

PACKWOOD, Mr. WARNER, Mr. COHEN, Mr. SHELBY, Mr. LOTT, Mr. HATFIELD, Mr. JEFFORDS, Mr. COCHRAN, Mr. BUMPERS, Mr. KOHL, Mr. MACK, Mr. BIDEN, Mr. CRAIG, Mr. SARBANES, Mr. BYRD, Mr. STEVENS, Mr. INHOFE, Mr. WELLSTONE, Mr. LEAHY, Mr. SIMPSON, Mr. BROWN, Mr. ROBB, Mr. INOUE, Mr. HATCH, and Mr. CAMPBELL):

S. Res. 179. A resolution concerning a joint meeting of Congress and the closing of the commemorations for the Fiftieth Anniversary of World War II, considered and agreed to.

By Mr. JEFFORDS:

S. Con. Res. 28. A concurrent resolution authorizing the use of the Capitol Grounds for the D.C. StandDown '95; to the Committee on Rules and Administration.

By Mr. DOLE:

S. Con. Res. 29. A concurrent resolution providing for marking the celebration of Jerusalem on the occasion of its 3000th Anniversary; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SMITH (for himself, Mr. CHAFFEE, Mr. INHOFE, Mr. KEMPTHORNE, Mr. FAIRCLOTH, Mr. BOND, Mr. THOMAS, Mr. MCCONNELL, Mr. WARNER, Mr. LOTT, and Mr. GREGG):

S. 1285. A bill to reauthorize and amend the Comprehensive Environmental Recovery, Compensation, and Liability Act of 1980, and for other purposes; to the Committee on Environment and Public Works.

THE ACCELERATED CLEANUP AND ENVIRONMENTAL RESTORATION ACT OF 1995

Mr. SMITH. Mr. President, when the Superfund Program was enacted in 1980, it was expected that only a few hundred sites would need to be cleaned up, at a relatively modest cost. Today, we know those expectations were misguided. There are more than 1,300 sites on the national priorities list, and the EPA has been adding an average of 30-40 new sites per year. To date, the construction of long-term cleanup remedies have been completed at fewer than 300 contaminated sites.

The Superfund saga has been running now for 15 years. The cast includes a bewildering mix of lawyers, bureaucrats, insurers, small business owners, polluters and others trapped in a tangled web of retroactive, joint, strict and several liability. The Superfund story is one of good intentions gone bad while a Government program ran amok.

I am here today to announce that this sorry show will be coming to an end, soon. My goal this year has been nothing short of a comprehensive, common sense reform of the Superfund Program.

The Subcommittee on Superfund, Waste Control, and Risk Assessment, which I chair, held 7 hearings and received testimony from more than 60 witnesses in an effort to formally incorporate a wide variety of views on the issue of Superfund reform. On June 28, I released a detailed outline of a Superfund reform plan and asked for

comments from interested parties. I received more than 150 constructive comments and suggestions.

The bill I am introducing today with Senators CHAFFEE, BOND, INHOFE, THOMAS, KEMPTHORNE, FAIRCLOTH, LOTT, MCCONNELL, WARNER and GREGG respond to the broad-based concerns and problems with the Superfund Program. The Accelerated Cleanup and Environmental Restoration Act will do just what the title says. The legislation will accelerate the pace of cleanups by reducing cleanup costs, reducing litigation costs, and providing economic incentives for PRPs to stay on site and get the job done.

The legislation will establish a fair, cost-effective and balanced approach to cleaning up hazardous waste sites and returning them to productive use.

Mr. President, I ask unanimous consent that a title-by-title summary of legislation be printed in the RECORD.

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

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

S. 1285

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Accelerated Cleanup and Environmental Restoration Act of 1995".

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

Sec. 1. Short title; table of contents.

TITLE I—COMMUNITY PARTICIPATION

Sec. 101. Community response organizations; technical assistance grants; improvement of public participation in the Superfund decision-making process.

TITLE II—STATE ROLE

Sec. 201. Delegation to the States of authorities with respect to national priorities list facilities.

TITLE III—VOLUNTARY CLEANUP

Sec. 301. Assistance for qualifying State voluntary response programs.

Sec. 302. Brownfield cleanup assistance.

Sec. 303. Treatment of security interest holders and fiduciaries as owners or operators.

Sec. 304. Federal Deposit Insurance Act amendment.

Sec. 305. Contiguous properties.

Sec. 306. Prospective purchasers and windfall liens.

Sec. 307. Safe harbor innocent landholders.

TITLE IV—SELECTION OF REMEDIAL ACTIONS

Sec. 401. Definitions.

Sec. 402. Selection and implementation of remedial actions.

Sec. 403. Remedy selection methodology.

Sec. 404. Remedy selection procedures.

Sec. 405. Completion of remedial action and delisting.

Sec. 406. Transition rules for facilities currently involved in remedy selection.

Sec. 407. Judicial review.

Sec. 408. National priorities list.

TITLE V—LIABILITY ALLOCATIONS

Sec. 501. Allocation of liability for multiparty facilities.

Sec. 502. Liability of response action contractors.

Sec. 503. Release of evidence.

Sec. 504. Contribution protection.

Sec. 505. Treatment of religious, charitable, scientific, and educational organizations as owners or operators.

Sec. 506. Common carriers.

Sec. 507. Limitation on liability for response costs.

TITLE VI—FEDERAL FACILITIES

Sec. 601. Transfer of authorities.

Sec. 602. Department of Energy environmental cleanup requirements.

Sec. 603. Innovative technologies for remedial action at Federal facilities.

Sec. 604. Federal facility listing.

Sec. 605. Federal facility listing deferral.

Sec. 606. Transfers of uncontaminated property.

TITLE VII—NATURAL RESOURCE DAMAGES

Sec. 701. Restoration of natural resources.

Sec. 702. Assessment of damages.

Sec. 703. Consistency between response actions and resource restoration standards and alternatives.

Sec. 704. Miscellaneous amendments.

TITLE VIII—MISCELLANEOUS

Sec. 801. Result-oriented cleanups.

Sec. 802. National priorities list.

Sec. 803. Obligations from the fund for response actions.

Sec. 804. Remediation waste.

TITLE IX—FUNDING

Subtitle A—General Provisions

Sec. 901. Authorization of appropriations from the fund.

Sec. 902. Orphan share funding.

Sec. 903. Department of Health and Human Services.

Sec. 904. Limitations on research, development, and demonstration programs.

Sec. 905. Authorization of appropriations from general revenues.

Sec. 906. Additional limitations.

Sec. 907. Reimbursement of potentially responsible parties.

TITLE I—COMMUNITY PARTICIPATION

SEC. 101. COMMUNITY RESPONSE ORGANIZATIONS; TECHNICAL ASSISTANCE GRANTS; IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.

(a) AMENDMENT.—Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617) is amended by striking subsection (e) and inserting the following:

“(e) COMMUNITY RESPONSE ORGANIZATIONS.—

“(1) ESTABLISHMENT.—The Administrator shall create a community response organization for a facility—

“(A) if the Administrator determines that a representative public forum will be helpful in promoting direct, regular, and meaningful consultation among persons interested in remedial action at a facility; or

“(B) at the request of—

“(i) 50 individuals residing in, or at least 20 percent of the population of, the area in which the facility is located;

“(ii) a representative group of the potentially responsible parties; or

“(iii) any local governmental entity with jurisdiction over the facility.

“(2) RESPONSIBILITIES.—A community response organization shall—

“(A) solicit the views of the local community on various issues affecting the development and implementation of remedial actions at the facility;

“(B) serve as a conduit of information to and from the community to appropriate Federal, State, and local agencies and potentially responsible parties; and

“(C) serve as a representative of the local community during the remedial action planning and implementation process.

“(3) CONSULTATION.—The Administrator shall consult with a community response organization in the preparation of a remedial action plan for a facility.

“(4) ACCESS TO DOCUMENTS.—The Administrator shall provide a community response organization access to documents in possession of the Federal Government regarding response actions at the facility that do not relate to liability and are not protected from disclosure as confidential business information.

“(5) PARTICIPATION BY EPA, THE STATE, AND POTENTIALLY RESPONSIBLE PARTIES.—Representatives of the Administrator, the State, and the potentially responsible parties shall be given reasonable notice and opportunity to participate in the community response organization activities and meetings and shall periodically report to the community response organization on preparation of the remedial action plan.

“(6) COMMUNITY RESPONSE ORGANIZATION INPUT.—

“(A) COMMUNICATION OF INFORMATION; SOLICITATION OF VIEWS.—The Administrator, (and if the remedial action plan is being prepared or implemented by a party other than the Administrator, the other party) shall keep the community response organization informed of progress and solicit the views of the community response organization during development and implementation of the remedial action plan.

“(B) TIMELY SUBMISSION OF COMMENTS.—The community response organization shall provide its comments, information, and recommendations in a timely manner to the Administrator (and other party).

“(C) CONSENSUS.—The community response organization shall attempt to achieve consensus among its members before providing comments and recommendations to the Administrator (and other party), but if consensus cannot be reached, the community response organization shall report or allow presentation of divergent views.

“(7) TECHNICAL ASSISTANCE GRANTS.—

“(A) PREFERRED RECIPIENT.—If a community response organization exists for a facility, the community response organization shall be the preferred recipient of a technical assistance grant under subsection (f).

“(B) PRIOR AWARD.—A technical assistance grant concerning a facility has been awarded prior to establishment of a community response organization—

“(i) the recipient of the grant shall coordinate its activities and share information and technical expertise with the community response organization; and

“(ii) 1 person representing the grant recipient shall serve on the community response organization.

“(8) MEMBERSHIP.—

“(A) NUMBER.—The Administrator shall select not less than 15 nor more than 20 persons to serve on a community response organization.

“(B) NOTICE.—Before selecting members of the community response organization, the Administrator shall provide a notice of intent to establish a community response organization to persons who reside in the local community.

“(C) REPRESENTED GROUPS.—The Administrator shall select members of the community response organization from each of the following groups of persons:

“(i) Persons who reside or own residential property near the facility;

“(ii) Persons who, although they may not reside or own property near the facility, may be adversely affected by a release from the facility.

“(iii) Persons who are members of the local public health or medical community and actively practicing in the community.

“(iv) Representatives of local Indian tribes or Indian communities, if such tribes or communities may be adversely affected.

“(v) Local representatives of citizen, environmental, or public interest groups with members residing in the community.

“(vi) Representatives of local governments, such as city or county governments, or both, and any other governmental unit that regulates land use or land use planning in the vicinity of the facility.

“(vii) Workers employed at the facility during facility operation, if readily available.

“(viii) The owner or operator of the facility and other potentially responsible parties who represent, if practicable, a balance of such parties' interests.

“(ix) Members of the local business community.

“(D) PROPORTION.—Local residents shall comprise not less than 60 percent of the membership of a community response organization.

“(E) PAY.—Members of a community response organization shall serve without pay.

“(9) PARTICIPATION BY GOVERNMENT REPRESENTATIVES.—Representatives of the Administrator, the Administrator of the Agency for Toxic Substances and Disease Registry, and the State, as appropriate, shall participate in community response organization meetings to provide information and technical expertise, but shall not be members of the community response organization.

“(10) ADMINISTRATIVE SUPPORT.—The Administrator shall provide administrative services and meeting facilities for community response organizations.

“(11) FACIA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a community response organization.

“(f) TECHNICAL ASSISTANCE GRANTS.—

“(1) DEFINITIONS.—In this subsection:

“(A) AFFECTED CITIZEN GROUP.—The term ‘affected citizen group’ means a group of 2 or more individuals who may be affected by the release or threatened release of a hazardous substance, pollutant, or contaminant at any facility on the State Registry or the National Priorities List.

“(B) TECHNICAL ASSISTANCE GRANT.—The term ‘technical assistance grant’ means a grant made under paragraph (2).

“(2) AUTHORITY.—

“(A) IN GENERAL.—In accordance with a regulation issued by the Administrator, the Administrator may make grants available to affected citizen groups.

“(B) AVAILABILITY OF APPLICATION PROCESS.—To ensure that the application process for a technical assistance grant is available to all affected citizen groups, the Administrator shall periodically review the process and, based on the review, implement appropriate changes to improve availability.

“(3) SPECIAL RULES.—

“(A) NO MATCHING CONTRIBUTION.—No matching contribution shall be required for a technical assistance grant.

“(B) AVAILABILITY IN ADVANCE.—The Administrator shall make all or a portion (but not less than \$5,000 or 10 percent of the grant amount, whichever is greater) of the grant amount available to a grant recipient in advance of the total expenditures to be covered by the grant.

“(4) LIMIT PER FACILITY.—

“(A) 1 GRANT PER FACILITY.—Not more than 1 technical assistance grant may be made

with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of response action.

“(B) DURATION.—The Administrator shall set a limit by regulation on the number of years for which a technical assistance grant may be made available based on the duration, type, and extent of response action at a facility.

“(5) AVAILABILITY FOR FACILITIES NOT YET LISTED.—Subject to paragraph (6), 1 or more technical assistance grants shall be made available to affected citizen groups in communities containing facilities on the State Registry that have been proposed for listing but are not yet listed on the National Priorities List as of the date on which the grant is awarded.

“(6) FUNDING LIMIT.—

“(A) PERCENTAGE OF TOTAL APPROPRIATIONS.—Not more than 2 percent of the funds made available to carry out this Act for a fiscal year may be used to make technical assistance grants.

“(B) ALLOCATION BETWEEN LISTED AND UNLISTED FACILITIES.—Not more than the portion of funds equal to 1/3 of the total amount of funds used to make technical assistance grants for a fiscal year may be used for technical assistance grants with respect to facilities not listed on the National Priorities List.

“(7) FUNDING AMOUNT.—

“(A) IN GENERAL.—The amount of a technical assistance grant may not exceed \$50,000 for a single grant recipient.

“(B) INCREASE.—The Administrator may increase the amount of a technical assistance grant, or renew a previous technical assistance grant, up to an amount not exceeding \$100,000 to reflect the complexity of the response action, the nature and extent of contamination at the facility, the level of facility activity, projected total needs as requested by the grant recipient, the size and diversity of the affected citizen group, and the ability of the grant recipient to identify and raise funds from other non-Federal sources.

“(8) USE OF TECHNICAL ASSISTANCE GRANTS.—

“(A) PERMITTED USE.—A technical assistance grant may be used to obtain technical assistance in interpreting information with regard to—

“(i) the nature of the hazardous substances located at a facility;

“(ii) facility evaluation;

“(iii) a proposed remedial action plan and final remedial design for a facility;

“(iv) response actions carried out at the facility; and

“(v) operation and maintenance activities at the facility.

“(B) PROHIBITED USE.—A technical assistance grant may not be used for the purpose of collecting field sampling data.

“(9) GRANT GUIDELINES.—

“(A) IN GENERAL.—Not later than 90 days after the date of enactment of this paragraph, the Administrator shall develop and publish guidelines concerning the management of technical assistance grants by grant recipients.

“(B) HIRING OF EXPERTS.—A recipient of a technical assistance grant shall hire technical experts and other experts in accordance with the guidelines under subparagraph (A).

“(g) IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.—

“(1) IN GENERAL.—

“(A) MEETINGS AND NOTICE.—In order to provide an opportunity for meaningful public participation in every significant phase of response activities under this Act, the Administrator shall provide the opportunity

for, and publish notice of, public meetings before or during performance of—

- “(i) a facility evaluation, as appropriate;
- “(ii) announcement of a proposed remedial action plan; and
- “(iii) completion of a final remedial design.

“(B) INFORMATION.—A public meeting under subparagraph (A) shall be designed to obtain information from the community, and disseminate information to the community, with respect to a facility concerning the Administrator’s facility activities and pending decisions.

“(2) PARTICIPANTS AND SUBJECT.—The Administrator shall provide reasonable notice of an opportunity for public participation in meetings in which—

“(A) the participants include Federal officials (or State officials, if the State is conducting response actions under a delegated or authorized program or through facility referral) with authority to make significant decisions affecting a response action, and any other person (unless all of such other persons are coregulators that are not potentially responsible parties or are government contractors); and

“(B) the subject of the meeting involves discussions directly affecting—

“(i) a legally enforceable work plan document, or any amendment to the document, for a removal, facility evaluation, proposed remedial action plan, final remedial design, or remedial action for a facility on the National Priorities List; or

“(ii) the final record of information on which the Administrator will base a hazard ranking system score for a facility.

“(3) LIMITATION.—Nothing in this subsection shall be construed—

“(A) to provide for public participation in or otherwise affect any negotiation, meeting, or other discussion that concerns only the potential liability or settlement of potential liability of any person, whether prior to or following the commencement of litigation or administrative enforcement action;

“(B) to provide for public participation in or otherwise affect any negotiation, meeting, or other discussion that is attended only by representatives of the United States (or of a department, agency, or instrumentality of the United States) with attorneys representing the United States (or of a department, agency, or instrumentality of the United States); or

“(C) to waive, compromise, or affect any privilege that may be applicable to a communication related to an activity described in subparagraph (A) or (B).

“(4) EVALUATION.—

“(A) IN GENERAL.—To the extent practicable, before and during the facility evaluation, the Administrator shall solicit and evaluate concerns, interests, and information from the community.

“(B) PROCEDURE.—An evaluation under subparagraph (A) shall include, as appropriate—

“(i) face-to-face community surveys to identify the location of private drinking water wells, historic and current or potential use of water, and other environmental resources in the community;

“(ii) a public meeting;

“(iii) written responses to significant concerns; and

“(iv) other appropriate participatory activities.

“(5) VIEWS AND PREFERENCES.—

“(A) SOLICITATION.—During the facility evaluation study, the Administrator shall solicit the views and preferences of the community on the remediation and disposition of hazardous substances or pollutants or contaminants at the facility.

“(B) CONSIDERATION.—The views and preferences of the community shall be described

in the facility evaluation study and considered in the screening of remedial alternatives for the facility.

“(6) ALTERNATIVES.—Members of the community may propose remedial action alternatives, and the Administrator shall consider such alternatives in the same manner as the Administrator considers alternatives proposed by potentially responsible parties.

“(7) INFORMATION.—

“(A) THE COMMUNITY.—The Administrator, with the assistance of the community response organization under subsection (g) if there is one, shall provide information to the community and seek comment from the community throughout all significant phases of the response action at the facility.

“(B) TECHNICAL STAFF.—The Administrator shall ensure that information gathered from the community during community outreach efforts reaches appropriate technical staff in a timely and effective manner.

“(C) RESPONSES.—The Administrator shall ensure that reasonable written or other appropriate responses will be made to such information.

“(8) NONPRIVILEGED INFORMATION.—Throughout all phases of response action at a facility, the Administrator shall make all nonprivileged information relating to a facility available to the public for inspection and copying without the need to file a formal request, subject to reasonable service charges as appropriate.

“(9) PRESENTATION.—

“(A) DOCUMENTS.—

“(i) IN GENERAL.—The Administrator, in carrying out responsibilities under this Act, shall ensure that the presentation of information on risk is complete and informative.

“(ii) RISK.—To the extent feasible, documents prepared by the Administrator and made available to the public that purport to describe the degree of risk to human health shall, at a minimum, state—

“(I) the upperbound and lowerbound estimates of the incremental risk;

“(II) the population or populations addressed by any estimates of the risk;

“(III) the expected risk or central estimate of the risk for the specific population;

“(IV) the reasonable range or other description of uncertainties in the assessment process; and

“(V) the assumptions that form the basis for any estimates of such risk posed by the facility and a brief explanation of the assumptions.

“(B) COMPARISONS.—The Administrator, in carrying out responsibilities under this Act, shall provide comparisons of the level of risk from hazardous substances found at the facility to comparable levels of risk from those hazardous substances ordinarily encountered by the general public through other sources of exposure.

“(10) REQUIREMENTS.—

“(A) LENGTHY REMOVAL ACTIONS.—Notwithstanding any other provision of this subsection, in the case of a removal action taken in accordance with section 104 that is expected to require more than 180 days to complete, and in any case in which implementation of a removal action is expected to obviate or that in fact obviates the need to conduct a long-term remedial action, the Administrator shall, to the maximum extent practicable, allow for public participation consistent with paragraph (1).

“(B) OTHER REMOVAL ACTIONS.—In the case of all other removal actions, the Administrator may provide the community with notice of the anticipated removal action and a public comment period, as appropriate.”

(b) ISSUANCE OF GUIDELINES.—The Administrator of the Environmental Protection Agency shall issue guidelines under section 117(e)(9) of the Comprehensive Environ-

mental Response, Compensation, and Liability Act of 1980, as added by subsection (a), not later than 90 days after the date of enactment of this Act.

TITLE II—STATE ROLE

SEC. 201. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

(a) IN GENERAL.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 302, is amended by adding at the end the following:

“SEC. 135. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

“(a) DEFINITIONS.—In this section:

“(1) COMPREHENSIVE DELEGATION STATE.—The term ‘comprehensive delegation State’, with respect to a facility, means a State to which the Administrator has delegated authority to perform all of the categories of delegable authority.

“(2) DELEGABLE AUTHORITY.—The term ‘delegable authority’ means authority to perform (or ensure performance of) all of the authorities included in any 1 or more of the categories of authority:

“(A) CATEGORY A.—All authorities necessary to perform technical investigations, evaluations, and risk analyses, including—

“(i) a preliminary assessment or facility inspection under section 104;

“(ii) facility characterization under section 104;

“(iii) a remedial investigation under section 104;

“(iv) A facility-specific risk evaluation under section 129(b)(4); and

“(v) any other authority identified by the Administrator under subsection (b).

“(B) CATEGORY B.—All authorities necessary to perform alternatives development and remedy selection, including—

“(i) a feasibility study under section 104; and

“(ii)(I) remedial action selection under section 121 (including issuance of a record of decision); or

“(II) remedial action planning under section 129(b)(5); and

“(iii) any other authority identified by the Administrator under subsection (b).

“(C) CATEGORY C.—All authorities necessary to perform remedial design, including—

“(i) remedial design under section 121; and

“(ii) any other authority identified by the Administrator under subsection (b).

“(D) CATEGORY D.—All authorities necessary to perform remedial action and operation and maintenance, including—

“(i) a removal under section 104;

“(ii) a remedial action under section 104 or section 10 (a) or (b);

“(iii) operation and maintenance under section 104(c); and

“(iv) any other authority identified by the Administrator under subsection (b).

“(E) CATEGORY E.—All authorities necessary to perform information collection and allocation of liability, including—

“(i) information collection activity under section 104(e);

“(ii) allocation of liability under section 132;

“(iii) a search for potentially responsible parties under section 104 or 107;

“(iv) settlement under section 122; and

“(v) any other authority identified by the Administrator under subsection (b).

“(F) CATEGORY F.—All authorities necessary to perform enforcement, including—

“(i) issuance of an order under section 106(a);

“(ii) a response action cost recovery under section 107;

“(iii) imposition of a civil penalty or award under section 109 (a)(1)(D) or (b)(4);

“(iv) settlement under section 122; and

“(v) any other authority identified by the Administrator under subsection (b).

“(3) DELEGATED STATE.—The term ‘delegated State’ means a State to which delegable authority has been delegated under subsection (c), except as may be provided in a delegation agreement in the case of a limited delegation of authority under subsection (c)(5).

“(4) DELEGATED AUTHORITY.—The term ‘delegated authority’ means a delegable authority that has been delegated to a delegated State under this section.

“(5) DELEGATED FACILITY.—The term ‘delegated facility’ means a non-federal listed facility with respect to which a delegable authority has been delegated to a State under this section.

“(6) NONCOMPREHENSIVE DELEGATION STATE.—The term ‘noncomprehensive delegation State’ with respect to a facility, means a State to which the Administrator has delegated authority to perform fewer than all of the categories of delegable authority.

“(7) NONDELEGABLE AUTHORITY.—The term ‘nondelegable authority’ means authority to—

“(A) make grants to community response organizations under section 117; and

“(B) conduct research and development activities under any provision of this Act.

“(8) NON-FEDERAL LISTED FACILITY.—The term ‘non-federal listed facility’ means a facility that—

“(A) is not owned or operated by and is not under the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States in any branch of the Government; and

“(B) is listed on the National Priorities List.

“(b) IDENTIFICATION OF DELEGABLE AUTHORITIES.—

“(1) IN GENERAL.—The Secretary shall by regulation identify all of the authorities of the Administrator that shall be included in a delegation of any category of delegable authority described in subsection (a)(2).

“(2) LIMITATION.—The Administrator shall not identify a nondelegable authority for inclusion in a delegation of any category of delegable authority.

“(c) DELEGATION OF AUTHORITY.—

“(1) IN GENERAL.—On application by a State, the Administrator shall delegate authority to perform 1 or more delegable authorities with respect to 1 or more non-Federal listed facilities in the State.

“(2) APPLICATION.—An application under paragraph (1) shall—

“(A) identify each non-Federal listed facility for which delegation is requested;

“(B) identify each delegable authority that is requested to be delegated for each non-Federal listed facility for which delegation is requested; and

“(C) certify that the State has adequate legal authority, financial and personnel resources, organization, and expertise to perform the requested delegable authority.

“(3) APPROVAL OF APPLICATION.—

“(A) IN GENERAL.—Not later than 60 days after receiving an application under paragraph (2) by a State that is authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), and not later than 120 days after receiving an application from any other State, the Administrator shall—

“(i) issue a notice of approval of the application (including approval or disapproval regarding any or all of the facilities with re-

spect to which a delegation of authority is requested or with respect to any or all of the authorities that are requested to be delegated); or

“(ii) if the Administrator determines that the State does not have adequate legal authority, financial and personnel resources, organization, or expertise to administer and enforce any of the requested delegable authority, issue a notice of disapproval, including an explanation of the basis for the determination.

“(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of all or any portion of an application within the applicable time period under subparagraph (A), the application shall be deemed to have been granted.

“(C) RESUBMISSION OF APPLICATION.—

“(i) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

“(ii) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the applicable time period under subparagraph (A), the resubmitted application shall be deemed to have been granted.

“(D) NO ADDITIONAL TERMS OR CONDITIONS.—The Administrator shall not impose any term or condition on the approval of an application that meets the requirements stated in paragraph (2) (except that any technical deficiencies in the application be corrected).

“(E) JUDICIAL REVIEW.—

“(i) IN GENERAL.—A disapproval of a resubmitted application shall be subject to judicial review under section 113(b).

“(ii) STANDARD OF REVIEW.—In a proceeding on review of a disapproval of a resubmitted application, the court shall, notwithstanding section 706(2)(E) of title 5, United States Code, hold unlawful and set aside actions, findings, and conclusions found to be unsupported by substantial evidence.

“(4) DELEGATION AGREEMENT.—On approval of a delegation of authority under this section, the Administrator and the delegated State shall enter into a delegation agreement that identifies each category of delegable authority that is delegated with respect to each delegated facility.

“(5) LIMITED DELEGATION.—

“(A) IN GENERAL.—In the case of a State that does not meet the requirements of paragraph (2)(C) the Administrator may delegate to the State limited authority to perform, ensure the performance of, or supervise or otherwise participate in the performance of 1 or more delegable authorities, as appropriate in view of the extent to which the State has the required legal authority, financial and personnel resources, organization, and expertise.

“(B) SPECIAL PROVISIONS.—In the case of a limited delegation of authority to a State under subparagraph (A), the Administrator shall specify the extent to which the State shall be considered to be a delegated State for the purposes of this Act.

“(d) PERFORMANCE OF DELEGATED AUTHORITIES.—

“(1) IN GENERAL.—A delegated State shall have sole authority (except as provided in paragraph (6)(B), subsection (e)(4), and subsection (g)) to perform a delegated authority with respect to a delegated facility.

“(2) AGREEMENTS.—A delegated State may enter into an agreement with a political subdivision of the State, an interstate body comprised of that State and another delegated State or States, or a combination of such subdivisions or interstate bodies, providing for the performance of any category of delegated authority with respect to a delegated facility in the State if the parties to

the agreement agree in the agreement to undertake response actions that are consistent with this Act.

“(3) COMPLIANCE WITH ACT.—

“(A) NONCOMPREHENSIVE DELEGATION STATES.—A noncomprehensive delegation State shall implement each applicable provision of this Act (including regulations and guidance issued by the Administrator) so as to perform each delegated authority with respect to a delegated facility in the same manner as would the Administrator with respect to a facility that is not a delegated facility.

“(B) COMPREHENSIVE DELEGATION STATES.—

“(i) IN GENERAL.—A comprehensive delegation State shall implement applicable provisions of this Act or of similar provisions of State law in a manner comporting with State policy, so long as the remedial action that is selected protects human health and the environment to the same extent as would a remedial action selected by the Administrator under section 121.

“(ii) COSTLIER REMEDIAL ACTION.—

“(I) IN GENERAL.—A delegated State may select a remedial action for a delegated facility that has a greater response cost (including operation and maintenance costs) than the response cost for a remedial action that would be selected by the Administrator under section 121, if the State pays for the difference in cost.

“(II) NO COST RECOVERY.—If a delegated State selects a more costly remedial action under subclause (I), the State shall not be entitled to seek cost recovery under this Act or any other Federal or State law from any other person for the difference in cost.

“(4) JUDICIAL REVIEW.—

“(A) IN GENERAL.—An order that is issued under section 106 by a delegated State with respect to a delegated facility shall be subject to judicial review under section 113(b).

“(B) STANDARD OF REVIEW.—In a proceeding on review of an order under subparagraph (A), the court shall, notwithstanding section 706(2)(E) of title 5, United States Code, hold unlawful and set aside actions, findings, and conclusions found to be unsupported by substantial evidence.

“(5) DELISTING OF NATIONAL PRIORITIES LIST FACILITIES.—

“(A) DELISTING.—After notice and an opportunity for public comment, a delegated State may remove from the National Priorities List all or part of a delegated facility—

“(i) if the State makes a finding that no further action is needed to be taken at the facility (or part of the facility) under any applicable law to protect human health and the environment consistent with section 121(a) (1) and (2);

“(ii) with the concurrence of the potentially responsible parties, if the State has an enforceable agreement to perform all required remedial action and operation and maintenance for the facility or if the clean-up will proceed at the facility under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); or

“(iii) if the State is a comprehensive delegation State with respect to the facility.

“(B) EFFECT OF DELISTING.—A delisting under subparagraph (A)(iii) shall not affect—

“(i) the authority or responsibility of the State to complete remedial action and operation and maintenance; or

“(ii) the eligibility of the State for funding under this Act.

“(C) NO RELISTING.—The Administrator shall not relist on the National Priorities List a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A).

“(6) COST RECOVERY.—

“(A) DEPOSIT IN FUND.—Any response costs recovered from a responsible party by a delegated State for a delegated facility under section 107 shall be deposited in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986.

“(B) RECOVERY BY THE ADMINISTRATOR.—

“(i) IN GENERAL.—The Administrator may take action under section 107 to recover response costs from a responsible party for a delegated facility if the delegated State notifies the Administrator in writing that the delegated State does not intend to pursue action for recovery of response costs under section 107 against the responsible party.

“(ii) NO FURTHER ACTION.—If the Administrator takes action against a potentially responsible party under section 107, the delegated State may not take any other action for recovery of response costs under this Act or any other Federal or State law.

“(e) FEDERAL RESPONSIBILITIES AND AUTHORITIES.—

“(1) REVIEW USE OF FUNDS.—

“(A) IN GENERAL.—The Administrator shall review the certification submitted by the Governor under subsection (f)(8) not later than 120 days after the date of its submission.

“(B) FINDING OF USE OF FUNDS INCONSISTENT WITH THIS ACT.—If the Administrator finds that funds were used in a manner that is inconsistent with this Act, the Administrator shall notify the Governor in writing not later than 120 days after receiving the Governor's certification.

“(C) EXPLANATION.—not later than 30 days after receiving a notice under subparagraph (B), the Governor shall—

“(i) explain why the Administrator's finding is in error; or

“(ii) explain to the Administrator's satisfaction how any misapplication or misuse of funds will be corrected.

“(D) FAILURE TO EXPLAIN.—If the Governor fails to make an explanation under subparagraph (C) to the Administrator's satisfaction, the Administrator may request reimbursement of such amount of funds as the Administrator finds was misapplied or misused.

“(E) WITHHOLDING OF FURTHER FUNDS; CIVIL ACTION.—If the Administrator fails to obtain reimbursement from the State within a reasonable period of time, the Administrator may, after 30 days' notice to the State, bring a civil action in United States district court to recover from the delegated State any funds from that were advanced for a purpose or were used for a purpose or in a manner that is inconsistent with this Act.

“(2) WITHDRAWAL OF DELEGATION OF AUTHORITY.—

“(A) DELEGATED STATES.—If at any time the Administrator finds that contrary to a certification made under subsection (c)(2), a delegated State—

“(i) lacks the required financial and personnel resources, organization, or expertise to administer and enforce the requested delegated authorities;

“(ii) does not have adequate legal authority to request and accept delegation; or

“(iii) is failing to materially carry out the State's delegated authorities,

the Administrator may withdraw a delegation of authority with respect to a delegated facility after providing notice and opportunity to correct deficiencies under subparagraph (D).

“(B) STATES WITH LIMITED DELEGATIONS OF AUTHORITY.—If the Administrator finds that a State to which a limited delegation of authority was made under subsection (c)(5) has materially breached the delegation agreement, the Administrator may withdraw the

delegation after providing notice and opportunity to correct deficiencies under subparagraph (D).

“(C) NO WITHDRAWAL WITH 1 YEAR OF APPROVAL.—The Administrator shall not withdraw a delegation of authority within 1 year after the date on which the application for delegation is approved (including approval under subsection (b)(3) (B) or (C)(ii)).

“(D) NOTICE AND OPPORTUNITY TO CORRECT.—If the Administrator proposes to withdraw a delegation of authority for any or all delegated facilities, the Administrator shall give the State written notice and allow the State at least 90 days after the date of receipt of the notice to correct the deficiencies cited in the notice.

“(E) FAILURE TO CORRECT.—If the Administrator finds that the deficiencies have not been corrected within the time specified in a notice under subparagraph (D), the Administrator may withdraw delegation of authority after providing public notice and opportunity for comment.

“(F) JUDICIAL REVIEW.—

“(i) IN GENERAL.—A decision of the Administrator to withdraw a delegation of authority shall be subject to judicial review under section 113(b).

“(ii) STANDARD OF REVIEW.—In a proceeding on review of a decision by the Administrator to withdraw a delegation of authority, the court shall, notwithstanding section 706(2)(E) of title 5, United States Code, hold unlawful and set aside actions, findings, and conclusions found to be unsupported by substantial evidence.

“(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the authority of the Administrator under this Act to—

“(A) take a response action at a facility listed on the National Priorities List in a State to which a delegation of authority has not been made under this section or at a facility not included in a delegation of authority; or

“(B) perform a delegable authority with respect to a facility that is not included among the authorities delegated to a State with respect to the facility.

“(4) EMERGENCY REMOVAL.—

“(A) NOTICE.—Before performing an emergency removal action under section 104 at a delegated facility, the Administrator shall notify the delegated States of the Administrator's intention to perform the removal.

“(B) STATE ACTION.—If, after receiving a notice under subparagraph (A), the delegated State notifies the Administrator within 48 hours that the State intends to take action to perform an emergency removal at the delegated facility, the Administrator shall not perform the emergency removal action unless the Administrator determines that the delegated State has failed to act within a reasonable period of time to perform the emergency removal.

“(C) IMMEDIATE AND SIGNIFICANT DANGER.—If the Administrator finds that an emergency at a delegated facility poses an immediate and significant danger to human health or the environment, the Administrator shall not be required to provide notice under subparagraph (A).

“(5) PROHIBITED ACTIONS.—Except as provided in subsections (d)(6)(B), (e)(4), and (g), the President, the Administrator, and the Attorney General shall not take any action under section 104, 106, 107, 109, 121, or 122 with respect to a delegated facility.

“(f) FUNDING.—

“(1) IN GENERAL.—The Administrator shall provide grants to delegated States to carry out this section.

“(2) NO CLAIM AGAINST FUND.—Notwithstanding any other law, funds to be granted

under this subsection shall not constitute a claim against the Fund.

“(3) DETERMINATION OF COSTS ON A FACILITY-SPECIFIC BASIS.—The Administrator shall—

“(A) determine—

“(i) the delegable authorities the costs of performing which it is practicable to determine on a facility-specific basis; and

“(ii) the delegable authorities the costs of performing which it is not practicable to determine on a facility-specific basis; and

“(B) publish a list describing the delegable authorities in each category.

“(4) FACILITY-SPECIFIC GRANTS.—The costs described in paragraph (3)(A)(i) shall be funded as such costs arise with respect to each delegated facility.

“(5) NON-FACILITY-SPECIFIC GRANTS.—

“(A) IN GENERAL.—The costs described in paragraph (1)(A)(ii) shall be funded through non-facility-specific grants under this paragraph.

“(B) FORMULA.—The Administrator shall establish a formula under which funds available for non-facility-specific grants shall be allocated among the delegated States, taking into consideration—

“(i) the cost of administering the delegated authority;

“(ii) the number of sites for which the State has been delegated authority;

“(iii) the types of activities for which the State has been delegated authority;

“(iv) the number of facilities within the State that are listed on the National Priorities List or are delegated facilities under section 127(d)(5);

“(v) the number of other high priority facilities within the State;

“(vi) the need for the development of the State program;

“(vii) the need for additional personnel;

“(viii) the amount of resources available through State programs for the cleanup of contaminated sites; and

“(ix) the benefit to human health and the environment of providing the funding.

“(6) PERMITTED USE OF GRANT FUNDS.—A delegated State may use grant funds to take any action or perform any duty necessary to implement the authority delegated to the State under this section.

“(7) COST SHARE.—

“(A) ASSURANCE.—A delegated State to which a grant is made under this subsection shall provide an assurance that the State will pay any amount required under section 104(c)(3).

“(B) PROHIBITED USE OF GRANT FUNDS.—A delegated State to which a grant is made under this subsection may not use grant funds to pay any amount required under section 104(c)(3).

“(8) CERTIFICATION OF USE OF FUNDS.—Not later than 1 year after the date on which a delegated State receives funds under this subsection, and annually thereafter, the Governor of the State shall submit to the Administrator—

“(A) a certification that the State has used the funds in accordance with the requirements of this Act; and

“(B) information describing the manner in which the State used the funds.

“(g) COOPERATIVE AGREEMENTS.—Nothing in this section shall affect the authority of the Administrator under section 104(d)(1) to enter into a cooperative agreement with a State, a political subdivision of a State, or an Indian tribe to carry out actions under section 104.

“(h) NON-NATIONAL PRIORITIES LIST FACILITIES.—

“(1) DEFINITIONS.—In this subsection, the term ‘non-National Priorities List facility’ means a facility that is not, and never has been, listed on the National Priorities List

and that is not owned or operated by a department, agency, or instrumentality of the United States.

“(2) FINALITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a determination that a response action at a non-National Priorities List facility or portion of a non-National Priorities List facility is complete under State law is final, and the facility shall not be subject to further response action notwithstanding any provision of this Act or any other Federal law.

“(B) EXCEPTION FOR EMERGENCY REMOVALS.—The Administrator may conduct an emergency removal action under the authority of section 104 subject to the notice requirement of section 135(e)(4) at a non-National Priorities List facility.

“(3) PROHIBITION.—The President shall not take any action under section 106 at a non-National Priorities List facility.”.

(b) USES OF FUND.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by inserting after paragraph (6) the following:

“(7) GRANTS TO DELEGATED STATES.—Making a grant to a delegated State under section 135(f).”.

(c) RELATIONSHIP TO OTHER LAWS.—

(1) IN GENERAL.—Section 114 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614) is amended—

(A) by striking subsection (a); and

(B) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

(2) CONFORMING AMENDMENT.—Section 101(37)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(37)(B)) is amended by striking “section 114(c)” and inserting “section 114(b)”.

TITLE III—VOLUNTARY CLEANUP

SEC. 301. ASSISTANCE FOR QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.

(a) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

“(39) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAM.—The term ‘qualifying State voluntary response program’ means a State program that includes the elements described in section 133(b).”.

(b) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 501, is amended by adding at the end the following:

“SEC. 133. QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.

“(a) ASSISTANCE TO STATES.—The Administrator shall provide technical and other assistance to States to establish and expand qualifying State voluntary response programs that include the elements listed in subsection (b).

“(b) ELEMENTS.—The elements of a qualifying State voluntary response program are the following:

“(1) Opportunities for technical assistance for voluntary response actions.

“(2) Adequate opportunities for public participation, including prior notice and opportunity for comment, in appropriate circumstances, in selecting response actions.

“(3) Streamlined procedures to ensure expeditious voluntary response actions.

“(4) Oversight and enforcement authorities that are adequate to ensure that—

“(A) voluntary response actions are protective of human health and the environment

and are conducted in accordance with an appropriate response action plan; and

“(B) if the person conducting the voluntary response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

“(5) Mechanisms for approval of a voluntary response action plan.

“(6) A requirement for certification or similar documentation from the State to the person conducting the voluntary response action indicating that the response is complete.”.

(c) FUNDING.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611), as amended by section 201(b), is amended by inserting after paragraph (7) the following:

“(8) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.—For assistance to States to establish and administer qualifying State voluntary response programs, during the first 5 full fiscal years following the date of enactment of this subparagraph, in a total amount to all States that is not less than 2 percent and not more than 5 percent of the amount available in the Fund for each such fiscal year, distributed among each of the States that notifies the Administrator of the State’s intent to establish a qualifying State voluntary response program and each of the States with a qualifying State voluntary response program in the amount that is equal to the total amount multiplied by a fraction—

“(A) the numerator of which is the number of facilities in the State that, as of September 29, 1995, were listed on the Comprehensive Environmental Response, Compensation, and Liability Information System (not including facilities that are listed on the National Priorities List); and

“(B) the denominator of which is the total number of such facilities in the United States.”.

SEC. 302. BROWNFIELD CLEANUP ASSISTANCE.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 301(b), is amended by adding at the end the following:

“SEC. 134. BROWNFIELD CLEANUP ASSISTANCE

“(a) DEFINITIONS.—In this section:

“(1) ADMINISTRATIVE COST.—The term ‘administrative cost’ does not include the cost of—

“(A) investigation and identification of the extent of contamination;

“(B) design and performance of a response action; or

“(C) monitoring of natural resources.

“(2) BROWNFIELD FACILITY.—The term ‘brownfield facility’ means—

“(A) a parcel of land that contains or at any time contained abandoned or underused commercial or industrial property, the expansion or redevelopment of which is complicated by the presence or potential presence of a hazardous substance; but

“(B) does not include—

“(i) a facility that is the subject of a removal or planned removal under title I;

“(ii) a facility that is listed or has been proposed for listing on the National Priorities List or that has been delisted under section 135(d)(5);

“(iii) a facility that is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h)) at the time at which an application for a grant or loan concerning the facility is submitted under this section;

“(iv) a land disposal unit with respect to which—

“(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

“(II) closure requirements have been specified in a closure plan or permit;

“(v) a facility with respect to which an administrative order on consent or judicial consent decree requiring cleanup has been entered into by the United States under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or title XIV of the Public Health Service Act (commonly known as the ‘Safe Drinking Water Act’) (42 U.S.C. 300f et seq.);

“(vi) a facility that is owned or operated by a department, agency, or instrumentality of the United States; or

“(vii) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

“(3) ELIGIBLE ENTITY.—The term ‘eligible entity’ means—

“(A) a general purpose unit of local government;

“(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

“(C) a regional council or group of general purpose units of local government; and

“(D) an Indian tribe.

“(b) BROWNFIELD CLEANUP ASSISTANCE PROGRAM.—

“(1) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to provide interest-free loans for the site characterization and assessment of brownfield facilities.

“(2) ASSISTANCE FOR SITE CHARACTERIZATION AND ASSESSMENT.—

“(A) IN GENERAL.—On approval of an application made by an eligible entity, the Administrator may make interest-free loans out of the Fund to the eligible entity to be used for the site characterization and assessment of 1 or more brownfield facilities.

“(B) APPROPRIATE INQUIRY.—A site characterization and assessment carried out with the use of a loan under subparagraph (A) shall be performed in accordance with section 101(35)(B).

“(C) REPAYMENT.—

“(i) IN GENERAL.—An eligible entity that receives a loan under subparagraph (A) shall agree to repay the full amount of the loan within 10 years after the date on which the loan is made.

“(ii) DEPOSIT IN FUND.—Repayments on a loan under subparagraph (A) shall be deposited in the Fund.

“(3) HAZARDOUS SUBSTANCE SUPERFUND.—Notwithstanding section 111 of this Act or any provision of the Superfund Amendments and Reauthorization Act of 1986 (100 Stat. 1613), there is authorized to be appropriated out of the Fund \$15,000,000 for each of the first 5 fiscal years beginning after the date of enactment of this section, to be used for making interest-free loans under paragraph (2).

“(4) MAXIMUM LOAN AMOUNT.—A loan under subparagraph (A) shall not exceed, with respect to each brownfield facility covered by the loan, \$100,000 for any fiscal year or \$200,000 in total.

“(5) SUNSET.—No amount shall be available from the Fund for purposes of this section after the fifth fiscal year after the date of enactment of this section.

“(6) PROHIBITION.—No part of a loan under this section may be used for payment of penalties, fines, or administrative costs.

“(7) AUDITS.—The Inspector General of the Environmental Protection Agency shall audit all loans made under paragraph (2) to ensure that all funds are used for the purposes described in this section and that all loans are repaid in accordance with paragraph (2).

“(8) AGREEMENTS.—Each loan made under this section shall be subject to an agreement that—

“(A) requires the eligible entity to comply with all applicable State laws (including regulations);

“(B) requires that the eligible entity shall use the loan exclusively for purposes specified in paragraph (2); and

“(C) contains such other terms and conditions as the Administrator determines to be necessary to protect the financial interests of the United States and to carry out the purposes of this section.

“(9) LEVERAGING.—An eligible entity that receives a loan under paragraph (1) may use the loaned funds for part of a project at a brownfield facility for which funding is received from other sources, but the loan funds shall be used only for the purposes described in paragraph (2).

“(C) LOAN APPLICATIONS.—

“(1) IN GENERAL.—Any eligible entity may submit an application to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, for a loan under this section for 1 or more brownfield facilities.

“(2) APPLICATION REQUIREMENTS.—An application for a loan under this section shall include—

“(A) an identification of each brownfield facility for which the loan is sought and a description of the redevelopment plan for the area or areas in which each facility is located, including a description of the nature and extent of any known or suspected environmental contamination within the area; and

“(B) an analysis that demonstrates the potential of the grant to stimulate economic development on completion of the planned response action, including a projection of the number of jobs expected to be created at the facility after remediation and redevelopment and, to the extent feasible, a description of the type and skill level of the jobs and a projection of the increases in revenues accruing to Federal, State, and local governments from the jobs.

“(3) APPROVAL.—

“(A) INITIAL LOANS.—On or about March 30 and September 30 of the first fiscal year following the date of enactment of this section, the Administrator shall make loans under this section to eligible entities that submit applications before those dates that the Administrator determines have the highest rankings under ranking criteria established under paragraph (4).

“(B) SUBSEQUENT LOANS.—Beginning with the second fiscal year following the date of enactment of this section, the Administrator shall make an annual evaluation of each application received during the prior fiscal year and make loans under this section to eligible entities that submit applications during the prior year that the Administrator determines have the highest rankings under the ranking criteria established under paragraph (4).

“(4) RANKING CRITERIA.—The Administrator shall establish a system for ranking loan applications that includes the following criteria:

“(A) The extent to which a loan will stimulate the availability of other funds for envi-

ronmental remediation and subsequent redevelopment of the area in which the brownfield facilities are located.

“(B) The potential of the development plan for the area in which the brownfield facilities are located to stimulate economic development of the area on completion of the cleanup, such as the following:

“(i) The relative increase in the estimated fair market value of the area as a result of any necessary response action.

“(ii) The potential of a loan to create new or expand existing business and employment opportunities (particularly full-time employment opportunities) on completion of any necessary response action.

“(iii) The estimated additional tax revenues expected to be generated by economic redevelopment in the area in which a brownfield facility is located.

“(iv) The estimated extent to which a loan would facilitate the identification of or facilitate a reduction of health and environmental risks.

“(v) The financial involvement of the State and local government in any response action planned for a brownfield facility and the extent to which the response action and the proposed redevelopment is consistent with any applicable State or local community economic development plan.

“(vi) The extent to which the site characterization and assessment or response action and subsequent development of a brownfield facility involves the active participation and support of the local community.

“(vii) Such other factors as the Administrator considers appropriate to carry out the purposes of this section.”.

SEC. 303. TREATMENT OF SECURITY INTEREST HOLDERS AND FIDUCIARIES AS OWNERS OR OPERATORS.

(a) DEFINITION OF OWNER OR OPERATOR.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 301(a), is amended—

(1) in paragraph (20)—

(A) in subparagraph (A) by striking the second sentence; and

(B) by adding at the end the following:

“(E) SECURITY INTEREST HOLDERS.—

“(i) IN GENERAL.—The term ‘owner or operator’ does not include a person that, without participating in the management of a vessel or facility, holds an indicium of ownership primarily to protect the person’s security interest in a vessel or facility.

“(ii) PARTICIPATING IN MANAGEMENT.—A security interest holder—

“(I) shall be considered to be participating in management of a vessel or facility only if the security interest holder has undertaken—

“(aa) responsibility for the hazardous substance handling or disposal practices of the vessel or facility; or

“(bb) overall management of the vessel or facility encompassing day-to-day decision-making over environmental compliance or over an operational function (including functions such as those of a plant manager, operations manager, chief operating officer, or chief executive officer), as opposed to financial and administrative aspects, of a vessel or facility; and

“(II) shall not be considered to be participating in management solely on the ground that the security interest holder—

“(aa) serves in a capacity or has the ability to influence or the right to control the operation of a vessel or facility if that capacity, ability, or right is not exercised;

“(bb) acts, or causes or requires another person to act, to comply with an applicable law or to respond lawfully to disposal of a hazardous substance;

“(cc) performs an act or omits to act in any way with respect to a vessel or facility prior to the time at which a security interest is created in a vessel or facility;

“(dd) holds, abandons, or releases a security interest;

“(ee) includes in the terms of an extension of credit, or in a contract or security agreement relating to an extension of credit, a covenant, warranty, or other term or condition that relates to environmental compliance;

“(ff) monitors or enforces a term or condition of an extension of credit or a security interest;

“(gg) monitors or undertakes 1 or more inspections of a vessel or facility;

“(hh) requires or conducts a response action or other lawful means of addressing a release or threatened release of a hazardous substance in connection with a vessel or facility prior to, during, or on the expiration of the term of an extension of credit;

“(ii) provides financial or other advice or counseling in an effort to mitigate, prevent, or cure a default or diminution in the value of a vessel or facility;

“(jj) exercises forbearance by restructuring, renegotiating, or otherwise agreeing to alter a term or condition of an extension of credit or a security interest; or

“(kk) exercises any remedy that may be available under law for the breach of a term or condition of an extension of credit or a security agreement.

“(iii) FORECLOSURE.—Legal or equitable title acquired by a security interest holder through foreclosure (or the equivalent of foreclosure) shall be considered to be held primarily to protect a security interest if the holder undertakes to sell, re-lease, or otherwise divest the vessel or facility in a reasonably expeditious manner on commercially reasonable terms.

“(iv) DEFINITION OF SECURITY INTEREST.—In this subparagraph, the term ‘security interest’ includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation.

“(F) FIDUCIARIES.—

“(i) IN GENERAL.—The term ‘owner or operator’ does not include a fiduciary that holds legal or equitable title to, is the mortgagee or secured party with respect to, controls, or manages, directly or indirectly, a vessel or facility for the purpose of administering an estate or trust of which the vessel or facility is a part.”; and

(2) by adding at the end the following:

“(40) FIDUCIARY.—The term ‘fiduciary’ means a person that is acting in the capacity of—

“(A) an executor or administrator of an estate, including a voluntary executor or a voluntary administrator;

“(B) a guardian;

“(C) a conservator;

“(D) a trustee under a will or a trust agreement under which the trustee takes legal or equitable title to, or otherwise controls or manages, a vessel or facility for the purpose of protecting or conserving the vessel or facility under the rules applied in State court;

“(E) a court-appointed receiver;

“(F) a trustee appointed in proceedings under title 11, United States Code;

“(G) an assignee or a trustee acting under an assignment made for the benefit of creditors; or

“(H) a trustee, or a successor to a trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest of participation in debt securities, or other forms of indebtedness as to which the trustee

is not, in the capacity of trustee, the lender.”

(b) **LIABILITY OF FIDUCIARIES AND LENDERS.**—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:

“(n) **LIABILITY OF FIDUCIARIES.**—

“(1) **IN GENERAL.**—The liability of a fiduciary that is liable under any other provision of this Act for the release or threatened release of a hazardous substance from a vessel or facility held by a fiduciary may not exceed the assets held by the fiduciary that are available to indemnify the fiduciary.

“(2) **NO INDIVIDUAL LIABILITY.**—Subject to the other provisions of this subsection, a fiduciary shall not be liable in an individual capacity under this Act.

“(3) **EXCEPTIONS.**—This subsection does not preclude a claim under this Act against—

“(A) the assets of the estate or trust administered by a fiduciary;

“(B) a nonemployee agent or independent contractor retained by a fiduciary; or

“(C) a fiduciary that causes or contributes to a release or threatened release of a hazardous substance.

“(4) **SAFE HARBOR.**—Subject to paragraph (5), a fiduciary shall not be liable in an individual capacity under this Act for—

“(A) undertaking or directing another to undertake a response action under section 107(d)(1) or under the direction of an on-scene coordinator;

“(B) undertaking or directing another to undertake any other lawful means of addressing a hazardous substance in connection with a vessel or facility;

“(C) terminating the fiduciary relationship;

“(D) including, modifying, or enforcing a covenant, warranty, or other term or condition in the terms of a fiduciary agreement that relates to compliance with environmental laws;

“(E) monitoring or undertaking 1 or more inspections of a vessel or facility;

“(F) providing financial or other advice or counseling to any party to the fiduciary relationship, including the settlor or beneficiary;

“(G) restructuring, renegotiating, or otherwise altering a term or condition of the fiduciary relationship;

“(H) administering a vessel or facility that was contaminated before the period of service of the fiduciary began; or

“(I) declining to take any of the actions described in subparagraphs (B) through (H).

“(5) **DUE CARE.**—This subsection does not limit the liability of a fiduciary if the fiduciary fails to exercise due care and the failure causes or contributes to the release of a hazardous substance.

“(6) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to—

“(A) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any person;

“(B) create any liability for any person; or

“(C) create a private right of action against a fiduciary or against a Federal agency that regulates lenders.

“(o) **LIABILITY OF LENDERS.**—

“(1) **DEFINITIONS.**—In this subsection:

“(A) **ACTUAL BENEFIT.**—The term ‘actual benefit’ means the net gain, if any, realized by a lender due to an action.

“(B) **EXTENSION OF CREDIT.**—The term ‘extension of credit’ includes a lease finance transaction—

“(i) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operations or maintenance of the vessel or facility; or

“(ii) that conforms to all regulations issued by any appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))) and any appropriate State banking regulatory authority.

“(C) **FORECLOSURE.**—The term ‘foreclosure’ means the acquisition of a vessel or facility through—

“(i) purchase at sale under a judgment or decree, a power of sale, a nonjudicial foreclosure sale, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if the vessel or facility was security for an extension of credit previously contracted;

“(ii) conveyance under an extension of credit previously contracted, including the termination of a lease agreement; or

“(iii) any other formal or informal manner by which a person acquires, for subsequent disposition, possession of collateral in order to protect the security interest of the person.

“(D) **LENDER.**—The term ‘lender’ means—

“(i) a person that makes a bona fide extension of credit to, or takes a security interest from, another party;

“(ii) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner is engaged in the business of buying or selling loans or interests in loans;

“(iii) a person engaged in the business of insuring or guaranteeing against a default in the repayment of an extension of credit, or acting as a surety with respect to an extension of credit, to another party; and

“(iv) a person regularly engaged in the business of providing title insurance that acquires a vessel or facility as a result of an assignment or conveyance in the course of underwriting a claim or claim settlement.

“(E) **NET GAIN.**—The term ‘net gain’ means an amount not in excess of the amount realized by a lender on the sale of a vessel or facility less acquisition, holding, and disposition costs.

“(F) **VESSEL OR FACILITY ACQUIRED THROUGH FORECLOSURE.**—The term ‘vessel or facility acquired through foreclosure’—

“(i) means a vessel or facility that is acquired by a lender through foreclosure from a person that is not affiliated with the lender; but

“(ii) does not include such a vessel or facility if the lender does not seek to sell or otherwise divest the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

“(2) **LIABILITY LIMITATION.**—

“(A) **IN GENERAL.**—The liability of a lender that is liable under any other provision of this Act for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility shall be limited to the amount described in subparagraph (B) if the vessel or facility is—

“(i) a vessel or facility acquired through foreclosure;

“(ii) a vessel or facility subject to a security interest held by the lender;

“(iii) a vessel or facility held by a lessor under the terms of an extension of credit; or

“(iv) a vessel or facility subject to financial control or financial oversight under the terms of an extension of credit.

“(B) **AMOUNT.**—The amount described in this subparagraph is the excess of the fair market value of a vessel or facility on the date on which the liability of a lender is determined over the fair market value of the vessel or facility on the date that is 180 days before the date on which the response action

is initiated, not to exceed the amount that the lender realizes on the sale of the vessel or facility after subtracting acquisition, holding, and disposition costs.

“(3) **EXCLUSION.**—This subsection does not limit the liability of a lender that causes or contributes to the release or threatened release of a hazardous substance.

“(4) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to—

“(A) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any person;

“(B) create any liability for any person; or

“(C) create a private right of action against a lender or against a Federal agency that regulates lenders.”

SEC. 304. FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

“SEC. 45. FEDERAL BANKING AND LENDING AGENCY LIABILITY.

“(a) **DEFINITIONS.**—In this section:

“(1) **FEDERAL BANKING OR LENDING AGENCY.**—The term ‘Federal banking or lending agency’—

“(A) means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, a Federal Reserve Bank, a Federal Home Loan Bank, the Department of Housing and Urban Development, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, the Small Business Administration, and any other Federal agency acting in a similar capacity, in any of their capacities, and their agents or appointees; and

“(B) includes a first subsequent purchaser of the vessel or facility from a Federal banking or lending agency, unless the purchaser—

“(i) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, corrective, or other response action due to a prior relationship with the vessel or facility;

“(ii) is or was affiliated with or related to a party described in clause (i);

“(iii) fails to agree to take reasonable steps necessary to remedy the release or threatened release or to protect public health and safety in a manner consistent with the purposes of applicable environmental laws; or

“(iv) causes or contributes to any additional release or threatened release on the vessel or facility.

“(2) **FACILITY.**—The term ‘facility’ has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

“(3) **HAZARDOUS SUBSTANCE.**—The term ‘hazardous substance’ means a hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)).

“(4) **RELEASE.**—The term ‘release’ has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

“(5) **RESPONSE ACTION.**—The term ‘response action’ has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

“(6) VESSEL.—The term ‘vessel’ has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

“(b) FEDERAL BANKING AND LENDING AGENCIES NOT STRICTLY LIABLE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of a hazardous substance at or from a vessel or facility (including a right or interest in a vessel or facility) acquired—

“(A) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including a subsidiary of an insured depository institution;

“(B) in connection with the provision of a loan, a discount, an advance, a guarantee, insurance, or other financial assistance; or

“(C) in connection with a vessel or facility received in a civil or criminal proceeding, or administrative enforcement action, whether by settlement or by order.

“(2) ACTIVE CAUSATION.—Subject to section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(d)), a Federal banking or lending agency that causes or contributes to a release or threatened release of a hazardous substance may be liable for a response action pertaining to the release or threatened release.

“(3) FEDERAL OR STATE ACTION.—If a Federal agency or State environmental agency is required to take response due to the failure of a subsequent purchaser to carry out in good faith an agreement described in paragraph (a)(1)(C)(iii), the subsequent purchaser shall reimburse the Federal or State environmental agency for the costs of the response action. Any such reimbursement shall not exceed the increase in the fair market value of the vessel or facility attributable to the response action.

“(c) LIEN EXEMPTION.—Notwithstanding any other law, a vessel or facility held by a subsequent purchaser described in subsection (a)(1)(B) or held by a Federal banking or lending agency shall not be subject to a lien for costs or damages associated with the release or threatened release of a hazardous substance existing at the time of the transfer.

“(d) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring the agency to grant a covenant warranting that a response action has been, or will in the future be, taken with respect to a vessel or facility acquired in a manner described in subsection (b)(1).

“(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

“(1) affect the rights or immunities or other defenses that are available to any party under this Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or any other law;

“(2) create any liability for any party;

“(3) create a private right of action against an insured depository institution or lender, a Federal banking or lending agency, or any other party;

“(4) preempt, affect, apply to, or modify a State law or a right, cause of action, or obligation under State law, except that the liability of a Federal banking or lending agency for a response action under a State law shall not exceed the value of the interest of the agency in the asset giving rise to the liability; or

“(5) preclude a Federal banking or lending agency from agreeing with a State to transfer a vessel or facility to the State in lieu of any liability that might otherwise be imposed under State law.”

SEC. 305. CONTIGUOUS PROPERTIES.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)), as amended by section 303(b), is amended by adding at the end the following:

“(p) CONTIGUOUS PROPERTIES.—

“(1) IN GENERAL.—A person that owns or operates real property that is contiguous to or otherwise similarly situated with respect to real property on which there has been a release or threatened release of a hazardous substance and that is or may be contaminated by the release shall not be considered to be an owner or operator of a vessel or facility under subsection (a) (1) or (2) solely by reason of the contamination if the person did not cause, contribute, or consent to the release or threatened release.

“(2) ASSURANCES.—The Administrator may—

“(A) issue an assurance that no enforcement action under this Act will be initiated against a person described in paragraph (1); and

“(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 113(f).”

SEC. 306. PROSPECTIVE PURCHASERS AND WIND-FALL LIENS.

(a) DEFINITION.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 303(a)(2), is amended by adding at the end the following:

“(41) BONA FIDE PROSPECTIVE PURCHASER.—The term ‘bona fide prospective purchaser’ means a person that acquires ownership of a facility after the date of enactment of this paragraph, or a tenant of such a person, that establishes each of the following by a preponderance of the evidence:

“(A) DISPOSAL PRIOR TO ACQUISITION.—All active disposal of hazardous substances at the facility occurred before the person acquired the facility.

“(B) INQUIRIES.—

“(i) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility and the facility’s real property in accordance with generally accepted good commercial and customary standards and practices.

“(ii) STANDARDS AND PRACTICES.—The standards and practices referred to in paragraph (35)(B)(ii) or those issued or adopted by the Administrator under that paragraph shall be considered to satisfy the requirements of this subparagraph.

“(iii) RESIDENTIAL USE.—In the case of property for residential or other similar use purchased by a nongovernmental or non-commercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

“(C) NOTICES.—The person provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

“(D) CARE.—The person exercised appropriate care with respect to each hazardous substance found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release and prevent or limit human or natural resource exposure to any previously released hazardous substance.

“(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and facility access to the persons

that are responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

“(F) RELATIONSHIP.—The person is not liable, and is not affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.”

(b) AMENDMENT.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 305(b), is amended by adding at the end the following:

“(q) PROSPECTIVE PURCHASER AND WIND-FALL LIEN.—

“(1) LIMITATION ON LIABILITY.—Notwithstanding subsection (a), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser’s being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

“(2) LIEN.—If there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of subsection (n)(1)(C) and each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may obtain from appropriate responsible party a lien on any other property or other assurances of payment satisfactory to the Administrator, for such unrecovered costs.

“(3) CONDITIONS.—The conditions referred to in paragraph (1) are the following:

“(A) RESPONSE ACTION.—A response action for which there are unrecovered costs is carried out at the facility.

“(B) FAIR MARKET VALUE.—The response action increases the fair market value of the facility above the fair market value of the facility that existed 180 days before the response action was initiated.

“(C) SALE.—A sale or other disposition of all or a portion of the facility has occurred.

“(4) AMOUNT.—A lien under paragraph (2)—

“(A) shall not exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of the property;

“(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

“(C) shall be subject to the requirements of subsection (1)(3); and

“(D) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility.”

SEC. 307. SAFE HARBOR INNOCENT LANDHOLDERS.

(a) AMENDMENT.—Section 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(35)) is amended by striking subparagraph (B) and inserting the following:

“(B) KNOWLEDGE OF INQUIRY REQUIREMENT.—

“(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must show that, at or prior to the date on which the defendant acquired the facility, the defendant undertook all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.

“(ii) STANDARDS AND PRACTICES.—The Secretary shall by regulation establish as standards and practices for the purpose of clause (i)—

“(I) the American Society for Testing and Materials (ASTM) Standard E1527-94, entitled ‘Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process’; or

“(II) alternative standards and practices under clause (iii).

“(iii) ALTERNATIVE STANDARDS AND PRACTICES.—

“(I) IN GENERAL.—The Administrator may by regulation issue alternative standards and practices or designate standards developed by other organizations than the American Society for Testing and Materials after conducting a study of commercial and industrial practices concerning the transfer of real property in the United States.

“(II) CONSIDERATIONS.—In issuing or designating alternative standards and practices under subclause (I), the Administrator shall include each of the following:

“(aa) The results of an inquiry by an environmental professional.

“(bb) Interviews with past and present owners, operators, and occupants of the facility and the facility’s real property for the purpose of gathering information regarding the potential for contamination at the facility and the facility’s real property.

“(cc) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records to determine previous uses and occupancies of the real property since the property was first developed.

“(dd) Searches for recorded environmental cleanup liens, filed under Federal, State, or local law, against the facility or the facility’s real property.

“(ee) Reviews of Federal, State, and local government records (such as waste disposal records), underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility or the facility’s real property.

“(ff) Visual inspections of the facility and facility’s real property and of adjoining properties.

“(gg) Specialized knowledge or experience on the part of the defendant.

“(hh) Consideration of the relationship of the purchase price to the value of the property if the property was uncontaminated.

“(ii) Commonly known or reasonably ascertainable information about the property.

“(jj) Consideration of the degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.

“(iv) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.”

(b) STANDARDS AND PRACTICES.—

(1) ESTABLISHMENT BY REGULATION.—The Administrator of the Environmental Protection Agency shall issue the regulation required by section 101(35)(B)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by subsection (a), not later than 1 year after the date of enactment of this Act.

(2) INTERIM STANDARDS AND PRACTICES.—Until the Administrator issues the regulation described in paragraph (1), in making a determination under section 101(35)(B)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as

added by subsection (a), there shall be taken into account—

(A) any specialized knowledge or experience on the part of the defendant;

(B) the relationship of the purchase price to the value of the property if the property was uncontaminated;

(C) commonly known or reasonably ascertainable information about the property;

(D) the degree of obviousness of the presence or likely presence of contamination at the property; and

(E) the ability to detect the contamination by appropriate investigation.

TITLE IV—SELECTION OF REMEDIAL ACTIONS

SEC. 401. DEFINITIONS.

Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 306(a), is amended by adding at the end the following:

“(42) ACTUAL OR PLANNED OR REASONABLY ANTICIPATED FUTURE USE OF THE LAND AND WATER RESOURCES.—The term ‘actual or planned or reasonably anticipated future use of the land and water resources’ means—

“(A) the actual use of the land, surface water, and ground water at a facility at the time of the initiation of the facility evaluation; and

“(B)(i) with respect to land—

“(I) the use of land that is authorized by the zoning or land use decisions formally adopted, at or prior to the time of the initiation of the facility evaluation, by the local land use planning authority for a facility and the land immediately adjacent to the facility; and

“(II) any other reasonably anticipated use that has a substantial probability of occurring based on recent (as of the time of the determination) development patterns in the area in which the facility is located and on population projections for the area; and

“(ii) with respect to water resources, the future use of the surface water and ground water that is potentially affected by releases from a facility that is reasonably anticipated, by a local government or other governmental unit that regulates ground water use or ground water use planning in the vicinity of the facility, on the earlier of—

“(I) the date of issuance of the first record of decision; or

“(II) the initiation of the facility evaluation.

“(43) SIGNIFICANT ECOSYSTEM.—The term ‘significant ecosystem’, for the purpose of section 121(a)(1)(B), means an ecosystem that exhibits a uniqueness, particular value, or historical presence or that is widely recognized as a significant resource at the national, State or local level.

“(44) VALUABLE ECOSYSTEM.—The term ‘valuable ecosystem’ means an ecosystem that is a known source of significant human or ecological benefits for its function.

“(45) SUSTAINABLE ECOSYSTEM.—The term ‘sustainable ecosystem’ means an ecosystem that has redundancy and resiliency sufficient to enable the ecosystem to continue to function and provide benefits within the normal range of its variability notwithstanding exposure to hazardous substances resulting from releases.

“(46) ECOLOGICAL RESOURCE.—The term ‘ecological resource’ means land, fish, wildlife, biota, air, surface water, and ground water within an ecosystem.

“(47) SIGNIFICANT RISK TO ECOLOGICAL RESOURCES THAT ARE NECESSARY TO THE SUSTAINABILITY OF A SIGNIFICANT ECOSYSTEM OR VALUABLE ECOSYSTEM.—The term ‘significant risk to ecological resources that are necessary to the sustainability of a significant ecosystem or valuable ecosystem’ means the

risk associated with exposures and impacts resulting from the release of hazardous substances which together reduce or eliminate the sustainability (within the meaning of paragraph (45)) of a significant ecosystem or valuable ecosystem.”

SEC. 402. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621) is amended—

(1) by striking the section heading and subsections (a) and (b) and inserting the following:

“SEC. 121. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

“(a) GENERAL RULES.—

“(1) SELECTION OF MOST COST-EFFECTIVE REMEDIAL ACTION THAT PROTECTS HUMAN HEALTH AND THE ENVIRONMENT.—

“(A) IN GENERAL.—The Administrator shall select a remedial action that is the most cost-effective means of achieving the goals of protecting human health and the environment as stated in subparagraph (B) using the criteria stated in subparagraph (C).

“(B) GOALS OF PROTECTING HUMAN HEALTH AND THE ENVIRONMENT.—

“(i) PROTECTION OF HUMAN HEALTH.—A remedial action shall be considered to protect human health if, considering the expected exposures associated with the actual or planned or reasonably anticipated future use of the land and water resources, the remedial action achieves a residual risk—

“(I) from exposure to carcinogenic hazardous substances, pollutants, or contaminants such that cumulative lifetime additional cancer from exposure to hazardous substances from releases at the facility range from 10⁻⁴ to 10⁻⁶ for the affected population; and

“(II) from exposure to noncarcinogenic hazardous substances, pollutants, or contaminants at the facility that does not pose an appreciable risk of deleterious effects.

“(ii) PROTECTION OF THE ENVIRONMENT.—A remedial action shall be considered to protect the environment if, based on the actual or planned or reasonably anticipated future use of the land and water resources, the remedial action will protect against significant risks to ecological resources that are necessary to the sustainability of a significant ecosystem or valuable ecosystem and will not interfere with a sustainable functional ecosystem.

“(C) REMEDY SELECTION CRITERIA.—In selecting a remedial action from among alternatives that achieve the goals stated in subparagraph (B), the Administrator shall balance the following factors, ensuring that no single factor predominates over the others:

“(i) The effectiveness of the remedy in protecting human health and the environment.

“(ii) The reliability of the remedial action in achieving the protectiveness standards over the long term.

“(iii) Any short-term risk to the affected community, those engaged in the remedial action effort, and to the environment posed by the implementation of the remedial action.

“(iv) The acceptability of the remedial action to the affected community.

“(v) The implementability and technical practicability of the remedial action from an engineering perspective.

“(2) TECHNICAL IMPRACTICABILITY AND UNREASONABLE COST.—

“(A) MINIMIZATION OF RISK.—If the Administrator finds that achieving the goals stated in paragraph (1)(B), is technically impracticable or unreasonably costly, the Administrator shall evaluate remedial measures that mitigate the risks to human health and the environment and select a technically practicable remedial action that minimizes the

risk to human health and the environment by cost-effective means.

“(B) BASIS FOR FINDING.—A finding of technical impracticability may be made on the basis of a determination, supported by appropriate documentation, that, at the time at which the finding is made—

“(i) there is no known reliable means of achieving at a reasonable cost the goals stated in paragraph (1)(B); and

“(ii) it has not been shown that such a means is likely to be developed within a reasonable period of time.

“(3) PRESUMPTIVE REMEDIAL ACTIONS.—A remedial action that implements a presumptive remedial action issued under section 128 shall be considered to achieve the goals stated in paragraph (1)(B) and balance adequately the factors stated in paragraph (1)(C).

“(4) GROUND WATER.—

“(A) IN GENERAL.—A remedial action shall protect uncontaminated ground water that is suitable for use as drinking water by humans or livestock in the water's condition at the time of initiation of the facility evaluation.

“(B) CONSIDERATIONS.—A decision under subparagraph (A) regarding remedial action for ground water shall take into consideration—

“(i) the actual or planned or reasonably anticipated future use of the ground water and the timing of that use;

“(ii) any attenuation or biodegradation that would occur if no remedial action were taken; and

“(iii) the criteria stated in paragraph (1)(C).

“(C) OFFICIAL CLASSIFICATION.—For the purposes of subparagraph (A), there shall be no presumption that ground water that is suitable for use as drinking water by humans or livestock is the actual or planned or reasonably anticipated future use of the ground water.

“(D) UNCONTAMINATED GROUND WATER.—A remedial action for protecting uncontaminated ground water may be based on natural attenuation or biodegradation so long as the remedial action does not interfere with the actual or planned or reasonably anticipated future use of the ground water.

“(E) CONTAMINATED GROUND WATER.—A remedial action for contaminated ground water may include point-of-use treatment.

“(5) LEGALLY APPLICABLE REQUIREMENTS.—A remedial action shall not be required to attain any standard that, without regard to this paragraph, would be legally applicable under any other Federal or State law, except that in the case of a removal or remedial action involving the transfer of hazardous waste off-site, that hazardous waste may be transferred only to a facility that is permitted to treat, store, or dispose such waste under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925) or, if applicable, the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

“(6) OTHER CONSIDERATIONS APPLICABLE TO REMEDIAL ACTIONS.—A remedial action that uses institutional and engineering controls shall be considered to be on an equal basis with all other remedial action alternatives.”;

(2) by redesignating subsection (c) as subsection (b), and, in the first sentence of that subsection, by striking “5 years” and inserting “7 years”;

(3) by redesignating subsection (e) as subsection (c); and

(4) by redesignating subsection (f) as subsection (d).

SEC. 403. REMEDY SELECTION METHODOLOGY.

Title I of the Comprehensive Environmental Response, Compensation, and Liability

Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

“SEC. 127. FACILITY-SPECIFIC RISK EVALUATIONS.

“(a) USES.—

“(1) IN GENERAL.—A facility-specific risk evaluation shall be used to—

“(A) identify the significant components of potential risk posed by a facility;

“(B) screen out potential contaminants, areas, or exposure pathways from further study at a facility;

“(C) compare the relative protectiveness of alternative potential remedies proposed for a facility; and

“(D) demonstrate that the remedial action selected for a facility is capable of protecting human health and the environment considering the actual or planned or reasonably anticipated future use of the land and water resources.

“(2) COMPLIANCE WITH PRINCIPLES.—A facility-specific risk evaluation shall comply with the principles stated in this section to ensure that—

“(A) actual or planned or reasonably anticipated future use of the land and water resources is given appropriate consideration; and

“(B) all of the components of the evaluation are, to the maximum extent practicable, scientifically objective and inclusive of all relevant data.

“(b) RISK EVALUATION PRINCIPLES.—A facility-specific risk evaluation shall—

“(1) be based on actual or plausible estimates of exposure considering the actual or planned or reasonably anticipated future use of the land and water resources;

“(2) be comprised of components each of which is, to the maximum extent practicable, scientifically objective, and inclusive of all relevant data;

“(3) use chemical and facility-specific data and analysis (such as toxicity, exposure, and fate and transport evaluations) in preference to default assumptions;

“(4) use a range and distribution of realistic and plausible assumptions when chemical and facility-specific data are not available;

“(5) use mathematical models that take into account the fate and transport of hazardous substances, pollutants, or contaminants, in the environment instead of relying on default assumptions; and

“(6) use credible hazard identification and dose/response assessments.

“(c) RISK COMMUNICATION PRINCIPLES.—The document reporting the results of a facility-specific risk evaluation shall—

“(1) contain an explanation that clearly communicates the risks at the facility;

“(2) identify and explain all assumptions used in the evaluation, all alternative assumptions, the policy or value judgments used in choosing the assumptions, and whether empirical data conflict with or validate the assumptions;

“(3) present—

“(A) a range and distribution of exposure and risk estimates, including, if numerical estimates are provided, central estimates of exposure and risk using—

“(i) the most plausible assumptions or a weighted combination of multiple assumptions based on different scenarios; or

“(ii) any other methodology designed to characterize the most plausible estimate of risk given the scientific information that is available at the time of the facility-specific risk evaluation; and

“(B) a statement of the nature and magnitude of the scientific and other uncertainties associated with those estimates;

“(4) state the size of the population potentially at risk from releases from the facility and the likelihood that potential exposures

will occur based on the actual or planned or reasonably anticipated future use of the land and water resources; and

“(5) compare the risks from the facility to other risks commonly experienced by members of the local community in their daily lives and similar risks regulated by the Federal Government.

“(d) REGULATIONS.—Not later than 18 months after the date of enactment of this section, the Administrator shall issue a final regulation implementing this section that promotes a realistic characterization of risk that neither minimizes nor exaggerates the risks and potential risks posed by a facility or a proposed remedial action.

“(e) DETERMINATION OF ACTUAL OR PLANNED OR REASONABLY ANTICIPATED FUTURE USE OF THE LAND AND WATER RESOURCES.—The Administrator shall determine the actual or planned or reasonably anticipated future use of the land and water resources at a facility by consulting the community response organization, facility owners and operators, potentially responsible parties, elected municipal and county officials, and other persons.

“SEC. 128. PRESUMPTIVE REMEDIAL ACTIONS.

“(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue a final regulation establishing presumptive remedial actions for commonly encountered types of facilities with reasonably well understood contamination problems and exposure potential.

“(b) PRACTICABILITY AND COST-EFFECTIVENESS.—Such presumptive remedies must have been demonstrated to be technically practicable and cost-effective methods of achieving the goals of protecting human health and the environment stated in section 121(a)(1)(B).

“(c) VARIATIONS.—The Administrator may issue various presumptive remedial actions based on various uses of land and water resources, various environmental media, and various types of hazardous substances, pollutants, or contaminants.

“(d) ENGINEERING CONTROLS.—Presumptive remedial actions are not limited to treatment remedies, but may be based on, or include, institutional and standard engineering controls.”.

SEC. 404. REMEDY SELECTION PROCEDURES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 403, is amended by adding at the end the following:

“SEC. 129. REMEDIAL ACTION PLANNING AND IMPLEMENTATION.

“(a) IN GENERAL.—

“(1) BASIC RULES.—

“(A) PROCEDURES.—A remedial action shall be developed and selected in accordance with the procedures set forth in this section.

“(B) NO OTHER PROCEDURES OR REQUIREMENTS.—The procedures stated in this section are in lieu of any procedures or requirements under any other law to conduct remedial investigations, feasibility studies, record of decisions, remedial designs, or remedial actions.

“(C) LIMITED REVIEW.—In a case in which the potentially responsible parties prepare a remedial action plan, only the facility evaluation, proposed remedial action plan, and final remedial design shall be subject to review, comment, and approval by the Administrator.

“(D) NATIONAL CONTINGENCY PLAN.—The Administrator shall conform the National Contingency Plan regulations to reflect the procedures stated in this section.

“(2) USE OF PRESUMPTIVE REMEDIAL ACTIONS.—

“(A) PROPOSAL TO USE.—In a case in which a presumptive remedial action applies, the

Administrator (if the Administrator is conducting the remedial action) or the preparer of the remedial action plan may, after conducting a facility evaluation, propose a presumptive remedial action for the facility, if the Administrator or preparer shows with appropriate documentation that the facility fits the generic classification for which a presumptive remedial action has been issued and performs an engineering evaluation to demonstrate that the presumptive remedial action can be applied at the facility.

“(B) LIMITATION.—The Administrator may not require a potentially responsible party to implement a presumptive remedial action.”

“(b) REMEDIAL ACTION PLANNING PROCESS.—

“(1) IN GENERAL.—The Administrator or a potentially responsible party shall prepare and implement a remedial action plan for a facility.

“(2) CONTENTS.—A remedial action plan shall consist of—

“(A) the results of a facility evaluation, including any screening analysis performed at the facility;

“(B) a discussion of the potentially viable remedies that are considered to be reasonable under section 121(a) and how they balance the factors stated in section 121(a)(1)(C);

“(C) a description of the remedial action to be taken;

“(D) a description of the facility-specific risk-based evaluation under section 127 and a demonstration that the selected remedial action—

“(i) will achieve the goals stated in section 121(a)(1)(B); or

“(ii) satisfies the requirements of section 128; and

“(E) a realistic schedule for conducting the remedial action, taking into consideration facility-specific factors.

“(3) WORK PLAN.—

“(A) IN GENERAL.—Prior to preparation of a remedial action plan, the preparer shall develop a work plan, including a community information and participation plan, which generally describes how the remedial action plan will be developed.

“(B) SUBMISSION.—A work plan shall be submitted to the Administrator, the State, the community response organization, the local library, and any other public facility designated by the Administrator.

“(C) PUBLICATION.—The Administrator, or the preparer of the plan, shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the work plan is available for review at the local library and that comments concerning the work plan can be submitted to the preparer of the work plan, the Administrator, the State, or the local community response organization.

“(D) FORWARDING OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall forward the comments to the preparer of the work plan.

“(4) FACILITY EVALUATION.—

“(A) IN GENERAL.—The Administrator shall conduct a facility evaluation at each facility to characterize the risk posed by the facility by gathering enough information necessary to—

“(i) assess potential remedial alternatives, including ascertaining, to the degree appropriate, the volume and nature of the contaminants, their location, potential exposure pathways and receptors;

“(ii) discern the actual or planned or reasonably anticipated future use of the land and water resources; and

“(iii) screen out any uncontaminated areas, contaminants, and potential pathways from further consideration.

“(B) SUBMISSION.—A draft facility evaluation shall be submitted to the Administrator for approval.

“(C) PUBLICATION.—Not later than 30 days after submission, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the draft facility evaluation, the Administrator shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the draft facility evaluation is available for review and that comments concerning the evaluation can be submitted to the Administrator, the State, and the community response organization.

“(D) AVAILABILITY OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall make the comments available to the preparer of the facility evaluation.

“(E) NOTICE OF APPROVAL.—If the Administrator approves a facility evaluation, the Administrator shall—

“(i) notify the community response organization; and

“(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

“(F) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a facility evaluation, the Administrator shall—

“(i) identify to the preparer of the facility evaluation, with specificity, any deficiencies in the submission; and

“(ii) request that the preparer submit a revised facility evaluation within a reasonable period of time.

“(5) PROPOSED REMEDIAL ACTION PLAN.—

“(A) SUBMISSION.—In a case in which a potentially responsible party prepares a remedial action plan, the preparer shall submit the remedial action plan to the Administrator for approval and provide a copy to the local library.

“(B) PUBLICATION.—After receipt of the proposed remedial action plan, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the remedial action plan, the Administrator shall cause to be published in a newspaper of general circulation in the area where the facility is located and posted in other conspicuous places in the local community a notice announcing that the proposed remedial action plan is available for review at the local library and that comments concerning the remedial action plan can be submitted to the Administrator, the State, and the community response organization, and that persons may request that the Administrator hold a public hearing.

“(C) AVAILABILITY OF COMMENTS.—If comments are submitted to a State or the community response organization, the State or community response organization shall make the comments available to the preparer of the proposed remedial action plan.

“(D) HEARING.—The Administrator shall hold a public hearing at which the proposed remedial action plan may be presented and public comment received.

“(E) APPROVAL.—

“(1) IN GENERAL.—The Administrator shall approve a proposed remedial action plan if the plan—

“(I) contains the information described in subsection (b); and

“(II) achieves the goals stated in section 121(a)(1)(B).

“(ii) DEFAULT.—If the Administrator fails to issue a notice of disapproval of a proposed remedial action plan in accordance with subparagraph (G) within 90 days after the proposed plan is submitted, the plan shall be considered to be approved and its implementation fully authorized.

“(F) NOTICE OF APPROVAL.—If the Administrator approves a proposed remedial action plan, the Administrator shall—

“(i) notify the community response organization; and

“(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

“(G) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a proposed remedial action plan, the Administrator shall—

“(i) inform the preparer of the proposed remedial action plan, with specificity, of any deficiencies in the submission; and

“(ii) request that the preparer submit a revised proposed remedial action plan within a reasonable time.

“(6) IMPLEMENTATION OF REMEDIAL ACTION PLAN.—A remedial action plan that has been approved or is considered to be approved under paragraph (5) shall be implemented in accordance with the schedule set forth in the remedial action plan.

“(7) REMEDIAL DESIGN.—

“(A) SUBMISSION.—A remedial design shall be submitted to, or in a case in which the Administrator is preparing the remedial action plan, completed by, the Administrator.

“(B) PUBLICATION.—After receipt (or completion) of the remedial design, the Administrator shall—

“(i) notify the community response organization; and

“(ii) cause a notice of submission or completion of the remedial design to be published in a newspaper of general circulation and posted in conspicuous places in the area where the facility is located.

“(C) COMMENT.—The Administrator shall provide an opportunity to the public to submit written comments on the remedial design.

“(D) APPROVAL.—Not later than 90 days after the submission (or completion) of the remedial design, the Administrator shall approve or disapprove the remedial design.

“(E) NOTICE OF APPROVAL.—If the Administrator approves a remedial design the Administrator shall—

“(i) notify the community response organization; and

“(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

“(F) NOTICE OF DISAPPROVAL.—If the Administrator disapproves the remedial design, the Administrator shall identify with specificity any deficiencies in the submission and allow the preparer submitting a remedial design a reasonable time to submit a revised remedial design.

“(c) JUDICIAL REVIEW.—Notwithstanding any other provision of this Act or any other law, an approval or disapproval of a remedial action plan the implementation of which is projected to cost more than \$15,000,000 shall be final action of the Administrator subject to judicial review in United States district court.

“(d) ENFORCEMENT OF REMEDIAL ACTION PLAN.—

“(1) NOTICE OF SIGNIFICANT DEVIATION.—If the Administrator determines that the implementation of the remedial action plan has deviated significantly from the plan, the Administrator shall so notify the implementing party and require the implementing party to—

“(A) comply with the terms of the remedial action plan; or

“(B) submit a notice for modifying the plan,

at the option of the implementing party.

“(2) FAILURE TO COMPLY.—If the implementing party fails to either comply with the plan or submit a proposed modification, the Administrator may pursue all appropriate enforcement pursuant to this Act.

“(e) MODIFICATIONS TO REMEDIAL ACTION PLAN.—

“(1) BY THE ADMINISTRATOR.—

“(A) IN GENERAL.—If the Administrator proposes a modification to the plan, the Administrator shall demonstrate that the modification constitutes the most cost-effective remedial action that is technologically feasible, is not unreasonably costly, and achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B).

“(B) NOTICE AND COMMENT.—The Administrator shall provide the implementing party and the community response organization at least 30 days' advance notice and opportunity to comment on any such proposed modification.

“(2) BY THE IMPLEMENTING PARTY.—An implementing party that proposes a minor modification to or clarification of a remedial action plan shall, at least 10 days prior to the proposed implementation of the modification or clarification, submit to the Administrator and to the community response organization a description of the proposed modification or clarification and documentation showing that the proposed modification or clarification will not cause the remedial action to fail to achieve the goals of section 121(a)(1)(B).”

SEC. 405. COMPLETION OF REMEDIAL ACTION AND DELISTING.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 404, is amended by adding at the end the following:

“SEC. 130. COMPLETION OF REMEDIAL ACTION AND DELISTING.

“(a) IN GENERAL.—

“(1) PROPOSED NOTICE OF COMPLETION AND PROPOSED DELISTING.—Not later than 60 days after the completion of a remedial action by the Administrator, or not later than 60 days after receipt of a notice of such completion from the implementing party, the Administrator shall publish a notice of completion and proposed delisting of the facility from the National Priorities List in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

“(2) COMMENTS.—The public shall be provided 30 days in which to submit comments on the notice of completion and proposed delisting.

“(3) FINAL NOTICE.—Not later than 60 days after the end of the comment period, the Administrator shall—

“(A) issue a final notice of completion and delisting or a notice of withdrawal of the proposed notice until the implementation of the remedial action is determined to be complete; and

“(B) publish the notice in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

“(4) FAILURE TO ACT.—If the Administrator fails to publish a notice of withdrawal within the 60-day period described in paragraph (3)—

“(A) the remedial action plan shall be deemed to have been completed; and

“(B) the facility shall be delisted by operation of law.

“(5) EFFECT OF DELISTING.—The delisting of a facility shall have no effect on—

“(A) liability allocation requirements or cost-recovery provisions otherwise provided in this Act; or

“(B) the obligation of any person to provide continued operation and maintenance.

“(b) CERTIFICATION.—A final notice of completion and delisting shall include a certification by the Administrator that the facility has met all of the requirements of the remedial action plan (except requirements for continued operation and maintenance).

“(c) RELEASE FROM LIABILITY.—

“(1) FACILITY AVAILABLE FOR UNRESTRICTED USE.—If, after completion of remedial action, a facility is available for unrestricted use and there is no need for continued operation and maintenance, the potentially responsible parties shall have no further liability under any Federal, State, or local law (including any regulation) for remediation at the facility, unless the Administrator determines, based on new and reliable factual information about the facility, that the facility does not meet the goals stated in section 121(a)(1)(B) considering the actual or planned or reasonably anticipated future use of the land and water resources.

“(2) FACILITY NOT AVAILABLE FOR UNRESTRICTED USE.—If, after completion of remedial action, a facility is not available for unrestricted use or there are continued operation and maintenance requirements that preclude use of the facility, the Administrator shall—

“(A) review the status of the facility every 7 years; and

“(B) require additional remedial action at the facility if the Administrator determines, after notice and opportunity for hearing, that the facility does not meet the goals of section 121(a)(1)(B), (C), and (D) considering the actual or planned or reasonably anticipated future use of the land and water resources contemplated in the remedial action plan.

“(3) FACILITIES AVAILABLE FOR RESTRICTED USE.—The Administrator may determine that a facility or portion of a facility is available for restricted use while remediation response actions are under way. The Administrator shall make available for use any uncontaminated portions of the facility where such uses would not interfere with ongoing operations and maintenance activities or endanger human health or the environment.

“(4) FAILURE TO MAKE TIMELY DISAPPROVAL.—The issuance of a final notice of completion and delisting or of a notice of withdrawal within the time required by subsection (a)(3) constitutes a nondiscretionary duty within the meaning of section 310(a)(2).

“(d) OPERATION AND MAINTENANCE.—The need to perform continued operation and maintenance at a facility shall not delay delisting of the facility or issuance of the certification if performance of operation and maintenance is subject to a legally enforceable agreement, order, or decree.

“(e) CHANGE OF USE OF FACILITY.—

“(1) PETITION.—Any person may petition the Administrator to change the use of a facility from that which was the basis of the remedial action plan.

“(2) GRANT.—The Administrator may grant a petition under paragraph (1) if the petitioner agrees to implement any additional remedial actions that the Administrator determines are necessary to continue to meet the goals stated in section 121(a)(1)(B), considering the different use of the facility.

“(3) RESPONSIBILITY FOR RISK.—When a petition has been granted under paragraph (2), the person requesting the change in use of the facility shall be responsible for all risk associated with altering the facility and all costs of implementing any necessary additional remedial actions.”

SEC. 406. TRANSITION RULES FOR FACILITIES CURRENTLY INVOLVED IN REMEDY SELECTION.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 405, is amended by adding at the end the following:

“SEC. 131. TRANSITION RULES FOR FACILITIES INVOLVED IN REMEDY SELECTION ON DATE OF ENACTMENT.

“(a) NO RECORD OF DECISION.—

“(1) OPTION.—In the case of a facility or operable unit that, as of the date of enactment of this section, is the subject of a remedial investigation and feasibility study (whether completed or incomplete), the potentially responsible parties or the Administrator may elect to follow the remedial action plan process stated in section 129 rather than the remedial investigation and feasibility study and record of decision process under regulations in effect on the date of enactment of this section that would otherwise apply if the requesting party notifies the Administrator and other potentially responsible parties of the election not later than 90 days after the date of enactment of this section.

“(2) SUBMISSION OF FACILITY EVALUATION.—In a case in which the potentially responsible parties have or the Administrator has made an election under subsection (a), the potentially responsible parties shall submit the proposed facility evaluation within 270 days after the date on which notice of the election is given.

“(b) CONSTRUCTION NOT BEGUN.—

“(1) DETERMINATION.—In the case of a facility or operable unit with respect to which a record of decision has been signed but construction has not yet begun prior to the date of enactment of this section, the Administrator or the State shall, at the request of the implementer of the record of decision, conduct an expedited review to determine whether the application of section 127 would be likely to result in the selection of a less costly remedial action that achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B).

“(2) DEFAULT.—Section 127 shall apply to a facility or operable unit in accordance with a request under paragraph (1) unless the Administrator or the State, prior to the date that is 90 days after the date on which the request is made, publishes a written finding that the application of section 127 would not be likely to result in the selection of a less costly remedial action that achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B).

“(c) ADDITIONAL CONSTRUCTION.—

“(1) IN GENERAL.—In the case of a facility or operable unit with respect to which a record of decision has been signed and construction has begun prior to the date of enactment of this section, but for which additional construction or long-term operation and maintenance activities are anticipated, the Administrator or the State shall, at the request of the implementer of the record of decision, conduct an expedited review to determine whether the application of section 127 would be likely to result in the selection of a remedial action that—

“(A) achieves a cost saving of at least 10 percent over the life of the remedial action, including any long-term operation and maintenance, compared to the remedial action originally selected; and

“(B) achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B).

“(2) DEFAULT.—Section 127 shall apply to a facility or operable unit in accordance with a request under paragraph (1) unless the Administrator or the State, prior to the date that is 90 days after the date on which the

request is made, publishes a written finding that the application of section 127 would not be likely to result in the selection of a remedial action that achieves a cost saving of at least 10 percent over the life of the remedial and achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B).

“(d) MEDIATION OF DISPUTES.—A dispute over the implementation of this section or over a written finding under subsection (b)(2) or (c)(2) shall be referred to mediation on an expedited basis without penalty to any person.”

SEC. 407. JUDICIAL REVIEW.

(a) REVIEW OF CERTAIN ACTIONS.—Section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(h)) is amended by adding at the end the following:

“(6) An action under section 129(c).”

(b) STAY.—Section 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(b)) is amended by adding at the end the following: “In the case of a challenge under section 113(h)(6), the court may stay the implementation or initiation of the challenged actions pending judicial resolution of the matter.”

SEC. 408. NATIONAL PRIORITIES LIST.

(a) REVISION OF NATIONAL CONTINGENCY PLAN.—

(1) AMENDMENTS.—Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended—

(A) in subsection (a)(8) by adding at the end the following:

“(C) provision that in listing a site on the National Priority List, the Administrator shall not include any parcel of real property at which no release has actually occurred, but to which a released hazardous substance, pollutant, or contaminant has migrated in ground water that has moved through subsurface strata from another parcel of real estate at which the release actually occurred, unless the ground water is in use as a public drinking water supply or was in such use at the time of the release.”; and

(B) by adding at the end the following:

“(h) LISTING OF PARTICULAR PARCELS.—

“(1) DEFINITION.—In subsection (a)(8)(C) and paragraph (2) of this subsection, the term ‘parcel of real property’ means a parcel, lot, or tract of land that has a separate legal description from that of any other parcel, lot, or tract of land the legal description and ownership of which has been recorded in accordance with the law of the State in which it is located.

“(2) STATUTORY CONSTRUCTION.—Nothing in subsection (a)(8)(C) shall be construed to limit the Administrator’s authority under section 104 to obtain access to and undertake response actions at any parcel of real property to which a released hazardous substance, pollutant, or contaminant has migrated in the ground water.”

(2) REVISION OF NATIONAL PRIORITIES LIST.—The President shall revise the National Priorities List to conform with the amendment made by paragraph (1) not later than 180 days of the date of enactment of this Act.

TITLE V—LIABILITY ALLOCATIONS

SEC. 501. ALLOCATION OF LIABILITY FOR MULTIPARTY FACILITIES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 406, is amended by adding at the end the following:

“SEC. 132. ALLOCATION OF LIABILITY FOR MULTIPARTY FACILITIES.

“(a) DEFINITIONS.—In this section:

“(1) ALLOCATION PARTY.—The term ‘allocation party’ means a party, named on a list of

parties that will be subject to the allocation process under this section, issued by an allocator under subsection (g)(3)(A).

“(2) ALLOCATOR.—The term ‘allocator’ means an allocator retained to conduct an allocation for a facility under subsection (f)(1).

“(3) MANDATORY ALLOCATION FACILITY.—The term ‘mandatory allocation facility’ means—

“(A) a non-federally owned vessel or facility listed on the National Priorities List for which the Administrator has approved a record of decision or a remedial action plan on or after June 15, 1995;

“(B) a federally owned facility listed on the National Priorities List for which the Administrator has approved a record of decision or a remedial action plan on or after June 15, 1995, if 1 or more of the potentially responsible parties with respect to the facility is not a department, agency, or instrumentality of the United States;

“(C) a non-federally owned vessel or facility listed on the National Priorities List for which the Administrator has approved a record of decision prior to June 15, 1995, if the construction or the operation and maintenance in accordance with the record of decision has continued after June 15, 1995; or

“(D) a federally owned facility listed on the National Priorities List for which the Administrator has approved a record of decision prior to June 15, 1995, and 1 or more of the potentially responsible parties is not a department, agency, or instrumentality of the United States and the construction or the operation and maintenance in accordance with the record of decision has continued after June 15, 1995.

“(b) ALLOCATIONS OF LIABILITY.—

“(1) MANDATORY ALLOCATIONS.—For each mandatory allocation facility involving 2 or more potentially responsible parties, the Administrator shall conduct the allocation process under this section.

“(2) REQUESTED ALLOCATIONS.—For a facility (other than a mandatory allocation facility) involving 2 or more potentially responsible parties, the Administrator shall conduct the allocation process under this section if the allocation is requested in writing by a potentially responsible party that has—

“(A) incurred response costs with respect to a response action; or

“(B) resolved any liability to the United States with respect to a response action in order to assist in allocating shares among potentially responsible parties.

“(3) PERMISSIVE ALLOCATIONS.—For any facility (other than a mandatory allocation facility) or a facility with respect to which a request is made under paragraph (2) involving 2 or more potentially responsible parties, the Administrator may conduct the allocation process under this section if the Administrator considers it to be appropriate to do so.

“(4) ORPHAN SHARE.—An allocation performed at a facility identified under subsection (a)(3) (C) or (D) or (b) (2) or (3) shall not require payment of an orphan share under subsection (1) or reimbursement under subsection (t).

“(5) EXCLUDED FACILITIES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), for purposes of the allocation process only, this section does not apply to—

“(i) a response action at a mandatory allocation facility for which there was in effect as of June 15, 1995, a final settlement, decree, or order that determines the liability and allocated shares of all potentially responsible parties with respect to the response action; or

“(ii) a facility with respect to which none of the potentially responsible parties is lia-

ble or potentially liable under section 107(a)(1) (C) or (D).

“(B) CONDUCT PRIOR TO DECEMBER 11, 1980.—

“(i) IN GENERAL.—For any mandatory allocation facility that is otherwise excluded by subparagraph (A), an allocation process shall be conducted for the sole purpose of determining the percentage share of responsibility attributable to activity of each potentially responsible party prior to December 11, 1980.

“(ii) PURPOSE.—The determination made under clause (i) shall be used only to determine the availability of the environmental response expenditures credit under section 38(b)(12) of the Internal Revenue Code of 1986.

“(6) SCOPE OF ALLOCATIONS.—Subject to paragraph (5), an allocation under this section shall apply to—

“(A) the cost of any response action selected by the Administrator after June 15, 1995, for a mandatory allocation facility described in subsection (a)(3) (A) or (B);

“(B) the cost of construction and operation and maintenance incurred at a mandatory allocation facility after June 15, 1995, in accordance with a record of decision approved by the Administrator before June 15, 1995; and

“(C) the cost of any response action incurred by a potentially responsible party at a facility that is the subject of a requested allocation or permissive allocation process under subsection (b) (2) or (3).

“(7) OTHER MATTERS.—This section shall not limit or affect—

“(A) the obligation of the Administrator to conduct the allocation process for a response action at a facility that has been the subject of a partial or expedited settlement with respect to a response action that is not within the scope of the allocation;

“(B) the ability of any person to resolve any liability at a facility to any other person at any time before initiation or completion of the allocation process, subject to subsection (1)(3);

“(C) the validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree issued prior to the date of enactment of this section with respect to liability under this Act; or

“(D) the validity, enforceability, finality, or merits of any preexisting contract or agreement relating to any allocation of responsibility or any indemnity for, or sharing of, any response costs under this Act.

“(c) MORATORIUM ON LITIGATION AND ENFORCEMENT.—

“(1) IN GENERAL.—No person may assert a claim for recovery of a response cost or contribution toward a response cost under this Act or any other Federal or State law in connection with a response action—

“(A) for which an allocation is required to be performed under subsection (b)(1); or

“(B) for which the Administrator has initiated the allocation process under this section,

until the date that is 120 days after the date of issuance of a report by the allocator under subsection (j)(5) or, if a second or subsequent report is issued under subsection (r), the date of issuance of the second or subsequent report.

“(2) PENDING ACTIONS OR CLAIMS.—If a claim described in paragraph (1) is pending on the date of enactment of this section or on initiation of an allocation under this section, the portion of the claim pertaining to response costs that are the subject of the allocation shall be stayed until the date that is 120 days after the date of issuance of a report by the allocator under subsection (j)(5) or, if a second or subsequent report is issued under subsection (r), the date of issuance of the second or subsequent report, unless the

court determines that a stay would result in manifest injustice.

“(3) TOLLING OF PERIOD OF LIMITATION.—

“(A) BEGINNING OF TOLLING.—Any applicable period of limitation with respect to a claim subject to paragraph (1) shall be tolled beginning on the earlier of—

“(i) the date of listing of the facility on the National Priorities List if the listing occurs after the date of enactment of this section; or

“(ii) the date of initiation of the allocation process under this section.

“(B) END OF TOLLING.—A period of limitation shall be tolled under subparagraph (A) until the date that is 180 days after the date of issuance of a report by the allocator under subsection (j)(5), or of a second or subsequent report under subsection (r).

“(4) LATER ACTIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the Administrator shall not issue any order under section 106 after the date of enactment of this section in connection with a response action for which an allocation is required to be performed under subsection (b)(1), or for which the Administrator has initiated the allocation process under this section, until the date that is 180 days after the date of issuance of a report by the allocator under subsection (j)(5) or of a second or subsequent report under subsection (r).

“(B) EMERGENCIES.—Subparagraph (A) does not preclude an order requiring the performance of a removal action that is necessary to address an emergency situation at a facility.

“(5) RETAINED AUTHORITY.—Except as specifically provided in this section, this section does not affect the authority of the Administrator to—

“(A) exercise the powers conferred by section 103, 104, 105, 106, or 122;

“(B) commence an action against a party if there is a contemporaneous filing of a judicial consent decree resolving the liability of the party; or

“(C) file a proof of claim or take other action in a proceeding under title 11, United States Code.

“(d) INITIATION OF ALLOCATION PROCESS.—

“(1) RESPONSIBLE PARTY SEARCH.—For each facility described in paragraph (2), the Administrator shall initiate the allocation process as soon as practicable by commencing a comprehensive search for all potentially responsible parties with respect to the facility under authority of section 104.

“(2) FACILITIES.—The Administrator shall initiate the allocation process for each—

“(A) mandatory allocation facility;

“(B) facility for which a request for allocation is made under subsection (b)(2); and

“(C) facility that the Administrator considers to be appropriate for allocation under subsection (b)(3).

“(3) TIME LIMIT.—The Administrator shall initiate the allocation process for a facility not later than the earlier of—

“(A) the date of completion of the facility evaluation or remedial investigation for the facility; or

“(B) the date that is 60 days after the date of selection of a removal action.

“(4) SUBMISSION OF INFORMATION.—Any person may submit information to the Administrator concerning a potentially responsible party for a facility that is subject to a search, and the Administrator shall consider the information in carrying out the search.

“(5) INITIAL LIST OF PARTIES.—

“(A) IN GENERAL.—As soon as practicable after initiation of an allocation process for a facility, the Administrator shall publish, in accordance with section 117(d), a list of all potentially responsible parties identified for a facility.

“(B) TIME LIMIT.—The Administrator shall publish a list under paragraph (1) not later than 120 days after the commencement of a comprehensive search.

“(C) COPY OF LIST.—The Administrator shall provide each person named on a list of potentially responsible parties with—

“(i) a copy of the list; and

“(ii) the names of not less than 25 neutral parties—

“(I) who are not employees of the United States;

“(II) who are qualified to perform an allocation at the facility, as determined by the Administrator; and

“(III) at least some of whom maintain an office in the vicinity of the facility.

“(D) PROPOSED ALLOCATOR.—A person identified by the Administrator as a potentially responsible party may propose an allocator not on the list of neutral parties.

“(e) SELECTION OF ALLOCATOR.—

“(1) IN GENERAL.—As soon as practicable after the receipt of a list under subsection (d)(5)(C), the potentially responsible parties named on the list shall—

“(A) select an individual to serve as allocator by plurality vote on a per capita basis; and

“(B) promptly notify the Administrator of the selection.

“(2) VOTE BY REPRESENTATIVE.—The representative of the Fund shall be entitled to cast 1 vote in an election under paragraph (1).

“(3) ELIGIBLE ALLOCATORS.—The potentially responsible parties shall select an allocator under paragraph (1) from among individuals—

“(A) named on the list of neutral parties provided by the Administrator;

“(B) named on a list that is current on the date of selection of neutrals maintained by the American Arbitration Association, the Center for Public Resources, the Administrative Conference of the United States, or another nonprofit or governmental organization of comparable standing; or

“(C) proposed by a party under subsection (d)(5)(D).

“(4) UNQUALIFIED ALLOCATOR.—

“(A) IN GENERAL.—If the Administrator determines that a person selected under paragraph (1) is unqualified to serve, the Administrator shall promptly notify all potentially responsible parties for the facility, and the potentially responsible parties shall make an alternative selection under paragraph (1).

“(B) LIMIT ON DETERMINATIONS.—The Administrator may not make more than 2 determinations that an allocator is unqualified under this paragraph with respect to any facility.

“(5) DETERMINATION BY ADMINISTRATOR.—If the Administrator does not receive notice of selection of an allocator within 60 days after a copy of a list is provided under subsection (d)(5)(C), or if the Administrator, having given a notification under paragraph (4), does not receive notice of an alternative selection of an allocator under that paragraph within 60 days after the date of the notification, the Administrator shall promptly select and designate a person to serve as allocator.

“(6) JUDICIAL REVIEW.—No action under this subsection shall be subject to judicial review.

“(f) RETENTION OF ALLOCATOR.—

“(1) IN GENERAL.—On selection of an allocator, the Administrator shall promptly—

“(A) contract with the allocator for the provision of allocation services in accordance with this section; and

“(B) notify each person named as a potentially responsible party at the facility that the allocator has been retained.

“(2) DISCRETION OF ALLOCATOR.—A contract with an allocator under paragraph (1) shall give the allocator broad discretion to conduct the allocation process in a fair, efficient, and impartial manner.

“(3) PROVISION OF INFORMATION.—

“(A) IN GENERAL.—Not later than 30 days after the selection of an allocator, the Administrator shall make available to the allocator and to each person named as a potentially responsible party for the facility—

“(i) any information or documents furnished under section 104(e)(2); and

“(ii) any other potentially relevant information concerning the facility and the potentially responsible parties at the facility.

“(B) PRIVILEGED INFORMATION.—The Administrator shall not make available any privileged information, except as otherwise authorized by law.

“(g) ADDITIONAL PARTIES.—

“(1) IN GENERAL.—Any person may propose to the allocator the name of an additional potentially responsible party at a facility, or otherwise provide the allocator with information pertaining to a facility or to an allocation, until the date that is 60 days after the later of—

“(A) the date of issuance of the initial list described in subsection (d)(5)(A); or

“(B) the date of retention of the allocator under subsection (f)(1)(A).

“(2) NEXUS.—Any proposal under paragraph (1) to add a potentially responsible party shall include all information reasonably available to the person making the proposal regarding the nexus between the additional potentially responsible party and the facility.

“(3) FINAL LIST.—

“(A) IN GENERAL.—The allocator shall issue a final list of all parties that will be subject to the allocation process (referred to in this section as the ‘allocation parties’) not later than 120 days after publication of the initial list under subsection (d)(5)(A).

“(B) STANDARD.—The allocator shall include each party proposed under paragraph (1) in the final list of allocation parties unless the allocator determines that the party is not potentially liable under section 107.

“(4) DE MICROMIS PARTIES.—

“(A) IDENTIFICATION.—Not later than 120 days after the filing of the initial list of parties under subsection (d)(5)(A), the allocator shall issue a list identifying all de micromis parties with respect to the facility based on an evaluation of all evidence received at the time of the issuance of the list with respect to the amount of hazardous substances contributed by potentially responsible parties.

“(B) NOTIFICATION.—The allocator shall notify each de micromis party of its inclusion on the list under subparagraph (A) not later than 20 days after the date of issuance of the list.

“(C) EXEMPTION FROM LIABILITY.—A person that is named on the list under subparagraph (A) shall have no liability to the United States or to any other person (including liability for contribution), under Federal or State law, for a response action or for any past, present, or future cost incurred at the facility for a release identified in the facility evaluation under section 129(b)(4) if the person takes no other action after being included on the list that would give rise to a separate basis for liability under this Act.

“(h) FEDERAL, STATE, AND LOCAL AGENCIES.—

“(1) IN GENERAL.—Notwithstanding any other law, any Federal, State, or local governmental department, agency, or instrumentality that is named as a potentially responsible party or an allocation party shall be subject to, and be entitled to the benefits

of, the allocation process and allocation determination under this section to the same extent as any other party.

“(2) ORPHAN SHARE.—The Administrator or the Attorney General shall participate in the allocation proceeding as the representative of the Fund from which any orphan share shall be paid.

“(i) POTENTIALLY RESPONSIBLE PARTY SETTLEMENT.—

“(1) SUBMISSION.—At any time prior to the date of issuance of an allocation report under subsection (j)(6) or of a second or subsequent report under subsection (r), any group of potentially responsible parties for a facility may submit to the allocator a private allocation for any response action that is within the scope of the allocation under subsection (b)(6).

“(2) ADOPTION.—The allocator shall promptly adopt a private allocation under paragraph (1) as the allocation report if the private allocation—

“(A) is a binding allocation of 100 percent of the recoverable costs of the response action that is the subject of the allocation; and

“(B) does not allocate a share to—

“(i) any person who is not a signatory to the private allocation; or

“(ii) any person whose share would be part of the orphan share under subsection (1), unless the representative of the Fund is a signatory to the private allocation.

“(3) WAIVER OF RIGHTS.—Any signatory to a private allocation waives the right to seek from any other potentially responsible party for a facility—

“(A) recovery of any response cost that is the subject of the allocation; and

“(B) contribution under this Act with respect to any response action that is within the scope of the allocation.

“(j) ALLOCATION DETERMINATION.—

“(1) ALLOCATION PROCESS.—An allocator retained under subsection (f)(1) shall conduct an allocation process culminating in the issuance of a written report with a non-binding equitable allocation of percentage shares of responsibility for any response action that is within the scope of the allocation under subsection (b)(6).

“(2) COPIES OF REPORT.—An allocator shall provide the report issued under paragraph (1) to the Administrator and to the allocation parties.

“(3) INFORMATION-GATHERING AUTHORITIES.—

“(A) IN GENERAL.—An allocator may request information from any person in order to assist in the efficient completion of the allocation process.

“(B) REQUESTS.—Any person may request that an allocator request information under this paragraph.

“(C) AUTHORITY.—An allocator may exercise the information-gathering authority of the Administrator under section 104(e), including issuing an administrative subpoena to compel the production of a document or the appearance of a witness.

“(D) DISCLOSURE.—Notwithstanding any other law, any information submitted to the allocator in response to a subpoena issued under paragraph (4) shall be exempt from disclosure to any person under section 552 of title 5, United States Code.

“(E) ORDERS.—In the event of contumacy or a failure of a person to obey a subpoena issued under paragraph (4), an allocator may request the Attorney General to—

“(i) bring a civil action to enforce the subpoena; or

“(ii) if the person moves to quash the subpoena, to defend the motion.

“(F) FAILURE OF ATTORNEY GENERAL TO RESPOND.—If the Attorney General fails to provide any response to the allocator within 30 days of a request for enforcement of a sub-

poena or information request, the allocator may retain counsel to commence a civil action to enforce the subpoena or information request.

“(4) ADDITIONAL AUTHORITY.—An allocator may—

“(A) schedule a meeting or hearing and require the attendance of allocation parties at the meeting or hearing;

“(B) sanction an allocation party for failing to cooperate with the orderly conduct of the allocation process;

“(C) require that allocation parties wishing to present similar legal or factual positions consolidate the presentation of the positions;

“(D) obtain or employ support services, including secretarial, clerical, computer support, legal, and investigative services; and

“(E) take any other action necessary to conduct a fair, efficient, and impartial allocation process.

“(5) CONDUCT OF ALLOCATION PROCESS.—

“(A) IN GENERAL.—The allocator shall conduct the allocation process and render a decision based solely on the provisions of this section, including the allocation factors described in subsection (k).

“(B) OPPORTUNITY TO BE HEARD.—Each allocation party shall be afforded an opportunity to be heard (orally or in writing, at the option of an allocation party) and an opportunity to comment on a draft allocation report.

“(C) RESPONSES.—The allocator shall not be required to respond to comments.

“(D) STREAMLINING.—In a case in which the expected response costs are relatively low and the number of potentially responsible parties is relatively small, the allocator shall make every effort to streamline the allocation process and minimize the cost of conducting the allocation.

“(6) ALLOCATION REPORT.—

“(A) DEADLINE.—

“(i) IN GENERAL.—The allocator shall provide a written allocation report to the Administrator and the allocation parties not later than 180 days after the date of issuance of the final list of allocation parties under subsection (g)(3)(A) that specifies the allocation share of each potentially responsible party and any orphan shares, as determined by the allocator.

“(ii) EXTENSION.—On request by the allocator and for good cause shown, the Administrator may extend the time to complete the report by not more than 90 days.

“(B) BREAKDOWN OF ALLOCATION SHARES INTO TIME PERIODS.—The allocation share for each potentially responsible party with respect to a mandatory allocation facility shall be comprised of percentage shares of responsibility stated separately for activity prior to December 11, 1980, and activity on or after December 11, 1980.

“(C) TAX-EXEMPT PARTIES.—Of the percentage share of a potentially responsible party that is a State, political subdivision of a State, an agency or instrumentality of a State or political subdivision, or is an organization that is exempt from tax imposed by chapter 1 of the Internal Revenue Code of 1986 (unless the organization is subject to the tax imposed by 511 of the Internal Revenue Code of 1986) for activity prior to December 11, 1980, that would be allocated to that party but for this subparagraph—

“(i) 50 percent shall be allocated to that party; and

“(ii) 50 percent shall be allocated to the orphan share under subsection (1).

“(k) EQUITABLE FACTORS FOR ALLOCATION.—The allocator shall prepare a non-binding allocation of percentage shares of responsibility to each allocation party and to the orphan share, in accordance with this

section and without regard to any theory of joint and several liability, based on—

“(1) the amount of hazardous substances contributed by each allocation party;

“(2) the degree of toxicity of hazardous substances contributed by each allocation party;

“(3) the mobility of hazardous substances contributed by each allocation party;

“(4) the degree of involvement of each allocation party in the generation, transportation, treatment, storage, or disposal of hazardous substances;

“(5) the degree of care exercised by each allocation party with respect to hazardous substances, taking into account the characteristics of the hazardous substances;

“(6) the cooperation of each allocation party in contributing to any response action and in providing complete and timely information to the allocator; and

“(7) such other equitable factors as the allocator determines are appropriate.

“(1) ORPHAN SHARES.—

“(1) IN GENERAL.—The allocator shall determine whether any percentage of responsibility for the response action shall be allocable to the orphan share.

“(2) MAKEUP OF ORPHAN SHARE.—The orphan share shall consist of—

“(A) any share that the allocator determines is attributable to an allocation party that is insolvent or defunct and that is not affiliated with any financially viable allocation party;

“(B) any share allocated under subsection (j)(6)(C)(ii); and

“(C) the difference between the aggregate share that the allocator determines is attributable to a person and the aggregate share actually assumed by the person in a settlement with the United States if—

“(i) the person is eligible for an expedited settlement with the United States under section 122 based on limited ability to pay response costs;

“(ii) the person is eligible for an expedited settlement with the United States under section 122 based on de minimis contributions of hazardous substances to a facility;

“(iii) the liability of the person for the response action is limited or reduced by any provision of this Act; or

“(iv) the person settled with the United States before the completion of the allocation.

“(3) UNATTRIBUTABLE SHARES.—A share attributed to a hazardous substance that the allocator cannot attribute to any identified party shall be distributed among the allocation parties and the orphan share.

“(m) DE MINIMIS SETTLEMENTS.—

“(1) IDENTIFICATION.—As part of the allocation report under subsection (j)(6), or at any time before the issuance of the allocation report, the allocator shall issue a list identifying all potentially responsible parties with respect to the facility whose allocated share of liability is determined to be 1.0 percent or less.

“(2) SETTLEMENT OFFER.—

“(A) OFFER BY THE ADMINISTRATOR.—Not later than 90 days after the date of issuance of the allocation report under subsection (j)(6) or the date of issuance of the list of de minimis parties under paragraph (1), whichever is earlier, the Administrator shall make a firm written offer of settlement to all de minimis parties.

“(B) AMOUNT.—The amount of the settlement offer for a de minimis party—

“(i) shall be stated in dollars, not a percentage share of the cleanup costs; and

“(ii) shall be based on the Administrator's estimate of the total cleanup cost at the facility multiplied by the de minimis party's allocated share, as determined by the allocator.

“(C) SINGLE ESTIMATE AND PREMIUM.—All settlement offers by the Administrator to de minimis parties at a facility shall be based on the same estimate of cleanup costs and the same premium.

“(D) NO JUDICIAL REVIEW.—A settlement offer under this paragraph is not subject to judicial review.

“(3) ACCEPTANCE.—

“(A) DEADLINE.—A de minimis party may accept or decline a settlement offer, but any acceptance of the offer shall be made within 60 days after receipt of the offer.

“(B) RESOLUTION OF LIABILITY.—A de minimis party that accepts the offer may resolve the party's liability to the United States by paying the amount of the offer to the Hazardous Substance Superfund established under subparagraph (A) of chapter 98 of the Internal Revenue Code of 1986.

“(C) NO REOPENING.—Settlement under this subsection may not be reopened after payment is made except on the ground of fraud.

“(4) NO FURTHER LIABILITY.—A de minimis party that accepts a settlement offer and pays the amount of the offer shall have no other liability, under Federal or State law, to any person for a response action or for any past, present, or future costs incurred at the facility for a release identified in the facility evaluation under section 129(b)(4) if the de minimis party takes no other actions after making the payment that would give rise to a separate basis for liability of the de minimis party under this Act.

“(5) APPLICATION OF PROCEEDS.—

“(A) PROCEEDS REPRESENTING ALLOCATED SHARES.—All proceeds from a de minimis settlement under this subsection that represent the allocated share of a de minimis party for a facility shall be held by the Administrator for timely payment directly to the person performing the response action at the facility.

“(B) EXCESS AMOUNTS.—Any amounts of a settlement remaining in the Fund after completion of the response action shall be available for other authorized uses.

“(n) INFORMATION REQUESTS.—

“(1) DUTY TO ANSWER.—Each person that receives an information request or subpoena from the allocator shall provide a full and timely response to the request.

“(2) CERTIFICATION.—An answer to an information request by an allocator shall include a certification by a representative that meets the criteria established in section 270.11(a) of title 40, Code of Federal Regulations (or any successor regulation), that—

“(A) the answer is correct to the best of the representative's knowledge;

“(B) the answer is based on a diligent good faith search of records in the possession or control of the person to whom the request was directed;

“(C) the answer is based on a reasonable inquiry of the current (as of the date of the answer) officers, directors, employees, and agents of the person to whom the request was directed;

“(D) the answer accurately reflects information obtained in the course of conducting the search and the inquiry;

“(E) the person executing the certification understands that there is a duty to supplement any answer if, during the allocation process, any significant additional, new, or different information becomes known or available to the person; and

“(F) the person executing the certification understands that there are significant penalties for submitting false information, including the possibility of a fine or imprisonment for a knowing violation.

“(o) PENALTIES.—

“(1) CIVIL.—

“(A) IN GENERAL.—A person that fails to submit a complete and timely answer to an

information request, a request for the production of a document, or a summons from an allocator, submits a response that lacks the certification required under subsection (n)(2), or knowingly makes a false or misleading material statement or representation in any statement, submission, or testimony during the allocation process (including a statement or representation in connection with the nomination of another potentially responsible party) shall be subject to a civil penalty of not more than \$10,000 per day of violation.

“(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

“(2) CRIMINAL.—A person that knowingly and willfully makes a false material statement or representation in the response to an information request or subpoena issued by the allocator under subsection (n) shall be considered to have made a false statement on a matter within the jurisdiction of the United States within the meaning of section 1001 of title 18, United States Code.

“(p) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

“(1) DOCUMENT REPOSITORY.—

“(A) IN GENERAL.—The allocator shall establish and maintain a document repository containing copies of all documents and information provided by the Administrator or any allocation party under this section or generated by the allocator during the allocation process.

“(B) AVAILABILITY.—Subject to paragraph (2), the documents and information in the document repository shall be available only to an allocation party for review and copying at the expense of the allocation party.

“(2) CONFIDENTIALITY.—

“(A) IN GENERAL.—Each document or material submitted to the allocator or placed in the document repository and the record of any information generated or obtained during the allocation process shall be confidential.

“(B) MAINTENANCE.—The allocator, each allocation party, the Administrator, and the Attorney General—

“(i) shall maintain the documents, materials, and records of any depositions or testimony adduced during the allocation as confidential; and

“(ii) shall not use any such document or material or the record in any other matter or proceeding or for any purpose other than the allocation process.

“(C) DISCLOSURE.—Notwithstanding any other law, the documents and materials and the record shall not be subject to disclosure to any person under section 552 of title 5, United States Code.

“(D) DISCOVERY AND ADMISSIBILITY.—

“(i) IN GENERAL.—Subject to clause (ii), the documents and materials and the record shall not be subject to discovery or admissible in any other Federal, State, or local judicial or administrative proceeding, except—

“(I) a new allocation under subsection (r) or (w) for the same response action; or

“(II) an initial allocation under this section for a different response action at the same facility.

“(ii) OTHERWISE DISCOVERABLE OR ADMISSIBLE.—

“(I) DOCUMENT OR MATERIAL.—If the original of any document or material submitted to the allocator or placed in the document repository was otherwise discoverable or admissible from a party, the original document, if subsequently sought from the party, shall remain discoverable or admissible.

“(II) FACTS.—If a fact generated or obtained during the allocation was otherwise discoverable or admissible from a witness,

testimony concerning the fact, if subsequently sought from the witness, shall remain discoverable or admissible.

“(3) NO WAIVER OF PRIVILEGE.—The submission of testimony, a document, or information under the allocation process shall not constitute a waiver of any privilege applicable to the testimony, document, or information under any Federal or State law or rule of discovery or evidence.

“(4) PROCEDURE IF DISCLOSURE SOUGHT.—

“(A) NOTICE.—A person that receives a request for a statement, document, or material submitted for the record of an allocation proceeding, shall—

“(i) promptly notify the person that originally submitted the item or testified in the allocation proceeding; and

“(ii) provide the person that originally submitted the item or testified in the allocation proceeding an opportunity to assert and defend the confidentiality of the item or testimony.

“(B) RELEASE.—No person may release or provide a copy of a statement, document, or material submitted, or the record of an allocation proceeding, to any person not a party to the allocation except—

“(i) with the written consent of the person that originally submitted the item or testified in the allocation proceeding; or

“(ii) as may be required by court order.

“(5) CIVIL PENALTY.—

“(A) IN GENERAL.—A person that fails to maintain the confidentiality of any statement, document, or material or the record generated or obtained during an allocation proceeding, or that releases any information in violation of this section, shall be subject to a civil penalty of not more than \$25,000 per violation.

“(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

“(C) DEFENSES.—In any administrative or judicial proceeding, it shall be a complete defense that any statement, document, or material or the record at issue under subparagraph (A)—

“(i) was in, or subsequently became part of, the public domain, and did not become part of the public domain as a result of a violation of this subsection by the person charged with the violation;

“(ii) was already known by lawful means to the person receiving the information in connection with the allocation process; or

“(iii) became known to the person receiving the information after disclosure in connection with the allocation process and did not become known as a result of any violation of this subsection by the person charged with the violation.

“(q) REJECTION OF ALLOCATION REPORT.—

“(1) REJECTION.—The Administrator and the Attorney General may jointly reject a report issued by an allocator only if the Administrator and the Attorney General jointly publish, not later than 180 days after the Administrator receives the report, a written determination that—

“(A) no rational interpretation of the facts before the allocator, in light of the factors required to be considered, would form a reasonable basis for the shares assigned to the parties; or

“(B) the allocation process was directly and substantially affected by bias, procedural error, fraud, or unlawful conduct.

“(2) FINALITY.—A report issued by an allocator may not be rejected after the date that is 180 days after the date on which the United States accepts a settlement offer (excluding a de minimis or other expedited settlement under section 122) based on the allocation.

“(3) JUDICIAL REVIEW.—Any determination by the Administrator or the Attorney General under this subsection shall not be subject to judicial review unless 2 successive allocation reports relating to the same response action are rejected, in which case any allocation party may obtain judicial review of the second rejection in a United States district court under subchapter II of chapter 5 of part I of title 5, United States Code.

“(4) STANDARD OF REVIEW.—In a proceeding on review of a rejection of an allocation report under subparagraph (3), the court shall, notwithstanding section 706(2)(E) of title 5, United States Code, hold unlawful and set aside actions, findings, and conclusions found to be unsupported by substantial evidence.

“(5) DELEGATION.—The authority to make a determination under this subsection may not be delegated to any officer or employee below the level of an Assistant Administrator or Acting Assistant Administrator or an Assistant Attorney General or Acting Assistant Attorney General with authority for implementing this Act.

“(r) SECOND AND SUBSEQUENT ALLOCATIONS.—

“(1) IN GENERAL.—If a report is rejected under subsection (q), the allocation parties shall select an allocator under subsection (e) to perform, on an expedited basis, a new allocation based on the same record available to the previous allocator.

“(2) MORATORIUM AND TOLLING.—The moratorium and tolling provisions of subsection (c) shall be extended until the date that is 180 days after the date of the issuance of any second or subsequent allocation report under paragraph (1).

“(3) SAME ALLOCATOR.—The allocation parties may select the same allocator who performed 1 or more previous allocations at the facility, except that the Administrator may determine under subsection (e) that an allocator whose previous report at the same facility has been rejected under subsection (q) is unqualified to serve.

“(s) SETTLEMENTS BASED ON ALLOCATIONS.—

“(1) DEFINITION.—In this subsection, the term ‘all settlements’ includes any orphan share allocated under subsection (1).

“(2) IN GENERAL.—Unless an allocation report is rejected under subsection (q), any allocation party with respect to a mandatory allocation facility shall be entitled to resolve the liability of the party to the United States for response actions subject to allocation if, not later than 90 days after the date of issuance of a report by the allocator, the party—

“(A) offers to settle with the United States based on the percentage share specified by the allocator; and

“(B) agrees to the other terms and conditions stated in this subsection.

“(3) PROVISIONS OF SETTLEMENTS.—

“(A) IN GENERAL.—A settlement based on an allocation under this section—

“(i) may consist of a cash-out settlement or an agreement for the performance of a response action; and

“(ii) shall include—

“(I) a waiver of contribution rights against all persons that are potentially responsible parties for any response action addressed in the settlement;

“(II) a covenant not to sue that is consistent with section 122(f) and, except in the case of a cash-out settlement, provisions regarding performance or adequate assurance of performance of the response action;

“(III) a premium, calculated on a facility-specific basis and subject to the limitations on premiums stated in paragraph (5), that reflects the actual risk to the United States of not collecting unrecovered response costs for

the response action, despite the diligent prosecution of litigation against any viable allocation party that has not resolved the liability of the party to the United States, except that no premium shall apply if all allocation parties participate in the settlement or if the settlement covers 100 percent of the response costs subject to the allocation;

“(IV) complete protection from all claims for contribution regarding the response action addressed in the settlement; and

“(V) provisions through which a settling party shall receive prompt reimbursement from the Fund under subsection (t) of any response costs incurred by the party for any response action that is the subject of the allocation in excess of the allocated share of the party, including the allocated portion of any orphan share.

“(B) RIGHT TO REIMBURSEMENT.—A right to reimbursement under subparagraph (A)(ii)(V) shall not be contingent on recovery by the United States of any response costs from any person other than the settling party.

“(4) REPORT.—The Administrator shall report annually to Congress on the administration of the allocation process under this section, providing in the report—

“(A) information comparing allocation results with actual settlements at multiparty facilities;

“(B) a cumulative analysis of response action costs recovered through post-allocation litigation or settlements of post-allocation litigation;

“(C) a description of any impediments to achieving complete recovery; and

“(D) a complete accounting of the costs incurred in administering and participating in the allocation process.

“(5) PREMIUM.—In each settlement under this subsection, the premium authorized—

“(A) shall be determined on a case-by-case basis to reflect the actual litigation risk faced by the United States with respect to any response action addressed in the settlement; but

“(B) shall not exceed—

“(i) 5 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 80 percent and less than 100 percent of responsibility for the response action;

“(ii) 10 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 60 percent and not more than 80 percent of responsibility for the response action;

“(iii) 15 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 40 percent and not more than 60 percent of responsibility for the response action; or

“(iv) 20 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for 40 percent or less of responsibility for the response action.

“(t) FUNDING OF ORPHAN SHARES.—

“(1) REIMBURSEMENT.—For each settlement agreement entered into under subsection (s), and for each administrative order that satisfies the requirements of subsection (u), the Administrator shall promptly reimburse the allocation parties for any costs incurred that are attributable to the orphan share, as determined by the allocator.

“(2) ENTITLEMENT.—Paragraph (1) constitutes an entitlement to any allocation party eligible to receive a reimbursement.

“(3) AMOUNTS OWED.—Any amount due and owing in excess of available appropriations in any fiscal year shall be paid from amounts made available in subsequent fiscal years, along with interest on the unpaid balances at the rate equal to that of the current average market yield on outstanding marketable

obligations of the United States with a maturity of 1 year.

“(4) DOCUMENTATION AND AUDITING.—The Administrator—

“(A) shall require that any claim for reimbursement be supported by documentation of actual costs incurred; and

“(B) may require an independent auditing of any claim for reimbursement.

“(u) ADMINISTRATIVE ORDER REIMBURSEMENT.—

“(1) IN GENERAL.—An allocation party that is ordered to perform, and does perform, a response action that is the subject of an allocation under this section to an extent that exceeds the percentage share of the allocation party, as determined by the allocator, shall be entitled to prompt reimbursement of the excess amount, including any orphan share, from the Fund, unless the allocation report is rejected under subsection (q).

“(2) NOT CONTINGENT.—The right to reimbursement under paragraph (1) shall not be contingent on recovery by the United States of a response cost from any other person.

“(3) TERMS AND CONDITIONS.—

“(A) RISK PREMIUM.—A reimbursement shall be reduced by the amount of the litigation risk premium under subsection (s)(4) that would apply to a settlement by the allocation party concerning the response action, based on the total allocated shares of the parties that have not reached a settlement with the United States.

“(B) TIMING.—

“(i) IN GENERAL.—A reimbursement shall be paid out during the course of the response action that was the subject of the allocation, using reasonable progress payments at significant milestones.

“(ii) CONSTRUCTION.—Reimbursement for the construction portion of the work shall be paid out not later than 120 days after the date of completion of the construction.

“(C) EQUITABLE OFFSET.—A reimbursement is subject to equitable offset or recoupment by the Administrator at any time if the allocation party fails to perform the work in a proper and timely manner.

“(D) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for reimbursement.

“(E) WAIVER.—An allocation party seeking reimbursement waives the right to seek recovery of response costs in connection with the response action, or contribution toward the response costs, from any other person.

“(F) BAR.—An administrative order shall be in lieu of any action by the United States or any other person against the allocation party for recovery of response costs in connection with the response action, or for contribution toward the costs of the response action.

“(v) POST-SETTLEMENT LITIGATION.—

“(1) IN GENERAL.—Subject to subsections (r) and (s), and on the expiration of the moratorium period under subsection (c)(4), the Administrator may commence an action under section 107 against an allocation party that has not resolved the liability of the party to the United States following allocation and may seek to recover response costs not recovered through settlements with other persons.

“(2) ORPHAN SHARE.—The recoverable costs shall include any orphan share determined under subsection (1), but shall not include any share allocated to a Federal, State, or local governmental agency, department, or instrumentality.

“(3) IMPLAIDER.—A defendant in an action under paragraph (1) may implead an allocation party only if the allocation party did not resolve liability to the United States.

“(4) CERTIFICATION.—In commencing or maintaining an action under section 107

against an allocation party after the expiration of the moratorium period under subsection (c)(4), the Attorney General shall certify in the complaint that the defendant failed to settle the matter based on the share that the allocation report assigned to the party.

“(5) RESPONSE COSTS.—

“(A) ALLOCATION PROCEDURE.—The cost of implementing the allocation procedure under this section, including reasonable fees and expenses of the allocator, shall be considered as a necessary response cost.

“(B) FUNDING ORPHAN SHARES.—The cost attributable to funding an orphan share under this section—

“(i) shall be considered as a necessary cost of response cost; and

“(ii) shall be recoverable in accordance with section 107 only from an allocation party that does not reach a settlement and does not receive an administrative order under subsection (s) or (u).

“(w) NEW INFORMATION.—

“(1) IN GENERAL.—An allocation under this section shall be final, except that any settling party, including the United States, may seek a new allocation with respect to the response action that was the subject of the settlement by presenting the Administrator with clear and convincing evidence that—

“(A) the allocator did not have information concerning—

“(i) 35 percent or more of the materials containing hazardous substances at the facility; or

“(ii) 1 or more persons not previously named as an allocation party that contributed 15 percent or more of materials containing hazardous substances at the facility; and

“(B) the information was discovered subsequent to the issuance of the report by the allocator.

“(2) NEW ALLOCATION.—Any new allocation of responsibility—

“(A) shall proceed in accordance with this section;

“(B) shall be effective only after the date of the new allocation report; and

“(C) shall not alter or affect the original allocation with respect to any response costs previously incurred.

“(x) ALLOCATOR’S DISCRETION.—The Administrator shall not issue any rule or order that limits the discretion of the allocator in the conduct of the allocation.”.

SEC. 502. LIABILITY OF RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF CONTRACTORS.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)), as amended by section 303(a), is amended by adding at the end the following:

“(G) LIABILITY OF CONTRACTORS.—

“(i) IN GENERAL.—The term ‘owner or operator’ does not include a response action contractor (as defined in section 119(e)).

“(ii) LIABILITY LIMITATIONS.—A person described in clause (i) shall not, in the absence of negligence by the person, be considered to—

“(I) cause or contribute to any release or threatened release of a hazardous substance, pollutant, or contaminant;

“(II) arrange for disposal or treatment of a hazardous substance, pollutant, or contaminant;

“(III) arrange with a transporter for transport or disposal or treatment of a hazardous substance, pollutant, or contaminant; or

“(IV) transport a hazardous substance, pollutant, or contaminant.

“(iii) EXCEPTION.—This subparagraph does not apply to a person potentially responsible under section 106 or 107 other than a person

associated solely with the provision of a response action or a service or equipment ancillary to a response action.”.

(b) NATIONAL UNIFORM NEGLIGENCE STANDARD.—Section 119(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(a)) is amended—

(1) in paragraph (1) by striking “title or under any other Federal law” and inserting “title, under any other Federal or State law”; and

(2) in paragraph (2)—

(A) by striking “Paragraph (1)” and inserting the following:

“(A) IN GENERAL.—Paragraph (1)”; and

(B) by adding at the end the following:

“(B) STANDARD.—Conduct under subparagraph (A) shall be evaluated based on the generally accepted standards and practices in effect at the time and place at which the conduct occurred.

“(C) PLAN.—An activity performed in accordance with a plan that was approved by the Administrator shall not be considered to constitute negligence under subparagraph (A).”.

(c) EXTENSION OF INDEMNIFICATION AUTHORITY.—Section 119(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(1)) is amended by adding at the end the following: “The agreement may apply to a claim for negligence arising under Federal or State law.”.

(d) INDEMNIFICATION DETERMINATIONS.—Section 119(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)) is amended by striking paragraph (4) and inserting the following:

“(4) DECISION TO INDEMNIFY.—

“(A) IN GENERAL.—For each response action contract for a vessel or facility, the Administrator shall make a decision whether to enter into an indemnification agreement with a response action contractor.

“(B) STANDARD.—The Administrator shall enter into an indemnification agreement to the extent that the potential liability (including the risk of harm to public health, safety, environment, and property) involved in a response action exceed or are not covered by insurance available to the contractor at the time at which the response action contract is entered into that is likely to provide adequate long-term protection to the public for the potential liability on fair and reasonable terms (including consideration of premium, policy terms, and deductibles).

“(C) DILIGENT EFFORTS.—The Administrator shall enter into an indemnification agreement only if the Administrator determines that the response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

“(D) CONTINUED DILIGENT EFFORTS.—An indemnification agreement shall require the response action contractor to continue, not more frequently than annually, to make diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

“(E) LIMITATIONS ON INDEMNIFICATION.—An indemnification agreement provided under this subsection shall include deductibles and shall place limits on the amount of indemnification made available in amounts determined by the contracting agency to be appropriate in light of the unique risk factors associated with the cleanup activity.”.

(e) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(c)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(5)(A)) is amended by inserting

“or threatened release” after “release” each place it appears.

(f) EXTENSION OF COVERAGE TO ALL RESPONSE ACTIONS.—Section 119(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(1)) is amended—

(1) in subparagraph (D) by striking “carrying out an agreement under section 106 or 122”; and

(2) in the matter following subparagraph (D)—

(A) by striking “any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act,” and inserting “any response action,”; and

(B) by inserting before the period at the end the following: “or to undertake appropriate action necessary to protect and restore any natural resource damaged by the release or threatened release”.

(g) DEFINITION OF RESPONSE ACTION CONTRACTOR.—Section 119(e)(2)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended by striking “and is carrying out such contract” and inserting “covered by this section and any person (including any subcontractor) hired by a response action contractor”.

(h) SURETY BONDS.—Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619) is amended—

(1) in subsection (e)(2)(C) by striking “, and before January 1, 1996,”; and

(2) in subsection (g)(5) by striking “, or after December 31, 1995”.

(i) NATIONAL UNIFORM STATUTE OF REPOSE.—Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619) is amended by adding at the end the following:

“(h) LIMITATION ON ACTIONS AGAINST RESPONSE ACTION CONTRACTORS.—

“(1) IN GENERAL.—No action may be brought as a result of the performance of services under a response contract against a response action contractor after the date that is 7 years after the date of completion of work at any facility under the contract to recover—

“(A) injury to property, real or personal;

“(B) personal injury or wrongful death;

“(C) other expenses or costs arising out of the performance of services under the contract; or

“(D) contribution or indemnity for damages sustained as a result of an injury described in subparagraphs (A) through (C).

“(2) EXCEPTION.—Paragraph (1) does not bar recovery for a claim caused by the conduct of the response action contractor that is grossly negligent or that constitutes intentional misconduct.

“(3) INDEMNIFICATION.—This subsection does not affect any right of indemnification that a response action contractor may have under this section or may acquire by contract with any person.

“(i) STATE STANDARDS OF NEGLIGENCE.—Subsection (a)(1) and subsection (h) shall not apply in determining the liability of a response action contractor if the State has enacted, after the date of enactment of this subsection, a statute of repose determining the liability of a response action contractor.”.

SEC. 503. RELEASE OF EVIDENCE.

(a) TIMELY ACCESS TO INFORMATION FURNISHED UNDER SECTION 104(e).—Section 104(e)(7)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is amended by inserting after “shall be available to the public” the following: “not later than 14 days after the records, reports, or information is obtained”.

(b) REQUIREMENT TO PROVIDE POTENTIALLY RESPONSIBLE PARTIES EVIDENCE OF LIABILITY.—

(1) ABATEMENT ACTIONS.—Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606(a)) is amended—

(A) by striking “(a) In addition” and inserting the following: “(a) ORDER.—”

“(1) IN GENERAL.—In addition”; and

(B) by adding at the end the following:

“(2) CONTENTS OF ORDER.—An order under paragraph (1) shall provide information concerning the evidence that indicates that each element of liability described in section 107(a)(1) (A), (B), (C), and (D), as applicable, is present.”.

(2) SETTLEMENTS.—Section 122(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9622(e)(1)) is amended by inserting after subparagraph (C) the following:

“(D) For each potentially responsible party, the evidence that indicates that each element of liability contained in section 107(a)(1) (A), (B), (C), and (D), as applicable, is present.”.

SEC. 504. CONTRIBUTION PROTECTION.

(a) NO LIABILITY FOR COST RECOVERY AFTER SETTLEMENT.—Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sentence by inserting “or cost recovery” after “contribution”.

(b) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 401, is amended by adding at the end the following:

“(48) ALLOCATED SHARE.—The term ‘allocated share’ means the percentage of liability assigned to a potentially responsible party by the allocator in an allocation report under section 132(j)(6).

“(49) DE MICROMIS PARTY.—The term ‘de micromis party’ means a potentially responsible party that is a generator or transporter that contributed not more than 200 pounds or not more than 110 gallons of material containing hazardous substances at a facility, or such greater or lesser amount as the Administrator may determine by regulation.

“(50) DE MINIMIS PARTY.—The term ‘de minimis party’ means a liable party whose assigned share of liability is determined to be 1.0 percent or less in an allocation report under section 132.

“(51) ORPHAN SHARE.—The term ‘orphan share’ means the total of the allocated shares determined by the allocator under section 132(1).

SEC. 505. TREATMENT OF RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS AS OWNERS OR OPERATORS.

(a) DEFINITION.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)), as amended by section 502(a), is amended by adding at the end the following:

“(H) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—The term ‘owner or operator’ includes an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is organized and operated exclusively for religious, charitable, scientific, or educational purposes and that holds legal or equitable title to a vessel or facility.”.

(b) LIMITATION ON LIABILITY.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 306(b), is amended by adding at the end the following:

“(r) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—

“(1) LIMITATION ON LIABILITY.—Subject to paragraph (2), if an organization described in section 101(20)(I) holds legal or equitable title to a vessel or facility as a result of a charitable gift that is allowable as a deduction under section 170, 2055, or 2522 of the Internal Revenue Code of 1986 (determined without regard to dollar limitations), the liability of the organization shall be limited to the lesser of the fair market value of the vessel or facility or the actual proceeds of the sale of the vessel or facility received by the organization.

“(2) CONDITIONS.—In order for an organization described in section 101(20)(I) to be eligible for the limited liability described in paragraph (1), the organization shall—

“(A) provide full cooperation, assistance, and vessel or facility access to persons authorized to conduct response actions at the vessel or facility, including the cooperation and access necessary for the installation, preservation of integrity, operation, and maintenance of any complete or partial response action at the vessel or facility;

“(B) provide full cooperation and assistance to the United States in identifying and locating persons who recently owned, operated, or otherwise controlled activities at the vessel or facility;

“(C) establish by a preponderance of the evidence that all active disposal of hazardous substances at the vessel or facility occurred before the organization acquired the vessel or facility; and

“(D) establish by a preponderance of the evidence that the organization did not cause or contribute to a release or threatened release of hazardous substances at the vessel or facility.

“(3) LIMITATION.—Nothing in this subsection affects the liability of a person other than a person described in section 101(20)(G) that meets the conditions specified in paragraph (2).”.

SEC. 506. COMMON CARRIERS.

Section 107(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(b)(3)) is amended by striking “a published tariff and acceptance” and inserting “a contract”.

SEC. 507. LIMITATION ON LIABILITY FOR RESPONSE COSTS.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 505(b), is amended by adding at the end the following:

“(s) LIMITATION ON LIABILITY OF RAILROAD OWNERS.—Notwithstanding subsection (a)(1), a person that does not impede the performance of a response action or natural resource restoration shall not be liable under this Act to the extent that liability is based solely on the status of the person as a railroad owner or operator of a spur track, including a spur track over land subject to an easement, to a facility that is owned or operated by a person that is not affiliated with the railroad owner or operator, if—

“(1) the spur track provides access to a main line or branch line track that is owned or operated by the railroad;

“(2) the spur track is 10 miles long or less; and

“(3) the railroad owner or operator does not cause or contribute to a release or threatened release at the spur track.”.

TITLE VI—FEDERAL FACILITIES

SEC. 601. TRANSFER OF AUTHORITIES.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by striking subsection (g) and inserting the following:

“(g) TRANSFER OF AUTHORITIES.—

“(1) DEFINITIONS.—In this section:

“(A) INTERAGENCY AGREEMENT.—The term ‘interagency agreement’ means an interagency agreement under section 120.

“(B) TRANSFER AGREEMENT.—The term ‘transfer agreement’ means a transfer agreement under paragraph (3).

“(C) TRANSFEREE STATE.—The term ‘transferee State’ means a State to which authorities have been transferred under a transfer agreement.

“(2) STATE APPLICATION FOR TRANSFER OF AUTHORITIES.—A State may apply to the Administrator to exercise the authorities vested in the Administrator under this Act at any facility owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government) located in the State.

“(3) TRANSFER OF AUTHORITIES.—

“(A) DETERMINATIONS.—The Administrator shall enter into a transfer agreement to transfer to a State the authorities described in paragraph (2) if the Administrator determines that—

“(i) the State has the ability to exercise such authorities in accordance with this Act, including adequate legal authority, financial and personnel resources, organization, and expertise;

“(ii) the State has demonstrated experience in exercising similar authorities;

“(iii) the State has agreed to be bound by all Federal requirements and standards under section 129 governing the design and implementation of the facility evaluation, remedial action plan, and remedial design; and

“(iv) the State has agreed to abide by the terms of any interagency agreement or agreements covering the Federal facility or facilities with respect to which authorities are being transferred in effect at the time of the transfer of authorities.

“(B) CONTENTS OF TRANSFER AGREEMENT.—A transfer agreement—

“(i) shall incorporate the determinations of the Administrator under subparagraph (A); and

“(ii) in the case of a transfer agreement covering a facility with respect to which there is no interagency agreement that specifies a dispute resolution process, shall require that within 120 days after the effective date of the transfer agreement, the State shall agree with the head of the Federal department, agency, or instrumentality that owns or operates the facility on a process for resolution of any disputes between the State and the Federal department, agency, or instrumentality regarding the selection of a remedial action for the facility; and

“(iii) shall not impose on the transferee State any term or condition other than that the State meet the requirements of subparagraph (A).

“(4) EFFECT OF TRANSFER.—

“(A) STATE AUTHORITIES.—A transferee State—

“(i) shall not be deemed to be an agent of the Administrator but shall exercise the authorities transferred under a transfer agreement in the name of the State; and

“(ii) shall have exclusive authority to determine the manner in which those authorities are implemented.

“(B) EFFECT ON INTERAGENCY AGREEMENTS.—Nothing in this subsection shall require, authorize, or permit the modification or revision of an interagency agreement covering a facility with respect to which authorities have been transferred to a State under a transfer agreement (except for the substitution of the transferee State for the Administrator in the terms of the interagency agreement, including terms stating

obligations intended to preserve the confidentiality of information) without the written consent of the Governor of the State and the head of the department, agency, or instrumentality.

“(5) **SELECTED REMEDIAL ACTION.**—The remedial action selected for a facility under section 129 by a transferee State shall constitute the only remedial action required to be conducted at the facility, and the transferee State shall be precluded from enforcing any other remedial action requirement under Federal or State law, except for—

“(A) any corrective action activity under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that was initiated prior to the date of enactment of this subsection; and

“(B) any remedial action in excess of remedial action under section 129 that the State selects in accordance with paragraph (8).

“(6) **DEADLINE.**—

“(A) **IN GENERAL.**—The Administrator shall make a determination on an application by a State under paragraph (2) not later than 120 days after the date on which the Administrator receives the application.

“(B) **FAILURE TO ACT.**—If the Administrator does not issue a notice of approval or notice of disapproval of an application within the time period stated in subparagraph (A), the application shall be deemed to have been granted.

“(7) **RESUBMISSION OF APPLICATION.**—

“(A) **IN GENERAL.**—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

“(B) **FAILURE TO ACT.**—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the time period stated in paragraph (6)(A), the resubmitted application shall be deemed to have been granted.

“(8) **JUDICIAL REVIEW.**—

“(A) **IN GENERAL.**—A disapproval of a resubmitted application shall be subject to judicial review under section 113(b).

“(B) **STANDARD OF REVIEW.**—In a proceeding on review of a disapproval of a resubmitted application, the court shall, notwithstanding section 706(2)(E) of title 5, United States Code, hold unlawful and set aside actions, findings, and conclusions found to be unsupported by substantial evidence.

“(9) **WITHDRAWAL OF AUTHORITIES.**—The Administrator may withdraw the authorities transferred under a transfer agreement in whole or in part if the Administrator determines that the State—

“(A) is exercising the authorities, in whole or in part, in a manner that is inconsistent with the requirements of this Act;

“(B) has violated the transfer agreement, in whole or in part; or

“(C) no longer meets one of the requirements of paragraph (3).

“(10) **STATE COST RESPONSIBILITY.**—The State may require a remedial action that exceeds Federal standards (including the remedial action selection requirements of section 121) if the State pays the incremental cost of implementing that remedial action over the most cost-effective remedial action that would result from the application of section 129.

“(11) **DISPUTE RESOLUTION AND ENFORCEMENT.**—

“(A) **DISPUTE RESOLUTION.**—

“(i) **FACILITIES COVERED BY BOTH A TRANSFER AGREEMENT AND AN INTERAGENCY AGREEMENTS.**—In the case of a facility with respect to which there is both a transfer agreement and an interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality

and the State shall engage in the dispute resolution process provided for in the interagency agreement, except that the final level for resolution of the dispute shall be the head of the Federal department, agency, or instrumentality and the Governor of the State.

“(ii) **FACILITIES COVERED BY A TRANSFER AGREEMENT BUT NOT AN INTERAGENCY AGREEMENT.**—In the case of a facility with respect to which there is a transfer agreement but no interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in dispute resolution as provide in paragraph (3)(B)(ii) under which the final level for resolution of the dispute shall be the head of the Federal department, agency, or instrumentality and the Governor of the State.

“(iii) **FAILURE TO RESOLVE.**—If no agreement is reached between the head of the Federal department, agency, or instrumentality and the Governor in a dispute resolution process under clause (i) or (ii), the Governor of the State shall make the final determination regarding selection of a remedial action.

“(B) **ENFORCEMENT.**—

“(i) **IN GENERAL.**—An interagency agreement with respect to which there is a transfer agreement or an order issued by a transferee State shall be enforceable by a transferee State or by the Federal department, agency, or instrumentality that is a party to the interagency agreement in the United States district court for the district in which the facility is located.

“(ii) **REMEDIES.**—The district court shall have the jurisdiction to—

“(I) enforce compliance with any provision, standard, regulation, condition, requirement, order, or final determination that has become effective under the interagency agreement;

“(II) impose any appropriate civil penalty provided for any violation of an interagency agreement, not to exceed \$25,000 per day;

“(III) compel implementation of the selected remedial action; and

“(IV) review a challenge by the Federal department, agency, or instrumentality to the remedial action selected by the State, in accordance with section 113(j).

“(12) **COMMUNITY PARTICIPATION.**—If, prior to June 15, 1995, a Federal department, agency, or instrumentality had established for a facility covered by a transfer agreement a facility-specific advisory board or other community-based advisory group (designated as a ‘site-specific advisory board’, a ‘response action advisory board’, or otherwise), and the Administrator determines that the board or group is willing and able to perform the responsibilities of a community response organization under section 117(e)(2), the board or group—

“(A) shall be considered to be a community response organization for the purposes of section 117 (e) (2), (3), (4), (5), and (6), and (g) and sections 127 and 129; but

“(B) shall not be required to comply with, and shall not be considered to be a community response organization for the purposes of, section 117 (e) (1), (7), (8), (9), (10), or (11) or (f).”

SEC. 602. DEPARTMENT OF ENERGY ENVIRONMENTAL CLEANUP REQUIREMENTS.

(a) **DEFINITIONS.**—In this section:

(1) **CIVIL OR CRIMINAL SANCTION.**—The term “civil or criminal sanction” means a fine, penalty, imprisonment, a requirement to pay damages or costs, the imposition of equitable relief against a person, and the application of any other remedy authorized by law.

(2) **DEPARTMENT OF ENERGY ENVIRONMENTAL CLEANUP REQUIREMENT.**—The term “Depart-

ment of Energy environmental cleanup requirement”—

(A) means a requirement imposed on the Secretary of Energy—

(i) to carry out a response action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(ii) to take corrective action under section 3004 (u) or (v) or section 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924 (u), (v));

(iii) to conduct closure activity under section 3004 or 3005 of the Solid Waste Disposal Act (42 U.S.C. 6924, 6925);

(iv) relating to storage of mixed waste under section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j));

(v) for treatment of mixed waste under section 3021 of the Solid Waste Disposal Act (42 U.S.C. 6939c);

(vi) with respect to the storage of mixed waste in a storage facility that does not meet other storage requirements imposed under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), if—

(I) the facility commenced operation prior to October 6, 1992;

(II) the storage does not result in any release of mixed waste to the environment, or any direct, immediate, and significant danger to human health or the environment.

(vii) under comparable provisions of State and local laws; or

(viii) under a permit or order issued by, or an agreement with a Federal, State, or local agency relating to a requirement described in clause (i), (ii), (iii), (iv), (v), (vi), (vii), or (viii); but

(B) does not include—

(i) a reporting requirement imposed by section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9603); or

(ii) except as provided in subparagraph (A)(iii), a requirement with respect to the treatment, storage, disposal, or transportation of hazardous waste generated by a response action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or by a corrective action or closure under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(b) **LISTS.**—

(1) **INITIAL LIST.**—Not later than 120 days after the date of enactment of this Act, the Secretary of Energy, after providing appropriate Federal, State, and local agencies reasonable notice and an opportunity for comment, shall submit to Congress a list identifying by State and facility the specific Department of Energy environmental cleanup requirements that cannot be carried out with the funds appropriated specifically for the Department’s environmental management activities under the Energy and Water Development Appropriations Act, 1996, or the Department of Defense Appropriations Act, 1996.

(2) **ANNUAL LISTS.**—

(A) **SUBMISSION TO THE PRESIDENT.**—For fiscal year 1997 and each fiscal year thereafter, the Secretary of Energy, after providing appropriate Federal, State, and local agencies reasonable notice and an opportunity for comment, shall—

(i) provide to the President—

(I) information concerning the budget necessary to meet all Department of Energy environmental management requirements, including Department of Energy environmental cleanup requirements; and

(II) a list of the Department of Energy environmental cleanup requirements that cannot be met (including information about the nature and cost of each requirement and the locations of each affected facility) within the

Department's budget request for environmental management activities for that fiscal year;

(ii) advise the President of the factors taken into account in formulating the list; and

(iii) a summary of comments on the list received by the Secretary of Energy from Federal, State, and local agencies.

(B) **INCLUSION IN BUDGET REQUEST.**—After considering information provided by the Secretary of Energy, the President shall submit to Congress with the President's annual budget request under section 1105 of title 31, United States Code—

(i) information concerning the budget necessary to meet all Department of Energy environmental management requirements, including Department of Energy environmental cleanup requirements;

(ii) a list of the Department of Energy environmental cleanup requirements that cannot be met (including information about the nature and cost of each requirement and the locations of each affected facility) within the Department's budget request for environmental management activities for that fiscal year; and

(iii) a summary of comments on the list received by the Secretary of Energy from Federal, State, and local agencies.

(3) **COMMENTS ON COST REDUCTION.**—During the comment period on a list under paragraph (1) or (2), the Secretary of Energy shall seek comments of appropriate Federal, State, and local agencies concerning opportunities for cost reduction in meeting cleanup requirements, risk reduction, community concerns and other factors relevant to setting priorities for cleanup activities.

(4) **REVISION OF LISTS.**—

(A) **IN GENERAL.**—Beginning with fiscal year 1997, after funds for the Department of Energy's environmental management activities have been appropriated for a fiscal year, the Secretary of Energy, after providing appropriate Federal, State, and local agencies reasonable notice and an additional opportunity for comment, shall revise the list of the Department of Energy environmental cleanup requirements submitted to Congress to reflect any differences between the President's budget request and the funds appropriated specifically to carry out such activities and shall submit the revised list to Congress within 60 days.

(B) **NO FURTHER REVISION.**—After a revised list is submitted to Congress, it shall not be subject to further revision.

(C) **CIVIL OR CRIMINAL SANCTIONS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), notwithstanding any other law, no action seeking to impose civil or criminal sanctions under any law may be commenced at any time against—

(A) the United States or any department, agency, or instrumentality of the United States;

(B) any employee or officer of the United States or of any department, agency, or instrumentality of the United States; or

(C) any person who is a contractor, subcontractor, or agent of the Department of Energy, or any employee, officer, shareholder, partner, or director of such a person acting in accordance with the person's authority,

with respect to a failure to comply with a Department of Energy environmental cleanup requirement by reason of a lack of funds appropriated specifically for the Department of Energy environmental management activities during a fiscal year for which such cleanup requirement was on a list under subsection (c).

(2) **PERMITTED ACTIONS.**—This subsection does not prohibit an action against the United States or any department, agency, or instrumentality of the United States—

(A) with respect to a violation of a Department of Energy environmental cleanup requirement contained in a compliance agreement with a Federal, State, or local agency or order that the Department of Energy voluntarily accepted in writing after January 1, 1995, if the action seeks only civil penalties stipulated in the agreement or order, or injunctive relief enforcing the agreement or order;

(B) if injunctive relief is sought on the basis that such relief is necessary to avoid a direct, immediate, and significant danger to human health or the environment; or

(C) if monetary damages are sought to compensate a person for an actual injury or loss to the extent that such an action is allowed by other law.

(d) **JUDICIAL REVIEW.**—A decision made by the President or the Secretary of Energy in preparing a list under subsection (c) shall not be subject to judicial review.

SEC. 603. INNOVATIVE TECHNOLOGIES FOR REMEDIAL ACTION AT FEDERAL FACILITIES.

(a) **IN GENERAL.**—Section 311 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660) is amended by adding at the end the following:

“(h) **FEDERAL FACILITIES.**—

“(1) **DESIGNATION.**—The President may designate a facility that is owned or operated by any department, agency, or instrumentality of the United States, and that is listed or proposed for listing on the National Priorities List, to facilitate the research, development, and application of innovative technologies for remedial action at the facility.

“(2) **USE OF FACILITIES.**—

“(A) **IN GENERAL.**—A facility designated under paragraph (1) shall be made available to Federal departments and agencies, State departments and agencies, and public and private instrumentalities, to carry out activities described in paragraph (1).

“(B) **COORDINATION.**—The Administrator—

“(i) shall coordinate the use of the facilities with the departments, agencies, and instrumentalities of the United States; and

“(ii) may approve or deny the use of a particular innovative technology for remedial action at any such facility.

“(3) **CONSIDERATIONS.**—

“(A) **EVALUATION OF SCHEDULES AND PENALTIES.**—In considering whether to permit the application of a particular innovative technology for remedial action at a facility designated under paragraph (1), the Administrator shall evaluate the schedules and penalties applicable to the facility under any agreement or order entered into under section 120.

“(B) **AMENDMENT OF AGREEMENT OR ORDER.**—If, after an evaluation under subparagraph (A), the Administrator determines that there is a need to amend any agreement or order entered into pursuant to section 120, the Administrator shall comply with all provisions of the agreement or order, respectively, relating to the amendment of the agreement or order.”

(b) **REPORT TO CONGRESS.**—Section 311(e) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(e)) is amended—

(1) by striking “At the time” and inserting the following:

“(1) **IN GENERAL.**—At the time”; and

(2) by adding at the end the following:

“(2) **ADDITIONAL INFORMATION.**—A report under paragraph (1) shall include information on the use of facilities described in subsection (h)(1) for the research, development, and application of innovative technologies for remedial activity, as authorized under subsection (h).”

SEC. 604. FEDERAL FACILITY LISTING.

Section 120(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(d)) is amended—

(1) by striking “Not later” and inserting the following:

“(1) **PRELIMINARY ASSESSMENTS.**—Not later”;

(2) by striking “Following such” and inserting the following:

“(2) **EVALUATION AND PLACEMENT ON NATIONAL PRIORITIES LIST.**—Following such”;

(3) by striking “(1) evaluate” and inserting the following:

“(A) evaluate”;

(4) by striking “(2) include” and inserting the following:

“(B) include”;

(5) by striking “Such criteria” and inserting the following:

“(3) **APPLICATION OF CRITERIA.**—The criteria for determining priorities”;

(6) by striking “Evaluation” and inserting the following:

“(4) **COMPLETION.**—Evaluation”;

(7) by striking “Upon” and inserting the following:

“(5) **PETITIONS BY GOVERNORS.**—On”;

(8) by adding at the end the following:

“(6) **UNCONTAMINATED PROPERTIES.**—On identification of parcels of uncontaminated property under subsection (h)(4), the Administrator may provide notice that the listing does not include the identified uncontaminated parcels.”

SEC. 605. FEDERAL FACILITY LISTING DEFERRAL.

Paragraph (3) of section 120(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(d)), as designated by section 604, is amended by inserting after “persons” the following: “, but an appropriate factor as referred to in section 105(a)(8)(A) may include the extent to which the Federal land holding agency has arranged with the Administrator or with a State to respond to the release or threatened release under other legal authority”.

SEC. 606. TRANSFERS OF UNCONTAMINATED PROPERTY.

Section 120(h)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(A)) is amended in the first sentence by striking “stored for one year or more.”.

TITLE VII—NATURAL RESOURCE DAMAGES

SEC. 701. RESTORATION OF NATURAL RESOURCES.

(a) **DEFINITIONS.**—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 504(b), is amended—

(1) by striking paragraph (16) and inserting the following:

“(16) **NATURAL RESOURCE.**—

“(A) **IN GENERAL.**—The term ‘natural resource’ means land, fish, wildlife, biota, air, water, ground water, a drinking water supply, and any similar resource that is committed for use by the general public and is owned or managed by, appertains to, is held in trust by, or is otherwise controlled by the United States (including a resource of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)), by a State or local government, by a foreign government, by an Indian tribe, or, if such a resource is subject to a trust restriction on alienation, by a member of an Indian tribe.

“(B) **COMMITMENT FOR USE.**—A resource shall be considered to be committed for use

by the general public only if, at the time of the act of disposal giving rise to liability (as limited by section 107(f)(1)(B)), the resource is subject to a public use or to a planned public use, for which there is an authorized and documented legal, administrative, budgetary, or financial commitment.”; and

(2) by adding at the end the following:

“(52) BASELINE.—The term ‘baseline’ means the condition or conditions that would have existed at a natural resource had a release of hazardous substances not occurred.

“(53) COMPENSATORY RESTORATION.—The term ‘compensatory restoration’ means the provision of ecological services lost as a result of injury to or destruction or loss of a natural resource from the initial release giving rise to liability under section 107(a)(2)(C) until primary restoration has been achieved with respect to those services.

“(54) ECOLOGICAL SERVICE.—The term ‘ecological service’ means a physical or biological function performed by an ecological resource, including the human uses of such a function.

“(55) PRIMARY RESTORATION.—The term ‘primary restoration’ means rehabilitation, natural recovery, or replacement of an injured, destroyed, or lost natural resource, or acquisition of a substitute or alternative natural resource, to reestablish the baseline ecological service that the natural resource would have provided in the absence of a release giving rise to liability under section 107(a)(2)(C).

“(56) RESTORATION.—The term ‘restoration’ means primary restoration and compensatory restoration.”

(b) LIABILITY FOR NATURAL RESOURCE DAMAGES.—

(1) AMENDMENT.—Section 107(a) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)) is amended—

(A) by inserting “IN GENERAL.—” after “(a)”;

(B) by striking “Notwithstanding” and inserting the following:

“(1) PERSONS LIABLE.—Notwithstanding”;

(C) by redesignating paragraphs (1), (2), (3), and (4) (as designated prior to the date of enactment of this Act) as subparagraphs (A), (B), (C), and (D), respectively, and adjusting the margins accordingly;

(D) by striking “hazardous substance, shall be liable for—” and inserting the following: “hazardous substance, shall be liable for the costs and damages described in paragraph (2).

“(2) COSTS AND DAMAGES.—A person described in paragraph (1) shall be liable for—”;

(E) by striking subparagraph (C) of paragraph (2), as designated by subparagraph (D), and inserting the following:

“(C) damages for injury to, destruction of, or loss of the baseline ecological services of natural resources, including the reasonable costs of assessing such injury, destruction, or loss caused by a release; and”;

(F) by striking “The amounts” and inserting the following:

“(3) INTEREST.—The amounts”; and

(G) in the first sentence of paragraph (3), as designated by subparagraph (F), by striking “subparagraphs (A) through (D)” and inserting “paragraph (2)”.

(2) CONFORMING AMENDMENTS.—Section 107 of the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended—

(A) in subsection (d)(3) by striking “the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section” and inserting “subsection (a)”;

(B) in subsection (f)(1) by striking “subparagraph (C) of subsection (a)” each place it appears and inserting “subsection (a)(2)(C)”.

(c) NATURAL RESOURCE DAMAGES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended—

(1) by inserting “NATURAL RESOURCE DAMAGES.—” after “(f)”;

(2) by striking “(1) NATURAL RESOURCES LIABILITY.—In the case” and inserting the following:

“(1) LIABILITY.—

“(A) IN GENERAL.—In the case”;

(3) in paragraph (1)(A), as designated by paragraph (2)—

(A) in the first sentence by inserting “the baseline ecological services of” after “loss of”;

(B) in the third and fourth sentences, by striking “to restore, replace, or acquire the equivalent” each place it appears and inserting “for restoration”;

(C) by inserting after the fourth sentence the following: “Sums recovered by an Indian tribe as trustee under this subsection shall be available for use only for restoration of such natural resources by the Indian tribe. A restoration conducted by the United States, a State, or an Indian tribe shall proceed only if it is technologically practicable, cost-effective, and consistent with all known or anticipated response actions at or near the facility. Any sums recovered by the United States, a State, or an Indian tribe shall be placed in an escrow account. Such sums may be released from the escrow account only for the purpose of contributing to restoration activities carried out in accordance with specific activities or accounts set forth in a restoration plan approved by the United States, a State, or an Indian tribe. The restoration plan may be revised as necessary to account for new information or extenuating circumstances on approval of the trustee and relevant responsible parties or on approval by a United States district court. The trustee shall issue a public notice and hold a public hearing every 2 years after approval of the restoration plan and issue a report describing how the sums have been expended in accordance with the restoration plan. Any sums expended by the United States, a State, or an Indian tribe that are not expended in accordance with the restoration plan may be recovered by the persons from whom the sums were collected.”; and

(D) by striking “The measure of damages in any action” and all that follows through the end of the paragraph and inserting the following:

“(B) LIMITATIONS ON LIABILITY.—

“(i) MEASURE OF DAMAGES.—The measure of damages in any action under subsection (a)(2)(C) shall be limited to the reasonable costs of restoration and of assessing damages.

“(ii) NONUSE VALUES.—There shall be no recovery under this Act for any impairment of non-use values.

“(iii) NO DOUBLE RECOVERY.—A person that obtains a recovery of damages, response costs, assessment costs, or any other costs under this Act for injury to, destruction of, or loss of a natural resource caused by a release shall not be entitled to recovery under or any other Federal or State law for injury to or destruction or loss of the natural resource caused by the release.

“(iv) NO RETROACTIVE LIABILITY.—

“(I) COMPENSATORY RESTORATION.—There shall be no recovery from any person under of this section of the costs of compensatory restoration for a natural resource injury, destruction, or loss that occurred prior to December 11, 1980.

“(II) PRIMARY RESTORATION.—There shall be no recovery from any person under this section for the costs of primary restoration if the natural resource injury, destruction, or loss for which primary restoration is

sought and the release of the hazardous substance from which the injury resulted occurred entirely prior to December 11, 1980.

“(v) BURDEN OF PROOF ON THE ISSUE OF THE DATE OF OCCURRENCE OF A RELEASE.—The trustee for an injured, destroyed, or lost natural resource bears the burden of demonstrating that any amount of costs of compensatory restoration that the trustee seeks under this section is to compensate for an injury, destruction, or loss (or portion of an injury, destruction, or loss) that occurred on or after December 11, 1980.”; and

(4) by adding at the end the following:

“(3) SELECTION OF RESTORATION METHOD.—When selecting appropriate restoration measures, including natural recovery, a trustee shall select the most cost-effective method of achieving restoration.”.

(d) AMOUNT OF DAMAGES.—Section 107(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(c)) is amended—

(A) by striking “paragraph (2) of this subsection,” and inserting “paragraph (2), and subject to the limitation stated in paragraph (4).”; and

(B) in subparagraph (D) by inserting “, as limited by paragraph (4)” before the period at the end; and

(2) by adding at the end the following:

“(4) LIMITATION.—Except as provided in paragraph (2), the aggregate liability of all responsible parties for costs of compensatory restoration incurred as a result of a release or releases of hazardous substances from an incineration vessel or a facility or group of facilities (including those that constitute part or all of 1 or more facilities listed on the national priorities list under section 105(a)(8)(B)) shall not exceed—

“(A) \$25,000,000; or

“(B) if the costs of compensatory compensation exceed \$100,000,000, \$50,000,000.”.

SEC. 702. ASSESSMENT OF DAMAGES.

(a) DAMAGE ASSESSMENTS.—Section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)) is amended by striking subparagraph (C) and inserting the following:

“(C) DAMAGE ASSESSMENT.—

“(i) REGULATION.—A natural resource damage assessment conducted for the purposes of this Act or section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) made by a Federal, State, or tribal trustee shall be performed in accordance with—

“(I) the regulation issued under section 301(c); and

“(II) generally accepted scientific and technical standards and methodologies to ensure the validity and reliability of assessment results.

“(ii) FACILITY-SPECIFIC CONDITIONS AND RESTORATION REQUIREMENTS.—Injury determination, restoration planning, and quantification of restoration costs shall be based on an assessment of facility-specific conditions and restoration requirements.

“(iii) USE BY TRUSTEE.—A natural resource damage assessment under clause (i) may be used by a trustee as the basis for a natural resource damage claim only if the assessment demonstrates that the hazardous substance release in question caused the alleged natural resource injury.

“(iv) COST RECOVERY.—As part of a trustee’s claim, a trustee may recover only the reasonable damage assessment costs that were incurred directly in relation to the site-specific conditions and restoration measures that are the subject of the natural resource damage action.

“(D) JUDICIAL REVIEW.—

“(i) LIABILITY.—In reviewing a claim brought by a trustee to recover natural resource damages costs of compensatory restoration or primary restoration under this section, a district court shall try de novo the issue whether a defendant is liable and the issue of the amount of liability, if any, to be imposed on the defendant.

“(ii) TRUSTEE DECISIONS.—In reviewing a claim brought to challenge a decision of a trustee (such as a decision concerning the extent of injury to or loss or destruction of a natural resource or the selection of a restoration plan) the district court, notwithstanding section 706(2)(E) of title 5, United States Code, shall hold unlawful and set aside actions, findings, and conclusions found to be unsupported by substantial evidence.”.

(b) REGULATIONS.—Section 301 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9651) is amended by striking subsection (c) and inserting the following:

“(c) REGULATIONS FOR DAMAGE ASSESSMENTS.—

“(1) IN GENERAL.—The President, acting through Federal officials designated by the National Contingency Plan under section 107(f)(2), shall issue a regulation for the assessment of restoration damages and assessment costs for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f) (4), (5)).

“(2) CONTENTS.—The regulation under paragraph (1) shall—

“(A) specify protocols for conducting assessments in individual cases to determine the injury, destruction, or loss of baseline ecological services of the environment;

“(B) identify the best available procedures to determine damages for the reasonable cost of restoration and assessment;

“(C) take into consideration the ability of a natural resource to recover naturally and the availability of replacement or alternative resources; and

“(D) specify an appropriate mechanism for the cooperative designation of a single lead decisionmaking trustee at a site where more than one Federal, State, or Indian tribe trustee intends to conduct an assessment, which designation shall occur not later than 180 days after the date of first notice to the responsible parties that a natural resource damage assessment will be made.

“(3) BIENNIAL REVIEW.—The regulation under paragraph (1) shall be reviewed and revised as appropriate every 2 years.”.

SEC. 703. CONSISTENCY BETWEEN RESPONSE ACTIONS AND RESOURCE RESTORATION STANDARDS AND ALTERNATIVES.

(a) RESTORATION STANDARDS AND ALTERNATIVES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), as amended by section 701(b)(4), is amended by adding at the end the following:

“(4) CONSISTENCY WITH RESPONSE ACTIONS.—A restoration standard or restoration alternative selected by a trustee shall not be duplicative of or inconsistent with actions undertaken pursuant to section 104, 106, 121, or 129.”.

(b) RESPONSE ACTIONS.—

(1) ABATEMENT ACTION.—Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606(a)) is amended by adding at the end the following: “The President shall not take action under this subsection except such action as is necessary to protect the public health and the baseline ecological services of the environment.”.

(2) LIMITATION ON DEGREE OF CLEANUP.—Section 121(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(a)), as amended by section 402(1), is amended by adding at the end the following:

“(7) LIMITATION.—

“(A) IN GENERAL.—The Administrator shall not select a remedial action under this section that goes beyond the measures necessary to protect human health and the baseline ecological services of the environment.

“(B) CONSIDERATIONS.—In evaluating and selecting remedial actions, the Administrator shall take into account the potential for injury to, destruction of, or loss of a natural resource resulting from such actions.

“(C) NO LIABILITY.—No person shall be liable for injury to, destruction of, or loss of a natural resource resulting from a response action or remedial action selected by the Administrator.”.

SEC. 704. MISCELLANEOUS AMENDMENTS.

(a) CONTRIBUTION.—Section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended in the third sentence by inserting “and natural resource damages” after “costs”.

(b) STATUTE OF LIMITATIONS.—Section 113(g)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(g)(1)) is amended—

(1) by striking the first sentence and inserting the following:

“(A) IN GENERAL.—Except as provided in paragraphs (3) and (4), no action for damages under this Act may be commenced unless the action is commenced within 3 years after the earlier of—

“(i) the date on which the trustee agency knew or should have known of the injury, destruction, or loss; or

“(ii) the date on which the vessel or facility is proposed for listing on the National Priorities List.”;

(2) by striking “With respect to” and inserting the following:

“(B) LISTED FACILITIES.—With respect to”;

(3) in subparagraph (B), as designated by paragraph (2), by striking “within” and all that follows through the end of the subparagraph and inserting “by the earlier of—

“(i) the date referred to in subparagraph (A); or

“(ii) the date that is 3 years after the date of completion of the remedial action (excluding operation and maintenance activities).”;

(4) in the third sentence—

(A) by striking “In no event” and inserting the following:

“(C) LIMITATION.—

“(i) IN GENERAL.—In no event”;

(B) by striking “commenced (i) prior” and inserting “commenced—

“(I) prior”; and

(C) by striking “suit, or (ii) before” and inserting “suit; or

“(II) before”; and

(5) by striking “The limitation in the preceding sentence and inserting the following:

“(ii) APPLICATION.—The limitation stated in clause (i)”.

TITLE VIII—MISCELLANEOUS

SEC. 801. RESULT-ORIENTED CLEANUPS.

(a) AMENDMENT.—Section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) is amended—

(1) by striking “and” at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting “; and”; and

(3) by inserting after paragraph (10) the following:

“(11) procedures for conducting response actions, including facility evaluations, reme-

dial investigations, feasibility studies, remedial action plans, remedial designs, and remedial actions, which procedures shall—

“(A) use a results-oriented approach to minimize the time required to conduct response measures and reduce the potential for exposure to the hazardous substances, pollutants, and contaminants in an efficient, timely, and cost-effective manner;

“(B) require, at a minimum, expedited facility evaluations and risk assessments, timely negotiation of response action goals, a single engineering study, streamlined oversight of response actions, and consultation with interested parties throughout the response action process;

“(C) be subject to the requirements of sections 117, 120, 121, and 129 in the same manner and to the same degree as those sections apply to response actions; and

“(D) be required to be used for each remedial action conducted under this Act unless the Administrator determines that their use would not be cost-effective or result in the selection of a response action that achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B).”.

(b) AMENDMENT OF NATIONAL HAZARDOUS SUBSTANCE RESPONSE PLAN.—Not later than 180 days after the date of enactment of this Act, the Administrator, after notice and opportunity for public comment, shall amend the National Hazardous Substance Response Plan under section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) to include the procedures required by the amendment made by subsection (a).

SEC. 802. NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), as amended by section 408(a)(1)(B), is amended by adding at the end the following:

“(i) NATIONAL PRIORITIES LIST.—

“(1) ADDITIONAL VESSELS AND FACILITIES.—

“(A) LIMITATION.—During each of the 3 12-month periods following the date of enactment of this subsection, the Administrator may add not more than 30 new vessels and facilities to the National Priorities List.

“(B) PRIORITIZATION.—The Administrator shall prioritize the vessels and facilities added under subparagraph (A) on a national basis in accordance with the threat to human health and the environment presented by each of the vessels and facilities, respectively.

“(C) STATE CONCURRENCE.—A vessel or facility may be added to the National Priorities List under subparagraph (A) only with the concurrence of the State in which the vessel or facility is located.

“(2) SUNSET.—

“(A) NO ADDITIONAL VESSELS OR FACILITIES.—The authority of the Administrator to add vessels and facilities to the National Priorities List shall expire on the date that is 3 years after the date of enactment of this subsection.

“(B) LIMITATION ON ACTION BY THE ADMINISTRATOR.—At the completion of response actions for all vessels and facilities on the National Priorities List, the authority of the Administrator under this Act shall be limited to—

“(i) providing a national emergency response capability;

“(ii) conducting research and development;

“(iii) providing technical assistance; and

“(iv) conducting oversight of grants and loans to the States.”.

SEC. 803. OBLIGATIONS FROM THE FUND FOR RESPONSE ACTIONS.

Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and

Liability Act of 1980 (42 U.S.C. 9604(c)(1)) is amended—

(1) in subparagraph (C) by striking “consistent with the remedial action to be taken” and inserting “not inconsistent with any remedial action that has been selected or is anticipated at the time of any removal action at a facility.”;

(2) by striking “\$2,000,000” and inserting “\$4,000,000”; and

(3) by striking “12 months” and inserting “2 years”.

SEC. 804. REMEDIATION WASTE.

(a) DEFINITIONS.—Section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903) is amended by adding at the end the following:

“(42) DEBRIS.—The term ‘debris’—

“(A) means—

“(i) a solid manufactured object exceeding a 60 millimeter particle size;

“(ii) plant or animal matter; and

“(iii) natural geologic material; but

“(B) does not include material that the Administrator may exclude from the meaning of the term by regulation.

“(43) IDENTIFIED CHARACTERISTIC WASTE.—The term ‘identified characteristic waste’ means a solid waste that has been identified as having the characteristics of hazardous waste under section 3001.

“(44) LISTED WASTE.—The term ‘listed waste’ means a solid waste that has been listed as a hazardous waste under section 3001.

“(45) MEDIA.—The term ‘media’ means ground water, surface water, soil, and sediment.

“(46) REMEDIATION ACTIVITY.—The term ‘remediation activity’ means the remediation, removal, containment, or stabilization of—

“(A) solid waste that has been released to the environment; or

“(B) media and debris that are contaminated as a result of a release.

“(47) REMEDIATION WASTE.—The term ‘remediation waste’ means—

“(A) solid and hazardous waste that is generated by a remediation activity; and

“(B) debris and media that are generated by a remediation activity and contain a listed waste or identified characteristic waste.

“(48) STATE VOLUNTARY REMEDIATION PROGRAM.—The term ‘State voluntary remediation program’ means a program established by a State that permits a person to conduct remediation activity at a facility under general guidance or guidelines without being subject to a State order or consent agreement specifically applicable to the person.”.

(b) IDENTIFICATION AND LISTING.—Section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921) is amended by adding at the end the following:

“(j) REMEDIATION WASTE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a person that manages remediation waste that is an identified characteristic waste or listed waste or that contains an identified characteristic waste or listed waste shall be subject to the requirements of this subtitle (including regulations issued under this subtitle, including the regulation for corrective action management units published in section 264.552, Code of Federal Regulations, and the regulation for temporary units published in section 264.553, Code of Federal Regulations, or any successor regulation).

“(2) EXCEPTIONS.—

“(A) REQUIREMENTS UNDER SECTION 3004.—Media and debris generated by a remediation activity that are identified characteristic wastes or listed wastes or that contain an identified characteristic waste or a listed waste shall not be subject to the requirements of section 3004 (d), (e), (f), (g), (j), (m), or (o).

“(B) PERMIT REQUIREMENTS.—No Federal, State, or local permit shall be required for the treatment, storage, or disposal of remediation waste that is conducted entirely at the facility at which the remediation takes place.

“(3) REMEDIATION WASTE SUBJECT TO ORDERS, CONSENT AGREEMENTS, VOLUNTARY REMEDIATION PROGRAMS, AND OTHER MECHANISMS.—

“(A) REQUIREMENTS NOT APPLICABLE.—Notwithstanding paragraph (1), a person that manages remediation waste that—

“(i) is identified characteristic waste or listed waste or that contains an identified characteristic waste or listed waste; and

“(ii) is subject to a Federal or State order, Federal or State consent agreement, a State voluntary remediation program, or such other mechanism as the Administrator considers appropriate,

shall not be subject to the requirements of this subtitle (including any regulation under this subsection) unless the requirements are specified in the Federal or State order, Federal or State consent agreement, State voluntary cleanup program, or other mechanism, as determined by the Administrator.

“(B) ENFORCEMENT.—Unless other enforcement procedures are specified in the order, consent agreement, or other mechanism, a person described in subparagraph (A) (except a person that manages remediation waste under a State voluntary remediation program) shall be subject to enforcement of the requirements of the order, consent agreement, or other mechanism by use of enforcement procedures under section 3008.”.

(c) REGULATION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall issue a regulation implementing section 3001(j) of the Solid Waste Disposal Act, as added by subsection (b).

TITLE IX—FUNDING

Subtitle A—General Provisions

SEC. 901. AUTHORIZATION OF APPROPRIATIONS FROM THE FUND.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended in the first sentence by striking “not more than \$8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994” and inserting “a total of \$8,500,000 for fiscal years 1996, 1997, 1998, 1999, and 2000”.

SEC. 902. ORPHAN SHARE FUNDING.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)), as amended by section 301(c), is amended by inserting after paragraph (8) the following:

“(9) ORPHAN SHARE FUNDING.—Payment of orphan shares under section 132.”.

SEC. 903. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (m) and inserting the following:

“(m) HEALTH AUTHORITIES.—There are authorized to be appropriated from the Fund to the Secretary of Health and Human Services to be used for the purposes of carrying out the activities described in subsection (c)(4) and the activities described in section 104(i), \$50,000,000 for each of fiscal years 1996, 1997, 1998, 1999, and 2000. Funds appropriated under this subsection for a fiscal year, but not obligated by the end of the fiscal year, shall be returned to the Fund.”.

SEC. 904. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (n) and inserting the following:

“(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

“(1) ALTERNATIVE OR INNOVATIVE TECHNOLOGIES RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

“(A) LIMITATION.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000, not more than \$20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) other than basic research.

“(B) CONTINUING AVAILABILITY.—Such amounts shall remain available until expended.

“(2) HAZARDOUS SUBSTANCE RESEARCH, DEMONSTRATION, AND TRAINING.—

“(A) LIMITATION.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000 not more than \$20,000,000 of the amounts available in the Fund may be used for the purposes of section 311(a).

“(B) FURTHER LIMITATION.—No more than 10 percent of such amounts shall be used for training under section 311(a) for any fiscal year.

“(3) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000, not more than \$5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d).”.

SEC. 905. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

Section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p)) is amended by striking paragraph (1) and inserting the following:

“(1) AUTHORIZATION OF APPROPRIATIONS.—

“(A) IN GENERAL.—There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund—

“(i) for fiscal year 1996, \$250,000,000;

“(ii) for fiscal year 1997, \$250,000,000;

“(iii) for fiscal year 1998, \$250,000,000;

“(iv) for fiscal year 1999, \$250,000,000; and

“(v) for fiscal year 2000, \$250,000,000.

“(B) ADDITIONAL AMOUNTS.—There is authorized to be appropriated to the Hazardous Substance Superfund for each such fiscal year an amount, in addition to the amount authorized by subparagraph (A), equal to so much of the aggregate amount authorized to be appropriated under this subsection and section 9507(b) of the Internal Revenue Code of 1986 as has not been appropriated before the beginning of the fiscal year.”.

SEC. 906. ADDITIONAL LIMITATIONS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by adding at the end the following:

“(q) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAM.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000, not more than \$25,000,000 of the amounts available in the Fund may be used for the purposes of subsection (a)(7) (relating to qualifying State voluntary response programs).

“(r) BROWNFIELD CLEANUP ASSISTANCE.—For each of fiscal years 1996 through 2000, not more than \$15,000,000 of the amounts available in the Fund may be used to carry out section 134(b) (relating to Citizen Information and Access Offices).

“(s) COMMUNITY RESPONSE ORGANIZATION.—For the period commencing October 1, 1995,

and ending September 30, 2000, not more than \$15,000,000 of the amounts available in the Fund may be used to make grants under section 117(f) (relating to Community Response Organizations).

“(t) RECOVERIES.—Effective beginning October 1, 1995, any recoveries collected pursuant to this Act shall be credited as offsetting collections to the Superfund appropriations account.”.

SEC. 907. REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)), as amended by section 902, is amended by inserting after paragraph (9) the following:

“(10) REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.—If—

“(A) a potentially responsible party and the Administrator enter into a settlement under this Act under which the Administrator is reimbursed for the response costs of the Administrator; and

“(B) the Administrator determines, through a Federal audit of response costs, that the costs for which the Administrator is reimbursed—

“(i) are unallowable due to contractor fraud;

“(ii) are unallowable under the Federal Acquisition Regulation; or

“(iii) should be adjusted due to routine contract and Environmental Protection Agency response cost audit procedures, reimbursement of a potentially responsible party for those costs.”.

TITLE-BY-TITLE SUMMARY

TITLE I: COMMUNITY PARTICIPATION

Goal—To empower the citizens who are most adversely impacted by the cleanup of hazardous waste sites with a greater role in the decision making and remedy selection processes to better protect human health and the environment, foster rapid economic redevelopment, and promote expedited restoration of natural resources.

Establishes Community Response Organizations (CROs) comprised of 15-20 local citizens to increase community participation in site cleanups. CROs will: Solicit views and concerns of the affected community; serve as a representative of the local community on issues relating to facility cleanup and land use designations; and serve as an information conduit from the community to the EPA, state, PRPs.

Creates Technical Assistance Grants (TAGs) that are renewable up to \$100,000 per facility, increasing the amount currently available by \$50,000 per facility. TAG grants would be used by the community to interpret information regarding: The nature of the hazardous substances located at the facility; the facility evaluation; proposed remedial action plans and remedial designs; response actions; and operation and maintenance activities at the facility.

Improves communication with the public through enhanced meeting notification and by providing the public with information regarding site cleanup activities and any incremental risks.

TITLE II: STATE ROLE

Goal—To move decisions regarding site cleanups closer to the affected citizenry.

Empowers states to veto listing of new NPL sites and to de-list existing NPL sites.

Provides maximum flexibility to states to accept all or portions of Federal CERCLA authorities. States may request delegation of authority to perform one or more of the following activities at non-Federal NPL sites: Site investigations and risk analysis; alternatives development and remedy selection (including feasibility studies and

issuance of records of decision); remedial design; remedial action and operation and maintenance (including removal actions); liability allocation (including identification of PRPs and issuance of settlement agreements); and enforcement (including compliance orders, cost recovery, and imposition of civil penalties).

Designates the state as the sole regulator and allows the state to use its own remedy selection process at those sites where the state accepts all EPA authority.

Requires the Fund to continue to pay its share of cleanup costs at delegated sites, as long as the selected remedy is protective of human health and the environment and is no more costly than the one that would have been selected under the Federal program.

Authorizes use of the Fund to make capacity building grants to delegated states.

TITLE III: VOLUNTARY CLEANUP

Goal—To provide greater flexibility to communities in protecting human health and the environment and provide incentives for the voluntary cleanup of industrial sites and expedited reutilization and economic redevelopment of urban areas.

Authorizes grants of up to \$25 million in yearly funding for states to manage voluntary cleanup programs at non-NPL sites.

Authorizes interest free loans to local governments of up to \$200,000 per site to promote “brownfields” redevelopment.

Protects from liability purchasers of contaminated property if they did not contribute to the contamination and conducted appropriate inquiries prior to the purchase.

Limits the liability of lenders or lessors that: Acquire property through foreclosure; hold a security interest in the property; hold property as a lessor pursuant to an extension of credit; or exercise financial control pursuant to the terms of an extension of credit.

Excludes from liability landholders who’s property was contaminated by a contiguous NPL site, if they did not contribute to the contamination and are not designated as an owner or operator.

TITLE IV: Selection of Remedial Actions

Goal—To base cleanup decisions on a careful analysis of the actual or plausible risks to human health and the environment.

Requires selection of the remedy that protects human health and the environment in the most cost-effective manner.

Requires remedial actions to be selected according to site specific conditions and risks based on the reasonably anticipated future use of the site. Remedial actions would be selected according to: actual or plausible exposure pathways based on actual or planned future use of the land and water resources (industrial, commercial, residential, etc.); site-specific data, in preference to default assumptions; and where site-specific data are unavailable, an acceptable range of realistic and plausible default assumptions regarding actual or likely human exposures and site-specific conditions, instead of worst case default assumptions.

Requires consideration of the following balancing factors in selecting a remedy: effectiveness in protecting human health; long-term reliability; short-term risks; acceptance by the local community; and technical practicability.

Cuts by half the number of steps required to implement cleanup remedies by establishing the following accelerated remedy selection process: Facility Evaluation, Remedial Action Planning, and Remedial Action.

Eliminates the preferences for permanence, allowing consideration of all cleanup options at a site that are protective of human health and the environment, including, containment, treatment, institutional controls, natural attenuation, or a combination of these alternatives.

Eliminates the requirement that remedial actions meet applicable, relevant and appropriate requirements (“ARARs”).

Requires assessment of the actual or planned future use of the contaminated land and water resources based on a mix of several factors including: (1) current zoning requirements and projected future land uses; (2) site analysis and surrounding land use growth patterns; (3) previous use of the landholdings; and (4) input from the CRO, elected municipal and county officials, local planning and zoning authorities, facility owners and potentially responsible parties.

Establishes a higher level of protection for groundwater that is currently uncontaminated.

Allows certain past records of decision to be modified, if applying the new remedy selection process can demonstrate life-cycle savings of at least 10% over the existing remedy.

Enhances emergency response capabilities by increasing the duration of emergency response actions to 24 months, and increasing the authorized spending cap to \$4 million per site.

Allows de-listing and reuse of the uncontaminated portions of NPL sites.

Provides expedited de-listing of NPL sites where construction of the remedy is complete and operation and maintenance activities are continued.

TITLE V: Liability Allocations

Goal—Accelerate cleanup by providing broad based fairness in allocating liability.

Establishes a mandatory, non-binding allocation process for multi-party sites, whereby PRPs would be assessed only for the costs of cleanup associated with their actions. This allocation process would be mandatory at all sites where response actions occurred after June 15, 1995, and would divide unidentifiable shares equally among the parties to the allocation. Shares that are attributable to bankrupt or insolvent parties would be borne by an “orphan share” paid out of the Trust Fund.

Makes available to those PRPs that accept the allocator’s finding a 50% tax credit for the PRP’s pre-1980 cleanup costs, if the PRP stays on-site to conduct the cleanup. This approach would: provide an incentive for PRPs to accelerate cleanup; significantly decrease litigation by creating incentives for PRPs to settle their liability; provide significant, broad-based relief of pre-1980 liability for most PRPs; avoid creating a “public works” program in Superfund; and ensure greater efficiency by keeping PRPs on-site.

Allows PRPs who conducted response actions before June 15, 1995, to request allocation of shares, but would not allow them to qualify for tax credits or orphan share funding.

Limits liability for religious, charitable, and other “501(c)(3)” organizations.

Assigns the cost of “orphan shares,” (which include the shares attributed to bankrupt or dissolved parties) to the Fund. Any PRP unwilling to pay its allocated share would be held liable for any unrecovered costs at the site, including unidentifiable shares. Settling parties would receive complete contribution protection.

Provides for an early dollar settlement for those “de-minimus” parties whose liability is 1% or less total site liability.

Releases from all liability those “demicromis” parties who contributed not more than 110 gallons of liquid material containing hazardous waste or not more than 200 pounds of solid material containing hazardous waste to a site.

Provides increased protection from liability for response action contractors by excluding them from being labeled “owners or

operators" and establishing a negligence standard for their activities at NPL sites.

TITLE VI: Federal Facilities

Goal—Enhance state participation in cleaning up and reutilizing Federal facilities while ensuring the Federal taxpayers get the maximum return for cleanup dollars spent.

Allows delegation of Federal facilities to qualified states, if that state takes the entire site and utilizes the Federal remedy selection process and standards.

Ensures that states: (1) apply cleanup standards that are equivalent to non-Federal cleanup sites; (2) allow uncontaminated or cleaned up parcels of property to be reused as rapidly as possible; and (3) apply a definition of uncontaminated property that includes property where hazardous materials were once stored, but not released to the environment.

Facilitates use of Federal facilities to promote development and demonstration of innovative cleanup technologies.

TITLE VII: Natural Resource Damages

Goal—Provide for the rapid restoration and replacement of significant natural resources that have been damaged by the release of hazardous materials.

Favors actual restoration of resources over assessing arbitrary, punitive damages.

Eliminates non-use damages. Eliminates all lost use damages for pre-1980 activities. Limits recovery to the restoration of baseline ecological services.

Allows for de novo court review of a trustee's assessment of whether a party is liable and the extent of any such liability.

Requires trustees to give equal consideration to natural attenuation and recovery as a viable restoration method.

Requires selection of the most cost effective method of restoring a resource to the condition that would have existed if not for the release of hazardous material.

Requires that the NRD provisions to receive "double recovery" for damages if compensation has already been provided pursuant to CERCLA or any other federal or state law.

TITLE VIII: MISCELLANEOUS

Requires the Administrator to establish a "results oriented" engineering approach to accelerate response actions, including site evaluations, response goals, and oversight.

Targets limited funds toward those sites currently on the NPL by limiting new NPL listings to 30 sites per year for the next three years and capping the list thereafter.

TITLE IX: Funding

Introduces a new accelerated cleanup tax credit of 50% for PRPs that conduct cleanups.

Authorizes continuation of the Superfund program at \$1.75 billion for fiscal years 1996–2000. \$1.5 billion from the Trust Fund; and \$250 million from general revenue.

Reauthorizes current Superfund taxes: (Corporate Environmental Income Tax, Petroleum Feedstock Tax, and Chemical Feedstock Tax). Assumes continuation of current taxes will generate sufficient revenue to offset accelerated cleanup tax credits.

Mr. CHAFEE. Mr. President, Superfund is broken, and today the Environment and Public Works Committee is putting forward a plan that will fix it. Senator BOB SMITH and his staff on the Superfund subcommittee have produced a remarkable reform package, one deserving of widespread support. I want to make it clear to everyone that Superfund reform will be a priority for the Environment and Public Works Committee for the rest of this year,

and we will move to mark up this bill and bring it to the floor as quickly as possible.

Superfund's troubled history and problems are news to no one, but fixing Superfund's plainly evident problems—too much litigation, not enough cleanup, inefficient use of scarce resources, blighted cities—has eluded us now for more than 5 years, as one interest group after another sought their vision of a "perfect" reform. No plan is perfect, but his bill that Senator SMITH and his staff prepared, with the help of my staff, is a tremendous improvement over the status quo. It is all the more remarkable for what it achieves in an era of tightly constrained budgets.

This is real reform for Superfund that we can afford. This bill will:

Streamline the cleanup process by eliminating overlapping studies of contaminated sites.

Require EPA to consider the future use of resources when it decides how clean a site must be. Why clean up a site that will be a parking lot to the same level as a day care center?

Let the States take as much of the Superfund Program as they want or can handle.

Address the Brownfields problem by providing grants and loans to States for voluntary cleanup programs, and assessment of contamination levels at these sites. We also protect potential investors, innocent landowners and lenders so that entrepreneurs will step forward and be able to secure financing.

Eliminate the unfairness of Joint & Several liability by having the fund, and not other parties, pay the share of those parties who cannot be found or are bankrupt.

Provide significant relief to small waste contributors, usually small business, with an expanded de minimis exemption, and expedited, fair de minimis settlements.

Make restoration the goal of natural resource damages recovery, not speculative punitive damages.

Relieve as much of the pain as we can afford on retroactive liability, through the use of a tax credit for costs associated with liability for things people did, legally, before Superfund was enacted in 1980. On this point, I know Senator Smith wanted to do more, but the facts of the budget frustrated his attempts. I want to salute him. He took the best run at it he could, and then came forward, at some personal political risk, with this fiscally credible plan.

Some will charge that the use of tax credits to relieve some of the unfairness of retroactive liability is corporate welfare. Any such charge about this tax credit proposal is merit-less, as the tax credits are tightly tied to the existing Superfund taxes. In this proposal, the tax credit is fully funded by the Superfund taxes that these corporations pay. It does not come out of general tax revenues. I would point out that, for the past several years, Super-

fund tax revenues have far outrun Superfund's annual appropriation, resulting in a Superfund trust fund balance of over \$3 billion. I would also add that there is something fundamentally unfair about holding people liable for acts that were legal when they occurred. This credit helps to relieve some of that unfairness.

I want to issue an invitation, and a warning, to all those out there who will say, "This does not go far enough," or "This is too much." First, the invitation. This bill is a work in progress. There will be a hearing on it before a markup, so make your views and suggestions known—but move with alacrity, because we will take this up in the committee as soon as we possibly can. Senator SMITH's staff and my staff are ready to work with you on this.

Second, the warning. If we fail, everyone loses. There is no longer a status quo for Superfund—just look at the cut the program took \$1.33 billion down to \$1 billion in both the Senate and House versions of the EPA appropriations bill. Unless we pass a new Superfund law, we are looking at a \$1 billion program, with even less in 1997 and beyond, probably with the existing taxes reauthorized. This will be the lose/lose scenario:

PRP's, and their insurers, lose. If you thought Enforcement First was bad, wait until Enforcement Only. The existing litigation machine rolls on. EPA, without many resources, runs the program by issuing section 106 orders, or suing a handful of parties for cost recovery.

EPA and all the agencies getting money from Superfund lose as the program slowly contacts, losing the expertise we want to keep on technical issues, until all that is left is a handful of lawyers to write those section 106 orders.

Protection of human health and the environment loses, because the pace of Federally funded cleanup slows down in the face of declining budgets until the Federal Superfund becomes Enforcement Only.

People paying Superfund taxes lose. Their taxes will probably get extended, but only two-thirds of those taxes will go to Superfund cleanup this year, and less in the future. And corporations paying Superfund taxes can still get sued by EPA or other PRP's. They will pay twice.

So I end with a call for common sense and realistic expectations. When you make suggestions to improve this bill, please furnish us with an estimate of how much it will cost, where the money will come from, and how we can spend the money given the budget caps and firewalls.

I want to assure all the members of the committee, and the Senate, that we will work to accommodate their concerns as we move forward on this bill. This is not a perfect bill, but neither Senator SMITH nor I plan to repeat last year's so-called delicate balance

Superfund bill, a deal made off the Hill that was so fragile that could not be changed without the deal falling apart. Some members of the committee have expressed concerns with some provisions in the bill as introduced. Senator KEMPTHORNE has expressed concern about the impact of Superfund on dry cleaners. Senator WARNER is concerned about the potential impact on recycling operations, and in how the States and Federal Government will control the costs of federal facility cleanups. Senator INHOFE would like to see more protection for acts that occurred in the distant past. I will continue to work with Senator SMITH on issues of concern to me, including groundwater and natural resource damage provisions. I know that other members of the Committee have other concerns as well. We will work to resolve these concerns as we move forward. This bill is no fragile compromise, and we will work within the budget constraints that we must all live with to get the best bill we can.

Again, I want to commend Senator SMITH and his staff for putting this complex bill together and bringing it quickly forward to this point. We have been working together on this since the start of the Congress, and today is an important milestone. It will not be easy to meet the goal we share—passage this year—but it will not be for lack of a continued team effort on this committee.

By Mr. SMITH:

S. 1286. A bill to amend the Solid Waste Disposal Act regarding management of remediation waste, certain recyclable industrial materials, and certain products, coproducts, and intermediate products, and for other purposes; to the Committee on Environment and Public Works.

THE RESOURCE CONSERVATION AND RECOVERY ACT

Mr. SMITH. Mr. President, in addition to the Superfund Accelerated Cleanup bill, I would also like to introduce today a targeted Resource Conservation and Recovery Act—or “rick-ra”—reform bill. I offer this bill in the hopes that it will supplement and enhance the reforms we are proposing to Superfund.

It is my feeling that these changes are consistent with the goals of the RCRA “Rifle Shot” proposal being discussed within the Administration.

My targeted bill is intended to: Provide greater consistency among environmental statutes; make RCRA more user friendly; eliminate costly and ineffective bureaucratic burdens; and maintain, or improve, current protections to human health and the environment.

I feel the provisions of this bill will greatly enhance recycling and reuse of hazardous materials and will begin to provide cohesiveness between the two largest hazardous waste laws—Superfund and RCRA.

We are trying to accomplish three things with this act:

First, remove some recyclable hazardous materials from current RCRA provisions, and instead, subject them to a tailored set of standards which will facilitate the reuse of these materials in an environmentally friendly way.

Under current law, the only option is to discard such materials.

Second, specify a reasonable point at which a material is considered hazardous.

Currently, EPA is required to apply very strict controls once a hazardous material is created, even if it is created very early in a manufacturing process.

This greatly increases the costs of managing wastes, regardless of whether they ever come in contact with the environment.

Third, allow EPA to determine when a hazardous material is no longer considered hazardous.

Under the current law, EPA does not have the authority to tailor its standards to specific risks posed by some hazardous substances.

This greatly increases the cost of treating materials that pose little or no risk.

Mr. President, these changes will not only save money on waste management and cleanup, it will also greatly increase the effectiveness of our waste management laws in protecting human health and the environment. I urge its passage at the earliest possible date.

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

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

S. 1286

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

SECTION 1. REMEDIATION WASTE.

(a) DEFINITIONS.—Section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903) is amended by adding at the end the following:

“(42) DEBRIS.—The term ‘debris’—

“(A) means—

“(i) a solid manufactured object exceeding a 60 millimeter particle size;

“(ii) plant or animal matter; and

“(iii) natural geologic material; but

“(B) does not include material that the Administrator may exclude from the meaning of the term by regulation.

“(43) IDENTIFIED CHARACTERISTIC WASTE.—The term ‘identified characteristic waste’ means a solid waste that has been identified as having the characteristics of hazardous waste under section 3001.

“(44) LISTED WASTE.—The term ‘listed waste’ means a solid waste that has been listed as a hazardous waste under section 3001.

“(45) MEDIA.—The term ‘media’ means ground water, surface water, soil, and sediment.

“(46) REMEDIATION ACTIVITY.—The term ‘remediation activity’ means the remediation, removal, containment, or stabilization of—

“(A) solid waste that has been released to the environment; or

“(B) media and debris that are contaminated as a result of a release.

“(47) REMEDIATION WASTE.—The term ‘remediation waste’ means—

“(A) solid and hazardous waste that is generated by a remediation activity; and

“(B) debris and media that are generated by a remediation activity and contain a listed waste or identified characteristic waste.

“(48) STATE VOLUNTARY REMEDIATION PROGRAM.—The term ‘State voluntary remediation program’ means a program established by a State that permits a person to conduct remediation activity at a facility under general guidance or guidelines without being subject to a State order or consent agreement specifically applicable to the person.”.

(b) IDENTIFICATION AND LISTING.—Section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921) is amended by adding at the end the following:

“(j) REMEDIATION WASTE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a person that manages remediation waste that is an identified characteristic waste or listed waste or that contains an identified characteristic waste or listed waste shall be subject to the requirements of this subtitle (including regulations issued under this subtitle, including the regulation for corrective action management units published in section 264.552, Code of Federal Regulations, and the regulation for temporary units published in section 264.553, Code of Federal Regulations, or any successor regulation).

“(2) EXCEPTIONS.—

“(A) REQUIREMENTS UNDER SECTION 3004.—Media and debris generated by a remediation activity that are identified characteristic wastes or listed wastes or that contain an identified characteristic waste or a listed waste shall not be subject to the requirements of section 3004 (d), (e), (f), (g), (j), (m), or (o).

“(B) PERMIT REQUIREMENTS.—No Federal, State, or local permit shall be required for the treatment, storage, or disposal of remediation waste that is conducted entirely at the facility at which the remediation takes place.

“(3) REMEDIATION WASTE SUBJECT TO ORDERS, CONSENT AGREEMENTS, VOLUNTARY REMEDIATION PROGRAMS, AND OTHER MECHANISMS.—

“(A) REQUIREMENTS NOT APPLICABLE.—Notwithstanding paragraph (1), a person that manages remediation waste that—

“(i) is identified characteristic waste or listed waste or that contains an identified characteristic waste or listed waste; and

“(ii) is subject to a Federal or State order, Federal or State consent agreement, a State voluntary remediation program, or such other mechanism as the Administrator considers appropriate,

shall not be subject to the requirements of this subtitle (including any regulation under this subsection) unless the requirements are specified in the Federal or State order, Federal or State consent agreement, State voluntary cleanup program, or other mechanism, as determined by the Administrator.

“(B) ENFORCEMENT.—Unless other enforcement procedures are specified in the order, consent agreement, or other mechanism, a person described in subparagraph (A) (except a person that manages remediation waste under a State voluntary remediation program) shall be subject to enforcement of the requirements of the order, consent agreement, or other mechanism by use of enforcement procedures under section 3008.”.

(c) REGULATION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall issue a regulation implementing section 3001(j) of the Solid Waste Disposal Act, as added by subsection (b).

SEC. 2. EXCLUSION OF CERTAIN RECYCLABLE INDUSTRIAL MATERIALS AND CERTAIN PRODUCTS, CO-PRODUCTS, AND INTERMEDIATE PRODUCTS.

(a) DEFINITIONS.—Section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903), as amended by section 1(a), is amended by adding at the end the following:

“(49) CO-PRODUCT.—The term ‘co-product’ means a combination of 2 or more materials intentionally produced from a manufacturing or recycling operation for commercial use.

“(50) INTERMEDIATE MATERIAL.—The term ‘intermediate material’ means a material that results from a manufacturing process the design of which contemplates further processing of the material by the manufacturer or by a toll processor to produce a product or an intermediate product.

“(51) MANUFACTURING.—The term ‘manufacturing’ means the use of a virgin material or other feedstock to produce a product, co-product, or intermediate product (including all associated ancillary operations) in which—

“(A) the process uses the appropriate equipment to produce the intended product, co-product, or intermediate product;

“(B) the virgin material or other feedstock used in the process meets commercial specifications;

“(C) the virgin material or other feedstock is handled in a manner that is designed to minimize loss of the virgin material or feedstock;

“(D) a contract or record is established by the manufacturer to record or document the receipt and use of the virgin material or other feedstock and the use or sale of the product, co-product, or intermediate product that is produced; and

“(E) the process produces a product, co-product, or intermediate product that meets commercial specifications.

“(52) PRODUCT.—The term ‘product’ means a material that is produced from a manufacturing or recycling operation for commercial use.

“(53) RECYCLABLE INDUSTRIAL MATERIAL.—The term ‘recyclable industrial material’ means a material that—

“(A) would constitute an identified characteristic waste or listed waste except for the application of section 3024(a); and

“(B) is intended by a manufacturer, commercial enterprise, or recycler for recycling by use, reuse, or reclamation.

“(54) TOLL PROCESSOR.—The term ‘toll processor’ means a person that performs any of a variety of manufacturing processes on material owned by a manufacturer.”

(b) EXCLUSION FROM REGULATION OF CERTAIN RECYCLABLE INDUSTRIAL MATERIALS AND CERTAIN PRODUCTS, CO-PRODUCTS, AND INTERMEDIATE PRODUCTS.—Subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) is amended by adding at the end the following:

“SEC. 3024. EXCLUSION FROM REGULATION OF CERTAIN RECYCLABLE INDUSTRIAL MATERIALS AND CERTAIN PRODUCTS, CO-PRODUCTS, AND INTERMEDIATE PRODUCTS.

“(a) CERTAIN RECYCLABLE INDUSTRIAL MATERIALS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a person that manages recyclable industrial material shall not be subject to the requirements of this subtitle (including regulations).

“(2) EXCEPTIONS.—The following recyclable industrial materials shall be subject to the requirements of this subtitle (including regulations) unless the Administrator determines that regulation under this subtitle is unnecessary:

“(A) A recyclable industrial material that—

“(i) is burned for energy recovery or used to produce fuel; or

“(ii) is otherwise contained in fuel, if burning for energy recovery or use to produce fuel is not a normal use of the recyclable industrial material.

“(B) A recyclable industrial material that—

“(i) is applied to or placed on land in a manner that constitutes disposal, if such use is not a normal use of the recyclable industrial material; or

“(ii) is used to produce a product that is applied to or placed on land or is contained in a product that is applied to or placed on land, if such use of the recyclable industrial material is not a normal use of the recyclable industrial material.

“(C) A recyclable industrial material that is identified by the Administrator by regulation as being inherently wastelike.

“(b) CERTAIN PRODUCTS, CO-PRODUCTS, AND INTERMEDIATE PRODUCTS.—A product, co-product, or intermediate product shall not be considered to be a solid waste for the purposes of this Act unless the product, co-product, or intermediate product—

“(1) is burned for energy recovery or used to produce fuel or is contained in fuel, if such use is not a normal use of the product, co-product, or intermediate product;

“(2) is used in a manner constituting disposal or used to produce a product or is contained in a product that is used in a manner constituting disposal, if such use is not a normal use of the product, co-product, or intermediate product; or

“(3) is identified by the Administrator by regulation as being inherently wastelike.”

SEC. 3. REGULATION OF CERTAIN RECYCLABLE INDUSTRIAL MATERIALS.

The Solid Waste Disposal Act (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

“Subtitle K—Recyclable Industrial Material
“SEC. 12001. RECYCLABLE INDUSTRIAL MATERIAL.

“(a) REQUIREMENTS.—A person that manages recyclable industrial material (other than recyclable industrial material described in section 3024(a)(2)) shall be subject to the following requirements:

“(1) IN GENERAL.—Recyclable industrial material shall not be stored on land but shall be managed in a building, tank, or other containment structure that meets the following requirements.

“(A) IN A BUILDING.—Recyclable industrial material that is managed in a building shall be completely enclosed with a floor, walls, and a roof and shall otherwise be reasonably constructed to prevent exposure to the elements and incorporate appropriate controls and practices to ensure containment of the recyclable industrial material.

“(B) IN A TANK OR OTHER CONTAINMENT STRUCTURE.—A recyclable industrial material that is managed in a tank or other containment structure shall meet the technical requirements of section 279.54 of title 40, Code of Federal Regulations, or any successor regulation, not including the requirements stated in—

“(i) the matter preceding paragraph (a); and

“(ii) paragraphs (a), (f)(2), and (h)(1)(i),

as those paragraphs are designated on the date of enactment of this Act, notwithstanding that the person managing the recyclable industrial material may not be a used oil processor or re-refiner under that section.

“(2) RECYCLING.—A recyclable industrial material shall be recycled within 24 months after the date on which the recyclable industrial material is generated unless the Administrator by regulation establishes a shorter or longer period.

“(3) ADDITIONAL REQUIREMENTS.—

“(A) IN GENERAL.—A recyclable industrial material shall be subject to such requirements, in addition to those described in this section, as the Administrator determines to be necessary.

“(B) CONSIDERATIONS.—In determining whether any additional requirement is necessary, the Administrator shall ensure that the requirement does not discourage the recycling of the recyclable industrial material, consistent with the protection of human health and the environment.

“(b) PERMIT.—A person that manages a recyclable industrial material in accordance with the requirements of subsection (a) shall not be required to obtain a permit to conduct recycling activity.

“(c) DOCUMENTATION.—

“(1) IN GENERAL.—A person that manages a recyclable industrial material shall maintain documentation at the recycling facility to demonstrate that the recyclable industrial material is recycled in accordance with the requirements of this subtitle.

“(2) GUIDANCE.—Not later than 9 months after the date of enactment of this subtitle, the Administrator shall, after opportunity for public comment, publish guidance identifying the criteria to be considered by a person that manages a recyclable industrial material in making the demonstration required by paragraph (1).

“(d) INSPECTION AND ENFORCEMENT.—The Administrator may use the authority under sections 3007 and 3008 to conduct inspections and enforce this Act with respect to a person that manages a recyclable industrial material.

“(e) REFERENCES.—The Administrator shall amend regulations, correspondence, orders, settlement agreements, and other documents as appropriate to reflect the management of recyclable industrial material under this subtitle.”

SEC. 4. POINT OF DETERMINATION.

(a) DEFINITIONS.—Section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903), as amended by section 4(a), is amended by adding at the end the following:

“(55) POINT OF DETERMINATION.—The term ‘point of determination’ means the point at which a decision is made whether a solid waste is an identified characteristic waste or listed waste.”

(b) IDENTIFICATION AND LISTING.—Section 3001(b)(1) of the Solid Waste Disposal Act (42 U.S.C. 6921(b)(1)) is amended by inserting after the second sentence the following: “In addition, the Administrator shall promulgate regulations specifying the point at which a solid waste is an identified characteristic waste or listed waste, which point of determination shall not be before the point at which the waste exits a closed system and is exposed to the environment or is discharged to a waste management unit (as defined by the Administrator), whichever point occurs first.”

SEC. 5. DISCONTINUATION OF REGULATION OF WASTE UNDER SUBTITLE C OF THE SOLID WASTE DISPOSAL ACT.

(a) IDENTIFICATION AND LISTING.—

(1) AMENDMENTS.—Section 3001(f) of the Solid Waste Disposal Act (42 U.S.C. 6921(f)) is amended—

(A) by striking “(1) When” and inserting the following:

“(1) DELISTING OF PARTICULAR WASTES.—

“(A) CONSIDERATION OF FACTORS.—When”;

(B) by striking “(2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or deny a petition referred to in paragraph (1)” and inserting the following:

“(B) DECISION.—To the maximum extent practicable, the Administrator shall publish

in the Federal Register a proposal to grant or deny a petition under subparagraph (A)";

(C) by striking subparagraph (B) of paragraph (2) as designated on the day prior to the date of enactment of this Act; and

(D) by adding at the end the following:

"(2) GENERIC DELISTING.—

"(A) REGULATION.—The Administrator shall issue a regulation that defines constituent levels below which a solid waste shall not be considered to be a hazardous waste subject to the requirements of this subtitle (including regulations).

"(B) CONSTITUENTS OF CONCERN.—The regulation under subparagraph (A) shall provide that only the constituents that are reasonably expected to be present in solid waste shall be considered in determining whether the solid waste is not considered to be a hazardous waste."

(2) INTERIM CONSTITUENT LEVELS.—Until the date on which the Administrator issues the regulation under section 3001(f)(2) of the Solid Waste Disposal Act, as added by paragraph (1)(D), the land disposal restriction treatment levels under section 3004(m) of that Act, as in effect on August 31, 1993, shall constitute the constituent levels below which a solid waste shall not be considered to be a hazardous waste.

(b) STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.—Section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924) is amended by adding at the end the following:

"(z) SPECIAL STANDARDS FOR HAZARDOUS WASTE.—

"(1) MODIFICATION OF REQUIREMENTS.—Notwithstanding this section and sections 3005(j) and 7004(b), the Administrator may by regulation alter to any extent the requirements of this section or section 3005(j) or 7004(b) for a solid waste that is an identified characteristic waste or listed waste and that contains hazardous constituents in an amount that is not greater than 10 times the amount below which a solid waste shall not be considered to be a hazardous waste.

"(2) REGULATION.—The Administrator—

"(A) shall issue a regulation under paragraph (1) not later than 18 months after the date of enactment of this subsection; and

"(B) in formulating the regulation—

"(i) shall take into account the lower level of risk posed by the wastes described in paragraph (1); and

"(ii) shall ensure that any modified requirements protect human health and the environment.

"(3) 10-TIMES LEVEL.—In issuing the regulation under paragraph (2), the Administrator may alter to any extent the 10-times level for modifying the requirements of this section and sections 3005(j) and 7004 so long as the changed requirements protect human health and the environment.

"(4) INTERIM RULE.—Until the Administrator modifies the regulations under paragraph (1), a person may dispose of a solid waste that is an identified characteristic waste or listed waste and contains hazardous constituents not greater than 10 times the land disposal restrictions treatment levels issued by the Administrator under section 3004(m), as in effect on August 31, 1993, in a hazardous waste management facility that meets the requirements of this section, except that—

"(A) the requirements of subsections (d), (e), (f), (g), (j), and (m) shall not apply;

"(B) the air emission standards issued by the Administrator under section 3004(n), as in effect on December 6, 1995, shall not apply to a tank or other container or to surface impoundment if the average volatile organic concentration of the hazardous waste at the point at which the waste is discharged into

the tank, container, or surface impoundment is less than 500 parts per million by weight; and

"(C) the double-liner requirement stated in section 3004(o) may be waived by the Administrator for any monofill if the monofill meets the same requirements as are applicable under section 3005(j).

"(5) PERMIT.—No permit shall be required for storage and treatment in a tank or other container or containment building that meets the requirements of this section."

SEC. 6. RELATIONSHIP OF THE SOLID WASTE DISPOSAL ACT TO OTHER STATUTES.

Section 1006(b)(1) of the Solid Waste Disposal Act (42 U.S.C. 6905(b)(1)) is amended—

(1) by striking "(1) The Administrator" and inserting the following:

"(1) IN GENERAL.—The Administrator";

(2) by striking the second sentence; and

(3) by adding at the end the following:

"(2) USE OF AUTHORITIES.—If the Administrator determines that a risk to health or the environment associated with the management of solid waste can be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, and the Administrator has a statutory or court-ordered mandate to address that risk to health or the environment within 5 years after the date of enactment of this sentence, the Administrator shall use the other authorities to protect against the risk."

Mr. LEAHY:

S. 1287. An act to amend chapters 83 and 84 of title 5, United States Code, to provide that Federal employees who are erroneously covered by the Civil Service Retirement System may elect to continue such coverage or transfer to coverage under the Federal Employees Retirement System, and for other purposes.

FEDERAL EMPLOYEE RETIREMENT SYSTEM (FERS) TRANSFER LEGISLATION

• Mr. LEAHY. Mr. President, today I am introducing a bill which offers a legislative solution for a number of Federal employees who have been the unwitting victims of paperwork errors. Over 10 years ago, Congress passed a Public Law 98-369, which eliminated the Social Security exclusion for Federal employees with prior military service. This law was made retroactive to January of that year, and it was up to each Federal agency to find the individual workers who were affected by this law and change them from the old Civil Service Retirement System [CSRS] into the Federal Employee Retirement System [FERS].

Unfortunately, a small but important group of workers have remained in the CSRS retirement system, because of agency error. Over time, these agencies have belatedly discovered employees who are improperly enrolled in CSRS and are forcing them back to FERS. This has been disruptive and unfair to the affected employees, since they are losing many years of contributions to the Thrift Savings Plan, which my colleagues know is critical to any FERS retirement. In many cases, the agencies reluctantly made this switch, but they had no authority to give a waiver to these public servants.

Today I am offering a bill which will allow Federal employees who were in-

advertently enrolled in the wrong retirement system to remain in CSRS. It is nearly impossible to make an employee whole after many years of contributing to the wrong retirement system, despite agency efforts to do so. The number of employees affected by my legislation may be small, perhaps as few as several dozen, but we need to correct this oversight so that these workers may enjoy a full retirement.

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

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

S. 1287

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

SECTION 1. ELECTION OF FEDERAL RETIREMENT COVERAGE BY EMPLOYEES ERRONEOUSLY COVERED BY THE CIVIL SERVICE RETIREMENT SYSTEM.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—(1) Section 8331(1)(x) of title 5, United States Code, is amended by inserting before the semicolon " , except an employee who elects to be covered under this chapter in accordance with section 8347(r)".

(2) Section 8347 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(r)(1) This subsection shall apply to any employee who—

"(A) is subject to coverage under chapter 84; and

"(B) notwithstanding subparagraph (A), is covered under this chapter as a result of an administrative error of an employing agency or the Office of Personnel Management, through no fault of the employee.

"(2)(A) No later than 180 days after the date on which an employee described under paragraph (1) receives notice of such administrative error, such employee may elect to—

"(i) continue coverage under this chapter;

or

"(ii) be subject to coverage under chapter 84, subject to regulations prescribed under paragraph (3).

"(B) An election under subparagraph (A) shall be irrevocable. An employee who fails to make an election under subparagraph (A) shall be subject to coverage under chapter 84, subject to regulations prescribed under paragraph (3).

"(3) The Office of Personnel Management shall prescribe regulations to carry out this subsection."

(b) FEDERAL EMPLOYEES RETIREMENT SYSTEM; EXCLUSIONS.—Section 8402(b) of title 5, United States Code, is amended—

(1) in paragraph (1) by striking out "or" after the semicolon;

(2) in paragraph (2) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "or"; and

(3) by adding after paragraph (2) the following new paragraph:

"(3) any employee who elects to continue coverage under chapter 83 in accordance with section 8347(r)".

(c) OPEN ENROLLMENT PERIOD.—(1) During the 180-day period beginning on the date of the enactment of this Act, the Office of Personnel Management shall conduct a period of open enrollment under section 8347(r) of title 5, United States Code (as added by subsection (a) of this section).

(2) In addition to any employee to whom section 8347(r) of title 5, United States Code, applies, an employee may make an election during the period of open enrollment under paragraph (1), if such employee—

(A) on the date of the enactment of this Act is participating under the Federal Employees Retirement System under subchapter II of chapter 84 of title 5, United States Code; and

(B) during any period before the date of the enactment of this Act was covered under chapter 83 of title 5, United States Code, as a result of an administrative error of an employing agency or the Office of Personnel Management through no fault of the employee.

(d) REGULATIONS.—The regulations prescribed under section 8347(r)(3) of title 5, United States Code (as added by subsection (a) of this section) shall—

(1) provide that an employee may not have periods of simultaneous coverage under subchapter III of chapter 83 of title 5, United States Code, and subchapter II of chapter 84 of such title; and

(2) include requirements similar to the applicable requirements under title III of the Federal Employees Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 599; 5 U.S.C. 8331 note) including requirements relating to—

(A) the interest of a spouse or former spouse under section 301(d) of such Act;

(B) withholdings, deposits, interest, and refunds under section 302 of such Act; and

(C) social security offsets under section 303 of such Act.

By Mr. KERRY:

S. 1290. A bill to reduce the deficit; to the Committee on the Budget.

BUDGET LEGISLATION

• Mr. KERRY. Mr. President, I introduce a "Budget Buster Bill" that strips more than \$90 billion from the budget and cuts 40 programs which I consider to be pointless, wasteful, antiquated, or just plain silly.

Our priority is people not "pork" or special interests, and this proposal recognizes the need to cut while at the same time understanding the need to invest in those things that bring this Nation its greatest return.

I know that the budget debate is philosophically driven, and that there are diametrically opposed positions on the legitimate role of government. But no matter where one falls on the political spectrum, it behooves us to point to specific savings that cross philosophical lines which can and should be made.

We came to our senses last week, and in a display of commonsense bipartisanship, we overwhelmingly passed an amendment that cut the milk subsidy. There are other similar programs that we should cut, and this bill cuts them.

It cuts \$11 billion from the space station. It cuts \$10 billion from defense spending. It saves \$360 million by reducing the number of political appointees in the Federal Government; and it cuts 37 other programs.

I know that this bill, in and of itself, won't balance the budget, but it is one Senator's commonsense effort to answer the question, "if you really want to cut the budget, what would you cut and how would you do it?"

Mr. President, there is no magic in this bill, but there is a healthy dose of common sense that seems to be sorely lacking in the ideologically driven budget debate that is speaking to the

activist extremes and ignoring the silent middle.

Despite the fact that a huge portion of the public has said they don't like the way we do business; despite the fact that we talk about change but rarely accomplish it; despite the fact that we claim to want bipartisanship and avoid politics as usual, Congress and the President together are willfully moving down a road that is guaranteed to leave most Americans questioning the degree to which people here are in touch.

I find that a profoundly disturbing direction, and I find it contrary to all of the things that people are asking us to try to do. People want us to behave like adults down here. They want an assurance that critical services are not going to be made the poker chips of political gamesmanship.

The point is that there are some basic needs that this country faces and, to the best of my knowledge, most Americans think about having a job and raising their paychecks sufficiently that they have quality of life to be able to enjoy the fruits of their labor.

And most people think that the real concerns they express about making sure their kids have the best education in the world, and that they can walk through a neighborhood that is safe to get to a school that is safe when they get there.

People are concerned about the quality of the education that they're going to get in that school. And yet, the debate in this country has been dominated by the return of a contribution to a campaign from a Republican gay person; the symbolic issue of English as our national language—which it is and ought to be; a constitutional amendment to protect the flag. These truly are not the paramount concerns of Americans but more of the traditional symbols of politics that are beginning to make people question the entire political process.

Americans want to know if we're going to do the job. And the job we were sent here to do is to produce a budget by the end of this month.

Rather than truly working on that budget, we are engaged in a charade where we're going to pass a continuing resolution and a series of appropriation bills without a true legislative effort but with one party ordained to march in lock step to refuse any legislative proposals that might improve it.

I believe that is an unacceptable way to do business and an avoidance of our responsibility.

Frankly, it is time we put the interests of the Nation first, get off the partisan track, and put America back on track.

Mr. President, this is a debate about economic fairness. It is about what we believe in and what we stand for as a nation. It's about the creation and preservation of jobs. It's a debate not about class warfare—rich against poor—but about the working class and

how we can legislate in their interests for their future.

It's a debate about commitment to family, about realistic tax policy, about access to education, and investments in our future.

It's about addressing the three deficits we face that I have mentioned many times on this floor: the fiscal deficit, the investment deficit, and the spiritual deficit.

I believe that this debate is fundamentally about how we can grow as an economy, a nation, and a people, and about what the proper role and size of the Federal Government should be.

For my part, any consensus on the budget must recognize four principles: First that we will not compromise our commitment to education, to jobs, to working families, and to senior citizens struggling to make ends meet; that we will not dis-invest in our economic, social, and cultural infrastructure; that we will not dis-invest in necessary technologies and science; and that we will not cut taxes unless and until we say to working Americans that there will be an increase in the minimum wage.

I believe the cuts I am proposing and the bipartisan, commonsense direction in which they take us is in our best interest.●

By Mr. BROWN:

S. 1292. A bill to designate the U.S. Post Office building located at 201 East Pikes Peak Avenue in Colorado Springs, CO, as the "Winfield Scott Stratton Post Office," and for other purposes; to the Committee on Governmental Affairs.

THE WINFIELD SCOTT STRATTON POST OFFICE ACT

• Mr. BROWN. Mr. President, today I would like to introduce legislation that would designate the U.S. Post Office building located at 201 East Pikes Peak Avenue in Colorado Springs, CO, the Winfield Scott Stratton Post Office.

This designation will honor the memory of a man who contributed greatly to the community of Colorado Springs. Working as a carpenter and prospector for over 18 years, Winfield Scott Stratton was one of the many adventurers who came to Colorado looking for their fortune. In his case, the fortune was a rich deposit of gold in Cripple Creek, CO.

Mr. Stratton's lifestyle changed little after his gold strike. He believed it was the duty of anyone who made a fortune to use his wealth in the development of his community. In keeping with that philosophy, Mr. Stratton dedicated the rest of his life to helping others less fortunate and to advancing the development of Colorado Springs and Colorado.

He purchased and gave Colorado Springs the ground for its city hall; he helped finance a new courthouse; he purchased and upgraded the street railway system; he built the first privately funded building at the Colorado School of Mines; and he endowed the Myron

Stratton Home, a foster home for children and impoverished elderly which is still serving the Colorado Springs community today. Thousands of Coloradans today are the direct beneficiaries of Mr. Stratton's generosity.

Regarding this bill, it is noteworthy that Winfield Scott Stratton also purchased the property at 201 East Pikes Peak Avenue and sold it to the Federal Government for half its value on the condition that the Federal Government build the post office which stands there today.

In view of Mr. Stratton's contribution to the existing post office and to Colorado as a whole, it is an entirely fitting and appropriate gesture to name this U.S. Post Office the Winfield Scott Stratton Post Office. He was a man who shared his riches with an entire State, and he left a legacy of love and care which continues today. ●

By Mr. MURKOWSKI (for himself, Mr. HELMS, Mr. MCCAIN, and Mr. NICKLES):

S. 1293. A bill to provide for implementation of the Agreed Framework with North Korea regarding resolution of the nuclear issue on the Korean Peninsula, and for other purposes; to the Committee on Foreign Relations.

AGREED FRAMEWORK BETWEEN THE UNITED STATES AND NORTH KOREA LEGISLATION

Mr. MURKOWSKI. Mr. President, today I am introducing legislation, along with Senators HELMS, MCCAIN, and NICKLES, which would provide a means for the Congress to monitor the implementation of the "Agreed Framework between the United States and North Korea" on nuclear issues. This will ensure that when and if we vote funds for that purpose, we know that that money is achieving the agreed objectives. The legislation conditions the availability of U.S. funds for fulfilling the accord on North Korea's abiding by the terms of the Agreed Framework and Confidential Minute in accordance with the schedule set forth in the agreement. Thus it adds necessary specificity to the timing and sequencing of all aspects of the Agreed Framework.

The Agreed Framework is written in traditional diplomatic language, with insufficient detail on the timing and nature of actions which both North Korea and the United States must take to implement it. While I appreciate the Administration's desire to have flexibility in implementing the accord, it will be important that the North Koreans and the Administration understand that the Congress desires greater specificity if it is going to authorize and appropriate funds for this accord.

I would add, Mr. President, that the legislation I am proposing is fully consistent with the Agreed Framework and with current U.S. policy. However, if this legislation causes difficulties for the Administration at some point, the President can waive the provisions of the legislation if he certifies to the Congress that it is vital to the national

security interests of the United States to do so.

In sum, the legislation provides the following:

Full political and economic normalization of relations—specifically the exchange of Ambassadors and the total lifting of the economic embargo—with North Korea can occur only after:

IAEA safeguards requirements are met, including inspections of 2 suspected nuclear waste sites.

Progress has been made in talks between North and South Korea.

A more effective, regularized process has been created to return U.S. MIAs from the Korean War, including through joint field activities, as in Vietnam.

North Korea no longer meets the criteria for inclusion on the list of countries the governments of which support international terrorism.

North Korea takes positive steps to demonstrate greater respect for human rights.

North Korea agrees to abide by Missile Technology Control Regime.

All spent fuel has been removed from North Korea to a third country.

North Korea's graphite reactors have been dismantled in a manner that bars reactivation of such reactors and related facilities.

In short, until North Korea proves it is no longer a renegade state and wishes to behave as a normal, respected member of the international community, including through negotiating peacefully with the Republic of Korea concerning the future of the Korean peninsula, we should not establish full economic and political relations.

Interim steps toward full economic and political relations, such as setting up diplomatic liaison offices and lifting certain economic regulatory sanctions, are not restricted under the legislation. In fact, I believe they can help provide incentives for the North Koreans to move ahead in these areas of concern while also giving the Administration useful leverage.

The legislation also provides that the United States will suspend relevant activities described in the Agreed Framework if North Korea reloads its existing 5 megawatt reactor or resumes construction of nuclear facilities other than those permitted to be built under the Agreed Framework.

The legislation also restricts United States direct or indirect support for exports of heavy fuel oil to North Korea if that state does not maintain the freeze on its nuclear program or takes steps regarding that oil which are not permitted under the Agreed Framework.

Finally, the legislation has a reporting requirement to ensure that congressional monitoring of the implementation of the Agreed Framework and that the taxpayers' money is being spent effectively.

I look forward to extensive debate on this legislation and its early passage.

Mr. MCCAIN. Mr. President, as I have often said, I have serious reservations

about the October 1994 Nuclear Framework Agreement with North Korea. Therefore, I am pleased to be an original sponsor, with Senator MURKOWSKI and others, of this legislation which would establish needed specificity to the vagaries of the agreement and provide clearly stated incentives for North Korean compliance with its terms.

This legislation would prohibit the use of any U.S. taxpayer dollars to implement the Framework Agreement unless the Congress passes a law authorizing and appropriating the funds. The President would also be required to certify that North Korea is in full compliance with the terms of the Framework Agreement before any authorized funds can be spent.

The legislation would prohibit normalization of diplomatic and economic relations between the United States and North Korea until several conditions are met—conditions which clearly serve our national interests, including the following:

North Korea must fully comply with the IAEA safeguards agreement for its nuclear program.

North Korea must forswear any support for international terrorism, and must demonstrate greater respect for human rights.

North Korea must halt the export of ballistic missiles and related technology and agree to adhere to the Missile Technology Control Regime.

The IAEA has inspected all suspected nuclear waste sites in North Korea.

And most important, in my view, all spent nuclear fuel must be removed from North Korea, and their existing graphite-based nuclear reactors must be destroyed.

Mr. President, let me take a moment to discuss some of the glaring flaws in the Framework Agreement, which are the principal reasons for my sponsorship of this legislation, and my predictions for the failure of the agreement.

The most charitable appraisal I can give the agreement is that it represents a tendered bribe to North Korea in exchange for a limit on its nuclear weapons program. The underlying problem with the Nuclear Framework Agreement is that it is based not on trust, but on wishful thinking. North Korea has a well-established record of breaking its commitments to the U.S. and to the international community. At least nine times during the past two-and-a-half years, the North Koreans have reneged on their commitments. This agreement relies very heavily on North Korean good faith—indeed, it virtually tempts the North Koreans to break their word. That is its fundamental flaw.

The foolish time lags between North Korea's receipt of the benefits of this agreement and the points at which they are required to prove their good faith will, I believe, prove an irresistible temptation to the North Koreans. This deal is front-end loaded in favor of North Korea. Under the deal, North

Korea gets free oil, the benefits of trade and diplomatic relations, two new nuclear reactors, and untold additional benefits, including tacit forgiveness of their blatant violation of the Nuclear Non-Proliferation Treaty—most before incurring any real damage to their nuclear weapons program.

Thus far, North Korea is only required to freeze its nuclear program at Yongbyon, and freeze construction of two larger reactors. Since none of these facilities fueled a single light bulb in North Korea (the Yongbyon reactor was never connected to a power grid), this is not much of a hardship.

The first serious obligation imposed on North Korea under the terms of the agreement will not occur for 3 to 5 years from now. At that time, they must begin to transfer the spent fuel rods to an undisclosed third country. Regrettably, the Administration either doesn't know or refuses to disclose when this transfer will occur and which country is prepared to take the rods. We should insist on the transfer immediately.

At that same time, as much as 5 years in the future, North Korea is supposed to accept its second major obligation—challenge inspections of undisclosed nuclear sites—especially the two suspected nuclear waste sites. These inspections are the only hope we have of determining what happened to the plutonium diverted during reprocessing in 1989. If North Korea reneges on the deal at this point—after receiving all the up-front benefits of the deal—we still won't know the truth about the 1989 refueling of the Yongbyon reactor, and thus the truth about North Korea's nuclear weapons program.

Finally, the dismantlement of any of the North Korean nuclear facilities will not begin until they have received one, fully operational, \$2 billion light water reactor. This could be 7 or more years away. And they don't have to complete dismantlement of their nuclear facilities until the second reactor is completed, perhaps at much as 10 years from now.

The harsh truth is that, by the time the North Koreans remove one brick from any of their nuclear facilities, they will have received from the U.S. and our Asian allies as much as 5 million tons of oil, inestimable millions in trade and investment opportunities, the propaganda value of improved relations with the United States—quite possibly at the expense of our relationship with South Korea, and a \$2 billion, fully operational, state of the art, light water reactor—the same kind we have pressured Russia and France not to sell to Iran.

The practical effect of providing significant amounts of energy and economic aid to North Korea is to free up scarce hard currency for North Korea to use for almost any purpose—whether it is beefing up their military capability or rebuilding their failing infrastructure. Either way, their economy is almost certainly going to improve,

and we may be facing a firmly entrenched Communist regime in North Korea for decades to come.

Given North Korea's long history of broken promises and violated agreements, why wouldn't we expect them to break their word again, after collecting the many benefits of this agreement, and resume the operation of their current facilities after 5 or 8 or 10 years. This legislation would create clearly stated incentives for the North Koreans to honor their commitments under the agreement and dismantle their nuclear weapons program—incentives which were not included in the agreement itself.

Mr. President, although I believe the framework agreement is seriously flawed, I strongly believe that Congress should not overturn the agreement. I do not want the U.S. Congress blamed for something that will really be the result of North Korean duplicity. When this agreement fails, I want it to be clear to all who is responsible for the failure—so that we can proceed immediately to organize international sanctions and other punitive measures which are designed to remove the threat of nuclear proliferation from the Korean Peninsula once and for all. That is what we should have done last year.

At the same time, the American taxpayer should not be expected to underwrite this agreement—with one exception, which I will explain in a moment.

Initially, the administration promised that the only financial commitment undertaken by the United States in the agreement was a one-time shipment of oil worth roughly \$5 million. Subsequent to that declaration, we learned that the President sent a letter to Kim Jong Il promising to ask Congress to pay for the new reactors if funding cannot be found elsewhere. To pay for the oil shipment, the administration avoided coming to Congress and took \$4.7 million from Defense Department funds, using a little-known authority that is supposed to be used for "emergencies and extraordinary expenses"—and they did it without giving Congress any prior notice.

I should note that this little-known "emergency and extraordinary expenses" authority will not in the future be misused in such a fashion. I was successful in including a provision in the fiscal year 1996 Defense authorization bill which establishes specific notification requirements when the authority is exercised for any expenditure exceeding \$500,000. This provision will become law as part of the FY 1996 Defense Authorization Act.

Now, the Administration says that the U.S. financial commitment to this agreement may ultimately amount to \$20–30 million per year, or \$200–300 million over the ten-year period of the agreement.

Since the Administration claims they did not guarantee North Korea that we will contribute anything more than the agreed upon oil shipment, and

since the Administration has already demonstrated its intention to cut Congress out of the loop as much as possible, I think Congress should decline to appropriate any further funds to implement this accord—with one exception. That exception is with respect to the security, safe storage, and subsequent removal from North Korea of the 8,000 spent nuclear fuel rods corroding in a cooling pond at Yongbyon.

I believe we should test North Korea's intentions as early as possible. I believe we should identify a country willing to receive the fuel rods, and ask North Korea to ship them there. Should they comply, the U.S. should pay for the transfer. It's worth the cost, because we will remove from North Korea enough plutonium for 5 or 6 nuclear weapons, and we will have an early—though certainly not a definitive—indicator of how seriously North Korea is taking its commitments under this agreement.

Until the fuel is removed from North Korea, I believe it is imperative to ensure the security and safe storage of the spent fuel. I worked successfully in the Senate Armed Services Committee for a provision allowing up to \$5 million of DOE funds to be used to complete work on the safe storage, or canning, of the spent nuclear fuel at the Yongbyon reactor site. Some of my colleagues wanted to refuse even this small amount of money, but I believe it would be counter-productive to allow the spent fuel to remain in an open and degrading storage pond, when we could at least ensure that it was less easily accessible to North Korea in the event the agreement fails. This provision will become law as part of the FY 1996 Defense Authorization Act.

Mr. President, the legislation I am introducing today, with Senator MURKOWSKI and others, is entirely consistent with the provisions of the Framework Agreement between the U.S. and North Korea. It merely adds specificity to the vagaries of the agreement, as well as incentives for North Korean compliance with the agreement. It also ensures that North Korea realizes a small part of the price it will pay for breaking its word to dismantle its nuclear weapons program. And it permits the President to waive any of its restrictive provisions if he certifies that it is vital to U.S. national security to do so.

I urge my colleagues to support this legislation. It will ensure that the laudable goals of the Framework Agreement are realized by fixing its flaws.

By Mr. JEFFORDS:

S. 1294. A bill to amend title 10, United States Code, to repeal the requirement that amounts paid to a member of the Armed Forces under the Special Separation Benefits Program of the Department of Defense, or under the Voluntary Separation Incentive Program of that Department, be offset from amounts subsequently paid to that

member by the Department of Veterans Affairs as disability compensation; to the Committee on Armed Services.

TITLE 10 AMENDMENT LEGISLATION

• Mr. JEFFORDS. Mr. President, I reintroduce a bill to change current law that requires amounts paid to a member of the Armed Forces under the Special Separation Benefits and Voluntary Separation Incentive Programs be offset from amounts subsequently paid to that individual by the Department of Veterans Affairs as disability compensation.

Since the end of the cold war, our country has called on military personnel to participate in several dangerous military operations, most recently in the Persian Gulf, Somalia, and Haiti. These personnel have served our country well. Unfortunately, due to language in the Department of Defense [DOD] Authorization Act for fiscal years 1992 and 1993, veterans who participate in the Department of Defense's downsizing by selecting one of two options, either a special separation bonus [SSB] lump sum payment or a voluntary separation incentive [VSI] monthly payment, are prevented from receiving both disability compensation from the VA and benefits from the SSB and VSI programs until the separation compensation is offset completely. My bill will address this injustice by repealing these provisions and allow for concurrent receipt. It will also be retroactive to December 5, 1991, so service members not able to receive payment concurrently since 1991 will be reimbursed for their lost compensation.

Mr. President, SSB and VSI benefits are for services rendered as well as compensation for the veterans' participation in the DOD's downsizing. VA disability pay is compensation for mental or physical disabilities incurred in that service. These are two separate compensations serving two very different purposes. Therefore, it is unfair to the veteran to offset one payment with another.

Aside from the unfairness of offsetting the costs of unrelated compensation benefits, many veterans who returned from the Persian Gulf war have come down with strange illnesses which are believed to be related to their service in the Persian Gulf. Individuals who have accepted SSB or VSI payments are suffering both physically and financially, as many cannot work under the conditions from which they are suffering. Repealing the offset will help ease this financial suffering.

I urge the Congress to correct this injustice to our Nation's veterans and provide these veterans with the proper care and compensation they deserve. •

By Mr. HELMS (for himself, Mr. FAIRCLOTH, and Mr. WARNER):

S. 1295. A bill to prohibit the regulation of any tobacco products, or tobacco sponsored advertising, used or purchased by the National Association of Stock Car Automobile Racing, its

agents or affiliates, or any other professional motor sports association by the Secretary of Health and Human Services or any other instrumentality of the Federal Government, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NASCAR LEGISLATION

Mr. HELMS. Mr. President, North Carolina is the home of professional auto racing and it is on behalf of literally thousands of Tar Heels and millions of other NASCAR racing fans across America that I today offer in the Senate the companion bill of the Motor Sports Protection Act which was introduced in the House on September 6 by the Honorable DAVID FUNDERBURK, who ably represents the Second North Carolina Congressional District.

Mr. President, the announcement last month of plans by the Food and Drug Administration to designate tobacco has created much concern in my State, and other tobacco-producing southern States. This is an example of how Washington bureaucrats increase their regulatory power at the expense of the livelihoods of the Nation's farmers and manufacturers. The FDA's attack on tobacco advertising is sure to have a tremendously adverse effect on NASCAR racing.

The issue is whether companies have a right to advertise their products. Advertising is a lawful act and tobacco is a lawful commodity. Unless and until tobacco is banned, proper advertising of this lawful product must not be denied by bureaucratic wherein.

So, this bill will limit the Federal bureaucracy from imposing advertising restrictions on any sponsors of pro racing. The motor sports industry contributes more than \$2 billion to the South's economy every year. Racing fans are hard working, law-abiding Americans—they don't deserve bureaucratic mistreatment.

Mr. President, not too long ago, the "King" of racing Richard Petty retired. He left at a time when his name was synonymous with NASCAR racing. He was a perfect example of what can be accomplished with determination, faith, and family values. Richard Petty's success was built on the cooperation of his family, friend, and companies that supported him throughout his career.

My friend, Richard Petty sends word that he will very much appreciate Senators' support of this bill, and so will I.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

NORTH CAROLINA MOTOR SPEEDWAY,
Rockingham, NC, September 19, 1995.
Hon. JESSE A. HELMS,
Senate Dirksen Office Building,
Washington, DC.

DEAR SENATOR HELMS: I am writing to express my concern about President Clinton's

plan to regulate tobacco and their sponsorship of motorsports events at North Carolina Motor Speedway. The FDA's proposed regulation will have a severe impact, not only on the Speedway, but also on Moore, Richmond, and surrounding counties. Loss of sponsorships might mean ticket prices could go up, quality of events and facilities could go down, which could contribute to lower attendance. Our area depends heavily on revenue from those attending motorsports and other sponsored events. Local communities will be an economic loser from reduced attendance at events.

I would appreciate you writing back to me with your views on this important issue. Thank you.

Sincerely,

JO DEWITT WILSON,
President.

By Mr. HATCH (for himself, Mr. BREAUX, Mr. LUGAR, and Mr. COCHRAN):

S. 1296. A bill to amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of a qualified football coaches plan; to the Committee on Finance.

THE QUALIFIED FOOTBALL COACHES PLAN
TECHNICAL CORRECTIONS ACT OF 1995

Mr. HATCH. Mr. President, on behalf of myself and Senator BREAUX, I rise today to introduce the Qualified Football Coaches Plan Technical Corrections Act of 1995. We are joined in this effort by Senators LUGAR, and COCHRAN.

As the title indicates, this bill is a technical correction to ensure the proper qualification of a retirement plan for many of America's college football coaches. All of us in this body are in favor of encouraging retirement saving. However, the retirement plan set up for many of these football coaches is in serious jeopardy.

Mr. President, let me explain what brought us to the point we are today on this issue. In 1987, Congress recognized the unique aspects of the coaching profession and passed legislation to permit the American Football Coaches Association [AFCA] to set up and maintain a qualified cash and deferred arrangement under Section 401(k) of the Internal Revenue Code. The bill amended Title I of ERISA to permit such a plan to be treated as a qualified multiemployer plan. Due to the frequency with which football coaches change jobs, legislation was needed to assist them in maintaining a retirement plan that is adequately portable.

In reliance on this legislation, the American Football Coaches Association, which represents over 4,400 college football coaches at 676 schools, sponsored a 401(k) plan for its members that today has over 500 participants.

However, on the same day this legislation was passed, Congress was involved in addressing another problem contained in ERISA that was unrelated to the football coaches retirement plan. The problem was an unfavorable Tax Court ruling that held that the ERISA standard regarding employer withdrawals from pension plans, rather than the standard under the Internal

Revenue Code of 1986, applied for purposes of interpreting the Internal Revenue Code. Thus, Congress, in an attempt to reject the holding of the Tax Court as it applied to Title I of ERISA, included a provision stating that Title I and Title IV of ERISA are not applicable in interpreting the Internal Revenue Code of 1986. This, of course, had the unintended consequence of deeming the football coaches retirement plan an invalid plan for purposes of the Internal Revenue Code.

Following the creation of the retirement plan, the coaches association asked the Internal Revenue Service to confirm the tax qualified status of the retirement plan. On three separate occasions, Mr. President, the Internal Revenue Service issued determination letters confirming the tax qualified status of the plan for years 1988, 1989, and 1991. It was not until 1992 that the Internal Revenue Service determined that the 1987 provision invalidates what Congress did in Title I of ERISA to authorize the coaches 401(k) plan. In that year, the IRS changed its position on the exempt status of the coaches' retirement plan and indicated it would revoke the determination letters unless clarifying legislation is passed. The horrible result will be a forced termination of the plan by the end of 1995 which will impose a substantial cost on the football coaches and leave them without a retirement plan.

Mr. President, the original enacting legislation in 1987 was a bipartisan effort cosponsored by 34 Members of the Senate and 151 Members in the House. This clarifying legislation is also a bipartisan effort. This bill eliminates the uncertainty that these coaches have been forced to live with since 1988.

Mr. President, I have requested the Joint Committee on Taxation estimate the revenue impact of this bill. The Joint Committee concluded that this change is technical in nature and would have no revenue impact. However, I do want to point out that if this change is not made, hundreds of coaches will risk the loss of retirement benefits. This is not the message we should send to those who follow in good faith, the actions of a prior Congress.

I wish to commend the Senator from Louisiana, Senator BREAUX, for his leadership on this issue. I urge my colleagues to support this legislation. It is the right thing to do and is long overdue.

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

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Qualified Football Coaches Plan Technical Corrections Act of 1995".

SEC. 2. CLARIFICATION OF TREATMENT OF QUALIFIED FOOTBALL COACHES PLANS.

(a) IN GENERAL.—Subparagraph (F) of section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)(F)) is amended by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

"(ii) For purposes of the Internal Revenue Code of 1986—

"(I) clause (i) shall apply, and

"(II) a qualified football coaches plan shall be treated as a multiemployer collectively bargained plan."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 22, 1987.

By Mr. HATCH (for himself and Mr. D'AMATO)

S. 1297. An Act to amend the Internal Revenue Code of 1986 to simplify certain provisions applicable to real estate investment trusts.

THE REAL ESTATE INVESTMENT TRUST TAX SIMPLIFICATION ACT OF 1995

Mr. HATCH, Mr. President, on behalf of myself and Senator D'AMATO, I rise today to introduce the Real Estate Investment Trust Tax Simplification Act of 1995, legislation to simplify and reform the tax law concerning Real Estate Investment Trusts [REITs]. Similar legislation has been introduced in the House by Representative E. CLAY SHAW, JR. along with many other Representatives.

REITs were designed to allow small investors to invest in large real estate projects that they otherwise could not afford to enter including apartment buildings, office buildings, shopping centers, malls, warehouses, etc. Real Estate Investment Trusts have become a very popular form of investment as indicated by the fact that the market capitalization in the whole industry has risen from \$9 billion in 1991 to over \$50 billion today.

Mr. President, if a REIT properly follows all of the rules, it is not normally taxed at the entity level, but passes through most items of income to the shareholders to report on their own individual tax returns. However, there are many complexities and uncertainties—minefields, if you will, for the unwary that can inadvertently penalize investors and even the general public in some circumstances. This bill is designed to alleviate these minefields.

Let me share with my colleagues an example of one of these minefields. Under the current rules, in order to gain the benefits of REIT taxation, the investment has to be passive in nature. Hence, the normal procedure is for the REIT to buy the underlying property and lease it out to tenants. However, the REIT must be careful not to provide directly to the tenants any services that are not customary in the real estate business. If this rule is violated, severe consequences can follow. For example, under a literal interpretation of the law, if a REIT that operates a retail mall provides wheelchairs to the customers of the retail tenants, or even assist the tenant in moving into it

space, the entity's very status as a REIT could be placed in jeopardy. This is ridiculous and needs to be changed.

Another unnecessary rule, Mr. President, could conceivably cause an entire community to lose its health care facility. Let me explain. Under the current law, if an operator of a health care facility owned by a REIT defaults on its rent payments to the REIT, that health care facility could be shut down for a long period of time, even though there may be other health care operators willing and able to take over the facility. Why? Because current law basically prohibits the REIT from operating the facility itself and, at the same time, artificially reduces the pool of potential operators that can run the health care facility without causing undue tax problems to the REIT and its owners. This potential problem faces many REITs and many communities inasmuch as REITs currently own about \$10 billion of investments in health care facilities around the nation. This bill will eliminate the perverse incentive to shut down such critical facilities in the unfortunate case of foreclosure.

Mr. President, this bill also relaxes some of the current law's onerous penalties for failing to perform some record keeping requirements. Currently a REIT could lose its favored tax status simply by failing to send out or receive back shareholder demand letters for the purpose of verifying the fact that no five or fewer parties own controlling interests in the REIT. So, even though the REIT in fact meets this test, Mr. President, simply by failing to have on file sufficient shareholder letters substantiating this fact, all of the REIT shareholders could face the extremely harsh penalty of REIT disqualification and double taxation.

Rather than penalizing the REIT so severely for this oversight, Mr. President, this bill would impose a \$25,000 penalty for failure to comply with this requirement, if the failure is inadvertent in nature. The penalty would rise to \$50,000 in the case of willful non-compliance. I believe my colleagues would agree that this approach makes much more sense than the current rules since it serves as an adequate incentive to keep the appropriate records without causing the unsuspecting, innocent investors severe and unnecessary personal tax penalties.

Mr. President, this bill also addresses other problems that are detailed in the summary of the bill that I ask unanimous consent to be included in the RECORD after my remarks.

This bill is not controversial and will have a negligible effect on revenues, according to the Joint Committee on Taxation. It is important to note that this bill is endorsed by the National Association of Real Estate Investment Trusts, which represents a high percentage of the REIT industry. Whenever we can do things to simplify the tax code without causing substantial

revenue loss or negative policy consequences, we should do it. Mr. President, this is an opportunity for us to do just that in the area of Real Estate Investment Trusts. I urge my colleagues on both sides of the aisle to join me in reforming and simplifying the tax law regarding this very difficult and complex area of the law.

Mr. President, I ask unanimous consent that the text of the bill and a detailed summary of its provisions be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

S. 1297

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) **SHORT TITLE.**—This Act may be cited as the “Real Estate Investment Trust Tax Simplification Act of 1995”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—REMOVAL OF TAX TRAPS FOR THE UNWARY

SEC. 101. CLARIFICATION OF LIMITATION ON MAXIMUM NUMBER OF SHAREHOLDERS.

(a) **RULES RELATING TO DETERMINATION OF OWNERSHIP.**—

(1) **FAILURE TO ISSUE SHAREHOLDER DEMAND LETTER NOT TO DISQUALIFY REIT.**—Section 857(a) (relating to requirements applicable to real estate investment trusts) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) **SHAREHOLDER DEMAND LETTER REQUIREMENT; PENALTY.**—Section 857 (relating to taxation of real estate investment trusts and their beneficiaries) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) **REAL ESTATE INVESTMENT TRUSTS TO ASCERTAIN OWNERSHIP.**—

“(1) **IN GENERAL.**—Each real estate investment trust shall each taxable year comply with regulations prescribed by the Secretary for the purposes of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

“(2) **FAILURE TO COMPLY.**—

“(A) **IN GENERAL.**—If a real estate investment trust fails to comply with the requirements of paragraph (1) for a taxable year, such trust shall pay (on notice and demand by the Secretary and in the same manner as tax) a penalty of \$25,000.

“(B) **INTENTIONAL DISREGARD.**—If any failure under paragraph (1) is due to intentional disregard of the requirement under paragraph (1), the penalty under subparagraph (A) shall be \$50,000.

“(C) **FAILURE TO COMPLY AFTER NOTICE.**—The Secretary may require a real estate investment trust to take such actions as the Secretary determines appropriate to ascertain actual ownership if the trust fails to meet the requirements of paragraph (1). If the trust fails to take such actions, the trust shall pay (on notice and demand by the Secretary and in the same manner as tax) an additional penalty equal to the penalty determined under subparagraph (A) or (B), whichever is applicable.

“(D) **REASONABLE CAUSE.**—No penalty shall be imposed under this paragraph with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.”

(b) **COMPLIANCE WITH CLOSELY HELD PROHIBITION.**—

(1) **IN GENERAL.**—Section 856 (defining real estate investment trust) is amended by adding at the end the following new subsection:

“(k) **REQUIREMENT THAT ENTITY NOT BE CLOSELY HELD TREATED AS MET IN CERTAIN CASES.**—A corporation, trust, or association—

“(1) which for a taxable year meets the requirements of section 857(f)(1), and

“(2) which does not know, or exercising reasonable diligence would not have known, whether the entity failed to meet the requirement of subsection (a)(6),

shall be treated as having met the requirement of subsection (a)(6) for the taxable year.”

(2) **CONFORMING AMENDMENT.**—Paragraph (6) of section 856(a) is amended by inserting “subject to the provisions of subsection (k),” before “which is not”.

SEC. 102. DE MINIMIS RULE FOR TENANT SERVICES INCOME.

(a) **IN GENERAL.**—Paragraph (2) of section 856(d) (defining rents from real property) is amended by striking subparagraph (C) and the last sentence and inserting:

“(C) any impermissible tenant service income (as defined in paragraph (7)).”

(b) **IMPERMISSIBLE TENANT SERVICE INCOME.**—Section 856(d) is amended by adding at the end the following new paragraph:

“(7) **IMPERMISSIBLE TENANT SERVICE INCOME.**—For purposes of paragraph (2)(C)—

“(A) **IN GENERAL.**—The term ‘impermissible tenant service income’ means, with respect to any real or personal property, any amount (other than amounts described in subparagraph (B) or (C) of paragraph (1)) received or accrued directly or indirectly by the real estate investment trust for—

“(i) services furnished or rendered by the trust to the tenants of such property, or

“(ii) managing or operating such property.

“(B) **DISQUALIFICATION OF ALL AMOUNTS WHERE MORE THAN DE MINIMIS AMOUNT.**—If the amount described in subparagraph (A) with respect to a property exceeds 1 percent of all amounts received or accrued directly or indirectly by the real estate investment trust with respect to such property, the impermissible tenant service income of the trust with respect to the property shall include all such amounts.

“(C) **EXCEPTIONS.**—For purposes of subparagraph (A)—

“(i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income shall not be treated as furnished, rendered, or provided by the trust, and

“(ii) there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 512(a)(2).

“(D) **AMOUNT ATTRIBUTABLE TO IMPERMISSIBLE SERVICES.**—For purposes of subparagraph (A), the amount treated as received for any service (or management or operation) shall not be less than 150 percent of the actual direct cost of the trust in furnishing or rendering the service (or providing the management or operation).

“(E) **COORDINATION WITH LIMITATIONS.**—For purposes of paragraphs (2) and (3) of subsection (c), amounts described in subparagraph (A) shall be included in the gross income of the corporation, trust, or association.”

SEC. 103. ATTRIBUTION RULES APPLICABLE TO TENANT OWNERSHIP.

Section 856(d)(5) (relating to constructive ownership of stock) is amended by adding at the end the following: “For purposes of paragraph (2)(B), section 318(a)(3)(A) shall be applied under the preceding sentence in the case of a partnership by taking into account only partners who own (directly or indirectly) 25 percent or more of the capital interest, or the profits interest, in the partnership.”

TITLE II—CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES

SEC. 201. CREDIT FOR TAX PAID BY REIT ON RETAINED CAPITAL GAINS.

(a) **GENERAL RULE.**—Paragraph (3) of section 857(b) (relating to capital gains) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

“(D) **TREATMENT BY SHAREHOLDERS OF UN-DISTRIBUTED CAPITAL GAINS.**—

“(i) Every shareholder of a real estate investment trust at the close of the trust’s taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the trust’s taxable year falls, such amount as the trust shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year), but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A)(ii) which he would have received if all of such amount had been distributed as capital gain dividends by the trust to the holders of such shares at the close of its taxable year.

“(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A)(ii) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholders shall be allowed credit or refund as the case may be, for the tax so deemed to have been paid by him.

“(iii) The adjusted basis of such shares in the hands of the holder shall be increased with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and such holder’s credit or refund determined under clause (ii).

“(iv) In the event of such designation, the tax imposed by subparagraph (A)(ii) shall be paid by the real estate investment trust within 30 days after the close of its taxable year.

“(v) The earnings and profits of such real estate investment trust, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

“(vi) As used in this subparagraph, the terms ‘shares’ and ‘shareholders’ shall include beneficial interests and holders of beneficial interest, respectively.”

(b) **CONFORMING AMENDMENTS.**—

(1) Clause (i) of section 857(b)(7)(A) is amended by striking “subparagraph (B)” and inserting “subparagraph (B) or (D)”.

(2) Clause (iii) of section 852(b)(3)(D) is amended by striking “by 65 percent” and all that follows and inserting “by the difference between the amount of such includible gains and such holder’s credit or refund determined under clause (ii).”

TITLE III—OTHER SIMPLIFICATION**SEC. 301. MODIFICATION OF EARNINGS AND PROFITS RULES FOR DETERMINING WHETHER REIT HAS EARNINGS AND PROFITS FROM NON-REIT YEAR.**

Subsection (d) of section 857 is amended by adding at the end the following new paragraph:

“(3) DISTRIBUTIONS TO MEET REQUIREMENTS OF SUBSECTION (a)(2)(B).—Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

“(A) shall be treated for purposes of this subsection as made from the earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies) rather than the most recently accumulated earnings and profits, and

“(B) shall not be treated as a distribution for purposes of subsection (b)(2)(B).”

SEC. 302. TREATMENT OF FORECLOSURE PROPERTY.

(a) GRACE PERIODS.—

(1) INITIAL PERIOD.—Paragraph (2) of section 856(e) (relating to special rules for foreclosure property) is amended by striking “on the date which is 2 years after the date the trust acquired such property” and inserting “as of the close of the 3d taxable year following the taxable year in which the trust acquired such property”.

(2) EXTENSION.—Paragraph (3) of section 856(e) is amended—

(A) by striking “or more extensions” and inserting “extension”, and

(B) by striking the last sentence and inserting: “Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2).”

(b) REVOCATION OF ELECTION.—Paragraph (5) of section 856(e) is amended by striking the last sentence and inserting: “A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided in regulations by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year.”

(c) CERTAIN ACTIVITIES NOT TO DISQUALIFY PROPERTY.—Paragraph (4) of section 856(e) is amended by adding at the end the following new flush sentence:

“For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property.”

SEC. 303. SPECIAL FORECLOSURE RULES FOR HEALTH CARE PROPERTIES.

Section 856(e) (relating to special rules for foreclosure property) is amended by adding at the end the following new paragraph:

“(6) SPECIAL RULES FOR QUALIFIED HEALTH CARE PROPERTIES.—For purposes of this subsection—

“(A) ACQUISITION BY LEASE TERMINATIONS.—The term ‘foreclosure property’ shall include any qualified health care property acquired by a real estate investment trust as the result of the termination or expiration of a lease of such property.

“(B) GRACE PERIOD.—For purposes of qualified health care property of a real estate investment trust qualifying as ‘foreclosure property’ under subparagraph (A), the qualified health care property shall cease to be foreclosure property on the date which is 2

years after the date such trust acquired such property.

“(C) EXTENSIONS.—If the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period in Subparagraph (B) is necessary to the orderly leasing or liquidation of the trust’s interest in such qualified health care property, the Secretary may grant one or more extensions of the grace period for such qualified health care property. Any such extension shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such qualified health care property.

“(D) INCOME FROM INDEPENDENT CONTRACTORS.—For purposes of applying paragraph (4)(C) with respect to qualified health care property which is foreclosure property, income derived or received by the trust from an independent contractor shall be disregarded to the extent such income is attributable to—

(i) leases existing on the date the real estate investment trust acquired the qualified health care property, or

(ii) leases extended or entered into after the trust acquired such property from lessees pursuant to terms set forth in such existing leases or on terms under which the trust receives a substantially similar or lesser benefit in comparison to the previous lease for such property.

“(E) QUALIFIED HEALTH CARE PROPERTY.—The term ‘qualified health care property’ means any real property (including interests therein), and any personal property incident to such real property, which—

“(i) is a hospital, outpatient medical clinic, nursing facility, assisted living facility, or other licensed health care facility which extends medical or nursing or ancillary services to patients and which, immediately before the termination, expiration, or breach of the lease of or mortgage secured by such facility, was operated by a provider of such services which was eligible for participation in the medicare program under title XVIII of the Social Security Act with respect to such facility, or

“(ii) is necessary or incidental to the use of such a health care facility.”

SEC. 304. PAYMENTS UNDER HEDGING INSTRUMENTS.

Section 856(c)(6)(G) (relating to treatment of certain interest rate agreements) is amended to read as follows:

“(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent provided by regulations, any—

“(i) payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to hedge any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

“(ii) gain from the sale or other disposition of any such investment,

shall not be taken into account under paragraphs (2), (3), and (4).

SEC. 305. EXCESS NONCASH INCOME.

Section 857(e)(2) (relating to determination of amount of excess noncash income) is amended—

(1) by striking subparagraph (B),

(2) by striking the period at the end of subparagraph (C) and inserting a comma,

(3) by redesignating subparagraph (C) (as amended by paragraph (2)) as subparagraph (B), and

(4) by adding at the end the following new subparagraphs:

“(C) the amount (if any) by which—

“(i) the amounts includible in gross income with respect to instruments to which section 860E(a) or 1272 applies, exceed

“(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments, and

“(D) amounts includible in income by reason of cancellation of indebtedness.”

SEC. 306. PROHIBITED TRANSACTION SAFE HARBOR.

Clause (iii) of section 857(b)(6)(C) (relating to certain sales not to constitute prohibited transactions) is amended—

(1) by striking “(other than foreclosure property)” in subclauses (I) and (II) and inserting “(other than sales of foreclosure property or sales to which section 1033 applies)”, and

(2) by striking “(as determined for purposes of computing earnings and profits)” in subclause (II) and inserting “(determined without regard to any adjustment for depreciation or amortization)”.

SEC. 307. SHARED APPRECIATION MORTGAGES.

(a) BANKRUPTCY SAFE HARBOR.—Section 856(j) (relating to treatment of shared appreciation mortgages) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) COORDINATION WITH 4-YEAR HOLDING PERIOD.—

“(A) IN GENERAL.—For purposes of section 857(b)(6)(C), if a real estate investment trust is treated as having sold secured property under paragraph (3)(A), the trust shall be treated as having held such property for at least 4 years if—

“(i) the secured property is sold or otherwise disposed of pursuant to a case under title 11 of the United States Code,

“(ii) the seller is under the jurisdiction of the court in such case, and

“(iii) the disposition is required by the court or is pursuant to a plan approved by the court.

“(B) EXCEPTION.—Subparagraph (A) shall not apply if—

“(i) the secured property was acquired by the trust with the intent to evict or foreclose, or

“(ii) the trust knew or had reason to know that default on the obligation described in paragraph (5)(A) would occur.”

(b) CLARIFICATION OF DEFINITION OF SHARED APPRECIATION PROVISION.—Clause (ii) of section 856(j)(5)(A) is amended by inserting “or appreciation in value” after “gain” each place it appears.

SEC. 308. WHOLLY OWNED SUBSIDIARIES.

Section 856(i)(2) (defining qualified REIT subsidiary) is amended by striking “at all times during the period such corporation was in existence”.

TITLE IV—EFFECTIVE DATE**SEC. 401. EFFECTIVE DATE.**

The amendments made by this Act shall apply to taxable years beginning after the date of the enactment of this Act.

SECTION-BY-SECTION ANALYSIS**TITLE I. REMOVAL OF TAX TRAPS FOR THE UNWARY****SEC. 101. SHAREHOLDER DEMAND LETTER**

Sections 856(a)(5) and 856(a)(6) require that a REIT have at least 100 beneficial owners, and that it not be “closely held” within the meaning of the personal holding company rules. A REIT that is disqualified because it fails to meet the requirements in section 856(a) generally may not elect REIT status again for a period of 5 years.

In addition, section 857(a)(2) disqualified a REIT for any year in which it does not comply with Internal Revenue Service (“IRS”) regulations prescribed to ascertain the “actual ownership” of the REIT’s outstanding shares. Sections 1.857-8(d) and (e) of the Income Tax Regulations (the “Regulations”)

require a REIT to demand, from its shareholders of record, a written statement identifying the "actual owner" (for income tax purposes) of the stock held in such shareholder's name. The Regulations specify which shareholders must be sent such letter, based on the total number of REIT shareholders and the percentage of shares held by each record holder. This demand letter must be sent within 30 days of the close of the REIT's taxable year.

Failure to comply with the rules in Regulations section 1.857-8, through inadvertence or otherwise, technically causes disqualification of REIT status for the taxable year, notwithstanding that the REIT may satisfy the substantive share ownership rules in section 856(a)(6). As in the case of any disqualification under section 856(a), a REIT that is disqualified under the shareholder demand letter regulations may not elect REIT status again for a period of 5 years without IRS consent.

Even those REITs that comply with the demand letter regulations, and are not aware of any violations of the ownership test, cannot know for certain whether they complied with such tests, the ownership information is not in the hands of the REIT and the REIT cannot compel its shareholders to respond to the demand letter. This uncertainty is increased for publicly-traded REITs that have a large portion of their shares held in "street name."

This bill proposes that a failure to comply with the shareholder demand letter regulations should not, by itself, disqualify a REIT if the REIT otherwise establishes that it satisfies the substantive rules involved. Under these circumstances, a \$25,000 penalty (\$50,000 for intentional violations) would be imposed for any year in which the REIT did not comply with the shareholder demand letter regulations and the REIT would be required, when requested by the IRS, to send curative demand letters. This bill strikes the right balance between the "atomic bomb" consequences of present law and the need to provide a disincentive for REITs not to send out demand letters.

Also under this bill, a REIT would be deemed to satisfy the share ownership requirements in section 856(a)(6) if it complies with the shareholder demand letter regulations and does not know, or have reason to know, of an actual violation of the ownership rules. Thus, a REIT that complies with the regulations, but is unable to discover an actual ownership violation and has no reason to suspect such a violation, would not be disqualified before it has reason to know of such violation. This amendment is vital to protect companies that exercise their best efforts to comply with the ownership rules, but somehow later discover that a technical violation exists.

SEC. 102. PROPERTY MANAGEMENT—DE MINIMIS RULE FOR TENANT SERVICES INCOME.

The REIT tax provisions include several independent contractor rules. The primary rule is found in section 856(d)(2)(C), which generally provides that "rents from real property" do not include amounts received with respect to the property if the REIT furnishes services to the tenants, or manages or operates the property, other than through an independent contractor. Congress modified this rule in 1986 by adding the language at the end of section 856(d)(2)(C). This language permits the REIT to receive amounts for furnishing customary services or managing property, without using an independent contractor, provided such amounts would be excluded from unrelated business taxable income under section 512(b)(3) if received by a section 511(a)(2) exempt organization.

Congress' relaxation of the independent contractor rule has helped the industry in-

efficiently managing rental properties on a competitive basis. However, certain problems persist. Under the existing language of section 856(d)(2)(C), the receipt of even a *de minimis* amount of non-qualified income or rendering a small amount of impermissible services with respect to a given property may disqualify all rents received with respect to such property. The disqualification of the entire property's rents could jeopardize the REITs's qualified status.

The present independent contractor rule creates significant administrative burdens for REITs because of the need to ensure that no REIT personnel ever perform any disqualifying service. In addition, due to the inherent ambiguity of the rule, significant time and expense are incurred by both REITs and the IRS in applying for and issuing private letter rulings that delineate permissible and impermissible services. Further, even a vigilant and conservative REIT cannot control whether a particular employee performs a service to its tenants that may taint the rents on a property. Last, the present rule unreasonably penalizes a REIT for providing services (which may be directly related to the operation of its property) to a tenant (by tainting all amounts received from that tenant) that it may, with much less chance of disqualification, provide to third parties.

This bill proposes a *de minimis* exception to the independent contractor rule. This proposal would simplify REIT administration and would remove the risk of disqualifying a REIT that inadvertently performs nominal, although impermissible, services. Further, the proposal would not encourage international disregard for the independent contractor rule, because of the relatively small amount of services that it would permit.

The approach taken in this bill would provide a simple, bright line test that the IRS could administer easily.

SEC. 103. ATTRIBUTION RULES APPLICABLE TO TENANT OWNERSHIP.

Section 856(d)(2)(B) generally disqualifies rents received from any person, if the REIT owns 10% or more of the ownership interests in such person or has an interest equal to 10% or more in the assets or net profits of such person. For purposes of determining the REIT's ownership interest in a tenant, the attribution rules of section 318 apply, except that 10% is substituted for 50% when it appears in subparagraph (C) of section 318(a)(2) and 318(a)(3). Under section 318(a)(3)(A), stock owned, directly or indirectly, by a partner is considered owned by the partnership. In addition, under section 318(a)(3)(C) a corporation is considered as owning stock that is owned, directly or indirectly, by or for a person who also owns more than 50% (10% for REITs) of the stock in such corporation.

The attribution rules may create an unintended result when several persons who own collectively 10% of a REIT's tenant, also own collectively 10% of the REIT. So long as these persons are unrelated and their individual interest in each entity is less than 10%, then no violation of section 856(d)(2) occurs. However, if each of these persons happen to obtain an interest, no matter how small, in the same unrelated partnership, then the attribution rules may cause the rents received from the tenant to be disqualified under section 856(d)(2). Such a result could occur even though section 318(a)(5)(C) specifically provides that the stock ownership interests of a partner are not to be attributed to another partner via the partnership.

Under one understanding of current law, the problem arises because all of the partners' shares of stock in the tenant are attributed to the unrelated partnership under section 318(a)(3)(A). Since the partnership also

is considered as owning the partners' shares in the REIT, section 318(a)(3)(C) treats the REIT as owning all of the shares in the tenant that are deemed held by the partnership. Thus, the rule in section 856(d)(2) is violated.

The potential for disqualification, under one reading of current law, is detailed in the following example: Pension Plan A holds stock representing 10% of the value in REIT. The remaining shares of REIT are publicly held. Pension Plan A and Corporation B each hold a 1% interest by value in Partnership, and the remainder of Partnership's interests are publicly held. Partnership holds various securities in entities other than REIT. Tenant, which leases retail space from REIT, is 10% owned by Corporation B, with the remaining interest publicly-held. Under section 318(A)(3)(A), Partnership is deemed to own A's 10% interest in the value of REIT and B's 10% interest in Tenant. Further, section 318(a)(3)(C) provides that REIT is deemed to own any stock held by its 10% shareholder. As a result, REIT could be deemed to own Partnership's deemed interest in Tenant. If so, the Tenant's rent payments to REIT would be disqualified.

These attribution rules disqualify amounts as rent even when the relationship between the tenant and the REIT is tenuous at best and abuse of the REIT concept is inconceivable. In any event, the rules are largely unenforceable because one partner will not know what the other partners own. The problem is particularly problematic with institutional investors that own small percentage interests in multiple partnerships owning securities and other assets unrelated to a REIT.

One understanding of the interplay between section 318(a)(3)(A) and (a)(3)(C) with the facts described above is equivalent to applying attribution rules to shares of stock held by partners. As noted, this is contrary to the policy set forth in section 318(a)(5)(C), which prohibits the reattribution of stock constructively owned by a partnership (via a partner) to another partner in the partnership. Without this partner-to-partner attribution, neither A nor B in the examples above, directly or indirectly, hold the 10% interest in both REIT and Tenant that section 856(d)(2)(B) requires for disqualification. Congress solved a similar problem of "partner to partner" attribution in another REIT context. In determining whether a REIT is "closely held" for purposes of section 856(a)(6), the attribution rules in section 544 apply. In 1986, Congress enacted section 856(h), which provides in part that the attribution rules in section 544 will apply as if they did not include the phrase "or by or for his partner."

This bill would modify the application of section 318(a)(3)(A) (attribution to partnerships), for purposes of section 856(d)(2), so that attribution would occur only when a partner owns a 25% or greater interest in the partnership. Applying a percentage threshold (rather than suspending entirely the application of section 318(a)(3)(A)) would prevent the potentially abusive technique of placing "dummy" partnerships between individuals and the REIT. This is a common sense approach that would simplify monitoring the ownership interests of all involved parties.

TITLE II. CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES

SEC. 201. CREDIT FOR TAX PAID BY REIT ON RETAINED CAPITAL GAINS.

Under the regulated investment company ("RIC") provisions, RICs (also known as mutual funds) always have been permitted to pass through a credit to their shareholders for taxes paid on retained capital gains. This

treatment helps preserve the capital base of the company, while respecting the principle of a single level of taxation.

Under section 857(b)(3)(A)(ii) and section 4981(c)(1)(B), a REIT need not distribute capital gains to its shareholders, but may be subject to tax on such undistributed gains under section 1201(a). A subsequent distribution of such gains is taxable to the REIT's shareholders, resulting in a double tax.

This double tax is inconsistent with the original Congressional intent to create a real estate entity parallel to RICs, and limits a REIT's ability to effectively manage assets. Because of the potential double tax on capital transactions, a REIT usually is compelled to either distribute any sale proceeds or not complete the transaction.

This would amend section 857(b)(3) to mirror the rules applicable to RICs.

TITLE III. OTHER SIMPLIFICATION

SEC. 301. EARNINGS & PROFITS—DISTRIBUTION RULE.

Enacted in 1986, section 857(a)(3) requires newly-electing REITs to distribute, during their first REIT taxable year, earnings and profits ("E&P") that were accumulated in non-REIT years. The ordering rule in section 316 complicates the E&P distribution requirement, by treating all distributions as being made from the most recently accumulated E&P. Under this rule, the unexpected realization of income near the end of the year can convert previous distributions of accumulated E&P into distributions from current E&P. For example, assume a company distributes \$200x in November, which represents its current E&P to date (\$100x) and its entire accumulated E&P (\$100x), and makes no other distributions during the year. If the company earns an additional \$10x in December, its accumulated E&P as of the end of the year is \$10x, notwithstanding the prior \$200x distribution.

The effect of the E&P rule in section 316 could be disastrous for a newly-electing REIT that is required to distribute all of its accumulated E&P during its first REIT year. The year-end receipt of any form of unanticipated income, such as unexpected overages from shopping mall tenants, could cost the new REIT its qualification. Most REITs (and most taxpayers, for that matter) cannot determine precisely the amount of their income before the end of the year. Ordinarily, the receipt of nominal amounts of income near the end of the year do not cause problems for established REITs, since they can use the "subsequent declared dividend" election in section 858 to make sure they meet their annual requirements to distribute 95 percent of their income.

However, the requirement in section 857(a)(3) effectively overrides the 95 percent income distribution requirement, since no accumulated E&P can be distributed until the REIT distributes 100 percent of current E&P. In addition, the section 858 election, which historically was available for all required distributions, cannot be used for section 857(a)(3) distributions since this election is available only for distributions of current E&P.

The ability to retain a small percentage of current earnings and the section 858 election both have been part of the REIT tax rules since 1960. Until 1986, REITs were not required to distribute any portion of their accumulated E&P. These adverse effects of the new accumulated E&P distribution requirement on both of these provisions is an unintended consequence of the 1986 change.

This bill would deem section 857(a)(3) distributions as being made first from accumulated E&P, then from current E&P. This provision would ensure that year-end receipts of unanticipated income would not cause a new

REIT to be disqualified. The proposal would not affect the requirement that such REIT also must distribute 95% of its current income, nor would it otherwise alter the traditional ordering rule for E&P distributions.

SEC. 302. FORECLOSURE PROPERTY.

A REIT is permitted to conduct a trade or business using property acquired through foreclosure for 90 days after it acquired such property, provided the REIT makes a foreclosure property election. After the 90-day period, the REIT may no longer conduct such trade or business, except through an independent contractor from whom the REIT does not derive or receive any income. Property is eligible for a foreclosure election if a REIT acquired it through foreclosure on a loan or default on a lease, but not if a REIT acquired it because a lease expired.

If it makes the foreclosure property election in section 856(e)(5), a REIT may hold foreclosure property for resale to customers without being subject to the 100% penalty tax under the prohibited transaction rules. Non-qualifying income from foreclosure property generally is subject to the highest corporate tax rate. The foreclosure property election is valid for 2 years, but may be extended up to 6 years with the IRS' consent. Under section 856(e)(4)(C), foreclosure property status is lost if, at some time after 90 days from the date such property is acquired, the property is used in a trade or business conducted by the REIT (other than through an independent contractor from whom the REIT does not derive any income).

This bill would make the period covered by an election three years and the initial foreclosure property election valid until the last day of the third full taxable year following the election. The present 2-year period is not a realistic time period for disposing of foreclosure property, especially in a depressed real estate market. In addition, this bill would reduce recordkeeping and filing requirements associated with managing foreclosure property and the need for the IRS to review extension requests.

Further, this bill would modify the rule in section 856(e)(4)(C) that requires a REIT to use an independent contractor to manage foreclosure properties. This modification would make the rule parallel to the primary independent contractor rule in section 856(d)(2)(C). This change would reduce the technical complexity and administrative costs associated with managing foreclosure property; it would provide a single, consistent standard for managing both foreclosure and non-foreclosure properties.

SEC. 303. SPECIAL FORECLOSURE RULES FOR HEALTH CARE PROPERTIES.

Health care REITs play an important economic role in both the health care and REIT industries. For example, REITs have invested about \$10 billion in health care properties, either as owners or lenders. This amount represents approximately 13% of the real estate investment by all REITs. These properties range from nursing homes and extended care facilities to acute care facilities.

These REITs face unique problems under the foreclosure property rules when the lessee/operator of a health care facility terminates its lease, either through expiration or default. Unlike most other forms of rental properties, if a health care property lease terminates, it is extremely difficult to close the facility because medical services to patients must be maintained. In fact, a variety of government regulations mandate measures to protect patients' welfare, which greatly restrict the ability to simply terminate the facility. In addition, because of the limited number of qualified health care providers, it can be very difficult to find a substitute provider that also will lease the property.

When a health care REIT acquires property either through a loan foreclosure, lease default, or lease expiration, the REIT must be able to ensure that the facility will remain open beyond the initial 90-day period. For many patients, especially those in rural areas, there may be no available alternative facilities in the locality. Frequently, if space is available in an alternative facility, such facility may not accept government-paid patients (*i.e.*, Medicare, Medicaid or county assistance), which account for 70% of the residents in properties of health care REITs. Patients in facilities owned by health care REITs typically include the frail elderly, the chronically ill and the disabled who require long term care. They cannot, and should not, be evicted and forced to relocate away from supportive family and friends, which could jeopardize their health and cause treatment setbacks.

The 90-day time period during which a REIT is permitted to operate a facility is inadequate for the REIT to conclude a lease with a health care provider. Health care properties typically are acquired in a sale-leaseback transaction in which the original owner continues to operate the facility as a lessee. After this lessee vacates the property, it is very difficult to find a qualified health care provider that is willing to assume not only the operational responsibilities for the facility, but also the long-term financial risks associated with being a lessee. This is particularly true when the original lessee abandoned the facilities because of financial problems.

Regulatory requirements further complicate and delay the releasing process. Potential lessees may be required to obtain up to 30 separate licenses from separate government agencies before they can assume control of a facility. In addition, many states impose certificate of need requirements when facility operators are changed. These proceedings can become adversarial and protracted.

Therefore, in order to keep a health care facility operational after the 90-day period has expired under the foreclosure property rules, a REIT must be able to hire a licensed health care provider that also qualifies as an independent contractor (a party from whom the REIT does not derive or receive any income or profits). The limited pool of licensed providers that could qualify as independent contractors may be dramatically reduced, since many of these providers already lease other health care properties owned by the REIT. As existing lessees of the REIT, these providers generate income to the REIT, and thus may be viewed by the IRS as disqualified from serving as independent contractors with respect to a second REIT property.

The problems that arise from foreclosing on a defaulted lease or mortgage also exist in the case of a health care provider/lessee who abandons the facility upon the expiration of a lease. A final decision whether or not to renew the lease may not be made until expiration occurs, giving the REIT little or no lead time to find a substitute provider/lessee. Even if adequate notice is given to the REIT that the provider/lessee intends to quit the business, this notice does not increase the pool of health care providers that could qualify as independent contractors.

This bill provides that in the case of qualified health care properties, a health care provider will not be disqualified as an independent contractor for purposes of the foreclosure property rules solely because the REIT receives rental income from the provider with respect to one or more other properties. In addition, the bill provides that REIT could make a foreclosure property election with respect to lease expirations of qualified health care properties.

These changes would help ensure that important health care facilities are not forced to be closed because of a technical requirement in the Code. As with any properties that are subject to a foreclosure election, non-rental income realized by the REIT under this proposal would be subject to the highest corporate tax rate.

SEC. 304. PAYMENTS UNDER HEDGING INSTRUMENTS.

In 1988, Congress added section 856(c)(6)(G), which generally provides that income from an interest rate swap or cap agreement used to hedge a variable rate indebtedness is treated as qualifying income under section 856(c)(2). In addition, such agreement is treated as a security for purposes of section 856(c)(4)(A), which limits a REIT's gain on the sale of securities held for less than 1 year to 30% of gross income.

A swap agreement is a contractual arrangement between parties that permits them to convert existing variable rate interest payments or receipts into fixed rates, and vice versa. Thus, swaps may be used to hedge against potential increases in interest rates on debt exposures, as well as to capture higher rates on fixed income streams. Interest rate caps likewise may be used to hedge interest payments or receipts, but such hedge is effective only over a specified range.

There are a number of financial products available, in addition to swaps and caps, that may be important tools in a company's effort to hedge its exposure to increased liabilities and to protect current high returns. As the REIT industry has grown and become more knowledgeable in managing its investments, more and more REITs are using financial instruments of all kinds as a conservative method of managing their interest rate exposure.

A REIT should be permitted to use the wide variety of financial instruments that are available for managing its liability exposures, whether the interest rates are fixed or variable. Financial markets world-wide have undergone revolutionary changes over the past decade. These changes have brought about dramatic liquidity in interest rate and currency markets, which in turn have significantly increased the volatility in these markets.

This bill would amend the REIT rules to allow all types of hedges of REIT liabilities. It would also insure that any income from a hedge mechanism will be excluded from either the numerator or denominator of any of the REIT income tests. This rule would not permit a REIT to speculate in hedging instruments, nor alter the REIT's primary mission to invest in real estate assets.

SEC. 305. EXCESS NONCASH INCOME.

Generally, REITs are required to distribute 95% of their taxable income to shareholders each year. In 1986, Congress recognized the inequity of requiring a REIT to distribute "phantom income" items, in which the REIT recognizes income but receives no corresponding cash. Congress enacted section 857(a)(1)(B) to exclude certain excess noncash income from the distribution requirement.

A REIT has been compelled to return property to a seller rather than accept a cancellation and restructuring of a seller-financed mortgage, because of the REIT's inability to distribute the resulting noncash income. Moreover, REITs often accrue original issue discount ("OID") income resulting from their investments. In addition, REITs are precluded under the current rules from repurchasing bonds at a discount that were issued at rates that are now "above market." This inability to refinance adversely affects the capital requirements for REITs.

Under this bill, all forms of OID and REMIC excess inclusion income (to the ex-

tent not offset by distributions), and cancellation of indebtedness income would be treated as excess noncash income for purposes of the distribution requirement in section 857(a). As a matter of policy, these forms of noncash income are indistinguishable from the types that are excepted from the distribution requirement. This bill would extend the special rules for OID income and REMIC excess inclusion income to both accrual basis and cash basis REITs. The bill would not alter the existing rule that imposes an excise tax on certain undistributed REIT income.

In addition, since the proposal would affect only a REIT's distribution requirements, a REIT would not receive a dividends paid deduction with respect to the phantom income. Thus, a REIT might be compelled to pay a corporate level tax to the extent its dividends paid deductions is less than its taxable income. These changes are just a logical extension of the 1986 changes.

SEC. 306. PROHIBITED TRANSACTION SAFE HARBOR.

A REIT may be subject to a 100% tax on net income from sales of property in the ordinary course of business ("prohibited transactions"). In 1986, Congress recognized the need for a bright line safe harbor for determining whether a REIT's property sale constituted a prohibited transaction. Congress further liberalized these rules in 1978 and 1986 to better comport with industry practice and to simplify a REIT's ability to sell long-term investment property without fear of being taxed at a 100% rate.

Because of certain limitations contained in the safe harbor, some of the industry's largest and most successful members cannot use the exception, thus, their ability to responsibly manage their property portfolio is impeded. The most restrictive limitation for these companies is the limitation on the number of sales per year.

The limitation relating to aggregate tax bases penalizes the companies that are the least likely to have engaged in dealer activity. The most successful REITs have typically held their properties the longest, resulting in low adjusted bases due to depreciation or amortization deductions. Thus, the aggregate bases of all the REIT properties will be relatively much lower for purposes of the safe harbor exception than a REIT that routinely turns over its properties every 4 years. Accordingly, the REIT that holds its properties for the longer term is penalized.

Under this bill, any real property asset disposed of as a result of an involuntary conversion (e.g., its destruction, seizure, or condemnation) would not be considered for purposes of determining compliance with the 7 sales per year safe harbor. This change would ensure that a diligent REIT is not removed for the safe harbor as a result of events beyond its control.

In addition, in order not to penalize companies that hold a large number of depreciated properties as long-term investments, this bill would change the alternative aggregate bases exception to use the adjusted bases of properties before reduction for any allowed or allowable depreciation or amortization. This change simply carries out the intent of the safe harbor.

SEC. 307. SHARED APPRECIATION MORTGAGES.

Section 856(j) generally provides that income recognized by a REIT from a shorter holding period is substituted for that of the contract for the purposes of applying the 30% limitation in section 856(c)(4) and the prohibited transaction safe harbor rule of section 857(b)(6)(C)(i). The character of the underlying property as dealer property (i.e., section 1221(l) property) in its holder's hands also is substituted for the shared apprecia-

tion mortgage ("SAM") contract's character for purposes of imposing the prohibited transaction tax.

Congress enacted section 856(j) in 1986, partly in response to the REIT industry's request for statutory authority that a REIT may receive interest based on a borrower's sales profits under limited circumstances. As a practical matter, a REIT cannot control the holding period, character or disposition of property underlying a SAM contract that it does not own. Attempts to provide contractual controls on these items give little assurance to a REIT and merely dilute its competitive position as a lender.

This bill would create a safe harbor that would not penalize a REIT lender for events beyond its control, for example, the borrower's bankruptcy. It also would clarify that shared appreciation mortgages can be based on appreciation in value as well as gain.

SEC. 308. WHOLLY OWNED SUBSIDIARIES.

In 1986, Congress recognized that for purposes of limiting liability, investors commonly hold separate parcels of real estate in separate corporations. Congress therefore enacted section 856(i), under which a REIT "qualified subsidiary" that holds property as a separate corporation is ignored for federal tax purposes. To be a qualified subsidiary, the REIT must own 100% of a corporation's stock "at all times during the period such corporation was in existence."

The requirement in the phrase quoted above has presented some problems not envisioned in 1986. For example, several real estate operating companies operating as regular C corporations have elected REIT status since 1991. As is typical with corporations owning real estate, these electing companies had subsidiaries that owned various real estate properties. The IRS was asked whether the existing subsidiaries could be REIT qualifying subsidiaries because before the parent's REIT election, the subsidiaries were not held by a REIT. The IRS has issued several private letter rulings holding that they can so qualify. However, to reach this result, the IRS used the artificial construct of deeming the subsidiaries as being liquidated as of the REIT election and then reincorporated.² Similar issues arise if a REIT acquires all of the stock of a non-REIT corporation owning real estate, either in a taxable or tax-free transaction.

¹"Section" refers to a section of the Internal Revenue Code of 1986, as amended ("Code"), unless otherwise indicated.

²See P.L.R.s 9527020, 9421034, 9307018, 9205030, 9124041 and 9051043. See also P.L.R. 9409035.

There is no sound policy reason why a non-REIT corporation may not become a qualified subsidiary once a REIT owns all of its stock. Under section 857(a)(3)(B), all pre-REIT E&P of the subsidiary should be distributed to the REIT's shareholders before the end of the REIT's taxable year. In addition, all of the subsidiary's pre-REIT built-in gain should be subject to tax under the normal rules of section 337(d).

This bill provides that any corporation could be a qualified subsidiary if a REIT owns all of its shares, regardless of the prior ownership of its shares. Again, this approach is a logical modification of the 1986 change that should remove an unnecessary barrier to REIT acquisitions.

By Mr. LEAHY (for himself, Mr. JEFFORDS, Mr. GREGG, and Mr. SMITH):

S.J.RES. 38. A joint resolution granting the consent of Congress to the Vermont-New Hampshire Interstate Public Water Supply Compact; to the Committee on the Judiciary.

VERMONT-NEW HAMPSHIRE INTERSTATE PUBLIC WATER SUPPLY COMPACT LEGISLATION

• Mr. LEAHY. Mr. President, today I am pleased to introduce a joint resolution with Senators JEFFORDS, GREGG and SMITH to allow the States of Vermont and New Hampshire to implement an interstate public water supply compact. Both States have enacted this compact through their State legislature, and the affected towns are currently awaiting congressional approval so that they can move forward in their partnership.

Most members are familiar with compacts since they have become common tools to address local problems. Like all compacts, this one is a binding agreement between States established for the purpose of addressing problems shared by those States. This particular compact allows Vermont and New Hampshire to construct and maintain joint public drinking water systems.

According to the compact in this Senate joint resolution, Vermont and New Hampshire municipalities are granted the authority to apply jointly for federal financing and raise appropriate revenue for the creation of drinking water facilities. The agreement also allows for joint management and maintenance to help cut costs while still meeting minimum health standards for drinking water. While public water projects will be carried out according to eight common guidelines stipulated in the joint resolution, this joint resolution does not create a new governmental authority and does not supersede any existing laws or agreements of member states. Finally, the States of Vermont and New Hampshire initiated and drafted this compact cooperatively and enactment was pursued voluntarily by each legislature.

This compact carries on a tradition of cooperative efforts to meet interstate objectives between Vermont and New Hampshire. These two States currently implement the New Hampshire-Vermont interstate sewage and waste disposal facilities compact. In addition, both States are members of the broader New England interstate water pollution control compact and the Connecticut River Valley Flood control compact. On a national level, literally dozens of compacts have been considered and approved by Congress to address water issues. The Vermont-New Hampshire Public Water Supply compact reflects the principles of previous compacts which have effectively addressed interstate concerns.

We are introducing this bill today in order to satisfy article 1, section 10 of the U.S. Constitution. Article 1, section 10 mandates that "No state shall without the consent of Congress enter into agreement or compact with another state or with a foreign power." The courts have established two reasons for Congressional consent. One is to prevent undue injury to the interest of noncompacting states, the other is to protect the Constitutional interests

of the federal government against interference from the states. I believe that this compact serves the interests of the two member states well, does not affect other states, and protects the constitutional interests of the federal government. It is in this spirit that I introduce this joint resolution for the consideration and approval by the U.S. Senate. •

ADDITIONAL COSPONSORS

S. 490

At the request of Mr. GRASSLEY, the names of the Senator from Iowa [Mr. HARKIN] and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of S. 490, a bill to amend the Clean Air Act to exempt agriculture-related facilities from certain permitting requirements, and for other purposes.

S. 505

At the request of Mr. HARKIN, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 505, a bill to direct the Administrator of the Environmental Protection Agency not to act under section 6 of the Toxic Substances Control Act to prohibit the manufacturing, processing, or distribution of certain fishing sinkers or lures.

S. 678

At the request of Mr. AKAKA, the names of the Senator from Virginia [Mr. ROBB] and the Senator from Oregon [Mr. PACKWOOD] were added as cosponsors of S. 678, a bill to provide for the coordination and implementation of a national aquaculture policy for the private sector by the Secretary of Agriculture, to establish an aquaculture development and research program, and for other purposes.

S. 690

At the request of Mr. AKAKA, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 690, a bill to amend the Federal Noxious Weed Act of 1974 and the Terminal Inspection Act to improve the exclusion, eradication, and control of noxious weeds and plants, plant products, plant pests, animals, and other organisms within and into the United States, and for other purposes.

S. 729

At the request of Mr. LOTT, the name of the Senator from Louisiana [Mr. BREAU] was added as a cosponsor of S. 729, a bill to provide off-budget treatment for the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund, and for other purposes.

S. 743

At the request of Mrs. HUTCHISON, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 743, a bill to amend the Internal Revenue Code of 1986 to provide a tax credit for investment necessary to revitalize communities within the United States, and for other purposes.

S. 758

At the request of Mr. HATCH, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 758, a bill to amend the Internal Revenue Code of 1986 to provide for S corporation reform, and for other purposes.

S. 830

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 830, a bill to amend title 18, United States Code, with respect to fraud and false statements.

S. 949

At the request of Mr. GRAHAM, the names of the Senator from Florida [Mr. MACK] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of S. 949, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the death of George Washington.

S. 969

At the request of Mr. BRADLEY, the names of the Senator from Illinois [Ms. MOSELEY-BRAUN] and the Senator from Nevada [Mr. BRYAN] were added as cosponsors of S. 969, a bill to require that health plans provide coverage for a minimum hospital stay for a mother and child following the birth of the child, and for other purposes.

S. 978

At the request of Mrs. HUTCHISON, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 978, a bill to facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws, to clarify the inapplicability of antitrust laws to charitable gift annuities, and for other purposes.

S. 1000

At the request of Mr. BURNS, the names of the Senator from Alaska [Mr. STEVENS], the Senator from Arizona [Mr. KYL], the Senator from Georgia [Mr. COVERDELL], and the Senator from Louisiana [Mr. JOHNSTON] were added as cosponsors of S. 1000, a bill to amend the Internal Revenue Code of 1986 to provide that the depreciation rules which apply for regular tax purposes shall also apply for alternative minimum tax purposes, to allow a portion of the tentative minimum tax to be offset by the minimum tax credit, and for other purposes.

At the request of Mr. HELMS, his name was added as a cosponsor of S. 1000, *supra*.

S. 1028

At the request of Mrs. KASSEBAUM, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 1028, a bill to provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.