer who—

''(A) has net earnings from self-employment (as defined in section 1402(a)) for the taxable year, and

''(B) is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in section 10142 and 10101 of title 10, United States Code.

''(d) 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 this section with respect to such employee.

''(e) LIMITATIONS.—

''(1) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(B) the tentative minimum tax for the taxable year.

''(2) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection (a) to a taxpayer for—

''(A) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

''(B) the 2 succeeding taxable years.

''(f) GENERAL DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means a small business employer or a Ready Reserve-National Guard self-employed taxpayer.

''(2) 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 50 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.

''(3) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' has the meaning given such term by section 45H(d)(1).

''(4) SPECIAL RULES FOR CERTAIN MANUFACTURERS.—

''(A) IN GENERAL.—In the case of any qualified manufacturer—

''(i) subsection (a)(2)(B) shall be applied by substituting '$20,000' for '$12,000', and

''(ii) paragraph (2)(A) of this subsection shall be applied by substituting '100' for '50'.

''(B) QUALIFIED MANUFACTURER.—For purposes of this paragraph, the term 'qualified manufacturer' means any person if—

''(i) the primary business of such person is classified in sector 31, 32, or 33 of the North American Industrial Classification System, and

''(ii) all of such person's facilities which are used for production in such business are located in the United States.

''(5) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e)(1) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(6) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.''.

(2) NO DEDUCTION FOR COMPENSATION TAKEN INTO ACCOUNT FOR CREDIT.—Section 280C(a) (relating to rule for employment credits), as amended by this Act, is amended—

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

(B) by inserting ''30D,'' before ''45A(a),''.

(3) CONFORMING AMENDMENT.—Section 55(c)(2), as amended by this Act, is amended by inserting ''30D(e)(1),'' after ''30C(e),''.

(4) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 30C the following new item:

''Sec. 30D. Credit for replacement of activated military reservists.''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(c) APPLICATION OF ANNUAL EXCLUSION LIMIT UNDER SECTION 911 TO HOUSING COSTS.—

(1) IN GENERAL.—Section 911(c) (relating to housing cost amount) is amended by adding at the end the following new paragraph:

''(4) LIMIT ON EXCLUSION FOR EMPLOYER PROVIDED HOUSING COSTS.—The housing cost amount for any individual for any taxable year attributable to employer provided amounts shall not exceed the excess (if any) of—

''(A) the product of—

''(i) the exclusion amount determined under subsection (b)(2)(D) for the taxable year, and

''(ii) a fraction equal to the number of days of the taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1) divided by the number of days in the taxable year, over

''(B) the foreign earned income of the individual excluded under subsection (a)(1) for the taxable year.''

(2) CONFORMING AMENDMENT.—Section 911(c)(1) is amended by striking ''The'' and inserting ''Except as provided in paragraph (4), the''.

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

SEC. 633. RURAL INVESTMENT TAX CREDIT.

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

''SEC. 42A. RURAL INVESTMENT CREDIT.

''(a) IN GENERAL.—For purposes of section 38, the amount of the rural investment credit determined under this section for any taxable year in the credit period shall be an amount equal to the applicable percentage of the eligible basis of each qualified rural investment building.

''(b) APPLICABLE PERCENTAGE: 70 PERCENT PRESENT VALUE CREDIT FOR NEW BUILDINGS; 30 PERCENT PRESENT VALUE CREDIT FOR EXISTING BUILDINGS.—For purposes of this section—

''(1) IN GENERAL.—The term 'applicable percentage' means the appropriate percentage prescribed by the Secretary for the earlier of—

''(A) the first month of the credit period with respect to a rural investment building, or

''(B) at the election of the taxpayer, the month in which the taxpayer and the rural investment credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the rural investment credit dollar amount to be allocated to such building.

A month may be elected under subparagraph (B) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

''(2) METHOD OF PRESCRIBING PERCENTAGES.—The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

''(A) 70 percent of the eligible basis of a new building, and

''(B) 30 percent of the eligible basis of an existing building.

''(3) METHOD OF DISCOUNTING.—The present value under paragraph (2) shall be determined—

''(A) as of the last day of the 1st year of the 10-year period referred to in paragraph (2),

''(B) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under subparagraph (A) or (B) of paragraph (1) and compounded annually, and

''(C) by assuming that the credit allowable under this section for any year is received on the last day of such year.

''(c) ELIGIBLE BASIS; QUALIFIED RURAL INVESTMENT BUILDING.—For purposes of this section—

''(1) ELIGIBLE BASIS.—

''(A) IN GENERAL.—The eligible basis of any qualified rural investment building for any taxable year shall be determined under rules similar to the rules under section 42(d), except that—

''(i) the determination of the adjusted basis of any building shall be made as of the beginning of the credit period, and

''(ii) such basis shall include development costs properly attributable to such building.

''(B) DEVELOPMENT COSTS.—For purposes of subparagraph (A)(ii), the term 'development costs' includes—

''(i) site preparation costs,

''(ii) State and local impact fees,

''(iii) reasonable development costs,

''(iv) professional fees related to basis items,

''(v) construction financing costs related to basis items other than land, and

''(vi) on-site and adjacent improvements required by State and local governments.

''(2) QUALIFIED RURAL INVESTMENT BUILDING.—The term 'qualified rural investment building' means any building which is part of a qualified rural investment project at all times during the period—

''(A) beginning on the 1st day in the compliance period on which such building is part of such an investment project, and

''(B) ending on the last day of the compliance period with respect to such building.

''(d) REHABILITATION EXPENDITURES TREATED AS SEPARATE NEW BUILDING.—Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building under the rules of section 42(e).

''(e) DEFINITION AND SPECIAL RULES RELATING TO CREDIT PERIOD.—

''(1) CREDIT PERIOD DEFINED.—For purposes of this section, the term 'credit period' means, with respect to any building, the period of 10 taxable years beginning with the taxable year in which the building is first placed in service.

''(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT PERIOD.—

''(A) IN GENERAL.—The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by multiplying such credit by the fraction—

''(i) the numerator of which is the number of full months of such year during which such building was in service, and

''(ii) the denominator of which is 12.

''(B) DISALLOWED 1ST YEAR CREDIT ALLOWED IN 11TH YEAR.—Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

''(3) CREDIT PERIOD FOR EXISTING BUILDINGS NOT TO BEGIN BEFORE REHABILITATION CREDIT ALLOWED.—The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

''(f) QUALIFIED RURAL INVESTMENT PROJECT; QUALIFYING COUNTY.—For purposes of this section—

''(1) QUALIFIED RURAL INVESTMENT PROJECT.—The term 'qualified rural investment project' means any investment project of 1 or more qualified rural investment buildings located in a qualifying county (and, if necessary to the project, any contiguous county) and selected by the State according to its qualified rural investment plan.

''(2) QUALIFYING COUNTY.—The term 'qualifying county' means any county which—

''(A) is outside a metropolitan statistical area (defined as such by the Office of Management and Budget), and

''(B) during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

''(g) LIMITATION ON AGGREGATE CREDIT ALLOWABLE WITH RESPECT TO INVESTMENT PROJECTS LOCATED IN A STATE.—

''(1) CREDIT MAY NOT EXCEED CREDIT AMOUNT ALLOCATED TO BUILDING.—The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the rural investment credit dollar amount allocated to such building under rules similar to the rules of section 42(h)(1).

''(2) ALLOCATED CREDIT AMOUNT TO APPLY TO ALL TAXABLE YEARS ENDING DURING OR AFTER CREDIT ALLOCATION YEAR.—Any rural investment credit dollar amount allocated to any building for any calendar year—

''(A) shall apply to such building for all taxable years in the credit period ending during or after such calendar year, and

''(B) shall reduce the aggregate rural investment credit dollar amount of the allocating agency only for such calendar year.

''(3) RURAL INVESTMENT CREDIT DOLLAR AMOUNT FOR AGENCIES.—

''(A) IN GENERAL.—The aggregate rural investment credit dollar amount which a rural investment credit agency may allocate for any calendar year is the portion of the State rural investment credit ceiling allocated under this paragraph for such calendar year to such agency.

''(B) STATE CEILING INITIALLY ALLOCATED TO STATE RURAL INVESTMENT CREDIT AGENCIES.—Except as provided in subparagraphs (D) and (E), the State rural investment credit ceiling for each calendar year shall be allocated to the rural investment credit agency of such State. If there is more than 1 rural investment credit agency of a State, all such agencies shall be treated as a single agency.

''(C) STATE RURAL INVESTMENT CREDIT CEILING.—The State rural investment credit ceiling applicable to any State and any calendar year shall be an amount equal to the sum of—

''(i) the unused State rural investment credit ceiling (if any) of such State for the preceding calendar year,

''(ii) $185,000 for each qualifying county in the State,

''(iii) the amount of State rural investment credit ceiling returned in the calendar year, plus

''(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State rural investment credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate rural investment credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State rural investment credit ceiling returned in the calendar year equals the rural investment credit dollar amount previously allocated within the State to any investment project which fails to meet the 10 percent test under section 42(h)(1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified rural investment project within the period required by this section or the terms of the allocation or to any investment project with respect to which an allocation is canceled by mutual consent of the rural investment credit agency and the allocation recipient.

''(D) UNUSED RURAL INVESTMENT CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN STATES.—

''(i) IN GENERAL.—The unused rural investment credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

''(ii) UNUSED RURAL INVESTMENT CREDIT CARRYOVER.—For purposes of this subparagraph, the unused rural investment credit carryover of a State for any calendar year is the excess (if any) of the unused State rural investment credit ceiling for such year (as defined in subparagraph (C)(i)) over the excess (if any) of—

''(I) the unused State rural investment credit ceiling for the year preceding such year, over

''(II) the aggregate rural investment credit dollar amount allocated for such year.

''(iii) FORMULA FOR ALLOCATION OF UNUSED RURAL INVESTMENT CREDIT CARRYOVERS AMONG QUALIFIED STATES.—The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused rural investment credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

''(iv) QUALIFIED STATE.—For purposes of this subparagraph, the term 'qualified State' means, with respect to a calendar year, any State—

''(I) which allocated its entire State rural investment credit ceiling for the preceding calendar year, and

''(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

''(E) STATE MAY PROVIDE FOR DIFFERENT ALLOCATION.—Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

''(F) POPULATION.—For purposes of this paragraph, population shall be determined in accordance with section 146(j).

''(G) COST-OF-LIVING ADJUSTMENT.—

''(i) IN GENERAL.—In the case of a calendar year after 2005, the $185,000 amount in subparagraph (C) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING.—Any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

''(4) PORTION OF STATE CEILING SET-ASIDE FOR CERTAIN INVESTMENT PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—

''(A) IN GENERAL.—At least 10 percent of the State rural investment credit ceiling for any State for any calendar year shall be allocated to qualified rural investment projects described in subparagraph (B).

''(B) INVESTMENT PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—For purposes of subparagraph (A), a qualified rural investment project is described in this subparagraph if a qualified nonprofit organization is to materially participate (within the meaning of section 469(h)) in the development and operation of the investment project throughout the compliance period.

''(C) QUALIFIED NONPROFIT ORGANIZATION.—For purposes of this paragraph, the term 'qualified nonprofit organization' means any organization if—

''(i) such organization is described in any paragraph of section 501(c) and is exempt from tax under section 501(a),

''(ii) such organization is determined by the State rural investment credit agency not to be affiliated with or controlled by a for-profit organization; and

''(iii) 1 of the exempt purposes of such organization includes the fostering of rural investment.

''(D) TREATMENT OF CERTAIN SUBSIDIARIES.—

''(i) IN GENERAL.—For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

''(ii) QUALIFIED CORPORATION.—For purposes of clause (i), the term 'qualified corporation' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

''(E) STATE MAY NOT OVERRIDE SET-ASIDE.—Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

''(F) CREDITS FOR QUALIFIED NONPROFIT ORGANIZATIONS.—

''(i) ALLOWANCE OF CREDIT.—Any credit which would be allowable under subsection (a) with respect to a qualified rural investment building of a qualified nonprofit organization if such organization were not exempt from tax under this chapter shall be

treated as a credit allowable under subpart C to such organization.

''(ii) USE OF CREDIT.—A qualified nonprofit organization may assign, trade, sell, or otherwise transfer any credit allowable to such organization under subparagraph (A) to any taxpayer.

''(iii) CREDIT NOT INCOME.—A transfer under subparagraph (B) of any credit allowable under subparagraph (A) shall not result in income for purposes of section 511.

''(5) SPECIAL RULES.—

''(A) BUILDING MUST BE LOCATED WITHIN JURISDICTION OF CREDIT AGENCY.—A rural investment credit agency may allocate its aggregate rural investment credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

''(B) AGENCY ALLOCATIONS IN EXCESS OF LIMIT.—If the aggregate rural investment credit dollar amounts allocated by a rural investment credit agency for any calendar year exceed the portion of the State rural investment credit ceiling allocated to such agency for such calendar year, the rural investment credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

''(C) CREDIT REDUCED IF ALLOCATED CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT WHICH WOULD BE ALLOWABLE WITHOUT REGARD TO SALES CONVENTION, ETC.—

''(i) IN GENERAL.—The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

''(ii) DETERMINATION OF PERCENTAGE.—For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

''(I) the rural investment credit dollar amount allocated to such building bears to

''(II) the credit amount determined in accordance with clause (iii).

''(iii) DETERMINATION OF CREDIT AMOUNT.—The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if this section were applied without regard to paragraph (2)(A) of subsection (e).

''(D) RURAL INVESTMENT CREDIT AGENCY TO SPECIFY APPLICABLE PERCENTAGE AND MAXIMUM ELIGIBLE BASIS.—In allocating a rural investment credit dollar amount to any building, the rural investment credit agency shall specify the applicable percentage and the maximum eligible basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum eligible basis so specified shall not exceed the applicable percentage and eligible basis determined under this section without regard to this subsection.

''(6) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) RURAL INVESTMENT CREDIT AGENCY.—The term 'rural investment credit agency' means any agency authorized to carry out this subsection.

''(B) POSSESSIONS TREATED AS STATES.—The term 'State' includes a possession of the United States.

''(7) PORTION OF STATE CEILING SET-ASIDE FOR QUALIFIED RURAL SMALL BUSINESS INVESTMENT CREDITS.—Not more than 10 percent of the State rural investment credit ceiling for any State for any calendar year may be allocated to qualified rural small business investment credits under section 42B.

''(h) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) COMPLIANCE PERIOD.—The term 'compliance period' means, with respect to any building, the period of 10 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

''(2) NEW BUILDING.—The term 'new building' means a building the original use of which begins with the taxpayer.

''(3) EXISTING BUILDING.—The term 'existing building' means any building which is not a new building.

''(4) APPLICATION TO ESTATES AND TRUSTS.—In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (i) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

''(i) RECAPTURE OF CREDIT.—If—

''(1) as of the close of any taxable year in the compliance period, the amount of the eligible basis of any building with respect to the taxpayer is less than

''(2) the amount of such basis as of the close of the preceding taxable year,

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount determined under rules similar to the rules of section 42(j).

''(j) CERTIFICATIONS AND OTHER REPORTS TO SECRETARY.—

''(1) CERTIFICATION WITH RESPECT TO 1ST YEAR OF CREDIT PERIOD.—Following the close of the 1st taxable year in the credit period with respect to any qualified rural investment building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

''(A) the taxable year, and calendar year, in which such building was first placed in service,

''(B) the eligible basis of such building as of the beginning of the credit period,

''(C) the maximum applicable percentage and eligible basis permitted to be taken into account by the appropriate rural investment credit agency under subsection (g),

''(D) the election made under subsection (f) with respect to the qualified rural investment project of which such building is a part, and

''(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

''(2) ANNUAL REPORTS TO THE SECRETARY.—The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

''(A) the eligible basis for the taxable year of each qualified rural investment building of the taxpayer,

''(B) the information described in paragraph (1)(C) for the taxable year, and

''(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

''(3) ANNUAL REPORTS FROM RURAL INVESTMENT CREDIT AGENCIES.—Each agency which allocates any rural investment credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

''(A) the amount of rural investment credit amount allocated to each building for such year,

''(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

''(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

''(k) RESPONSIBILITIES OF RURAL INVESTMENT CREDIT AGENCIES.—

''(1) PLANS FOR ALLOCATION OF CREDIT AMONG INVESTMENT PROJECTS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this section, the rural investment credit dollar amount with respect to any building shall be zero unless—

''(i) such amount was allocated pursuant to a qualified rural investment plan of the agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

''(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such investment project and provides such individual a reasonable opportunity to comment on the investment project,

''(iii) a comprehensive market study of the development needs of individuals in the qualifying county to be served by the investment project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

''(iv) a written explanation is available to the general public for any allocation of a rural investment credit dollar amount which is not made in accordance with established priorities and selection criteria of the rural investment credit agency.

''(B) QUALIFIED RURAL INVESTMENT PLAN.—For purposes of this section, the term 'qualified rural investment plan' means any plan—

''(i) which sets forth selection criteria to be used to determine priorities of the rural investment credit agency which are appropriate to qualifying counties,

''(ii) which also gives preference in allocating rural investment credit dollar amounts among selected investment projects to—

''(I) investment projects that target those small rural counties with consistently high rates of net out-migration,

''(II) investment projects that link the economic development and job creation efforts of 2 or more small rural counties with high rates of net out-migration, and

''(III) investment projects that link the economic development and job creation efforts of 1 or more small rural counties in the State with high rates of net out-migration to related efforts in regions of such State experiencing economic growth, and

''(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance through regular site visits.

''(C) CERTAIN SELECTION CRITERIA MUST BE USED.—The selection criteria set forth in a qualified rural investment plan must include—

''(i) investment project location,

''(ii) technology and transportation infrastructure needs, and

''(iii) private development trends.

''(2) CREDIT ALLOCATED TO BUILDING NOT TO EXCEED AMOUNT NECESSARY TO ASSURE INVESTMENT PROJECT FEASIBILITY.—

''(A) IN GENERAL.—The rural investment credit dollar amount allocated to an investment project shall not exceed the amount the rural investment credit agency determines is necessary for the financial feasibility of the investment project and its viability as a qualified rural investment project throughout the compliance period.

''(B) AGENCY EVALUATION.—In making the determination under subparagraph (A), the rural investment credit agency shall consider—

''(i) the sources and uses of funds and the total financing planned for the investment project,

''(ii) any proceeds or receipts expected to be generated by reason of tax benefits,

''(iii) the percentage of the rural investment credit dollar amount used for investment project costs other than the cost of intermediaries, and

''(iv) the reasonableness of the developmental and operational costs of the investment project.

Clause (iii) shall not be applied so as to impede the development of investment projects in hard-to-develop areas.

''(C) DETERMINATION MADE WHEN CREDIT AMOUNT APPLIED FOR AND WHEN BUILDING PLACED IN SERVICE.—

''(i) IN GENERAL.—A determination under subparagraph (A) shall be made as of each of the following times:

''(I) The application for the rural investment credit dollar amount.

''(II) The allocation of the rural investment credit dollar amount.

''(III) The date the building is first placed in service.

''(ii) CERTIFICATION AS TO AMOUNT OF OTHER SUBSIDIES.—Prior to each determination under clause (i), the taxpayer shall certify to the rural investment credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

''(1) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

''(1) dealing with—

''(A) investment projects which include more than 1 building or only a portion of a building,

''(B) buildings which are sold in portions,

''(2) providing for the application of this section to short taxable years,

''(3) preventing the avoidance of the rules of this section, and

''(4) providing the opportunity for rural investment credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.''.

(b) CURRENT YEAR BUSINESS CREDIT CALCULATION.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting '', plus'', and by adding at the end the following:

''(18) the rural investment credit determined under section 42A(a).''.

(c) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 (relating to carryback and carryforward of unused credits), as amended by this Act, is amended by adding at the end the following:

''(12) NO CARRYBACK OF RURAL INVESTMENT CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the rural investment credit determined under section 42A may be carried back to a taxable year beginning before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 55(c)(1) is amended by inserting ''or subsection (i) or (j) of section 42A'' after ''section 42''.

(2) Subsections (i)(c)(3), (i)(c)(6)(B)(i), and (k)(1) of section 469 are each amended by inserting ''or 42A'' after ''section 42''.

(3) Section 772(a) is amended by striking ''and'' at the end of paragraph (10), by redesignating paragraph (11) as paragraph (12), and by inserting after paragraph (10) the following:

''(11) the rural investment credit determined under section 42A, and''.

(4) Section 774(b)(4) is amended by inserting '', 42A(i),'' after ''section 42(j)''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 42 the following:

''Sec. 42A. Rural investment credit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures made in taxable years beginning after the date of the enactment of this Act.

SEC. 634. QUALIFIED RURAL SMALL BUSINESS INVESTMENT CREDIT.

(a) 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. 42B. QUALIFIED RURAL SMALL BUSINESS INVESTMENT CREDIT.

''(a) IN GENERAL.—For purposes of section 38, in the case of a qualified rural small business, the amount of the qualified rural small business investment credit determined under this section for any taxable year is equal to 30 percent of the qualified expenditures for the taxable year of such business.

''(b) DOLLAR LIMITATION.—

''(1) IN GENERAL.—The credit allowable under subsection (a) for any taxable year shall not exceed the lesser of—

''(A) $5,000, or

''(B) the amount when added to the aggregate credits allowable to the taxpayer under subsection (a) for all preceding taxable years does not exceed $25,000.

''(2) NO DOUBLE CREDIT ALLOWED.—In the case of any qualified rural small business which places in service a qualified rural investment building with respect to which a rural investment credit is allowed under section 42A for any taxable year, paragraph (1)(A) shall be applied with respect to such taxable year by substituting 'zero' for '$5,000'.

''(c) QUALIFIED RURAL SMALL BUSINESS.—For purposes of this section, the term 'qualified rural small business' means any person if such person—

''(1) employed not more than 5 full-time employees during the taxable year,

''(2) materially and substantially participates in management,

''(3) is located in a qualifying county, and

''(4) submitted a qualified business plan with respect to which the rural investment credit agency with jurisdiction over such qualifying county has allocated a portion of the State rural investment ceiling for such taxable year under section 42A(g)(7).

For purposes of paragraph (1), an employee shall be considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.

''(d) QUALIFIED EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified expenditures' means expenditures normally associated with starting or expanding a business and included in a qualified business plan, including costs for capital, plant and equipment, inventory expenses, and wages, but not including interest costs.

''(2) ONLY CERTAIN EXPENDITURES INCLUDED FOR EXISTING BUSINESSES.—In the case of a qualified rural small business with respect to which a credit under subsection (a) was allowed for a preceding taxable year, such term shall include only so much of the expenditures described in paragraph (1) for the taxable year as exceed the aggregate of such expenditures for the preceding taxable year.

''(e) QUALIFIED BUSINESS PLAN.—For purposes of this section, the term 'qualified business plan' means a business plan which—

''(1) has been approved by the rural investment credit agency with jurisdiction over the qualifying county in which the qualified rural small business is located pursuant to such agency's rural investment plan, and

''(2) meets such requirements as the agency may specify.

''(f) DENIAL OF DOUBLE BENEFIT.—In the case of the amount of the credit determined under this section—

''(1) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

''(2) no increase in the adjusted basis of any property shall result from such amount.

''(g) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) any term which is used in this section which is used in section 42A shall have the meaning given such term by section 42A, and

''(2) rules similar to the rules under subsections (j)(2), (j)(3), and (k) of section 42A shall apply.''.

(b) CURRENT YEAR BUSINESS CREDIT CALCULATION.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting '', plus'', and by adding at the end the following:

''(19) the qualified rural small business investment credit determined under section 42B(a).''.

(c) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 (relating to carryback and carryforward of unused credits), as amended by this Act, is amended by adding at the end the following:

''(13) NO CARRYBACK OF QUALIFIED RURAL SMALL BUSINESS INVESTMENT CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualified rural small business investment credit determined under section 42B may be carried back to a taxable year beginning before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 42A the following:

''Sec. 42B. Qualified rural small business investment credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures made in taxable years beginning after the date of the enactment of this Act.

SEC. 635. CREDIT FOR MAINTENANCE OF RAILROAD TRACK.

(a) 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 new section:

"SEC. 45I. RAILROAD TRACK MAINTENANCE CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 30 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

''(b) LIMITATION.—The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

''(1) $3,500, and

''(2) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year.

''(c) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means—

''(1) any Class II or Class III railroad, and

''(2) any person who transports property using the rail facilities of a person described in paragraph (1) or who furnishes railroad-related property or services to such a person.

''(d) QUALIFIED RAILROAD TRACK MAINTENANCE EXPENDITURES.—For purposes of this section, the term 'qualified railroad track maintenance expenditures' means expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad.

''(e) OTHER DEFINITIONS AND SPECIAL RULES.—

''(1) CLASS II OR CLASS III RAILROAD.—For purposes of this section, the terms 'Class II railroad' and 'Class III railroad' have the meanings given such terms by the Surface Transportation Board.

''(2) CONTROLLED GROUPS.—Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

''(3) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to any railroad track, the basis of such track shall be reduced by the amount of the credit so allowed.

''(f) APPLICATION OF SECTION.—This section shall apply to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.''.

(b) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(14) NO CARRYBACK OF RAILROAD TRACK MAINTENANCE CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the railroad track maintenance credit determined under section 45I may be carried to a taxable year beginning before January 1, 2005.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting '', plus'', and by adding at the end the following new paragraph:

''(20) the railroad track maintenance credit determined under section 45I(a).''.

(2) Subsection (a) of section 1016, as amended by this Act, is amended by striking ''and'' at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting '', and'', and by adding at the end the following new paragraph:

''(30) in the case of railroad track with respect to which a credit was allowed under section 45I, to the extent provided in section 45I(e)(3).''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45H the following new item:

''Sec. 45I. Railroad track maintenance credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 636. RAILROAD REVITALIZATION AND SECURITY INVESTMENT CREDIT.

(a) RAILROAD REVITALIZATION AND SECURITY INVESTMENT 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 new section:

"SEC. 45J. RAILROAD REVITALIZATION AND SECURITY INVESTMENT CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the railroad revitalization and security investment credit determined under this section for the taxable year is the amount equal to 50 percent of the qualified project expenditures paid or incurred by the taxpayer during the taxable year.

''(b) QUALIFIED PROJECT EXPENDITURES.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified project expenditures' means, with respect to any project for intercity passenger rail transportation (as defined under section 24102 of title 49, United States Code) which is included in a State rail plan, expenditures (whether or not otherwise chargeable to capital account) for—

''(A) planning,

''(B) environmental review and environmental impact mitigation,

''(C) track and track structure rehabilitation, relocation, improvement, and development,

''(D) railroad safety and security improvements,

''(E) communications and signaling improvements,

''(F) intercity passenger rail equipment acquisition, and

''(G) rail station and intermodal facilities development.

''(2) EXCEPTIONS.—An expenditure shall not be treated as a qualified project expenditure unless all persons which conduct rail operations over the infrastructure with respect to which such an expenditure is made—

''(A) are employers for purposes of the Railroad Retirement Act of 1974 and are carriers for purposes of the Railway Labor Act (unless such a person is an operator with respect to commuter rail passenger transportation (as defined in section 24102(4) of title 49, United States Code) of a State or local government authority (as such terms are defined in section 5302 of such title) eligible to receive financial assistance under section 5307 of such title, a contractor performing services in connection with the operations with respect to commuter rail passenger transportation (as so defined), or the Alaska Railroad or its contractors),

''(B) provide assurances to the State that any collective bargaining agreements with such a person's employees (including terms regulating the contracting of work) will remain in full force and effect according to the terms of the agreements for work performed for such a person on the railroad transportation corridor, and

''(C) comply with the protective agreements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 with respect to employees affected by actions taken in connection with the project.

''(c) LIMITATION.—

''(1) IN GENERAL.—The amount of the credit allowed under subsection (a) for any taxable year with respect to any project for which qualified project expenditures are made shall not exceed the limitation allocated to such project under this subsection for the calendar year in which the taxable year begins.

''(2) STATE LIMITATION.—

''(A) IN GENERAL.—There is a State railroad revitalization and security investment credit limitation for each calendar year. Such limitation is the amount which bears the same ratio to $165,000,000 as the allocation number for such State bears to the allocation number for all States.

''(B) ALLOCATION NUMBER.—For purposes of subparagraph (A), the allocation number is, with respect to any State, the sum of the following:

''(i) The number of railroad and public road at grade crossings on intercity passenger rail routes within the State.

''(ii) The number of intercity passenger train miles within the State.

''(iii) The number of intercity embarkations and disembarkations for each passenger within the State.

''(3) UNUSED CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN STATES.—

''(A) IN GENERAL.—The unused credit carryover for all States for any calendar year shall be reallocated to each qualified State in an amount which bears the same ratio to the unused credit carryover for all States for the calendar as the allocation number for such qualified State bears to the allocation number for all qualified States.

''(B) UNUSED CREDIT CARRYOVER.—For purposes of this paragraph, the term 'unused credit carryover' means, with respect to any State, the excess of the State limitation (determined under paragraph (2)) for the calendar year over the amount allocated by the State under paragraph (4) for such calendar year.

''(C) QUALIFIED STATES.—For purposes of this paragraph, the term 'qualified State' means any State—

''(i) which allocated its entire State limitation amount under paragraph (4) for the calendar year, and

''(ii) for which a request is made to receive an allocation under this paragraph.

''(4) ALLOCATION WITHIN STATES.—Each State shall allocate the limitation amount allocated to such State under paragraphs (2) and (3) to projects for intercity passenger rail transportation which are included in the State rail plan of such State.

''(5) NEW YORK CITY RAIL PROJECTS.—

''(A) IN GENERAL.—In addition to the amounts allocated under paragraph (2), the Secretary shall allocate a limitation of $200,000,000 to New York City, New York, for qualified project expenditures within the New York Liberty Zone (as defined in section 1400L(h)) for the period described in subsection (h).

''(B) ALLOCATION AMONG PROJECTS.—Of the limitation allocated under subparagraph (A)—

''(i) $100,000,000 shall be allocated to projects designated by the Mayor of New York City, New York, and

''(ii) $100,000,000 shall be allocated to projects designated by the Governor of New York.

''(C) SPECIAL RULE REGARDING QUALIFIED PROJECT EXPENDITURES.—For purposes of this paragraph, a qualified project expenditure shall include any expenditure for improvements to subway systems, for commuter rail systems, for rail links to airports, and for

public infrastructure improvements in the vicinity of rail or subway stations.

''(d) STATE RAIL PLAN.—For purposes of this section, the term 'State rail plan' means a plan prepared and maintained in accordance with chapter 225 of title 49, United States Code.

''(e) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so allowed.

''(f) NO DOUBLE BENEFIT.—No credit shall be allowed under this section with respect to any expenditures for which a credit is allowed under section 45I.

''(g) CREDIT TRANSFERABILITY.—Any credit allowable under this section may be transferred (but not more than once) if—

''(1) the credit exceeds the tax liability of the taxpayer for the taxable year, or

''(2) the taxpayer is not subject to any tax imposed by this chapter by reason of having a tax-exempt status.

''(h) APPLICATION OF SECTION.—This section shall apply to qualified project expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.''.

(2) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(15) NO CARRYBACK OF SECTION 45J CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45J(a) may be carried back to any taxable year beginning before January 1, 2005.''.

(3) CONFORMING AMENDMENTS.—

(A) Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting '', plus'', and by adding at the end the following new paragraph:

''(21) the railroad revitalization and security investment credit determined under section 45J(a).''.

(B) Subsection (a) of section 1016, as amended by this Act, is amended by striking ''and'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', and'', and by adding at the end the following new paragraph:

''(31) in the case of property with respect to which a credit was allowed under section 45J, to the extent provided in section 45J(e).''.

(4) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45I the following new item:

''Sec. 45J. Railroad revitalization and security investment credit.''.

(5) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

(b) STATE RAIL PLANS.—

(1) IN GENERAL.—Part B of subtitle V of title 49, United States Code, is amended by adding at the end the following:

''CHAPTER 225—STATE RAIL PLANS

''Sec.

''22501. Authority.

''22502. Purposes.

''22503. Transparency; coordination.

''22504. Content.

''22505. Approval.

''22506. Definitions.

''§ 22501. Authority

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) make the State's approved plan available to the public and transmit a copy to the Secretary of Transportation; and

''(4) revise the plan no less frequently than once every 5 years.

''§ 22502. Purposes

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To present priorities and strategies to enhance rail service in the State that benefits the public.

''(3) To serve as the basis for Federal and State rail investments within the State.

''(b) CONTENT.—The State rail plan shall establish the period covered by such plan.

''(c) CONSISTENCY WITH STATE TRANSPORTATION EFFORTS.—A State rail plan shall be consistent with the State transportation planning goals and programs and shall set forth rail transportation's role within the State transportation system.

''§ 22503. Transparency; coordination

''(a) PREPARATION.—A State shall provide adequate and reasonable notice and opportunity for comment and other input on a proposed State rail plan under this chapter to the following:

''(1) The public.

''(2) Rail carriers.

''(3) Commuter and transit authorities operating in, or affected by rail operations within, the State.

''(4) Units of local government.

''(5) Other parties interested in the preparation and review of the State rail plan.

''(b) INTERGOVERNMENTAL COORDINATION.—A State shall review the freight and passenger rail service activities and initiatives of regional planning agencies, regional transportation authorities, and municipalities within the State, or in the region in which the State is located, while preparing the plan, and shall include any recommendations made by such agencies, authorities, and municipalities as deemed appropriate by the State.

''§ 22504. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

''(3) A statement of the State's passenger rail service objectives, including minimum service levels, for intercity passenger rail transportation routes in the State.

''(4) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(5) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

''(6) A statement of public financing issues for rail projects and service in the State, including a list of current and prospective public capital and operating funding resources, public subsidies, State taxation, and other financial policies relating to rail infrastructure development.

''(7) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.

''(8) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports, and prioritized options to maximize service integration and efficiency between rail and other modes of transportation within the State.

''(9) A review of publicly funded projects within the State to improve rail transportation safety and security, including all major projects funded under section 130 of title 23.

''(10) A performance evaluation of passenger rail services operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.

''(11) A compilation of studies and reports on high-speed rail corridor development within the State not included in a previous plan under this chapter, and a plan for funding any recommended development of such corridors in the State.

''(12) A statement that the State satisfies the conditions set forth in section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

''(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(5) shall include the following matters:

''(A) Two lists for rail capital projects, 1 list for freight rail capital projects and 1 list for intercity passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The lists of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) public funding contributions for the projects; and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Economic and employment impacts.

''(G) Projected ridership and other service measures for passenger rail projects.

''§ 22505. Approval

''The State rail plan approval authority established or designated under section 22501(b)(2) may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital improvement projects under the plan—

''(A) the project meets all safety and environmental requirements, including those

prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure or right-of-way directly affected by the project that provides for the State to proceed with the project and includes assurances regarding capacity and compensation for use of such infrastructure or right-of-way, if applicable; and

''(3) the content of the plan is coordinated with State transportation plans developed pursuant to section 135 of title 23.

''§ 22506. Definitions

''In this chapter:

''(1) PRIVATE BENEFIT.—The term 'private benefit'—

''(A) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or other means; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the State and the affected persons or private entities.

''(2) PUBLIC BENEFIT.—The term 'public benefit'—

''(A) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and other positive community effects; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the State and the persons or private entities involved in the project.

''(3) STATE.—The term 'State' means any of the 50 States and the District of Columbia.

''(4) STATE RAIL TRANSPORTATION AUTHORITY.—The term 'State rail transportation authority' means the State agency or official responsible under the direction of the Chief Executive of the State or a State law for preparation, maintenance, coordination, and administration of the State rail plan under this chapter.''.

(2) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle V of title 49, United States Code, is amended by inserting after the item relating to chapter 223 the following:

''225. STATE RAIL PLANS .....22501.''.

SEC. 637. MODIFICATION OF TARGETED AREAS DESIGNATED FOR NEW MARKETS TAX CREDIT.

(a) IN GENERAL.—Paragraph (2) of section 45D(e) is amended to read as follows:

''(2) TARGETED POPULATIONS.—The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to such populations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to designations made by the Secretary of the Treasury after the date of the enactment of this Act.

SEC. 638. MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.

(a) IN GENERAL.—Section 45D(e) (relating to low-income community) is amended by adding at the end the following new paragraph:

''(4) MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.—

''(A) IN GENERAL.—In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting '85 percent' for '80 percent'.

''(B) HIGH MIGRATION RURAL COUNTY.—For purposes of this paragraph, the term 'high migration rural county' means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000.

SEC. 639. CREDIT FOR INVESTMENT IN TECHNOLOGY TO MAKE MOTION PICTURES MORE ACCESSIBLE TO THE DEAF AND HARD OF HEARING.

(a) IN GENERAL.—

(1) ALLOWANCE OF CREDIT.—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 new section:

''SEC. 45T. EXPENDITURES TO PROVIDE ACCESS TO MOTION PICTURES FOR THE DEAF AND HARD OF HEARING.

''(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible taxpayer, the motion picture accessibility credit for any taxable year shall be an amount equal to 50 percent of the qualified expenditures made by the eligible taxpayer during the taxable year.

''(b) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means a taxpayer who is in the business of—

''(1) showing motion pictures to the public in theaters, or

''(2) producing or distributing such motion pictures.

''(c) QUALIFIED EXPENDITURES.—For purposes of this section, the term 'qualified expenditures' means amounts paid or incurred by the taxpayer for the purpose of making motion pictures accessible to individuals who are deaf or hard of hearing through the use of captioning technology.

''(d) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so allowed.

''(e) NO DOUBLE BENEFIT.—In the case of the credit determined under this section, no deduction or credit shall be allowed for such amount under any other provision of this chapter.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', plus'', and by adding at the end the following new paragraph:

''(32) the motion picture accessibility credit determined under section 45T(a).''.

(B) Subsection (a) of section 1016, as amended by this Act, is amended by striking ''and'' at the end of paragraph (38), by striking the period at the end of paragraph (39) and inserting '', and'', and by adding at the end the following new paragraph:

''(40) in the case of property with respect to which a credit was allowed under section 45T, to the extent provided in section 45T(d).''.

(b) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules) is amended by adding at the end the following new paragraph:

''(16) NO CARRYBACK OF MOTION PICTURE ACCESSIBILITY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the motion picture accessibility credit determined under section 45T may be carried to a taxable year beginning before January 1, 2004.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45S the following new item:

''Sec. 45T. Expenditures to provide access to motion pictures for the deaf and hard of hearing.''.

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

Subtitle E—Miscellaneous Provisions

SEC. 641. EXCLUSION OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES FROM UNRELATED BUSINESS TAXABLE INCOME.

(a) IN GENERAL.—Subsection (b) of section 512 (relating to unrelated business taxable income), as amended by this Act, is amended by adding at the end the following new paragraph:

''(19) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

''(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

''(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'eligible taxpayer' means, with respect to a property, any organization exempt from tax under section 501(a) which—

''(I) acquires from an unrelated person a qualifying brownfield property, and

''(II) pays or incurs eligible remediation expenditures with respect to such property in an amount which exceeds the greater of $550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

''(ii) EXCEPTION.—Such term shall not include any organization which is—

''(I) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property,

''(II) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instruments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

''(III) the result of a reorganization of a business entity which was so potentially liable.

''(C) QUALIFYING BROWNFIELD PROPERTY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualifying brownfield property' means any real property which is certified, before the taxpayer incurs any eligible remediation expenditures

(other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

''(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property's presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

''(D) QUALIFIED SALE, EXCHANGE, OR OTHER DISPOSITION.—For purposes of this paragraph—

''(i) IN GENERAL.—A sale, exchange, or other disposition of property shall be considered as qualified if—

''(I) such property is transferred by the eligible taxpayer to an unrelated person, and

''(II) within 1 year of such transfer the eligible taxpayer has received a certification from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located that, as a result of the eligible taxpayer's remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee.

For purposes of subclause (II), before issuing such certification, the Environmental Protection Agency or appropriate State agency shall respond to comments received pursuant to clause (ii)(V) in the same form and manner as required under section 117(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

''(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall be made not later than the date of the transfer and shall include a sworn statement by the eligible taxpayer certifying the following:

''(I) Remedial actions which comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) have been substantially completed, such that there are no hazardous substances, pollutants, or contaminants which complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property.

''(II) The reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date of the certification described in subparagraph (C)(i). For purposes of the preceding sentence, use of property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

''(III) A remediation plan has been implemented to bring the property into compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that the remediation protects human health and the environment.

''(IV) The remediation plan described in subclause (III), including any physical improvements required to remediate the property, is either complete or substantially complete, and, if substantially complete, sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the property in accordance with the remediation plan as soon as is reasonably practicable after the sale, exchange, or other disposition of such property.

''(V) Public notice and the opportunity for comment on the request for certification was completed before the date of such request. Such notice and opportunity for comment shall be in the same form and manner as required for public participation required under section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph). For purposes of this subclause, public notice shall include, at a minimum, publication in a major local newspaper of general circulation.

''(iii) ATTACHMENT TO TAX RETURNS.—A copy of each of the requests for certification described in clause (ii) of subparagraph (C) and this subparagraph shall be included in the tax return of the eligible taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

''(iv) SUBSTANTIAL COMPLETION.—For purposes of this subparagraph, a remedial action is substantially complete when any necessary physical construction is complete, all immediate threats have been eliminated, and all long-term threats are under control.

''(E) ELIGIBLE REMEDIATION EXPENDITURES.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'eligible remediation expenditures' means, with respect to any qualifying brownfield property, any amount paid or incurred by the eligible taxpayer to an unrelated third person to obtain a Phase I environmental site assessment of the property, and any amount so paid or incurred after the date of the certification described in subparagraph (C)(i) for goods and services necessary to obtain a certification described in subparagraph (D)(i) with respect to such property, including expenditures—

''(I) to manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property,

''(II) to obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

''(III) to obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property, and

''(IV) regardless of whether it is necessary to obtain a certification described in subparagraph (D)(i)(II), to obtain remediation cost-cap or stop-loss coverage, re-opener or regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

''(ii) EXCEPTIONS.—Such term shall not include—

''(I) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property,

''(II) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage,

''(III) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local government obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property, or

''(IV) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subclause (III), the Secretary may issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

''(F) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary income with respect to section 1245 or section 1250 property, including amounts deducted as section 198 expenses which are subject to the recapture rules of section 198(e), if the taxpayer had deducted such amounts in the computation of its unrelated business taxable income.

''(G) SPECIAL RULES FOR PARTNERSHIPS.—

''(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner of a qualifying partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property, this paragraph shall apply to the eligible taxpayer's distributive share of the qualifying partnership's gain or loss from the sale, exchange, or other disposition of such property.

''(ii) QUALIFYING PARTNERSHIP.—The term 'qualifying partnership' means a partnership which—

''(I) has a partnership agreement which satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i),

''(II) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if 'qualified partnership' is substituted for 'eligible taxpayer' each place it appears therein (except subparagraph (D)(iii)), and

''(III) is not an organization which would be prevented from constituting an eligible taxpayer by reason of subparagraph (B)(ii).

''(iii) REQUIREMENT THAT TAX-EXEMPT PARTNER BE A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i) and ending on the date of the sale, exchange, or other disposition of the property by the partnership.

''(iv) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

''(I) the use of special allocations of gains or losses, or

''(II) changes in ownership of partnership interests held by eligible taxpayers.

''(H) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

''(i) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more

than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

''(ii) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer's or qualifying partnership's timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective for the period—

''(I) beginning on the date which is the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership, and

''(II) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

''(iii) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(II) by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

''(I) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (H) applies, and such property fails to satisfy the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

''(J) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

''(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting '25 percent' for '50 percent' each place it appears therein, and

''(ii) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.''

(b) EXCLUSION FROM DEFINITION OF DEBT-FINANCED PROPERTY.—Section 514(b)(1) (defining debt-financed property) is amended by striking ''or'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ''; or'', and by inserting after subparagraph (D) the following new subparagraph:

''(E) any property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(19) in computing the gross income of any unrelated trade or business.''.

(c) SAVINGS CLAUSE.—Nothing in the amendments made by this section shall affect any duty, liability, or other requirement imposed under any other Federal or State law. Notwithstanding section 128(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a certification provided by the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4) of the Internal Revenue Code of 1986) shall not affect the liability of any person under section 107(a) of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after December 31, 2004.

SEC. 642. MODIFICATION OF UNRELATED BUSINESS INCOME LIMITATION ON INVESTMENT IN CERTAIN DEBT-FINANCED PROPERTIES.

(a) IN GENERAL.—Section 514(c)(6) (relating to acquisition indebtedness) is amended—

(1) by striking ''include an obligation'' and inserting ''include—

''(A) an obligation'',

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

(3) by adding at the end the following:

''(B) indebtedness incurred by a small business investment company licensed under the Small Business Investment Act of 1958 which is evidenced by a debenture—

''(i) issued by such company under section 303(a) of such Act, and

''(ii) held or guaranteed by the Small Business Administration.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions made on or after the date of the enactment of this Act.

SEC. 643. CIVIL RIGHTS TAX RELIEF.

(a) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 (defining adjusted gross income) is amended by inserting after paragraph (18) the following new item:

''(19) COSTS INVOLVING DISCRIMINATION SUITS, ETC.—Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.''.

(b) UNLAWFUL DISCRIMINATION DEFINED.—Section 62 is amended by adding at the end the following new subsection:

''(e) UNLAWFUL DISCRIMINATION DEFINED.—For purposes of subsection (a)(19), the term 'unlawful discrimination' means an act that is unlawful under any of the following:

''(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).

''(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

''(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

''(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

''(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

''(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

''(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

''(8) Title IX of the Education Amendments of 1972 (29 U.S.C. 1681 et seq.).

''(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 201 et seq.).

''(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

''(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

''(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

''(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

''(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

''(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

''(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

''(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

''(18) Any provision of Fderal, State, or local law, or common law claims permitted under Federal, State, or local law—

''(i) providing for the enforcement of civil rights, or

''(ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fees and costs paid after December 31, 2002, with respect to any judgment or settlement occurring after such date.

SEC. 644. EXCLUSION FOR PAYMENTS TO INDIVIDUALS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.

(a) IN GENERAL.—Section 108(f) (relating to student loans) is amended by adding at the end the following new paragraph:

''(4) PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act or under a State program described in section 338I of such Act.''.

(b) TREATMENT FOR PURPOSES OF EMPLOYMENT TAXES.—Each of the following provisions is amended by inserting ''108(f)(4),'' after ''74(c),'':

(1) Section 3121(a)(20).

(2) Section 3231(e)(5).

(3) Section 3306(b)(16).

(4) Section 3401(a)(19).

(5) Section 209(a)(17) of the Social Security Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received by an individual in taxable years beginning after December 31, 2003.

SEC. 645. CERTAIN EXPENSES OF RURAL LETTER CARRIERS.

(a) IN GENERAL.—Section 162(o) (relating to treatment of certain reimbursed expenses of rural mail carriers) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following:

''(2) SPECIAL RULE WHERE EXPENSES EXCEED REIMBURSEMENTS.—Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.''.

(b) CONFORMING AMENDMENT.—The heading for section 162(o) is amended by striking ''REIMBURSED''.

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

SEC. 646. METHOD OF ACCOUNTING FOR NAVAL SHIPBUILDERS.

(a) IN GENERAL.—In the case of a qualified naval ship contract, the taxable income of such contract during the 5-taxable year period beginning with the taxable year in which the contract commencement date occurs shall be determined under a method identical to the method used in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987).

(b) RECAPTURE OF TAX BENEFIT.—In the case of a qualified naval ship contract to which subsection (a) applies, the taxpayer's tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the first taxable year following the 5-taxable year period described in subsection (a) shall be increased by the excess (if any) of—

(1) the amount of tax which would have been imposed during such period if this section had not been enacted, over

(2) the amount of tax so imposed during such period.

(c) QUALIFIED NAVAL SHIP CONTRACT.—For purposes of this section—

(1) IN GENERAL.—The term ''qualified naval ship contract'' means any contract or portion thereof that is for the construction in the United States of 1 ship or submarine for the Federal Government if the taxpayer reasonably expects the acceptance date will occur no later than 9 years after the construction commencement date.

(2) ACCEPTANCE DATE.—The term ''acceptance date'' means the date 1 year after the date on which the Federal Government issues a letter of acceptance or other similar document for the ship or submarine.

(3) CONSTRUCTION COMMENCEMENT DATE.—The term ''construction commencement date'' means the date on which the physical fabrication of any section or component of the ship or submarine begins.

(d) EFFECTIVE DATE.—This section shall apply to contracts for ships or submarines with respect to which the construction commencement date occurs after the date of the enactment of this Act.

SEC. 647. SUSPENSION OF POLICYHOLDERS SURPLUS ACCOUNT PROVISIONS.

(a) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-1984 POLICYHOLDERS SURPLUS ACCOUNT.—Section 815 (relating to distributions to shareholders from pre-1984 policyholders surplus account) is amended by adding at the end the following:

''(g) SPECIAL RULES APPLICABLE DURING 2004 AND 2005.—In the case of any taxable year of a stock life insurance company beginning after December 31, 2003, and before January 1, 2006—

''(1) the amount under subsection (a)(2) for such taxable year shall be treated as zero, and

''(2) notwithstanding subsection (b), in determining any subtractions from an account under subsections (c)(3) and (d)(3), any distribution to shareholders during such taxable year shall be treated as made first out of the policyholders surplus account, then out of the shareholders surplus account, and finally out of other accounts.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 648. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) IN GENERAL.—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following new sentence: ''For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act.

SEC. 649. SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) REPLACEMENT OF LIVESTOCK WITH OTHER FARM PROPERTY.—Subsection (f) of section 1033 (relating to involuntary conversions) is amended—

(1) by inserting ''drought, flood, or other weather-related conditions, or'' after ''because of'',

(2) by inserting ''in the case of soil contamination or other environmental contamination'' after ''including real property'', and

(3) by striking ''WHERE THERE HAS BEEN ENVIRONMENTAL CONTAMINATION'' in the heading and inserting ''IN CERTAIN CASES''.

(b) EXTENSION OF REPLACEMENT PERIOD OF INVOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e) of section 1033 (relating to involuntary conversions) is amended—

(1) by striking ''CONDITIONS.—For purposes'' and inserting ''CONDITIONS.—

''(1) IN GENERAL.—For purposes'', and

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

''(2) EXTENSION OF REPLACEMENT PERIOD.—

''(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting '4 years' for '2 years'.

''(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.''.

(c) INCOME INCLUSION RULES.—Section 451(e) (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

''(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 650. MOTOR VEHICLE DEALER TRANSITIONAL ASSISTANCE.

(a) IN GENERAL.—For purposes of subtitle A of the Internal Revenue Code of 1986, in the case of a taxpayer who elects the application of this section and who was a party to a motor vehicle sales and service agreement with a motor vehicle manufacturer who announced in December 2000 that it would phase-out the motor vehicle brand to which such agreement relates—

(1) amounts received by such taxpayer from such manufacturer on account of the termination of such agreement (hereafter in this section referred to as ''termination payment'') are considered to be received for property used in the trade or business of a motor vehicle retail sales and service dealership, and

(2) to the extent such termination payment is reinvested in property used in a motor vehicle retail sales and service dealership located within the United States, such property shall qualify as like-kind replacement property to which section 1031 of the Internal Revenue Code of 1986 shall apply with the following modifications:

(A) Such section shall be applied without regard to subparagraphs (A) and (B)(ii) of subsection (a)(3).

(B) The period described in section 1031(a)(3)(B) of such Code shall be applied by substituting ''2 years'' for ''180 days''.

(b) RULES FOR ELECTION.—

(1) FORM OF ELECTION.—The taxpayer shall make an election under this section in such form and manner as the Secretary of the Treasury may prescribe and shall include in such election the amount of the termination payment received, the identification of the replacement property purchased, and such other information as the Secretary may prescribe.

(2) ELECTION ON AMENDED RETURN.—The Secretary of the Treasury shall permit an election under this section on an amended tax return for taxable years beginning before the date of the enactment of this Act.

(c) STATUTE OF LIMITATIONS.—Notwithstanding the provisions of any other law or rule of law, the statutory period for the assessment for any deficiency attributable to any termination payment gain shall be extended until 3 years after the date the Secretary of the Treasury is notified by the taxpayer of the like-kind replacement property or an intention not to replace.

(d) EFFECTIVE DATE.—This section shall apply to amounts received after December 12, 2000, in taxable years ending after such date.

SEC. 651. EXPANSION OF DESIGNATED RENEWAL COMMUNITY AREA BASED ON 2000 CENSUS DATA.

(a) RENEWAL COMMUNITIES.—Section 1400E (relating to designation of renewal communities) is amended by adding at the end the following new subsection:

''(g) EXPANSION OF DESIGNATED AREAS.—

''(1) EXPANSION BASED ON 2000 CENSUS.—At the request of the nominating entity with respect to a renewal community, the Secretary of Housing and Urban Development may expand the area of a renewal community to include any census tract—

''(A) which, at the time such community was nominated, met the requirements of this section for inclusion in such community but for the failure of such tract to meet 1 or more of the population and poverty rate requirements of this section using 1990 census data, and

''(B) which meets all failed population and poverty rate requirements of this section using 2000 census data.

''(2) EXPANSION TO CERTAIN AREAS WHICH DO NOT MEET POPULATION REQUIREMENTS.—

''(A) IN GENERAL.—At the request of 1 or more local governments and the State or States in which an area described in subparagraph (B) is located, the Secretary of Housing and Urban Development may expand a designated area to include such area.

''(B) AREA.—An area is described in this subparagraph if—

''(i) the area is adjacent to at least 1 other area designated as a renewal community,

''(ii) the area has a population less than the population required under subsection (c)(2)(C), and

''(iii)(I) the area meets the requirements of subparagraphs (A) and (B) of subsection (c)(2) and subparagraph (A) of subsection (c)(3), or

''(II) the area contains a population of less than 100 people.

''(3) APPLICABILITY.—Any expansion of a renewal community under this section shall take effect as provided in subsection (b).''.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000.

SEC. 652. REDUCTION OF HOLDING PERIOD TO 12 MONTHS FOR PURPOSES OF DETERMINING WHETHER HORSES ARE SECTION 1231 ASSETS.

(a) IN GENERAL.—Subparagraph (A) of section 1231(b)(3) (relating to definition of property used in the trade or business) is amended by striking ''and horses''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 653. BLUE RIBBON COMMISSION ON COMPREHENSIVE TAX REFORM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the ''Blue Ribbon Commission on Comprehensive Tax Reform'' (in this section referred to as the ''Commission'').

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Commission shall be composed of 17 members of whom—

(i) 3 shall be appointed by the majority leader of the Senate;

(ii) 3 shall be appointed by the minority leader of the Senate;

(iii) 3 shall be appointed by the Speaker of the House of Representatives;

(iv) 3 shall be appointed by the minority leader of the House of Representatives; and

(v) 5 shall be appointed by the President, of which no more than 3 shall be of the same party as the President.

(B) FEDERAL EMPLOYEES.—The members of the Commission may be employees or former employees of the Federal Government.

(C) DATE.—The appointments of the members of the Commission shall be made not later than October 30, 2004.

(3) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(4) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(5) MEETINGS.—The Commission shall meet at the call of the Chairman.

(6) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(7) CHAIRMAN AND VICE CHAIRMAN.—The President shall select a Chairman and Vice Chairman from among its members.

(b) DUTIES OF THE COMMISSION.—

(1) STUDY.—The Commission shall conduct a thorough study of all matters relating to a comprehensive reform of the Federal tax system, including the reform of the Internal Revenue Code of 1986 and the implementation (if appropriate) of other types of tax systems.

(2) RECOMMENDATIONS.—The Commission shall develop recommendations on how to comprehensively reform the Federal tax system in a manner that generates appropriate revenue for the Federal Government.

(3) REPORT.—Not later than 18 months after the date on which all initial members of the commission have been appointed pursuant to subsection (a)(2), the Commission shall submit a report to the President and Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

(c) POWERS OF THE COMMISSION.—

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

(2) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

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

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

(d) COMMISSION PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) STAFF.—

(A) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(B) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(e) TERMINATION OF THE COMMISSION.—The Commission shall terminate 90 days after the date on which the Commission submits its report under subsection (b).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to the Commission to carry out this section.

SEC. 654. TREATMENT OF DISTRIBUTIONS BY ESOPS WITH RESPECT TO S CORPORATION STOCK.

(a) IN GENERAL.—Section 4975(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new flush sentences:

''A plan shall not be treated as violating the requirements of section 401, 409, or subsection (e)(7), or as engaging in a prohibited transaction for purposes of paragraph (3), merely by reason of any distribution described in section 1368(a) with respect to S corporation stock which constitutes qualifying employer securities if the distribution is, in accordance with the plan provisions, used to make payments on a loan described in paragraph (3) the proceeds of which were used to acquire the qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.''

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 1998.

SEC. 655. CLARIFICATION OF WORKING CAPITAL FOR REASONABLY ANTICIPATED NEEDS OF A BUSINESS FOR PURPOSES OF ACCUMULATED EARNINGS TAX.

(a) IN GENERAL.—Section 537(b) (relating to special rules) is amended by adding at the end the following new paragraph:

''(6) WORKING CAPITAL.—The reasonably anticipated needs of a business for any taxable year shall include working capital for the business in an amount which is not less than the sum of the cost of goods, operating expenses, taxes, and interest expense which the business incurred during the preceding taxable year. Any amounts incurred as part of a plan a principal purpose of which is to increase the limitation under this subsection shall not be taken into account.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003, and before January 1, 2009.

SEC. 656. TAX TREATMENT OF STATE OWNERSHIP OF RAILROAD REAL ESTATE INVESTMENT TRUST.

(a) IN GENERAL.—If a State owns all of the outstanding stock of a corporation which is a real estate investment trust, which is a non-operating class III railroad, and substantially all of the activities of which consist of

the ownership, leasing, and operation by such corporation of facilities, equipment, and other property used by the corporation or other persons in railroad transportation, then, for purposes of section 115 of the Internal Revenue Code of 1986—

(1) income derived from such activities by the corporation shall be treated as accruing to the State, and

(2) such activities shall be treated as the exercise of an essential governmental function of the State to the extent such activities are of a type which are an essential government function (within the meaning of section 115 of such Code).

(b) GAIN OR LOSS NOT RECOGNIZED ON CONVERSION.—Notwithstanding section 337(d) of the Internal Revenue Code of 1986—

(1) no gain or loss shall be recognized under section 336 or 337 of such Code, and

(2) no change in basis of the property of such corporation shall occur,

because of any change of status of the corporation to a tax-exempt entity by reason of the application of subsection (a).

(c) TAX-EXEMPT FINANCING.—Any obligation issued by an entity described in subsection (a) shall be treated as an obligation of the State for purposes of applying section 103 and part IV of subchapter B of chapter 1 of the Internal Revenue Code of 1986.

(d) DEFINITIONS.—For purposes of this section—

(1) REAL ESTATE INVESTMENT TRUST.—The term ''real estate investment trust'' has the meaning given such term by section 856(a) of the Internal Revenue Code of 1986.

(2) NON-OPERATING CLASS III RAILROAD.—The term ''non-operating class III railroad'' has the meaning given such term by part A of subtitle IV of title 49, United States Code (49 U.S.C. 10101 et seq.) and the regulations thereunder.

(3) STATE.—The term ''State'' includes—

(A) the District of Columbia and any possession of the United States, and

(B) any authority, agency, or public corporation of a State.

(e) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply on and after the date on which a State becomes the owner of all of the outstanding stock of a corporation described in subsection (a).

(2) EXCEPTION.—This section shall not apply to any State which—

(A) becomes the owner of all of the voting stock of a corporation described in subsection (a) after December 31, 2003, or

(B) becomes the owner of all of the outstanding stock of a corporation described in subsection (a) after December 31, 2005.

SEC. 657. CLARIFICATION OF CONTRIBUTION IN AID OF CONSTRUCTION FOR WATER AND SEWERAGE DISPOSAL UTILITIES.

(a) IN GENERAL.—Subparagraph (A) of section 118(c)(3) (relating to definitions) is amended to read as follows:

''(A) CONTRIBUTION IN AID OF CONSTRUCTION.—The term 'contribution in aid of construction' shall be defined by regulations prescribed by the Secretary, except that such term—

''(i) shall include amounts paid as customer connection fees (including amounts paid to connect the customer's water service line or sewer lateral line to the utility's distribution or collection system or extend a main water or sewer line to provide service to a customer), and

''(ii) shall not include amounts paid as service charges for starting or stopping services.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

SEC. 658. CREDIT FOR PURCHASE AND INSTALLATION OF AGRICULTURAL WATER CONSERVATION SYSTEMS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30B. PURCHASE AND INSTALLATION OF AGRICULTURAL WATER CONSERVATION SYSTEMS.

''(a) ALLOWANCE OF CREDIT.—In the case of an eligible taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the water conservation system expenses paid or incurred by the taxpayer during such year.

''(b) LIMITATIONS.—The credit allowed by subsection (a) with respect to any acre of land which is served by a water conservation system shall not exceed the excess of—

''(1) $500, over

''(2) the amount of credit allowed under this section with respect to such acre for all prior taxable years.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means any taxpayer if—

''(A) at least 50 percent of such taxpayer's gross income is normally derived from farm land, and

''(B) such taxpayer complies with all Federal, State, and local water rights and environmental laws.

''(2) WATER CONSERVATION SYSTEM EXPENSES.—

''(A) IN GENERAL.—The term 'water conservation system expenses' means expenses for the purchase and installation of a water conservation system but only if—

''(i) the land served by the water conservation system is entirely in a county or county-equivalent area which has received, in the taxable year the expenses were paid or incurred or in any of the 3 preceding taxable years, a primary-county designation due to drought by the Secretary of Agriculture, and

''(ii) such system is certified as saving at least 5 percent more irrigation water than the irrigation system which was used on such land immediately prior to the installation of such water conservation system.

For purposes of clause (ii), irrigation water savings shall be determined and certified under regulations prescribed jointly by the Natural Resources Conservation Service of the Department of Agriculture and the Bureau of Reclamation of the Department of the Interior. Such regulations shall include a list of individuals or organizations qualified to make such certification.

''(B) WATER CONSERVATION SYSTEM.—The term 'water conservation system' means, with respect to farm land—

''(i) new or replacement irrigation equipment and machinery, including sprinklers, pipes, siphons, nozzles, pumps, motors, and engines, and

''(ii) computer systems for irrigation and water management.

''(C) FARM LAND.—The term 'farm land' means land used in a trade or business by the taxpayer or a tenant of the taxpayer for—

''(i) the production of crops, fruits, or other agricultural products,

''(ii) the raising, harvesting, or growing of trees, or

''(iii) the sustenance of livestock.

''(d) YEAR EXPENDITURE MADE.—For purposes of this section, an expenditure with respect to a water conservation system shall be treated as made when the original installation of the system is completed.

''(e) LIMITATION BASED ON AMOUNT OF TAX.—

''(1) LIABILITY FOR TAX.—The credit allowable under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year, reduced by the sum of the credits allowable under subpart A and the preceding sections of this subpart, over

''(B) the tentative minimum tax for the taxable year.

''(2) CARRYFORWARD OF UNUSED CREDIT.—If the amount of the credit allowable under subsection (a) for any taxable year exceeds the limitation under paragraph (1) for the taxable year, the excess shall be carried to the succeeding taxable year and added to the amount allowable as a credit under subsection (a) for such succeeding taxable year.

''(f) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter with respect to any expense which is taken into account in determining the credit under this section, and any increase in the basis of any property which would (but for this subsection) result from such expense shall be reduced by the amount of credit allowed under this section for such expense.

''(g) TERMINATION.—This section shall not apply to amounts paid or incurred with respect any water conservation system the installation of which is completed after December 31, 2006.''.

(b) TECHNICAL AMENDMENT.—Subsection (a) of section 1016, as amended by this Act, is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting ''; and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 30B(f), in the case of amounts with respect to which a credit has been allowed under section 30B.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 30B. Purchase and installation of agricultural water conservation systems.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act with respect any water conservation system the installation of which is completed after December 31, 2004.

SEC. 659. MODIFICATION OF INVOLUNTARY CONVERSION RULES FOR BUSINESSES AFFECTED BY THE SEPTEMBER 11TH TERRORIST ATTACKS.

(a) IN GENERAL.—Subsection (g) of section 1400L is amended to read as follows:

''(g) MODIFICATION OF RULES APPLICABLE TO NONRECOGNITION OF GAIN.—In the case of property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone—

''(1) which was held by a corporation which is a member of an affiliated group filing a consolidated return, such corporation shall be treated as satisfying the purchase requirement of section 1033(a)(2) with respect to such property to the extent such requirement is satisfied by another member of the group, and

''(2) notwithstanding subsections (g) and (h) of section 1033, clause (i) of section 1033(a)(2)(B) shall be applied by substituting '5 years' for '2 years' with respect to property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone but only if substantially all of the use of the replacement property is in the City of New York, New York.''.

(b) EFFECTIVE DATE.—The amendments made by this Act shall apply to involuntary conversions occurring on or after September 11, 2001.

SEC. 660. REPEAL OF APPLICATION OF BELOW-MARKET LOAN RULES TO AMOUNTS PAID TO CERTAIN CONTINUING CARE FACILITIES.

(a) IN GENERAL.—Section 7872(c)(1) (relating to below-market loans to which section applies) is amended—

(1) by striking subparagraph (F), and

(2) by striking ''(C), or (F)'' in subparagraph (E) and inserting ''or (C)''.

(b) FULL EXCEPTION.—Section 7872(g) (relating to exception for certain loans to qualified continuing care facilities) is amended—

(1) by striking ''made by a lender to a qualified continuing care facility pursuant to a continuing care contract'' in paragraph (1) and inserting ''owed by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract and'',

(2) by striking ''increased personal care services or'' in paragraph (3)(C),

(3) by adding at the end of paragraph (3) the following new flush sentence:

''The Secretary shall issue guidance which limits such term to contracts which provide to an individual or individual's spouse only facilities, care, and services described in this paragraph which are customarily offered by continuing care facilities.'',

(4) by inserting ''independent living unit'' after ''all of the'' in paragraph (4)(A)(ii),

(5) by striking paragraphs (2) and (5),

(6) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively, and

(7) by striking ''CERTAIN'' in the heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2004.

SEC. 661. GOLD, SILVER, PLATINUM, AND PALLADIUM TREATED IN THE SAME MANNER AS STOCKS AND BONDS FOR MAXIMUM CAPITAL GAINS RATE FOR INDIVIDUALS.

(a) IN GENERAL.—Section 1(h)(5) (relating to definition of collectibles gain and loss) is amended—

(1) by striking ''(as defined in section 408(m) without regard to paragraph (3) thereof)'' in subparagraph (A) thereof, and

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

''(C) COLLECTIBLE.—For purposes of this paragraph, the term 'collectible' has the meaning given such term by section 408(m), except that in applying paragraph (3)(B) thereof the determination of whether any bullion is excluded from treatment as a collectible shall be made without regard to the person who is in physical possession of the bullion.''

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

SEC. 662. INCLUSION OF PRIMARY AND SECONDARY MEDICAL STRATEGIES FOR CHILDREN AND ADULTS WITH SICKLE CELL DISEASE AS MEDICAL ASSISTANCE UNDER THE MEDICAID PROGRAM.

(a) OPTIONAL MEDICAL ASSISTANCE.—

(1) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) in subsection (a)—

(i) by striking ''and'' at the end of paragraph (26);

(ii) by redesignating paragraph (27) as paragraph (28); and

(iii) by inserting after paragraph (26), the following:

''(27) subject to subsection (x), primary and secondary medical strategies and treatment and services for individuals who have Sickle Cell Disease; and''; and

(B) by adding at the end the following:

''(x) For purposes of subsection (a)(27), the strategies, treatment, and services described in that subsection include the following:

''(1) Chronic blood transfusion (with deferoxamine chelation) to prevent stroke in individuals with Sickle Cell Disease who have been identified as being at high risk for stroke.

''(2) Genetic counseling and testing for individuals with Sickle Cell Disease or the sickle cell trait to allow health care professionals to treat such individuals and to prevent symptoms of Sickle Cell Disease.

''(3) Other treatment and services to prevent individuals who have Sickle Cell Disease and who have had a stroke from having another stroke.''.

(2) RULE OF CONSTRUCTION.—Nothing in subsections (a)(27) or (x) of section 1905 of the Social Security Act (42 U.S.C. 1396d), as added by paragraph (1), shall be construed as implying that a State medicaid program under title XIX of such Act could not have treated, prior to the date of enactment of this Act, any of the primary and secondary medical strategies and treatment and services described in such subsections as medical assistance under such program, including as early and periodic screening, diagnostic, and treatment services under section 1905(r) of such Act.

(b) FEDERAL REIMBURSEMENT FOR EDUCATION AND OTHER SERVICES RELATED TO THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.—Section 1903(a)(3) of the Social Security Act (42 U.S.C. 1396b(a)(3)) is amended—

(1) in subparagraph (D), by striking ''plus'' at the end and inserting ''and''; and

(2) by adding at the end the following:

''(E) 50 percent of the sums expended with respect to costs incurred during such quarter as are attributable to providing—

''(i) services to identify and educate individuals who are likely to be eligible for medical assistance under this title and who have Sickle Cell Disease or who are carriers of the sickle cell gene, including education regarding how to identify such individuals; or

''(ii) education regarding the risks of stroke and other complications, as well as the prevention of stroke and other complications, in individuals who are likely to be eligible for medical assistance under this title and who have Sickle Cell Disease; plus''.

(c) DEMONSTRATION PROGRAM FOR THE DEVELOPMENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS FOR THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.—

(1) AUTHORITY TO CONDUCT DEMONSTRATION PROGRAM.—

(A) IN GENERAL.—The Administrator, through the Bureau of Primary Health Care and the Maternal and Child Health Bureau, shall conduct a demonstration program by making grants to up to 40 eligible entities for each fiscal year in which the program is conducted under this section for the purpose of developing and establishing systemic mechanisms to improve the prevention and treatment of Sickle Cell Disease, including through—

(i) the coordination of service delivery for individuals with Sickle Cell Disease;

(ii) genetic counseling and testing;

(iii) bundling of technical services related to the prevention and treatment of Sickle Cell Disease;

(iv) training of health professionals; and

(v) identifying and establishing other efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with Sickle Cell Disease.

(B) GRANT AWARD REQUIREMENTS.—

(i) GEOGRAPHIC DIVERSITY.—The Administrator shall, to the extent practicable, award grants under this section to eligible entities located in different regions of the United States.

(ii) PRIORITY.—In awarding grants under this subsection, the Administrator shall give priority to awarding grants to eligible entities that are—

(I) Federally-qualified health centers that have a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health; or

(II) Federally-qualified health centers that intend to develop a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health.

(2) ADDITIONAL REQUIREMENTS.—An eligible entity awarded a grant under this subsection shall use funds made available under the grant to carry out, in addition to the activities described in paragraph (1)(A), the following activities:

(A) To facilitate and coordinate the delivery of education, treatment, and continuity of care for individuals with Sickle Cell Disease under—

(i) the entity's collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity that works with individuals who have Sickle Cell Disease;

(ii) the Sickle Cell Disease newborn screening program for the State in which the entity is located; and

(iii) the maternal and child health program under title V of the Social Security Act (42 U.S.C. 701 et seq.) for the State in which the entity is located.

(B) To train nursing and other health staff who provide care for individuals with Sickle Cell Disease.

(C) To enter into a partnership with adult or pediatric hematologists in the region and other regional experts in Sickle Cell Disease at tertiary and academic health centers and State and county health offices.

(D) To identify and secure resources for ensuring reimbursement under the medicaid program, State children's health insurance program, and other health programs for the prevention and treatment of Sickle Cell Disease.

(3) NATIONAL COORDINATING CENTER.—

(A) ESTABLISHMENT.—The Administrator shall enter into a contract with an entity to serve as the National Coordinating Center for the demonstration program conducted under this subsection.

(B) ACTIVITIES DESCRIBED.—The National Coordinating Center shall—

(i) collect, coordinate, monitor, and distribute data, best practices, and findings regarding the activities funded under grants made to eligible entities under the demonstration program;

(ii) develop a model protocol for eligible entities with respect to the prevention and treatment of Sickle Cell Disease;

(iii) develop educational materials regarding the prevention and treatment of Sickle Cell Disease; and

(iv) prepare and submit to Congress a final report that includes recommendations regarding the effectiveness of the demonstration program conducted under this subsection and such direct outcome measures as—

(I) the number and type of health care resources utilized (such as emergency room visits, hospital visits, length of stay, and physician visits for individuals with Sickle Cell Disease); and

(II) the number of individuals that were tested and subsequently received genetic counseling for the sickle cell trait.

(4) APPLICATION.—An eligible entity desiring a grant under this subsection shall submit an application to the Administrator at such time, in such manner, and containing

such information as the Administrator may require.

(5) DEFINITIONS.—In this subsection:

(A) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Health Resources and Services Administration.

(B) ELIGIBLE ENTITY.—The term ''eligible entity'' means a Federally-qualified health center, a nonprofit hospital or clinic, or a university health center that provides primary health care, that—

(i) has a collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity with experience in working with individuals who have Sickle Cell Disease; and

(ii) demonstrates to the Administrator that either the Federally-qualified health center, the nonprofit hospital or clinic, the university health center, the organization or entity described in clause (i), or the experts described in paragraph (2)(C), has at least 5 years of experience in working with individuals who have Sickle Cell Disease.

(C) FEDERALLY-QUALIFIED HEALTH CENTER.—The term ''Federally-qualified health center'' has the meaning given that term in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B)).

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, $10,000,000 for each of fiscal years 2005 through 2009.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect on the date of enactment of this Act and apply to medical assistance and services provided under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after that date.

Subtitle F—Revenue Provisions

PART I—GENERAL REVENUE PROVISIONS

SEC. 661A. TREASURY REGULATIONS ON FOREIGN TAX CREDIT.

Section 901, as amended by this Act, is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) REGULATIONS.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.''.

SEC. 662B. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(g) (relating to suspension of interest and certain penalties where Secretary fails to contact taxpayer) is amended by striking ''1-year period (18-month period in the case of taxable years beginning before January 1, 2004)'' both places it appears and inserting ''18-month period''.

(b) EXCEPTION FOR GROSS MISSTATEMENT.—Section 6404(g)(2) (relating to exceptions) is amended by striking ''or'' at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

''(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; or''.

(c) EXCEPTION FOR LISTED AND REPORTABLE TRANSACTIONS.—Section 6404(g)(2) (relating to exceptions), as amended by subsection (b), is amended by striking ''or'' at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

''(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction or listed transaction (as defined in 6707A(c)); or''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—The amendments made by subsection (c) shall apply with respect to interest accruing after May 5, 2004.

PART II—PENSION AND DEFERRED COMPENSATION

SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new section:

''SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED COMPENSATION UNDER NONQUALIFIED DEFERRED COMPENSATION PLANS.

''(a) RULES RELATING TO CONSTRUCTIVE RECEIPT.—

''(1) IN GENERAL.—

''(A) GROSS INCOME INCLUSION.—If at any time during a taxable year a nonqualified deferred compensation plan—

''(i) fails to meet the requirements of paragraphs (2), (3), (4), and (5), or

''(ii) is not operated in accordance with such requirements,

all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

''(B) INTEREST AND ADDITIONAL TAX PAYABLE WITH RESPECT TO PREVIOUSLY DEFERRED COMPENSATION.—

''(i) IN GENERAL.—If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for the taxable year of inclusion shall be increased by the sum of—

''(I) the amount of interest determined under clause (ii), and

''(II) an amount equal to 10 percent of the compensation which is required to be included in gross income.

''(ii) INTEREST.—For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

''(2) DISTRIBUTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

''(i) except as provided in subparagraph (B)(i), separation from service (as determined by the Secretary),

''(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

''(iii) death,

''(iv) a specified time (or pursuant to a fixed schedule) specified under the plan as of the date of the deferral of such compensation,

''(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

''(vi) the occurrence of an unforeseeable emergency.

''(B) SPECIAL RULES.—

''(i) SEPARATION FROM SERVICE OF SPECIFIED EMPLOYEES.—In the case of specified employees, the requirement of subparagraph (A)(i) is met only if distributions may not be made earlier than 6 months after the date of separation from service. For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i)) of a corporation the stock in which is publicly traded on an established securities market or otherwise.

''(ii) CHANGES IN OWNERSHIP OR CONTROL.—In the case of a participant who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934, the requirement of subparagraph (A)(v) is met only if distributions may not be made earlier than 1 year after the date of the change in ownership or effective control.

''(iii) UNFORESEEABLE EMERGENCY.—For purposes of subparagraph (A)(vi)—

''(I) IN GENERAL.—The term 'unforeseeable emergency' means a severe financial hardship to the participant or beneficiary resulting from a sudden and unexpected illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in section 152(a)), loss of the participant's or beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary.

''(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's or beneficiary's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

''(C) DISABLED.—For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

''(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

''(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant's employer.

''(3) INVESTMENT OPTIONS.—The requirements of this paragraph are met if the plan provides that the investment options a participant may elect under the plan—

''(A) are comparable to the investment options which a participant may elect under the defined contribution plan of the employer which—

''(i) meets the requirement of section 401(a) and includes a trust exempt from taxation under section 501(a), and

''(ii) has the fewest investment options, or

''(B) if there is no such defined contribution plan, meet such requirements as the Secretary may prescribe (including requirements limiting such options to permissible

investment options specified by the Secretary).

''(4) ACCELERATION OF BENEFITS.—The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided by the Secretary in regulations.

''(5) ELECTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

''(B) INITIAL DEFERRAL DECISION.—The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer such compensation is made during the preceding taxable year or at such other time as provided in regulations. In the case of the first year in which a participant becomes eligible to participate in the plan, such election may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan.

''(C) CHANGES IN TIME AND FORM OF DISTRIBUTION.—The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

''(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

''(ii) in the case an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the first payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

''(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

A plan shall be treated as failing to meet the requirements of this subparagraph if the plan permits more than 1 subsequent election to delay any payment.

''(b) RULES RELATING TO FUNDING.—

''(1) OFFSHORE PROPERTY IN A TRUST.—In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, such assets shall be treated for purposes of section 83 as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

''(A) at the time set aside if such assets are located outside of the United States, or

''(B) at the time transferred if such assets are subsequently transferred outside of the United States.

This paragraph shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

''(2) EMPLOYER'S FINANCIAL HEALTH.—In the case of a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 as of the earlier of—

''(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or

''(B) the date on which assets are so restricted.

''(3) INCOME INCLUSION FOR OFFSHORE TRUSTS AND EMPLOYER'S FINANCIAL HEALTH.—For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1) or (2), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

''(4) INTEREST ON TAX LIABILITY PAYABLE WITH RESPECT TO TRANSFERRED PROPERTY.—

''(A) IN GENERAL.—If amounts are required to be included in gross income by reason of paragraph (1) or (2) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

''(i) the amount of interest determined under subparagraph (B), and

''(ii) an amount equal to 10 percent of the amounts required to be included in gross income.

''(B) INTEREST.—For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1) or (2) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

''(c) NO INFERENCE ON EARLIER INCOME INCLUSION.—Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

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

''(1) NONQUALIFIED DEFERRED COMPENSATION PLAN.—The term 'nonqualified deferred compensation plan' means any plan that provides for the deferral of compensation, other than—

''(A) a qualified employer plan, and

''(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

''(2) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' means—

''(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5), and

''(B) any eligible deferred compensation plan (within the meaning of section 457(b)) of an employer described in section 457(e)(1)(A).

''(3) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

''(4) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

''(5) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

''(6) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION.—This section shall not apply to any nonelective deferred compensation to which section 457 does not apply by reason of section 457(e)(12), but only if such compensation is provided under a nonqualified deferred compensation plan which was in existence on May 1, 2004, and which was providing nonelective deferred compensation described in section 457(e)(12) on such date. If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amemdment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

''(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

''(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

''(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

''(4) defining financial health for purposes of subsection (b)(2), and

''(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.''.

(b) APPLICATION OF GOLDEN PARACHUTE PAYMENT PROVISIONS.—Section 280G of such Code (relating to golden parachute payments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) SPECIAL RULES FOR CERTAIN PAYMENTS FROM NONQUALIFIED DEFERRED COMPENSATION PLANS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, an applicable payment shall be treated as an excess parachute payment for purposes of this section and section 4999.

''(2) COORDINATION WITH OTHER PAYMENTS.—

''(A) APPLICABLE PAYMENTS WHICH ARE PARACHUTE PAYMENTS.—If any applicable payment is a parachute payment (determined without regard to subsection (b)(2)(A)(ii))—

''(i) except as provided in paragraph (4), this section shall be applied to such payment in the same manner as if this subsection had not been enacted, and

''(ii) if such application results in an excess parachute payment, any tax under section 4999 on the excess parachute payment shall be in addition to the tax imposed by reason of paragraph (1).

''(B) APPLICABLE PAYMENTS WHICH ARE NOT PARACHUTE PAYMENTS.—An applicable payment not described in subparagraph (A) shall be taken into account in determining whether any payment described in subparagraph (A) or any payment which is not an applicable payment is a parachute payment under subsection (b)(2).

''(3) APPLICABLE PAYMENT.—For purposes of this subsection, the term 'applicable payment' means any distribution (including any distribution treated as a parachute payment without regard to this subsection) from a nonqualified deferred compensation plan (as defined in section 409A(d)) which is made—

''(A) to a participant who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934, and

''(B) during the 1-year period following a change in the ownership or effective control of the corporation or in the ownership of a substantial portion of the assets of the corporation.

Such terms shall not include any distribution by reason of the death of the participant

or the participant becoming disabled (within the meaning of section 409A(a)(2)(C)).

''(4) NO DOUBLE COUNTING.—Under regulations, proper adjustments shall be made in the application of this subsection to prevent a deduction from being disallowed more than once.''.

(c) W–2 FORMS.—

(1) IN GENERAL.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking ''and'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', and'', and by inserting after paragraph (12) the following new paragraph:

''(13) the total amount of deferrals under a nonqualified deferred compensation plan (within the meaning of section 409A(d)).''.

(2) THRESHOLD.—Subsection (a) of section 6051 is amended by adding at the end the following: ''In the case of the amounts required to be shown by paragraph (13), the Secretary may (by regulation) establish a minimum amount of deferrals below which paragraph (13) does not apply.''.

(d) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Section 414(b) is amended by inserting ''409A,'' after ''408(p),''.

(2) Section 414(c) is amended by inserting ''409A,'' after ''408(p),''.

(3) The table of sections for such subpart A is amended by adding at the end the following new item:

''Sec. 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts deferred in taxable years beginning after December 31, 2004.

(2) EARNINGS ATTRIBUTABLE TO AMOUNT PREVIOUSLY DEFERRED.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

(f) GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.

(g) GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance providing a limited period during which an individual participating in a nonqualified deferred compensation plan adopted on or before December 31, 2004, may, without violating the requirements of paragraphs (2), (3), (4), and (5) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), terminate participation or cancel an outstanding deferral election with regard to amounts earned after December 31, 2004, if such amounts are includible in income as earned.

SEC. 672. PROHIBITION ON DEFERRAL OF GAIN FROM THE EXERCISE OF STOCK OPTIONS AND RESTRICTED STOCK GAINS THROUGH DEFERRED COMPENSATION ARRANGEMENTS.

(a) IN GENERAL.—Section 83 (relating to property transferred in connection with performance of services) is amending by adding at the end the following new subsection:

''(i) PROHIBITION ON ADDITIONAL DEFERRAL THROUGH DEFERRED COMPENSATION ARRANGEMENTS.—If a taxpayer exchanges—

''(1) an option to purchase employer securities—

''(A) to which subsection (a) applies, or

''(B) which is described in subsection (e)(3), or

''(2) employer securities or any other property based on employer securities transferred to the taxpayer,

for a right to receive future payments, then, notwithstanding any other provision of this title, there shall be included in gross income for the taxable year of the exchange an amount equal to the present value of such right (or such other amount as the Secretary may by regulations specify). For purposes of this subsection, the term 'employer securities' includes any security issued by the employer.''.

(b) CONTROLLED GROUP RULES.—Section 414(t)(2) is amended by inserting ''83(i),'' after ''79,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any exchange after December 31, 2004.

SEC. 673. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS IN EXCESS OF $1,000,000.

(a) IN GENERAL.—If an employer elects under Treasury Regulation 31.3402(g)–1 to determine the amount to be deducted and withheld from any supplemental wage payment by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 28 percent (or the corresponding rate in effect under section 1(i)(2) of the Internal Revenue Code of 1986 for taxable years beginning in the calendar year in which the payment is made).

(b) SPECIAL RULE FOR LARGE PAYMENTS.—

(1) IN GENERAL.—Notwithstanding subsection (a), if the supplemental wage payment, when added to all such payments previously made by the employer to the employee during the calendar year, exceeds $1,000,000, the rate used with respect to such excess shall be equal to the maximum rate of tax in effect under section 1 of such Code for taxable years beginning in such calendar year.

(2) AGGREGATION.—All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subsection.

(c) CONFORMING AMENDMENT.—Section 13273 of the Revenue Reconciliation Act of 1993 (Public Law 103–66) is repealed.

(d) EFFECTIVE DATE.—The provisions of, and the amendment made by, this section shall apply to payments made after December 31, 2003.

SEC. 674. TREATMENT OF SALE OF STOCK ACQUIRED PURSUANT TO EXERCISE OF STOCK OPTIONS TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.

(a) IN GENERAL.—Section 421 of the Internal Revenue Code of 1986 (relating to general rules for certain stock options) is amended by adding at the end the following new subsection:

''(d) CERTAIN SALES TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.—If—

''(1) a share of stock is transferred to an eligible person (as defined in section 1043(b)(1)) pursuant to such person's exercise of an option to which this part applies, and

''(2) such share is disposed of by such person pursuant to a certificate of divestiture (as defined in section 1043(b)(2)),

such disposition shall be treated as meeting the requirements of section 422(a)(1) or 423(a)(1), whichever is applicable.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales after the date of the enactment of this Act.

SEC. 675. APPLICATION OF BASIS RULES TO EMPLOYER AND EMPLOYEE CONTRIBUTIONS ON BEHALF OF NONRESIDENT ALIENS.

(a) IN GENERAL.—Section 72 (relating to annuities and certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (w) as subsection (x) and by inserting after subsection (v) the following new subsection:

''(w) APPLICATION OF BASIS RULES TO EMPLOYER AND EMPLOYEE CONTRIBUTIONS MADE ON BEHALF OF NONRESIDENT ALIENS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, for purposes of determining the portion of any distribution which is includible in gross income of a distributee who is a citizen or resident of the United States, the investment in the contract shall not include any applicable nontaxable contributions.

''(2) APPLICABLE NONTAXABLE CONTRIBUTION.—For purposes of this subsection, the term 'applicable nontaxable contribution' means any employer or employee contribution—

''(A) which was made with respect to compensation for labor or personal services by an employee who, at the time the services were performed, was a nonresident alien for purposes of the laws of the United States in effect at such time, but only if such compensation is treated as from sources without the United States, and

''(B) which was not subject to income tax under the laws of the United States or any foreign country.

''(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations treating contributions as not subject to tax under the laws of any foreign country where appropriate to carry out the purposes of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions on or after the date of the enactment of this Act.

TITLE VII—EXTENSIONS OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Extensions

SEC. 701. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

(a) IN GENERAL.—Section 9812(f) is amended—

(1) by striking ''and'' at the end of paragraph (1), and

(2) by striking paragraph (2) and inserting the following new paragraphs:

''(2) on or after January 1, 2004, and before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act, and

''(3) after December 31, 2005.''.

(b) ERISA.—Section 712(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185a(f)) is amended by striking ''on or after December 31, 2004'' and inserting ''after December 31, 2005''.

(c) PHSA.—Section 2705(f) of the Public Health Service Act (42 U.S.C. 300gg-5(f)) is amended by striking ''on or after December 31, 2004'' and inserting ''after December 31, 2005''.

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to benefits for services furnished on or after December 31, 2003.

(2) SUBSECTIONS (b) AND (c).—The amendments made by subsections (b) and (c) shall apply to benefits for services furnished on or after December 31, 2004.

SEC. 702. MODIFICATIONS TO WORK OPPORTUNITY CREDIT AND WELFARE-TO-WORK CREDIT.

(a) PERMANENT EXTENSION OF CREDIT.—

(1) IN GENERAL.—Section 51(c) is amended by striking paragraph (4).

(2) LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—

(A) IN GENERAL.—Section 51A is amended by striking subsection (f).

(B) CONFORMING AMENDMENTS.—

(i) The heading for section 51A is amended by striking ''temporary''.

(ii) The item relating to section 51A in the table of sections for subpart F of part IV of subchapter A of chapter 1 is amended by striking ''Temporary incentives'' and inserting ''Incentives''.

(b) ELIGIBILITY OF EX-FELONS DETERMINED WITHOUT REGARD TO FAMILY INCOME.—Paragraph (4) of section 51(d) is amended by adding ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking all that follows subparagraph (B).

(c) INCREASE IN MAXIMUM AGE FOR ELIGIBILITY OF FOOD STAMP RECIPIENTS.—Clause (i) of section 51(d)(8)(A) is amended by striking ''25'' and inserting ''40''.

(d) INCREASE IN MAXIMUM AGE FOR DESIGNATED COMMUNITY RESIDENTS.—

(1) IN GENERAL.—Paragraph (5) of section 51(d) is amended to read as follows:

''(5) DESIGNATED COMMUNITY RESIDENTS.—

''(A) IN GENERAL.—The term 'designated community resident' means any individual who is certified by the designated local agency—

''(i) as having attained age 18 but not age 40 on the hiring date, and

''(ii) as having his principal place of abode within an empowerment zone, enterprise community, or renewal community.

''(B) INDIVIDUAL MUST CONTINUE TO RESIDE IN ZONE OR COMMUNITY.—In the case of a designated community resident, the term 'qualified wages' shall not include wages paid or incurred for services performed while the individual's principal place of abode is outside an empowerment zone, enterprise community, or renewal community.''

(2) CONFORMING AMENDMENT.—Subparagraph (D) of section 51(d)(1) is amended to read as follows:

''(D) a designated community resident,''.

(e) EFFECTIVE DATES.—

(1) EXTENSION OF CREDITS.—The amendments made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2003.

(2) MODIFICATIONS.—The amendments made by subsections (b), (c), and (d) shall apply to individuals who begin work for the employer after December 31, 2004.

SEC. 703. CONSOLIDATION OF WORK OPPORTUNITY CREDIT WITH WELFARE-TO-WORK CREDIT.

(a) IN GENERAL.—Paragraph (1) of section 51(d) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'', and by adding at the end the following new subparagraph:

''(I) a long-term family assistance recipient.''

(b) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—Subsection (d) of section 51 is amended by redesignating paragraphs (10) through (12) as paragraphs (11) through (13), respectively, and by inserting after paragraph (9) the following new paragraph:

''(10) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—The term 'long-term family assistance recipient' means any individual who is certified by the designated local agency—

''(A) as being a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least the 18-month period ending on the hiring date,

''(B)(i) as being a member of a family receiving such assistance for 18 months beginning after August 5, 1997, and

''(ii) as having a hiring date which is not more than 2 years after the end of the earliest such 18-month period, or

''(C)(i) as being a member of a family which ceased to be eligible for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such assistance is payable to a family, and

''(ii) as having a hiring date which is not more than 2 years after the date of such cessation.''

(c) INCREASED CREDIT FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51 is amended by inserting after subsection (d) the following new subsection:

''(e) CREDIT FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—

''(1) IN GENERAL.—With respect to the employment of a long-term family assistance recipient—

''(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and

''(B) in lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to such a recipient shall not exceed $10,000 per year.

''(2) QUALIFIED SECOND-YEAR WAGES.—For purposes of this subsection, the term 'qualified second-year wages' means qualified wages—

''(A) which are paid to a long-term family assistance recipient, and

''(B) which are attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such recipient determined under subsection (b)(2).

''(3) SPECIAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—If such recipient is an employee to whom subparagraph (A) or (B) of subsection (h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

''(A) such subparagraph (A) shall be applied by substituting '$10,000' for '$6,000', and

''(B) such subparagraph (B) shall be applied by substituting '$833.33' for '$500'.''

(d) REPEAL OF SEPARATE WELFARE-TO-WORK CREDIT.—

(1) IN GENERAL.—Section 51A is hereby repealed.

(2) CLERICAL AMENDMENT.—The table of sections for subpart F of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 51A.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2004.

SEC. 704. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 1397E(e) is amended by striking ''and 2003'' and inserting ''2003, 2004, and 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after December 31, 2003.

SEC. 705. COVER OVER OF TAX ON DISTILLED SPIRITS.

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking ''January 1, 2004'' and inserting ''January 1, 2006''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles brought into the United States after December 31, 2003.

SEC. 706. DEDUCTION FOR CORPORATE DONATIONS OF SCIENTIFIC PROPERTY AND COMPUTER TECHNOLOGY.

(a) SCIENTIFIC PROPERTY USED FOR RESEARCH.—

(1) IN GENERAL.—Clause (ii) of section 170(e)(4)(B) (defining qualified research contributions) is amended by inserting ''or assembled'' after ''constructed''.

(2) CONFORMING AMENDMENT.—Clause (iii) of section 170(e)(4)(B) is amended by inserting ''or assembling'' after ''construction''.

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—

(1) IN GENERAL.—Clause (ii) of section 170(e)(6)(B) is amended by inserting ''or assembled'' after ''constructed'' and ''or assembling'' after ''construction''.

(2) SPECIAL RULE EXTENDED.—Section 170(e)(6)(G) is amended by striking ''2003'' and inserting ''2005''.

(3) CONFORMING AMENDMENTS.—Subparagraph (D) of section 170(e)(6) is amended by inserting ''or assembled'' after ''constructed'' and ''or assembling'' after ''construction''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2003.

SEC. 707. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking ''or 2003'' and inserting '', 2003, 2004, or 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses paid or incurred in taxable years beginning after December 31, 2003.

SEC. 708. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) EXTENSION OF TERMINATION DATE.—Subsection (h) of section 198 is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenditures paid or incurred after December 31, 2003.

SEC. 709. EXPANSION OF CERTAIN NEW YORK LIBERTY ZONE BENEFITS.

(a) EXTENSION OF TAX-EXEMPT BOND FINANCING.—Subparagraph (D) of section 1400L(d)(2) is amended by striking ''2005'' and inserting ''2006''.

(b) CLARIFICATION OF BONDS ELIGIBLE FOR ADVANCE REFUNDING.—Section 1400L(e)(2)(B) (relating to bonds described) is amended by striking '', or'' and inserting ''or the Municipal Assistance Corporation, or''.

(c) ELECTION OUT TECHNICAL AMENDMENT.—Subsection (c) of section 1400L is amended by adding at the end the following new paragraph:

''(5) ELECTION OUT.—For purposes of this subsection, rules similar to the rules of section 168(k)(2)(C)(iii) shall apply.''.

(d) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) shall take effect as if included in the amendments made by section 301 of the Job Creation and Worker Assistance Act of 2002.

SEC. 710. REPEAL OF REDUCTION OF DEDUCTIONS FOR MUTUAL LIFE INSURANCE COMPANIES.

(a) IN GENERAL.—Section 809 of the Internal Revenue Code of 1986 (relating to reductions in certain deduction of mutual life insurance companies) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsections (a)(2)(B) and (b)(1)(B) of section 807 of such Code are each amended by striking ''the sum of (i)'' and by striking ''plus (ii) any excess described in section 809(a)(2) for the taxable year,''.

(2)(A) The last sentence of section 807(d)(1) of such Code is amended by striking ''section 809(b)(4)(B)'' and inserting ''paragraph (6)''.

(B) Subsection (d) of section 807 of such Code is amended by adding at the end the following new paragraph:

''(6) STATUTORY RESERVES.—The term 'statutory reserves' means the aggregate amount set forth in the annual statement with respect to items described in section 807(c).

Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c).''

(3) Subsection (c) of section 808 of such Code is amended to read as follows:

''(c) AMOUNT OF DEDUCTION.—The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.''

(4) Subparagraph (A) of section 812(b)(3) of such Code is amended by striking ''sections 808 and 809'' and inserting ''section 808''.

(5) Subsection (c) of section 817 of such Code is amended by striking ''(other than section 809)''.

(6) Subsection (c) of section 842 of such Code is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(7) The table of sections for subpart C of part I of subchapter L of chapter 1 of such Code is amended by striking the item relating to section 809.

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

SEC. 711. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

(a) DESIGNATION OF ZONE.—Subsection (f) of section 1400 is amended by striking ''December 31, 2003'' both places it appears and inserting ''December 31, 2005''.

(b) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—Subsection (b) of section 1400A is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(c) ZERO PERCENT CAPITAL GAINS RATE.—

(1) IN GENERAL.—Subsection (b) of section 1400B is amended by striking ''January 1, 2004'' each place it appears and inserting ''January 1, 2006''.

(2) CONFORMING AMENDMENTS.—

(A) Section 1400B(e)(2) is amended—

(i) by striking ''December 31, 2008'' and inserting ''December 31, 2010'', and

(ii) by striking ''2008'' in the heading and inserting ''2010''.

(B) Section 1400B(g)(2) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2010''.

(C) Section 1400F(d) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2010''.

(d) FIRST-TIME HOMEBUYER CREDIT.—Subsection (i) of section 1400C is amended by striking ''January 1, 2004'' and inserting ''January 1, 2006''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 2004.

(2) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—The amendment made by subsection (b) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 712. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

(a) IN GENERAL.—Paragraph (5) of section 6103(d) (relating to disclosure to State tax officials and State and local law enforcement agencies) is amended to read as follows:

''(5) DISCLOSURE FOR COMBINED EMPLOYMENT TAX REPORTING.—The Secretary may disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 713. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—

(1) by striking ''RULE FOR 2000, 2001, 2002, AND 2003.—'' and inserting ''RULE FOR TAXABLE YEARS 2000 THROUGH 2004.—'', and

(2) by striking ''or 2003'' and inserting ''2003, or 2004''.

(b) CONFORMING PROVISIONS.—

(1) Section 904(i), as redesignated by this Act, is amended by striking ''or 2003'' and inserting ''2003, or 2004''.

(2) The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to taxable years beginning during 2004.

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

SEC. 714. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subparagraphs (A), (B), and (C) of section 45(c)(3) are each amended by striking ''January 1, 2004'' and inserting ''January 1, 2005''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to facilities placed in service after December 31, 2003.

SEC. 715. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.

(a) IN GENERAL.—Subparagraph (H) of section 613A(c)(6) is amended by striking ''January 1, 2004'' and inserting ''January 1, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 716. INDIAN EMPLOYMENT TAX CREDIT.

Section 45A(f) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 717. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON INDIAN RESERVATION.

Section 168(j)(8) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 718. DISCLOSURE OF RETURN INFORMATION RELATING TO STUDENT LOANS.

Section 6103(l)(13)(D) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 719. EXTENSION OF TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking ''Pension Funding Equity Act of 2004'' and inserting ''Jumpstart Our Business Strength (JOBS) Act''.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking ''Pension Funding Equity Act of 2004'' and inserting ''Jumpstart Our Business Strength (JOBS) Act''.

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended by striking ''Pension Funding Equity Act of 2004'' and inserting ''Jumpstart Our Business Strength (JOBS) Act''.

(b) MINIMUM COST REQUIREMENTS.—

(1) IN GENERAL.—Section 420(c)(3)(E) is amended by adding at the end the following new clause:

''(ii) INSIGNIFICANT COST REDUCTIONS PERMITTED.—

''(I) IN GENERAL.—An eligible employer shall not be treated as failing to meet the requirements of this paragraph for any taxable year if, in lieu of any reduction of retiree health coverage permitted under the regulations prescribed under clause (i), the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall be treated as if it were an equivalent reduction in retiree health coverage.

''(II) ELIGIBLE EMPLOYER.—For purposes of subclause (I), an employer shall be treated as an eligible employer for any taxable year if, for the preceding taxable year, the qualified current retiree health liabilities of the employer were at least 5 percent of the gross receipts of the employer. For purposes of this subclause, the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply in determining the amount of an employer's gross receipts.''.

(2) CONFORMING AMENDMENT.—Section 420(c)(3)(E) is amended by striking ''The Secretary'' and inserting:

''(i) IN GENERAL.—The Secretary''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 720. ELIMINATION OF PHASEOUT OF CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) IN GENERAL.—Section 30(b) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(b) CONFORMING AMENDMENTS.—

(1) Section 53(d)(1)(B)(iii) is amended by striking ''section 30(b)(3)(B)'' and inserting ''section 30(b)(2)(B)''.

(2) Section 55(c)(2) is amended by striking ''30(b)(3)'' and inserting ''30(b)(2)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003.

SEC. 721. ELIMINATION OF PHASEOUT FOR DEDUCTION FOR CLEAN-FUEL VEHICLE PROPERTY.

(a) IN GENERAL.—Paragraph (1) of section 179A(b) is amended to read as follows:

''(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

''(A) in the case of a motor vehicle not described in subparagraph (B) or (C), $2,000,

''(B) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

''(C) $50,000 in the case of—

''(i) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

''(ii) any bus which has a seating capacity of at least 20 adults (not including the driver).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property placed in service after December 31, 2003.

Subtitle B—Revenue Provisions

SEC. 731. DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRPLANES.

(a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by adding at the end the following new paragraph:

''(11) CONTRIBUTIONS OF USED MOTOR VEHICLES, BOATS, AND AIRPLANES.—

''(A) IN GENERAL.—In the case of a contribution of a qualified vehicle in excess of $500—

''(i) paragraph (8) shall not apply and no deduction shall be allowed under subsection

(a) for such contribution unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B) and includes the acknowledgement with the taxpayer's return of tax which includes the deduction, and

''(ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds received from such sale.

''(B) CONTENT OF ACKNOWLEDGEMENT.—An acknowledgement meets the requirements of this subparagraph if it includes the following information:

''(i) The name and taxpayer identification number of the donor.

''(ii) The vehicle identification number or similar number.

''(iii) In the case of a qualified vehicle to which subparagraph (A)(ii) applies and which is sold by the donee organization—

''(I) a certification that the vehicle was sold in an arm's length transaction between unrelated parties,

''(II) the gross proceeds from the sale, and

''(III) that the deductible amount may not exceed the amount of such gross proceeds.

''(iv) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply—

''(I) a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and

''(II) a certification that the vehicle would not be transferred in exchange for money, other property, or services before completion of such use or improvement.

''(C) CONTEMPORANEOUS.—For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the donee organization provides it within 30 days of—

''(i) the sale of the qualified vehicle, or

''(ii) in the case of an acknowledgement including a certification described in subparagraph (B)(iv), the contribution of the qualified vehicle.

''(D) INFORMATION TO SECRETARY.—A donee organization required to provide an acknowledgement under this paragraph shall provide to the Secretary the information contained in the acknowledgement. Such information shall be provided at such time and in such manner as the Secretary may prescribe.

''(E) QUALIFIED VEHICLE.—For purposes of this paragraph, the term 'qualified vehicle' means any—

''(i) self-propelled vehicle manufactured primarily for use on public streets, roads, and highways,

''(ii) boat, or

''(iii) airplane.

Such term shall not include any property which is described in section 1221(a)(1).

''(F) REGULATIONS OR OTHER GUIDANCE.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this paragraph.''.

(b) PENALTY FOR FRAUDULENT ACKNOWLEDGMENTS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalities), as amended by section 882(c) of this Act, is amended adding at the end the following new section:

''SEC. 6720A. FRAUDULENT ACKNOWLEDGMENTS WITH RESPECT TO DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRPLANES.

''Any donee organization required under section 170(f)(11)(A) to furnish a contemporaneous written acknowledgment to a donor which knowingly furnishes a false or fraudulent acknowledgment, or which knowingly fails to furnish such acknowledgment in the manner, at the time, and showing the information required under section 170(f)(11), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty equal to—

''(1) in the case of an acknowledgment with respect to a qualified vehicle to which section 170(f)(11)(A)(ii) applies, the greater of the value of the tax benefit to the donor or the gross proceeds from the sale of such vehicle, and

''(2) in the case of an acknowledgment with respect to any other qualified vehicle to which section 170(f)(11) applies, the greater of the value of the tax benefit to the donor or $5,000.''.

(2) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by section 882(c) of this Act, is amended by adding at the end the following new item:

''Sec. 6720A. Fraudulent acknowledgments with respect to donations of motor vehicles, boats, and airplanes.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions after June 30, 2004.

SEC. 732. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine), as amended by this Act, is amended adding at the end the following new subparagraph:

''(N) Any trivalent vaccine against influenza.''.

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendment made by this section shall apply to sales and uses on or after the later of—

(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act, or

(B) the date on which the Secretary of Health and Human Services lists any vaccine against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 733. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 1275(d) (relating to regulation authority) is amended—

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

''(1) IN GENERAL.—The Secretary'', and

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

''(2) TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT.—

''(A) IN GENERAL.—In the case of a debt instrument which—

''(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

''(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed rate debt instrument shall be applied as requiring that such comparable yield be determined by reference to a noncontingent fixed rate debt instrument which is convertible into stock.

''(B) SPECIAL RULE.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.''.

(b) CROSS REFERENCE.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

''For the treatment of contingent payment convertible debt, see section 1275(d)(2).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act.

SEC. 734. MODIFICATION OF CONTINUING LEVY ON PAYMENTS TO FEDERAL VENDERS.

(a) IN GENERAL.—Section 6331(h) (relating to continuing levy on certain payments) is amended by adding at the end the following new paragraph:

''(3) INCREASE IN LEVY FOR CERTAIN PAYMENTS.—Paragraph (1) shall be applied by substituting '100 percent' for '15 percent' in the case of any specified payment due to a vendor of goods or services sold or leased to the Federal Government.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

TITLE VIII—ENERGY TAX INCENTIVES

SEC. 800. SHORT TITLE.

This title may be cited as the ''Energy Tax Incentives Act''.

Subtitle A—Renewable Electricity Production Tax Credit

SEC. 801. EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—Subsection (c) of section 45 (relating to electricity produced from certain renewable resources) is amended to read as follows:

''(c) QUALIFIED ENERGY RESOURCES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified energy resources' means—

''(A) wind,

''(B) closed-loop biomass,

''(C) open-loop biomass,

''(D) geothermal energy,

''(E) solar energy,

''(F) small irrigation power,

''(G) biosolids and sludge, and

''(H) municipal solid waste.

''(2) CLOSED-LOOP BIOMASS.—The term 'closed-loop biomass' means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

''(3) OPEN-LOOP BIOMASS.—

''(A) IN GENERAL.—The term 'open-loop biomass' means—

''(i) any agricultural livestock waste nutrients, or

''(ii) any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

''(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush; but not including spent chemicals from pulp manufacturing,

''(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

''(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

''(B) AGRICULTURAL LIVESTOCK WASTE NUTRIENTS.—

''(i) IN GENERAL.—The term 'agricultural livestock waste nutrients' means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

''(ii) AGRICULTURAL LIVESTOCK.—The term 'agricultural livestock' includes bovine, swine, poultry, and sheep.

''(C) EXCEPTIONS.—The term 'open-loop biomass' does not include—

''(i) closed-loop biomass, or

''(ii) biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

''(4) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

''(5) SMALL IRRIGATION POWER.—The term 'small irrigation power' means power—

''(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

''(B) the installed capacity of which is less than 5 megawatts.

''(6) BIOSOLIDS AND SLUDGE.—The term 'biosolids and sludge' means the residue or solids removed in the treatment of commercial, industrial, or municipal wastewater.

''(7) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given the term 'solid waste' under section 2(27) of the Solid Waste Disposal Act (42 U.S.C. 6903).''.

(b) EXTENSION AND EXPANSION OF QUALIFIED FACILITIES.—

(1) IN GENERAL.—Section 45 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

''(d) QUALIFIED FACILITIES.—For purposes of this section—

''(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2007.

''(2) CLOSED-LOOP BIOMASS FACILITY.—

''(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term 'qualified facility' means any facility—

''(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2007, or

''(ii) owned by the taxpayer which before January 1, 2007, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

''(B) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(ii)—

''(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than January 1, 2005,

''(ii) the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and

''(iii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

''(3) OPEN-LOOP BIOMASS FACILITY.—

''(A) IN GENERAL.—In the case of a facility using open-loop biomass to produce electricity for grid sale in excess of its internal requirements, the term 'qualified facility' means any facility owned by the taxpayer which—

''(i) in the case of a facility using agricultural livestock waste nutrients, is originally placed in service after December 31, 2004, and before January 1, 2007, and

''(ii) in the case of any other facility, is originally placed in service before January 1, 2005.

''(B) SPECIAL RULES FOR PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in subparagraph (A)(ii) which is placed in service before January 1, 2005—

''(i) subsection (a)(1) shall be applied by substituting '1.2 cents' for '1.5 cents', and

''(ii) the 5-year period beginning on January 1, 2005, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(C) CREDIT ELIGIBILITY.—In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

''(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—In the case of a facility using geothermal or solar energy to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2004, and before January 1, 2007. Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

''(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2004, and before January 1, 2007.

''(6) BIOSOLIDS AND SLUDGE FACILITY.—In the case of a facility using waste heat from the incineration of biosolids and sludge to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2004, and before January 1, 2007. Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account for purposes of the energy credit under section 46.

''(7) MUNICIPAL SOLID WASTE FACILITY.—

''(A) IN GENERAL.—In the case of a facility or unit incinerating municipal solid waste to produce electricity, the term 'qualified facility' means any facility or unit owned by the taxpayer which is originally placed in service after December 31, 2004, and before January 1, 2007.

''(B) SPECIAL RULE.—In the case of any facility or unit described in subparagraph (A), the 5-year period beginning on the date the facility or unit was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(C) CREDIT ELIGIBILITY.—In the case of any qualified facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.''.

(2) NO CREDIT FOR CERTAIN PRODUCTION.—Section 45(e) (relating to definitions and special rules), as redesignated by paragraph (1), is amended by striking paragraph (6) and inserting the following new paragraph:

''(6) OPERATIONS INCONSISTENT WITH SOLID WASTE DISPOSAL ACT.—In the case of a qualified facility described in subsection (d)(6)(A), subsection (a) shall not apply to electricity produced at such facility during any taxable year if, during a portion of such year, there is a certification in effect by the Administrator of the Environmental Protection Agency that such facility was permitted to operate in a manner inconsistent with section 4003(d) of the Solid Waste Disposal Act (42 U.S.C. 6943(d)).''.

(3) CONFORMING AMENDMENT.—Section 45(e), as so redesignated, is amended by striking ''subsection (c)(3)(A)'' in paragraph (7)(A)(i) and inserting ''subsection (d)(1)''.

(c) CREDIT RATE FOR ELECTRICITY PRODUCED FROM NEW FACILITIES.—

(1) IN GENERAL.—Section 45(a) is amended by adding at the end the following new flush sentence:

''In the case of electricity produced after December 31, 2004, at any qualified facility originally placed in service after such date, paragraph (1) shall be applied by substituting '1.8 cents' for '1.5 cents'.''.

(2) NEW RATE NOT SUBJECT TO INFLATION ADJUSTMENT.—Section 45(b)(2) (relating to credit and phaseout adjustment based on inflation) is amended by adding at the end the following new sentence: ''This paragraph shall not apply to any amount which is substituted for the 1.5 cent amount in subsection (a) by reason of any provision of this section.''.

(d) ELIMINATION OF CERTAIN CREDIT REDUCTIONS.—Section 45(b)(3)(A) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by striking clause (ii),

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(3) by inserting ''(other than proceeds of an issue of State or local government obligations the interest on which is exempt from tax under section 103, or any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act)'' after ''project'' in clause (ii) (as so redesignated),

(4) by adding at the end the following new sentence: ''This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).'', and

(5) by striking ''TAX-EXEMPT BONDS,'' in the heading and inserting ''CERTAIN''.

(e) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—Section 45(e) (relating to definitions and special rules), as redesignated by subsection (b)(1), is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

''(A) ALLOWANCE OF CREDIT.—

''(i) IN GENERAL.—Except as otherwise provided in this subsection—

''(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

''(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

''(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(II) an organization described in section 1381(a)(2)(C),

''(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

''(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing,

''(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof, or

''(VI) the Tennessee Valley Authority.

''(B) TRANSFER OF CREDIT.—

''(i) IN GENERAL.—A person described in subclause (I), (II), (III), (IV), or (V) of subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

''(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is assigned once and not reassigned by such other person.

''(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

''(C) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in subclause (I), (II), or (V) of subparagraph (A)(ii), any credit to which subparagraph (A)(i) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act.

''(D) USE BY TVA.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, in the case of a person described in subparagraph (A)(ii)(VI), any credit to which subparagraph (A)(i) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(e)) as an annual return on the appropriations investment and an annual repayment sum.

''(ii) TREATMENT OF CREDITS.—The aggregate amount of credits described in subparagraph (A)(i) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash and shall be applied first against the annual return on the appropriations investment.

''(iii) CREDIT CARRYOVER.—With respect to any fiscal year, if the aggregate amount of credits described subparagraph (A)(i) with respect to such person exceeds the aggregate amount of payment obligations described in clause (i), the excess amount shall remain available for application as credits against the amounts of such payment obligations in succeeding fiscal years in the same manner as described in this subparagraph.

''(E) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

''(F) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales of electricity among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.''.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(3) CREDIT RATE FOR NEW FACILITIES.—The amendments made by subsection (c) shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on December 31, 2004) placed in service on or before such date.

Subtitle B—Alternative Motor Vehicles and Fuels Incentives

SEC. 811. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 30C. ALTERNATIVE MOTOR VEHICLE CREDIT.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

''(2) the new qualified hybrid motor vehicle credit determined under subsection (c), and

''(3) the new qualified alternative fuel motor vehicle credit determined under subsection (d).

''(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

''(A) $4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(2) INCREASE FOR FUEL EFFICIENCY.—

''(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

''(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

''(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

''(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

''(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy,

''(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2002 model year city fuel economy,

''(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2002 model year city fuel economy, and

''(vii) $4,000, if such vehicle achieves at least 300 percent of the 2002 model year city fuel economy.

''(B) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2002 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

''(i) In the case of a passenger automobile:

''If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

''(ii) In the case of a light truck:

''If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

''(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term 'vehicle inertia weight class' has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term 'new qualified fuel cell motor vehicle' means a motor vehicle—

''(A) which is propelled by power derived from 1 or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

''(B) which, in the case of a passenger automobile or light truck—

''(i) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(C) the original use of which commences with the taxpayer,

''(D) which is acquired for use or lease by the taxpayer and not for resale, and

''(E) which is made by a manufacturer.

''(c) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection with respect to a new qualified hybrid motor vehicle placed in service by the

taxpayer during the taxable year is the credit amount determined under paragraph (2).

''(2) CREDIT AMOUNT.—

''(A) IN GENERAL.—The credit amount determined under this paragraph shall be determined in accordance with the following tables:

''(i) In the case of a new qualified hybrid motor vehicle which is a passenger automobile, medium duty passenger vehicle, or light truck and which provides the following percentage of the maximum available power:

''If percentage of the maximum available power is:	The credit amount is:
At least 4 percent but less than 10 percent	$250
At least 10 percent but less than 20 percent	$500
At least 20 percent but less than 30 percent	$750
At least 30 percent	$1,000.

''(ii) In the case of a new qualified hybrid motor vehicle which is a heavy duty hybrid motor vehicle and which provides the following percentage of the maximum available power:

''(I) If such vehicle has a gross vehicle weight rating of not more than 14,000 pounds:

''If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	$1,000
At least 30 percent but less than 40 percent	$1,750
At least 40 percent but less than 50 percent	$2,000
At least 50 percent but less than 60 percent	$2,250
At least 60 percent	$2,500.

''(II) If such vehicle has a gross vehicle weight rating of more than 14,000 but not more than 26,000 pounds:

''If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	$4,000
At least 30 percent but less than 40 percent	$4,500
At least 40 percent but less than 50 percent	$5,000
At least 50 percent but less than 60 percent	$5,500
At least 60 percent	$6,000.

''(III) If such vehicle has a gross vehicle weight rating of more than 26,000 pounds:

''If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	$6,000
At least 30 percent but less than 40 percent	$7,000
At least 40 percent but less than 50 percent	$8,000
At least 50 percent but less than 60 percent	$9,000
At least 60 percent	$10,000.

''(B) INCREASE FOR FUEL EFFICIENCY.—

''(i) AMOUNT.—The amount determined under subparagraph (A)(i) with respect to a new qualified hybrid motor vehicle which is a passenger automobile or light truck shall be increased by—

''(I) $500, if such vehicle achieves at least 125 percent but less than 150 percent of the 2002 model year city fuel economy,

''(II) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

''(III) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

''(IV) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

''(V) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy, and

''(VI) $3,000, if such vehicle achieves at least 250 percent of the 2002 model year city fuel economy.

''(ii) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of clause (i), the 2002 model year city fuel economy with respect to a vehicle shall be determined on a gasoline gallon equivalent basis as determined by the Administrator of the Environmental Protection Agency using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

''(C) INCREASE FOR ACCELERATED EMISSIONS PERFORMANCE.—The amount determined under subparagraph (A)(ii) with respect to an applicable heavy duty hybrid motor vehicle shall be increased by the increased credit amount determined in accordance with the following tables:

''(i) In the case of a vehicle which has a gross vehicle weight rating of not more than 14,000 pounds:

''If the model year is:	The increased credit amount is:
2004	$2,500
2005	$2,000
2006	$1,500.

''(ii) In the case of a vehicle which has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds:

''If the model year is:	The increased credit amount is:
2004	$6,500
2005	$5,250
2006	$4,000.

''(iii) In the case of a vehicle which has a gross vehicle weight rating of more than 26,000 pounds:

''If the model year is:	The increased credit amount is:
2004	$10,000
2005	$8,000
2006	$6,000.

''(D) DEFINITIONS RELATING TO CREDIT AMOUNT.—

''(i) APPLICABLE HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (C), the term 'applicable heavy duty hybrid motor vehicle' means a heavy duty hybrid motor vehicle which is powered by an internal combustion or heat engine which is certified as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2007 and later model year diesel heavy duty engines, or for 2008 and later model year ottocycle heavy duty engines, as applicable.

''(ii) MAXIMUM AVAILABLE POWER.—

''(I) PASSENGER AUTOMOBILE, MEDIUM DUTY PASSENGER VEHICLE, OR LIGHT TRUCK.—For purposes of subparagraph (A)(i), the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

''(II) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (A)(ii), the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. The term 'total traction power' means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

''(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'new qualified hybrid motor vehicle' means a motor vehicle—

''(i) which draws propulsion energy from onboard sources of stored energy which are both—

''(I) an internal combustion or heat engine using consumable fuel, and

''(II) a rechargeable energy storage system,

''(ii) which, in the case of a passenger automobile, medium duty passenger vehicle, or light truck—

''(I) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(II) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(iii) which, in the case of a heavy duty hybrid motor vehicle, has an internal combustion or heat engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy duty engines or ottocycle heavy duty engines, as applicable,

''(iv) the original use of which commences with the taxpayer,

''(v) which is acquired for use or lease by the taxpayer and not for resale, and

''(vi) which is made by a manufacturer.

''(B) CONSUMABLE FUEL.—For purposes of subparagraph (A)(i)(I), the term 'consumable fuel' means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

''(4) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of this subsection, the term 'heavy duty hybrid motor vehicle' means a new qualified hybrid motor vehicle which has a gross vehicle weight rating of more than 8,500 pounds. Such term does not include a medium duty passenger vehicle.

''(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—

''(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the new qualified alternative fuel motor vehicle credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

''(A) 40 percent, plus

''(B) 30 percent, if such vehicle—

''(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

''(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

For purposes of the preceding sentence, in the case of any new qualified alternative fuel motor vehicle which weighs more than 14,000 pounds gross vehicle weight rating, the most stringent standard available shall be such standard available for certification on the date of the enactment of the Energy Tax Incentives Act.

''(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

''(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(4) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'new qualified alternative fuel motor vehicle' means any motor vehicle—

''(i) which is only capable of operating on an alternative fuel,

''(ii) the original use of which commences with the taxpayer,

''(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

''(iv) which is made by a manufacturer.

''(B) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

''(5) CREDIT FOR MIXED-FUEL VEHICLES.—

''(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

''(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

''(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

''(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term 'mixed-fuel vehicle' means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

''(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

''(ii) either—

''(I) has received a certificate of conformity under the Clean Air Act, or

''(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

''(iii) the original use of which commences with the taxpayer,

''(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

''(v) which is made by a manufacturer.

''(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '75/25 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

''(D) 90/10 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '90/10 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(2) the tentative minimum tax for the taxable year.

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

''(1) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given such term by section 30(c)(2).

''(2) CITY FUEL ECONOMY.—The city fuel economy with respect to any vehicle shall be measured in a manner which is substantially similar to the manner city fuel economy is measured in accordance with procedures under part 600 of subchapter Q of chapter I of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section.

''(3) OTHER TERMS.—The terms 'automobile', 'passenger automobile', 'medium duty passenger vehicle', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(4) REDUCTION IN BASIS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (e)).

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter—

''(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (d) shall be reduced by the amount of such credit attributable to such cost, and

''(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

''(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(7) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

''(8) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

''(9) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

''(10) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year, except that no excess may be carried to a taxable year beginning before January 1, 2005.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(11) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

''(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

''(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

''(g) REGULATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

''(2) COORDINATION IN PRESCRIPTION OF CERTAIN REGULATIONS.—The Secretary of the Treasury, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

''(h) TERMINATION.—This section shall not apply to any property purchased after—

''(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2011, and

''(2) in the case of any other property, December 31, 2006.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking ''and'' at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting '', and'', and by adding at the end the following new paragraph:

''(33) to the extent provided in section 30C(f)(4).''.

(2) Section 55(c)(2), as amended by this Act, is amended by inserting ''30C(e),'' after ''30(b)(2),''.

(3) Section 6501(m) is amended by inserting ''30C(f)(9),'' after ''30(d)(4),''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30B the following new item:

''Sec. 30C. Alternative motor vehicle credit.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 812. MODIFICATION OF CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) AMOUNT OF CREDIT.—

(1) IN GENERAL.—Section 30(a) (relating to allowance of credit) is amended by striking ''10 percent of''.

(2) LIMITATION OF CREDIT ACCORDING TO TYPE OF VEHICLE.—Paragraph (1) of section 30(b) (relating to limitations) is amended to read as follows:

''(1) LIMITATION ACCORDING TO TYPE OF VEHICLE.—The amount of the credit allowed under subsection (a) for any vehicle shall not exceed the greatest of the following amounts applicable to such vehicle:

''(A) In the case of a vehicle with a gross vehicle weight rating not exceeding 8,500 pounds—

''(i) except as provided in clause (ii) or (iii), $3,500,

''(ii) $6,000, if such vehicle is—

''(I) capable of a driving range of at least 100 miles on a single charge of the vehicle's rechargeable batteries as measured pursuant to the urban dynamometer schedules under appendix I to part 86 of title 40, Code of Federal Regulations, or

''(II) capable of a payload capacity of at least 1,000 pounds, and

''(iii) if such vehicle is a low-speed vehicle which conforms to Standard 500 prescribed by the Secretary of Transportation (49 C.F.R. 571.500), as in effect on the date of the enactment of the Energy Tax Incentives Act, the lesser of—

''(I) 10 percent of the manufacturer's suggested retail price of the vehicle, or

''(II) $1,500.

''(B) In the case of a vehicle with a gross vehicle weight rating exceeding 8,500 but not exceeding 14,000 pounds, $10,000.

''(C) In the case of a vehicle with a gross vehicle weight rating exceeding 14,000 but not exceeding 26,000 pounds, $20,000.

''(D) In the case of a vehicle with a gross vehicle weight rating exceeding 26,000 pounds, $40,000.''.

(b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

(1) IN GENERAL.—Section 30(c)(1)(A) (defining qualified electric vehicle) is amended to read as follows:

''(A) which is—

''(i) operated solely by use of a battery or battery pack, or

''(ii) powered primarily through the use of an electric battery or battery pack using a flywheel or capacitor which stores energy produced by an electric motor through regenerative braking to assist in vehicle operation,''.

(2) LEASED VEHICLES.—Section 30(c)(1)(C) is amended by inserting ''or lease'' after ''use''.

(3) CONFORMING AMENDMENTS.—

(A) Subsections (a), (b)(2), and (c) of section 30 are each amended by inserting ''battery'' after ''qualified'' each place it appears.

(B) The heading of subsection (c) of section 30 is amended by inserting ''BATTERY'' after ''QUALIFIED''.

(C) The heading of section 30 is amended by inserting ''**BATTERY**'' after ''**QUALIFIED**''.

(D) The item relating to section 30 in the table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting ''battery'' after ''qualified''.

(E) Section 179A(c)(3) is amended by inserting ''battery'' before ''electric''.

(F) The heading of paragraph (3) of section 179A(c) is amended by inserting ''BATTERY'' before ''ELECTRIC''.

(c) ADDITIONAL SPECIAL RULES.—Section 30(d) (relating to special rules) is amended by adding at the end the following new paragraphs:

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(7) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (b)(2) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year, except that no excess may be carried to a taxable year beginning before January 1, 2005.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 813. CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 30D. CLEAN-FUEL VEHICLE REFUELING PROPERTY CREDIT.

''(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the amount paid or incurred by the taxpayer during the taxable year for the installation of qualified clean-fuel vehicle refueling property.

''(b) LIMITATION.—The credit allowed under subsection (a)—

''(1) with respect to any retail clean-fuel vehicle refueling property, shall not exceed $30,000, and

''(2) with respect to any residential clean-fuel vehicle refueling property, shall not exceed $1,000.

''(c) YEAR CREDIT ALLOWED.—Notwithstanding subsection (a), no credit shall be allowed under subsection (a) with respect to any qualified clean-fuel vehicle refueling property before the taxable year in which the property is placed in service by the taxpayer.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'qualified clean-fuel vehicle refueling property' has the same meaning given such term by section 179A(d).

''(2) RESIDENTIAL CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'residential clean-fuel vehicle refueling property' means qualified clean-fuel vehicle refueling property which is installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer.

''(3) RETAIL CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'retail clean-fuel vehicle refueling property' means qualified clean-fuel vehicle refueling property which is installed on property (other than property described in paragraph (2)) used in a trade or business of the taxpayer.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, 30, and 30C, over

''(2) the tentative minimum tax for the taxable year.

''(f) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(g) NO DOUBLE BENEFIT.—

''(1) COORDINATION WITH OTHER DEDUCTIONS AND CREDITS.—Except as provided in paragraph (2), the amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(2) NO DEDUCTION ALLOWED UNDER SECTION 179A.—No deduction shall be allowed under section 179A with respect to any property with respect to which a credit is allowed under subsection (a).

''(h) REFUELING PROPERTY INSTALLED FOR TAX-EXEMPT ENTITIES.—In the case of qualified clean-fuel vehicle refueling property installed on property owned or used by an entity exempt from tax under this chapter, the person which installs such refueling property for the entity shall be treated as the taxpayer with respect to the refueling property for purposes of this section (and such refueling property shall be treated as retail clean-fuel vehicle refueling property) and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any installation contract the specific amount of the credit allowable under this section.

''(i) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year, such excess shall be a credit carryforward to each of the 20 taxable years following such taxable year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).

''(j) SPECIAL RULES.—Rules similar to the rules of paragraphs (4) and (5) of section 179A(e) shall apply.

''(k) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

''(l) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(b) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—Subsection (f) of section 179A is amended to read as follows:

''(f) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(c) INCENTIVE FOR PRODUCTION OF HYDROGEN AT QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—Section 179A(d) (defining qualified clean-fuel vehicle refueling property) is amended by adding at the end the following new flush sentence:

''In the case of clean-burning fuel which is hydrogen produced from another clean-burning fuel, paragraph (3)(A) shall be applied by substituting 'production, storage, or dispensing' for 'storage or dispensing' both places it appears.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting '', and'', and by adding at the end the following new paragraph:

''(34) to the extent provided in section 30D(f).''.

(2) Section 55(c)(2), as amended by this Act, is amended by inserting ''30D(e),'' after ''30C(e),''.

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30C the following new item:

''Sec. 30D. Clean-fuel vehicle refueling property credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 814. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

''SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the alternative fuel retail sales credit for any taxable year is the applicable amount for each gasoline gallon equivalent of alternative fuel sold at retail by the taxpayer during such year as a fuel to propel any qualified motor vehicle.

''(b) DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE AMOUNT.—The term 'applicable amount' means the amount determined in accordance with the following table:

''In the case of any taxable year ending in—	The applicable amount is—
2005 and 2006	50 cents.

''(2) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, or any liquid at least 85 percent of the volume of which consists of methanol or ethanol.

''(3) GASOLINE GALLON EQUIVALENT.—The term 'gasoline gallon equivalent' means, with respect to any alternative fuel, the amount (determined by the Secretary) of such fuel having a Btu content of 114,000.

''(4) QUALIFIED MOTOR VEHICLE.—The term 'qualified motor vehicle' means any motor vehicle (as defined in section 30(c)(2)) which meets any applicable Federal or State emissions standards with respect to each fuel by which such vehicle is designed to be propelled.

''(5) SOLD AT RETAIL.—

''(A) IN GENERAL.—The term 'sold at retail' means the sale, for a purpose other than resale, after manufacture, production, or importation.

''(B) USE TREATED AS SALE.—If any person uses alternative fuel (including any use after importation) as a fuel to propel any new qualified alternative fuel motor vehicle (as defined in section 30C(d)(4)) before such fuel is sold at retail, then such use shall be treated in the same manner as if such fuel were sold at retail as a fuel to propel such a vehicle by such person.

''(c) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any fuel taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such fuel.

''(d) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any fuel sold at retail after December 31, 2006.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting '', plus'', and by adding at the end the following new paragraph:

''(22) the alternative fuel retail sales credit determined under section 40A(a).''.

(c) LIMITATION ON CARRYBACK.—

(1) IN GENERAL.—Subsection (d) of section 39, as amended by this Act, is amended to read as follows:

''(d) TRANSITIONAL RULE.—No portion of the unused business credit for any taxable year which is attributable to a credit specified in section 38(b) may be carried back to any taxable year before the first taxable year for which such specified credit is allowable.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to taxable years beginning after December 31, 2003.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 40 the following new item:

''Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.''.

(e) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to fuel sold at retail after December 31, 2004, in taxable years ending after such date.

SEC. 815. SMALL ETHANOL PRODUCER CREDIT.

(a) ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by adding at the end the following new paragraph:

''(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

''(A) ELECTION TO ALLOCATE.—

''(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

''(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to patrons under subparagraph (A)—

''(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

''(ii) shall be included in the amount determined under subsection (a) for the taxable year of each patron for which the patronage dividends for the taxable year described in subparagraph (A) are included in gross income.

''(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a)(3) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

''(i) such reduction, over

''(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.''.

(b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER CREDIT.—

(1) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking ''30,000,000'' each place it appears and inserting ''60,000,000''.

(2) SMALL ETHANOL PRODUCER CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) is amended by striking ''subpart D'' and inserting ''subpart D, other than section 40(a)(3),''.

(3) SMALL ETHANOL PRODUCER CREDIT NOT ADDED BACK TO INCOME UNDER SECTION 87.—Section 87 (relating to income inclusion of alcohol fuel credit) is amended to read as follows:

''SEC. 87. ALCOHOL FUEL CREDIT.

''Gross income includes an amount equal to the sum of—

''(1) the amount of the alcohol mixture credit determined with respect to the taxpayer for the taxable year under section 40(a)(1), and

''(2) the alcohol credit determined with respect to the taxpayer for the taxable year under section 40(a)(2).''.

(c) CONFORMING AMENDMENT.—Section 1388 (relating to definitions and special rules for cooperative organizations), as amended by this Act, is amended by adding at the end the following new subsection:

''(1) CROSS REFERENCE.—For provisions relating to the apportionment of the alcohol fuels credit between cooperative organizations and their patrons, see section 40(g)(6).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

Subtitle C—Conservation and Energy Efficiency Provisions

SEC. 821. CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOME.

(a) 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 new section:

''SEC. 45K. NEW ENERGY EFFICIENT HOME CREDIT.

''(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor, the credit determined under this section for the taxable year is an amount equal to the aggregate adjusted bases of all energy efficient property installed in a qualifying new home during construction of such home.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—

''(A) IN GENERAL.—The credit allowed by this section with respect to a qualifying new home shall not exceed—

''(i) in the case of a 30-percent home, $1,000, and

''(ii) in the case of a 50-percent home, $2,000.

''(B) 30- OR 50-PERCENT HOME.—For purposes of subparagraph (A)—

''(i) 30-PERCENT HOME.—The term '30-percent home' means—

''(I) a qualifying new home which is certified to have a projected level of annual heating and cooling energy consumption, measured in terms of average annual energy cost to the homeowner, which is at least 30 percent less than the annual level of heating and cooling energy consumption of a qualifying new home constructed in accordance with the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home and any applicable Federal minimum efficiency standards for equipment, or

''(II) in the case of a qualifying new home which is a manufactured home, a home which meets the applicable standards required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(ii) 50-PERCENT HOME.—The term '50-percent home' means a qualifying new home which would be described in clause (i)(I) if 50 percent were substituted for 30 percent.

''(C) PRIOR CREDIT AMOUNTS ON SAME HOME TAKEN INTO ACCOUNT.—The amount of the credit otherwise allowable for the taxable year with respect to a qualifying new home under clause (i) or (ii) of subparagraph (A) shall be reduced by the sum of the credits allowed under subsection (a) to any taxpayer with respect to the home for all preceding taxable years.

''(2) COORDINATION WITH CERTAIN CREDITS.—For purposes of this section—

''(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to the rehabilitation credit (as determined under section 47(a)) or to the energy credit (as determined under section 48(a)), and

''(B) expenditures taken into account under section 25D, 47, or 48(a) shall not be taken into account under this section.

''(3) PROVIDER LIMITATION.—Any eligible contractor who directly or indirectly provides the guarantee of energy savings under a guarantee-based method of certification described in subsection (d)(1)(D) shall not be eligible to receive the credit allowed by this section.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means—

''(A) the person who constructed the qualifying new home, or

''(B) in the case of a qualifying new home which is a manufactured home, the manufactured home producer of such home.

If more than 1 person is described in subparagraph (A) or (B) with respect to any qualifying new home, such term means the person designated as such by the owner of such home.

''(2) ENERGY EFFICIENT PROPERTY.—The term 'energy efficient property' means any energy efficient building envelope component, and any energy efficient heating or cooling equipment or system which can, individually or in combination with other components, meet the requirements of this section.

''(3) QUALIFYING NEW HOME.—

''(A) IN GENERAL.—The term 'qualifying new home' means a dwelling—

''(i) located in the United States,

''(ii) the construction of which is substantially completed after December 31, 2004, and

''(iii) the first use of which after construction is as a principal residence (within the meaning of section 121).

''(B) MANUFACTURED HOME INCLUDED.—The term 'qualifying new home' includes a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(4) CONSTRUCTION.—The term 'construction' includes reconstruction and rehabilitation.

''(5) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a qualifying new home when installed in or on such home,

''(B) exterior windows (including skylights), and

''(C) exterior doors.

''(d) CERTIFICATION.—

''(1) METHOD OF CERTIFICATION.—

''(A) IN GENERAL.—A certification described in subsection (b)(1)(B) shall be determined either by a component-based method, a performance-based method, or a guarantee-based method, or, in the case of a qualifying new home which is a manufactured home, by a method prescribed by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(B) COMPONENT-BASED METHOD.—A component-based method is a method which uses the applicable technical energy efficiency specifications or ratings (including product labeling requirements) for the energy efficient building envelope component or energy efficient heating or cooling equipment. The Secretary shall, in consultation with the Administrator of the Environmental Protection Agency, develop prescriptive component-based packages which are equivalent in energy performance to properties which qualify under subparagraph (C).

''(C) PERFORMANCE-BASED METHOD.—

''(i) IN GENERAL.—A performance-based method is a method which calculates projected energy usage and cost reductions in the qualifying new home in relation to a new home—

''(I) heated by the same fuel type, and

''(II) constructed in accordance with the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home and any applicable Federal minimum efficiency standards for equipment.

''(ii) COMPUTER SOFTWARE.—Computer software shall be used in support of a performance-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy.

''(D) GUARANTEE-BASED METHOD.—

''(i) IN GENERAL.—A guarantee-based method is a method which guarantees in writing to the homeowner energy savings of either 30 percent or 50 percent over the 2000 International Energy Conservation Code for heating and cooling costs. The guarantee shall be provided for a minimum of 2 years and shall fully reimburse the homeowner any heating and cooling costs in excess of the guaranteed amount.

''(ii) COMPUTER SOFTWARE.—Computer software shall be selected by the provider to support the guarantee-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy.

''(2) PROVIDER.—A certification described in subsection (b)(1)(B) shall be provided by—

''(A) in the case of a component-based method, a local building regulatory authority, a utility, or a home energy rating organization,

''(B) in the case of a performance-based method or a guarantee-based method, an individual recognized by an organization designated by the Secretary for such purposes, or

''(C) in the case of a qualifying new home which is a manufactured home, a manufactured home primary inspection agency.

''(3) FORM.—

''(A) IN GENERAL.—A certification described in subsection (b)(1)(B) shall be made in writing in a manner which specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance, and

''(i) in the case of a performance-based method, accompanied by a written analysis documenting the proper application of a permissible energy performance calculation method to the specific circumstances of such qualifying new home, and

''(ii) in the case of a qualifying new home which is a manufactured home, accompanied by such documentation as required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(B) FORM PROVIDED TO BUYER.—A form documenting the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their rated energy efficiency performance shall be provided to the buyer of the qualifying new home. The form shall include labeled R-value for insulation products, NFRC-labeled U-factor and solar heat gain coefficient for windows, skylights, and doors, labeled annual fuel utilization efficiency (AFUE) ratings for furnaces and boilers, labeled heating seasonal performance factor (HSPF) ratings for electric heat pumps, and labeled seasonal energy efficiency ratio (SEER) ratings for air conditioners.

''(C) RATINGS LABEL AFFIXED IN DWELLING.—A permanent label documenting the ratings in subparagraph (B) shall be affixed to the front of the electrical distribution panel of the qualifying new home, or shall be otherwise permanently displayed in a readily inspectable location in such home.

''(4) REGULATIONS.—

''(A) IN GENERAL.—In prescribing regulations under this subsection for performance-based and guarantee-based certification methods, the Secretary shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

''(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a qualifying new home to be eligible for the credit under this section regardless of whether such home uses a gas or oil furnace or boiler or an electric heat pump, and

''(ii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the homebuyer.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the Mortgage Industry National Home Energy Rating Standards.

''(e) APPLICATION.—Subsection (a) shall apply to qualifying new homes the construction of which is substantially completed after December 31, 2004, and purchased during the period beginning on such date and ending on—

''(1) in the case of any 30-percent home, December 31, 2005, and

''(2) in the case of any 50-percent home, December 31, 2007.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (21), by striking the period at the end of paragraph (22) and inserting '', plus'', and by adding at the end the following new paragraph:

''(23) the new energy efficient home credit determined under section 45K(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end the following new subsection:

''(d) NEW ENERGY EFFICIENT HOME EXPENSES.—No deduction shall be allowed for that portion of expenses for a qualifying new home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45K(a).''.

(d) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Section 196(c) (defining qualified business credits), as amended by this Act, is amended by striking ''and'' at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting '', and'', and by adding after paragraph (11) the following new paragraph:

''(12) the new energy efficient home credit determined under section 45K(a).''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45K. New energy efficient home credit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to homes the construction of which is substantially completed after December 31, 2004.

SEC. 822. CREDIT FOR ENERGY EFFICIENT APPLIANCES.

(a) 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 new section:

''SEC. 45L. ENERGY EFFICIENT APPLIANCE CREDIT.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—For purposes of section 38, the energy efficient appliance credit determined under this section for the taxable year is an amount equal to the sum of the amounts determined under paragraph (2) for qualified energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

''(2) AMOUNT.—The amount determined under this paragraph for any category described in subsection (b)(2)(B) shall be the product of the applicable amount for appliances in the category and the eligible production for the category.

''(b) APPLICABLE AMOUNT; ELIGIBLE PRODUCTION.—For purposes of subsection (a)—

''(1) APPLICABLE AMOUNT.—The applicable amount is—

''(A) $50, in the case of—

''(i) a clothes washer which is manufactured with at least a 1.42 MEF, or

''(ii) a refrigerator which consumes at least 10 percent less kilowatt hours per year than the energy conservation standards for refrigerators promulgated by the Department of Energy and effective on July 1, 2001,

''(B) $100, in the case of—

''(i) a clothes washer which is manufactured with at least a 1.50 MEF, or

''(ii) a refrigerator which consumes at least 15 percent (20 percent in the case of a refrigerator manufactured after 2006) less kilowatt hours per year than such energy conservation standards, and

''(C) $150, in the case of a refrigerator manufactured before 2007 which consumes at least 20 percent less kilowatt hours per year than such energy conservation standards.

''(2) ELIGIBLE PRODUCTION.—

''(A) IN GENERAL.—The eligible production of each category of qualified energy efficient appliances is the excess of—

''(i) the number of appliances in such category which are produced by the taxpayer during such calendar year, over

''(ii) the average number of appliances in such category which were produced by the taxpayer during calendar years 2001, 2002, and 2003.

''(B) CATEGORIES.—For purposes of subparagraph (A), the categories are—

''(i) clothes washers described in paragraph (1)(A)(i),

''(ii) clothes washers described in paragraph (1)(B)(i),

''(iii) refrigerators described in paragraph (1)(A)(ii),

''(iv) refrigerators described in paragraph (1)(B)(ii), and

''(v) refrigerators described in paragraph (1)(C).

''(c) LIMITATION ON MAXIMUM CREDIT.—

''(1) IN GENERAL.—The amount of credit allowed under subsection (a) with respect to a taxpayer for all taxable years shall not exceed $60,000,000, of which not more than $30,000,000 may be allowed with respect to the credit determined by using the applicable amount under subsection (b)(1)(A).

''(2) LIMITATION BASED ON GROSS RECEIPTS.—The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

''(3) GROSS RECEIPTS.—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term 'qualified energy efficient appliance' means—

''(A) a clothes washer described in subparagraph (A)(i) or (B)(i) of subsection (b)(1), or

''(B) a refrigerator described in subparagraph (A)(ii), (B)(ii), or (C) of subsection (b)(1).

''(2) CLOTHES WASHER.—The term 'clothes washer' means a residential clothes washer, including a residential style coin operated washer.

''(3) REFRIGERATOR.—The term 'refrigerator' means an automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

''(4) MEF.—The term 'MEF' means Modified Energy Factor (as determined by the Secretary of Energy).

''(e) SPECIAL RULES.—

''(1) IN GENERAL.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply for purposes of this section.

''(2) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as 1 person for purposes of subsection (a).

''(f) VERIFICATION.—The taxpayer shall submit such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).

''(g) TERMINATION.—This section shall not apply—

''(1) with respect to refrigerators described in subsection (b)(1)(A)(ii) produced after December 31, 2005, and

''(2) with respect to all other qualified energy efficient appliances produced after December 31, 2007.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (22), by striking the period at the end of paragraph (23) and inserting '', plus'', and by adding at the end the following new paragraph:

''(24) the energy efficient appliance credit determined under section 45L(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45L. Energy efficient appliance credit.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2004, in taxable years ending after such date.

SEC. 823. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year,

''(2) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during such year,

''(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year,

''(4) 30 percent of the qualified wind energy property expenditures made by the taxpayer during such year, and

''(5) the sum of the qualified Tier 2 energy efficient building property expenditures made by the taxpayer during such year.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed—

''(A) $2,000 for property described in paragraph (1), (2), or (5) of subsection (d),

''(B) $500 for each 0.5 kilowatt of capacity of property described in subsection (d)(4), and

''(C) for property described in subsection (d)(6)—

''(i) $150 for each electric heat pump water heater,

''(ii) $125 for each advanced natural gas, oil, propane furnace, or hot water boiler,

''(iii) $150 for each advanced natural gas, oil, or propane water heater,

''(iv) $50 for each natural gas, oil, or propane water heater,

''(v) $50 for an advanced main air circulating fan,

''(vi) $150 for each advanced combination space and water heating system,

''(vii) $50 for each combination space and water heating system, and

''(viii) $250 for each geothermal heat pump.

''(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless—

''(A) in the case of solar water heating property, such property is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed,

''(B) in the case of a photovoltaic property, a fuel cell property, or a wind energy property, such property meets appropriate fire and electric code requirements, and

''(C) in the case of property described in subsection (d)(6), such property meets the performance and quality standards, and the certification requirements (if any), which—

''(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate),

''(ii) in the case of the energy efficiency ratio (EER) for property described in subsection (d)(6)(B)(viii)—

''(I) require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

''(II) do not require ratings to be based on certified data of the Air Conditioning and Refrigeration Institute, and

''(iii) are in effect at the time of the acquisition of the property.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term 'qualified solar water heating property expenditure' means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

''(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term 'qualified photovoltaic property expenditure' means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

''(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

''(4) QUALIFIED FUEL CELL PROPERTY EXPENDITURE.—The term 'qualified fuel cell property expenditure' means an expenditure for qualified fuel cell property (as defined in section 48(a)(4)) installed on or in connection with a dwelling unit located in the United States and used as a principal residence (within the meaning of section 121) by the taxpayer.

''(5) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE.—The term 'qualified wind energy property expenditure' means an expenditure for property which uses wind energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

''(6) QUALIFIED TIER 2 ENERGY EFFICIENT BUILDING PROPERTY EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified Tier 2 energy efficient building property expenditure' means an expenditure for any Tier 2 energy efficient building property.

''(B) TIER 2 ENERGY EFFICIENT BUILDING PROPERTY.—The term 'Tier 2 energy efficient building property' means—

''(i) an electric heat pump water heater which yields an energy factor of at least 1.7 in the standard Department of Energy test procedure,

''(ii) an advanced natural gas, oil, propane furnace, or hot water boiler which achieves at least 95 percent annual fuel utilization efficiency (AFUE),

''(iii) an advanced natural gas, oil, or propane water heater which has an energy factor of at least 0.80 in the standard Department of Energy test procedure,

''(iv) a natural gas, oil, or propane water heater which has an energy factor of at least 0.65 but less than 0.80 in the standard Department of Energy test procedure,

''(v) an advanced main air circulating fan used in a new natural gas, propane, or oil-fired furnace, including main air circulating fans that use a brushless permanent magnet motor or another type of motor which achieves similar or higher efficiency at half and full speed, as determined by the Secretary,

''(vi) an advanced combination space and water heating system which has a combined energy factor of at least 0.80 and a combined annual fuel utilization efficiency (AFUE) of at least 78 percent in the standard Department of Energy test procedure,

''(vii) a combination space and water heating system which has a combined energy factor of at least 0.65 but less than 0.80 and a combined annual fuel utilization efficiency (AFUE) of at least 78 percent in the standard Department of Energy test procedure, and

''(viii) a geothermal heat pump which has an energy efficiency ratio (EER) of at least 21.

''(7) LABOR COSTS.—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in paragraph (1), (2), (4), (5), or (6) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

''(8) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following rules shall apply:

''(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) ALLOCATION IN CERTAIN CASES.—Except in the case of qualified wind energy property expenditures, if less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

''(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

''(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

''(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

''(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(5)(C)).

''(f) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(g) TERMINATION.—The credit allowed under this section shall not apply to expenditures after December 31, 2007.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25C(b), as added by subsection (a), is amended by adding at the end the following new paragraph:

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D)'' and inserting ''subsection (b)(3)''.

(B) Section 23(b)(4)(B) is amended by inserting ''and section 25C'' after ''this section''.

(C) Section 24(b)(3)(B) is amended by striking ''23 and 25B'' and inserting ''23, 25B, and 25C''.

(D) Section 25(e)(1)(C) is amended by inserting ''25C,'' after ''25B,''.

(E) Section 25B(g)(2) is amended by striking ''section 23'' and inserting ''sections 23 and 25C''.

(F) Section 26(a)(1) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(G) Section 904(i), as redesignated and amended by this Act, is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(H) Section 1400C(d) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (33), by striking the period at the end of paragraph (34) and inserting '', and'', and by adding at the end the following new paragraph:

''(35) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C.''.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Residential energy efficient property.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to expenditures after December 31, 2004, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2004.

SEC. 824. CREDIT FOR BUSINESS INSTALLATION OF QUALIFIED FUEL CELLS AND STATIONARY MICROTURBINE POWER PLANTS.

(a) IN GENERAL.—Section 48(a)(3)(A) (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) qualified fuel cell property or qualified microturbine property,''.

(b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—Section 48(a) (relating to energy credit) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—For purposes of this subsection—

''(A) QUALIFIED FUEL CELL PROPERTY.—

''(i) IN GENERAL.—The term 'qualified fuel cell property' means a fuel cell power plant which—

''(I) generates at least 0.5 kilowatt of electricity using an electrochemical process, and

''(II) has an electricity-only generation efficiency greater than 30 percent.

''(ii) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to $500 for each 0.5 kilowatt of capacity of such property.

''(iii) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components which converts a fuel into electricity using electrochemical means.

''(iv) TERMINATION.—The term 'qualified fuel cell property' shall not include any property placed in service after December 31, 2007.

''(B) QUALIFIED MICROTURBINE PROPERTY.—

''(i) IN GENERAL.—The term 'qualified microturbine property' means a stationary microturbine power plant which—

''(I) has a capacity of less than 2,000 kilowatts, and

''(II) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

''(ii) LIMITATION.—In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal $200 for each kilowatt of capacity of such property.

''(iii) STATIONARY MICROTURBINE POWER PLANT.—The term 'stationary microturbine power plant' means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

''(iv) TERMINATION.—The term 'qualified microturbine property' shall not include any property placed in service after December 31, 2006.''.

(c) ENERGY PERCENTAGE.—Section 48(a)(2)(A) (relating to energy percentage) is amended to read as follows:

''(A) IN GENERAL.—The energy percentage is—

''(i) in the case of qualified fuel cell property, 30 percent, and

''(ii) in the case of any other energy property, 10 percent.''.

(d) CONFORMING AMENDMENTS.—

(A) Section 29(b)(3)(A)(i)(III) is amended by striking ''section 48(a)(4)(C)'' and inserting ''section 48(a)(5)(C)''.

(B) Section 48(a)(1) is amended by inserting ''except as provided in subparagraph (A)(ii) or (B)(ii) of paragraph (4),'' before ''the energy''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 825. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179A the following new section:

''SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

''(a) IN GENERAL.—There shall be allowed as a deduction for the taxable year in which a building is placed in service by a taxpayer, an amount equal to the energy efficient commercial building property expenditures made by such taxpayer with respect to the construction or reconstruction of such building for the taxable year or any preceding taxable year.

''(b) MAXIMUM AMOUNT OF DEDUCTION.—The amount of energy efficient commercial building property expenditures taken into account under subsection (a) shall not exceed an amount equal to the product of—

''(1) $2.25, and

''(2) the square footage of the building with respect to which the expenditures are made.

''(c) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'energy efficient commercial building property expenditures' means amounts paid or incurred for energy efficient property installed on or in connection with the construction or reconstruction of a building—

''(A) for which depreciation is allowable under section 167,

''(B) which is located in the United States, and

''(C) which is the type of structure to which the Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America is applicable.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

''(2) ENERGY EFFICIENT PROPERTY.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'energy efficient property' means any property which reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a building which meets the minimum requirements of Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America, using methods of calculation described in subparagraph (B) and certified by qualified individuals as provided under paragraph (5).

''(B) METHODS OF CALCULATION.—The Secretary, in consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power costs.

''(C) COMPUTER SOFTWARE.—

''(i) IN GENERAL.—Any calculation described in subparagraph (B) shall be prepared by qualified computer software.

''(ii) QUALIFIED COMPUTER SOFTWARE.—For purposes of this subparagraph, the term 'qualified computer software' means software—

''(I) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power costs as required by the Secretary,

''(II) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

''(III) which provides a notice form which summarizes the energy efficiency features of the building and its projected annual energy costs.

''(3) ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY.—In the case of energy efficient commercial building property expenditures made by a public entity with respect to the construction or reconstruction of a public building, the Secretary shall promulgate regulations under which the value of the deduction with respect to such expenditures which would be allowable to the public entity under this section (determined without regard to the tax-exempt status of such entity) may be allocated to the person primarily responsible for designing the energy efficient property. Such person shall be treated as the taxpayer for purposes of this section.

''(4) NOTICE TO OWNER.—Any qualified individual providing a certification under paragraph (5) shall provide an explanation to the owner of the building regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (2)(C)(ii)(III).

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall prescribe procedures for the inspection and testing for compliance of buildings by qualified individuals described in subparagraph (B). Such procedures shall be—

''(i) comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Home Energy Rating Standards, and

''(ii) fuel neutral such that the same energy efficiency measures allow a building to be eligible for the credit under this section regardless of whether such building uses a gas or oil furnace or boiler or an electric heat pump.

''(B) QUALIFIED INDIVIDUALS.—Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes. The Secretary may qualify a home energy ratings organization, a local building regulatory authority, a State or local energy office, a utility, or any other organization which meets the requirements prescribed under this paragraph.

''(C) PROFICIENCY OF QUALIFIED INDIVIDUALS.—The Secretary shall consult with nonprofit organizations and State agencies with expertise in energy efficiency calculations and inspections to develop proficiency tests and training programs to qualify individuals to determine compliance.

''(d) BASIS REDUCTION.—For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient property, the basis of such property shall be reduced by the amount of the deduction so allowed.

''(e) INTERIM RULES FOR LIGHTING SYSTEMS.—Until such time as the Secretary issues final regulations under subsection (c)(2)(B) with respect to property which is part of a lighting system—

''(1) IN GENERAL.—The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1–2001.

''(2) REDUCTION IN CREDIT IF REDUCTION LESS THAN 40 PERCENT.—

''(A) IN GENERAL.—If, with respect to the lighting system of any building other than a warehouse, the reduction of lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of credit otherwise allowable under this section with respect to such property shall be allowed.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage is the number of percentage points (not greater than 100) equal to the sum of—

''(i) 50, and

''(ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

''(C) EXCEPTIONS.—This subsection shall not apply to any system—

''(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1–2001 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

''(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

''(f) REGULATIONS.—The Secretary shall promulgate such regulations as necessary to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section.

''(g) TERMINATION.—This section shall not apply with respect to any energy efficient commercial building property expenditures in connection with a building the construction of which is not completed on or before December 31, 2009.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (34), by striking the period at the end of paragraph (35) and inserting '', and'', and by adding at the end the following new paragraph:

''(36) to the extent provided in section 179B(d).''.

(2) Section 1245(a) is amended by inserting ''179B,'' after ''179A,'' both places it appears in paragraphs (2)(C) and (3)(C).

(3) Section 1250(b)(3) is amended by inserting before the period at the end of the first sentence ''or by section 179B''.

(4) Section 263(a)(1), as amended by this Act, is amended by striking ''or'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', or'', and by inserting after subparagraph (I) the following new subparagraph:

''(J) expenditures for which a deduction is allowed under section 179B.''.

(5) Section 312(k)(3)(B) is amended by striking ''or 179A'' each place it appears in the heading and text and inserting '', 179A, or 179B''.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after section 179A the following new item:

''Sec. 179B. Energy efficient commercial buildings deduction.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 826. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) any qualified energy management device.''.

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting at the end the following new paragraph:

''(17) QUALIFIED ENERGY MANAGEMENT DEVICE.—

''(A) IN GENERAL.—The term 'qualified energy management device' means any energy management device which is placed in service before January 1, 2008, by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

''(B) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term 'energy management device' means any meter or metering device which is used by the taxpayer—

''(i) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and

''(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.''.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (A)(iii) the following:

''(A)(iv) ..... 20''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 827. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED WATER SUBMETERING DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) any qualified water submetering device.''.

(b) DEFINITION OF QUALIFIED WATER SUBMETERING DEVICE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting at the end the following new paragraph:

''(16) QUALIFIED WATER SUBMETERING DEVICE.—

''(A) IN GENERAL.—The term 'qualified water submetering device' means any water submetering device which is placed in service before January 1, 2008, by a taxpayer who is an eligible resupplier with respect to the unit for which the device is placed in service.

''(B) WATER SUBMETERING DEVICE.—For purposes of this paragraph, the term 'water submetering device' means any submetering device which is used by the taxpayer—

''(i) to measure and record water usage data, and

''(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.

''(C) ELIGIBLE RESUPPLIER.—For purposes of subparagraph (A), the term 'eligible resupplier' means any taxpayer who purchases and installs qualified water submetering devices in every unit in any multi-unit property.''.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B), as amended by this Act, is amended by inserting after the item relating to subparagraph (A)(iv) the following:

''(A)(v) ..... 20''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 828. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) IN GENERAL.—Section 48(a)(3)(A) (defining energy property), as amended by this Act, is amended by striking ''or'' at the end of clause (ii), by adding ''or'' at the end of clause (iii), and by inserting after clause (iii) the following new clause:

''(iv) combined heat and power system property,''.

(b) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Section 48 (relating to energy credit; reforestation credit), as amended by this Act, is amended by adding at the end the following new subsection:

''(d) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of subsection (a)(3)(A)(iv)—

''(1) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term 'combined heat and power system property' means property comprising a system—

''(A) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

''(B) which has an electrical capacity of not more than 15 megawatts or a mechanical

energy capacity of not more than 2,000 horsepower or an equivalent combination of electrical and mechanical energy capacities,

''(C) which produces—

''(i) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

''(ii) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

''(D) the energy efficiency percentage of which exceeds 60 percent, and

''(E) which is placed in service before January 1, 2007.

''(2) SPECIAL RULES.—

''(A) ENERGY EFFICIENCY PERCENTAGE.—For purposes of this subsection, the energy efficiency percentage of a system is the fraction—

''(i) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

''(ii) the denominator of which is the lower heating value of the fuel sources for the system.

''(B) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under paragraph (1)(C) shall be determined on a Btu basis.

''(C) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term 'combined heat and power system property' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

''(D) PUBLIC UTILITY PROPERTY.—

''(i) ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.—If the combined heat and power system property is public utility property (as defined in section 168(i)(10)), the taxpayer may only claim the credit under subsection (a) if, with respect to such property, the taxpayer uses a normalization method of accounting.

''(ii) CERTAIN EXCEPTION NOT TO APPLY.—The matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to combined heat and power system property.

''(3) SYSTEMS USING BAGASSE.—If a system is designed to use bagasse for at least 90 percent of the energy source—

''(A) paragraph (1)(D) shall not apply, but

''(B) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this paragraph) as the energy efficiency percentage of such system bears to 60 percent.''.

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to periods after December 31, 2004, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 829. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits), as amended by this Act, is amended by inserting after section 25C the following new section:

''SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

''(b) LIMITATION.—The credit allowed by this section with respect to a dwelling for any taxable year shall not exceed $300, reduced (but not below zero) by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all preceding taxable years.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section, the term 'qualified energy efficiency improvements' means any energy efficient building envelope component which is certified to meet or exceed the latest prescriptive criteria for such component in the International Energy Conservation Code approved by the Department of Energy before the installation of such component, or any combination of energy efficiency measures which are certified as achieving at least a 30 percent reduction in heating and cooling energy usage for the dwelling (as measured in terms of energy cost to the taxpayer), if—

''(1) such component or combination of measures is installed in or on a dwelling which—

''(A) is located in the United States,

''(B) has not been treated as a qualifying new home for purposes of any credit allowed under section 45K, and

''(C) is owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

''(2) the original use of such component or combination of measures commences with the taxpayer, and

''(3) such component or combination of measures reasonably can be expected to remain in use for at least 5 years.

''(e) CERTIFICATION.—

''(1) METHODS OF CERTIFICATION.—

''(A) COMPONENT-BASED METHOD.—The certification described in subsection (d) for any component described in such subsection shall be determined on the basis of applicable energy efficiency ratings (including product labeling requirements) for affected building envelope components.

''(B) PERFORMANCE-BASED METHOD.—

''(i) IN GENERAL.—The certification described in subsection (d) for any combination of measures described in such subsection shall be—

''(I) determined by comparing the projected heating and cooling energy usage for the dwelling to such usage for such dwelling in its original condition, and

''(II) accompanied by a written analysis documenting the proper application of a permissible energy performance calculation method to the specific circumstances of such dwelling.

''(ii) COMPUTER SOFTWARE.—Computer software shall be used in support of a performance-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy.

''(2) PROVIDER.—A certification described in subsection (d) shall be provided by—

''(A) in the case of the method described in paragraph (1)(A), a third party, such as a local building regulatory authority, a utility, a manufactured home primary inspection agency, or a home energy rating organization, or

''(B) in the case of the method described in paragraph (1)(B), an individual recognized by an organization designated by the Secretary for such purposes.

''(3) FORM.—A certification described in subsection (d) shall be made in writing on forms which specify in readily inspectable fashion the energy efficient components and other measures and their respective efficiency ratings, and which include a permanent label affixed to the electrical distribution panel of the dwelling.

''(4) REGULATIONS.—

''(A) IN GENERAL.—In prescribing regulations under this subsection for certification methods described in paragraph (1)(B), the Secretary, after examining the requirements for energy consultants and home energy ratings providers specified by the Mortgage Industry National Home Energy Rating Standards, shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

''(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a dwelling to be eligible for the credit under this section regardless of whether such dwelling uses a gas or oil furnace or boiler or an electric heat pump, and

''(ii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the owner of the dwelling.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the Mortgage Industry National Home Energy Rating Standards.

''(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following rules shall apply:

''(A) The amount of the credit allowable under subsection (a) by reason of expenditures for the qualified energy efficiency improvements made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified energy efficiency improvements made by such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having paid the individual's proportionate share of the cost of qualified energy efficiency improvements made by such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain or a dwelling when installed in or on such dwelling,

''(B) exterior windows (including skylights), and

''(C) exterior doors.

''(5) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term 'dwelling' includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(h) TERMINATION.—Subsection (a) shall not apply to qualified energy efficiency improvements installed after December 31, 2006.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25D(b), as added by subsection (a), is amended—

(A) by striking ''The credit'' and inserting the following:

''(1) DOLLAR AMOUNT.—The credit'', and

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

''(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25D(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)'' and inserting ''subsection (b)(2)''.

(B) Section 23(b)(4)(B), as amended by this Act, is amended by striking ''section 25C'' and inserting ''sections 25C and 25D''.

(C) Section 24(b)(3)(B), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(D) Section 25(e)(1)(C), as amended by this Act, is amended by inserting ''25D,'' after ''25C,''.

(E) Section 25B(g)(2), as amended by this Act, is amended by striking ''23 and 25C'' and inserting ''23, 25C, and 25D''.

(F) Section 26(a)(1), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(G) Section 904(i), as redesignated and amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(H) Section 1400C(d), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting ''; and'', and by adding at the end the following new paragraph:

''(37) to the extent provided in section 25D(g), in the case of amounts with respect to which a credit has been allowed under section 25D.''.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 25C the following new item:

''Sec. 25D. Energy efficiency improvements to existing homes.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to property installed after December 31, 2004, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2004.

Subtitle D—Clean Coal Incentives

PART I—CREDIT FOR EMISSION REDUCTIONS AND EFFICIENCY IMPROVEMENTS IN EXISTING COAL-BASED ELECTRICITY GENERATION FACILITIES

SEC. 831. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

(a) CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—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 new section:

''SEC. 45M. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying clean coal technology production credit of any taxpayer for any taxable year is equal to—

''(1) the applicable amount of clean coal technology production credit, multiplied by

''(2) the applicable percentage of the sum of—

''(A) the kilowatt hours of electricity, plus

''(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying clean coal technology unit, but only if such production occurs during the 10-year period beginning on the date the unit was returned to service after becoming a qualifying clean coal technology unit.

''(b) APPLICABLE AMOUNT.—

''(1) IN GENERAL.—For purposes of this section, the applicable amount of clean coal technology production credit is equal to $0.0034.

''(2) INFLATION ADJUSTMENT.—For calendar years after 2005, the applicable amount of clean coal technology production credit shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (e) bears to the total megawatt capacity of such unit.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—The term 'qualifying clean coal technology unit' means a clean coal technology unit of the taxpayer which—

''(A) on January 1, 2005—

''(i) was a coal-based electricity generating steam generator-turbine unit which was not a clean coal technology unit, and

''(ii) had a nameplate capacity rating of not more than 300 megawatts,

''(B) becomes a clean coal technology unit as the result of the retrofitting, repowering, or replacement of the unit with clean coal technology during the 10-year period beginning on January 1, 2005,

''(C) is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy, and

''(D) receives an allocation of a portion of the national megawatt capacity limitation under subsection (e).

''(2) CLEAN COAL TECHNOLOGY UNIT.—The term 'clean coal technology unit' means a unit which—

''(A) uses clean coal technology, including advanced pulverized coal or atmospheric fluidized bed combustion, pressurized fluidized bed combustion, integrated gasification combined cycle, or any other technology, for the production of electricity,

''(B) uses an input of at least 75 percent coal to produce at least 50 percent of its thermal output as electricity,

''(C) has a design net heat rate of at least 500 less than that of such unit as described in paragraph (1)(A),

''(D) has a maximum design net heat rate of not more than 9,500, and

''(E) meets the pollution control requirements of paragraph (3).

''(3) POLLUTION CONTROL REQUIREMENTS.—

''(A) IN GENERAL.—A unit meets the requirements of this paragraph if—

''(i) its emissions of sulfur dioxide, nitrogen oxide, or particulates meet the lower of the emission levels for each such emission specified in—

''(I) subparagraph (B), or

''(II) the new source performance standards of the Clean Air Act (42 U.S.C. 7411) which are in effect for the category of source at the time of the retrofitting, repowering, or replacement of the unit, and

''(ii) its emissions do not exceed any relevant emission level specified by regulation pursuant to the hazardous air pollutant requirements of the Clean Air Act (42 U.S.C. 7412) in effect at the time of the retrofitting, repowering, or replacement.

''(B) SPECIFIC LEVELS.—The levels specified in this subparagraph are—

''(i) in the case of sulfur dioxide emissions, 50 percent of the sulfur dioxide emission levels specified in the new source performance standards of the Clean Air Act (42 U.S.C. 7411) in effect on the date of the enactment of this section for the category of source,

''(ii) in the case of nitrogen oxide emissions—

''(I) 0.1 pound per million Btu of heat input if the unit is not a cyclone-fired boiler, and

''(II) if the unit is a cyclone-fired boiler, 15 percent of the uncontrolled nitrogen oxide emissions from such boilers, and

''(iii) in the case of particulate emissions, 0.02 pound per million Btu of heat input.

''(4) DESIGN NET HEAT RATE.—The design net heat rate with respect to any unit, measured in Btu per kilowatt hour (HHV)—

''(A) shall be based on the design annual heat input to and the design annual net electrical power, fuels, and chemicals output from such unit (determined without regard to such unit's co-generation of steam),

''(B) shall be adjusted for the heat content of the design coal to be used by the unit if it is less than 12,000 Btu per pound according to the following formula:

Design net heat rate = Unit net heat rate [1 − {((12,000-design coal heat content, Btu per pound)/1,000) 0.013}],

''(C) shall be corrected for the site reference conditions of—

''(i) elevation above sea level of 500 feet,

''(ii) air pressure of 14.4 pounds per square inch absolute (psia),

''(iii) temperature, dry bulb of 63°F,

''(iv) temperature, wet bulb of 54°F, and

''(v) relative humidity of 55 percent, and

''(D) if carbon capture controls have been installed with respect to any qualifying unit and such controls remove at least 50 percent of the unit's carbon dioxide emissions, shall be adjusted up to the design heat rate level which would have resulted without the installation of such controls.

''(5) HHV.—The term 'HHV' means higher heating value.

''(6) APPLICATION OF CERTAIN RULES.—The rules of paragraphs (3), (4), and (5) of section 45(e) shall apply.

''(7) INFLATION ADJUSTMENT FACTOR.—

''(A) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2003.

''(B) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(8) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this section, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying clean coal technology unit during such period.

''(e) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF QUALIFYING CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of this section, the national megawatt capacity limitation for qualifying clean coal technology units is 4,000 megawatts.

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection,

''(B) to limit the capacity of any qualifying clean coal technology unit to which this section applies so that the megawatt capacity allocated to any unit under this subsection does not exceed 300 megawatts and the combined megawatt capacity allocated to all such units when all such units are placed in service during the 10-year period described in subsection (d)(1)(B), does not exceed 4,000 megawatts,

''(C) to provide a certification process under which the Secretary, in consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation—

''(i) to encourage that units with the highest thermal efficiencies, when adjusted for the heat content of the design coal and site reference conditions described in subsection (d)(4)(C), and environmental performance, be placed in service as soon as possible, and

''(ii) to allocate capacity to taxpayers which have a definite and credible plan for placing into commercial operation a qualifying clean coal technology unit, including—

''(I) a site,

''(II) contractual commitments for procurement and construction or, in the case of regulated utilities, the agreement of the State utility commission,

''(III) filings for all necessary preconstruction approvals,

''(IV) a demonstrated record of having successfully completed comparable projects on a timely basis, and

''(V) such other factors that the Secretary determines are appropriate,

''(D) to allocate the national megawatt capacity limitation to a portion of the capacity of a qualifying clean coal technology unit if the Secretary determines that such an allocation would maximize the amount of efficient production encouraged with the available tax credits,

''(E) to set progress requirements and conditional approvals so that capacity allocations for clean coal technology units which become unlikely to meet the necessary conditions for qualifying can be reallocated by the Secretary to other clean coal technology units, and

''(F) to provide taxpayers with opportunities to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (23), by striking the period at the end of paragraph (24) and inserting '', plus'', and by adding at the end the following new paragraph:

''(25) the qualifying clean coal technology production credit determined under section 45M(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45M. Credit for production from a qualifying clean coal technology unit.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to production after December 31, 2004, in taxable years ending after such date.

PART II—INCENTIVES FOR EARLY COMMERCIAL APPLICATIONS OF ADVANCED CLEAN COAL TECHNOLOGIES

SEC. 832. CREDIT FOR INVESTMENT IN QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.

(a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating to amount of credit), as amended by this Act, is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) the qualifying advanced clean coal technology unit credit.''.

(b) AMOUNT OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

''SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.

''(a) IN GENERAL.—For purposes of section 46, the qualifying advanced clean coal technology unit credit for any taxable year is an amount equal to 10 percent of the applicable percentage of the qualified investment in a qualifying advanced clean coal technology unit for such taxable year.

''(b) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the term 'qualifying advanced clean coal technology unit' means an advanced clean coal technology unit of the taxpayer—

''(A)(i) in the case of a unit first placed in service after December 31, 2004, the original use of which commences with the taxpayer, or

''(ii) in the case of the retrofitting or repowering of a unit first placed in service before January 1, 2005, the retrofitting or repowering of which is completed by the taxpayer after such date, or

''(B) which is depreciable under section 167,

''(C) which has a useful life of not less than 4 years,

''(D) which is located in the United States,

''(E) which is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy,

''(F) which is not a qualifying clean coal technology unit, and

''(G) which receives an allocation of a portion of the national megawatt capacity limitation under subsection (f).

''(2) SPECIAL RULE FOR SALE-LEASEBACKS.—For purposes of subparagraph (A) of paragraph (1), in the case of a unit which—

''(A) is originally placed in service by a person, and

''(B) is sold and leased back by such person, or is leased to such person, within 3 months after the date such unit was originally placed in service, for a period of not less than 12 years,

such unit shall be treated as originally placed in service not earlier than the date on which such unit is used under the leaseback (or lease) referred to in subparagraph (B). The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such an election, once made, may be revoked only with the consent of the Secretary.

''(3) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this subsection, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying advanced clean coal technology unit during such period.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying advanced clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (f) bears to the total megawatt capacity of such unit.

''(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of this section—

''(1) IN GENERAL.—The term 'advanced clean coal technology unit' means a new, retrofit, or repowering unit of the taxpayer which—

''(A) is—

''(i) an eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit,

''(ii) an eligible pressurized fluidized bed combustion technology unit,

''(iii) an eligible integrated gasification combined cycle technology unit, or

''(iv) an eligible other technology unit, and

''(B) meets the carbon emission rate requirements of paragraph (6).

''(2) ELIGIBLE ADVANCED PULVERIZED COAL OR ATMOSPHERIC FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term 'eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit' means a clean coal technology unit using advanced pulverized coal or atmospheric fluidized bed combustion technology which—

''(A) is placed in service after December 31, 2004, and before January 1, 2013, and

''(B) has a design net heat rate of not more than 8,500 (8,900 in the case of units placed in service before 2009).

''(3) ELIGIBLE PRESSURIZED FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term 'eligible pressurized fluidized bed combustion technology unit' means a clean coal technology unit using pressurized fluidized bed combustion technology which—

''(A) is placed in service after December 31, 2004, and before January 1, 2017, and

''(B) has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2009, and 8,500 in the case of units placed in service after 2008 and before 2013).

''(4) ELIGIBLE INTEGRATED GASIFICATION COMBINED CYCLE TECHNOLOGY UNIT.—The term 'eligible integrated gasification combined cycle technology unit' means a clean coal technology unit using integrated gasification combined cycle technology, with or without fuel or chemical co-production, which—

''(A) is placed in service after December 31, 2004, and before January 1, 2017,

''(B) has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2009, and 8,500 in the case of units placed in service after 2008 and before 2013), and

''(C) has a net thermal efficiency (HHV) using coal with fuel or chemical co-production of not less than 44.2 percent (38.4 percent in the case of units placed in service before 2009, and 40.2 percent in the case of units placed in service after 2008 and before 2013).

''(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—The term 'eligible other technology unit' means a clean coal technology unit using any other technology for the production of electricity which is placed in service after December 31, 2004, and before January 1, 2017.

''(6) CARBON EMISSION RATE REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a unit meets the requirements of this paragraph if—

''(i) in the case of a unit using design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate is less than 0.60 pound of carbon per kilowatt hour, and

''(ii) in the case of a unit using design coal with a heat content of more than 9,000 Btu per pound, the carbon emission rate is less than 0.54 pound of carbon per kilowatt hour.

''(B) ELIGIBLE OTHER TECHNOLOGY UNIT.—In the case of an eligible other technology unit, subparagraph (A) shall be applied by substituting '0.51' and '0.459' for '0.60' and '0.54', respectively.

''(e) GENERAL DEFINITIONS.—Any term used in this section which is also used in section 45M shall have the meaning given such term in section 45M.

''(f) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF ADVANCED CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of subsection (b)(1)(G), the national megawatt capacity limitation is—

''(A) for qualifying advanced clean coal technology units using advanced pulverized coal or atmospheric fluidized bed combustion technology, not more than 1,000 megawatts (not more than 500 megawatts in the case of units placed in service before 2009),

''(B) for such units using pressurized fluidized bed combustion technology, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2009),

''(C) for such units using integrated gasification combined cycle technology, with or without fuel or chemical co-production, not more than 2,000 megawatts (not more than 1,000 megawatts in the case of units placed in service before 2009), and

''(D) for such units using other technology for the production of electricity, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2009).

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying advanced clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection and section 45N,

''(B) to limit the capacity of any qualifying advanced clean coal technology unit to which this section applies so that the combined megawatt capacity of all such units to which this section applies does not exceed 4,000 megawatts,

''(C) to provide a certification process described in section 45M(e)(3)(C),

''(D) to carry out the purposes described in subparagraphs (D), (E), and (F) of section 45M(e)(3), and

''(E) to reallocate capacity which is not allocated to any technology described in subparagraphs (A) through (D) of paragraph (1) because an insufficient number of qualifying units request an allocation for such technology, to another technology described in such subparagraphs in order to maximize the amount of energy efficient production encouraged with the available tax credits.

''(4) SELECTION CRITERIA.—For purposes of this subsection, the selection criteria for allocating the national megawatt capacity limitation to qualifying advanced clean coal technology units—

''(A) shall be established by the Secretary of Energy as part of a competitive solicitation,

''(B) shall include primary criteria of minimum design net heat rate, maximum design thermal efficiency, environmental performance, and lowest cost to the Government, and

''(C) shall include supplemental criteria as determined appropriate by the Secretary of Energy.

''(g) QUALIFIED INVESTMENT.—For purposes of subsection (a), the term 'qualified investment' means, with respect to any taxable year, the basis of a qualifying advanced clean coal technology unit placed in service by the taxpayer during such taxable year (in the case of a unit described in subsection (b)(1)(A)(ii), only that portion of the basis of such unit which is properly attributable to the retrofitting or repowering of such unit).

''(h) QUALIFIED PROGRESS EXPENDITURES.—

''(1) INCREASE IN QUALIFIED INVESTMENT.—In the case of a taxpayer who has made an election under paragraph (5), the amount of the qualified investment of such taxpayer for the taxable year (determined under subsection (g) without regard to this subsection) shall be increased by an amount equal to the aggregate of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

''(2) PROGRESS EXPENDITURE PROPERTY DEFINED.—For purposes of this subsection, the term 'progress expenditure property' means any property being constructed by or for the taxpayer and which it is reasonable to believe will qualify as a qualifying advanced clean coal technology unit which is being constructed by or for the taxpayer when it is placed in service.

''(3) QUALIFIED PROGRESS EXPENDITURES DEFINED.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—In the case of any self-constructed property, the term 'qualified progress expenditures' means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

''(B) NONSELF-CONSTRUCTED PROPERTY.—In the case of nonself-constructed property, the term 'qualified progress expenditures' means the amount paid during the taxable year to another person for the construction of such property.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—The term 'self-constructed property' means property for which it is reasonable to believe that more than half of the construction expenditures will be made directly by the taxpayer.

''(B) NONSELF-CONSTRUCTED PROPERTY.—The term 'nonself-constructed property' means property which is not self-constructed property.

''(C) CONSTRUCTION, ETC.—The term 'construction' includes reconstruction and erection, and the term 'constructed' includes reconstructed and erected.

''(D) ONLY CONSTRUCTION OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT TO BE TAKEN INTO ACCOUNT.—Construction shall be taken into account only if, for purposes of this subpart, expenditures therefor are properly chargeable to capital account with respect to the property.

''(5) ELECTION.—An election under this subsection may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to the taxable year for which made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary.

''(i) COORDINATION WITH OTHER CREDITS.—This section shall not apply to any property with respect to which the rehabilitation credit under section 47 or the energy credit under section 48 is allowed unless the taxpayer elects to waive the application of such credit to such property.''.

(c) RECAPTURE.—Section 50(a) (relating to other special rules) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULES RELATING TO QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of applying this subsection in the case of any credit allowable by reason of section 48A, the following rules shall apply:

''(A) GENERAL RULE.—In lieu of the amount of the increase in tax under paragraph (1), the increase in tax shall be an amount equal to the investment tax credit allowed under section 38 for all prior taxable years with respect to a qualifying advanced clean coal technology unit (as defined by section 48A(b)(1)) multiplied by a fraction the numerator of which is the number of years remaining to fully depreciate under this title the qualifying advanced clean coal technology unit disposed of, and the denominator of which is the total number of years over which such unit would otherwise have been subject to depreciation. For purposes of the preceding sentence, the year of disposition of

the qualifying advanced clean coal technology unit shall be treated as a year of remaining depreciation.

''(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology unit under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted for the amount described in such paragraph (2).

''(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology unit.''.

(d) TECHNICAL AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) the portion of the basis of any qualifying advanced clean coal technology unit attributable to any qualified investment (as defined by section 48A(g)).''.

(2) Section 50(a)(4) is amended by striking ''and (2)'' and inserting '', (2), and (6)''.

(3) Section 50(c) is amended by adding at the end the following new paragraph:

''(6) NONAPPLICATION.—Paragraphs (1) and (2) shall not apply to any qualifying advanced clean coal technology unit credit under section 48A.''.

(4) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48 the following new item:

''Sec. 48A. Qualifying advanced clean coal technology unit credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 2004, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 833. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

(a) 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 new section:

''SEC. 45N. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying advanced clean coal technology production credit of any taxpayer for any taxable year is equal to—

''(1) the applicable amount of advanced clean coal technology production credit, multiplied by

''(2) the applicable percentage (as determined under section 48A(c)) of the sum of—

''(A) the kilowatt hours of electricity, plus

''(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying advanced clean coal technology unit, but only if such production occurs during the 10-year period beginning on the date the unit was originally placed in service (or returned to service after becoming a qualifying advanced clean coal technology unit).

''(b) APPLICABLE AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the applicable amount of advanced clean coal technology production credit with respect to production from a qualifying advanced clean coal technology unit shall be determined as follows:

''(A) If the qualifying advanced clean coal technology unit is producing electricity only:

''(i) In the case of a unit originally placed in service before 2009, if—

''The design net heat rate is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not more than 8,500	$.0060	$.0038
More than 8,500 but not more than 8,750	$.0025	$.0010
More than 8,750 but less than 8,900	$.0010	$.0010.

''(ii) In the case of a unit originally placed in service after 2008 and before 2013, if—

''The design net heat rate is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not more than 7,770	$.0105	$.0090
More than 7,770 but not more than 8,125	$.0085	$.0068
More than 8,125 but less than 8,500	$.0075	$.0055.

''(iii) In the case of a unit originally placed in service after 2012 and before 2017, if—

''The design net heat rate is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not more than 7,380	$.0140	$.0115
More than 7,380 but not more than 7,720	$.0120	$.0090.

''(B) If the qualifying advanced clean coal technology unit is producing fuel or chemicals:

''(i) In the case of a unit originally placed in service before 2009, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not less than 40.2 percent	$.0060	$.0038
Less than 40.2 but not less than 39 percent	$.0025	$.0010
Less than 39 but not less than 38.4 percent	$.0010	$.0010.

''(ii) In the case of a unit originally placed in service after 2008 and before 2013, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not less than 43.9 percent	$.0105	$.0090
Less than 43.9 but not less than 42 percent	$.0085	$.0068
Less than 42 but not less than 40.2 percent	$.0075	$.0055.

''(iii) In the case of a unit originally placed in service after 2012 and before 2017, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not less than 46.3 percent	$.0140	$.0115
Less than 46.3 but not less than 44.2 percent	$.0120	$.0090.

''(2) SPECIAL RULE FOR UNITS QUALIFYING FOR GREATER APPLICABLE AMOUNT WHEN PLACED IN SERVICE.—If, at the time a qualifying advanced clean coal technology unit is placed in service, production from the unit would be entitled to a greater applicable amount if such unit had been placed in service at a later date, the applicable amount for such unit shall be such greater amount.

''(c) INFLATION ADJUSTMENT.—For calendar years after 2005, each dollar amount in subsection (b)(1) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) IN GENERAL.—Any term used in this section which is also used in section 45M or 48A shall have the meaning given such term in such section.

''(2) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 45(e) shall apply.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (24), by striking the period at the end of paragraph (25) and inserting '', plus'', and by adding at the end the following new paragraph:

''(26) the qualifying advanced clean coal technology production credit determined under section 45N(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 29(d) (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DOUBLE BENEFIT.—This section shall not apply with respect to any qualified fuel the production of which may be taken into account for purposes of determining the credit under section 45N.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45N. Credit for production from a qualifying advanced clean coal technology unit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to production after December 31, 2004, in taxable years ending after such date.

PART III—TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT

SEC. 834. TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.

(a) IN GENERAL.—Section 45M, as added by this Act, is amended by adding at the end the following new subsection:

''(f) TREATMENT OF PERSON NOT ABLE TO USE ENTIRE CREDIT.—

''(1) ALLOWANCE OF CREDITS.—

''(A) IN GENERAL.—Any credit allowable under this section, section 45N, or section 48A with respect to a facility owned by a person described in subparagraph (B) may be transferred or used as provided in this subsection, and the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(B) PERSONS DESCRIBED.—A person is described in this subparagraph if the person is—

''(i) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(ii) an organization described in section 1381(a)(2)(C),

''(iii) a public utility (as defined in section 136(c)(2)(B)),

''(iv) any State or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any of the foregoing,

''(v) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof, or

''(vi) the Tennessee Valley Authority.

''(2) TRANSFER OF CREDIT.—

''(A) IN GENERAL.—A person described in clause (i), (ii), (iii), (iv), or (v) of paragraph (1)(B) may transfer any credit to which paragraph (1)(A) applies through an assignment to any other person not described in paragraph (1)(B). Such transfer may be revoked only with the consent of the Secretary.

''(B) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in subparagraph (A) is claimed once and not reassigned by such other person.

''(C) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in clause (iii), (iv), or (v) of paragraph (1)(B) from the transfer of any credit under subparagraph (A) shall be treated as arising from the exercise of an essential government function.

''(3) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in clause (i), (ii), or (v) of paragraph (1)(B), any credit to which paragraph (1)(A) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of this section.

''(4) USE BY TVA.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a person described in paragraph (1)(B)(vi), any credit to which paragraph (1)(A) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(e)) as an annual return on the appropriations investment and an annual repayment sum.

''(B) TREATMENT OF CREDITS.—The aggregate amount of credits described in paragraph (1)(A) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash and shall be applied first against the annual return on the appropriations investment.

''(C) CREDIT CARRYOVER.—With respect to any fiscal year, if the aggregate amount of credits described paragraph (1)(A) with respect to such person exceeds the aggregate amount of payment obligations described in subparagraph (A), the excess amount shall remain available for application as credits against the amounts of such payment obligations in succeeding fiscal years in the same manner as described in this paragraph.

''(5) CREDIT NOT INCOME.—Any transfer under paragraph (2) or use under paragraph (3) of any credit to which paragraph (1)(A) applies shall not be treated as income for purposes of section 501(c)(12).

''(6) TREATMENT OF UNRELATED PERSONS.—For purposes of this subsection, transfers among and between persons described in clauses (i), (ii), (iii), (iv), and (v) of paragraph (1)(B) shall be treated as transfers between unrelated parties.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to production after December 31, 2004, in taxable years ending after such date.

Subtitle E—Oil and Gas Provisions

SEC. 841. OIL AND GAS FROM MARGINAL WELLS.

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

''SEC. 45O. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

''(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit

for any taxable year is an amount equal to the product of—

''(1) the credit amount, and

''(2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

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

''(1) IN GENERAL.—The credit amount is—

''(A) $3 per barrel of qualified crude oil production, and

''(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

''(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

''(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

''(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

''(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

''(B) INFLATION ADJUSTMENT.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year.

''(ii) INFLATION ADJUSTMENT FACTOR.—For purposes of clause (i)—

''(I) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2004.

''(II) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(C) REFERENCE PRICE.—For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year—

''(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

''(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

''(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

''(1) IN GENERAL.—The terms 'qualified crude oil production' and 'qualified natural gas production' mean domestic crude oil or domestic natural gas which is produced from a qualified marginal well.

''(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

''(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

''(B) PROPORTIONATE REDUCTIONS.—

''(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

''(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

''(3) NONCOMPLIANCE WITH POLLUTION LAWS.—Production from any well during any period in which such well is not in compliance with applicable Federal pollution prevention, control, and permit requirements shall not be treated as qualified crude oil production or qualified natural gas production.

''(4) DEFINITIONS.—

''(A) QUALIFIED MARGINAL WELL.—The term 'qualified marginal well' means a domestic well—

''(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

''(ii) which, during the taxable year—

''(I) has average daily production of not more than 25 barrel equivalents, and

''(II) produces water at a rate not less than 95 percent of total well effluent.

''(B) CRUDE OIL, ETC.—The terms 'crude oil', 'natural gas', 'domestic', and 'barrel' have the meanings given such terms by section 613A(e).

''(C) BARREL EQUIVALENT.—The term 'barrel equivalent' means, with respect to natural gas, a conversation ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

''(D) DOMESTIC NATURAL GAS.—The term 'domestic natural gas' does not include Alaska natural gas (as defined in section 45Q(c)(1)).

''(d) OTHER RULES.—

''(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than 1 owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

''(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

''(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting '', plus'', and by adding at the end the following new paragraph:

''(27) the marginal oil and gas well production credit determined under section 45O(a).''.

(c) COORDINATION WITH SECTION 29.—Section 29(a) (relating to allowance of credit) is amended by striking ''There'' and inserting ''At the election of the taxpayer, there''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45O. Credit for producing oil and gas from marginal wells.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years beginning after December 31, 2004.

SEC. 842. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

''(iii) any natural gas gathering line, and''.

(b) NATURAL GAS GATHERING LINE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(18) NATURAL GAS GATHERING LINE.—The term 'natural gas gathering line' means—

''(A) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

''(i) a gas processing plant,

''(ii) an interconnection with a transmission pipeline certificated by the Federal Energy Regulatory Commission as an interstate transmission pipeline,

''(iii) an interconnection with an intrastate transmission pipeline, or

''(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer, or

''(B) any other pipe, equipment, or appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes) is amended by inserting after the item relating to subparagraph (C)(i) the following new item:

''(C)(iii) ..... 14''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 843. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179B the following new section:

''SEC. 179C. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

''(a) TREATMENT AS EXPENSES.—A small business refiner (as defined in section 45I(c)(1)) may elect to treat 75 percent of qualified capital costs (as defined in section 45I(c)(2)) which are paid or incurred by the taxpayer during the taxable year as expenses which are not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which paid or incurred.

''(b) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels. For purposes of calculating such average daily domestic refinery runs, only refineries of the refiner or a related person (within the meaning of section 613A(d)(3)) on April 1, 2003, shall be taken into account.

''(c) BASIS REDUCTION.—

''(1) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

''(d) COORDINATION WITH OTHER PROVISIONS.—Section 280B shall not apply to amounts which are treated as expenses under this section.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking ''or'' at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting ''; or'', and by adding at the end the following new subparagraph:

''(K) expenditures for which a deduction is allowed under section 179C.''.

(2) Section 263A(c)(3) is amended by inserting ''179C,'' after ''section''.

(3) Section 312(k)(3)(B), as amended by this Act, is amended by striking ''or 179B'' each place it appears in the heading and text and inserting ''179B, or 179C''.

(4) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting '', and'', and by adding at the end the following new paragraph:

''(38) to the extent provided in section 179C(c).''

(5) Paragraphs (2)(C) and (3)(C) of section 1245(a), as amended by this Act, are each amended by inserting ''179C,'' after ''179B,''.

(6) The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179B the following new item:

''Sec. 179C. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 844. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

(a) 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 new section:

''SEC. 45P. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

''(a) IN GENERAL.—For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

''(b) MAXIMUM CREDIT.—

''(1) IN GENERAL.—The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

''(A) 25 percent of the qualified capital costs incurred by the small business refiner with respect to such facility, reduced by

''(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

''(2) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels. For purposes of calculating such average daily domestic refinery runs, only refineries of the refiner or a related person (within the meaning of section 613A(d)(3)) on April 1, 2003, shall be taken into account.

''(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

''(1) SMALL BUSINESS REFINER.—The term 'small business refiner' means, with respect to any taxable year, a refiner of crude oil—

''(A) with respect to which not more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year, and

''(B) the average daily domestic refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

For purposes of calculating such average daily domestic refinery run or retained production, only refineries of the refiner or a related person (within the meaning of section 613A(d)(3)) on April 1, 2003, shall be taken into account.

''(2) QUALIFIED CAPITAL COSTS.—The term 'qualified capital costs' means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

''(3) APPLICABLE EPA REGULATIONS.—The term 'applicable EPA regulations' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

''(4) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to any facility, the period beginning on January 1, 2003, and ending on the earlier of the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility or December 31, 2009.

''(5) LOW SULFUR DIESEL FUEL.—The term 'low sulfur diesel fuel' means diesel fuel with a sulfur content of 15 parts per million or less.

''(6) SPECIAL RULE FOR DETERMINATION OF REFINERY RUNS.—Refinery runs shall be determined under rules similar to the rules under section 613A(d)(4).

''(d) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

''(e) CERTIFICATION.—

''(1) REQUIRED.—No credit shall be allowed unless, not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is allowed with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

''(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

''(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

''(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

''(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends with respect to the taxpayer, and

''(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(f) COOPERATIVE ORGANIZATIONS.—

''(1) APPORTIONMENT OF CREDIT.—

''(A) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

''(B) FORM AND EFFECT OF ELECTION.—An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(2) TREATMENT OF ORGANIZATIONS AND PATRONS.—

''(A) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

''(B) PATRONS.—The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

''(3) SPECIAL RULE.—If for any reason the tax imposed with respect to any patron of a cooperative organization would, but for this paragraph, be increased by any amount by reason of a credit apportioned to such patron under this subsection—

''(A) the amount of such increase in tax shall not be imposed on such patron, and

''(B) the tax imposed by this chapter on such organization shall be increased by such amount.

The increase under subparagraph (B) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (26), by striking the period at the end of paragraph (27) and inserting '', plus'', and by adding at the end the following new paragraph:

''(28) in the case of a small business refiner, the low sulfur diesel fuel production credit determined under section 45P(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding after subsection (d) the following new subsection:

''(e) LOW SULFUR DIESEL FUEL PRODUCTION CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45P(a).''.

(d) BASIS ADJUSTMENT.—Section 1016(a) (relating to adjustments to basis), as amended by this Act, is amended by striking ''and'' at the end of paragraph (37), by striking the period at the end of paragraph (38) and inserting '', and'', and by adding at the end the following new paragraph:

''(39) in the case of a facility with respect to which a credit was allowed under section 45P, to the extent provided in section 45P(d).''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45P. Credit for production of low sulfur diesel fuel.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 845. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

(a) IN GENERAL.—Paragraph (4) of section 613A(d) (relating to limitations on application of subsection (c)) is amended to read as follows:

''(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or 1 or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 60,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after December 31, 2004.

SEC. 846. MARGINAL PRODUCTION INCOME LIMIT EXTENSION.

Section 613A(c)(6)(H) (relating to temporary suspension of taxable income limit with respect to marginal production), as amended by this Act, is amended by striking ''2005'' and inserting ''2007''.

SEC. 847. AMORTIZATION OF DELAY RENTAL PAYMENTS.

(a) IN GENERAL.—Section 167 (relating to depreciation) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) AMORTIZATION OF DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.—

''(1) IN GENERAL.—Any delay rental payment paid or incurred in connection with the development of oil or gas wells within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such payment was paid or incurred.

''(2) HALF-YEAR CONVENTION.—For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

''(3) EXCLUSIVE METHOD.—Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

''(4) TREATMENT UPON ABANDONMENT.—If any property to which a delay rental payment relates is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

''(5) DELAY RENTAL PAYMENTS.—For purposes of this subsection, the term 'delay rental payment' means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2004.

SEC. 848. AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) IN GENERAL.—Section 167 (relating to depreciation), as amended by this Act, is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

''(i) AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.—

''(1) IN GENERAL.—Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

''(2) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of paragraphs (2), (3), and (4) of subsection (h) shall apply.''.

(b) CONFORMING AMENDMENT.—Section 263A(c)(3) is amended by inserting ''167(h), 167(i),'' after ''under section''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2004.

SEC. 849. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Section 29 (relating to credit for producing fuel from a nonconventional source) is amended by adding at the end the following new subsection:

''(h) EXTENSION FOR OTHER FACILITIES.—

''(1) OIL AND GAS.—In the case of a well or facility for producing qualified fuels described in subparagraph (A) or (B) of subsection (c)(1) which was drilled or placed in service after December 31, 2004, and before January 1, 2007, notwithstanding subsection (f), this section shall apply with respect to such fuels produced at such well or facility before the close of the 3-year period beginning on the date that such well is drilled or such facility is placed in service.

''(2) FACILITIES PRODUCING FUELS FROM AGRICULTURAL AND ANIMAL WASTE.—

''(A) IN GENERAL.—In the case of a facility for producing liquid, gaseous, or solid fuels from qualified agricultural and animal wastes, including such fuels when used as feedstocks, which was placed in service after December 31, 2004, and before January 1, 2007, this section shall apply with respect to fuel produced at such facility before the close of the 3-year period beginning on the date such facility is placed in service.

''(B) QUALIFIED AGRICULTURAL AND ANIMAL WASTE.—For purposes of this paragraph, the term 'qualified agricultural and animal waste' means agriculture and animal waste, including by-products, packaging, and any materials associated with the processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes.

''(3) WELLS PRODUCING VISCOUS OIL.—

''(A) IN GENERAL.—In the case of a well for producing viscous oil which was placed in service after December 31, 2004, and before January 1, 2007, this section shall apply with respect to fuel produced at such well before the close of the 3-year period beginning on the date such well is placed in service.

''(B) VISCOUS OIL.—The term 'viscous oil' means heavy oil, as defined in section 613A(c)(6), except that—

''(i) '22 degrees' shall be substituted for '20 degrees' in applying subparagraph (F) thereof, and

''(ii) in all cases, the oil gravity shall be measured from the initial well-head samples, drill cuttings, or down hole samples.

''(C) WAIVER OF UNRELATED PERSON REQUIREMENT.—In the case of viscous oil, the requirement under subsection (a)(2)(A) of a sale to an unrelated person shall not apply to any sale to the extent that the viscous oil is not consumed in the immediate vicinity of the wellhead.

''(4) FACILITIES PRODUCING REFINED COAL.—

''(A) IN GENERAL.—In the case of a facility described in subparagraph (C) for producing refined coal which was placed in service after December 31, 2004, and before January 1, 2007, this section shall apply with respect to fuel produced at such facility before the close of the 5-year period beginning on the date such facility is placed in service.

''(B) REFINED COAL.—For purposes of this paragraph, the term 'refined coal' means a fuel which is a liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock.

''(C) COVERED FACILITIES.—

''(i) IN GENERAL.—A facility is described in this subparagraph if such facility produces refined coal using a technology which results in—

''(I) a qualified emission reduction, and

''(II) a qualified enhanced value.

''(ii) QUALIFIED EMISSION REDUCTION.—For purposes of this subparagraph, the term 'qualified emission reduction' means a reduction of at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2004.

''(iii) QUALIFIED ENHANCED VALUE.—For purposes of this subparagraph, the term 'qualified enhanced value' means an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal.

''(iv) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNITS EXCLUDED.—A facility described in this subparagraph shall not include a qualifying advanced clean coal technology unit (as defined in section 48A(b)).

''(5) COALMINE GAS.—

''(A) IN GENERAL.—This section shall apply to coalmine gas—

''(i) captured or extracted by the taxpayer during the period beginning after December 31, 2004, and ending before January 1, 2007, and

''(ii) utilized as a fuel source or sold by or on behalf of the taxpayer to an unrelated person during such period.

''(B) COALMINE GAS.—For purposes of this paragraph, the term 'coalmine gas' means any methane gas which is—

''(i) liberated during or as a result of coal mining operations, or

''(ii) extracted up to 10 years in advance of coal mining operations as part of a specific plan to mine a coal deposit.

''(C) SPECIAL RULE FOR ADVANCED EXTRACTION.—In the case of coalmine gas which is captured in advance of coal mining operations, the credit under subsection (a) shall be allowed only after the date the coal extraction occurs in the immediate area where the coalmine gas was removed.

''(D) NONCOMPLIANCE WITH POLLUTION LAWS.—This paragraph shall not apply to the capture or extraction of coalmine gas from coal mining operations with respect to any period in which such coal mining operations are not in compliance with applicable State and Federal pollution prevention, control, and permit requirements.

''(6) SPECIAL RULES.—In determining the amount of credit allowable under this section solely by reason of this subsection—

''(A) FUELS TREATED AS QUALIFIED FUELS.—Any fuel described in paragraph (2), (3), (4), or (5) shall be treated as a qualified fuel for purposes of this section.

''(B) DAILY LIMIT.—The amount of qualified fuels described in subparagraph (A) or (B)(i) of subsection (c)(1) sold during any taxable year which may be taken into account by reason of this subsection with respect to any project shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the project is placed in service shall not be taken into account in determining such average.

''(C) EXTENSION PERIOD TO COMMENCE WITH UNADJUSTED CREDIT AMOUNT AND NEW PHASE-OUT ADJUSTMENT.—For purposes of applying subsection (b)(2), in the case of fuels sold after 2003—

''(i) paragraphs (1)(A) and (2) of subsection (b) shall be applied by subtituting '$35.00' for '$23.50', and

''(ii) subparagraph (B) of subsection (d)(2) shall be applied by substituting '2002' for '1979' in determining such dollar amounts.''.

(b) EXTENSION FOR CERTAIN FUEL PRODUCED AT EXISTING FACILITIES.—

(1) EXTENSION.—Section 29(f)(2) (relating to application of section) is amended by inserting ''(January 1, 2006, in the case of any coke, coke gas, or natural gas and byproducts produced by coal gasification from lignite in a facility described in paragraph (1)(B))'' after ''January 1, 2003''.

(2) USE OF CREDIT AS AN OFFSET.—Section 29, as amended by subsection (a), is amended by adding the end the following new subsection:

''(i) USE OF CREDIT AS AN OFFSET.—

''(1) IN GENERAL.—Any credit allowable under subsection (a) with respect to any natural gas and byproducts produced by coal gasification from lignite in a facility described in paragraph (1)(B) of subsection (f) owned by a person described in section 1381(a)(2)(C) or subsidiaries of such person may be used as provided in paragraph (2).

''(2) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in paragraph (1), any credit to which paragraph (1) applies may be applied by such person—

''(A) to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003, and

''(B) to the extent provided by the Secretary of Energy, as a prepayment not to exceed 50 percent of any obligation the person has incurred pursuant to an asset purchase agreement entered into with the Secretary and dated October 7, 1988.

''(3) CREDIT NOT INCOME.—Any use under paragraph (2) of any credit to which paragraph (1) applies shall not be treated as income for purposes of this title.

''(4) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(A), sales of qualified fuels among and between persons described in paragraph (1) shall be treated as sales between unrelated parties.''.

(c) TREATMENT AS BUSINESS CREDIT.—

(1) CREDIT MOVED TO SUBPART RELATING TO BUSINESS RELATED CREDITS.—The Internal Revenue Code of 1986, as amended by this Act, is amended by redesignating section 29, as amended by this Act, as section 45R and by moving section 45R (as so redesignated) from subpart B of part IV of subchapter A of chapter 1 to the end of subpart D of part IV of subchapter A of chapter 1.

(2) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', plus'', and by adding at the end the following:

''(31) the nonconventional source production credit determined under section 45R(a).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 30(b)(2)(A), as redesignated by this Act, is amended by striking ''sections 27 and 29'' and inserting ''section 27''.

(B) Sections 43(b)(2) and 613A(c)(6)(C) are each amended by striking ''section 29(d)(2)(C)'' and inserting ''section 45R(d)(2)(C)''.

(C) Section 45R(a), as redesignated by paragraph (1), is amended by striking ''At the election of the taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year'' and inserting ''For purposes of section 38, if the taxpayer elects to have this section apply, the nonconventional source production credit determined under this section for the taxable year is''.

(D) Section 45R(b), as so redesignated, is amended by striking paragraph (6).

(E) Section 53(d)(1)(B)(iii) is amended by striking ''under section 29'' and all that follows through ''or not allowed''.

(F) Section 55(c)(2) is amended by striking ''29(b)(6),''.

(G) Subsection (a) of section 772, as amended by this Act, is amended by striking paragraph (10) and by redesignating paragraphs (11) and (12) as paragraphs (10) and (11), respectively.

(H) Paragraph (5) of section 772(d) is amended by striking ''the foreign tax credit, and the credit allowable under section 29'' and inserting ''and the foreign tax credit''.

(I) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 29.

(J) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45Q the following new item:

''Sec. 45R. Credit for producing fuel from a nonconventional source.''.

(d) STUDY OF COALBED METHANE.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study regarding the effect of section 45R of the Internal Revenue Code of 1986 on the production of coalbed methane.

(2) CONTENTS OF STUDY.—The study under paragraph (1) shall estimate the total amount of credits under section 45R of the Internal Revenue Code of 1986 claimed annually and in the aggregate which are related to the production of coalbed methane since the date of the enactment of such section 45R. Such study shall report the annual value of such credits allowable for coalbed methane compared to the average annual wellhead price of natural gas (per thousand cubic feet of natural gas). Such study shall also estimate the incremental increase in production of coalbed methane which has resulted from the enactment of such section 45R, and the cost to the Federal Government, in terms of the net tax benefits claimed, per thousand cubic feet of incremental coalbed methane produced annually and in the aggregate since such enactment.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to fuel sold after December 31, 2004, in taxable years ending after such date.

(2) EXISTING FACILITIES.—The amendments made by subsection (b) shall apply to fuel sold after December 31, 2002, in taxable years ending after such date.

(3) TREATMENT AS BUSINESS CREDIT.—The amendments made by subsection (c) shall apply to taxable years ending after December 31, 2003.

SEC. 850. NATURAL GAS DISTRIBUTION LINES TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(E) (defining 15-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and by inserting '', and'', and by adding at the end the following new clause:

''(v) any natural gas distribution line.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes), as amended by this Act, is amended by adding after the item relating to subparagraph (E)(iii) the following new item:

''(E)(v) ..... 35''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 851. CREDIT FOR ALASKA NATURAL GAS.

(a) 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 new section:

''SEC. 45Q. ALASKA NATURAL GAS.

''(a) IN GENERAL.—For purposes of section 38, the Alaska natural gas credit for any taxable year is an amount equal to the product of—

''(1) the credit amount, and

''(2) Alaska natural gas the production of which is attributable to the taxpayer.

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

''(1) IN GENERAL.—The credit amount is $0.52 per 1,000,000 Btu of Alaska natural gas.

''(2) REDUCTION AS GAS PRICES INCREASE.—

''(A) IN GENERAL.—The dollar amount under paragraph (1) shall be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

''(i) the excess (if any) of the applicable reference price over $0.83, bears to

''(ii) $0.52.

''(B) APPLICABLE REFERENCE PRICE.—For purposes of this paragraph—

''(i) IN GENERAL.—The applicable reference price for any calendar month in a taxable year is the reference price for the calendar month in which production occurs.

''(ii) REFERENCE PRICE.—The term 'reference price' means, with respect to any calendar month, a published market price for natural gas in United States dollars per 1,000,000 Btu (reduced by any gas transportation costs and gas processing costs as determined by the appropriate national regulatory body for natural gas transportation)

as determined under regulations by the Secretary.

''(C) INFLATION ADJUSTMENT.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in paragraph (1) and subparagraph (A) of this paragraph shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year.

''(ii) INFLATION ADJUSTMENT FACTOR.—For purposes of clause (i)—

''(I) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2004.

''(II) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(c) ALASKA NATURAL GAS.—For purposes of this section—

''(1) IN GENERAL.—The term 'Alaska natural gas' means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(19) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

''(A) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

''(B) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

''(2) NATURAL GAS.—The term 'natural gas' has the meaning given such term by section 613A(e)(2).

''(d) SPECIAL RULES.—For purposes of this section—

''(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—

''(A) IN GENERAL.—In the case of a well in which there is more than 1 person or entity—

''(i) entitled to production of Alaska natural gas, or

''(ii) at the election of such person or entity, entitled to the value of production as either an operating interest owner or a royalty interest owner,

the portion of such production attributable to such person or entity shall be determined on the basis of the ratio which the person's or entity's interest in the production or the value of production bears to the aggregate of the interests of all such persons or entities. Production otherwise attributable to a United States tax-exempt person or entity by reason of a royalty interest shall be attributable to such person or entity with respect to whom royalty-in-value production remains or to whom royalty-in-kind production is sold.

''(B) PARTNERSHIP PROPERTIES.—In the case of a partnership, for purposes of applying subparagraph (A), production shall be attributable to its partners based on each partner's distributive share of Alaska natural gas which is produced from partnership properties and attributable to the partnership or its partners under subparagraph (A).

''(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) APPLICATION OF SECTION.—This section shall apply to Alaska natural gas during the period—

''(1) beginning with the later of—

''(A) January 1, 2010, or

''(B) the initial date for the interstate transportation of such Alaska natural gas, and

''(2) ending with the date which is 25 years after the date described in paragraph (1).''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', plus'', and by adding at the end the following new paragraph:

''(29) The Alaska natural gas credit determined under section 45Q(a).''.

(c) ALLOWING CREDIT AGAINST ENTIRE REGULAR TAX AND MINIMUM TAX.—

(1) IN GENERAL.—Section 38(c) (relating to limitation based on amount of tax), as amended by this Act, is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) SPECIAL RULES FOR ALASKA NATURAL GAS CREDIT.—

''(A) IN GENERAL.—In the case of the Alaska natural gas credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the Alaska natural gas credit).

''(B) ALASKA NATURAL GAS CREDIT.—For purposes of this subsection, the term 'Alaska natural gas credit' means the credit allowable under subsection (a) by reason of section 45Q(a).''.

(2) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii), as amended by this Act, subclause (II) of section 38(c)(3)(A)(ii), as amended by this Act, and subclause (II) of section 38(c)(4)(A)(ii), as added by this Act, are each amended by inserting ''or the Alaska natural gas credit'' after ''specified credits''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45Q. Alaska natural gas.''.

SEC. 852. CERTAIN ALASKA NATURAL GAS PIPELINE PROPERTY TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

''(iv) any Alaska natural gas pipeline, and''.

(b) ALASKA NATURAL GAS PIPELINE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(19) ALASKA NATURAL GAS PIPELINE.—The term 'Alaska natural gas pipeline' means the natural gas pipeline system located in the State of Alaska which—

''(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

''(B) is—

''(i) placed in service after December 31, 2012, or

''(ii) treated as placed in service on January 1, 2013, if the taxpayer who places such system in service before January 1, 2013, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.''.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes), as amended by this Act, is amended by inserting after the item relating to subparagraph (C)(iii) the following new item:

''(C)(iv) ..... 22''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004.

SEC. 853. EXTENSION OF ENHANCED OIL RECOVERY CREDIT TO CERTAIN ALASKA FACILITIES.

(a) IN GENERAL.—Section 43(c)(1) (defining qualified enhanced oil recovery costs) is amended by adding at the end the following new subparagraph:

''(D) Any amount which is paid or incurred during the taxable year to construct a gas treatment plant which—

''(i) is located in the area of the United States (within the meaning of section 638(1)) lying north of 64 degrees North latitude,

''(ii) prepares Alaska natural gas (as defined in section 45Q(c)(1)) for transportation through a pipeline with a capacity of at least 2,000,000,000,000 Btu of natural gas per day, and

''(iii) produces carbon dioxide which is injected into hydrocarbon-bearing geological formations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2004.

SEC. 854. ARBITRAGE RULES NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.

(a) IN GENERAL.—Section 148(b) (relating to higher yielding investments) is amended by adding at the end the following new paragraph:

''(4) SAFE HARBOR FOR PREPAID NATURAL GAS.—

''(A) IN GENERAL.—The term 'investment-type property' does not include a prepayment under a qualified natural gas supply contract.

''(B) QUALIFIED NATURAL GAS SUPPLY CONTRACT.—For purposes of this paragraph, the term 'qualified natural gas supply contract' means any contract to acquire natural gas for resale by or for a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract for the utility during any year does not exceed the sum of—

''(i) the annual average amount during the testing period of natural gas purchased (other than for resale) by customers of such utility who are located within the service area of such utility, and

''(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

''(C) NATURAL GAS USED TO GENERATE ELECTRICITY.—Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

''(i) only if the electricity is generated by a utility owned by a governmental unit, and

''(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

''(D) ADJUSTMENTS FOR CHANGES IN CUSTOMER BASE.—

''(i) NEW BUSINESS CUSTOMERS.—If—

''(I) after the close of the testing period and before the date of issuance of the issue,

the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for use by a business at a property within the service area of such utility, and

''(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

''(ii) OVERALL LIMITATION.—The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

''(E) RULING REQUESTS.—The Secretary may increase the average under subparagraph (B)(i) for any period if the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

''(F) ADJUSTMENT FOR NATURAL GAS OTHERWISE ON HAND.—

''(i) IN GENERAL.—The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

''(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

''(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

''(ii) APPLICABLE SHARE.—For purposes of clause (i), the term 'applicable share' means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

''(G) INTENTIONAL ACTS.—Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

''(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

''(ii) the amount of natural gas used to transport such natural gas to the utility.

''(H) TESTING PERIOD.—For purposes of this paragraph, the term 'testing period' means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

''(I) SERVICE AREA.—For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

''(i) any area throughout which such utility provided at all times during the testing period—

''(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

''(II) in the case of an electric utility, electricity distribution services,

''(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

''(iii) any area recognized as the service area of such utility under State or Federal law.''.

(b) PRIVATE LOAN FINANCING TEST NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.—Section 141(c)(2) (providing exceptions to the private loan financing test) is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by adding at the end the following new subparagraph:

''(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).''.

(c) CONFORMING AMENDMENT.—Section 141(d) is amended by adding at the end the following new paragraph:

''(7) EXCEPTION FOR QUALIFIED ELECTRIC AND NATURAL GAS SUPPLY CONTRACTS.—The term 'nongovernmental output property' shall not include any contract for the prepayment of electricity or natural gas which is not investment property under section 148(b)(2).''.

(d) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2004.

Subtitle F—Electric Utility Restructuring Provisions

SEC. 855. MODIFICATIONS TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER FUNDING PERIOD.—Subsection (b) of section 468A (relating to special rules for nuclear decommissioning costs) is amended to read as follows:

''(b) LIMITATION ON AMOUNTS PAID INTO FUND.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.''.

(b) CLARIFICATION OF TREATMENT OF FUND TRANSFERS.—Section 468A(e) (relating to Nuclear Decommissioning Reserve Fund) is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF FUND TRANSFERS.—If, in connection with the transfer of the taxpayer's interest in a nuclear power plant, the taxpayer transfers the Fund with respect to such power plant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

''(A) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

''(B) no amount shall be treated as distributed from such Fund, or be includable in gross income, by reason of such transfer.''.

(c) TREATMENT OF CERTAIN DECOMMISSIONING COSTS.—

(1) IN GENERAL.—Section 468A is amended by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by inserting after subsection (e) the following new subsection:

''(f) TRANSFERS INTO QUALIFIED FUNDS.—

''(1) IN GENERAL.—Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund not more than an amount equal to the present value of the excess of the total nuclear decommissioning costs with respect to such nuclear power plant over the portion of such costs taken into account in determining the ruling amount in effect immediately before the transfer.

''(2) DEDUCTION FOR AMOUNTS TRANSFERRED.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

''(B) DENIAL OF DEDUCTION FOR PREVIOUSLY DEDUCTED AMOUNTS.—No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed or a corresponding amount was not included in gross income. For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

''(C) TRANSFERS OF QUALIFIED FUNDS.—If—

''(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

''(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferee and not the transferor. The preceding sentence shall not apply if the transferor is an entity exempt from tax under this chapter.

''(D) SPECIAL RULES.—

''(i) GAIN OR LOSS NOT RECOGNIZED.—No gain or loss shall be recognized on any transfer permitted by this subsection.

''(ii) TRANSFERS OF APPRECIATED PROPERTY.—If appreciated property is transferred in a transfer permitted by this subsection, the amount of the deduction shall not exceed the adjusted basis of such property.

''(3) NEW RULING AMOUNT REQUIRED.—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

''(4) NO BASIS IN QUALIFIED FUNDS.—Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.''.

(2) NEW RULING AMOUNT TO TAKE INTO ACCOUNT TOTAL COSTS.—Subparagraph (A) of section 468A(d)(2) (defining ruling amount) is amended to read as follows:

''(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and''.

(d) TECHNICAL AMENDMENT.—Section 468A(e)(2) (relating to taxation of Fund) is amended—

(1) by striking ''rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''rate of 20 percent'',

(2) by striking subparagraph (B), and

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 856. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Section 501(c)(12)(C) (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (i), by striking clause (ii), and by adding at the end the following new clauses:

''(ii) from any open access transaction (other than income received or accrued directly or indirectly from a member),

''(iii) from any nuclear decommissioning transaction,

''(iv) from any asset exchange or conversion transaction, or

''(v) from the prepayment of any loan, debt, or obligation made, insured, or guaranteed under the Rural Electrification Act of 1936.''.

(2) DEFINITIONS AND SPECIAL RULES.—Section 501(c)(12) is amended by adding at the end the following new subparagraphs:

''(E) For purposes of subparagraph (C)(ii)—

''(i) The term 'open access transaction' means any transaction meeting the open access requirements of any of the following subclauses with respect to a mutual or cooperative electric company:

''(I) The provision or sale of electric transmission service or ancillary services meets the open access requirements of this subclause only if such services are provided on a nondiscriminatory open access basis pursuant to an open access transmission tariff filed with and approved by FERC, including an acceptable reciprocity tariff, or under a regional transmission organization agreement approved by FERC.

''(II) The provision or sale of electric energy distribution services or ancillary services meets the open access requirements of this subclause only if such services are provided on a nondiscriminatory open access basis to end-users served by distribution facilities owned by the mutual or cooperative electric company (or its members).

''(III) The delivery or sale of electric energy generated by a generation facility meets the open access requirements of this subclause only if such facility is directly connected to distribution facilities owned by the mutual or cooperative electric company (or its members) which owns the generation facility, and such distribution facilities meet the open access requirements of subclause (II).

''(ii) Clause (i)(I) shall apply in the case of a voluntarily filed tariff only if the mutual or cooperative electric company files a report with FERC within 90 days after the date of the enactment of this subparagraph relating to whether or not such company will join a regional transmission organization.

''(iii) A mutual or cooperative electric company shall be treated as meeting the open access requirements of clause (i)(I) if a regional transmission organization controls the transmission facilities.

''(iv) References to FERC in this subparagraph shall be treated as including references to the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))) or references to the Rural Utilities Service with respect to any other facility not subject to FERC jurisdiction.

''(v) For purposes of this subparagraph—

''(I) The term 'transmission facility' means an electric output facility (other than a generation facility) which operates at an electric voltage of 69 kilovolts or greater. To the extent provided in regulations, such term includes any output facility which FERC determines is a transmission facility under standards applied by FERC under the Federal Power Act (as in effect on the date of the enactment of the Energy Tax Incentives Act).

''(II) The term 'regional transmission organization' includes an independent system operator.

''(III) The term 'FERC' means the Federal Energy Regulatory Commission.

''(F) The term 'nuclear decommissioning transaction' means—

''(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

''(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

''(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

''(G) The term 'asset exchange or conversion transaction' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

''(i) generating, transmitting, distributing, or selling electric energy, or

''(ii) producing, transmitting, distributing, or selling natural gas.''.

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS.—Section 501(c)(12), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

''(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

''(ii) For purposes of clause (i), the term 'load loss transaction' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

''(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

''(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

''(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

''(II) the megawatt hours of electric energy sold during the base year to such members.

''(v) For purposes of clause (iv)(II), the term 'base year' means—

''(I) the calendar year preceding the start-up year, or

''(II) at the election of the electric company, the second or third calendar years preceding the start-up year.

''(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

''(vii) For purposes of this subparagraph, the start-up year is the calendar year which includes January 1, 2005, or, if later, at the election of the mutual or cooperative electric company—

''(I) the first year that such electric company offers nondiscriminatory open access, or

''(II) the first year in which at least 10 percent of such electric company's sales are not to members of such electric company.

''(viii) A company shall not fail to be treated as a mutual or cooperative company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

''(ix) In the case of a mutual or cooperative electric company, income from any open access transaction received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.''.

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Section 512(b) (relating to modifications), as amended by this Act, is amended by adding at the end the following new paragraph:

''(20) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.''.

(d) CROSS REFERENCE.—Section 1381 is amended by adding at the end the following new subsection:

''(c) CROSS REFERENCE.—

''For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 857. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

''(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

''(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualifying electric transmission transaction in any taxable year—

''(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

''(B) any income derived from such transaction in excess of such ordinary income which is required to be included in gross income for such taxable year (determined without regard to this subsection),

shall be so recognized and included ratably over the 8-taxable year period beginning with such taxable year.

''(2) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2008, of—

''(A) property used by the taxpayer in the trade or business of providing electric transmission services, or

''(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

''(3) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term 'independent transmission company' means—

''(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

''(B) a person—

''(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) is not a market participant within the meaning of such Commission's rules applicable to regional transmission organizations, and

''(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization before the close of the period specified in such authorization, but not later than January 1, 2008, or

''(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

''(4) ELECTION.—An election under paragraph (1), once made, shall be irrevocable.

''(5) NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions occurring after December 31, 2004.

Subtitle G—Volumetric Ethanol Excise Tax Credit

SEC. 860. SHORT TITLE.

This subtitle may be cited as the ''Volumetric Ethanol Excise Tax Credit (VEETC) Act of 2004''.

SEC. 861. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT AND EXTENSION OF ALCOHOL FUELS INCOME TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

''SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

''(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

''(1) the alcohol fuel mixture credit, plus

''(2) the biodiesel mixture credit.

''(b) ALCOHOL FUEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

''(2) APPLICABLE AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 52 cents (51 cents in the case of any sale or use after 2004).

''(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

''(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term 'alcohol fuel mixture' means a mixture of alcohol and a taxable fuel which—

''(A) is sold by the taxpayer producing such mixture to any person for use as a fuel,

''(B) is used as a fuel by the taxpayer producing such mixture, or

''(C) is removed from the refinery by a person producing such mixture.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) ALCOHOL.—The term 'alcohol' includes methanol and ethanol but does not include—

''(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

''(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

''(B) TAXABLE FUEL.—The term 'taxable fuel' has the meaning given such term by section 4083(a)(1).

''(5) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.

''(c) BIODIESEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

''(2) APPLICABLE AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

''(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.

''(3) BIODIESEL MIXTURE.—For purposes of this section, the term 'biodiesel mixture' means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

''(A) is sold by the taxpayer producing such mixture to any person for use as a fuel,

''(B) is used as a fuel by the taxpayer producing such mixture, or

''(C) is removed from the refinery by a person producing such mixture.

''(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

''(5) OTHER DEFINITIONS.—Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

''(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2006.

''(d) MIXTURE NOT USED AS A FUEL, ETC.—

''(1) IMPOSITION OF TAX.—If—

''(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or biodiesel mixture, respectively, and

''(B) any person—

''(i) separates the alcohol or biodiesel from the mixture, or

''(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

''(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

''(e) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—Rules similar to the rules under section 40(c) shall apply for purposes of this section.''.

(b) REGISTRATION REQUIREMENT.—Section 4101(a)(1) (relating to registration), as amended by sections 871 and 880 of this Act, is amended by inserting ''and every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))'' after ''4081''.

(c) ADDITIONAL AMENDMENTS.—

(1) Section 40(c) is amended by striking ''subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c)'' and inserting ''section 4041(b)(2), section 6426, or section 6427(e)''.

(2) Paragraph (4) of section 40(d) is amended to read as follows:

''(4) VOLUME OF ALCOHOL.—For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants).''.

(3) Section 40(e)(1) is amended—

(A) by striking ''2007'' in subparagraph (A) and inserting ''2010'', and

(B) by striking ''2008'' in subparagraph (B) and inserting ''2011''.

(4) Section 40(h) is amended—

(A) by striking ''2007'' in paragraph (1) and inserting ''2010'', and

(B) by striking '', 2006, or 2007'' in the table contained in paragraph (2) and inserting ''through 2010''.

(5) Section 4041(b)(2)(B) is amended by striking ''a substance other than petroleum or natural gas'' and inserting ''coal (including peat)''.

(6) Section 4041 is amended by striking subsection (k).

(7) Section 4081 is amended by striking subsection (c).

(8) Paragraph (2) of section 4083(a) is amended to read as follows:

''(2) GASOLINE.—The term 'gasoline'—

''(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or a denatured alcohol, and

''(B) includes, to the extent prescribed in regulations—

''(i) any gasoline blend stock, and

''(ii) any product commonly used as an additive in gasoline (other than alcohol).

For purposes of subparagraph (B)(i), the term 'gasoline blend stock' means any petroleum product component of gasoline.''.

(9) Section 6427 is amended by inserting after subsection (d) the following new subsection:

''(e) ALCOHOL OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS FUELS.—Except as provided in subsection (k)—

''(1) USED TO PRODUCE A MIXTURE.—If any person produces a mixture described in section 6426 in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such mixture.

''(2) USED AS FUEL.—If alcohol (as defined in section 40(d)(1)) or biodiesel (as defined in section 40A(d)(1)) or agri-biodiesel (as defined in section 40A(d)(2)) which is not in a mixture described in section 6426—

''(A) is used by any person as a fuel in a trade or business, or

''(B) is sold by any person at retail to another person and placed in the fuel tank of such person's vehicle,

the Secretary shall pay (without interest) to such person an amount equal to the alcohol credit (as determined under section 40(b)(2)) or the biodiesel credit (as determined under section 40A(b)(2)) with respect to such fuel.

''(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any mixture with respect to which an amount is allowed as a credit under section 6426.

''(4) TERMINATION.—This subsection shall not apply with respect to—

''(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) or alcohol (as so defined) sold or used after December 31, 2010, and

''(B) any biodiesel mixture (as defined in section 6426(c)(3)) or biodiesel (as so defined) or agri-biodiesel (as so defined) sold or used after December 31, 2006.''.

(10) Section 6427(i)(3) is amended—

(A) by striking ''subsection (f)'' both places it appears in subparagraph (A) and inserting ''subsection (e)(1)'',

(B) by striking ''gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))'' in subparagraph (A) and inserting ''a mixture described in section 6426'',

(C) by adding at the end of subparagraph (A) the following new flush sentence:

''In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).'',

(D) by striking ''subsection (f)(1)'' in subparagraph (B) and inserting ''subsection (e)(1)'',

(E) by striking ''20 days of the date of the filing of such claim'' in subparagraph (B) and inserting ''45 days of the date of the filing of such claim (20 days in the case of an electronic claim)'', and

(F) by striking ''ALCOHOL MIXTURE'' in the heading and inserting ''ALCOHOL FUEL AND BIODIESEL MIXTURE''.

(11) Section 9503(b)(1) is amended by adding at the end the following new flush sentence:

''For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.''.

(12) Section 9503(b)(4) is amended—

(A) by adding ''or'' at the end of subparagraph (C),

(B) by striking the comma at the end of subparagraph (D)(iii) and inserting a period, and

(C) by striking subparagraphs (E) and (F).

(13) The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

''Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.''.

(14) TARIFF SCHEDULE.—Headings 9901.00.50 and 9901.00.52 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007) are each amended in the effective period column by striking ''10/1/2007'' each place it appears and inserting ''1/1/2011''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to fuel sold or used after September 30, 2004.

(2) REGISTRATION REQUIREMENT.—The amendment made by subsection (b) shall take effect on April 1, 2005.

(3) EXTENSION OF ALCOHOL FUELS CREDIT.—The amendments made by paragraphs (3), (4), and (14) of subsection (c) shall take effect on the date of the enactment of this Act.

(4) REPEAL OF GENERAL FUND RETENTION OF CERTAIN ALCOHOL FUELS TAXES.—The amendments made by subsection (c)(12) shall apply to fuel sold or used after September 30, 2003.

(e) FORMAT FOR FILING.—The Secretary of the Treasury shall describe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (c)(10)(C)) not later than September 30, 2004.

SEC. 862. BIODIESEL INCOME TAX CREDIT.

(a) 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 inserting after section 40A the following new section:

''SEC. 40B. BIODIESEL USED AS FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

''(1) the biodiesel mixture credit, plus

''(2) the biodiesel credit.

''(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

''(1) BIODIESEL MIXTURE CREDIT.—

''(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

''(B) QUALIFIED BIODIESEL MIXTURE.—The term 'qualified biodiesel mixture' means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

''(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

''(ii) is used as a fuel by the taxpayer producing such mixture.

''(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

''(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

''(ii) for the taxable year in which such sale or use occurs.

''(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

''(2) BIODIESEL CREDIT.—

''(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

''(i) is used by the taxpayer as a fuel in a trade or business, or

''(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

''(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

''(3) CREDIT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.

''(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

''(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427(e).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BIODIESEL.—The term 'biodiesel' means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

''(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

''(B) the requirements of the American Society of Testing and Materials D6751.

''(2) AGRI-BIODIESEL.—The term 'agri-biodiesel' means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

''(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL, ETC.—

''(A) MIXTURES.—If—

''(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

''(ii) any person—

''(I) separates the biodiesel from the mixture, or

''(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

''(B) BIODIESEL.—If—

''(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

''(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

''(C) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

''(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any sale or use after December 31, 2006.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting '', plus'', and by adding at the end the following new paragraph:

''(30) the biodiesel fuels credit determined under section 40B(a).''.

(c) CONFORMING AMENDMENTS.—

(1)(A) Section 87, as amended by this Act, is amended—

(i) by striking ''and'' at the end of paragraph (1),

(ii) by striking the period at the end of paragraph (2) and inserting '', and'',

(iii) by adding at the end the following new paragraph:

''(3) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40B(a).'', and

(iv) by striking ''**FUEL CREDIT**'' in the heading and inserting ''**AND BIODIESEL FUELS CREDITS**''.

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking ''fuel credit'' and inserting ''and biodiesel fuels credits''.

(2) Section 196(c), as amended by this Act, is amended by striking ''and'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', and'', and by adding at the end the following new paragraph:

''(13) the biodiesel fuels credit determined under section 40B(a).''.

(3) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 40 the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel produced, and sold or used, after September 30, 2004, in taxable years ending after such date.

Subtitle H—Fuel Fraud Prevention

SEC. 870. SHORT TITLE.

This subtitle may be cited as the ''Fuel Fraud Prevention Act of 2004''.

PART I—AVIATION JET FUEL

SEC. 871. TAXATION OF AVIATION-GRADE KEROSENE.

(a) RATE OF TAX.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) is amended by striking ''and''

at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ''and'', and by adding at the end the following new clause:

''(iv) in the case of aviation-grade kerosene, 21.8 cents per gallon.''.

(2) COMMERCIAL AVIATION.—Paragraph (2) of section 4081(a) is amended by adding at the end the following new subparagraph:

''(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.''.

(3) NONTAXABLE USES.—

(A) IN GENERAL.—Section 4082 is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

''(e) AVIATION-GRADE KEROSENE.—In the case of aviation-grade kerosene which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft, the rate of tax under section 4081(a)(2)(A)(iv) shall be zero.''.

(B) CONFORMING AMENDMENTS.—

(i) Subsection (b) of section 4082 is amended by adding at the end the following new flush sentence: ''The term 'nontaxable use' does not include the use of aviation-grade kerosene in an aircraft.''.

(ii) Section 4082(d) is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(4) NONAIRCRAFT USE OF AVIATION-GRADE KEROSENE.—

(A) IN GENERAL.—Subparagraph (B) of section 4041(a)(1) is amended by adding at the end the following new sentence: ''This subparagraph shall not apply to aviation-grade kerosene.''.

(B) CONFORMING AMENDMENT.—The heading for paragraph (1) of section 4041(a) is amended by inserting ''AND KEROSENE'' after ''DIESEL FUEL''.

(b) COMMERCIAL AVIATION.—Section 4083 is amended redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

''(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term 'commercial aviation' means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by section 4261 and 4271 by reason of section 4281 or 4282 or by reason of section 4261(h).''.

(c) REFUNDS.—

(1) IN GENERAL.—Paragraph (4) of section 6427(l) is amended to read as follows:

''(4) REFUNDS FOR AVIATION-GRADE KEROSENE.—

''(A) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene used in commercial aviation (as defined in section 4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4081 as is attributable to—

''(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

''(ii) so much of the rate of tax specified in section 4081(a)(2)(A)(iv) as does not exceed 4.3 cents per gallon.

''(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—With respect to aviation-grade kerosene, if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(2) TIME FOR FILING CLAIMS.—Subparagraph (A) of section 6427(i)(4) is amended—

(A) by striking ''subsection (l)(5)'' both places it appears and inserting ''paragraph (4)(B) or (5) of subsection (l)'', and

(B) by striking ''the preceding sentence'' and inserting ''subsection (l)(5)''.

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6427(l)(2) is amended to read as follows:

''(B) in the case of aviation-grade kerosene—

''(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

''(ii) any use in commercial aviation (within the meaning of section 4083(b)).''.

(d) REPEAL OF PRIOR TAXATION OF AVIATION FUEL.—

(1) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by striking subpart B and by redesignating subpart C as subpart B.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041(c) is amended to read as follows:

''(c) AVIATION-GRADE KEROSENE.—

''(1) IN GENERAL.—There is hereby imposed a tax upon aviation-grade kerosene—

''(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

''(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

''(2) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this subsection on the sale or use of any aviation-grade kerosene if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

''(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax specified in section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.''.

(B) Section 4041(d)(2) is amended by striking ''section 4091'' and inserting ''section 4081''.

(C) Section 4041 is amended by striking subsection (e).

(D) Section 4041 is amended by striking subsection (i).

(E) Section 4041(m)(1) is amended to read as follows:

''(1) IN GENERAL.—In the case of the sale or use of any partially exempt methanol or ethanol fuel, the rate of the tax imposed by subsection (a)(2) shall be—

''(A) after September 30, 1997, and before September 30, 2009—

''(i) in the case of fuel none of the alcohol in which consists of ethanol, 9.15 cents per gallon, and

''(ii) in any other case, 11.3 cents per gallon, and

''(B) after September 30, 2009—

''(i) in the case of fuel none of the alcohol in which consists of ethanol, 2.15 cents per gallon, and

''(ii) in any other case, 4.3 cents per gallon.''.

(F) Sections 4101(a), 4103, 4221(a), and 6206 are each amended by striking '', 4081, or 4091'' and inserting ''or 4081''.

(G) Section 6416(b)(2) is amended by striking ''4091 or''.

(H) Section 6416(b)(3) is amended by striking ''or 4091'' each place it appears.

(I) Section 6416(d) is amended by striking ''or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)''.

(J) Section 6427 is amended by striking subsection (f).

(K) Section 6427(j)(1) is amended by striking '', 4081, and 4091'' and inserting ''and 4081''.

(L)(i) Section 6427(l)(1) is amended to read as follows:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any refund paid to the ultimate vendor under paragraph (4)(B).''.

(ii) Paragraph (5)(B) of section 6427(l) is amended by striking ''Paragraph (1)(A) shall not apply to kerosene'' and inserting ''Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)''.

(M) Subparagraph (B) of section 6724(d)(1), as amended by this Act, is amended by striking clause (xvi) and by redesignating clauses (xvii), (xviii), and (xix) as clauses (xvi), (xvii), and (xviii), respectively.

(N) Paragraph (2) of section 6724(d), as amended by this Act, is amended by striking subparagraph (X) and by redesignating subparagraphs (Y), (Z), (AA), (BB), and (CC) as subparagraphs (X), (Y), (Z), (AA), and (BB), respectively.

(O) Paragraph (1) of section 9502(b) is amended by adding ''and'' at the end of subparagraph (B) and by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

''(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and''.

(P) The last sentence of section 9502(b) is amended to read as follows:

''There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).''.

(Q) Subsection (b) of section 9508 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(R) Section 9508(c)(2)(A) is amended by striking ''sections 4081 and 4091'' and inserting ''section 4081''.

(S) The table of subparts for part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A. Motor and aviation fuels.

''Subpart B. Special provisions applicable to fuels tax.''.

(T) The heading for subpart A of part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A—Motor and Aviation Fuels''.

(U) The heading for subpart B of part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart B—Special Provisions Applicable to Fuels Tax''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to aviation-grade kerosene removed, entered, or sold after September 30, 2004.

(f) FLOOR STOCKS TAX.—

(1) IN GENERAL.—There is hereby imposed on aviation-grade kerosene held on October 1, 2004, by any person a tax equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the tax imposed before such date under section 4091 of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—The person holding the kerosene on October 1, 2004, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD AND TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

(3) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

(A) at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

(B) at the rate under section 4081(a)(2)(A)(iv) to the extent of the remainder.

(4) HELD BY A PERSON.—For purposes of this section, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(5) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.

SEC. 872. TRANSFER OF CERTAIN AMOUNTS FROM THE AIRPORT AND AIRWAY TRUST FUND TO THE HIGHWAY TRUST FUND TO REFLECT HIGHWAY USE OF JET FUEL.

(a) IN GENERAL.—Section 9502(d) is amended by adding at the end the following new paragraph:

''(7) TRANSFERS FROM THE TRUST FUND TO THE HIGHWAY TRUST FUND.—

''(A) IN GENERAL.—The Secretary shall pay annually from the Airport and Airway Trust Fund into the Highway Trust Fund an amount (as determined by him) equivalent to amounts received in the Airport and Airway Trust Fund which are attributable to fuel that is used primarily for highway transportation purposes.

''(B) AMOUNTS TRANSFERRED TO MASS TRANSIT ACCOUNT.—The Secretary shall transfer 11 percent of the amounts paid into the Highway Trust Fund under subparagraph (A) to the Mass Transit Account established under section 9503(e).''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 9503 is amended—

(A) by striking ''appropriated or credited'' and inserting ''paid, appropriated, or credited'', and

(B) by striking ''or section 9602(b)'' and inserting '', section 9502(d)(7), or section 9602(b)''.

(2) Subsection (e)(1) of section 9503 is amended by striking ''or section 9602(b)'' and inserting '', section 9502(d)(7), or section 9602(b)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART II—DYED FUEL

SEC. 873. DYE INJECTION EQUIPMENT.

(a) IN GENERAL.—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting ''by mechanical injection'' after ''indelibly dyed''.

(b) DYE INJECTOR SECURITY.—Not later than June 30, 2004, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

''SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

''(a) IMPOSITION OF PENALTY.—

''(1) TAMPERING.—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, then such person shall pay a penalty in addition to the tax (if any).

''(2) FAILURE TO MAINTAIN SECURITY REQUIREMENTS.—If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty.

''(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

''(1) for each violation described in paragraph (1), the greater of—

''(A) $25,000, or

''(B) $10 for each gallon of fuel involved, and

''(2) for each—

''(A) failure to maintain security standards described in paragraph (2), $1,000, and

''(B) failure to correct a violation described in paragraph (2), $1,000 per day for each day after which such violation was discovered or such person should have reasonably known of such violation.

''(c) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item related to section 6715 the following new item:

''Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect 180 days after the date on which the Secretary issues the regulations described in subsection (b).

SEC. 874. ELIMINATION OF ADMINISTRATIVE REVIEW FOR TAXABLE USE OF DYED FUEL.

(a) IN GENERAL.—Section 6715 is amended by inserting at the end the following new subsection:

''(e) NO ADMINISTRATIVE APPEAL FOR THIRD AND SUBSEQUENT VIOLATIONS.—In the case of any person who is found to be subject to the penalty under this section after a chemical analysis of such fuel and who has been penalized under this section at least twice after the date of the enactment of this subsection, no administrative appeal or review shall be allowed with respect to such finding except in the case of a claim regarding—

''(1) fraud or mistake in the chemical analysis, or

''(2) mathematical calculation of the amount of the penalty.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 875. PENALTY ON UNTAXED CHEMICALLY ALTERED DYED FUEL MIXTURES.

(a) IN GENERAL.—Section 6715(a) (relating to dyed fuel sold for use or used in taxable use, etc.) is amended by striking ''or'' in paragraph (2), by inserting ''or'' at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

''(4) any person who has knowledge that a dyed fuel which has been altered as described in paragraph (3) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel,''.

(b) CONFORMING AMENDMENT.—Section 6715(a)(3) is amended by striking ''alters, or attempts to alter,'' and inserting ''alters, chemically or otherwise, or attempts to so alter,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 876. TERMINATION OF DYED DIESEL USE BY INTERCITY BUSES.

(a) IN GENERAL.—Paragraph (3) of section 4082(b) (relating to nontaxable use) is amended to read as follows:

''(3) any use described in section 4041(a)(1)(C)(iii)(II).''.

(b) ULTIMATE VENDOR REFUND.—Subsection (b) of section 6427 is amended by adding at the end the following new paragraph:

''(4) REFUNDS FOR USE OF DIESEL FUEL IN CERTAIN INTERCITY BUSES.—

''(A) IN GENERAL.—With respect to any fuel to which paragraph (2)(A) applies, if the ultimate purchaser of such fuel waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

''(B) CREDIT CARDS.—For purposes of this paragraph, if the sale of such fuel is made by means of a credit card, the person extending credit to the ultimate purchaser shall be deemed to be the ultimate vendor.''.

(c) PAYMENT OF REFUNDS.—Subparagraph (A) of section 6427(i)(4), as amended by this Act, is amended by inserting ''subsections (b)(4) and'' after ''filed under''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after September 30, 2004.

PART III—MODIFICATION OF INSPECTION OF RECORDS PROVISIONS

SEC. 877. AUTHORITY TO INSPECT ON-SITE RECORDS.

(a) IN GENERAL.—Section 4083(d)(1)(A) (relating to administrative authority), as amended by this Act, is amended by striking ''and'' at the end of clause (i) and by inserting after clause (ii) the following new clause:

''(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 878. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 6717. REFUSAL OF ENTRY.

''(a) IN GENERAL.—In addition to any other penalty provided by law, any person who refuses to admit entry or refuses to permit any other action by the Secretary authorized by section 4083(d)(1) shall pay a penalty of $1,000 for such refusal.

''(b) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4083(d)(3), as amended by this Act, is amended—

(A) by striking ''ENTRY.—The penalty'' and inserting: ''ENTRY.—

''(A) FORFEITURE.—The penalty'', and

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

''(B) ASSESSABLE PENALTY.—For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.''.

(2) The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 6717. Refusal of entry.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART IV—REGISTRATION AND REPORTING REQUIREMENTS

SEC. 879. REGISTRATION OF PIPELINE OR VESSEL OPERATORS REQUIRED FOR EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.

(a) IN GENERAL.—Section 4081(a)(1)(B) (relating to exemption for bulk transfers to registered terminals or refineries) is amended—

(1) by inserting ''by pipeline or vessel'' after ''transferred in bulk'', and

(2) by inserting '', the operator of such pipeline or vessel,'' after ''the taxable fuel''.

(b) CIVIL PENALTY FOR CARRYING TAXABLE FUELS BY NONREGISTERED PIPELINES OR VESSELS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 6718. CARRYING TAXABLE FUELS BY NONREGISTERED PIPELINES OR VESSELS.

''(a) IMPOSITION OF PENALTY.—If any person knowingly transfers any taxable fuel (as defined in section 4083(a)(1)) in bulk pursuant to section 4081(a)(1)(B) to an unregistered, such person shall pay a penalty in addition to the tax (if any).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the penalty under subsection (a) on each act shall be an amount equal to the greater of—

''(A) $10,000, or

''(B) $1 per gallon.

''(2) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, paragraph (1) shall be applied by increasing the amount in paragraph (1) by the product of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

''(c) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

''(d) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 6718. Carrying taxable fuels by nonregistered pipelines or vessels.''.

(c) PUBLICATION OF REGISTERED PERSONS.—Not later than June 30, 2004, the Secretary of the Treasury shall publish a list of persons required to be registered under section 4101 of the Internal Revenue Code of 1986.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2004.

SEC. 880. DISPLAY OF REGISTRATION.

(a) IN GENERAL.—Subsection (a) of section 4101 (relating to registration) is amended—

(1) by striking ''Every'' and inserting the following:

''(1) IN GENERAL.—Every'', and

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

''(2) DISPLAY OF REGISTRATION.—Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an electronic identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.''.

(b) CIVIL PENALTY FOR FAILURE TO DISPLAY REGISTRATION.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 6719. FAILURE TO DISPLAY REGISTRATION OF VESSEL.

''(a) FAILURE TO DISPLAY REGISTRATION.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(2) shall pay a penalty of $500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

''(b) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 6719. Failure to display registration of vessel.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 881. REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC.

(a) IN GENERAL.—Section 4101(a), as amended by this Act, is amended by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

''(2) REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC.—The Secretary shall require registration by any person which—

''(A) operates a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or

''(B) holds an inventory position with respect to a taxable fuel in such a terminal.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 882. PENALTIES FOR FAILURE TO REGISTER AND FAILURE TO REPORT.

(a) INCREASED PENALTY.—Subsection (a) of section 7272 (relating to penalty for failure to register) is amended by inserting ''($10,000 in the case of a failure to register under section 4101)'' after ''$50''.

(b) INCREASED CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended by striking ''$5,000'' and inserting ''$10,000''.

(c) ASSESSABLE PENALTY FOR FAILURE TO REGISTER.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 6720. FAILURE TO REGISTER.

''(a) FAILURE TO REGISTER.—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

''(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

''(1) $10,000 for each initial failure to register, and

''(2) $1,000 for each day thereafter such person fails to register.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 6720. Failure to register.''.

(d) ASSESSABLE PENALTY FOR FAILURE TO REPORT.—

(1) IN GENERAL.—Part II of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

"SEC. 6725. FAILURE TO REPORT INFORMATION UNDER SECTION 4101.

''(a) IN GENERAL.—In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of $10,000 in addition to the tax (if any).

''(b) FAILURES SUBJECT TO PENALTY.—For purposes of subsection (a), the failures described in this subsection are—

''(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

''(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 68 is amended by adding at the end the following new item:

''Sec. 6725. Failure to report information under section 4101.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to failures pending or occurring after September 30, 2004.

SEC. 883. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

(a) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new section:

''SEC. 4104. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

''(a) IN GENERAL.—The Secretary shall require any person claiming tax benefits—

''(1) under the provisions of section 34, 40, and 40B to file a return at the time such person claims such benefits (in such manner as the Secretary may prescribe), and

''(2) under the provisions of section 4041(b)(2), 6426, or 6427(e) to file a monthly return (in such manner as the Secretary may prescribe).

''(b) CONTENTS OF RETURN.—Any return filed under this section shall provide such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

''(c) ENFORCEMENT.—With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new item:

''Sec. 4104. Information reporting for persons claiming certain tax benefits.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART V—IMPORTS

SEC. 884. TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.

(a) TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.—

(1) IN GENERAL.—Subpart C of part III of subchapter A of chapter 31, as amended by this Act, is amended by adding at the end the following new section:

''SEC. 4105. TAX AT ENTRY WHERE IMPORTER NOT REGISTERED.

''(a) IN GENERAL.—Any tax imposed under this part on any person not registered under section 4101 for the entry of a fuel into the United States shall be imposed at the time and point of entry.

''(b) ENFORCEMENT OF ASSESSMENT.—If any person liable for any tax described under subsection (a) has not paid the tax or posted a bond, the Secretary may—

''(1) seize the fuel on which the tax is due, or

''(2) detain any vehicle transporting such fuel,

until such tax is paid or such bond is filed.

''(c) LEVY OF FUEL.—If no tax has been paid or no bond has been filed within 5 days from the date the Secretary seized fuel pursuant to subsection (b), the Secretary may sell such fuel as provided under section 6336.''.

(2) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 31 of the Internal Revenue Code of 1986, as amended by section 5245 of this Act, is amended by adding after the last item the following new item:

''Sec. 4105. Tax at entry where importer not registered.''.

(b) DENIAL OF ENTRY WHERE TAX NOT PAID.—The Secretary of Homeland Security is authorized to deny entry into the United States of any shipment of a fuel which is taxable under section 4081 of the Internal Revenue Code of 1986 if the person entering such shipment fails to pay the tax imposed under such section or post a bond in accordance with the provisions of section 4105 of such Code.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 885. RECONCILIATION OF ON-LOADED CARGO TO ENTERED CARGO.

(a) IN GENERAL.—Subsection (a) of section 343 of the Trade Act of 2002 is amended by inserting at the end the following new paragraph:

''(4) IN GENERAL.—Subject to paragraphs (2) and (3), not later than 1 year after the enactment of this paragraph, the Secretary of Homeland Security, together with the Secretary of the Treasury, shall promulgate regulations providing for the transmission to the Internal Revenue Service, through an electronic data interchange system, of information pertaining to cargo of taxable fuels (as defined in section 4083 of the Internal Revenue Code of 1986) destined for importation into the United States prior to such importation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

PART VI—MISCELLANEOUS PROVISIONS

SEC. 886. TAX ON SALE OF DIESEL FUEL WHETHER SUITABLE FOR USE OR NOT IN A DIESEL-POWERED VEHICLE OR TRAIN.

(a) IN GENERAL.—Section 4083(a)(3) is amended—

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

''(A) IN GENERAL.—The term'', and

(2) by inserting at the end the following new subparagraph:

''(B) LIQUID SOLD AS DIESEL FUEL.—The term 'diesel fuel' includes any liquid which is sold as or offered for sale as a fuel in a diesel-powered highway vehicle or a diesel-powered train.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 40B(b)(1)(B), as added by this Act, is amended by striking ''4083(a)(3)'' and inserting ''4083(a)(3)(A)''.

(2) Section 6426(c)(3), as added by this Act, is amended by striking ''4083(a)(3)'' and inserting ''4083(a)(3)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 887. MODIFICATION OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) IN GENERAL.—

(1) REFUNDS.—Section 6427(l) is amended by adding at the end the following new paragraph:

''(6) REGISTERED VENDORS PERMITTED TO ADMINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL FUEL AND KEROSENE SOLD TO FARMERS.—

''(A) IN GENERAL.—In the case of diesel fuel or kerosene used on a farm for farming purposes (within the meaning of section 6420(c)), paragraph (1) shall not apply to the aggregate amount of such diesel fuel or kerosene if such amount does not exceed 500 gallons (as determined under subsection (i)(5)(A)(iii)).

''(B) PAYMENT TO ULTIMATE VENDOR.—The amount which would (but for subparagraph (A)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(2) FILING OF CLAIMS.—Section 6427(i) is amended by inserting at the end the following new paragraph:

''(5) SPECIAL RULE FOR VENDOR REFUNDS WITH RESPECT TO FARMERS.—

''(A) IN GENERAL.—A claim may be filed under subsection (l)(6) by any person with respect to fuel sold by such person for any period—

''(i) for which $200 or more ($100 or more in the case of kerosene) is payable under subsection (l)(6),

''(ii) which is not less than 1 week, and

''(iii) which is for not more than 500 gallons for each farmer for which there is a claim.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under the preceding sentence.

''(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.''.

(3) CONFORMING AMENDMENTS.—

(A) Section 6427(l)(5)(A) is amended to read as follows:

''(A) IN GENERAL.—Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.''.

(B) The heading for section 6427(l)(5) is amended by striking ''FARMERS AND''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuels sold for nontaxable use after the date of the enactment of this Act.

SEC. 888. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE VENDORS.

(a) IN GENERAL.—Paragraph (4) of section 6416(a) (relating to abatements, credits, and refunds) is amended to read as follows:

''(4) REGISTERED ULTIMATE VENDOR TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

''(A) IN GENERAL.—For purposes of this subsection, if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101. For purposes of this subparagraph, if the sale of gasoline is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.

''(B) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).''.

(b) CREDIT CARD PURCHASES OF DIESEL FUEL OR KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Section 6427(l)(5)(C) (relating to nontaxable uses of diesel fuel, kerosene, and aviation fuel), as amended by this Act, is amended by adding at the end the following new sentence: ''For purposes of this subparagraph, if the sale of diesel fuel or kerosene is

made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 889. TWO-PARTY EXCHANGES.

(a) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32, as amended by this Act, is amended by adding at the end the following new section:

''SEC. 4106. TWO-PARTY EXCHANGES.

''(a) IN GENERAL.—In a two-party exchange, the delivering person shall not be liable for the tax imposed under of section 4081(a)(1)(A)(ii).

''(b) TWO-PARTY EXCHANGE.—The term 'two-party exchange' means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant to a receiving person who is so registered where all of the following occur:

''(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

''(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

''(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction to the Secretary.

''(4) The transaction is the subject of a written contract.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32, as amended by of this Act, is amended by adding after the last item the following new item:

''Sec. 4106. Two-party exchanges.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 890. MODIFICATIONS OF TAX ON USE OF CERTAIN VEHICLES.

(a) NO PRORATION OF TAX UNLESS VEHICLE IS DESTROYED OR STOLEN.—

(1) IN GENERAL.—Section 4481(c) (relating to proration of tax) is amended to read as follows:

''(c) PRORATION OF TAX WHERE VEHICLE SOLD, DESTROYED, OR STOLEN.—

''(1) IN GENERAL.—If in any taxable period a highway motor vehicle is sold, destroyed, or stolen before the first day of the last month in such period and not subsequently used during such taxable period, the tax shall be reckoned proportionately from the first day of the month in such period in which the first use of such highway motor vehicle occurs to and including the last day of the month in which such highway motor vehicle was sold, destroyed, or stolen.

''(2) DESTROYED.—For purposes of paragraph (1), a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 6156 (relating to installment payment of tax on use of highway motor vehicles) is repealed.

(B) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6156.

(b) DISPLAY OF TAX CERTIFICATE.—Paragraph (2) of section 4481(d) (relating to one tax liability for period) is amended to read as follows:

''(2) DISPLAY OF TAX CERTIFICATE.—Under regulations by the Secretary, every taxpayer which pays the tax imposed under this section with respect to a highway motor vehicle shall, not later than 1 month after the due date of the return of tax with respect to each taxable period, receive and display on such vehicle an electronic identification device prescribed by the Secretary.''.

(c) ELECTRONIC FILING.—Section 4481, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) ELECTRONIC FILING.—Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.''.

(d) REPEAL OF REDUCTION IN TAX FOR CERTAIN TRUCKS.—Section 4483 of the Internal Revenue Code of 1986 is amended by striking subsection (f).

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

(2) REGULATIONS REGARDING DISPLAY OF TAX CERTIFICATE.—The Secretary of the Treasury shall issue regulations required under section 4481(d)(2) of the Internal Revenue Code of 1986 (as added by subsection (b)) not later than October 1, 2005.

SEC. 891. DEDICATION OF REVENUES FROM CERTAIN PENALTIES TO THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes), is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

''(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties assessed under sections 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).''.

(b) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 9503 is amended by inserting ''AND PENALTIES'' after ''TAXES''.

(2) The heading of paragraph (1) of section 9503(b) is amended by striking ''IN GENERAL'' and inserting ''CERTAIN TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after October 1, 2004.

SEC. 892. NONAPPLICATION OF EXPORT EXEMPTION TO DELIVERY OF FUEL TO MOTOR VEHICLES REMOVED FROM UNITED STATES.

(a) IN GENERAL.—Section 4221(d)(2) (defining export) is amended by adding at the end the following new sentence: ''Such term does not include the delivery of a taxable fuel (as defined in section 4083(a)(1)) into a fuel tank of a motor vehicle which is shipped or driven out of the United States.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4041(g) (relating to other exemptions) is amended by adding at the end the following new sentence: ''Paragraph (3) shall not apply to the sale for delivery of a liquid into a fuel tank of a motor vehicle which is shipped or driven out of the United States.''.

(2) Clause (iv) of section 4081(a)(1)(A) (relating to tax on removal, entry, or sale) is amended by inserting ''or at a duty-free sales enterprise (as defined in section 555(b)(8) of the Tariff Act of 1930)'' after ''section 4101''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or deliveries made after the date of the enactment of this Act.

PART VII—TOTAL ACCOUNTABILITY

SEC. 893. TOTAL ACCOUNTABILITY.

(a) TAXATION OF REPORTABLE LIQUIDS.—

(1) IN GENERAL.—Section 4081(a), as amended by this Act, is amended—

(A) by inserting ''or reportable liquid'' after ''taxable fuel'' each place it appears, and

(B) by inserting ''such liquid'' after ''such fuel'' in paragraph (1)(A)(iv).

(2) RATE OF TAX.—Subparagraph (A) of section 4081(a)(2), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) in the case of reportable liquids, the rate determined under section 4083(c)(2).''.

(3) EXEMPTION.—Section 4081(a)(1) is amended by adding at the end the following new subparagraph:

''(C) EXEMPTION FOR REGISTERED TRANSFERS OF REPORTABLE LIQUIDS.—The tax imposed by this paragraph shall not apply to any removal, entry, or sale of a reportable liquid if—

''(i) such removal, entry, or sale is to a registered person who certifies that such liquid will not be used as a fuel or in the production of a fuel, or

''(ii) the sale is to the ultimate purchaser of such liquid.''.

(4) REPORTABLE LIQUIDS.—Section 4083, as amended by this Act, is amended by redesignating subsections (c) and (d) (as redesignated by this Act) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new section:

''(c) REPORTABLE LIQUID.—For purposes of this subpart—

''(1) IN GENERAL.—The term 'reportable liquid' means any petroleum-based liquid other than a taxable fuel.

''(2) TAXATION.—

''(A) GASOLINE BLEND STOCKS AND ADDITIVES.—Gasoline blend stocks and additives which are reportable liquids (as defined in paragraph (1)) shall be subject to the rate of tax under clause (i) of section 4081(a)(2)(A).

''(B) OTHER REPORTABLE LIQUIDS.—Any reportable liquid (as defined in paragraph (1)) not described in subparagraph (A) shall be subject to the rate of tax under clause (iii) of section 4081(a)(2)(A).''.

(5) CONFORMING AMENDMENTS.—

(A) Section 4081(e) is amended by inserting ''or reportable liquid'' after ''taxable fuel''.

(B) Section 4083(d) (relating to certain use defined as removal), as redesignated by paragraph (4), is amended by inserting ''or reportable liquid'' after ''taxable fuel''.

(C) Section 4083(e)(1) (relating to administrative authority), as redesignated by paragraph (4), is amended—

(i) in subparagraph (A)—

(I) by inserting ''or reportable liquid'' after ''taxable fuel'', and

(II) by inserting ''or such liquid'' after ''such fuel'' each place it appears, and

(ii) in subparagraph (B), by inserting ''or any reportable liquid'' after ''any taxable fuel''.

(D) Section 4101(a)(2), as added by this Act, is amended by inserting ''or a reportable liquid'' after ''taxable fuel''.

(E) Section 4101(a)(3), as added and redesignated by this Act, is amended by inserting ''or any reportable liquid'' before the period at the end.

(F) Section 4102 is amended by inserting ''or any reportable liquid'' before the period at the end.

(G)(i) Section 6718, as added by this Act, is amended—

(I) in subsection (a), by inserting ''or any reportable liquid (as defined in section 4083(c)(1))'' after ''section 4083(a)(1))'', and

(II) in the heading, by inserting ''OR REPORTABLE LIQUIDS'' after ''TAXABLE FUEL''.

(ii) The item relating to section 6718 in table of sections for part I of subchapter B of

chapter 68, as added by this Act, is amended by inserting ''or reportable liquids'' after ''taxable fuels''.

(H) Section 6427(h) is amended to read as follows:

''(h) GASOLINE BLEND STOCKS OR ADDITIVES AND REPORTABLE LIQUIDS.—Except as provided in subsection (k)—

''(1) if any gasoline blend stock or additive (within the meaning of section 4083(a)(2)) is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, or

''(2) if any reportable liquid (within the meaning of section 4083(c)(1)) is not used by any person to produce a taxable fuel and such person establishes that the ultimate use of such reportable liquid is not to produce a taxable fuel,

then the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such gasoline blend stock or additive or such reportable liquid.''.

(I) Section 7232, as amended by this Act, is amended by inserting ''or reportable liquid (within the meaning of section 4083(c)(1))'' after ''section 4083)''.

(J) Section 343 of the Trade Act of 2002, as amended by this Act, is amended by inserting ''and reportable liquids (as defined in section 4083(c)(1) of such Code)'' after ''Internal Revenue Code of 1986)''.

(b) DYED DIESEL.—Section 4082(a) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''and'', and by inserting after paragraph (3) the following new paragraph:

''(4) which is removed, entered, or sold by a person registered under section 4101.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to reportable liquids (as defined in section 4083(c) of the Internal Revenue Code) and fuel sold or used after September 30, 2004.

SEC. 894. EXCISE TAX REPORTING.

(a) IN GENERAL.—Part II of subchapter A of chapter 61 is amended by adding at the end the following new subpart:

''SUBPART E—EXCISE TAX REPORTING

''SEC. 6025. RETURNS RELATING TO FUEL TAXES.

''(a) IN GENERAL.—The Secretary shall require any person liable for the tax imposed under Part III of subchapter A of chapter 32 to file a return of such tax on a monthly basis. Not earlier than January 1, 2005, such filings shall be in electronic form as prescribed by the Secretary.

''(b) INFORMATION INCLUDED WITH RETURN.—The Secretary shall require any person filing a return under subsection (a) to provide information regarding any refined product (whether or not such product is taxable under this title) removed from a terminal during the period for which such return applies.''.

(b) CONFORMING AMENDMENT.—The table of parts for subchapter A of chapter 61 is amended by adding at the end the following new item:

''Subpart E—Excise Tax Reporting''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after September 30, 2004.

SEC. 895. INFORMATION REPORTING.

(a) IN GENERAL.—Section 4101(d) is amended by adding at the end the following new flush sentence:

''The Secretary shall require reporting under the previous sentence with respect to taxable fuels removed, entered, or transferred from any refinery, pipeline, or vessel which is registered under this section. Any person who is required to report under this subsection and who has 25 or more reportable transactions in a month shall file such report in electronic format.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply on October 1, 2004.

Subtitle I—Mobile Machinery

SEC. 896. TREATMENT OF MOBILE MACHINERY.

(a) TREATMENT OF MOBILE MACHINERY AS HIGHWAY VEHICLE.—

(1) IN GENERAL.—Section 7701(a) (relating to definitions) is amended by adding at the end the following new paragraph:

''(48) TREATMENT OF MOBILE MACHINERY AS HIGHWAY VEHICLE.—

''(A) IN GENERAL.—A vehicle described in subparagraph (B) shall be treated as a highway vehicle.

''(B) MOBILE MACHINERY.—A vehicle is described in this subparagraph if such vehicle consists of a chassis—

''(i) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

''(ii) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

''(iii) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(b) ELIGIBILITY FOR REFUND IN CASE OF LIMITED USE OF VEHICLE ON HIGHWAYS.—

(1) RETAIL SALES AND TIRE TAXES.—

(A) IN GENERAL.—Section 6416(b) (relating to special cases in which tax payments considered overpayments) is amended by adding at the end the following new paragraph:

''(7) MOBILE MACHINERY.—

''(A) IN GENERAL.—If the tax imposed by section 4051 or 4071 has been paid with respect to any vehicle described in section 7701(a)(48)(B) which meets the use-based test for each of the first 2 12-month periods after such payment, 50 percent of such tax shall be considered an overpayment for each such period.

''(B) USE-BASED TEST.—For purposes of subparagraph (A), the use-based test is met if the use of the vehicle on public highways was less than 5,000 miles during any 12-month period.

''(C) SPECIAL RULE FOR USE BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—For purposes of subparagraph (A), the use-based test shall be determined without regard to any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a).''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect on the day after the date of the enactment of this Act.

(2) FUEL TAXES.—

(A) IN GENERAL.—Section 6421(e)(2) (defining off-highway business use) is amended by adding at the end the following new subparagraph:

''(C) USES IN MOBILE MACHINERY.—

''(i) IN GENERAL.—The term 'off-highway business use' shall include any use in a vehicle described in section 7701(a)(48)(B) which meets the use-based test.

''(ii) USE-BASED TEST.—For purposes of clause (i), the use-based test is met if the use of the vehicle on public highways was less than 5,000 miles during the taxpayer's taxable year.

''(iii) SPECIAL RULE FOR USE BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—For purposes of clause (i), the use-based test shall be determined without regard to any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a).''.

(B) ANNUAL REFUND OF TAX PAID.—Section 6427(i)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

''(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used in any off-highway business use described in section 6421(e)(2)(C).''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years beginning after the date of the enactment of this Act.

(3) CONFORMING AMENDMENT FOR TAX-EXEMPT USERS WITH RESPECT TO USE TAX.—

(A) IN GENERAL.—Section 4483(d)(1) (relating to suspension of tax) is amended by adding at the end the following new subparagraph:

''(C) SPECIAL RULE FOR USE BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—Subparagraph (A) shall be determined without regard to any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a).''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect on the day after the date of the enactment of this Act.

Subtitle J—Additional Provisions

SEC. 897. STUDY OF EFFECTIVENESS OF CERTAIN PROVISIONS BY GAO.

(a) STUDY.—The Comptroller General of the United States shall undertake an ongoing analysis of—

(1) the effectiveness of the alternative motor vehicles and fuel incentives provisions under subtitle B and the conservation and energy efficiency provisions under subtitle C, and

(2) the recipients of the tax benefits contained in such provisions, including an identification of such recipients by income and other appropriate measurements.

Such analysis shall quantify the effectiveness of such provisions by examining and comparing the Federal Government's forgone revenue to the aggregate amount of energy actually conserved and tangible environmental benefits gained as a result of such provisions.

(b) REPORTS.—The Comptroller General of the United States shall report the analysis required under subsection (a) to Congress not later than December 31, 2004, and annually thereafter.

SEC. 898. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(a)(1) is amended by striking ''or a diesel-powered train'' each place it appears and by striking ''or train''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 4041(a)(1) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(B) Subparagraph (C) of section 4041(b)(1) is amended by striking all that follows ''section 6421(e)(2)'' and inserting a period.

(C) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

''(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

''(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.''

(D) Subsection (f) of section 4082 is amended by striking ''section 4041(a)(1)'' and inserting ''subsections (d)(3) and (a)(1) of section 4041, respectively''.

(E) Paragraph (3) of section 4083(a) is amended by striking ''or a diesel-powered train''.

(F) Paragraph (3) of section 6421(f) is amended to read as follows:

''(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.''

(G) Paragraph (3) of section 6427(l) is amended to read as follows:

''(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof.''

(b) FUEL USED ON INLAND WATERWAYS.—

(1) IN GENERAL.—Paragraph (1) of section 4042(b) is amended by adding ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 4042(b) is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 899. DISTRIBUTIONS FROM PUBLICLY TRADED PARTNERSHIPS TREATED AS QUALIFYING INCOME OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (2) of section 851(b) (defining regulated investment company) is amended to read as follows:

''(2) at least 90 percent of its gross income is derived from—

''(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

''(B) distributions or other income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and''

(b) SOURCE FLOW-THROUGH RULE NOT TO APPLY.—The last sentence of section 851(b) is amended by inserting ''(other than a qualified publicly traded partnership as defined in subsection (h))'' after ''derived from a partnership''.

(c) LIMITATION ON OWNERSHIP.—Subsection (c) of section 851 is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

''(5) The term 'outstanding voting securities of such issuer' shall include the equity securities of a qualified publicly traded partnership (as defined in subsection (h)).''.

(d) DEFINITION OF QUALIFIED PUBLICLY TRADED PARTNERSHIP.—Section 851 is amended by adding at the end the following new subsection:

''(h) QUALIFIED PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'qualified publicly traded partnership' means a publicly traded partnership described in section 7704(b) other than a partnership which would satisfy the gross income requirements of section 7704(c)(2) if qualifying income included only income described in subsection (b)(2)(A).''.

(e) DEFINITION OF QUALIFYING INCOME.—Section 7704(d)(4) is amended by striking ''section 851(b)(2)'' and inserting ''section 851(b)(2)(A)''.

(f) LIMITATION ON COMPOSITION OF ASSETS.—Subparagraph (B) of section 851(b)(3) is amended to read as follows:

''(B) not more than 25 percent of the value of its total assets is invested in—

''(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

''(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

''(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).''.

(g) APPLICATION OF SPECIAL PASSIVE ACTIVITY RULE TO REGULATED INVESTMENT COMPANIES.—Subsection (k) of section 469 (relating to separate application of section in case of publicly traded partnerships) is amended by adding at the end the following new paragraph:

''(4) APPLICATION TO REGULATED INVESTMENT COMPANIES.—For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.''.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 899A. CERTAIN BUSINESS RELATED CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) SPECIAL RULES FOR SPECIFIED CREDITS.—

''(A) IN GENERAL.—In the case of specified credits—

''(i) this section and section 39 shall be applied separately with respect to such credits, and

''(ii) in applying paragraph (1) to such credits—

''(I) the tentative minimum tax shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the specified credits).

''(B) SPECIFIED CREDITS.—For purposes of this subsection, the term 'specified credits' includes—

''(i) for taxable years beginning after December 31, 2004, the credit determined under section 40, and

''(ii) the credit determined under section 45 to the extent that such credit is attributable to electricity produced—

''(I) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

''(II) during the 4-year period beginning on the date that such facility was originally placed in service.''.

(b) CONFORMING AMENDMENTS.—Paragraph (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each amended by inserting ''or the specified credits'' after ''employee credit''.

(c) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 899B. CREDIT FOR QUALIFYING POLLUTION CONTROL EQUIPMENT.

(a) ALLOWANCE OF QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.—Section 46 (relating to amount of credit), as amended by this Act, is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) the qualifying pollution control equipment credit.''.

(b) AMOUNT OF QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit), as amended by this Act, is amended by inserting after section 48A the following new section:

''SEC. 48B. QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.

''(a) IN GENERAL.—For purposes of section 46, the qualifying pollution control equipment credit for any taxable year is an amount equal to 15 percent of the basis of the qualifying pollution control equipment placed in service at a qualifying facility during such taxable year.

''(b) QUALIFYING POLLUTION CONTROL EQUIPMENT.—For purposes of this section, the term 'qualifying pollution control equipment' means any technology installed in or on a qualifying facility to reduce air emissions of any pollutant regulated by the Environmental Protection Agency under the Clean Air Act, including thermal oxidizers, regenerative thermal oxidizers, scrubber systems, evaporative control systems, vapor recovery systems, flair systems, bag houses, cyclones, continuous emissions monitoring systems, and low nitric oxide burners.

''(c) QUALIFYING FACILITY.—For purposes of this section, the term 'qualifying facility' means any facility which produces not less than 1,000,000 gallons of ethanol during the taxable year.

''(d) SPECIAL RULE FOR CERTAIN SUBSIDIZED PROPERTY.—Rules similar to section 48(a)(4) shall apply for purposes of this section.

''(e) CERTAIN QUALIFIED PROGRESS EXPENDITURES RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.''.

(c) RECAPTURE OF CREDIT WHERE EMISSIONS REDUCTION OFFSET IS SOLD.—Paragraph (1) of section 50(a) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR QUALIFYING POLLUTION CONTROL EQUIPMENT.—For purposes of

subparagraph (A), any investment property which is qualifying pollution control equipment (as defined in section 48B(b)) shall cease to be investment credit property with respect to a taxpayer if such taxpayer receives a payment in exchange for a credit for emission reductions attributable to such qualifying pollution control equipment for purposes of an offset requirement under part D of title I of the Clean Air Act.''.

(d) SPECIAL RULE FOR BASIS REDUCTION; RECAPTURE OF CREDIT.—Paragraph (3) of section 50(c) (relating to basis adjustment to investment credit property), as amended by this Act, is amended by inserting ''or qualifying pollution control equipment credit'' after ''energy credit''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 899C. ELECTRIC TRANSMISSION PROPERTY TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and by inserting '', and'', and by adding at the end the following new clause:

''(v) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale the original use of which commences with the taxpayer after the date of the enactment of this clause.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (E)(iv) the following:

''(E)(v) ..... 30''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, and prior to July 1, 2006.

TITLE IX—HOMESTEAD PRESERVATION ACT

SEC. 901. SHORT TITLE.

This title may be cited as the ''Homestead Preservation Act''.

SEC. 902. MORTGAGE PAYMENT ASSISTANCE.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Housing and Urban Development (referred to in this section as the ''Secretary'') shall establish a program under which the Secretary shall award low-interest loans to eligible individuals to enable such individuals to continue to make mortgage payments with respect to the primary residences of such individuals.

(b) ELIGIBILITY.—To be eligible to receive a loan under the program established under subsection (a), an individual shall be—

(1) an individual that is a worker adversely affected by international economic activity, as determined by the Secretary;

(2) a borrower under a loan which requires the individual to make monthly mortgage payments with respect to the primary place of residence of the individual; and

(3) enrolled in a training or assistance program.

(c) LOAN REQUIREMENTS.—

(1) IN GENERAL.—A loan provided to an eligible individual under this section shall—

(A) be for a period of not to exceed 12 months;

(B) be for an amount that does not exceed the sum of—

(i) the amount of the monthly mortgage payment owed by the individual; and

(ii) the number of months for which the loan is provided;

(C) have an applicable rate of interest that equals 4 percent;

(D) require repayment as provided for in subsection (d); and

(E) be subject to such other terms and conditions as the Secretary determines appropriate.

(2) ACCOUNT.—A loan awarded to an individual under this section shall be deposited into an account from which a monthly mortgage payment will be made in accordance with the terms and conditions of such loan.

(d) REPAYMENT.—

(1) IN GENERAL.—An individual to which a loan has been awarded under this section shall be required to begin making repayments on the loan on the earlier of—

(A) the date on which the individual has been employed on a full-time basis for 6 consecutive months; or

(B) the date that is 1 year after the date on which the loan has been approved under this section.

(2) REPAYMENT PERIOD AND AMOUNT.—

(A) REPAYMENT PERIOD.—A loan awarded under this section shall be repaid on a monthly basis over the 5-year period beginning on the date determined under paragraph (1).

(B) AMOUNT.—The amount of the monthly payment described in subparagraph (A) shall be determined by dividing the total amount provided under the loan (plus interest) by 60.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to prohibit an individual from—

(i) paying off a loan awarded under this section in less than 5 years; or

(ii) from paying a monthly amount under such loan in excess of the monthly amount determined under subparagraph (B) with respect to the loan.

(e) REGULATIONS.—Not later than 6 weeks after the date of enactment of this section, the Secretary shall promulgate regulations necessary to carry out this section, including regulations that permit an individual to certify that the individual is an eligible individual under subsection (b).

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $10,000,000 for each of fiscal years 2005 through 2009.

TITLE X—OFFICE OF FEDERAL PROCUREMENT POLICY ACT IMPROVEMENTS

SEC. 1001. REPORT ON ACQUISITIONS OF GOODS FROM FOREIGN SOURCES.

(a) REPORT.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

''SEC. 43. REPORT ON ACQUISITIONS OF GOODS FROM FOREIGN SOURCES.

''(a) Not later than 60 days after the end of each fiscal year, the head of each executive agency shall submit to Congress a report on the acquisitions that were made of articles, materials, or supplies by such executive agency in that fiscal year from entities that manufacture the articles, materials, or supplies outside the United States.

''(b) The report for a fiscal year under subsection (a) shall separately indicate the following information:

''(1) The dollar value of any articles, materials, or supplies that were manufactured outside the United States.

''(2) An itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act (41 U.S.C. 10a et seq.).

''(3) A summary of—

''(A) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

''(B) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

''(c) The head of each executive agency submitting a report under subsection (a) shall make the report publicly available by posting on an Internet website.

''(d) Subsection (a) shall not apply to any procurement for national security purposes entered into by—

''(1) the Department of Defense or any agency or entity thereof;

''(2) the Department of the Army, the Department of the Navy, the Department of the Air Force, or any agency or entity of any of the military departments;

''(3) the Department of Homeland Security;

''(4) the Department of Energy or any agency or entity thereof, with respect to the national security programs of that Department; or

''(5) any element of the intelligence community.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Office of Federal Procurement Policy Act is amended by adding at the end the following new item:

''Sec. 43. Report on acquisitions of goods from foreign sources.''.

(c) COMMERCE DEPARTMENT REPORT.—Not later than 60 days after the end of each fiscal year ending after the date of the enactment of this Act, the Secretary of Commerce shall submit to Congress and make publicly available by posting on an Internet website a report on the acquisitions by foreign governments of articles, materials, or supplies that were manufactured or extracted in the United States in that fiscal year. Such report shall indicate the dollar value of such articles, materials, or supplies.

UNANIMOUS CONSENT AGREEMENT—S. 15

Mr. FRIST. Mr. President, I ask unanimous consent that on Wednesday, May 19, at a time to be determined by the majority leader, in consultation with the minority leader, the Senate proceed to the consideration of Calendar No. 53, S. 15, the bioshield legislation. I further ask consent that the only amendment in order be a Gregg-Kennedy substitute; provided that there be 2 hours of debate equally divided between the chairman and ranking member of the HELP Committee, and upon the use or yielding back of the time, the substitute amendment be agreed to, the committee amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Senate proceed to a vote on passage, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDING THE SMALL BUSINESS INVESTMENT ACT OF 1958

Mr. FRIST. Mr. President, I ask unanimous consent that the Small Business Committee be discharged from further consideration of H.R. 923 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 923) to amend the Small Business Investment Act of 1958 to allow certain premier certified lenders to elect to maintain an alternative loss reserve.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 923) was read the third time and passed.

MEASURE PLACED ON THE CALENDAR—H.R. 4275

Mr. FRIST. Mr. President, I understand there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the second time.

The legislative clerk read as follows:

A bill (H.R. 4275) to amend the Internal Revenue Code of 1986 to permanently extend the 10-percent individual income tax rate bracket.

Mr. FRIST. In order to place the bill on the calendar under the provisions of rule XIV, I object to further proceeding.

The PRESIDING OFFICER. Objection is heard.

The bill will be placed on the calendar.

ORDERS FOR WEDNESDAY, MAY 19, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, May 19. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business for up to 90 minutes, with the Democratic leader or his designee in control of the first 45 minutes, and the majority leader or his designee in control of the final 45 minutes; provided that following morning business, the Senate resume consideration of Calendar No. 503, S. 2400, the Department of Defense authorization bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Tomorrow, following morning business, the Senate will resume debate on the Department of Defense authorization bill. We will continue the amendment process tomorrow morning. The chairman and ranking member will be here throughout the day to receive amendments, and I encourage all Members who have amendments to contact them at the earliest possible time. We would like to complete the Defense bill this week. We will need everyone's cooperation to conclude this bill before the recess. Therefore, rollcall votes should be anticipated throughout the day, and Senators will be notified when the first vote is scheduled.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:44 p.m., adjourned until Wednesday, May 19, 2004, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 18, 2004:

FEDERAL RESERVE SYSTEM

ALAN GREENSPAN, OF NEW YORK, TO BE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF FOUR YEARS. (REAPPOINTMENT)

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

CAPTAIN SAMUEL P. DE BOW, JR., NOAA FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (O–8), WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY AS DIRECTOR, NOAA CORPS AND DIRECTOR, OFFICE OF MARINE AND AVIATION OPERATIONS, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, UNDER THE PROVISIONS OF TITLE 33, UNITED STATES CODE, SECTION 3028(D)(1).

CAPTIAN RICHARD R. BEHN, NOAA FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (O–7), WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY AS DIRECTOR, MARINE AND AVIATION OPERATIONS CENTERS, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, UNDER THE PROVISIONS OF TITLE 33, UNITED STATES CODE, SECTION 3028(D)(1).

FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASS STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH: FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF AGRICULTURE

ROBERT H. HANSON, OF FLORIDA

THE FOLLOWING NAMED MEMBERS OF THE FOREIGN SERVICE TO THE DEPARTMENT OF STATE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED: CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

MARY F. BOSCIA, OF VIRGINIA
BRYAN D. LARSON, OF COLORADO
ROBERT A. PEASLEE, OF COLORADO
SHERYL A. PINCKNEY-MAAS, OF SOUTH CAROLINA
CAMERON S. WERKER, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS FOUR, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

IREAS C. COOK, OF TEXAS
JASON R. FIELD, OF WASHINGTON
JASON M. HANCOCK, OF MINNESOTA
DAVID E. KNUTI, OF VIRGINIA
MARK A. RUSSELL, OF CALIFORNIA

THE FOLLOWING NAMED MEMBERS OF THE FOREIGN SERVICE TO THE DEPARTMENT OF STATE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED: CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

LORA A. BAKER, OF CALIFORNIA

DEPARTMENT OF STATE

JEAN ELIZABETH AKERS, OF NEW YORK
SYED NAUSHER M ALI, OF CALIFORNIA
CATHY J. ARMSTRONG, OF VIRGINIA
KERA K. ARONSON, OF VIRGINIA
CHRISTOPHER CHARLES ASHE, OF THE DISTRICT OF COLUMBIA
CLAUDIA L. BAKER, OF CALIFORNIA
CHERYL R. BALTZER, OF SOUTH DAKOTA
GREGORY J. BANASZAK, OF VIRGINIA
PETER R. BARTE, OF MINNESOTA
LYNN K. BATALDEN, OF THE DISTRICT OF COLUMBIA
MICHAEL W. BENNETT, OF VIRGINIA
MICHAEL L. BENTON, OF MARYLAND
EDWARD MARTIN BOGAN, OF THE DISTRICT OF COLUMBIA
DAVID J. BOUMAN, OF WASHINGTON
THOMAS S. BOYDEN, OF VIRGINIA
JESSICA L. BROWN, OF THE DISTRICT OF COLUMBIA
DEBORAH L. CAMPBELL, OF FLORIDA
HEATHER L. CAMPBELL, OF VIRGINIA
DANA LYNN CANDELL, OF VIRGINIA
LANDRY JOSEPH CARR, OF LOUISIANA
PHILIP MICHAEL CINNAMON, OF VIRGINIA
JAYMIE D. COOK, OF VIRGINIA
DANIELLE A. COOTE, OF VIRGINIA
JOHN C. CORRAO, OF INDIANA
CHARLOTTE ANN CROUCH, OF ARIZONA
JENNIFER DENISE CROW, OF CALIFORNIA
JOANNE HELD CUMMINGS, OF TEXAS
BRIAN SEAN DARIN, OF INDIANA
JANET E. DEUTSCH, OF ILLINOIS
GARY L. DEWEY, OF ARIZONA
MARGARET ROSE DONAKOWSKI, OF VIRGINIA
JEFFREY T. DUBIEL, OF VIRGINIA
SARAH A. DUFFY, OF ILLINOIS
ALLISON D. DYESS, OF TEXAS
ERIC SHERIDAN EASLEY, OF THE DISTRICT OF COLUMBIA
KARL R. EHLERS, OF VIRGINIA
THARNTHIP T. FAIST, OF VIRGINIA
CHARLES FINFROCK, OF THE DISTRICT OF COLUMBIA
LAURA K. FOREST, OF VIRGINIA
JOY L. FULTON, OF THE DISTRICT OF COLUMBIA
CARSON GARNER, OF MARYLAND
ALAN K. GIBBS, OF FLORIDA
CARLA A. GONNEVILLE, OF CALIFORNIA
JOHN R. GROCH, OF PENNSYLVANIA
MARC E. GRUZENSKI, OF MARYLAND
PHAEDRA MARIE GWYN, OF TEXAS
GAYLE JO HALLMAN, OF VIRGINIA
KERRY HALPIN, OF VIRGINIA
JOHN C. HANSEN, OF VIRGINIA
KELLY A. HAPKA, OF TEXAS
GENE DOUGLAS HARREL, OF CALIFORNIA
JOHN CHARLES HARTMAN, OF KENTUCKY
KEVIN A. HERRERA, OF VIRGINIA
ANGELA L. HICKS, OF PENNSYLVANIA
LESLIE AYN HILBERT, OF VIRGINIA
ROBERT L. HOOPER, OF MASSACHUSETTS
DAVID J. HUGHEY, OF VIRGINIA
JASON T. INGRAM, OF VIRGINIA
THEODORE EVAN JASIK, OF NEW YORK
DENISE JOBIN-WELCH, OF PENNSYLVANIA
ALMA MUSANOVIC JOHNSON, OF NEW HAMPSHIRE
CHRISTOPHER KEITH JOHNSON, OF VIRGINIA
DANIEL B. JOHNSON, OF ILLINOIS
TIMOTHY RAY JOHNSON, OF VIRGINIA
BARBARA S. KEARY, OF THE DISTRICT OF COLUMBIA
SHERYL HOPE KLEE, OF FLORIDA
WENDY A. KOLLS, OF CALIFORNIA
KIRSTEN M. KRAWCZYK, OF VIRGINIA
MELINDA H. LAMONT-HAVERS, OF VIRGINIA
PAULA I. L'ECUYER, OF VIRGINIA
SEUNGHYE S. LIM, OF FLORIDA
KENNETH G. LIMPARIS, OF MARYLAND
SARA L. LITKE, OF WASHINGTON
KEVIN M. LLOYD, OF MARYLAND
KARA E. LOEFFLER, OF VIRGINIA
PAUL LOH, OF VIRGINIA
JERRY BUENO LOPEZ, OF CALIFORNIA
STEPHEN E. LYNAGH, OF NEW YORK
JOSLYN G. MACK, OF THE DISTRICT OF COLUMBIA
JONATHAN F. MALTMAN, OF VIRGINIA
GUY MARGALITH, OF NEW YORK
BERENICE MARISCAL, OF TEXAS
CRISTINA MARIE MARKO, OF ARIZONA
BRETON H. MARSH, OF VIRGINIA
WILLIAM J. MARSHALL, OF VIRGINIA
RYAN D. MATHENY, OF CALIFORNIA
P. CHRISTOPHER MCCABE, OF COLORADO
CATHERINE E. MCGEARY, OF VIRGINIA
ALEXANDER MCLAREN, OF NEW YORK
ANN MECEDA, OF CALIFORNIA
JOSEPH J. MELE, OF MARYLAND
GWENDOLYN S. MELICH, OF VIRGINIA
CHRISTOPHER S. MERKLE, OF VIRGINIA
CHRISTINE ELIZABETH MEYER, OF TEXAS
MICHELINE J. MEYERS, OF VIRGINIA
AMY M. MOSER, OF MISSOURI
E. WILLIAM MURAD, OF VIRGINIA
KEVIN THOMAS MURAKAMI, OF CALIFORNIA
JENIFER LYNN NEIDHART DE ORTIZ, OF MARYLAND
ERIC OWENS, OF ILLINOIS
SARAH HALE PALAIA, OF WASHINGTON
JAMES R. PASQUALINI, OF VIRGINIA
CONEY PATTERSON, OF VIRGINIA
TIMOTHY EUGENE PELTIER, OF VIRGINIA
STEVEN J. PERRY, OF VIRGINIA
BRIAN R. PETERSON, OF WASHINGTON
ERIC A. PLUES, OF VIRGINIA
ANDREW POSNER, OF CALIFORNIA
RONA R. RATHOD, OF CALIFORNIA
GARY L. REX, OF FLORIDA
MICHELLE L. RIEBELING, OF MISSOURI
RICHARD W. ROESING III, OF PENNSYLVANIA
AUDREY JANE ROY, OF VIRGINIA
MEREDITH RUBIN, OF VIRGINIA
TRINA D. SAHA, OF CALIFORNIA
ANNE LEE SESHADRI, OF MARYLAND

CHARLES H. SEWALL, OF FLORIDA
PREETI VIKAS SHAH, OF MICHIGAN
KIM SHAW, OF CALIFORNIA
DAVID S. SHEKMER, OF VIRGINIA
CARRIE ANNA SHIRTZ, OF WISCONSIN
RUSSELL SINGER NY, OF NEW YORK
ANNE R. SIPPEL, OF GEORGIA
HELEN SMITH, OF THE DISTRICT OF COLUMBIA
JENNIFER E. SMITH, OF VIRGINIA
STEVEN TAYLOR SMITH, OF NEW HAMPSHIRE
DAVID B. SNIDER, OF VIRGINIA
G. MICHAEL SNYDER, OF THE DISTRICT OF COLUMBIA
MADALYN N. SNYDER, OF COLORADO
MICHAEL G. SPRING, OF ILLINOIS
DEBRA A. STEIGERWALT, OF VIRGINIA
JASON A. STOCK, OF UTAH
ANDREA V. STRANO, OF NEW YORK
DEBRA TAYLOR, OF ILLINOIS
ROY THERRIEN, OF CONNECTICUT
MATTHEW F. THOMAS, OF VIRGINIA
CHAD A. THORNBERRY, OF THE DISTRICT OF COLUMBIA
CHRISTOPHER L. TURNER, OF FLORIDA
CAROLYN L. TURPIN, OF FLORIDA
ANN-JANETTE TWOMBLY, OF VIRGINIA
CRAIG MICHAEL UHL MD, OF THE DISTRICT OF COLUMBIA
THOMAS LOGAN WAIT, OF VIRGINIA
CHARLENE SHIAU-NING WANG, OF CALIFORNIA
RUDDY KERFUN WANG, OF CALIFORNIA
JENNIFER L. B. WARF, OF VIRGINIA
BRIAN ELSON WATENPAUGH, OF MARYLAND
SAMUEL WERBERG, OF NEW YORK
LILIETH R. WHYTE, OF COLORADO
SEAN P. WILKINS, OF VIRGINIA
PATRICK RANDALL WINGATE, OF TEXAS
DANIELLE K. WOOD, OF OHIO
JEAN THOMAS WOYNICKI, OF PENNSYLVANIA
DANIELA ZADROZNY, OF TEXAS

THE FOLLOWING-NAMED CAREER MEMBERS OF FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED: CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER COUNSELOR, IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

BARRY I. FRIEDMAN, OF NEW YORK
BOBETTE K. ORR, OF VIRGINIA

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

BERYL C. BLECHER, OF FLORIDA
WILLIAM N. CENTER, OF FLORIDA
KEITH M. CURTIS, OF VIRGINIA
DANIEL L. THOMPSON, OF HAWAII

DEPARTMENT OF STATE

LESLIE ANN BASSETT, OF CALIFORNIA
DONNA M. BLAIR, OF LOUISIANA

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GRADES INDICATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

To be captain

JOHN C. CLARY III
ROBERT X. MCCANN JR.
SAMUEL P. DE BOW JR.
ROBERT W. MAXSON
GARY D. PETRAE
MARK S. FINKE
JAMES C. GARDNER JR.
RICHARD R. BEHN
DANIEL R. HERLIHY
GARY P. BULMER
GEORGE E. WHITE

To be commander

SEAN R. WHITE
TIMOTHY D. TISCH
STEPHEN A. KOZAK
STEVEN A. THOMPSON
WILLIAM E. SITES
KENNETH W. BARTON
JOHN W. HUMPHREY JR.
TIMOTHY J. CLANCY
PHILIP R. KENNEDY
JOHN E. LOWELL JR.
MARK P. ABLONDI
FREDERICK W. ROSSMANN
CRAIG L. BAILEY
EMILY B. CHRISTMAN
MICHAEL S. ABBOTT
SCOTT E. KUESTER
TODD C. STILES
FRANK A. WOOD
WADE J. BLAKE
ROBERT W. POSTON
BRIAN K. TAGGART
MICHAEL S. GALLAGHER
MICHELE G. BULLOCK
GREGG LAMONTAGNE
GERD F. GLANG

To be lieutenant commander

THOMAS G. CALLAHAN
JEFFREY K. BROWN
DONALD W. HAINES
RICHARD A. FLETCHER
MICHELE A. FINN
PAUL L. SCHATTGEN
PHILIP A. GRUCCIO
HARRIS B. HALVERSON II
BARRY K. CHOY
MICHAEL D. FRANCISCO
RALPH R. ROGERS
MARK P. MORAN
ALAN C. HILTON
RICHARD R. WINGROVE
DOUGLAS D. BAIRD JR.
DANIEL S. MORRIS JR.
DAVID A. SCORE
STEPHEN F. BECKWITH
RANDALL J. TEBEEST
JOHN J. ADLER
GEOFFREY S. SANDORF
MICHAEL S. WEAVER

To be lieutenant

MICHAEL J. HOSHLYK
JAMES A. BUNN II
GREGORY G. GLOVER
JAMES A. ILLG
RICHARD T. BRENNAN
ADAM D. DUNBAR
PETER C. FISCHEL
JEREMY M. ADAMS
DAVID J. DEMERS
LOUIS E. NOVAK
JOEL T. MICHALSKI
PAULENE O. ROBERTS
KURT A. ZEGOWITZ
MICHAEL J. SILAH
SCOTT M. SIROIS
DEVIN R. BRAKOB
DEMIAN A. BAILEY
SARAH L. SCHERER
JENNIFER N. DOWLING
DAVID J. ZEZULA
MICHAEL F. ELLIS
GEORGE M. MILLER
BRADLEY H. FRITZLER
DANIEL K. KARLSON
NANCY L. ASH
ELIZABETH I. JONES
ARTHUR J. STARK
KEVIN V. WERNER

To be lieutenant (junior grade)

THOMAS J. PELTZER
MARK S. MOSER
JASON M. SEIFERT
KEVIN J. SLOVER
HOLLY A. DEHART
JASON A. APPLER
KRISTIE J. TWINING
FRANK K. DREFLAK
ANGELIKA G. MESSER
BENJAMIN K. EVANS
JEREMY B. WEIRICH
WILLIAM P. MOWITT
DOUGLAS J. KRAUSE
NICOLE M. CABANA
RUSSELL G. HANER
JONATHAN B. NEUHAUS
NICHOLAS J. TOTH
ANDREW A. HALL
CATHERINE A. MARTIN
JEFFREY R. JUDAS
STEPHANIE A. KOES
DANIEL M. SIMON
JEFFREY D. KELLEY
JOHN A. CROFTS
MARK VAN WAES
WILLIAM W. PIERCE III
RICHARD E. HESTER JR.
JEFFREY C. TAYLOR
NOAH LAWRENCE-SLAVAS
STEPHEN A. KROENING
NICHOLAS J. CHROBAK
ERIK M. EILERS
JESSICA S. KONDEL
SHANNON M. RISTAU
NICOLE S. LAMBERT
CHADWICK A. BROWN
SUENG H. SUK
NICOLE D. COLASACCO
MICHAEL S. SNOW
CHAD M. CARY
JENNIFER E. PRALGO
SEAN D. CIMILLUCA
CHARLES J. YOOS III
KEITH A. GOLDEN
SHAWN MADDOCK

To be ensign

WILLIAM D. WHITMORE
DOUGLAS E. MACINTYRE
SARAH L. DUNSFORD
SARAH K. MROZEK
JOSHUA D. BAUMAN
KATHERINE R. PEET
MICHAEL G. LEVINE
BRYAN R. WAGONSELLER
NICOLE M. MANNING
ALLISON B. MELICHAREK
JESSICA M. FUTCH
EARL M. SPENCER
JEFFREY D. SHOUP
HECTOR L. CASANOVA
AMANDA M. BITTINGER
ERIC T. JOHNSON
JASPER D. SCHAER
JESSICA E. DAUM
AMANDA M. MIDDLEMISS
NATASHA R. DAVIS
LUKE J. SPENCE
JOHN J. LOMNICKY
LUNDY E. PIXTON
MATTHEW R. RINGEL
ERICH J. BOHABOY
LINDSAY R. KURELJA
PATRICK D. DIDIER
AMY M. DANIEL
MISTY M. WATSON
KELLY E. STROUD
RICHARD A. EDMUNDSON
ANDREW P. SEAMAN

CONFIRMATION

Executive nomination confirmed by the Senate May 18, 2004:

THE JUDICIARY

MARCIA G. COOKE, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA.