carbon and other aerosols research program in the National Oceanic and Atmospheric Administration that supports observations, monitoring, modeling, and for other purposes.

S. 1539

At the request of Mr. ROCKEFELLER, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1539, a bill to authorize the National Oceanic and Atmospheric Administration to establish a comprehensive greenhouse gas observation and analysis system, and for other purposes.

S. 1553

At the request of Mr. GRASSLEY, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 1553, a bill to require the Secretary of the Treasury to mint coins in commemoration of the National Future Farmers of America Organization and the 85th anniversary of the founding of the National Future Farmers of America Organization.

S. 1643

At the request of Ms. SNOWE, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. 1643, a bill to amend the Internal Revenue Code of 1986 to allow a credit for the conversion of heating using oil fuel to using natural gas or biomass feedstocks, and for other purposes.

S. 1660

At the request of Ms. KLOBUCHAR, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. 1660, a bill to amend the Toxic Substances Control Act to reduce the emissions of formaldehyde from composite wood products, and for other purposes.

S. RES. 226

At the request of Mrs. GILLIBRAND, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. Res. 226, a resolution designating September 2009 as ''Gospel Music Heritage Month'' and honoring gospel music for its valuable contributions to the culture of the United States.

S. RES. 272

At the request of Mr. HARKIN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. Res. 272, a resolution commemorating Dr. Norman Borlaug, recipient of the Nobel Peace Prize, Congressional Gold Medal, Presidential Medal of Freedom, and founder of the World Food Prize.

AMENDMENT NO. 2394

At the request of Mr. JOHANNS, the names of the Senator from Georgia (Mr. ISAKSON), the Senator from Oklahoma (Mr. INHOFE), the Senator from Kansas (Mr. BROWNBACK), the Senator from North Carolina (Mr. BURR), the Senator from Utah (Mr. BENNETT), the Senator from Kansas (Mr. ROBERTS), the Senator from Wyoming (Mr. BARRASSO), the Senator from Kentucky (Mr. BUNNING), the Senator from Wyoming (Mr. ENZI), the Senator from South Carolina (Mr. DEMINT), the Senator from Texas (Mrs. HUTCHISON) and the Senator from South Dakota (Mr. THUNE) were added as cosponsors of amendment No. 2394 proposed to H.R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY (for himself, Mr. FEINGOLD, Ms. CANTWELL, Mr. DURBIN, Mr. SCHUMER, and Mrs. FEINSTEIN):

S. 1681. A bill to ensure that health insurance issuers and medical malpractice insurance issuers cannot engage in price fixing, bid rigging, or market allocations to the detriment of competition and consumers; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, our Nation's antitrust laws exist to protect consumers. These laws promote competition, which ensures that consumers will pay lower prices, and receive more choices of higher quality products. The vast majority of the companies doing business in the U.S. are subject to the Federal antitrust laws.

A few industries have used their influence to obtain a special, statutory exemption from the antitrust laws, and the insurance industry is one of them. In the markets for health insurance and medical malpractice insurance, patients and doctors are paying the price, as costs continue to increase at an alarming rate. As the insurance industry prospers behind its exemption, patients and small businesses suffer. I am pleased to introduce today the Health Insurance Industry Antitrust Enforcement Act of 2009, which will repeal the antitrust exemption for health insurance and medical malpractice insurance providers.

The health care industry is the subject of a great deal of debate. There are many proposals to bring competition to health insurance providers. While we are debating these solutions, we should not lose sight of the fact that the health insurance industry currently does not have to play by the same, good-competition rules as other industries. That is wrong, and this legislation corrects it.

The lack of affordable health insurance plagues families throughout our country, and the rising prices that hospitals and doctors pay for medical malpractice insurance drains resources that could otherwise be used to improve patient care. Antitrust oversight in these industries will provide consumers with the confidence that insurance companies are operating in a competitive marketplace.

There is simply no justification for health insurance and medical malpractice insurance companies to be exempt from Federal laws prohibiting price fixing. Subjecting health and medical malpractice insurance providers to the antitrust laws will enable customers to feel confident that the price they are being quoted is the product of a fair marketplace. This bill will prohibit the most egregious anticompetitive conduct—price fixing, bid rigging and market allocations—conduct that harms consumers and drives up health care costs.

In the 110th Congress, I introduced a much broader repeal of the McCarran-Ferguson Act with Senator Lott. While Congress did not reach consensus on that legislation, surely in this environment of rising health care costs, we can agree on this more narrowly tailored repeal. Insurers should not object to being subject to the same antitrust laws as everyone else. If they are operating in an appropriate way, they should have nothing to fear. American families, doctors and hospitals rely on insurance. It is important to ensure that the prices they pay for this insurance are established in a fair and competitive way.

I look forward to repealing the antitrust exemption in the health insurance and medical malpractice insurance industries.

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

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

S. 1681

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 ''Health Insurance Industry Antitrust Enforcement Act of 2009''.

SEC. 2. PURPOSE.

It is the purpose of this Act to ensure that health insurance issuers and medical malpractice insurance issuers cannot engage in price fixing, bid rigging, or market allocations to the detriment of competition and consumers.

SEC. 3. PROHIBITION OF ANTI-COMPETITIVE ACTIVITIES.

Notwithstanding any other provision of law, nothing in the Act of March 9, 1945 (15 U.S.C. 1011 et seq., commonly known as the ''McCarran-Ferguson Act'') shall be construed to permit health insurance issuers (as defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91) or issuers of medical malpractice insurance to engage in any form of price fixing, bid rigging, or market allocations in connection with the conduct of the business of providing health insurance coverage (as defined in such section) or coverage for medical malpractice claims or actions.

SEC. 4. APPLICATION TO ACTIVITIES OF STATE COMMISSIONS OF INSURANCE AND OTHER STATE INSURANCE REGULATORY BODIES.

Nothing in this Act shall apply to the information gathering and rate setting activities of any State commission of insurance, or any other State regulatory entity with authority to set insurance rates.

By Ms. CANTWELL (for herself and Mr. NELSON, of Florida):

1682. A bill to provide the Commodity Futures Trading Commission with

clear antimarket manipulation authority, and for other purposes; to the Committee on Agriculture. Nutrition, and Forestry.

Ms. CANTWELL. Mr. President, I rise today to introduce the Commodities Market Manipulation Prevention Act of 2009.

When bad-actors like Enron and Amaranth Advisors, LLC, manipulate commodities prices, it means that Americans pay more for commodities like oil, gasoline, heating oil, food, and natural gas. Unfortunately, current law does not protect our economy with a tough enough standard to prevent, deter, and enforce illegal market manipulation in critical commodity futures markets.

Current law makes it very difficult for the Commodities Futures Trading Commission to prosecute market manipulation cases. This is because current law requires the CFTC to meet a more rigorous standard to prove market manipulation than other financial market regulatory agencies such as the Securities and Exchange Commission, the Federal Energy Regulatory Commission, and the Federal Trade Commission.

Specifically, the Commodities Exchange Act requires the CFTC to prove ''specific intent'' to manipulate. That is a very difficult standard to reach. You would have to have a pretty dumb individual to, for example, write in an e-mail that you specifically intend to manipulate prices. But that's what current law currently requires the CFTC to prove.

In addition, CFTC case law also requires that it prove an artificial price exists, that the defendant had market power to move the price, and that he or she actually did cause the artificial price. Particularly in today's complex markets, proving ''artificial price'' can be a daunting task, which more often than not comes down to a ''battle of the experts'' in court. Because these requirements are so onerous, the CFTC often ends up moving to a lesser charge of ''attempted manipulation,'' which requires only proving intent and some act showing that intent. This is still a high standard, but is much easier than proving a full manipulation case.

As a result, Federal courts have recognized that, with the CFTC's weaker anti-manipulation standard, market ''manipulation cases generally have not fared well.'' In fact, the standard is so weak that in the CFTC's 35-year history, it has only successfully prosecuted and won one single case of manipulation. That case is currently on appeal in Federal court.

The Securities and Exchange Commission, on the other hand, under section 10(b) of the Securities and Exchange of 1934, has a different, easier-to-prove manipulation standard that it has employed successfully for over 75 years. Basically, the SEC does not need to prove specific intent, as the CFTC does. The SEC just has to prove that the defendant acted ''recklessly.''

This legislation would give the CFTC the same anti-manipulation standard currently employed by the SEC. This means that the CFTC would be empowered to prove a manipulation case under the same ''reckless conduct'' standard that the SEC, FERC, and FTC employ, in contrast to its current difficult-to-prove ''specific intent'' standard. That is, this legislation will repeal the affirmative rule that says you are allowed to act recklessly in the commodity futures markets as long as you have no specific intent to do harm.

Congress also recently granted this same authority to the FERC in 2005 and the FTC in 2007 in legislation I wrote that carefully tracked section 10(b) of the Securities and Exchange Act of 1934 to ensure the FERC and FTC would interpret and enforce their new market manipulation authorities consistent with the SEC. This legislation also carefully tracks section 10(b) of the Securities Exchange Act of 1934 in part because Federal case law is clear that when the Congress uses language identical to that used in another statute, Congress intended for the courts and the Commission to interpret the new authority in a similar manner.

In the words of the Supreme Court from the 1904 case of Kepner v. United States, ''when a statute uses words whose meaning under the judicial decisions has become well-known and well-settled, it will be presumed that the Legislature used such words in the sense justified by long judicial sanction.'' In the 75 years since the enactment of the Securities and Exchange Act 1934, a substantial body of case law has developed over the last half century around section 10(b). This will provide certainty in how this legislation will be interpreted and applied by the Courts and the CFTC.

In fact, the Supreme Court has compared this body of law to ''a judicial oak which has grown from little more than a legislative acorn.'' So it's worth noting that courts have held that the SEC's manipulation authority is not intended to catch sellers who take advantage of the natural market forces of supply and demand; only those who attempt to affect the market or prices by artificial means unrelated to the natural forces of supply and demand.

In this country, our current standard in the futures arena just isn't working. It is not sufficient to fully prosecute and deter abuses in the markets. We need to get the right standard to prevent, deter, and enforce market manipulation in these markets.

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

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

S. 1682

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 ''Derivatives Market Manipulation Prevention Act of 2009''.

SEC. 2. CIVIL PENALTIES FOR MARKET MANIPULATION.

Subsection (c) of section 6 of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended to read as follows:

''(c) PROHIBITION REGARDING MARKET MANIPULATION AND FALSE INFORMATION.—

''(1) PROHIBITION REGARDING MARKET MANIPULATION.—It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Derivatives Market Manipulation Prevention Act of 2009.

''(2) PROHIBITION REGARDING FALSE INFORMATION.—It shall be unlawful for any person to report information relating to any registration application, any report filed with the Commission, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit any material fact that is required to be stated in any application or report if the person knew, or reasonably should have known, the information to be false or misleading.

''(3) ENFORCEMENT.—

''(A) AUTHORITY OF COMMISSION.—If the Commission has reason to believe that any person is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

''(B) CONTENTS OF COMPLAINT.—A complaint under subparagraph (A) shall—

''(i) contain a description of the charges against the person that is the subject of the complaint; and

''(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

''(C) HEARING.—A hearing described in subparagraph (B)(ii)—

''(i) shall be held not later than 3 days after the date on which the person described in subparagraph (A) receives the complaint;

''(ii) shall require the person to show cause regarding why—

''(I) an order should not be made—

''(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

''(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

''(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

''(iii) may be held before—

''(I) the Commission; or

''(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.

''(4) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this chapter, for the purpose of any investigation or proceeding under this chapter, and for the purpose of any action taken under section 12(f) of this title, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (6)) may administer oaths and affirmations,

subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

''(5) WITNESSES.—The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

''(6) SERVICE.—A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

''(7) REFUSAL TO OBEY.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

''(8) FAILURE TO OBEY.—Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

''(9) EVIDENCE.—On the receipt of evidence under paragraph (3)(C)(iii)(II), the Commission may—

''(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

''(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

''(C) assess such person—

''(i) a civil penalty of not more than an amount equal to the greater of—

''(I) $140,000; or

''(II) triple the monetary gain to such person for each such violation; or

''(ii) in any case of manipulation or attempted manipulation in violation of this subsection, subsection (d), or section 9(a)(2), a civil penalty of not more than an amount equal to the greater of—

''(I) $1,000,000; or

''(II) triple the monetary gain to the person for each such violation; and

''(D) through an order of the Commission, require restitution to customers of damages proximately caused by violations of the person.

''(10) ORDERS.—

''(A) NOTICE.—The Commission shall provide to a person described in paragraph (9)(A) and the appropriate governing board of the registered entity notice of the order described in paragraph (9)(A) by—

''(i) registered mail;

''(ii) certified mail; or

''(iii) personal delivery.

''(B) REVIEW.—

''(i) IN GENERAL.—A person that has received notice of an order by the Commission may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

''(ii) PETITION.—To obtain a review or other relief under clause (i), a person may, not later than 15 days after the date of receipt of a notice under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

''(I) for the circuit in which the petitioner carries out the business of the petitioner; or

''(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application of the petitioner.

''(C) PROCEDURE.—

''(i) DUTY OF CLERK OF APPROPRIATE COURT.—The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

''(ii) DUTY OF COMMISSION.—In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

''(iii) JURISDICTION OF APPROPRIATE COURT.—Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) shall have jurisdiction to affirm, set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.''.

SEC. 3. CEASE AND DESIST ORDERS, FINES.

Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended to read as follows:

''(d) If any person (other than a registered entity), directly or indirectly, is using or employing, or attempting to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Derivatives Market Manipulation Prevention Act of 2009, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in sections 9 and 15 of this title, make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of $140,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 13 of this title, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): Provided, That any such cease and desist order against any respondent in any case of under this subsection shall be issued only in conjunction with an order issued against such respondent under sections 9 and 15 of this title. Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.''.

SEC. 4. MANIPULATIONS; PRIVATE RIGHTS OF ACTION.

Section 22(a)(1) of the Commodity Exchange Act (7 U.S.C. 25(a)(1)) is amended by striking subparagraph (D) and inserting the following:

''(D) who purchased or sold a contract referred to in subparagraph (B) hereof if the violation constitutes the use or employment of, or an attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Derivatives Market Manipulation Prevention Act of 2009.''.

SEC. 5. DEFINITION OF SWAP.

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended by adding at the end the following:

''(35) SWAP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction that—

''(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

''(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

''(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, foreign exchange swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

''(iv) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

''(v) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (iv);

''(B) EXCLUSIONS.—The term 'swap' does not include:

''(i) any contract of sale of a commodity for future delivery or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

''(ii) any sale of a nonfinancial commodity for deferred shipment or delivery, so long as such transaction is physically settled;

''(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

''(v) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(vi) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

''(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a));

''(viii) any agreement, contract, or transaction that is—

''(I) based on a security; and

''(II) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933) (15 U.S.C. 77b(a)) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising; or

''(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States government or an agency of the United States government that is expressly backed by the full faith and credit of the United States.

''(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).''.

SEC. 6. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by sections 2, 3, and 4 shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to the Derivatives Market Manipulation Prevention Act of 2009 takes effect.

(b) DEFINITION OF SWAP.—The amendment made by section 5 shall take effect on the date of enactment of this Act.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 1684. A bill to establish guidelines and incentives for States to establish criminal arsonist and criminal bomber registries and to require the Attorney General to establish a national criminal arsonist and criminal bomber registry program, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, today I am pleased to join with Senator BOXER in introducing the Managing Arson Through Criminal History, MATCH, Act of 2009. This bill is a companion to a bill introduced in the House of Representatives by Representatives BONO MACK and SCHIFF.

The bill would establish Federal and State arson registries; require convicted arsonists and bombers to register and update certain specified information for 5 years after a first conviction, 10 years after a second conviction, and for life after a third conviction; and authorize grants and incentives through the Department of Justice so that these registries will be operational within 3 years.

Southern California just went through one of the worst fire disasters in its history. The Station Fire destroyed 160,500 acres, destroyed more than 80 homes and threatened more than 12,000 homes. Right now, the fire is still burning in wilderness areas on its eastern flank in the Angeles National Forest.

Two firefighters, Fire Captain Tedmund ''Ted'' Hall, 47, of San Bernardino County, and Firefighter Specialist Arnaldo ''Arnie'' Quinones, 34, of Palmdale, served with dedication and courage. They were killed August 30th when their truck slipped off a winding dirt road high in the Angeles National Forest. Officials believe the truck might have been overrun by flames from the wildfire.

Though the incident is still under investigation, officials believe that Hall and Quinones may have ordered dozens of people to seek shelter while they fought through active flames to search for an escape route.

There is no doubt that the Station Fire, the largest wildfire in the history of Los Angeles County, was the result of arson after investigators examined forensic evidence from scorched landscape off Angeles Crest Highway. The spot is believed to be the source of origin of the Station fire and investigators have found incendiary material near the site.

This was a disaster of massive proportions—preliminary estimates indicate that these fires will cost $100 million. In these tough economic times, this cost and its effect on the economy of California is enormous and will have an impact for years to come.

Although the Federal Government may foot 80 to 90 percent of the bill for fighting the fire, which broke out in national parkland, the state's share will hit at a time when California is in the grip of a fiscal crisis.

Unfortunately, this is not the first or last time that a wildfire in California is started by an arsonist. It doesn't need to be that way. The bill that I introduce today—the MATCH Act would assist fire investigators and law enforcement officials by giving them up-to-date information on potential arsonists and bombers.

The bill would require convicted arsonists and bombers to register and regularly update their personal information in a new arsonist registry. In the future this will allow law enforcement and fire investigators to have an accessible database they can use to either find or rule out people of interest.

This will allow them to more easily complete their investigations, find the person responsible, and ensure that more wildfires won't get started intentionally.

This bill represents common-sense legislation that will help law enforcement officers do their jobs. Hundreds of firefighters worked on controlling the Station Fire. We owe it to these brave men and women who put their lives on the line—and others like them who will do so in the future—to give fire investigators this important new tool, so they can help bring arsonists and bombers to justice.

I urge my colleagues to support this important legislation.

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

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

S. 1684

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 ''Managing Arson Through Criminal History (MATCH) Act of 2009''.

SEC. 2. CRIMINAL ARSONIST AND CRIMINAL BOMBER REGISTRATION AND NOTIFICATION PROGRAM.

(a) REGISTRY REQUIREMENTS FOR JURISDICTIONS.—

(1) JURISDICTION TO MAINTAIN A REGISTRY.—Each jurisdiction shall establish and maintain a jurisdiction-wide arsonist and bomber registry in accordance with this section.

(2) GUIDELINES AND REGULATIONS.—The Attorney General shall issue guidelines and regulations to carry out this section.

(b) REGISTRY REQUIREMENTS FOR CRIMINAL ARSONISTS AND BOMBERS.—

(1) IN GENERAL.—A criminal arsonist or criminal bomber shall register, and shall keep the registration current in accordance with paragraph (3), in each jurisdiction in which the criminal arsonist or criminal bomber resides, is an employee, or is a student.

(2) INITIAL REGISTRATION.—A criminal arsonist or criminal bomber shall initially register—

(A) in addition to any jurisdiction described in paragraph (1), in the jurisdiction in which the criminal arsonist or criminal bomber was convicted; and

(B)(i) before completing a sentence of imprisonment with respect to the arson offense or bombing offense giving rise to the registration requirement; or

(ii) not later than 5 business days after being sentenced for the arson offense or bombing offense giving rise to the registration requirement, if the criminal arsonist or criminal bomber is not sentenced to a term of imprisonment.

(3) KEEPING THE REGISTRATION CURRENT.—

(A) IN GENERAL.—Not later than 10 business days after each change of name, residence,

employment, or student status, a criminal arsonist or criminal bomber shall appear in person in at least 1 jurisdiction described in paragraph (1) and inform the jurisdiction of all changes in the information required for that criminal arsonist or criminal bomber in the arsonist and bomber registry involved.

(B) PROVISION TO OTHER JURISDICTIONS.—A jurisdiction receiving information under subparagraph (A) shall immediately provide the revised information to all other jurisdictions in which the criminal arsonist or criminal bomber is required to register.

(4) APPLICATION OF REGISTRATION REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in the guidelines established under subparagraph (B), the requirements of this section, including the duties to register and to keep a registration current, shall apply only to a criminal arsonist or criminal bomber who was—

(i) convicted of an arson offense or a bombing offense on or after the date of enactment of this Act; and

(ii) notified of the duties and registered in accordance with subsection (f).

(B) APPLICATION TO CRIMINAL ARSONISTS OR CRIMINAL BOMBERS UNABLE TO COMPLY WITH PARAGRAPH (2)(B).—

(i) GUIDELINES.—The Attorney General shall establish guidelines in accordance with this subparagraph for each jurisdiction for—

(I) the application of the requirements of this section to criminal arsonists or criminal bombers convicted before the date of the enactment of this Act, or the date of the implementation of this section in such a jurisdiction; and

(II) the registration of any criminal arsonist or criminal bomber described in subclause (I) who is otherwise unable to comply with paragraph (2)(B).

(ii) INFORMATION REQUIRED TO BE INCLUDED IN REGISTRY.—With respect to each criminal arsonist or criminal bomber described in clause (i) convicted of an arson offense or bombing offense during the 10-year period ending on the date of enactment of this Act, the guidelines under clause (i) shall provide for the inclusion in the arsonist and bomber registry of each applicable jurisdiction (and, in accordance with subsection (j), the provision by the jurisdiction to each entity described in subsection (j)) of—

(I) the name of the criminal arsonist or criminal bomber (including any alias used by the individual);

(II) the Social Security number of the individual;

(III) the most recent known address of the residence at which the individual has resided;

(IV) a physical description of the individual;

(V) the text of the provision of law establishing the arson offense or bombing offense giving rise to the duty of the individual to register;

(VI) a set of fingerprints and palm prints of the individual;

(VII) a photocopy of a valid driver's license or identification card issued to the individual by a jurisdiction, if available; and

(VIII) any other information required by the Attorney General.

(iii) NOTICE REQUIRED.—The guidelines under clause (i) shall require notice to each criminal arsonist or criminal bomber included in an arsonist and bomber registry pursuant to this subparagraph of such inclusion.

(5) STATE PENALTY FOR FAILURE TO COMPLY.—Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a criminal arsonist or criminal bomber to comply with the requirements of this section.

(6) AUTHORITY TO EXEMPT CERTAIN INDIVIDUALS FROM REGISTRY REQUIREMENTS.—A jurisdiction may exempt a criminal arsonist or criminal bomber who has been convicted of an arson offense or a bombing offense for the first time from the registration requirements under this section in exchange for the substantial assistance of the individual in the investigation or prosecution of another person who has committed a criminal offense. The Attorney General shall ensure that any regulations promulgated under this section include guidelines establishing criteria regarding when it is appropriate to exempt an individual from the registration requirements under this section.

(c) INFORMATION REQUIRED IN REGISTRATION.—

(1) PROVIDED BY ARSONIST OR BOMBER.—A criminal arsonist or criminal bomber shall provide to the appropriate officer of a jurisdiction in which the individual is required to register for inclusion in the arsonist and bomber registry of the jurisdiction—

(A) the name of the individual (including any alias used by the individual);

(B) the Social Security number of the individual;

(C) the address of each residence at which the individual resides or will reside;

(D) the name and address of any place where the individual is an employee or will be an employee;

(E) the name and address of any place where the individual is a student or will be a student;

(F) the license plate number and a description of any vehicle owned or operated by the individual; and

(G) any other information required by the Attorney General.

(2) PROVIDED BY THE JURISDICTION.—The jurisdiction in which a criminal arsonist or criminal bomber registers shall ensure that the arsonist and bomber registry of the jurisdiction includes—

(A) a physical description of the individual;

(B) the text of the provision of law establishing the arson offense or bombing offense giving rise to the duty of the individual to register;

(C) the criminal history of the individual, including the date of all arrests and convictions, the status of parole, probation, or supervised release, registration status, and the existence of any outstanding arrest warrants for the individual;

(D) a current photograph of the individual;

(E) a set of fingerprints and palm prints of the individual;

(F) a photocopy of a valid driver's license or identification card issued to the individual by a jurisdiction; and

(G) any other information required by the Attorney General.

(d) DURATION OF REGISTRATION REQUIREMENT; EXPUNGING REGISTRIES OF INFORMATION FOR CERTAIN JUVENILE CRIMINALS.—

(1) DURATION OF REGISTRATION REQUIREMENT.—A criminal arsonist or criminal bomber shall keep the registration information provided under subsection (c) current in accordance with subsection (b)(3) for the full registration period.

(2) EXPUNGING REGISTRIES OF INFORMATION FOR CERTAIN JUVENILE CRIMINALS.—

(A) IN GENERAL.—In the case of a criminal arsonist or criminal bomber described in subparagraph (B), a jurisdiction shall expunge the arson and bomber registry of the jurisdiction of information relating to the criminal arsonist or criminal bomber on the date that is 5 years after the last day of the full registration period for the criminal arsonist or criminal bomber.

(B) CRIMINAL ARSONIST OR BOMBER DESCRIBED.—A criminal arsonist or criminal bomber described in this subparagraph is a criminal arsonist or criminal bomber who—

(i) was a juvenile tried as an adult for the arson offense or bombing offense giving rise to the duty of the individual to register under this section; and

(ii) was not convicted of any other felony during the period beginning on the first day of the full registration period for the criminal arsonist or criminal bomber and ending on the last day of the 5-year period described in subparagraph (A).

(C) APPLICATION TO OTHER DATABASES.—The Attorney General shall establish a process to ensure that each entity that receives information under subsection (j) with respect to a criminal arsonist or criminal bomber described in subparagraph (B) shall expunge the applicable database of the information on the date that is 5 years after the last day of the full registration period for the criminal arsonist or criminal bomber.

(e) ANNUAL VERIFICATION.—Not less than once during each calendar year during the full registration period, a criminal arsonist or criminal bomber required to register under this section shall—

(1) appear in person at not less than 1 jurisdiction in which the individual is required to register;

(2) allow the jurisdiction to take a photograph of the individual; and

(3) while present at the jurisdiction, verify the information in each arsonist and bomber registry in which the individual is required to be registered.

(f) DUTY TO NOTIFY CRIMINAL ARSONISTS AND CRIMINAL BOMBERS OF REGISTRATION REQUIREMENTS AND TO REGISTER.—

(1) IN GENERAL.—An appropriate officer shall, shortly before release of a criminal arsonist or criminal bomber from custody, or, if the individual is not in custody, immediately after the sentencing of the individual for the arson offense or bombing offense giving rise to the duty of the individual to register—

(A) inform the individual of the duties of the individual under this section and explain those duties in a manner that the individual can understand in light of the native language, mental capability, and age of the individual;

(B) ensure that the individual understands the registration requirement, and if so, require the individual to read and sign a form stating that the duty to register has been explained and that the individual understands the registration requirement;

(C) if the individual is unable to understand the registration requirements, sign a form stating that the individual is unable to understand the registration requirements; and

(D) ensure that the individual is registered in accordance with this section.

(2) NOTIFICATION OF CRIMINAL ARSONISTS AND CRIMINAL BOMBERS WHO CANNOT COMPLY WITH PARAGRAPH (1).—The Attorney General shall prescribe rules to ensure the notification and registration in accordance with this section of criminal arsonists and criminal bombers who cannot be registered in accordance with paragraph (1).

(g) ACCESS TO INFORMATION THROUGH THE INTERNET.—

(1) IN GENERAL.—Except as provided in this subsection, each jurisdiction shall make available on the Internet, in a manner that is readily accessible to law enforcement personnel and fire safety officers located in the jurisdiction, all information about each criminal arsonist and criminal bomber in the arsonist and bomber registry of the jurisdiction.

(2) COORDINATION WITH NATIONAL DATABASE.—Each jurisdiction shall—

(A) ensure that the Internet site of the jurisdiction described in paragraph (1) includes all field search capabilities needed for full participation in the national Internet site established under subsection (i); and

(B) participate in the national Internet site established under subsection (i) in accordance with regulations promulgated by the Attorney General under this section.

(3) PROHIBITION ON ACCESS BY THE PUBLIC.—Information about a criminal arsonist or criminal bomber shall not be made available on the Internet to the public under paragraph (1).

(4) MANDATORY EXEMPTIONS.—A jurisdiction shall exempt from disclosure on the Internet site of the jurisdiction described in paragraph (1)—

(A) any information about a criminal arsonist or criminal bomber involving conviction for an offense other than the arson offense or bombing offense giving rise to the duty of the individual to register;

(B) if the criminal arsonist or criminal bomber is participating in a witness protection program, any information about the individual the release of which could jeopardize the safety of the individual or any other person; and

(C) any other information identified as a mandatory exemption from disclosure by the Attorney General.

(5) OPTIONAL EXEMPTIONS.—A jurisdiction may exempt from disclosure on the Internet site of the jurisdiction described in paragraph (1)—

(A) the name of an employer of a criminal arsonist or criminal bomber; and

(B) the name of an educational institution where a criminal arsonist or criminal bomber is a student.

(6) CORRECTION OF ERRORS.—The Attorney General shall establish guidelines to be used by each jurisdiction to establish a process to seek correction of information included in the Internet site of the jurisdiction described in paragraph (1) if an individual contends the information is erroneous. The guidelines established under this paragraph shall establish the period, beginning on the date on which an individual has knowledge of the inclusion of information in the Internet site, during which the individual may seek the correction of the information.

(7) WARNING.—An Internet site of a jurisdiction described in paragraph (1) shall include a warning that—

(A) information on the site is to be used for law enforcement purposes only and may only be disclosed in connection with law enforcement purposes; and

(B) any action in violation of subparagraph (A) may result in a civil or criminal penalty.

(h) NATIONAL CRIMINAL ARSONIST AND CRIMINAL BOMBER REGISTRY.—

(1) IN GENERAL.—The Attorney General shall maintain a national database at the Bureau of Alcohol, Tobacco, Firearms, and Explosives that includes relevant information for each criminal arsonist or criminal bomber (including any information provided under subsection (j)). The database shall be known as the National Criminal Arsonist and Criminal Bomber Registry.

(2) ELECTRONIC FORWARDING.—The Attorney General shall ensure (through the national registry maintained under this subsection or otherwise) that updated information about a criminal arsonist or criminal bomber is immediately transmitted by electronic forwarding to all relevant jurisdictions.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General to carry out this subsection such sums as may be necessary for each of fiscal years 2010 through 2014.

(i) NATIONAL ARSONIST AND BOMBER INTERNET SITE.—

(1) IN GENERAL.—The Attorney General shall establish and maintain a national arsonist and bomber Internet site. The Internet site shall include relevant information for each criminal arsonist or criminal bomber. The Internet site shall allow law enforcement officers and fire safety officers to obtain relevant information for each criminal arsonist or criminal bomber by a single query for any given zip code or geographical radius set by the user in a form and with such limitations as may be established by the Attorney General and shall have such other field search capabilities as the Attorney General may provide.

(2) PROHIBITION ON ACCESS BY THE PUBLIC.—Information about a criminal arsonist or criminal bomber shall not be made available on the Internet to the public under paragraph (1).

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General to carry out this subsection such sums as may be necessary for each of fiscal years 2010 through 2014.

(j) NOTIFICATION PROCEDURES.—

(1) IN GENERAL.—Immediately after a criminal arsonist or criminal bomber registers in the arsonist and bomber registry of a jurisdiction, or updates a registration in the arsonist and bomber registry of a jurisdiction, an appropriate officer of the jurisdiction shall provide the information in the arsonist and bomber registry (other than information exempted from disclosure by this section or the Attorney General) about the individual to the entities described in paragraph (2).

(2) ENTITIES.—The entities described in this paragraph are—

(A) the Attorney General;

(B) appropriate law enforcement agencies (including probation agencies, if applicable) in each area in which the criminal arsonist or criminal bomber resides, is an employee, or is a student;

(C) each jurisdiction in which the criminal arsonist or criminal bomber resides, is an employee, or is a student; and

(D) each jurisdiction from or to which a change of residence, employment, or student status occurs.

(k) ACTIONS TO BE TAKEN WHEN CRIMINAL ARSONIST OR CRIMINAL BOMBER FAILS TO COMPLY.—

(1) JURISDICTIONS.—An appropriate officer of a jurisdiction shall—

(A) notify the Attorney General and appropriate law enforcement agencies if a criminal arsonist or criminal bomber fails to comply with the requirements of the arsonist and bomber registry of the jurisdiction; and

(B) revise the arsonist and bomber registry of the jurisdiction to reflect the nature of the failure.

(2) ENSURING COMPLIANCE.—If a criminal arsonist or criminal bomber fails to comply with the requirements of the arsonist and bomber registry of a jurisdiction, an appropriate officer of the jurisdiction, the Attorney General, and any law enforcement agency notified under paragraph (1)(A) shall take any appropriate action to ensure compliance.

(l) DEVELOPMENT AND AVAILABILITY OF REGISTRY MANAGEMENT AND WEBSITE SOFTWARE.—

(1) DUTY TO DEVELOP AND SUPPORT.—In consultation with the jurisdictions, the Attorney General shall develop and support software to enable jurisdictions to establish and operate arsonist and bomber registries and Internet sites described in subsection (g).

(2) CRITERIA.—The software described in paragraph (1) shall facilitate—

(A) immediate exchange of information among jurisdictions;

(B) access over the Internet to appropriate information, including the number of registered criminal arsonists or criminal bombers in each jurisdiction;

(C) full compliance with the requirements of this section; and

(D) communication of information as required under subsection (j).

(3) DEADLINE.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall make available to jurisdictions a fully operational edition of the software described in paragraph (1).

(m) PERIOD FOR IMPLEMENTATION BY JURISDICTIONS.—

(1) DEADLINE.—A jurisdiction shall implement this section not later than the later of—

(A) 3 years after the date of enactment of this Act; or

(B) 1 year after the date on which the software described in subsection (l) is made available to the jurisdiction.

(2) EXTENSIONS.—The Attorney General may make not more than 2 1-year extensions of the deadline under paragraph (1) for a jurisdiction.

(3) FAILURE OF JURISDICTION TO COMPLY.—For any fiscal year after the expiration of the deadline specified in paragraph (1) (including any extension under paragraph (2)), that a jurisdiction fails to substantially implement this section, as determined by the Attorney General, the jurisdiction shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(n) ELECTION BY INDIAN TRIBES.—

(1) ELECTION.—

(A) IN GENERAL.—A federally recognized Indian tribe may, by resolution or other enactment of the tribal council or comparable governmental body, elect to carry out this section as a jurisdiction subject to its provisions.

(B) IMPLEMENTATION.—A federally recognized Indian tribe that, as of the date that is 1 year after the date of enactment of this Act, has not made an election described in subparagraph (A) shall, by resolution or other enactment of the tribal council or comparable governmental body, enter into a cooperative agreement to arrange for a jurisdiction to carry out any function of the tribe under this section until such time as the tribe elects to carry out this section.

(2) COOPERATION BETWEEN TRIBAL AUTHORITIES AND OTHER JURISDICTIONS.—

(A) NONDUPLICATION.—A federally recognized Indian tribe subject to this section is not required to duplicate functions under this section that are fully carried out by 1 or more jurisdictions within which the territory of the tribe is located.

(B) COOPERATIVE AGREEMENTS.—A federally recognized Indian tribe, through cooperative agreements with 1 or more jurisdictions within which the territory of the tribe is located, may—

(i) arrange for the tribe to carry out any function of the jurisdiction under this section with respect to criminal arsonists or criminal bombers subject to the jurisdiction of the tribe; and

(ii) arrange for the jurisdiction to carry out any function of the tribe under this section with respect to criminal arsonists and criminal bombers subject to the jurisdiction of the tribe.

(3) LAW ENFORCEMENT AUTHORITY IN INDIAN COUNTRY.—Enforcement of this section in Indian country, as defined in section 1151 of title 18, United States Code, shall be carried out by the Federal Government, tribal governments, and State governments under jurisdictional authorities in effect on the date of enactment of this Act.

(o) IMMUNITY FOR GOOD FAITH CONDUCT.—The Federal Government, a jurisdiction, a political subdivision of a jurisdiction, and an agency, officer, employee, and agent of the Federal Government, a jurisdiction, or a political subdivision of a jurisdiction shall not be held liable in any Federal or State court for any good faith conduct to carry out this section.

(p) CRIMINAL ARSONIST AND CRIMINAL BOMBER MANAGEMENT ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Attorney General shall establish and implement a Criminal Arsonist and Bomber Management Assistance program (in this subsection referred to as the ''Assistance Program''), under which the Attorney General may make grants to jurisdictions to offset the costs of implementing this section.

(2) APPLICATION.—A jurisdiction desiring a grant under this subsection for a fiscal year shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require.

(3) INCREASED GRANT PAYMENTS FOR PROMPT COMPLIANCE.—

(A) IN GENERAL.—A jurisdiction that, as determined by the Attorney General, has substantially implemented this section not later than 2 years after the date of enactment of this Act is eligible for a bonus payment in addition to the amount of a grant to the jurisdiction under paragraph (1). The Attorney General may make a bonus payment to a jurisdiction for the first fiscal year beginning after the date on which the Attorney General determines the jurisdiction has substantially implemented this section.

(B) AMOUNT.—A bonus payment under this paragraph shall be—

(i) if the Attorney General determines that the jurisdiction has substantially implemented this section not later than the date that is 1 year after the date of enactment of this Act, in an amount equal to 10 percent of the amount of a grant to the jurisdiction under paragraph (1) for the fiscal year in which the bonus payment is made; and

(ii) if the Attorney General determines that the jurisdiction has substantially implemented this section after the date that is 1 year after the date of the enactment of this Act, and not later than 2 years after the date of enactment of this Act, in an amount equal to 5 percent of the amount of a grant to the jurisdiction under paragraph (1) for the fiscal year in which the bonus payment is made.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General to carry out this subsection such sums as may be necessary for each of fiscal years 2010 through 2014.

(q) DEFINITIONS.—In this section:

(1) ARSONIST AND BOMBER REGISTRY.—The term ''arsonist and bomber registry'' means a registry of criminal arsonists and criminal bombers, and a notification program, maintained by a jurisdiction under this section.

(2) ARSON OFFENSE.—The term ''arson offense'' means any criminal offense for committing arson, attempting arson, or conspiracy to commit arson in violation of the laws of the jurisdiction in which the offense was committed or the laws of the United States.

(3) BOMBING OFFENSE.—The term ''bombing offense'' means any criminal offense for committing a bombing, attempting a bombing, or conspiracy to commit a bombing in violation of the laws of the jurisdiction in which the offense was committed or the laws of the United States.

(4) CRIMINAL ARSONIST.—The term ''criminal arsonist''—

(A) means an individual who is convicted of an arson offense; and

(B) does not include a juvenile who is convicted of an arson offense unless the juvenile was tried as an adult for the arson offense.

(5) CRIMINAL BOMBER.—The term ''criminal bomber''—

(A) means an individual who is convicted of a bombing offense; and

(B) does not include a juvenile who is convicted of a bombing offense unless the juvenile was tried as an adult for the bombing offense.

(6) CRIMINAL OFFENSE.—The term ''criminal offense'' means a Federal, State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105–119; 10 U.S.C. 951 note)) or other criminal offense.

(7) EMPLOYEE.—The term ''employee'' includes an individual who is self-employed or works for any other entity, whether compensated or not.

(8) FIRE SAFETY OFFICER.—The term ''fire safety officer'' means an individual serving in an official capacity as a firefighter, fire investigator, or other arson investigator, as defined by the jurisdiction for the purposes of this section.

(9) FULL REGISTRATION PERIOD.—

(A) IN GENERAL.—The term ''full registration period'' means the period—

(i) beginning on the later of—

(I) the date on which an individual is convicted of an arson offense or bombing offense;

(II) the date on which an individual is released from custody for conviction of an arson offense or bombing offense; or

(III) the date on which an individual is placed on parole, supervised release, or probation for an arson offense or bombing offense; and

(ii) ending—

(I) for an individual who has been convicted of an arson offense or bombing offense for the first time, 5 years after the date described in clause (i);

(II) for an individual who has been convicted of an arson offense or bombing offense for the second time, 10 years after the date described in clause (i); and

(III) for an individual who has been convicted of an arson offense or bombing offense more than twice, on the date on which the individual dies.

(B) EXCLUSION OF TIME IN CUSTODY.—Any period during which an individual is in custody shall not be included in determining the end of the period under subparagraph (A).

(10) JURISDICTION.—The term ''jurisdiction'' means—

(A) a State;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico;

(D) Guam;

(E) American Samoa;

(F) the Commonwealth of the Northern Mariana Islands;

(G) the Virgin Islands; and

(H) to the extent provided in and subject to the requirements of subsection (o), a federally recognized Indian tribe.

(11) LAW ENFORCEMENT OFFICER.—The term ''law enforcement officer'' has the meaning given that term in section 1204 of the Omnibus Crime Control and Safe Street Act of 1968 (42 U.S.C. 3796b).

(12) RESIDES.—The term ''resides'' means the location of the home of an individual or other place where an individual habitually lives.

(13) STUDENT.—The term ''student'' means an individual who enrolls in or attends an educational institution (whether public or private), including a secondary school, trade or professional school, and institution of higher education.

By Mr. FEINGOLD (for himself, Mr. DURBIN, Mr. TESTER, Mr. UDALL, of New Mexico, Mr. BINGAMAN, Mr. SANDERS, Mr. AKAKA, Mr. WYDEN, Mr. MENENDEZ, and Mr. MERKLEY):

S. 1686. A bill to place reasonable safeguards on the use of surveillance and other authorities under the USA PATRIOT Act, and for other purposes; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I am pleased today to introduce the Judicious Use of Surveillance Tools In Counterterrorism Efforts, or JUSTICE, Act of 2009. I have had the privilege of working closely on this bill with Senator DURBIN, as I have on so many of these issues over the years, and I welcome the support of Senators TESTER, TOM UDALL, BINGAMAN, SANDERS, AKAKA and WYDEN. I am also pleased that the bill has the support of organizations and activists across the political spectrum, from former Republican Congressman Bob Barr to the American Civil Liberties Union to the American Library Association.

At the end of this year, three provisions of the USA PATRIOT Act will sunset unless Congress acts to reauthorize them. In my view, Congress should take this opportunity to revisit not just those three provisions, but rather a broad range of surveillance laws enacted in recent years to assess what additional safeguards are needed.

The JUSTICE Act does just that: It takes a comprehensive approach to fixing the Patriot Act and the FISA Amendments Act, once and for all. It permits the government to conduct necessary surveillance, but within a framework of accountability and oversight. It ensures both that our government has the tools to keep us safe, and that the privacy and civil liberties of innocent Americans will be protected. Because we can and must do both. These are not mutually exclusive goals.

Indeed, the Department of Justice just this week acknowledged as much in a letter setting forth its views on Patriot Act reauthorization. The Department said: ''We also are aware that Members of Congress may propose modifications to provide additional protection for the privacy of law abiding Americans. As President Obama said in his speech at the National Archives on May 21, 2009, 'We are indeed at war with al Qaeda and its affiliates. We do need to update our institutions to deal with this threat. But we must do so with an abiding confidence in the rule of law and due process; in checks and balances and accountability.' Therefore, the Administration is willing to consider such ideas, provided

that they do not undermine the effectiveness of these important authorities.''

I welcome the administration's openness to potential reforms of the Patriot Act and look forward to working together as the reauthorization process moves forward this fall.

But I remain concerned that critical information about the implementation of the Patriot Act has not been made public—information that I believe would have a significant impact on the debate. During the debate on the Protect America Act and the FISA Amendments Acts in 2007 and 2008, critical legal and factual information remained unknown to the public and to most members of Congress—information that was certainly relevant to the debate and might even have made a difference in votes. And during the last Patriot Act reauthorization debate in 2005, a great deal of implementation information remained classified. This time around, we must find a way to have an open and honest debate about the nature of these government powers, while protecting national security secrets.

As a first step, the Justice Department's letter made public for the first time that the so-called ''lone wolf'' authority—one of the three expiring provisions—has never been used. That was a good start, since this is a key fact as we consider whether to extend that power. But there also is information about the use of Section 215 orders that I believe Congress and the American people deserve to know. I do not underestimate the importance of protecting our national security secrets. But before we decide whether and in what form to extend these authorities, Congress and the American people deserve to know at least basic information about how they have been used. So I hope that the administration will consider seriously making public some additional basic information, particularly with respect to the use of Section 215 orders.

There can be no question that statutory changes to our surveillance laws are necessary. Since the Patriot Act was first passed in 2001, we have learned important lessons, and perhaps the most important of all is that Congress cannot grant the government overly broad authorities and just keep its fingers crossed that they won't be misused. Congress has the responsibility to put appropriate limits on government authorities—limits that allow agents to actively pursue criminals, terrorists and spies, but that also protect the privacy of innocent Americans.

This lesson was most clear in the context of National Security Letters. In reports issued in 2007 and 2008, the Department of Justice Inspector General carefully documented rampant misuse and abuse of the National Security Letter, NSL, authority by the FBI. The Inspector General found—as he put it—''widespread and serious misuse of the FBI's national security letter authorities. In many instances, the FBI's misuse of national security letters violated NSL statutes, Attorney General Guidelines, or the FBI's own internal policies.'' After those Inspector General reports, there can no longer be any doubt that granting overbroad authority leads to abuses. The FBI's apparently lax attitude and in some cases grave misuse of these potentially very intrusive authorities is attributable in no small part to the USA PATRIOT Act. That flawed legislation greatly expanded the NSL authorities, essentially granting the FBI a blank check to obtain some very sensitive records about Americans, including people not under any suspicion of wrong-doing, without judicial approval. Congress gave the FBI very few rules to follow, and failed to adequately remedy those shortcomings when it considered the NSL statutes as part of the Patriot Act reauthorization process in 2005.

The JUSTICE Act, like the bipartisan National Security Letter Reform Act that I introduced in the 110th Congress, would finally provide the statutory safeguards needed to protect against abuse of NSLs. And it would remedy First Amendment violations in the NSL statutes that were identified last year by the U.S. Court of Appeals for the Second Circuit, in a decision where Justice Sotomayor participated on the panel.

Specifically, the JUSTICE Act restricts the types of records that can be obtained without a court order to those that are the least sensitive and private, and it ensures that the FBI can only use NSLs to obtain information about individuals with some nexus to a suspected terrorist or spy. It makes sure that the FBI can no longer obtain the sensitive records of individuals three or four times removed from a suspect, most of whom would be entirely innocent. It follows the road map laid out by the Second Circuit to make sure the gag orders that accompany NSLs do not violate the First Amendment.

It prevents the use of so-called ''exigent letters,'' which the IG found the FBI was using in violation of the NSL statutes. It requires additional congressional reporting on NSLs, and it requires the FBI to establish a compliance program and tracking database for NSLs. And it requires the Attorney General to issue minimization procedures for information obtained through NSLs, so that information obtained about Americans is subject to enhanced protections and the FBI does not retain information obtained in error.

The JUSTICE Act also fixes Section 215, one of the most controversial provisions of the Patriot Act and one of the three that is subject to the 2009 sunset. This provision permits the government to obtain court orders for Americans' business records under the Foreign Intelligence Surveillance Act; it is often referred to as the ''library'' provision, although it covers all types of business records.

On Section 215, the legislation establishes a standard of individualized suspicion for obtaining a FISA business records order, requiring that the government be able to demonstrate the records have some nexus to terrorism or espionage, and it creates procedural protections to prevent abuses. The bill also ensures robust, meaningful and constitutionally sound judicial review of both National Security Letters and Section 215 business records orders, and the gag orders that accompany them.

The bill also ensures that Americans can feel safe in their homes by placing reasonable checks on the so-called ''sneak and peek'' search warrant provision of the Patriot Act. It would eliminate the overbroad catch-all provision that allows these searches to be used in virtually any criminal case, and it would shorten the presumptive time limits for notification that the search occurred. It also would create a statutory exclusionary rule, in recognition of the strong Fourth Amendment interests at stake with regard to this extraordinary exception to the usual requirement that law enforcement knock and announce themselves before executing a search warrant.

The JUSTICE Act also includes a number of reasonable safeguards to protect Americans' private communications. It permits the FBI to use roving wiretaps under FISA, but provides safeguards to protect innocent Americans from unnecessary surveillance. It ensures that the FBI does not obtain sensitive information about Americans' Internet usage without satisfying an appropriate standard, and subjects those authorities, called ''pen registers and trap and trace devices'', to new procedural checks. It provides new safeguards for the Patriot Act provision on computer trespass, which allows computer owners who are subject to hacking to give the government permission to monitor individuals on their systems without a warrant.

The bill also addresses the FISA Amendments Act, FAA, which granted the government new, over-expansive surveillance authorities and provided immunity to any companies that cooperated with the blatantly illegal warrantless wiretapping program that went on for more than five years—and that the prior administration repeatedly misled Congress about. That legislation became law last year over my strong objection, but it is not too late for Congress to fix it.

I offered several amendments to the FISA Amendments Act on the Senate floor—amendments that would have helped to make sure that the privacy of Americans' communications are properly protected. And now those amendments are part of the JUSTICE Act.

First, the bill would ensure that the FISA Amendments Act cannot be used to authorize the government to collect the content of all communications between the U.S. and the rest of the world. Under the FAA, millions upon millions of communications between

innocent Americans and their friends, families, or business associates overseas could legally be collected, with absolutely no suspicion of any wrongdoing. The JUSTICE Act would ensure such bulk collection will never occur.

Second, the JUSTICE Act would include a meaningful prohibition on the practice of reverse targeting—namely, wiretapping a person overseas when what the government is really interested in is listening to an American here at home with whom the foreigner is communicating. It would do so by requiring the government to obtain a court order whenever a significant purpose of the surveillance is to acquire the communications of an American in the U.S.

Third, the bill would create potential consequences if the government initiates surveillance under the FAA using procedures that have not been approved by the FISA Court, and the FISA Court later finds that those procedures were unlawful. Say, for example, the FISA Court determines that the procedures were not even reasonably designed to wiretap foreigners outside the U.S., rather than Americans here at home. Under the bill, the FISA Court would have the discretion to place limits on how the illegally obtained information on Americans can be retained and used.

Fourth, this bill includes a provision that will help protect the privacy of Americans whose international communications will be collected in vast new quantities. On the Senate floor last year, I joined with Senator WEBB and Senator TESTER to offer an amendment to provide real protections for the privacy of Americans, while also giving the government the flexibility it needs to wiretap terrorists overseas. And that amendment is in this bill.

And finally with respect to the FAA, the bill would repeal the grant of immunity to any companies that participated in the illegal NSA wiretapping program. Senator DODD was a leader on this during debate on the FAA and deserves a great deal of credit for drawing attention to this issue. Granting immunity seriously undercut our statutory scheme, which relies on both the government and the private sector to follow the law in implementing surveillance techniques. That is exactly why the surveillance laws have long provided liability protection for companies that cooperate with a government request for assistance, as long as they receive either a court order or a certification from the Attorney General that no court order is needed and the request meets all statutory requirements. But if requests are not properly documented, companies are supposed to refuse the government's request, and they are subject to liability if they instead decide to cooperate.

This framework, which has been in place for 30 years, protects companies that comply with legitimate government requests while also protecting the privacy of Americans' communications from illegitimate snooping. Granting companies that allegedly cooperated with an illegal program the retroactive immunity that was in the FAA undermines the law that has been on the books for decades—a law that was designed to prevent exactly the type of abuses that occurred. Repealing that provision helps bolster the statutory framework that has for so long helped to protect the privacy of Americans' communications.

The JUSTICE Act also provides additional congressional and judicial oversight of the Foreign Intelligence Surveillance Act. It ensures that the FBI provides some limited public reporting regarding its secret intelligence surveillance authority under FISA. It would give courts more authority to oversee the process for determining whether and how criminal defendants against whom FISA-derived evidence is being used should get access to the underlying applications and orders so they can mount a challenge.

The last title of the bill simply ensures that the law labels as terrorists only those people who truly wish to do this country harm—not domestic protesters who engage in civil disobedience or people who provide humanitarian assistance.

These concerns are not new. ''Sneak and peek'' searches, the need for reasonable limits on the FBI's use of roving wiretaps, access to business records, and the overly expansive computer trespass authority were all issues I first raised in the fall of 2001 as some of the reasons why I believed the PATRIOT Act was flawed and threatened fundamental constitutional rights and protections. Eight years later, it is time to finally get this right. Again and again, the previous administration requested and the Congress provided vast new surveillance authorities with minimal checks and balances. Many of these new tools were appropriate, and passage of this bill would leave in place surveillance authorities that are dramatically broader than what existed prior to 9/11. But what has been missing—what this bill finally provides—is the assurances that these new authorities are tailored to our national security needs and subject to proper oversight. Every single one of the changes in this bill is reasonable, measured and justifiable. I urge my colleagues to support it.

Mr. BENNETT (for himself, Mr. ENZI, Mr. BUNNING, and Mr. CRAPO):

S. 1688. A bill to prevent congressional reapportionment distortions by requiring that, in the questionnaires used in the taking of any decennial census of population, a checkbox or other similar option be included for respondents to indicate citizenship status or lawful presence in the United States; to the Committee on Homeland Security and Governmental Affairs.

Mr. BENNETT. Mr. President, I am pleased to rise today to introduce this important legislation, The Fairness in Representation Act, with my colleagues Senators ENZI and BUNNING. Next year's decennial census will be an enormous and expensive effort to complete the constitutionally mandated ''actual enumeration.'' I am proud of our Census department and the many people around the nation that will work together to produce what we hope and expect will be a fair and accurate census.

Unfortunately, current 2010 Census questionnaires lack a critical question: Are you a U.S citizen? How are we to accurately apportion representation in the House of Representatives and the Electoral College when no count of legal residents exists? Article 1 Section 2 of the U.S. Constitution mandates that a census be taken every 10 years expressly for the purpose of apportioning seats in the House of Representatives. However apportionment is based on each State's total population—including illegal aliens—relative to the rest of the country. Currently our census doesn't give us a count of the legal residents of this country. In the 1964 Supreme Court ruling, Wesberry v. Sanders the Court states that ''The House of Representatives, the [Constitutional] Convention agreed, was to represent the people as individuals and on a basis of complete equality for each voter.'' By counting citizens, legal residents and illegals alike, we are in effect eroding the power of the vote of those citizens who live in areas with fewer non-citizens. The large number of non-citizens in a district erases the principle of ''one man, one vote'' because it takes fewer votes to be elected to Congress.

The political costs of this broken system are great. I have drafted this legislation to require the decennial census to include a question regarding citizenship. The legislation will further direct the census to make such adjustments in the total population figures as may be necessary, in order that those who are not U.S. citizens or are not lawfully present in the U.S. are not counted in tabulating population for the purposes of apportionment. Apportionment of congressional seats and the Electoral College will be based on the legal population, rather than unfairly advantaging those communities with high illegal populations. I urge my colleagues to support this legislation that will correct an inexcusable error and return our representation system to its constitutional roots.

By Mr. BINGAMAN (for himself and Mr. UDALL, of New Mexico):

S. 1689. A bill to designate certain land as components of the National Wilderness Preservation System and the National Landscape Conservation System in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I am pleased to rise today with my colleague

Senator TOM UDALL to introduce the Organ Mountains-Desert Peaks Wilderness Act. This legislation will designate approximately 259,000 acres of wilderness in Doña Ana County, including the iconic Organ Mountains that overlook the City of Las Cruces. The legislation will also establish two Conservation Areas in Doña Ana County—the 86,600-acre Organ Mountains National Conservation Area on the east side of Las Cruces, and the 75,600-acre Desert Peaks National Conservation Area to the west, which adjoins the Prehistoric Trackways National Monument to its south.

The Organ Mountains are among the many scenic landscapes in Doña Ana County that define Southern New Mexico and the rich culture of its people. In addition to protecting the viewshed of the Organ Mountains from future development, this proposal seeks to preserve other important landscapes such as the Daña Ana Mountains, Robledo Mountains, and the ancient volcanic cinder cones and grasslands of the Potrillo Mountains. Many visitors also come to explore the caves, limestone cliffs, and winding canyons of the proposed Desert Peaks National Conservation Area.

While the public lands protected by this bill are important for their scenic and recreational values, they also represent a valuable economic resource for county residents, through ranching, hunting, and tourism that takes place here. This proposal will preserve healthy habitat for game and sensitive species; quality grazing land; and cultural resources like petroglyphs and historical features. Even those who may never visit these areas will benefit from their protection by consuming the clean water that these major watersheds provide to the people living in the valleys below.

This proposal is the culmination of over 2 years of consensus building accomplished by listening to input from a broad spectrum of the community. As a result, the proposal that has been developed meets the goals of conserving our treasured landscapes in Doña Ana County while addressing the valid concerns raised by frequent users of our public lands. I would like to take a moment to mention a couple of important changes we have made to the bill based on the input we received from the community to address both border security concerns as well as access issues for the ranchers who graze cattle in the region.

Doña Ana County shares its southern border with Mexico, and national security issues are always an important factor to consider in any legislation that involves border counties. For example, currently the West Potrillo Mountains Wilderness Study Area comes as close as a half mile in some places from the U.S.-Mexico border, which has created challenges for both the Department of Interior and the Department of Homeland Security to meet the goals of their distinct, yet equally important missions. This legislation seeks to provide additional flexibility for Customs and Border Patrol to accomplish its mission of border enforcement by releasing from Wilderness Study Area status more than 16,000 acres along the southern border. By assisting Border Patrol with its mission, the Bureau of Land Management will be better suited to meet its goals of natural resource protection as well.

With regard to ranching, access to water infrastructure is critical in the hot climate of southern New Mexico. To this end, we worked closely with all grazing permittees in the area to ensure all roads that lead to water improvements, like windmills, solar wells, water troughs and pipelines, were excluded from new wilderness areas. Other major infrastructure, like corrals, have also been excluded, and the congressional grazing guidelines that are referred to in this legislation will provide ranchers with the ability to use motorized vehicles to maintain stock ponds, fences, and other improvements in wilderness areas and to respond to emergencies. It is my belief that this approach will allow for the protection of these public lands while ensuring that ranching will continue.

My constituents in Doña Ana County have long expressed their desire to strike a balance between development and the preservation of the public lands that they grew up enjoying or that attracted them to the area in the first place. As such, this proposal is supported by a wide array of constituencies ranging from conservation and sportsmen's groups, city and county officials, to the Hispano Chamber of Commerce. With enactment of this bill, it is my hope that while Doña Ana County continues to prosper and grow, our unique places will be protected for generations to come. I am pleased that Senator UDALL has cosponsored this bill, and I urge all my colleagues to support the passage of this legislation.

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

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

S. 1689

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 ''Organ Mountains-Desert Peaks Wilderness Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONSERVATION AREA.—The term ''Conservation Area'' means each of the Organ Mountains National Conservation Area and the Desert Peaks National Conservation Area established by section 4(a).

(2) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Conservation Areas developed under section 4(d).

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

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

SEC. 3. DESIGNATION OF WILDERNESS AREAS.

(a) IN GENERAL.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), the following areas in the State are designated as wilderness and as components of the National Wilderness Preservation System:

(1) ADEN LAVA FLOW WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 27,650 acres as generally depicted on the map entitled ''Potrillo Mountains Complex'' and dated September 16, 2009, which shall be known as the ''Aden Lava Flow Wilderness''.

(2) BROAD CANYON WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 13,900 acres as generally depicted on the map entitled ''Desert Peaks National Conservation Area'' and dated September 16, 2009, which shall be known as the ''Broad Canyon Wilderness''.

(3) CINDER CONE WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 16,950 acres as generally depicted on the map entitled ''Potrillo Mountains Complex'' and dated September 16, 2009, which shall be known as the ''Cinder Cone Wilderness''.

(4) ORGAN MOUNTAINS WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 19,400 acres as generally depicted on the map entitled ''Organ Mountains National Conservation Area'' and dated September 16, 2009, which shall be known as the ''Organ Mountains Wilderness''.

(5) POTRILLO MOUNTAINS WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana and Luna counties comprising approximately 143,450 acres as generally depicted on the map entitled ''Potrillo Mountains Complex'' and dated September 16, 2009, which shall be known as the ''Potrillo Mountains Wilderness''.

(6) ROBLEDO MOUNTAINS WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 17,000 acres as generally depicted on the map entitled ''Desert Peaks National Conservation Area'' and dated September 16, 2009, which shall be known as the ''Robledo Mountains Wilderness''.

(7) SIERRA DE LAS UVAS WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 11,100 acres as generally depicted on the map entitled ''Desert Peaks National Conservation Area'' and dated September 16, 2009, which shall be known as the ''Sierra de las Uvas Wilderness''.

(8) WHITETHORN WILDERNESS.—Certain land administered by the Bureau of Land Management in Doña Ana and Luna counties comprising approximately 9,600 acres as generally depicted on the map entitled ''Potrillo Mountains Complex'' and dated September 16, 2009, which shall be known as the ''Whitethorn Wilderness''.

(b) MANAGEMENT.—Subject to valid existing rights, the wilderness areas designated by subsection (a) shall be administered by the Secretary in accordance with this Act and the Wilderness Act (16 U.S.C. 1131 et seq.), except that any reference in the Wilderness Act to the effective date of that Act shall be considered to be a reference to the date of enactment of this Act.

(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land or interest in land that is within the boundary of a wilderness area designated by subsection (a) that is acquired by the United States shall—

(1) become part of the wilderness area within the boundaries of which the land is located; and

(2) be managed in accordance with—

(A) the Wilderness Act (16 U.S.C. 1131 et seq.);

(B) this Act; and

(C) any other applicable laws.

(d) GRAZING.—Grazing of livestock in the wilderness areas designated by subsection (a), where established before the date of enactment of this Act, shall be administered in accordance with—

(1) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and

(2) the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101–405).

(e) MILITARY OVERFLIGHTS.—Nothing in this section restricts or precludes—

(1) low-level overflights of military aircraft over the wilderness areas designated by subsection (a), including military overflights that can be seen or heard within the wilderness areas;

(2) flight testing and evaluation; or

(3) the designation or creation of new units of special use airspace, or the establishment of military flight training routes, over the wilderness areas.

(f) BUFFER ZONES.—

(1) IN GENERAL.—Nothing in this section creates a protective perimeter or buffer zone around any wilderness area designated by subsection (a).

(2) ACTIVITIES OUTSIDE WILDERNESS AREAS.—The fact that an activity or use on land outside any wilderness area designated by subsection (a) can be seen or heard within the wilderness area shall not preclude the activity or use outside the boundary of the wilderness area.

(g) POTENTIAL WILDERNESS AREA.—

(1) ROBLEDO MOUNTAINS POTENTIAL WILDERNESS AREA.—

(A) IN GENERAL.—Certain land administered by the Bureau of Land Management, comprising approximately 100 acres as generally depicted as ''Potential Wilderness'' on the map entitled ''Desert Peaks National Conservation Area'' and dated September 16, 2009, is designated as a potential wilderness area.

(B) DESIGNATION AS WILDERNESS.—

(i) IN GENERAL.—On the date on which the Secretary publishes in the Federal Register the notice described in clause (ii), the potential wilderness area designated under subparagraph (A) shall be—

(I) designated as wilderness and as a component of the National Wilderness Preservation System; and

(II) incorporated into the Robledo Mountains Wilderness designated by subsection (a)(6).

(ii) NOTICE.—The notice referred to in clause (i) is notice that—

(I) the communications site within the potential wilderness area designated under subparagraph (A) is no longer used;

(II) the associated right-of-way is relinquished or not renewed; and

(III) the conditions in the potential wilderness area designated by subparagraph (A) are compatible with the Wilderness Act (16 U.S.C. 1131 et seq.).

(h) RELEASE OF WILDERNESS STUDY AREAS.—Congress finds that, for purposes of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)), the public land in Doña Ana County administered by the Bureau of Land Management not designated as wilderness by subsection (a)—

(1) has been adequately studied for wilderness designation;

(2) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)); and

(3) shall be managed in accordance with—

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

(B) this Act; and

(C) any other applicable laws.

SEC. 4. ESTABLISHMENT OF NATIONAL CONSERVATION AREAS.

(a) ESTABLISHMENT.—The following areas in the State are established as National Conservation Areas:

(1) ORGAN MOUNTAINS NATIONAL CONSERVATION AREA.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 86,650 acres as generally depicted on the map entitled ''Organ Mountains National Conservation Area'' and dated September 16, 2009, which shall be known as the ''Organ Mountains National Conservation Area''.

(2) DESERT PEAKS NATIONAL CONSERVATION AREA.—Certain land administered by the Bureau of Land Management in Doña Ana County comprising approximately 75,600 acres, as generally depicted on the map entitled ''Desert Peaks National Conservation Area'' and dated September 16, 2009, which shall be known as the ''Desert Peaks National Conservation Area''.

(b) PURPOSES.—The purposes of the Conservation Areas are to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the cultural, archaeological, natural, geological, historical, ecological, wildlife, educational, recreational, and scenic resources of the Conservation Areas.

(c) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Conservation Areas—

(A) in a manner that conserves, protects, and enhances the resources of the Conservation Areas; and

(B) in accordance with—

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

(ii) this Act; and

(iii) any other applicable laws.

(2) USES.—

(A) IN GENERAL.—The Secretary shall allow only such uses of the Conservation Areas that the Secretary determines would further the purposes described in subsection (b).

(B) USE OF MOTORIZED VEHICLES.—

(i) IN GENERAL.—Except as needed for administrative purposes or to respond to an emergency, the use of motorized vehicles in the Conservation Areas shall be permitted only on roads designated for use by motorized vehicles in the management plan.

(ii) NEW ROADS.—No additional road shall be built within the Conservation Areas after the date of enactment of this Act unless the road is necessary for public safety or natural resource protection.

(C) GRAZING.—The Secretary shall permit grazing within the Conservation Areas, where established before the date of enactment of this Act—

(i) subject to all applicable laws (including regulations) and Executive orders; and

(ii) consistent with the purposes described in subsection (b).

(D) UTILITY RIGHT-OF-WAY UPGRADES.—Nothing in this section precludes the Secretary from renewing or authorizing the upgrading (including widening) of an existing utility right-of-way through the Organ Mountains National Conservation Area—

(i) in accordance with—

(I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(II) any other applicable law; and

(ii) subject to such terms and conditions as the Secretary determines to be appropriate.

(d) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall develop a management plan for each of the Conservation Areas.

(2) CONSULTATION.—The management plans shall be developed in consultation with—

(A) State, tribal, and local governments; and

(B) the public.

(3) CONSIDERATIONS.—In preparing and implementing the management plans, the Secretary shall consider the recommendations of Indian tribes and pueblos on methods for—

(A) ensuring access to, and protection for, traditional cultural and religious sites in the Conservation Areas; and

(B) enhancing the privacy and continuity of traditional cultural and religious activities in the Conservation Areas.

(e) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land or interest in land that is within the boundary of a Conservation Area designated by subsection (a) that is acquired by the United States shall—

(1) become part of the Conservation Area within the boundaries of which the land is located; and

(2) be managed in accordance with—

(A) this Act; and

(B) any other applicable laws.

(f) TRANSFER OF ADMINISTRATIVE JURISDICTION.—On the date of enactment of this Act, administrative jurisdiction over the approximately 2,050 acres of land generally depicted as ''Transfer from DOD to BLM'' on the map entitled ''Organ Mountains National Conservation Area'' and dated September 16, 2009, shall—

(1) be transferred from the Secretary of Defense to the Secretary;

(2) become part of the Organ Mountains National Conservation Area; and

(3) be managed in accordance with—

(A) this Act; and

(B) any other applicable laws.

SEC. 5. GENERAL PROVISIONS.

(a) MAPS AND LEGAL DESCRIPTIONS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file maps and legal descriptions of the Conservation Areas and the wilderness areas designated by section 3(a) with—

(A) the Committee on Energy and Natural Resources of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) FORCE OF LAW.—The maps and legal descriptions filed under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct errors in the maps and legal descriptions.

(3) PUBLIC AVAILABILITY.—The maps and legal descriptions filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(b) NATIONAL LANDSCAPE CONSERVATION SYSTEM.—The Conservation Areas and the wilderness areas designated by section 3(a) shall be administered as components of the National Landscape Conservation System.

(c) FISH AND WILDLIFE.—Nothing in this Act affects the jurisdiction of the State with respect to fish and wildlife located on public land in the State, except that the Secretary, after consultation with the New Mexico Department of Game and Fish, may designate zones where, and establish periods during which, hunting, or fishing shall not be allowed for reasons of public safety, administration, the protection for nongame species

and their habitats, or public use and enjoyment.

(d) WITHDRAWALS.—

(1) IN GENERAL.—Subject to valid existing rights, the Federal land within the Conservation Areas, the wilderness areas designated by section 3(a), and the approximately 6,300 acres of land generally depicted as ''Parcel B'' on the map entitled ''Organ Mountains National Conservation Area'' and dated September 16, 2009, including any land or interest in land that is acquired by the United States after the date of enactment of this Act within such areas, is withdrawn from—

(A) entry, appropriation, or disposal under the public land laws;

(B) location, entry, and patent under the mining laws; and

(C) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(2) LIMITED WITHDRAWAL.—The approximately 1,300 acres of land generally depicted as ''Parcel A'' on the map entitled ''Organ Mountains National Conservation Area'' and dated September 16, 2009, is withdrawn in accordance with paragraph (1), except from disposal under the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'' (43 U.S.C. 869 et seq.)).

SEC. 6. PREHISTORIC TRACKWAYS NATIONAL MONUMENT BOUNDARY ADJUSTMENT.

Section 2103(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 431 note; Public Law 111–11; 123 Stat. 1097) is amended by striking ''December 17, 2008'' and inserting ''July 30, 2009''.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Mr. UDALL of New Mexico. Mr. President, today I join Senator BINGAMAN in introducing Organ Mountains-Desert Peaks Wilderness Act. The bill celebrates and preserves a portion of the unique and delicate landscape of southern New Mexico. Wilderness and conservation areas in Dona Ana and Luna Counties will protect a vast number of archeological sites and riparian areas, maintain habitat and migration corridors for wildlife, and preserve some of the only Chihuahuan Desert in the United States.

Set in the heart of Dona Ana County, Las Cruces is New Mexico's second largest city, and growing. The citizens of Las Cruces and the surrounding communities want to ensure that the area will continue to develop in a way that preserves the surrounding pristine landscapes including the iconic Organ Mountains. The Organ Mountains-Desert Peaks Wilderness Act is consistent with the city and County's long-term growth plan, and will act to maintain growth patterns in a way that will allow all citizens to enjoy the impressive views and landscapes surrounding Las Cruces.

The Organ Mountains Wilderness and NCA, just one portion of this comprehensive legislation, will keep these impressive peaks available for the enjoyment of southern New Mexicans, and all who visit the area. This mountain range is strikingly unique and gives great character and identity to other surrounding landscape and to the city of Las Cruces itself. A vast range of individual and public and private organizations came together to work on the protection of the Organ Mountains and the seven other wilderness areas included in the bill. Hunters, anglers and conservationists worked with ranchers and city and county officials to determine what areas were in greatest need of protection. Nearby military facilities worked with the Bureau of Land Management on land exchanges that are reflected in the bill and will benefit the public and military entities. Recommendations from the Border Patrol on how to ensure that the new wilderness fit into their homeland security efforts were incorporated into the bill. Years of negotiation and cooperation have resulted in the legislation being introduced today.

In total, the Organ Mountains-Desert Peaks Wilderness Act will protect 421,344 acres of desert landscape including 162,270 acres of National Conservation Area, and 259,071 acres of Wilderness Area. This area of rare and beautiful landscapes will be valued for generations. From the jagged basalt lava flows of the Cinder Cone Wilderness to the roaming hawks and scrambling javelinas of the Robledo Mountains, this unique piece of southern New Mexico has abundant natural value for its citizens.

With this legislation, we build upon the work of conservation greats like Aldo Leopold, a man who saw the beauty of New Mexico's untamed wilderness lands and sought to preserve them for future generations. It was Mr. Leopold who said, ''Conservation is a state of harmony between men and land.'' With the Organ Mountains-Desert Peaks Wilderness Act, we move a step closer to achieving that state of perfect harmony. I thank Senator BINGAMAN for his work to preserve this landscape and urge my colleagues to support this important bill.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 273—COMMEMORATING DR. NORMAN BORLAUG, RECIPIENT OF THE NOBEL PEACE PRIZE, CONGRESSIONAL GOLD MEDAL, PRESIDENTIAL MEDAL OF FREEDOM, AND FOUNDER OF THE WORLD FOOD PRIZE

Mr. HARKIN (for himself, Mr. GRASSLEY, Mrs. LINCOLN, Mr. CHAMBLISS, Mr. LUGAR, Mr. LEAHY, Ms. KLOBUCHAR, Mr. CORNYN, Mr. BROWN, Mr. CONRAD, Mr. FRANKEN, Mrs. HUTCHISON, Mr. BAUCUS, Mr. CASEY, Ms. STABENOW, Mr. BENNET, MR. JOHANNS, Mr. ROBERTS, Mr. NELSON of Nebraska, Mr. COCHRAN, Mr. THUNE, and Mrs. GILLIBRAND) submitted the following resolution; which was considered and agreed to:

S. RES. 273

Whereas Dr. Norman E. Borlaug was born on March 25, 1914, of Norwegian parents on a farm in Cresco, Iowa, and was educated in a 1-room school house throughout grades 1 through 8;

Whereas Dr. Borlaug attended the University of Minnesota, where he earned a Ph.D. degree in Plant Pathology;

Whereas, beginning in 1944, Dr. Borlaug spent 2 decades in rural Mexico working to assist the poorest farmers through a pioneering Rockefeller Foundation program;

Whereas Dr. Borlaug's research and innovative ''shuttle breeding'' in Mexico enabled him to develop a new approach to agriculture and a new disease-resistant variety of wheat with triple the output of grain;

Whereas this breakthrough achievement in plant production enabled Mexico to become self-sufficient in wheat by 1956, and concurrently raised the living standard for thousands of poor Mexican farmers;

Whereas Dr. Borlaug was asked by the United Nations to travel to India and Pakistan in the 1960s, as South-Asia and the Middle East faced an imminent widespread famine, where he eventually helped convince those 2 warring governments to adopt his new seeds and new approach to agriculture to address this critical problem;

Whereas, Dr. Borlaug brought miracle wheat to India and Pakistan, which helped both countries become self-sufficient in wheat production, thus saving hundreds of millions of people from hunger, famine, and death;

Whereas Dr. Borlaug and his team trained young scientists from Algeria, Tunisia, Egypt, Jordan, Iraq, Turkey, and Afghanistan in this same new approach to agriculture, which introduced new seeds but also put emphasis on the use of fertilizer and irrigation, thus increasing yields significantly in those countries as well;

Whereas Dr. Borlaug's approach to wheat was adapted by research scientists working in rice, which spread the Green Revolution to Asia, feeding and saving millions of people from hunger and starvation;

Whereas Dr. Borlaug was awarded the Nobel Peace Prize in 1970 as the ''Father of the Green Revolution'' and is only 1 of 5 people to have ever received the Nobel Peace Prize, Presidential Medal of Freedom, and Congressional Gold Medal;

Whereas Dr. Borlaug headed the Sasakawa Global 2000 program to bring the Green Revolution to 10 countries in Africa, and traveled the world to educate the next generation of scientists on the importance of producing new breakthrough achievements in food production;

Whereas Dr. Borlaug tirelessly promoted the potential that biotechnology offers for feeding the world, while also preserving biodiversity, in the 21st century when the global population is projected to rise to 9,000,000,000 people;

Whereas Dr. Borlaug continued his role as an educator as a Distinguished Professor at Texas A&M University, while also working at the International Center for the Improvement of Wheat and Maize in Mexico;

Whereas Dr. Borlaug founded the World Food Prize, called by several world leaders ''The Nobel Prize for Food and Agriculture'', which is awarded in Iowa each October so as to recognize and inspire Nobel-like achievements in increasing the quality, quantity, and availability of food in the world;

Whereas the Senate designated October 16 as World Food Prize Day in America in honor of Dr. Borlaug; and

Whereas it is written of Dr. Borlaug that throughout all of his work he saved 1,000,000,000 lives, thus making him widely known as saving more lives than any other person in human history: Now, therefore, be it

Resolved, That—

(1) the Senate has received with profound sorrow and deep regret the announcement of the passing of Dr. Norman Borlaug; and