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Senate

The Senate met at 9:30 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious Father, make us maximum for the demanding responsibilities and relationships of this day. We say with the Psalmist, ''The Lord is my strength and my shield; my heart trusted in Him, and I am helped; therefore, my heart greatly rejoices.''—(Psalm 28:7).

Lord, our day is filled with challenges and decisions that will test our own knowledge and experience. We dare not only trust in our own understanding. In the quiet of this moment fill our inner wells with Your spirit. Our deepest desire is to live today for Your glory and by Your grace.

We praise You that it is Your desire to give good gifts to those who ask You. You give strength and courage when we seek You above anything else. You guide the humble and teach them Your way. We open our minds to receive Your inspiration. Astound us with new insight and fresh ideas we would not conceive without Your blessing. When we truly seek You and really desire Your will, You do guide us in what to ask. When we ask what You guide, You provide. Through our Lord and Savior. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT, is recognized.

Mr. LOTT. Thank you, Mr. President.

SCHEDULE

Mr. LOTT. Mr. President, today there will be a period for morning business until the hour of 11 a.m. Following morning business, at 11 the Senate will resume consideration of S. 39, the Magnuson fisheries bill. At that time there will be 4 minutes of debate time remaining on the Hutchison amendment. Following that debate time, the Senate will proceed to two consecutive votes, first in relation to the Hutchison amendment, if necessary, to be followed by a vote on passage of S. 39, as amended.

I want to say again how much I appreciate the good work that has been done on this legislation. This is very important conservation legislation that will help protect our fisheries and at the same time make them available for commercial fishermen and recreational fishermen. A lot of good work has been done by the Senator from Alaska, Senator STEVENS, and the Senators from Washington, and the Senator from Massachusetts, Senator KERRY. Senator HUTCHISON is very much involved. I think they have done really good work. I am pleased we are going to be able to complete this legislation this morning.

Following disposition of those votes, the Senate will then be asked to turn to the consideration of any of the following items—the maritime bill, H.R. 1350, the pipeline safety bill, and any available appropriations bills or conference reports. In the case of appropriations bills, if we could work out some sort of agreement as to how to proceed; otherwise, we may have a conference report come over from the House, perhaps today, the VA–HUD appropriations bill. I know they were trying to wrap it up last night or early this morning. The House hopes to be able to vote on that this afternoon, I believe.

Therefore, votes can be expected throughout today's session on these items or others that may be cleared. I will continue to make an effort to notify Members as early in the evening as possible as to what time we are going to finish up or whether or not there will be any additional votes, as we did at 6 o'clock last night when we notified Members there would be debate but no further votes. We will try to do that again tonight.

MEASURE PLACED ON THE CALENDAR—SENATE JOINT RESOLUTION 61

Mr. LOTT. Mr. President, I understand there is a resolution at the desk that is due for its second reading.

The PRESIDING OFFICER (Mr. SMITH). The clerk will read the resolution.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 61) granting the consent of Congress to the Emergency Management Assistance Compact.

Mr. LOTT. Mr. President, I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. The resolution will be placed on the Calendar of General Orders.

Mr. LOTT. I yield the floor.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 11 a.m.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair.

Mr. President, I ask unanimous consent to speak in morning business for 10 minutes.

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

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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SUSTAINABLE FISHERIES ACT

Mr. MURKOWSKI. Mr. President, I rise to support the measure, S. 39, which is a bill to reauthorize and revitalize the Fisheries Conservation and Management Act, also known as the Magnuson Act. This is without a doubt one of the most important conservation bills that has come before this Congress, along with the nuclear waste bill.

The text of the bill before us, which was discussed at some length last night, has changed a good deal since the bill that I had the honor to cosponsor along with Senator STEVENS and Senator KERRY, in the final days of the 103d Congress. And almost 2 years since that day, Senator STEVENS and Senator KERRY have led, I think, a remarkable, bipartisan effort to resolve other Members' problems with the bill as originally introduced. I would like to commend both of them. I would like to also recognize the cooperation of Senator MURRAY, Senator GORTON, of course our leader, Senator LOTT, and many others who worked to bring this about.

I cannot say I am completely satisfied with all the changes that have been necessary to accommodate the interests of various Members but that how the process of legislating works. However, I can say that I have watched and participated in the evolution of this legislation with very close attention. I am confident the managers have made every possible effort to make those accommodations without violating the intent of and the integrity of the bill.

I also want to recognize the tremendous efforts that have been made by others, including Bill Woolf of my staff, and the staffs of Senator STEVENS and others, to bring this to fulfillment.

The fishing industry itself, the industry groups, the environmental community, and others who have participated in this bill to this point also deserve recognition. For without that cooperative effort, we would not be where we are today, ready to culminate this effort in a floor vote.

My efforts in connection with this bill have largely focused on certain issues that have recently exploded in national prominence: fisheries bycatch and discard—in other words, the incidental catch that is picked up as the preferred species is pursued, and the disposed of by discarding it over the side of the fishing vessel.

My first association with that came as a consequence of being appointed by Senator Dole to represent the U.S. Senate at the United Nations. I learned of a report by the Food and Agriculture Organization of the United Nations that indicated that a world total fishery landing figures of about 83 million metric tons did not include the 27 million metric tons of incidental catch discarded overboard. The grand total of fish caught, I learned, could easily exceed the sustainable harvest level of the world's oceans by as much as 10 million metric tons.

Such incidental catch, Mr. President, is simply thrown over the side, back into the ocean. And it is not thrown over alive, it is thrown over dead. While it makes food for other fish, it is still an excessive waste. So what we are looking at is a total catch of about 110 million metric tons of which we discard 27 million metric tons and retain and consume 83 million metric tons.

The scientists tell us the ocean is capable of producing—on a renewable basis—about 100 million metric tons. Well, one can quickly see the possibility that we are overfishing the oceans of the world by about 10 million metric tons.

If we could just address the discard, to reduce that tonnage, we could get this thing in balance. That was of particular interest and a role that I played. I introduced the first bill to address bycatch and discard back in 1993. Today, almost 3 years later, I am pleased to say that we are finally on the verge of taking action. The bill before us follows the lead of my earlier efforts by establishing a new national standard calling for bycatch to be avoided, where possible, and where it cannot be avoided for steps to minimize the resulting fisheries mortalities. We focused in on this issue. This will put us on the road to reducing and, hopefully, stopping the shameful waste that is currently occurring in many fisheries.

Following this principle, my good friend, Senator STEVENS, has also authored a separate section of the bill for Alaska only, which calls for annual bycatch reductions in the Gulf of Alaska and in the Bering Sea off Alaska.

Among other provisions, this bill will improve fisheries conservation and utilization, on which so many individuals in our coastal communities depend. It will for the first time address the problem of overfishing by requiring corrective action to be taken when a fishery is or is in danger of becoming overfished. It will also strengthen the fisheries management process by improving the way that regional fishery councils function, improve the way fisheries research is conducted and make many other changes of great importance and urgent need.

Mr. President, two issues which have been most contentious during this reauthorization process are the prospects for a new type of fishery limitation called an individual fishing quota program, and for a community development quota program intended to pass through some of the benefits from fisheries in the Bering Sea to disadvantaged, largely small native communities in that area.

In Alaska, and elsewhere, there has been considerable debate on redesigning fishery management using an individual fishing quota system. I will not attempt to get into the level of detail necessary to explain how this would differ from the existing system of management. Suffice it to say that supporters believe this would solve most of today's problems of overcapitalized fisheries with the least Government interference, and opponents claim it would not only be costly to the Government but hugely unfair to those who are excluded and to communities dependent on fishing.

The bill before us represents a compromise between these two positions. It contains a moratorium on new individual fishing quota systems, and a comprehensive study of their potential—that is both good and bad—and of their actual impacts in those cases where they have already been used. I believe this is a compromise worthy of our support as a Senate body.

In the case of the community development program proposal, we also see the results of sensible, needed compromise. The bill before us today provides a mechanism to assign some of the volume of fish coming from Bering Sea fisheries to the task of helping provide a stable, permanent economic base for some of the poorest, most disadvantaged communities in the country. This is a very worthy goal, and it is also one that I believe deserves the support of my colleagues.

Finally, there are far too many other specifics in this bill to recount them all, or to provide my views on each and every issue the bill addresses. –Instead, let me close with this: If there is anything on which we can agree, it is the need for productive, healthy oceans. That is the goal of this bill, and this bill is Congress' farthest ever reach toward reaching it. Let's not waste the opportunity.

Finally, let me note that my good friend and colleague, the senior Senator, Senator STEVENS, worked with the late Senator Magnuson on the original formulation of this bill. I personally feel that this legislation should be referred to as the Magnuson-Stevens legislation, but recognizing the lateness of the date for such a change, I will reserve that name for my own thoughts about it.

I do want to congratulate my senior colleague for his tireless efforts, and that of his staff, as well as many other Senators, to bring this bill before the Senate today. Needless to say, I urge its successful passage.

I yield the floor.

Mr. CRAIG. Mr. President, we are now in morning business?

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. Mr. President, I will speak no more than 5 minutes, but I ask unanimous consent Senator KENNEDY follow me for up to 15 minutes.

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

(The remarks of Mr. CRAIG pertaining to the introduction of S. 2092 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

IMMIGRATION

Mr. KENNEDY. Mr. President, Republicans in Congress say they want to work out an immigration bill that can become law. Yet, the only negotiations now going on are between Republicans and Republicans. The struggling Dole campaign is desperately trying to keep the poison pill Gallegly amendment in the bill, over the objections of many Republicans who want to deal responsibly with illegal immigration. Dr. Dole is prescribing a poison pill, but Congress doesn't have to swallow it.

The record is clear. Members of both parties have worked together effectively and intensively for the past 2 years to develop bipartisan legislation to address the crisis in illegal immigration, and it is irresponsible for Bob Dole to sabotage the possibility of agreement.

This bill had its origin in the work of the bipartisan Jordan commission, which conducted extensive hearings and produced a comprehensive set of recommendations in September 1994.

Senator SIMPSON then conducted extensive Judiciary Committee hearings in 1995 on needed enforcement at the border, and on measures to deny jobs to illegal immigrants and prevent document fraud. The Immigration Subcommittee held 3 days of markup in June 1995 and again in November.

The full Judiciary Committee considered almost 150 amendments during 8 days in February and March 1996.

The full Senate adopted by the bill by an overwhelming vote of 97 to 3 in May, after almost 2 weeks of intense debate.

So we know how to work together to develop responsible legislation to combat illegal immigration. But instead of working together in this final stage, Republicans Tuesday canceled our immigration meeting at the last minute.

So far, Republicans are still fighting among themselves because of Bob Dole's irresponsible 11th hour intervention to salvage his campaign by sinking the bill, so that President Clinton will not have this bill to sign.

We need a bill that is tough at the border and tough in the workplace, not tough on children. We need a bill that tackles the problem of document fraud head on, so that illegal immigrants can no longer steal American jobs by using counterfeit documents to pose as legal workers. We need a bill that continues to protect Americans and legal immigrants from job discrimination. We need a bill that preserves the ability of American citizens to bring close family members to the United States.

We need a bill that protects all refugees from exclusion, not just those from Cuba. We need a bill that treats legal immigrants fairly under the welfare laws.

The current Republican bill winks at unscrupulous employers, and then lowers the boom on innocent school children through the Gallegly amendment.

The Nation's police officers and educators vigorously oppose the Gallegly amendment, and for good reason. As Chief of Police Jerry Sanders of San Diego wrote in his June 25 letter to Congress:

> If the proposed legislation becomes law, thousands of children may be turned away from school. Many of these children will be drawn to trouble or victimized by it, and I believe that both gang activity and juvenile crime will increase. I hope you will take these factors into consideration, and I encourage you to oppose the legislation.

Expelling children from school and dumping them on the street is no solution to the problem of illegal immigration, and is not even a partial solution. It will only make other problems worse. The cost to America in crime and other social costs will be immense.

A UCLA study found that each student kicked out of school will cost the Los Angeles government $6,100 in police costs, judicial and penal costs, and health, welfare, and employment services.

Teenage pregnancy rates rise dramatically when students leave school. The pregnancy rate for teenagers in school is 8 percent, compared with 41 percent for those who are out of school. The result is huge costs in emergency medical services, intensive care for babies born prematurely to teenage mothers, and welfare costs for the children.

Every major study of illegal immigration reaches the same conclusion. The reason illegal immigrants come to the United States is for jobs. Jobs are the overwhelming magnet. They don't come so that their children can attend U.S. schools.

That was the conclusion of the 1976 report of the Ford administration's Domestic Council Committee on Illegal Immigration. That was the conclusion of the 1981 report of Select Commission on Immigration and Refugee Policy chaired by Father Theodore Hesburgh. That was the conclusion of the Bush administration survey of illegal immigrants in 1992. That was the conclusion of the Barbara Jordan commission in 1994. That was the conclusion this year of a study by the Center for Population Research at the National Institutes of Health, which concluded that ''the estimated value of welfare, medical, and educational benefits that migrants could expect to receive in the United States had no clear relationship to the likehood of migrating.''

Expelling children from school won't prevent illegal immigration. Some 80 percent of the children have brothers or sisters or parents who are legally in the United States or who may even be citizens. These families have roots here, and the Gallegly amendment won't make them leave.

Some versions of the Gallegly amendment have proposed that States charge tuition, rather than expelling children from school. The average cost of public school is $5,600 per child per year. Charging tuition is the same as kicking children out of school. Their parents can't afford tuition, even if they were willing to identify themselves by writing a check.

The Gallegly amendment is only the beginning of the problems with the current Republican bill. Republicans have kowtowed to special business interests and eliminated needed provisions to protect American jobs from illegal workers. In fact, for American workers under the Republican bill, it is three strikes and you're out.

First, the bill denies the Department of Labor the additional inspectors needed to make sure employers obey the law. The Senate bill added 350 more inspectors, a 50-percent increase. The House bill contained a similar increase when it was approved by the House Judiciary Committee. But under pressure from business lobbyists, the House Republican leadership quietly stripped that provision from the bill, with no vote and with no debate.

No one can say to the American people with a straight face that this bill combats illegal immigration, when it gives employers a slap on the wrist if they hire illegal immigrant workers.

Second, this bill fails to deal adequately with the serious problem of document fraud. Too many illegal workers obtain jobs by using fake documents to pass as legal immigrants or even U.S. citizens.

What's needed is more secure forms of birth certificates and other documents widely used to prove citizenship and identification. Birth certificates in particular are breeder documents. A fake birth certificate breeds a host of other fraud. With a fake birth certificate, an illegal immigrant can get a Social Security card—and often a passport, too. These fake documents enable them to get jobs illegally, and get welfare benefits illegally, too. Yet the Republican bill, under pressure from unscrupulous employers, doesn't crack down the way it should.

Third, this Republican bill gives employers who discriminate against Hispanic-American workers and Asian-American workers a green light to continue that discrimination. The bill sets an impossibly high standard for proving that employers put Hispanics and Asians through more hoops to get jobs than other American workers. This kind of job discrimination is flagrant and wrong, and Congress should not let employers continue to get away with it.

The Republican bill also puts an unfair dollar sign on family reunification. American citizens who want to bring in family members—even wives or husbands or young children—must meet excessive income standards. It doesn't matter if the family members they are sponsoring have a job or have assets of their own. These citizens are out of luck and out of hope for reuniting their families in America, and Congress should reject this harsh antifamily standard.

Finally, the Republican bill hurts refugees, makes the recent welfare reforms even worse, and gratuitously endangers the environment. All of these

issues can be satisfactorily resolved in a fair bipartisan conference. But they cannot be resolved if Republicans continue to quarrel among themselves and let the Dole campaign dictate steps that have nothing to do with reasonable immigration legislation. Bob Dole may not want action by Congress on illegal immigration but the country does, and the vast majority of Americans and Congress do.

I also ask unanimous consent to have printed in the RECORD the excellent editorial in the New York Times today.

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

A DANGEROUS IMMIGRATION BILL

As the White House and members of Congress make final decisions this week about a severely flawed immigration bill, they seem more concerned with protecting their political interests than the national interest. The bill should be killed.

Debate over the bill has concentrated on whether it should contain a punitive amendment that would close school doors to illegal-immigrant children. But even without that provision, it is filled with measures that would harm American workers and legal immigrants, and deny basic legal protections to all kinds of immigrants. At the same time, the bill contains no serious steps to prevent illegal immigrants from taking American jobs.

Its most dangerous provisions would block Federal courts from reviewing many Immigration and Naturalization Service actions. This would remove the only meaningful check on the I.N.S., an agency with a history of abuse. Under the bill, every court short of the Supreme Court would be effectively stripped of the power to issue injunctions against the I.N.S. when its decisions may violate the law or the Constitution.

Injunctions have proven the only way to correct system-wide illegalities. A court injunction, for instance, forced the I.N.S. to drop its discriminatory policy of denying Haitian refugees the chance to seek political asylum.

On an individual level, legal immigrants convicted of minor crimes would be deported with no judicial review. If they apply for naturalization, they would be deported for such crimes committed in the past. The I.N.S. would gain the power to pick up people it believes are illegal aliens anywhere, and deport them without a court review if they have been here for less than two years.

The bill would also diminish America's tradition of providing asylum to the persecuted. Illegal immigrants entering the country, who may not speak English or be familiar with American law, would be summarily deported if they do not immediately request asylum or express fear of persecution. Those who do would have to prove that their fear was credible—a tougher standard than is internationally accepted—to an I.N.S. official on the spot, with no right to an interpreter or attorney.

Scam artists with concocted stories would be more likely to pass the test than the genuinely persecuted, who are often afraid of authority and so traumatized they cannot recount their experiences. Applicants would have a week to appeal to a Justice Department administrative judge but no access to real courts before deportation.

The bill would also go further than the recently adopted welfare law in attacking legal immigrants. Under the immigration bill they could be deported for using almost any form of public assistance for a year, including English classes. It would make family reunification more difficult by requiring high incomes for sponsors of new immigrants. The bill would also require workers who claim job discrimination to prove that an employer intended to discriminate, which is nearly impossible.

A bill that grants so many unrestricted powers to the Government should alarm Republicans as well as Democrats. This is not an immigration bill but an immigrant-bashing bill. It deserves a quick demise.

Mr. KENNEDY. I will read the lead paragraph and the final paragraph.

As the White House and Members of Congress make final decisions this week about a severely flawed immigration bill, they seem more concerned with protecting their political interests than the national interest. The bill should be killed.

A bill that grants so much unrestricted powers to the Government should alarm Republicans as well as Democrats. This is not an immigration bill but an immigrant-bashing bill. It deserves a quick demise.

I yield the remainder of my time. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. FRAHM). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator is recognized for 30 minutes.

Mr. CONRAD. I thank the Chair.

THE DOLE ECONOMIC PLAN—IT DOESN'T ADD UP

Mr. CONRAD. Madam President, we are now about 7 weeks away from critically important decisions about our country's future. We are 7 weeks away from the Presidential election—7 weeks away from decisions on who will represent the United States in the Halls of Congress.

This election is becoming a debate on the economic policy that will guide this country's future. There can be no more important debate. For a long time the conduct of economic policy in this country has been central to the question of who will guide our country in terms of political leadership.

Madam President, once before we had a Presidential candidate who told the American people that we could cut taxes dramatically, we could increase defense spending while holding large parts of the Federal budget harmless, and that somehow it would all add up. We took that gamble once before. It didn't work. It didn't add up.

We can just go back to 1981, and administration of Ronald Reagan, when he told the American people we could have massive tax cuts, we could increase defense spending, large parts of the Federal budget would not be touched, and it would all add up. We can see what happened.

President Reagan inherited a deficit of about $80 billion, but it quickly exploded to $200 billion a year. Then we had years of some small improvement, and years when the deficit jumped back up. But the deficit was averaging over $200 billion. At the end of his term the deficit declined slightly.

Then President Bush came into office. He inherited a deficit of $153 billion, and it promptly skyrocketed to $290 billion in 1992. President Clinton came into office at that point, and every year since the unified budget deficit has declined. Four years in a row the unified deficit has gone down. It has now been reduced by 60 percent since 1992.

So that is the record of the last three administrations with respect to deficit reduction.

Madam President, this chart shows that, even though we have made significant progress on reducing the budget deficit, if we do not keep pressure on Federal spending and if we do not keep our eye on the need for deficit reduction, very quickly we are going to see the deficit rise again. In fact, if no changes are made, the deficit from 1997 to 2006 is going to start rising dramatically. This country faces a demographic time bomb. It is called the baby-boom generation. When those baby boomers start to retire in very short order they are going to double the number of people who are eligible for our basic Federal programs—Social Security, Medicare. And that is going to put enormous pressure on the Federal budget.

That is why it is critically important that we continue to keep our eye on deficit reduction. That means we have to do more, even though without question much has been accomplished under the leadership of President Clinton. The deficit has come down dramatically. But even with all the progress that has been made, much more needs to be done or this problem once more will get away from us.

This next chart shows in a very clear way the challenge that we face over the next 6 years. This chart shows what the spending will be under current law over the next 6 years—$11.3 trillion. That is what will happen if no changes are made. And on the revenue side, if no changes are made, over the next 6 years we will get $9.9 trillion in Federal revenue.

So we can see very clearly that we are going to be adding more than $1.4 trillion to the national debt over the next 6 years if we do nothing.

What does Senator Dole propose? Senator Dole suggests, looking at these numbers—$11.3 trillion of spending, $9.9 trillion of revenue—that the first thing we ought to do is cut our revenue. He says the first thing we ought to do is, since we are going to have $9.9 trillion of revenue, let us cut that $550 billion. Let us dig the hole deeper before we start filling it in. Madam President, it does not take any great mathematician to figure out, if we are going to add more than $1.4 trillion to the debt, if we do not make any changes, and the first change Senator Dole wants to make is to cut our revenue $550 billion,

that instead of adding to the debt by more than $1.4 trillion we are going to add more than $2 trillion to the debt under the Dole plan.

Madam President, this is important for people to understand. Obviously, under the Dole plan we would add dramatically to the debt if we didn't do something. Senator Dole has said that his plan is to balance the budget by the year 2002.

Obviously, you would be adding to the debt held by the public until the point in 2002 when you finally reach unified balance. And so the debt would be increasing during this period, all the while we are moving toward unified balance in 2002, according to his statement about his plan.

So the question arises, how much do you need to cut the deficit in order to balance the unified budget by the year 2002? And we know the answers to those questions. We know that under the 1997 budget resolution, Republicans needed to cut the deficit by $584 billion to balance in the year 2002 the unified budget of the United States.

The unified budget is a big word. It is very simple what it means. It means all of the revenues and all of the expenditures of the Federal Government put into the same pot. That includes all of the Social Security surpluses that we will run over the next 6 years.

We need $584 billion of spending cuts in order to balance the unified budget over the next 6 years. But Senator Dole digs the hole deeper before we start filling it in. He wants $550 billion of tax cuts that reduces our revenue. So instead of needing $584 billion of spending cuts, we now need $1.1 trillion of spending cuts. Of course, as I said before, that is to balance the so-called unified budget that counts all of the Social Security surpluses. And that is not really balancing the budget.

If we were going to honestly balance the budget, we could not use those Social Security surpluses. So if one does the appropriate calculation, you can see we would need the $584 billion of spending cuts necessary to balance the unified budget, then we have to cover Senator Dole's $550 billion of tax cuts, and then we would need another $525 billion to stop using the Social Security surpluses, because under the Dole plan every penny of Social Security surplus between now and the year 2002 is going into the pot and is going to be used.

I call this a major problem with the Dole plan. Remember what we said here. To balance, counting his tax cuts, we would need $1.1 trillion of spending cuts, and if we were going to honestly balance the budget, not use the Social Security surpluses, we would need another $525 billion of cuts for a total of $1.6 trillion. So if we want to balance without counting Social Security surpluses, counting Senator Dole's tax cuts, you would need $1.6 trillion of cuts.

What has Senator Dole offered to us? What has he put on the table? Here are the numbers that Senator Dole has offered. He said he will start with the 1997 GOP budget, that cuts discretionary spending $300 billion. By the way, that is education, that is law enforcement, that is highways, that is bridges. He is going to cut that $302 billion for starters. Medicare, $158 billion; Medicaid, $72 billion; other mandatory programs and interest, $174 billion, for a total of $706 billion.

But remember, we said if you are going to balance this thing without counting Social Security surpluses, you need $1.6 trillion—$1.6 trillion. If you use the Social Security surpluses, you need $1.1 trillion. So he is not even close here. So he has suggested another $217 billion of cuts. By the way, he has not told anybody the specifics of these cuts. He has not told us where they are coming from. He has not told us what program he is going to cut to achieve this additional $200 billion. That will be, I guess, a secret plan. Maybe he will tell us after the election where that money is coming. But even with that, he has got total cuts of $923 billion. Remember, if we are going to balance and not count Social Security surpluses, we need $1.6 trillion. He is nowhere close. To balance using Social Security surpluses you need $1.1 trillion. He is not even close to that.

Madam President, this is what is wrong with the Dole economic plan. It does not add up. It does not add up. The spending cuts are not enough to balance this budget, even on a unified basis. They are not enough to balance it even if he uses all $525 billion of the Social Security surplus.

Now, why hasn't Senator Dole told us more specifically where the money is coming? I think the reason is that when you start getting into the specifics, it does not make much sense to the American people.

Senator Dole is looking at the spending. This chart shows the Federal spending for the next 6 years. We are going to spend $2 trillion on interest on the debt. We are going to spend $2.1 trillion on Social Security; $1.6 trillion on Medicare; defense, $1.7 trillion; $800 billion on Medicaid; other entitlements, $1.4 trillion.

What are those other entitlements? Well, those are veterans' benefits; those are Federal retirement benefits; those are food stamp programs. That is the kind of thing we are talking about—child nutrition—in this category of spending. Then there is what we call nondefense discretionary. Nondefense discretionary, that is education, environmental enforcement, parks, roads, bridges, law enforcement.

However, Senator Dole has said we are not going to touch Social Security. So 19 percent of our spending is off the table. He has said we are not going to cut defense. That is 15 percent. In fact, he said we are going to increase defense spending. He says, of course, we cannot cut interest payments; that we legally owe. We cannot cut that.

In just those three areas, he has taken half of the spending off the table, but he has not stopped there. He said, well, we are not going to cut veterans, not going to cut veterans. He said we are just going to cut Medicare by about 10 percent—$160 billion. And he says on nondefense discretionary, this is the one that is going to have to take the big hit—the big hit.

Remember, he has about $900 billion of cuts. Almost $500 billion is going to have to come out of nondefense discretionary just on the cuts he has identified. Remember, the cuts he has identified do not do the job. But he is going to take $500 billion out of discretionary spending of $1.7 trillion over the next 6 years. So he is going to have to cut 30 percent. Education is going to have to be cut 30 percent; environmental enforcement is going to have to be cut 30 percent; parks, roads, airports, bridges. All of it is going to have to be cut 30 percent, and it still does not add up. It still does not balance. And you know what? Law enforcement is going to have to be cut 30 percent under the Dole plan. Those are the cuts he is going to have to make—$500 billion out of this little chunk of Federal spending. This is the place he has targeted. This is the place he is going to take $500 billion out of the $1.7 trillion we are scheduled to spend.

So, this is the place that is really getting targeted. Because for all the rest of the budget he is just going to cut a little bit, or, he has said, he is not going to cut at all, or, he has said, he is going to increase. Madam President, there is no wonder this Dole plan does not add up. No wonder it does not add up. Because this is where the money is going and he said huge chunks of it are off the table.

Here is where the money is going to come from, over the next 6 years: Individual income taxes, about half of our income, 46 percent; corporate taxes, 10 percent; Social Security, 26 percent; and other revenue, 18 percent.

But let me just show kind of an interesting thing. Here is the revenue from Social Security. Here is the spending for Social Security. You notice something very interesting here—very interesting. They are not the same size. These are all on the same scale but there is a difference. Here is the revenue from Social Security: $2.6 trillion over the next 6 years. And here is the spending: $2.1 trillion over the next 6 years. We have way more revenue from Social Security than we have spending on Social Security. We have a difference of $500 billion over the next 6 years, $500 billion more in revenue for Social Security than we have expense for Social Security. Where is it going? Where is it going? Because I have already showed you that we have more expenditures planned over the next 6 years than we have revenue.

Madam President, I think we can see the $500 billion of Social Security surpluses that Senator Dole is going to use in his plan. Again, I remind everyone who is listening, even with using that $500 billion of Social Security surplus, every penny of it, his plan still

does not balance, it still does not add up. But he is using it, $525 billion. It is interesting, that $525 billion of Social Security surpluses that are going to be used over the next 6 years is very close to the $551 billion of tax cuts that he has proposed. What earthly sense does this make? What earthly sense does this make? To take $525 billion of Social Security surpluses that we get from payroll taxes, that we ought to be saving for the time the baby boom generation retires, and turn around and give it out in tax cuts, when we are not balancing the budget in any true sense over the next 6 years with this economic plan?

You talk about a plan that is spending the money today and borrowing from the future; that is the Dole economic plan. It does not add up. It does not make sense. It digs a very deep hole for the economic future of our country.

Madam President, I think one reason Senator Dole has been reluctant to be more specific is because, when you start being specific, you see how clearly the Dole plan does not add up. Let us just look at the education cuts that would be necessary to finance the Dole tax cut. Remember, the GOP budget last year that was vetoed by the President and rejected by the American people had tax cuts of $245 billion. On education, they cut $42 billion. I think that begs the question: What happens when you have the Dole plan that has, instead of $245 billion of tax cuts, $550 billion of tax cuts? How much are you going to have to cut education then? How much is education going to have to be cut to accommodate a $550 billion tax cut?

The same can be asked of Medicare. Medicare—remember, the GOP budget last year had tax cuts of $245 billion; the Medicare cuts were $270 billion. Now Dole says he is going to have a $550 billion tax cut. How much would he have to cut Medicare in order to accommodate this plan?

This is where Dole has not been specific. Because, when you get into the specifics, very quickly anybody who has been involved in these budgets knows it does not add up.

Medicaid cuts necessary to finance the Dole tax cut? Last year, again, GOP budget vetoed by the President, rejected by the American people: $245 billion in tax cuts, Medicaid cuts were $163 billion. Now he says we are going to have a $550 billion tax cut. How big would the Medicaid cuts be? How big would they have to be in order to finance this plan?

Domestic discretionary spending: education, law enforcement, roads, highways, bridges. Last year, the GOP plan, $245 billion of tax cuts, domestic discretionary cuts $440 billion. With a $550 billion tax cut, how big would the domestic discretionary cuts have to be in order to finance the Dole plan? It does not add up.

Madam President, I hope I have been able to communicate that the Dole plan does not add up. There is no way there are enough spending cuts in order to balance the budget, even on a unified basis counting the Social Security surpluses, and certainly nowhere near enough to balance it without using every penny of the Social Security surplus.

In addition to that, we have to look at the Dole tax cut and who benefits. This chart shows the various income categories, who the big beneficiaries are. For example, for those who earn less than $10,000 a year, they get a $5 tax cut, on average; for those who are in the $10,000 to $20,000 category, they get $120, on average. For those who are in the $20,000 to $30,000 category, they get $400, on average. If you start adding these up, zero to $10,000, that is 18 percent of the American people; $10,000 to $20,000 is 21 percent; $20,000 to $30,000 is another 16 percent of the American people. If you add that up, it is 55 percent of the American people get less than $400 a year, on average, from this plan.

Look at what happens to those earning over $200,000 a year, the top 1 percent of people in this country. They would get an average benefit of $25,000. Does this strike you as fair? Does that strike you as a balanced plan? I do not think so. I do not think it is fair when the top 1 percent get a $25,000 reduction on average and the 55 percent of the American people who are below $30,000 a year in income get from $5 to $400 a year. That is not a fair plan.

One of the things that is perhaps most shocking, as you start to really look into the details of this Dole plan that has $500 tax credit for children, what you find out is 40 percent of the children in America do not qualify, they do not get anything. They do not get a $500 credit, they do not get a $400 credit, they do not get anything. The reason is that their families do not have enough income to be eligible. Because of other parts of the Dole plan, his reductions in the earned-income tax credit, many families with child-care costs are not going to get a cut; they are going to get an increase in their taxes.

Thousands, millions of people in this country are not going to get a tax reduction under the Dole plan, they are going to get a tax increase under the Dole plan, because a child care credit doesn't work for you unless you reached a certain income level, and he is cutting the earned income tax credit.

Let's look at two examples. A two-parent family, four people in the family with an income of $21,500 and $400 a month in child care costs, under current law they pay $172 in taxes. Under the Dole plan, they get a whopping increase. They pay $609 in taxes. No tax cut under the Dole plan for these folks. They are getting a big tax increase. Interesting, isn't it?

If you are at the top, you are going to get the gravy under the Dole plan. If you are one of the fortunate few in America, the top 1 percent that earns over $200,000 a year, you are going to get a $25,000 reduction on average. But if you are one of these folks earning $21,000 a year, have children, have child care costs, under the Dole plan you are not going to get a tax cut, you are going to get a tax increase.

Under another example, a two-parent family with two children with income of $25,000 and $400 a month in child care costs, under current law, they pay $1,176. Under the Dole plan, they would pay $1,734. Not a reduction, not a cut, but a big tax increase.

Madam President, this Dole plan doesn't add up any way you cut it. It doesn't balance the budget. It doesn't have enough cuts to balance, even if he uses all the Social Security surpluses, and goodness knows, we ought not to use Social Security surpluses to balance the budget. That is just mortgaging the future.

Interestingly enough, Bob Dole has always himself rejected the so-called supply-side economic theory. The supply-side theory is the one that was in vogue in the 1980's. It is the one that led us into this swamp of debt and deficits in the first place.

Senator Dole, just last year, said this about supply-side economics. This is Senator Dole. He said:

> What I could never understand is why, if you just cut taxes, you'd have this big, big revenue increase. You know, more jobs, more opportunity. And you didn't have to make hard choices about spending. That was the philosophy back in the eighties, particularly with Newt and the House Republicans. Don't make any painful decisions. Just cut taxes. In the eighties, we said, ''Everything's going to be fine.'' Well, it wasn't.

That is Senator Bob Dole 1 year ago. Bob Dole was right a year ago when he said this. Bob Dole was exactly right. And I return to where I started. This demonstrates how right he was last year and how wrong he is this year. Because now Bob Dole, finding himself 20 points behind in the polls, all of a sudden is a born-again supply-side economist, believing in the tooth fairy, that somehow, somewhere the money will emerge.

Madam President, we tried that once before. We tried it back in 1981, and we know what the results were: the deficit skyrocketed—skyrocketed. It wasn't until President Clinton put in place an economic plan in 1993—an economic plan, by the way, that Senator Dole said would crater the economy—that we saw 4 years in a row of declining deficits, that we saw the country headed in the direction of a stronger economy, that we finally saw America getting back on the right course with dramatic deficit reduction, renewed economic growth, the creation of over 10 million jobs.

Madam President, we ought not to take the riverboat gamble of supply-side economics. That way lies a future of debt, deficits and decline.

I thank the Chair and yield the floor.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Madam President, I understand that Senator HEFLIN has the floor for the next 10 minutes. I ask unanimous consent that I be able to speak as in morning business just for 1 minute.

Mr. HEFLIN. I have no objection.

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

Mr. BURNS. Madam President, we have seen a lot of charts and everything. Here, again, we are scaring people. We are absolutely scaring people about things that, No. 1, President Clinton inherited a trend that was already started; that we know that tax cuts put a spur in the economy and more revenues come into the Treasury.

I want to put everybody on notice about these scare things—what is going to happen, what might happen—that Americans don't back up very quickly; we don't scare very easy. We know we have a problem, and it will take America to solve it. And this last illustration is absolutely bogus.

So I just want the American people to put them on notice that we don't scare too easy. We didn't build this country to the pinnacle we have today by backing up, going in reverse in this country. We are not prepared to do that.

I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

TRIBUTE TO THE RT. HON. MICHAEL JOPLING, D.L., M.P.

Mr. HEFLIN. Madam President, several of us in the U.S. Senate, as well as some in the House of Representatives, have had the pleasure over the years of knowing and working with the Right Honorable Michael Jopling, a British Member of Parliament and former Minister of Agriculture under Prime Minister Margaret Thatcher. He has been a familiar and most welcome participant at both the North Atlantic Assembly sessions and at the British-American Interparliamentary Group meetings in which some of us have participated. He is well respected by his fellow Members of Parliament, both Conservative and Labour alike. Mr. Jopling, whose retirement from the House of Commons is imminent after close to 33 years in the Parliament, has served as secretary to this important and engaging interparliamentary group for the past 9 years and served the previous 4 years as its vice chairman. The position of secretary is a most important responsibility, since that officer is the chief liaison official with the American delegation. The secretaries of the delegations make most of the logistical decisions. The exchange plan he helped institute is an excellent program and vehicle for dealing with issues common to our two countries. He has referred to his activities with the British-American group ''as a labour of love'' and believes ''with a great deal of passion that the continued warm relationship between Britain and the United States is crucial for world peace.''

Mr. Jopling was an outstanding and courageous Minister of Agriculture, Fisheries, and Food in the British government for two 4-year periods between 1979 and 1987. Some of his policies angered British farmers, since he was appointed at a time when food surpluses under the Common Agricultural Policy of Europe had reached very high levels. It has been said that he was a victim of Jopling's law, which says that whatever you do is going to be unpopular with the environmentalists for not going nearly far enough and with the farmers for doing far too much. For those of us who serve on the Agriculture Committee, Jopling's Law has particular resonance. Nevertheless, he stood firm and became a moving force during the 1980's for bringing the Common Agricultural Policy of Europe under control. Under trying circumstances, he endeavored to achieve a proper and reasonable balance on these issues and always acted in a manner that served the public interest. He was warmly praised and encouraged by former American Secretary of Agriculture Clayton Yeutter.

He also served as government chief whip. The government and the opposition in Parliament both appoint whips whose duty is to manage the affairs of the party and to organize their members to provide support. The government chief whip is in charge of the important responsibility of arranging the scheduling of the government's business in the House of Commons. This is done in consultation with the opposition chief whip.

In addition, he was assistant whip, spokesman on agriculture, deputy spokesman on agriculture, secretary of the conservative MPs' agriculture committee, and a member of the Select Committees on Science and Technology, Agriculture, Foreign Affairs, and Privileges. He was also vice chairman of the Commonwealth Parliamentary Association, chairman of the Select Committee on Sittings of the Commons, and president of the Auto Cycle Union.

Michael Jopling was born on December 10, 1930 in Ripon, Yorkshire. He was educated at Cheltenham College; King's College, Newcastle-upon-Tyne; and Durham University, where he earned a degree in agriculture. He is a farmer, sharing a 500-acre farm in Thirsk, Yorkshire ''on some of the finest arable land in the country.'' He has also served as a consultant to the Hill and Knowlton public relations firm.

Mr. Jopling represents Westmorland and Lonsdale, an area of Great Britain which is dominated by agriculture and tourism, with some light industry. One British newspaper referred to it as ''a curious mixture of farmers in tweeds and sprightly geriatrics * * *'' While I do not think of him as being ''geriatric,'' he certainly reflects the overall nature of his constituency. He has been called ''a farmer in politics rather than a politician who makes agriculture his specialty.'' He is know as being likable, engaging, and affable. I have had the pleasure on several occasions to swap humorous stories with him about the politics, government, and cultural idiosyncracies of our respective nations. He is a practical joker who has said that ''riding a motorcycle is one of the life's most exhilarating experiences.''

He is also a serious leader who pays close attention to the nuances of public policy and who judges by eye and instinct. His voice of reason at NAA meetings has helped guide favorably its deliberations and improved its decisions.

He has always supported a strong national defense and strong NATO. He often criticized backsliders like Canada ''with its miserable 1.2 percent of GNP'' for defense expenditures. He also warned the British cabinet to take ''unpopular decisions, if necessary'' to ensure the Army had the best tank possible.

His natural manner is one of caution, of getting all the facts before making a decision. He instinctively distrusts high-flown theory, preferring instead the directness of personal dialog and negotiation. His height, square build, and rustic manner often conjure up the image of a genial giant, but his country gentleman appearance often masks his shrewdness, keen sense of politics, and anayltically sharp mind. All these traits come together to give him an unusual ability to take the full measure of a person, situation, or piece of legislation objectively, but always with an eye toward accomplishing his goals.

I am pleased to commend and congratulate the Right Honourable Michael Jopling for his outstanding leadership and dedication as a Member of the British Parliament and as a British good-will ambassador at-large. I wish him, as well as his red-haired, beautiful, and talented wife, Gail Dickinson Jopling, all the best as he approaches retirement. He deserves our profound thanks for his many lasting contributions over the years to British-American relations in general and for his personal commitment to preserving the special nature of the relationship between our two great nations. After he leaves government service, I hope he will continue to use his enormous talents and energies to benefit British-American relations.

Madam President, I thank the Chair, and I suggest the absence of a quorum.

Mr. REID. Will the Senator withhold?

Mr. HEFLIN. I yield the floor.

Mr. REID. Madam President, I understand, under the standing order, that I have 10 minutes. Is that correct?

The PRESIDING OFFICER. The Senator from Nevada is correct.

Mr. REID. Would the Chair advise me when I have used 8 minutes of the 10?

The PRESIDING OFFICER. We will let you know.

HOW GOVERNMENT WORKS FOR YOU: AMERICA'S NATIONAL PARK SYSTEM

Mr. REID. Madam President, I rise today to speak about an issue that has been bothering me for some time. As this Congress begins to wind down, I have reflected on the achievements and the failures during the past 2 years of this Congress. As I look back on the 104th Congress, I am struck by the public's negative perception, not only of this Congress, but our Government, our Federal Government. In my 10 years here in the Senate, I cannot recall a time when the American public had such a low regard for our Federal Government. It seems like our perception of Government in this country has gone from a view where all things are possible to a view by many where all things are suspect.

There has always been in this country a healthy tradition of political dissent, but what I am hearing today is something deeper and more negative than that. This troubles me because I hear it being echoed in the State of Nevada even by young people, the very generation who will lead us into the next century. I am not willing to stand by and watch an entire generation of Nevadans grow up distrusting our Government. The future, I believe, of Nevada, and our Nation, depends on this next generation's youthful energy and natural optimism to carry us forward.

So I would like to spend a little time today—and I will in the future—talking about how Government works for each of us. I think it is important to take a few minutes to remember how Government has changed our lives for the better. There are many areas about which we could speak, but today I am going to talk about our National Park System, which I personally am very proud of. I think all of us in America should be rightfully proud.

In the late 1700's and the early part of the 1800's, hunters and trappers would come back from passing through Yellowstone with incredible tales of soaring mountains, steaming lakes, of spouts of water going into the air hundreds of feet, stories that many people believed were untrue. But, of course, they were true.

In PBS's recent production on the West, ''The Making of the West,'' there is a great story in the first couple of series about a mountain man by the name of Joe Mink, who came through Yellowstone, and some of the stories that he told.

Many stories were told about this great area in our country. These stories were passed on, some not believing them, as I mentioned, some thinking that they were nothing more than tall tales started by native Americans and then passed on by hunters and trappers.

But the stories persisted. Finally, expedition parties were sent out to check the stories about Yellowstone. One such expedition journeyed there to report back what they felt should be done with Yellowstone. What these men found there awed and really humbled them. At their campsite near the Madison River, members of the expedition party talked about what they had seen. Maybe the land, they said, could be mined, and surely a few fortunes could be made harvesting timber. The possibilities of development really seemed endless.

But a member of that expedition by the name of Cornelius Hedges, who was a Montana judge, had a different idea. There are a lot of fathers of our National Park System. Cornelius Hedges is one of those fathers. He thought that the land should be preserved as a national park, a word that was unheard of at the time.

The expedition returned and began to promote the idea that Hedges had. In 1872 this dream came to fruition when Congress established Yellowstone National Park. In 1916 the National Park Service was established by Congress. Today, 80 years after the birth of the National Park Service, there are more than 270 million visitors to our national parks. Of course, some people visit parks more than once.

Madam President, I read in this morning's paper about President Clinton yesterday being at the Grand Canyon. During his presentation yesterday at the Grand Canyon, he talked about an event that really changed his life. That was a time when as a young man he went to the Grand Canyon and spent 2 hours sitting in solitude, looking at this piece of nature. He said even today in his hustle and bustle world he is able to reflect back on the solitude that he experienced at Grand Canyon National Park.

I, too, a little over a year ago had the good fortune of traveling down the Colorado River through the Grand Canyon. It was a life-changing experience for me, also, as it has been for thousands and thousands and thousands of people over the years who have gone through this, one of our national parks, the Grand Canyon.

This year Nevada is celebrating the 10th anniversary of our only national park, the Great Basin National Park. This incredible wonder in Nevada is home to the southernmost glacier in all of America. Yes, a glacier in Nevada—incredible, but true. The oldest living thing in the world is in this national park, the bristlecone pine, a tree that is gnarled, and some say not statuesque like a lot of big green trees that we see. It is over 5,000 years old. Madam President, 2,500 years before the birth of Christ these trees were growing in the Great Basin National Park.

We have many other things that will cause one to wonder other than these twisted limbs of the bristlecone pine in Great Basin National Park, but it is something that we in Nevada are proud of and the entire Nation is proud of. This 77,000-acre park was visited last year by about 100,000 people. You do not have to be rich to take in the wonders of the Grand Canyon. You do not have to be rich to take in the wonders of Yellowstone or Great Basin.

Our National Park System is designed for everyone. It is something that we as a country should be very proud of and we are. You can travel the depths of the Earth to see the incredible wonders of Lehman Cave, also part of our great national park. This jewel, the Great Basin National Park, will be there for centuries to come, as will Grand Canyon, as will Yellowstone.

I have talked today, Madam President, about one example of about where I think Government has worked well for the people of this country in establishing our National Park System. Now, this is something, our National Park System, that we should all speak proudly of, positively of, and it is a function where Government has worked well. Instead of denigrating Government, we should work to improve our system of Government that is the envy of the world. Our National Park System is the envy of the world.

Unquestionably, the Federal Government needs to streamline, reform, and change. Burdens of regulations of unfunded mandates must be eliminated, and ridiculous paperwork requirements must be eliminated, also. However, Government oversight is not innately evil and can be designed not as an intrusive control mechanism over the States but as an insurance policy to guard against Americans falling through the cracks. Our goal should be for a more effective Federal Government, not one that is useless or so reduced that our citizens are the ones to suffer. As a nation, we cannot afford to have a Federal Government that is unable to provide for Americans to defend our interests in the world.

Madam President, I ask that we all reflect on a success that we have had as a Federal Government. That is, in establishing and maintaining our National Park System. Of course, we need to do more. We have a tremendous backlog of renovations and repairs that need to be made in our National Park System, but visiting a national park is an experience of a lifetime. It was for me as it has been for millions of other Americans.

Mr. FAIRCLOTH. Madam President, I thank the Chair.

(The remarks of Mr. FAIRCLOTH pertaining to the introduction of S. 2093 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. FRIST). Morning business is closed.

SUSTAINABLE FISHERIES ACT

The PRESIDING OFFICER. Under the previous order, the hour of 11 a.m. having arrived, the Senate will resume consideration of S. 39, which the clerk will report.

The bill clerk read as follows:

A bill (S. 39) to amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Hutchison amendment No. 5383, to make certain modifications to provisions with regard to regional fishery management councils.

AMENDMENT NO. 5383

The PRESIDING OFFICER (Mr. FRIST). The pending question is the Hutchison amendment, No. 5383. There will be 4 minutes of debate, equally divided, on the amendment.

Mr. STEVENS. Mr. President, while we are waiting the manager on the Democratic side, I have a parliamentary inquiry.

Was the managers' amendment that was adopted last evening printed in the RECORD?

The PRESIDING OFFICER. Yes, it is. It is on page S10844.

Mr. STEVENS. Mr. President, I ask unanimous consent that a summary of the managers' amendment be printed in the RECORD at this point, and that it be printed in the permanent RECORD following the managers' amendment of yesterday.

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

SUMMARY OF MANAGER'S AMENDMENT TO S. 39

AUTHORIZATION OF APPROPRIATION

The manager's amendment authorizes appropriations through fiscal year (FY) 1999 for the purposes of carrying out the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

DEFINITIONS

The amendment defines a number of new terms for the proposes of the Magnuson Act and amends a number of existing definitions. New defined terms include: ''bycatch''; ''charter fishing''; ''commercial fishing''; ''economic discards''; ''essential fish habitat''; ''fishing community''; ''individual fishing quota''; ''overfishing''; ''Pacific Insular areas''; ''recreational fishing''; ''regulatory discards''; ''special areas''; and ''vessel subject to the jurisdiction of the United States.'' The amendment amends the existing definition of ''optimum'' with respect to the yield of fishery to mean the amount of fish prescribed on the basis of the maximum sustainable yield ''as reduced'' (rather than ''as modified'') by any relevant economic, social, or ecological factor. This change prevents the maximum sustainable yield of a fishery from being exceeded.

BYCATCH REDUCTION

The amendment adds a new national standard to the Magnuson Act requiring that, to the extent practicable, conservation and management measures minimize bycatch and minimize the mortality of bycatch that cannot be avoided. The amendment specifically requires the Councils to establish standard reporting methods under fishery management plans to assess the amount and type of bycatch occurring in each fishery, and to include measures to minimize bycatch to the maximum extent they can, and to minimize the mortality of bycatch that cannot be avoided in the first place. The amendment provides the Councils with the new tools of harvest preferences and other harvest incentives to achieve this bycatch reduction. In addition, the amendment requires the Councils to assess the type and amount of fish being caught and released alive in recreational fisheries, and include measures to ensure the extended survival of such fish.

The amendment requires the Secretary of State to seek to secure international agreements for bycatch standards and measures equivalent of those of the United States.

The amendment requires the North Pacific Council, in carrying out the new bycatch requirements, to reduce the total amount of bycatch occurring in the North Pacific, and authorizes the North Pacific Council to use, in addition to harvest preferences or other harvest incentives, fines and non-transferable annual allocations of regulatory discards as incentives to reduce bycatch and bycatch rates. The amendment requires the North Pacific Council to submit a report on the advisability of requiring the full retention and full utilization of the economic discards in the North Pacific that cannot be avoided in the first place. The Council must report on any measures it already has approved, or approves during the period of the study, to require full retention or full utilization, and is not meant to preclude the Council from taking all actions that it can to achieve these goals.

The amendment requires the Secretary to conclude within nine months the collection of data in the program to assess the impact on fishery resources of incidental harvest by shrimp trawl fisheries, and to conduct additional data collection and evaluation activities for stocks identified by the program which are considered to be overfished. Within 12 months of enactment, the Secretary must complete a program to develop technology, devices, and changes in fishing operations necessary to minimize the incidental mortality of bycatch in the course of shrimp trawl activity to the extent practicable as measured against the level of mortality which occurred in a fishery before November 28, 1990. Any measures taken are required to be consistent with measures that are applicable to fishing throughout the range within the United States by the bycatch species.

OVERFISHING

The amendment defines ''overfishing'' to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis. It requires the Councils to specify, in each FMP, criteria for determining when a fishery is overfished and to include measures to rebuild any overfished fishery. It also requires the Secretary to report annually to Congress and the Councils on the status of fisheries, and to identify fisheries that are overfished or approaching a condition of being overfished using the Council's overfishing criteria. The Secretary is required to notify the Council immediately if a fishery is overfished.

Within one year of the Secretary's annual report, the appropriate Council must submit an FMP, amendment or regulation to prevent overfishing in fisheries determined to be approaching that condition, and to stop overfishing and begin to rebuild fisheries classified as overfished. For an overfished fishery, the Councils must specify as short a time period as possible to stop the overfishing, taking into account the harvest status and biology of the overfished stock, the needs of fishing communities, recommendations by international organizations in which the United States participates, and interaction between the stock and the ecosystem. The duration cannot exceed 10 years except under extraordinary circumstances. The Secretary is required to prepare an FMP or amendment if a Council fails to take sufficient action within one year on an FMP, amendment or regulations to rebuild an overfished fishery. The amendment allows the Secretary to recommend appropriate measures to the Council, and requires that the allocation of both overfishing restrictions and recovery benefits be fairly and equitably distributed among sectors of the fishery.

The manager's amendment allows the Secretary to use interim authority to reduce overfishing for up to 180 days, with one additional 180 day period, provided that a public comment period on the measure is provided.

HABITAT PROTECTION

The amendment defines ''essential fish habitat'' for the purposes of the Magnuson Act as ''waters and substrate necessary to fish for spawning, breeding, or growth to maturity.'' It requires the Councils to identify essential fish habitat under each FMP, to minimize, where practicable, adverse impacts on the habitat caused by fishing, and to identify actions that should be considered to encourage the conservation and enhancement of essential fish habitat. The Secretary is required to establish guidelines to assist the Councils in describing and identifying essential fish habitat and to review programs administered by the Department of Commerce to ensure they further the conservation and enhancement of essential fish habitat. Federal agencies are required to consult with the Secretary with respect to any action authorized, funded or proposed to be undertaken that may adversely affect any essential fish habitat identified under the Magnuson Act.

The amendment authorizes the Councils (similar to existing law) to comment on and make recommendations to the Secretary and other Federal or State agencies on any agency actions that may affect habitat, including essential fish habitat, and requires the Councils to comment on and make recommendations on agency activities that in the view of the Council are likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource.

Upon notification of any action authorized, funded, undertaken, or proposed to be authorized, funded, or undertaken by a Federal agency that may adversely affect essential fish habitat, the Secretary is required to recommend measures that can be taken to conserve the habitat. Federal agencies must respond in writing to such recommendations, and explain reasons for not following any recommendations.

COUNCIL REFORM

The amendment requires Council members to recuse themselves from voting on Council decisions that would have a ''significant and predictable effect'' on their financial interests. Such a decision is defined as one where there is ''a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery.'' This language is intended to prevent Council members from voting on decisions that would bring substantially disproportionate financial benefits to themselves, but not to prevent Council members from voting on most matters on which they have expertise.

The Secretary, in consultation with the Council, is required to select a ''designated official'' with Federal conflict-of-interest experience to attend Council meetings and make determinations on conflicts of interest. The determinations will occur at the request of the affected Council member or at

the initiative of the designated official. Any Council member may request a review by the Secretary of a determination. Regulations for the recusal process are required to be promulgated by the Secretary within one year of enactment.

The amendment adds an additional seat to the Pacific Council for Pacific Northwest Indian tribes, to be selected by the Secretary from a list of 3 individuals from tribes with Federally recognized fishing rights. The amendment adds two additional seats to the Mid-Atlantic Council to provide representation for the State of North Carolina.

The amendment requires the Councils to keep detailed minutes of meetings. It also allows any voting member of the Council to request that a matter be decided by roll call vote, and requires all roll call votes to be identified in the Council's minutes. All written data submitted to the Council are required to include a statement of the information's source. The reported bill allows the Councils (and the Secretary with respect to Atlantic highly migratory species) to establish fishery negotiation panels to assist in the development of difficult conservation and management measures.

FISHERY MANAGEMENT PLANS

The amendment simplifies the review process by the Secretary of proposed FMPs and amendments submitted by the Councils, and includes a new section addressing proposed regulations submitted by the Councils. It eliminates the preliminary FMP evaluation required under current law. After transmittal of an FMP or amendment by the Council to the Secretary, the Secretary immediately must publish notice of the plan in the Federal Register and provide a 60-day comment period. The Secretary must approve, partially approve, or disapprove a plan within 30 days of the end of the comment period.

The amendment creates a new framework for the Secretary to review proposed regulations from the Councils and allows the Councils to submit proposed regulations simultaneously with an FMP or amendment, or at any time after an FMP or amendment has been approved. The Secretary has 15 days to review proposed regulations for their consistency with an FMP. If they are consistent, regulations must be published in the Federal Register for a comment period of 15 to 60 days. The Secretary must publish final regulations within 30 days of the end of the comment period.

The amendment requires the Councils to describe the commercial, recreational, and charter fishing occurring in each fishery and to allocate any harvest restrictions or recovery benefits fairly and equitably among these three sectors. The amendment codifies existing authority of the Councils to restrict the sale of fish for conservation and management purposes, including to ensure that any fish that is sold complies with federal and state safety and quality requirements.

INDIVIDUAL FISHING QUOTAS

The amendment prevents Councils from submitting and the Secretary from approving or implementing any new individual fishing quota (IFQ) programs until after September 30, 2000, and directs the National Academy of Sciences, in consultation with the Secretary, Councils, and others, to submit a comprehensive report on IFQs to the Congress by October 1, 1998.

The Academy report must address, among other things, IFQ transferability, foreign ownership, processor quotas, effective IFQ enforcement, IFQ auctions, windfall profits, and potential economic impacts including capital gains revenue. The report must additionally analyze IFQ programs already in existence in the United States (wreckfish, surf clam/ocean quahog, and halibut/sablefish), IFQs outside the United States, and characteristics unique to IFQs as well as alternative measures that accomplish the same objectives as IFQs. Two working groups (West Coast/Alaska/Hawaii and East Coast/Gulf) will assist in preparing the report. After September 30, 2000, in the event that amendments to the Magnuson Act have not been adopted to implement a national IFQ policy, the councils will be allowed to submit new IFQ programs to the Secretary following certain guidelines.

The amendment requires the Secretary to establish a fee of up to three percent of the annual ex-vessel value of fish harvested under IFQ programs to pay for management costs. The surf clam/ocean quahog and wreckfish IFQ fisheries will not begin paying fees until January 1, 2000. The amendment allows the Councils to reserve up to 25 percent of these fees be used for loan obligations for IFQs for small vessel fishermen and entry level fishermen. The North Pacific Council is required to reserve the full 25 percent for such a program in the halibut and sablefish fisheries.

The amendment requires the Secretary to collect a fee under the authority of a new section 304(d)(2)(A)(i) to recover the actual costs directly related to the management and enforcement of any IFQ program, including any program that may be created under section 313(g)(2) in the North Pacific to reduce per vessel bycatch and bycatch rates. It is expected that the fee collected under any program created under section 313(g)(2) would not exceed one percent of the estimated annual value of the target species in the fishery in which the program is created.

STATE JURISDICTION

The manager's amendment restates in greater detail existing law with respect to a state's ability to regulate fishing vessels registered in that state in federal waters. It allows states to regulate all fishing vessels in a fishery in the EEZ off that State if a fishery management plan delegates such authority to the State. Further, it allows the State of Alaska to regulate fishing vessels not registered under Alaska laws in the EEZ off Alaska if there is no fishery management plan in place for a fishery, and allows the states of California, Oregon and Washington to enforce certain state laws in the EEZs off their respective coasts with respect to dungeness crab fishing until October 1, 1999, or if a fishery management plan for that species is implemented.

LIEN REGISTRY

The amendment requires the Secretary to establish a central registry system for limited access permits (including IFQ permits), 6 months after the enactment of the Act, and requires the Secretary to charge a fee of not more than one half of one percent of the value of a permit upon registration and transfer to pay for the system. The amendment requires the Secretary to determine whether the Secretary of the Treasury has placed any liens against limited access system permits and to provide this information to both the buyer and seller of any permit before collecting a fee on the transfer of a permit. Consistent with the requirements of the Internal Revenue Code of 1986, the Secretary of the Treasury may withdraw a notice of lien filed against a limited access system permit if the withdrawal will facilitate the collection of a tax liability by allowing the owner of the permit to derive income from the use of the permit. The amendment establishes a Limited Access System Administration Fund in the Treasury. Funds from this fund are available without appropriation to the Secretary to administer the central lien registry system and manage the fishery in which IFQ fees were collected. Any fees collected on the ex-vessel value of the fish harvested under an IFQ system can be spent only in the fishery in which they were collected.

PACIFIC COMMUNITY FISHERIES

The amendment requires the North Pacific Council and Secretary to establish a western Alaska community development quota (CDQ) program under which a percentage of the total allowable catch of each Bering Sea fishery is allocated to western Alaska communities that participate in the program. The amendment prevents the North Pacific Council from increasing the percentage of any CDQ allocation approved by the Council prior to October 1, 1995 until after September 30, 2001. The amendment includes a sentence at the end of a new section 305(i)(1)(C)(i) making clear that this cap through September 30, 2001 does not prevent the extension of the pollock CDQ allocation beyond 1998. In complying with the western Alaska CDQ requirement, a percentage of the pollock fishery (and each Bering Sea fishery) must be allocated to the program every year. In the event that the North Pacific Council fails to submit an extension of the pollock CDQ in 1998, it is the intent that the Secretary continue to allocate to the western Alaska CDQ program the percentage of pollock approved by the Council for previous years until the Council submits an extension.

The Council retains the ability to revise CDQ allocations, except as provided in the amendment for crab fisheries, provided that the allocations not exceed the levels approved by the Council prior to October 1, 1995 (after September 30, 2001, the Councils retains the full ability to revise CDQ allocations). The Secretary is required to phase in the CDQ percentage already approved by the North Pacific Council for the Bering crab fisheries, allocating 3.5 percent in 1998, 5 percent in 1999 and 7.5 percent in 2000 and thereafter, unless the Council submits a percentage no greater than 7.5 percent for 2001 or any other percentage on or after October 1, 2001. CDQ allocations already approved by the Council (pollock, halibut, sablefish, crab and groundfish) do not need to be resubmitted by the Council or reapproved (if already approved) by the Secretary.

The amendment requires the National Academy of Sciences to submit a report to Congress on the performance and effectiveness of the community development quota programs under the authority of the North Pacific Council. The amendment requires CDQ fees collected by the Secretary to be reduced by the amount of costs imposed on CDQ program participants that are not imposed on other participants in the fishery. The Secretary is required to transfer to the State of Alaska up to 33 percent of any CDQ fees to reimburse the State for its costs in the CDQ program.

The amendment authorizes the Western Pacific Council to establish a western Pacific community development program. It additionally authorizes the Secretary and Secretary of Interior to make direct grants, not to exceed a total of $500,000 annually, to eligible western Pacific communities to establish from three to five fishery demonstration projects which foster and promote the involvement of western Pacific communities.

REDUCING FISHING CAPACITY

The amendment authorizes the Secretary to implement a vessel and/or permit buyout program at the request of a Council (or Governor for a fishery under a State's authority) if adequate steps are taken to ensure that vessels and permits are removed permanently and the program is needed for conservation and management. Eligible funding sources could include Saltonstall-Kennedy funds, funds appropriated for the purpose of

the buyout section, funds provided by an industry fee system (which cannot exceed 5 percent of the ex-vessel value of fish harvested), of funds provided by a State or other source. The amendment authorizes the Secretary to provide direct loan obligations of up to $100 million per fishery to finance buyout programs, which must be paid back over a twenty year period. Any catch history must be forfeited by the owner of a vessel or permit that is purchased under a buyout program.

FISHERIES DISASTER RELIEF

At the discretion of the Secretary or at the request of an affected state or fishing community, the Secretary must determine whether a commercial fishery failure has occurred, caused by natural causes; man-made causes beyond the control of a Council; or undetermined causes. If the Secretary determines that a commercial fishery failure has occurred, the Secretary may make funds available to an affected State, fishing community or other activity the Secretary determines appropriate to restore the fishery or prevent a similar failure in the future. The Federal share of the cost of any activity under the authority of the section cannot exceed 75 percent of the total cost. The amendment authorizes such sums as are necessary for each fiscal year for fisheries disaster relief.

RESEARCH

The amendment creates a new title IV of the Magnuson Act, titled ''Fishery Monitoring and Research'' that contains existing Magnuson sections (with some modifications) dealing with information collection, confidentiality, fisheries research, shrimp trawl incidental harvest research, observers. It also contains new sections dealing with vessel registration, and the creation of an advisory panel to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities. The amendment requires the National Academy of Sciences to complete a peer review of the Northeast Multispecies Fishery Management Plan by February 1, 1997.

VESSEL REGISTRATION

The amendment requires the Secretary to develop recommendations for implementation of a standardized vessel registration and data management system, centralized on a regional basis, that would be required to integrate and standardize all federal marine resource vessel registration and data collection requirements, as well as State requirements if a State chooses to participate. The system must avoid duplication with any existing State or other systems. Within 16 months of the date of enactment, and after providing for public comment, the Secretary must transmit the proposal to Congress. Within 15 months of enactment, the Secretary must report to Congress on the need to include private recreational fishing vessels in a national fishing vessel registration and data collection system.

OBSERVERS

The Secretary is required to promulgate regulations for vessels required to carry observers, including guidelines to determine when the facilities of a vessel are not safe or adequate for an observer, or how to reasonably make them safe or adequate. The Secretary also must establish, in cooperation with States and Sea Grant College Programs, programs to train and ensure the competence of observers. The Secretary is required to use university training facilities, such as the North Pacific Observer Training Center, where possible, to carry out the observer section. The amendment treats observers as Federal employees for the purposes of compensation under the Federal Employee Compensation Act. Data collectors are protected from being forcibly assaulted, impeded, intimidated, sexually harassed, interfered with, or bribed, while carrying out responsibilities under the Magnuson Act.

OTHER REAUTHORIZATIONS

The amendment extends the authorization of appropriations for several other marine statutes, including the Inter Jurisdictional Fisheries Act, the Atlantic Coastal Cooperative Fisheries Management Act, the Anadromous Fish Conservation Act and an authorization for other NOAA marine fisheries programs. The amendment requires the Secretary to submit a report reviewing New England fishing capacity reduction programs.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 5383, AS MODIFIED

Mrs. HUTCHISON. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. The Senator has that right.

The amendment will be so modified.

The amendment (No. 5383), as modified, is as follows:

On page 142, line 7, strike ''Any'' before ''conservation'' and insert in lieu thereof ''To the extent practicable, any''.

On page 148, beginning on line 14, strike ''specified in part 641.24 and 641.25 of title 50, Code of Federal Regulations (as revised as of October 1, 1995),''.

Mrs. HUTCHISON. Mr. President, I don't even need to take my 2 minutes. I will just say that this amendment has been agreed to by both sides. I want to especially thank Senators LOTT, STEVENS, BREAUX, and KERRY for helping me to make sure that the management of bycatch applies in the Gulf of Mexico like it will apply to the rest of the bill and to the other waters contiguous to our country. Everybody is satisfied with this.

I appreciate so much the cooperation and the staff cooperation. We could not have come to this agreement without a lot of hard work late last night and early this morning. I appreciate it very much. I ask for consideration of my amendment.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, the Senator from Texas is correct. I am informed that this matter was worked out. I should explain to the Senate that we had in the managers' amendment one amendment—the one from the Senator from Texas—that could not be agreed to at the time we offered that amendment last night. We pulled it out and asked unanimous consent that the Senator from Texas be able to offer her amendment. It has now been worked out through the night. I am informed by the leader, and by the representatives of the other Senators involved, that it is acceptable. Therefore, I am prepared to accept this amendment and would ask that it be adopted on a voice vote.

Mr. SHELBY. Mr. President, I rise this morning in support of the Hutchison-Shelby amendment to S. 39, the Sustainable Fisheries Act.

Over the past several years, it has become increasingly clear that our marine fisheries are in serious trouble. The Sustainable Fisheries Act will significantly improve the management and conservation of our marine resources by allowing the regional councils to adopt measures to reduce overfishing, bycatch, and waste.

What is clear to all who have been involved in the reauthorization of the Magnuson Act is that decisionmaking authority over the adoption and implementation of bycatch reduction programs must lie with the councils. For the most part, the bill before us today furthers this insight. However, there is a provision which will significantly impair the authority of one of the councils, the Gulf Council, to manage the bycatch program of the red snapper.

The Hutchison-Shelby amendment corrects this oversight and restores the necessary discretion to the Gulf Council. I want to be clear that we are not adding additional powers. Our amendment merely brings the Gulf Council in line with the authority of the other regional councils.

Without the Hutchison-Shelby amendment, the red snapper fishery will be closed, which will shut down recreational fishermen and a thriving charter boat industry. In the city of Gulf Shores alone, red snapper fishing generates approximately $80 million annually. Salt water fishing in my State will soon become a billion dollar industry, and limiting the authority of the Gulf Council to manage these waters will devastate the economy of Alabama.

I thank the Senator from Texas for her leadership on this important issue, and I urge adoption of this amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 5383), as modified, was agreed to.

Mrs. HUTCHISON. I thank the Senator from Alaska.

Mr. President, I ask unanimous consent that Senator SHELBY from Alabama be added as a prime cosponsor of my amendment to this bill, to the managers' amendment.

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

Mr. HELMS. Mr. President, as I make clear my strong support for S. 39, I also extend my congratulations to the distinguished Senator from Alaska [Mr. STEVENS] and to his fine staff for their efforts in crafting S. 39, the Sustainable Fisheries Act of 1996. This legislation strikes an appropriate balance between the needs of the various sectors of the U.S. fishing community while giving both commercial and recreational fishermen adequate opportunities to fish.

S. 39 is exceedingly important to our fishermen in North Carolina. I was very pleased last July when Senator

STEVENS and I flew together to eastern North Carolina to hold hearings in Morehead City on this legislation. We heard many concerns and opinions from all sectors of the fishing community in my State. I appreciate TED STEVENS making the trip and also his allowing me to participate in those hearings.

Mr. President, testimony in that hearing indicated widespread support for adding North Carolina as a voting member on the Mid-Atlantic Fishery Management Council. My State has long participated in council proceedings as an observer and as nonvoting participant in council technical committees—but never before as a full-fledged voting member.

So I am grateful that this legislation allots to North Carolina voting memberships on the Mid-Atlantic Council. There have been so many decisions made by the Mid-Atlantic Council that have affected my fishermen; it is good that they will now be able to vote on decisions that affect our State.

Fish and fish products have become a greater staple of the diets of all Americans. Statistics gathered by the National Marine Fisheries Service in 1995, revealed that U.S. consumption of fish and fish products was 15 pounds of edible meat per capita. In 1992 Americans consumed 14.8 pounds of edible meat.

Mr. President, I greatly enjoy seafood. I have dined in many seafood restaurants in coastal North Carolina and many fish houses further inland. North Carolinians want to maintain a steady supply of good, high-quality seafood well into the future. We can do that if our fishery resources are well managed in an environmentally responsible manner.

At the same time, fishery regulations must not be allowed to hamstring North Carolina's hand-working, taxpaying fishermen in their efforts to earn a honest daily wage. The National Marine Fisheries Service should be put on notice that the Congress will not tolerate unfair and unreasonable regulatory practices that single out one sector of the fishing community for penalties.

Mr. President, this is a good bill. We must preserve our fisheries for future generations. If we don't, this country will face great adverse consequences.

None of us here wants to see entire areas closed to fishing, as has occurred off the coast of Massachusetts. Senators from that State are painfully aware that three areas near Georges Bank have been permanently closed to fishing, due to overfishing the resource. That situation must not be duplicated off the North Carolina coast—or any other State's coast for that matter. This bill will go a long way in preventing that from happening.

Mr. CHAFEE. Mr. President, I commend and thank the Senator from Alaska, Senator STEVENS, for his many months of hard work in getting this vitally important environmental legislation to the floor. I know that in writing and bringing this bill to the floor, Senator STEVENS has had to contend with a great many competing interests that were often at odds on some very complex issues. Despite this obstacle, he has been able to fashion what I believe to be a strong but fair piece of legislation. There remain several changes I would like to see in this bill, but on balance I support S. 39, legislation which should help our fisheries recover from years of overfishing, mismanagement and other negative factors. I would like to briefly share with my colleagues our unfortunate experience with the decline of fishing in New England, and hope that this experience and others like it might convince all Senators on the importance of passing this bill.

Commercial fishing has long been a great source of pride for Rhode Island and New England, its history in our region stretching back several hundred years. Explorers of the New World returned to England with reports of codfish so plentiful that men actually scooped them from the sea by the bucket. In addition, early colonists relied on fish for subsistence during their first, difficult years of settlement. More recently, commercial fishing remained a fruitful and profitable industry in New England throughout the 20th century. Fishing and all of its associated businesses have employed tens of thousands of New Englanders in ports along the coast, making it one of our region s most important industries.

But beginning in the 1960's, distant-water factory trawler fleets from more than a dozen countries were decimating fish stocks off New England. In response, Congress in 1976 passed the Magnuson Act, which sought to Americanize our fishing grounds within 200 miles of the U.S. coast and let stocks recover from foreign overfishing.

Unfortunately, though, the Americanization of our fishing grounds 20 years ago has not resulted in the intended conservation of this valuable national resource. Domestic fishermen have more than made up for the departure of foreign fleets—the introduction of more boats and the use of increasingly sophisticated fishing technology has resulted in destructive overfishing throughout New England's prime fishing grounds. In 1976, there were 775 New England boats licensed to catch groundfish. Today there are 4,000, of which 1,800 still actively fish. Overfishing and the resulting sharp downturn in our fishing industry, particularly in New England, is nothing short of a genuine tragedy.

A look at some of the consequences of years of fisheries mismanagement in New England is staggering: in 1980, Georges Bank cod biomass totalled about 90,000 metric tons; by last year it had declined to under 20,000 metric tons. Georges Bank haddock biomass was nearly 70,000 metric tons in 1978, while today it is under 20,000. Many of these once abundant fish stocks, which have been such a major influence on New England's economy and heritage, are now, sadly, at or near commercial extinction.

The question we now face in the context of the legislation before the Senate today is how do we best restore this sadly declining industry and bring life back to a marine resource that is disappearing? Unfortunately, efforts thus far to halt this collapse of fish stocks in New England have met with limited success at best. In fact, in 1991 it actually took a lawsuit by two Massachusetts environmental groups to force the notoriously slow New England Fishery Management Council to draft and implement a fishery management plan that contained the teeth needed to stem continued overfishing and stock decimation. And this plan, entitled amendment 5, did not even take effect until some 3 years after the lawsuit was filed.

But amendment 5, while its groundbreaking restrictions on fishing effort were significantly stronger than previous efforts, proved to be insufficient to stem the continuing decline in New England fish stocks. So amendment 7, which further restricts fishing off New England in several ways, was proposed and approved by the Department of Commerce several months ago. Those of us who are committed to restoring New England's fisheries are hopeful that amendment 7 might begin to reverse the tremendous damage that has been done to this resource.

Unfortunately, though, the New England and other regional fishery management councils, while their efforts have improved during recent years, still require additional tools to address the many conservation needs of our Nation s fisheries. Through a long series of hearings and a tremendous amount of hard work and patient listening, the Commerce Committee has succeeded in producing a far-reaching bill, S. 39, that provides the Councils these tools. I strongly endorse this legislation, and urge all of my colleagues, both from coastal and inland regions, to do so as well.

S. 39 defines ''overfished'' and ''overfishing'' in the Magnuson Act and requires fishery management plans to specify criteria for determining when a fishery is overfished and include measures to rebuild any overfished fishery. A council would have 1 year to come up with a plan to stop overfishing and rebuild the fishery, and the Secretary of Commerce would be required to step in if the council fails to act.

This bill also adds a new national standard to the Magnuson Act requiring that conservation and management measures minimize what we call bycatch, which is the incidental harvest of nontarget fish. Bycatch has caused much damage to many fisheries in the United States as unintentionally caught fish are often thrown back in the water dead or dying.

In addition, S. 39 imposes several significant reforms on the council process, including conflict-of-interest procedures and new mechanisms to push

councils to develop difficult conservation and management measures. Our experience in New England, where an industry-dominated council for years stymied effective management, certainly illustrates the need for these council reforms.

Mr. President, the Sustainable Fisheries Act includes many other provisions aimed at restoring and sustaining some of our Nation's most valued resources. I look with amazement at the array of fishing and conservation organizations that have endorsed this vitally important legislation. These groups range from industry to environmental to recreational. I commend the work done by Senator STEVENS to obtain this wide-ranging level of support, and urge all of my colleagues to join me in voting for this bill.

Thank you.

JURISDICTION OVER FISHERIES IN THE EEZ

Mr. GRAHAM. Mr. President, I would like to commend the distinguished chairman for his dedication to the conservation of our Nation's fisheries, the industry, and its beneficiaries. The chairman and his staff have worked very hard to steer this important legislation through the tedious legislative process. I look forward to working with the chairman and the committee in working toward this bill's ultimate success.

Mr. President, I would like to ask the chairman a clarifying question regarding an issue that is of great importance to many States, including the State of Florida.

Mr. STEVENS. I would be happy to respond to a question from my friend, the senior Senator from Florida.

Mr. GRAHAM. The State of Florida has been firmly committed to the conservation of the State's natural resources. In the past year, the National Marine Fisheries Service, and the Regional Fishery Management Council had proposed giving authority to the State over certain fisheries, such as stone crab and spiny lobster, but could not do so because Federal courts have ruled that the States are preempted by the Magnuson Act from regulating in the EEZ. I am pleased, therefore, that the distinguished chairman has included in this reauthorization legislation, a provision which would allow a fishery management council to delegate jurisdiction over certain fisheries in the EEZ to a State, if the State has regulations consistent with the fishery management plan for that area.

Mr. STEVENS. The Senator from Florida is correct in his understanding of what is in the reauthorization bill. His interpretation is consistent with the drafter's intent.

Mr. GRAHAM. It is my understanding that the legislation give states the right to regulate any vessels in a fishery that the regional council has designated as being under State jurisdiction, including vessels registered outside that particular State. Is that correct?

Mr. STEVENS. The Senator from Florida is again correct in his understanding of what is in the legislation.

Mr. GRAHAM. Now in the case of my State, if the council designates jurisdiction of a particular fishery to the State, the officials in Florida would be able to regulate out-of-State vessels, in that portion of the EEZ, regardless of which ports it utilizes or chooses not to utilize.

Mr. STEVENS. Mr. President, if the State of Florida has been designated as having jurisdiction over a fishery in the EEZ, they would be entitled to regulate any vessel in that fishery, no matter where it comes from or what facilities it utilizes, so long as it does so consistent with the fishery management plan that delegates authority to the State.

Mr. GRAHAM. I thank the distinguished chairman for his clarification of the issue.

STATE JURISDICTION

Ms. SNOWE. Mr. President, I would like to engage the chairman of the Oceans and Fisheries Subcommittee and the author of this bill, Senator STEVENS, in a brief colloquy.

Mr. STEVENS. I would be pleased to join Senator SNOWE in a colloquy.

Ms. SNOWE. As the Senator knows, section 112 of the manager's amendment amends the Magnuson Act to clarify that the existing provision which allows a State to impose State laws and regulations on its State-registered vessels, even if those vessels fish in the exclusive economic zone. This provision greatly interests Maine because, in addition to the Federal rules, Maine imposes stringent State lobster conservation regulations on all of its vessels, regardless of where they fish. These State regulations are certainly consistent with the Federal lobster management plan in conserving and sustainably managing the lobster resource. But some of Maine's regulations do differ in design from some of the regulations currently in force in the Federal zone. For instance, Maine prohibits the possession or landing of lobsters by State vessels that do not use traps to harvest lobster, imposes a maximum-size lobster possession limit, prohibits the possession of egg-bearing female lobsters, and requires the v-notching technique to ensure the identification of these lobsters. The Federal lobster management plan does not contain conservation and management measures of the same design.

As I understand the amendment, section 112 would allow Maine to continue imposing its more stringent State lobster regulations on all of its State-registered fishing vessels because the regulations are consistent with the Federal lobster management plan. Am I correct in stating that it is the intent of the author and manager of this bill that section 112 of the manager's amendment dealing with State jurisdiction would permit a State like Maine to continue applying more stringent rules on its State-registered vessels that operate in the exclusive economic zone?

Mr. STEVENS. The Senator from Maine is correct. Section 112 of my amendment protects the existing authority of States to impose more stringent regulations which are not inconsistent with a management plan on its vessels in the Federal zone. Maine's more stringent regulations were consistent with the management plan for lobster before this amendment, and they would continue to be viewed that way after its enactment. Because regulations such as Maine's are not irreconcilable with the management plan, they will be viewed as consistent with it under my amendment.

HERRING TRANSSHIPMENT

Mr. CHAFEE. Mr. President, I would like to engage the Senator from Maine, Senator SNOWE, and the chairman of the Oceans and Fisheries Subcommittee, Senator STEVENS, in a colloquy.

Ms. SNOWE. I would be pleased to join the Senator from Rhode Island in a colloquy.

Mr. STEVENS. I would be happy to join Senator CHAFEE in a colloquy.

Mr. CHAFEE. Mr. President, section 105(e) of the manager's amendment directs the Secretary of Commerce to provide transshipment permits for up to 14 Canadian vessels for the purposes of transporting Atlantic herring caught off the coast of Maine in the sardine processing trade. I would like to ask the Senators whether the manager's amendment would also require this herring transshipment practice to be consistent with any applicable regulations, including fishery allocations, approved by the Atlantic States Marine Fisheries Commission. The ASMFC has management authority for Atlantic herring.

Ms. SNOWE. I sponsored and worked on, with other Commerce Committee members, the provision to which Senator CHAFEE refers, and I can assure the Senator that the provision does require these transshipment permits to be consistent with all relevant herring management measures approved by the Atlantic States Marine Fisheries Commission. I would simply mention that the ASMFC has expressed support for this provision.

Mr. STEVENS. I agree with Senator SNOWE's interpretation of this provision.

Mr. CHAFEE. I thank the Senators for the clarification.

CENTRAL REGISTRY

Mr. STEVENS. Mr. President, my manager's amendment to S. 39, the Sustainable Fisheries Act, adds a new section to the Magnuson Act requiring the Secretary of Commerce to create a central lien registry system for limited access permits. Among other things, the Secretary is required to notify both the buyer and seller of a permit if a lien has been filed by the Secretary of the Treasury against the permit.

Mr. ROTH. Mr. President, we have reviewed the central lien registry provisions in the amendment offered by the

Senator from Alaska. He has removed language that involved matters within the Finance Committee's jurisdiction. We do hope, however, that the Secretary of the Treasury will work with the Secretary of Commerce as the Secretary of Commerce carries out the new requirement my friend from Alaska has described.

Mr. STEVENS. I thank the Senator from Delaware for his help with this new subsection. My amendment no longer contains the language that was within the Finance Committee's jurisdiction. I would, however, like to ask my friend from Delaware about his understanding of section 6323(j)(1)(C) of the Internal Revenue Code—26 U.S.C. 6323(j)(1)(C), a provision he helped write. Is that section intended to allow the Secretary of the Treasury to withdraw a notice of lien filed against a limited access fishing permit if such withdrawal will facilitate the collection of a tax liability by allowing the owner of the permit to derive income from the use of the permit?

Mr. ROTH. The Senator from Alaska is correct. Section 6323(j)(1)(C) gives the Secretary of the Treasury discretionary authority to withdraw a notice of lien filed against a fishing permit if the withdrawal will facilitate the collection of a tax liability by allowing the owner to derive income from the use of the permit.

Mr. STEVENS. I thank the Senator from Delaware.

Mr. PRESSLER. Mr. President, I am pleased we have been able to bring to the Senate S. 39, a bill to amend and reauthorize the Magnuson Fishery Conservation and Management Act of 1976. This bill, introduced by Senator STEVENS and cosponsored by Senators KERRY, MURKOWSKI, HOLLINGS, LOTT, INOUYE, SIMPSON, and myself, is crucial to continuing the sound management of our Nation's fishery resources.

On March 28, 1996, the Committee on Commerce, Science, and Transportation reported this legislation. The report was filed on May 23, 1996, and a cost estimate for the bill as prepared by the Congressional Budget Office was printed in the CONGRESSIONAL RECORD on July 10, 1996. Under the leadership of Senator STEVENS, chairman of our Oceans and Fisheries Subcommittee, seven field hearings were conducted last year gathering testimony from fishermen, industry representatives, Federal and State managers, and environmental organizations, throughout the Nation. While this legislation may not be perfect, the language we have before us today is an attempt to address the concerns raised at those hearings as well as issues brought to our attention by many of our colleagues in the Senate. This has been no small feat and I commend Senator STEVENS for his efforts.

Commercial fisheries are very important to many States and the Nation as a whole. In 1995, commercial landings by U.S. fishermen were over 9.9 billion pounds and valued at $3.8 billion. The State of Alaska led the Nation in value of landings with $1.4 billion. Other regions of the country have a similar dependency on commercial fisheries, some are strong and robust, others have not fared as well—their fish stocks have declined and communities in those regions are feeling that economic impact. Hopefully, provisions in this bill that call for reductions in bycatch, measures to prevent overfishing, and requirements for the protection of habitat, will again bring about healthy fisheries and healthy fishing communities.

Twenty years ago the Magnuson Act was enacted in direct response to the depletion of U.S. fishery resources by foreign vessels. The Magnuson Act secured U.S. jurisdiction and management authority over the fisheries out to 200 miles from our shores. It was intended that this action would provide long-term stability and sustainable fisheries, though today in many areas we are again overcapitalized and the stocks face a crisis similar to that of the 1970's.

The Magnuson Act is administered by the National Marine Fisheries Service and eight Regional Fishery Management Councils that manage the fisheries in their geographic areas through specific fishery management plans. Their actions provide the rules under which the fishing industry operates. They determine the harvest quotas, season length, gear restrictions, and license limitations. This is where tough management decisions need to be made.

One of the overall goals of the Magnuson Act is to provide a mechanism to determine the appropriate level of harvest to maximize the benefit to the Nation while still protecting the long-term sustainability of the fisheries. It is a balancing act among competing interests of commercial and recreational fishermen and even competing gear groups within the commercial industry.

Mr. President, I am pleased that Senator STEVENS, Senator GORTON, and others have been able to resolve any differences they may have had with the bill as reported. A manager's amendment that I fully support has been developed that addresses these issues. The amendment shortens the authorization period through fiscal year 1999, thereby reducing the time that a moratorium will be in effect concerning individual fishing quotas [IFQ's]; it requires the National Academy of Sciences to conduct a study on the value of IFQ's and community development quotas or CDQ's; it includes consideration for the sustained participation of fishing communities, and it also addresses the issue of State jurisdiction into Federal waters absent any applicable fishery management plan.

Mr. President, many of the provisions in this bill will strengthen the administration of the Magnuson Act and, in turn, the conservation and management of our fishery resources. I say to my Senate colleagues that this bill is a bipartisan effort to accommodate the interests of fishermen throughout the Nation. I again commend the leadership efforts of Senator STEVENS as well as many other members of the Commerce Committee in moving this legislation.

Mr. HATFIELD. Mr. President, we are obliged to be responsible stewards of our environment, both here and abroad. Even in these times of fiscal restraint, it would be counterproductive to cut back on the investment we have made in our environment and indeed in our own future. Growing concern over the deterioration of our global resources and environment has forced us to examine ways in which we can redouble our efforts to protect and conserve these valuable resources. However, protection need not be at the expense of our ability to enjoy, enhance, and utilize our resources. There are few industries whose future is as directly dependent on the conservation of a resource as commercial fishing.

As residents of Oregon's coastal communities recently learned, due to the closing of a commercial salmon season, when fish populations suffer that hardship is passed along to fishermen, processors, and consumers. The problem of dwindling fishery resources is not unique to the Pacific Northwest. Virtually every region of the country has experienced some form of decay in the commercial fishing industry. Therefore, it is critical that we fulfill our obligation to protect and responsibly manage our Nation's fisheries.

The Magnuson Fishery Conservation and Management Act has been our Nation's principal offshore fisheries conservation policy since it was enacted in 1976. I am gratified the Senate has overcome the substantial barriers that were preventing this important legislation from being considered. The House of Representatives overwhelmingly passed its version of this measure last year and it is my hope we will send a Magnuson reauthorization bill to the President for his signature this year. However, I recognize there are a number of outstanding issues which must be resolved before we can complete action on this important legislation.

Mr. President, I would like to take a brief moment to congratulate the sponsors of the Sustainable Fisheries Act of 1996, Senators STEVENS and KERRY. They have crafted a bill which enjoys support on a bipartisan basis in the Senate and is also endorsed by numerous conservation and industry groups. It has taken impressive dedication on the part of the sponsors of this bill and cooperation with many Members of the Senate to bring this measure before us today. I commend them for their leadership on this matter.

The Sustainable Fisheries Act of 1996, S. 39, would extend the authorization of appropriations for the Magnuson Fishery Conservation Management Act through fiscal year 2000 and build on the policy objectives of that landmark legislation. In the 20 years since

its enactment, the Magnuson Act has provided a national framework for conserving and managing U.S. marine fisheries.

In addition to reauthorizing several important appropriations for marine statutes, the Sustainable Fisheries Act includes significant fishery conservation and management provisions. The bill contains language which requires fishery management plans to specify criteria for establishing when a fishery has been overfished and include methods to rebuild an overfished fishery. Additionally, the issue of bycatch, taking of nontarget fish in the process of catching marketable seafood, is also addressed by this legislation. It adds a national standard which would require measures to minimize bycatch and minimize the mortality of unavoidable bycatch. The legislation also mandates the eight regional fishery management councils to identify essential fish habitat and reduce negative effects on habitat due to fishing.

As with all natural resource policy matters, effective conservation and management of fisheries must be based on sound science and accurate research. The Sustainable Fisheries Act maintains existing Magnuson Act sections dealing with data collection and fisheries research. Additionally, it includes a section which establishes guidelines for fishing vessel observers and fishing vessel registration. The legislation also incorporates the National Academy of Sciences to conduct a review of the contentious individual fishing quota and community development quota programs.

Many individuals within my State have contacted me to express concern about specific provisions contained in this legislation. I recognize each issue within this bill may not be resolved to the satisfaction of all interested parties. However, the compromise package is a reasonable attempt to address these concerns and the accommodations made by the managers of the bill represent our best opportunity to see this overdue legislation enacted this year. Therefore, I will vote in favor of the Sustainable Fisheries Act.

Once again, I applaud the work of the sponsors of this legislation and thank them for their efforts on behalf of our Nation's fisheries and those who depend upon them. It is my hope the Senate will overwhelmingly pass this important measure and that action will be taken quickly by the White House to sign it into law.

BUDGETARY TREATMENT OF LOAN GUARANTEE PROGRAMS

Mr. DOMENICI. Mr. President, title III of S. 39, the Fisheries Financing Act, creates a new loan guarantee program and makes some changes to existing credit programs. Under the Federal Credit Reform Act of 1990, we reformed the budgetary treatment of Federal direct loan and loan guarantee programs to make sure we accurately reflected the costs of all these programs in the Federal budget. As a new credit program, this program will be governed under the terms of the Federal Credit Reform Act.

Mr. STEVENS. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Have we disposed of all matters that were covered by the time agreement?

The PRESIDING OFFICER. Without objection, the committee substitute is agreed to.

The committee substitute was agreed to.

The PRESIDING OFFICER. The bill will be read for the third time.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. STEVENS. Mr. President, we have been waiting for one Senator, but we have waited a long time. I do ask unanimous consent now that there be a period after the vote of about, say, 10 minutes for Members who wish to make statements concerning this bill.

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

Mr. STEVENS. Mr. President, this bill took 5 years, from 1971 to 1976, to pass—the original bill. This one has been worked out in a very short period of time due to the total agreement of everyone concerned. I am thankful for that. I thank my good friend from Massachusetts in particular.

Mr. KERRY. Mr. President, I join my colleague in expressing gratitude for the bipartisan effort to bring forth this bill. As Senator STEVENS said yesterday, this is the most important conservation measure we will pass in this session, and I am grateful we are able to do it in a bipartisan way.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 295 Leg.]

YEAS—100

Abraham	Bingaman	Bryan
Akaka	Bond	Bumpers
Ashcroft	Boxer	Burns
Baucus	Bradley	Byrd
Bennett	Breaux	Campbell
Biden	Brown	Chafee
Coats	Hatfield	Murkowski
Cochran	Heflin	Murray
Cohen	Helms	Nickles
Conrad	Hollings	Nunn
Coverdell	Hutchison	Pell
Craig	Inhofe	Pressler
D'Amato	Inouye	Pryor
Daschle	Jeffords	Reid
DeWine	Johnston	Robb
Dodd	Kassebaum	Rockefeller
Domenici	Kempthorne	Roth
Dorgan	Kennedy	Santorum
Exon	Kerrey	Sarbanes
Faircloth	Kerry	Shelby
Feingold	Kohl	Simon
Feinstein	Kyl	Simpson
Ford	Lautenberg	Smith
Frahm	Leahy	Snowe
Frist	Levin	Specter
Glenn	Lieberman	Stevens
Gorton	Lott	Thomas
Graham	Lugar	Thompson
Gramm	Mack	Thurmond
Grams	McCain	Warner
Grassley	McConnell	Wellstone
Gregg	Mikulski	Wyden
Harkin	Moseley-Braun	
Hatch	Moynihan	

The bill (S. 39), as amended, was passed, as follows:

S. 39

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 ''Sustainable Fisheries Act''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Amendment of Magnuson Fishery Conservation and Management Act.

TITLE I—CONSERVATION AND MANAGEMENT

Sec. 101. Findings; purposes; policy.
Sec. 102. Definitions.
Sec. 103. Authorization of appropriations.
Sec. 104. Highly migratory species.
Sec. 105. Foreign fishing and international fishery agreements.
Sec. 106. National standards.
Sec. 107. Regional fishery management councils.
Sec. 108. Fishery management plans.
Sec. 109. Action by the Secretary.
Sec. 110. Other requirements and authority.
Sec. 111. Pacific community fisheries.
Sec. 112. State jurisdiction.
Sec. 113. Prohibited acts.
Sec. 114. Civil penalties and permit sanctions; rebuttable presumptions.
Sec. 115. Enforcement.
Sec. 116. Transition to sustainable fisheries.
Sec. 117. North Pacific and northwest Atlantic Ocean fisheries.

TITLE II—FISHERY MONITORING AND RESEARCH

Sec. 201. Change of title.
Sec. 202. Registration and information management.
Sec. 203. Information collection.
Sec. 204. Observers.
Sec. 205. Fisheries research.
Sec. 206. Incidental harvest research.
Sec. 207. Miscellaneous research.
Sec. 208. Study of contribution of bycatch to charitable organizations.
Sec. 209. Study of identification methods for harvest stocks.
Sec. 210. Review of Northeast fishery stock assessments.
Sec. 211. Clerical amendments.

TITLE III—FISHERIES FINANCING

Sec. 301. Short title.

Sec. 302. Individual fishing quota loans.
Sec. 303. Fisheries financing and capacity reduction.
TITLE IV—MARINE FISHERY STATUTE REAUTHORIZATIONS
Sec. 401. Marine fish program authorization of appropriations.
Sec. 402. Interjurisdictional Fisheries Act amendments.
Sec. 403. Anadromous fisheries amendments.
Sec. 404. Atlantic coastal fisheries amendments.
Sec. 405. Technical amendments to maritime boundary agreement.
Sec. 406. Amendments to the Fisheries Act.

SEC. 2. AMENDMENT OF MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

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 Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

TITLE I—CONSERVATION AND MANAGEMENT

SEC. 101. FINDINGS; PURPOSES; POLICY.

Section 2 (16 U.S.C. 1801) is amended—

(1) by striking subsection (a)(2) and inserting the following:

''(2) Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.'';

(2) by inserting ''to facilitate long-term protection of essential fish habitats,'' in subsection (a)(6) after ''conservation,'';

(3) by adding at the end of subsection (a) the following:

''(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

''(10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.'';

(4) by striking ''principles;'' in subsection (b)(3) and inserting ''principles, including the promotion of catch and release programs in recreational fishing;'';

(5) by striking ''and'' after the semicolon at the end of subsection (b)(5);

(6) by striking ''development.'' in subsection (b)(6) and inserting ''development in a non-wasteful manner; and'';

(7) by adding at the end of subsection (b) the following:

''(7) to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.'';

(8) in subsection (c)(3)—

(A) by striking ''promotes'' and inserting ''considers''; and

(B) by inserting ''minimize bycatch and'' after ''practical measures that'';

(9) striking ''and'' at the end of paragraph (c)(5);

(10) striking the period at the end of paragraph (c)(6) and inserting ''; and''; and

(11) adding at the end of subsection (c) a new paragraph as follows:

''(7) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.''.

SEC. 102. DEFINITIONS.

Section 3 (16 U.S.C. 1802) is amended—

(1) by redesignating paragraphs (2) through (32) as paragraphs (5) through (35) respectively, and inserting after paragraph (1) the following:

''(2) The term 'bycatch' means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

''(3) The term 'charter fishing' means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing.

''(4) The term 'commercial fishing' means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.'';

(2) in paragraph (7) (as redesignated)—

(A) by striking ''COELENTERATA'' from the heading of the list of corals and inserting ''CNIDARIA''; and

(B) in the list appearing under the heading ''CRUSTACEA'', by striking ''Deep-sea Red Crab—Geryon quinquedens'' and inserting ''Deep-sea Red Crab—Chaceon quinquedens'';

(3) by redesignating paragraphs (9) through (35) (as redesignated) as paragraphs (11) through (37), respectively, and inserting after paragraph (8) (as redesignated) the following:

''(9) The term 'economic discards' means fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons.

''(10) The term 'essential fish habitat' means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.'';

(4) by redesignating paragraphs (16) through (37) (as redesignated) as paragraphs (17) through (38), respectively, and inserting after paragraph (15) (as redesignated) the following:

''(16) The term 'fishing community' means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.'';

(5) by redesignating paragraphs (21) through (38) (as redesignated) as paragraphs (22) through (39), respectively, and inserting after paragraph (20) (as redesignated) the following:

''(21) The term 'individual fishing quota' means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i).'';

(6) by striking ''of one and one-half miles'' in paragraph (23) (as redesignated) and inserting ''of two and one-half kilometers'';

(7) by striking paragraph (28) (as redesignated), and inserting the following:

''(28) The term 'optimum', with respect to the yield from a fishery, means the amount of fish which—

''(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

''(B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and

''(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.'';

(8) by redesignating paragraphs (29) through (39) (as redesignated) as paragraphs (31) through (41), respectively, and inserting after paragraph (28) (as redesignated) the following:

''(29) The terms 'overfishing' and 'overfished' mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

''(30) The term ''Pacific Insular Area'' means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.'';

(9) by redesignating paragraphs (32) through (41) (as redesignated) as paragraphs (34) through (43), respectively, and inserting after paragraph (31) (as redesignated) the following:

''(32) The term 'recreational fishing' means fishing for sport or pleasure.

''(33) The term 'regulatory discards' means fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.'';

(10) by redesignating paragraphs (36) through (43) (as redesignated) as paragraphs (37) through (44), respectively, and inserting after paragraph (35) (as redesignated) the following:

''(36) The term 'special areas' means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.'';

(11) by striking ''for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(g) has been implemented'' in paragraph (42) (as redesignated) and inserting ''regulated under this Act''; and

(12) by redesignating paragraph (44) (as redesignated) as paragraph (45), and inserting after paragraph (43) the following:

''(44) The term 'vessel subject to the jurisdiction of the United States' has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).''.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

The Act is amended by inserting after section 3 (16 U.S.C. 1802) the following:

''SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act, not to exceed the following sums:

''(1) $147,000,000 for fiscal year 1996;

''(2) $151,000,000 for fiscal year 1997;

''(3) $155,000,000 for fiscal year 1998; and

''(4) $159,000,000 for fiscal year 1999.''.

SEC. 104. HIGHLY MIGRATORY SPECIES.

Section 102 (16 U.S.C. 1812) is amended by striking ''promoting the objective of optimum utilization'' and inserting ''shall promote the achievement of optimum yield''.

SEC. 105. FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS.

(a) AUTHORITY TO OPERATE UNDER TRANSSHIPMENT PERMITS.—Section 201 (16 U.S.C. 1821) is amended—

(1) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:

''(1) is authorized under subsections (b) or (c) or section 204(e), or under a permit issued under section 204(d);

''(2) is not prohibited under subsection (f); and'';

(2) by striking ''(i)'' in subsection (c)(2)(D) and inserting ''(h)'';

(3) by striking subsection (f);

(4) by redesignating subsections (g) through (j) as subsections (f) through (i), respectively;

(5) in paragraph (2) of subsection (h) (as redesignated), redesignate subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and insert after subparagraph (A) the following:

''(B) in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program that is at least equal in effectiveness to the program established by the Secretary;''; and

(6) in subsection (i) (as redesignated) by striking ''305'' and inserting ''304''.

(b) INTERNATIONAL FISHERY AGREEMENTS.—Section 202 (16 U.S.C. 1822) is amended—

(1) by adding before the period at the end of subsection (c) ''or section 204(e)'';

(2) by adding at the end the following:

''(h) BYCATCH REDUCTION AGREEMENTS.—

''(1) The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen for such purposes in any fishery regulated pursuant to this Act for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.

''(2) An international agreement negotiated under this subsection shall be—

''(A) consistent with the policies and purposes of this Act; and

''(B) subject to approval by Congress under section 203.

''(3) Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing actions taken under this subsection.''.

(c) PERIOD FOR CONGRESSIONAL REVIEW OF INTERNATIONAL FISHERY AGREEMENTS.—Section 203 (16 U.S.C. 1823) is amended—

(1) by striking ''GOVERNING'' in the section heading;

(2) by striking ''agreement'' each place it appears in subsection (a) and inserting ''agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement'';

(3) by striking ''60 calendar days of continuous session of the Congress'' in subsection (a) and inserting ''120 days (excluding any days in a period for which the Congress is adjourned sine die)'';

(4) by striking subsection (c);

(5) by redesignating subsection (d) as subsection (c); and

(6) by striking ''agreement'' in subsection (c)(2)(A), as redesignated, and inserting ''agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement''.

(d) TRANSSHIPMENT PERMITS AND PACIFIC INSULAR AREA FISHING.— Section 204 (16 U.S.C. 1824) is amended—

(1) by inserting ''or subsection (d)'' in the first sentence of subsection (b)(7) after ''under paragraph (6)'';

(2) by striking ''the regulations promulgated to implement any such plan'' in subsection (b)(7)(A) and inserting ''any applicable federal or State fishing regulations'';

(3) by inserting ''or subsection (d)'' in subsection (b)(7)(D) after ''paragraph (6)(B)''; and

(4) by adding at the end the following:

''(d) TRANSSHIPMENT PERMITS.—

''(1) AUTHORITY TO ISSUE PERMITS.—The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the exclusive economic zone or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States to any person who—

''(A) submits an application which is approved by the Secretary under paragraph (3); and

''(B) pays a fee imposed under paragraph (7).

''(2) TRANSMITTAL.—Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of State, Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any affected State.

''(3) APPROVAL OF APPLICATION.—The Secretary may approve, in consultation with the appropriate Council or Marine Fisheries Commission, an application for a permit under this section if the Secretary determines that—

''(A) the transportation of fish or fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this Act;

''(B) the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application;

''(C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and

''(D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.

''(4) WHOLE OR PARTIAL APPROVAL.—The Secretary may approve all or any portion of an application under paragraph (3).

''(5) FAILURE TO APPROVE APPLICATION.—If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.

''(6) CONDITIONS AND RESTRICTIONS.—The Secretary shall establish and include in each permit under this subsection conditions and restrictions, including those conditions and restrictions set forth in subsection (b)(7), which shall be complied with by the owner and operator of the vessel for which the permit is issued.

''(7) FEES.—The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit, except that the Secretary shall waive the fee for the permit if the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation.

''(e) PACIFIC INSULAR AREAS.—

''(1) NEGOTIATION OF PACIFIC INSULAR AREA FISHERY AGREEMENTS.—The Secretary of State, with the concurrence of the Secretary and in consultation with any appropriate Council, may negotiate and enter into a Pacific Insular Area fishery agreement to authorize foreign fishing within the exclusive economic zone adjacent to a Pacific Insular Area—

''(A) in the case of American Samoa, Guam, or the Northern Mariana Islands, at the request and with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which such agreement applies; and

''(B) in the case of a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, at the request of the Western Pacific Council.

''(2) AGREEMENT TERMS AND CONDITIONS.—A Pacific Insular Area fishery agreement—

''(A) shall not be considered to supersede any governing international fishery agreement currently in effect under this Act, but shall provide an alternative basis for the conduct of foreign fishing within the exclusive economic zone adjacent to Pacific Insular Areas;

''(B) shall be negotiated and implemented consistent only with the governing international fishery agreement provisions of this title specifically made applicable in this subsection;

''(C) may not be negotiated with a nation that is in violation of a governing international fishery agreement in effect under this Act;

''(D) shall not be entered into if it is determined by the Governor of the applicable Pacific Insular Area with respect to agreements initiated under paragraph (1)(A), or the Western Pacific Council with respect to agreements initiated under paragraph (1)(B), that such an agreement will adversely affect the fishing activities of the indigenous people of such Pacific Insular Area;

''(E) shall be valid for a period not to exceed three years and shall only become effective according to the procedures in section 203; and

''(F) shall require the foreign nation and its fishing vessels to comply with the requirements of paragraphs (1), (2), (3) and (4)(A) of section 201(c), section 201(d), and section 201(h).

''(3) PERMITS FOR FOREIGN FISHING.—

''(A) Application for permits for foreign fishing authorized under a Pacific Insular Areas fishing agreement shall be made, considered and approved or disapproved in accordance with paragraphs (3), (4), (5), (6), (7)(A) and (B), (8), and (9) of subsection (b), and shall include any conditions and restrictions established by the Secretary in consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, the Governor of the applicable Pacific Insular Area, and the appropriate Council.

''(B) If a foreign nation notifies the Secretary of State of its acceptance of the requirements of this paragraph, paragraph (2)(F), and paragraph (5), including any conditions and restrictions established under subparagraph (A), the Secretary of State shall promptly transmit such notification to the Secretary. Upon receipt of any payment required under a Pacific Insular Area fishing agreement, the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each

permit shall contain a statement of all of the requirements, conditions, and restrictions established under this subsection which apply to the fishing vessel for which the permit is issued.

''(4) MARINE CONSERVATION PLANS.—

''(A) Prior to entering into a Pacific Insular Area fishery agreement, the Western Pacific Council and the appropriate Governor shall develop a 3-year marine conservation plan detailing uses for funds to be collected by the Secretary pursuant to such agreement. Such plan shall be consistent with any applicable fishery management plan, identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned marine conservation projects. Conservation and management objectives shall include, but not be limited to—

''(i) establishment of Pacific Insular Area observer programs, approved by the Secretary in consultation with the Western Pacific Council, that provide observer coverage for foreign fishing under Pacific Insular Area fishery agreements that is at least equal in effectiveness to the program established by the Secretary under section 201(h);

''(ii) conduct of marine and fisheries research, including development of systems for information collection, analysis, evaluation, and reporting;

''(iii) conservation, education, and enforcement activities related to marine and coastal management, such as living marine resource assessments, habitat monitoring and coastal studies;

''(iv) grants to the University of Hawaii for technical assistance projects by the Pacific Island Network, such as education and training in the development and implementation of sustainable marine resources development projects, scientific research, and conservation strategies; and

''(v) western Pacific community-based demonstration projects under section 112(b) of the Sustainable Fisheries Act and other coastal improvement projects to foster and promote the management, conservation, and economic enhancement of the Pacific Insular Areas.

''(B) In the case of American Samoa, Guam, and the Northern Mariana Islands, the appropriate Governor, with the concurrence of the Western Pacific Council, shall develop the marine conservation plan described in subparagraph (A) and submit such plan to the Secretary for approval. In the case of other Pacific Insular Areas, the Western Pacific Council shall develop and submit the marine conservation plan described in subparagraph (A) to the Secretary for approval.

''(C) If a Governor or the Western Pacific Council intends to request that the Secretary of State renew a Pacific Insular Area fishery agreement, a subsequent 3-year plan shall be submitted to the Secretary for approval by the end of the second year of the existing 3-year plan.

''(5) RECIPROCAL CONDITIONS.—Except as expressly provided otherwise in this subsection, a Pacific Insular Area fishing agreemeent may include terms similar to the terms applicable to United States fishing vessels for access to similar fisheries in waters subject to the fisheries jurisdiction of another nation.

''(6) USE OF PAYMENTS BY AMERICAN SAMOA, GUAM, NORTHERN MARIANA ISLANDS.—Any payments received by the Secretary under a Pacific Insular Area fishery agreement for American Samoa, Guam, or the Northern Mariana Islands shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which those funds were collected. Amounts deposited in the Treasury of a Pacific Insular Area shall be available, without appropriation or fiscal year limitation, to the Governor of the Pacific Insular Area—

''(A) to carry out the purposes of this subsection;

''(B) to compensate (i) the Western Pacific Council for mutually agreed upon administrative costs incurred relating to any Pacific Insular Area fishery agreement for such Pacific Insular Area, and (ii) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(A); and

''(C) to implement a marine conservation plan developed and approved under paragraph (4).

''(7) WESTERN PACIFIC SUSTAINABLE FISHERIES FUND.—There is established in the United States Treasury a Western Pacific Sustainable Fisheries Fund into which any payments received by the Secretary under a Pacific Insular Area fishery agreement for any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands shall be deposited. The Western Pacific Sustainable Fisheries Fund shall be made available, without appropriation or fiscal year limitation, to the Secretary, who shall provide such funds only to—

''(A) the Western Pacific Council for the purpose of carrying out the provisions of this subsection, including implementation of a marine conservation plan approved under paragraph (4);

''(B) the Secretary of State for mutually agreed upon travel expenses for no more than 2 federal representatives incurred as a direct result of complying with paragraph (1)(B); and

''(C) the Western Pacific Council to meet conservation and management objectives in the State of Hawaii if monies remain in the Western Pacific Sustainable Fisheries Fund after the funding requirements of subparagraphs (A) and (B) have been satisfied.

Amounts deposited in such fund shall not diminish funding received by the Western Pacific Council for the purpose of carrying out other responsibilities under this Act.

''(8) USE OF FINES AND PENALTIES.—In the case of violations occurring within the exclusive economic zone off American Samoa, Guam, or the Northern Mariana Islands, amounts received by the Secretary which are attributable to fines or penalties imposed under this Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, after payment of direct costs of the enforcement action to all entities involved in such action, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the exclusive economic zone in which the violation occurred, to be used for fisheries enforcement and for implementation of a marine conservation plan under paragraph (4).''.

(e) ATLANTIC HERRING TRANSSHIPMENT.—Within 30 days of receiving an application, the Secretary shall, under Section 204(d) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, issue permits to up to fourteen Canadian transport vessels that are not equipped for fish harvesting or processing, for the transshipment, within the boundaries of the State of Maine or within the portion of the exclusive economic zone east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State, of Atlantic herring harvested by United States fishermen within the area described and used solely in sardine processing. In issuing a permit pursuant to this subsection, the Secretary shall provide a waiver under section 201(h)(2)(C) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, provided that such vessels comply with Federal or State monitoring and reporting requirements for the Atlantic herring fishery, including the stationing of United States observers aboard such vessels, if necessary.

(f) LARGE SCALE DRIFTNET FISHING.—Section 206 (16 U.S.C. 1826) is amended—

(1) in subsection (e), by striking paragraphs (3) and (4), and redesignating paragraphs (5) and (6) as (3) and (4), respectively; and

(2) in subsection (f), by striking ''(e)(6),'' and inserting ''(e)(4),''.

(g) RUSSIAN FISHING IN THE BERING SEA.—No later than September 30, 1997, the North Pacific Fishery Management Council, in consultation with the North Pacific and Bering Sea Advisory Body, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing the institutional structures in Russia pertaining to stock assessment, management, and enforcement for fishery harvests in the Bering Sea, and recommendations for improving coordination between the United States and Russia for managing and conserving Bering Sea fishery resources of mutual concern.

SEC. 106. NATIONAL STANDARDS.

(a) Section 301(a)(5) (16 U.S.C. 1851(a)(5)) is amended by striking ''promote'' and inserting ''consider''.

(b) Section 301(a) (16 U.S.C. 1851(a)) is amended by adding at the end thereof the following:

''(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

''(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

''(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.''.

SEC. 107. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) Section 302(a) (16 U.S.C. 1852(a)) is amended—

(1) by inserting ''(1)'' after the subsection heading;

(2) by redesignating paragraphs (1) through (8) as subparagraphs (A) through (H), respectively;

(3) by striking ''section 304(f)(3)'' wherever it appears and inserting ''paragraph (3)'';

(4) in paragraph (1)(B), as amended—

(A) by striking ''and Virginia'' and inserting ''Virginia, and North Carolina'';

(B) by inserting ''North Carolina, and'' after ''except'';

(C) by striking ''19'' and inserting ''21''; and

(D) by striking ''12'' and inserting ''13'';

(5) by striking paragraph (1)(F), as redesignated, and inserting the following:

''(F) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 14 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State), and including

one appointed from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).'';

(6) by indenting the sentence at the end thereof and inserting ''(2)'' before ''Each Council''; and

(7) by adding at the end the following:

''(3) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.''.

(b) Section 302(b) (16 U.S.C. 1852(b)) is amended—

(1) by striking ''subsection (b)(2)'' in paragraphs (1)(C) and (3), and inserting in both places ''paragraphs (2) and (5)'';

(2) by striking the last sentence in paragraph (3) and inserting the following: ''Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member.''; and

(3) by striking paragraph (5) and inserting after paragraph (4) the following:

''(5)(A) The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph.

''(B) Representation shall be rotated among the tribes taking into consideration—

''(i) the qualifications of the individuals on the list referred to in subparagraph (A),

''(ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and

''(iii) the geographic area in which the tribe of the representative is located.

''(C) A vacancy occurring prior to the expiration of any term shall be filled in the same manner as set out in subparagraphs (A) and (B), except that the Secretary may use the list from which the vacating representative was chosen.

''(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with paragraphs (2) or (5) if—

''(A) the Council concerned first recommends removal by not less than two-thirds of the members who are voting members and submits such removal recommendation to the Secretary in writing together with a statement of the basis for the recommendation; or

''(B) the member is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307(1)(O).''.

(c) Section 302(d) (16 U.S.C. 1852(d)) is amended in the first sentence—

(1) by striking ''each Council,'' and inserting ''each Council who are required to be appointed by the Secretary and''; and

(2) by striking ''shall, until January 1, 1992,'' and all that follows through ''GS-16'' and inserting ''shall receive compensation at the daily rate for GS-15, step 7''.

(d) Section 302(e) (16 U.S.C. 1852(e)) is amended by adding at the end the following:

''(5) At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.''.

(e) Section 302(g) (16 U.S.C. 1852(g)) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following:

''(4) The Secretary shall establish advisory panels to assist in the collection and evaluation of information relevant to the development of any fishery management plan or plan amendment for a fishery to which subsection (a)(3) applies. Each advisory panel shall participate in all aspects of the development of the plan or amendment; be balanced in its representation of commercial, recreational, and other interests; and consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from among—

''(A) members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

''(B) other interested persons.''.

(f) Section 302(h) (16 U.S.C. 1852(h)) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to each such plan that are necessary from time to time (and promptly whenever changes in conservation and management measures in another fishery substantially affect the fishery for which such plan was developed);'';

(2) in paragraph (2)—

(A) by striking ''section 204(b)(4)(C),'' in paragraph (2) and inserting ''section 204(b)(4)(C) or section 204(d),'';

(B) by striking ''304(c)(2)'' and inserting ''304(c)(4)''; and

(3) by striking ''304(f)(3) ''in paragraph (5) and inserting ''subsection (a)(3)''.

(g) Section 302 is amended further by striking subsection (i), and by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(h) Section 302(i), as redesignated, is amended—

(1) by striking ''of the Councils'' in paragraph (1) and inserting ''established under subsection (g)'';

(2) by striking ''of a Council:'' in paragraph (2) and inserting ''established under subsection (g):'';

(3) by striking ''Council's'' in paragraph (2)(C);

(4) by adding the following at the end of paragraph (2)(C): ''The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c), in which case public notice shall be given immediately.'';

(5) by adding the following at the end of paragraph (2)(D): ''All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.'';

(6) by striking paragraph (2)(E) and inserting:

''(E) Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.'';

(7) by striking ''by the Council'' the first place it appears in paragraph (2)(F);

(8) by inserting ''or the Secretary, as appropriate'' in paragraph (2)(F) after ''of the Council''; and

(9) by striking ''303(d)'' each place it appears in paragraph (2)(F) and inserting ''402(b)''; and

(10) by striking ''303(d)'' in paragraph (4) and inserting ''402(b)''.

(i) Section 302(j), as redesignated, is amended—

(1) by inserting ''and Recusal'' after ''Interest'' in the subsection heading;

(2) by striking paragraph (1) and inserting the following:

''(1) For the purposes of this subsection—

''(A) the term 'affected individual' means an individual who—

''(i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2); or

''(ii) is a voting member of a Council appointed—

''(I) under subsection (b)(2); or

''(II) under subsection (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and

''(B) the term 'designated official' means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph (7)(B).'';

(3) by striking ''(1)(A)'' in paragraph (3)(A) and inserting ''(1)(A)(i)'';

(4) by striking ''(1)(B) or (C)'' in paragraph (3)(B) and inserting ''(1)(A)(ii)'';

(5) by striking ''(1)(B) or (C)'' in paragraph (4) and inserting ''(1)(A)(ii)'';

(6)(A) by striking ''and'' at the end of paragraph (5)(A);

(B) by striking the period at the end of paragraph (5)(B) and inserting a semicolon and the word ''and''; and

(C) by adding at the end of paragraph (5) the following:

''(C) be kept on file by the Secretary for use in reviewing determinations under paragraph (7)(B) and made available for public inspection at reasonable hours.'';

(7) by striking ''(1)(B) or (C)'' in paragraph (6) and inserting ''(1)(A)(ii)'';

(8) by redesignating paragraph (7) as paragraph (8) and inserting after paragraph (6) the following:

''(7)(A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph (2) shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

''(B) At the request of an affected individual, or upon the initiative of the appropriate

designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.

''(C) Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B) within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

''(D) Any affected individual who does not vote in a Council decision in accordance with this subsection may state for the record how he or she would have voted on such decision if he or she had voted.

''(E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph (C), the eventual ruling may not be treated as cause for the invalidation or reconsideration by the Secretary of such decision.

''(F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of the Sustainable Fisheries Act, shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A), and which allow for the making of determinations under subparagraphs (B) and (C).''; and

(9) by striking ''(1)(B) or (C)'' in paragraph (8), as redesignated, and inserting ''(1)(A)(ii)''.

SEC. 108. FISHERY MANAGEMENT PLANS.

(a) REQUIRED PROVISIONS.—Section 303(a) (16 U.S.C. 1853(a)) is amended—

(1) in paragraph (1)(A) by inserting ''and rebuild overfished stocks'' after ''overfishing'';

(2) by inserting ''commercial, recreational, and charter fishing in'' in paragraph (5) after ''with respect to'';

(3) by striking paragraph (7) and inserting the following:

''(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;'';

(4) by striking ''and'' at the end of paragraph (8);

(5) by inserting ''and fishing communities'' after ''fisheries'' in paragraph (9)(A);

(6) by striking the period at the end of paragraph (9) and inserting a semicolon; and

(7) by adding at the end the following:

''(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

''(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

''(A) minimize bycatch; and

''(B) minimize the mortality of bycatch which cannot be avoided;

''(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

''(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

''(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.''.

(b) IMPLEMENTATION.—Not later than 24 months after the date of enactment of this Act, each Regional Fishery Management Council shall submit to the Secretary of Commerce amendments to each fishery management plan under its authority to comply with the amendments made in subsection (a) of this section.

(c) DISCRETIONARY PROVISIONS.—Section 303(b) (16 U.S.C. 1853(b)) is amended—

(1) by striking paragraph (3) and inserting the following:

''(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the —

''(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

''(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

''(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;'';

(2) by striking ''system for limiting access to'' in paragraph (6) and inserting ''limited access system for'';

(3) by striking ''fishery'' in subparagraph (E) of paragraph (6) and inserting ''fishery and any affected fishing communities'';

(4) by inserting ''one or more'' in paragraph (8) after ''require that'';

(5) by striking ''and'' at the end of paragraph (9);

(6) by redesignating paragraph (10) as paragraph (12); and

(7) by inserting after paragraph (9) the following:

''(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

''(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and''.

(d) REGULATIONS.—Section 303 (16 U.S.C. 1853) is amended by striking subsection (c) and inserting the following:

''(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

''(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

''(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.''.

(e) INDIVIDUAL FISHING QUOTAS.—Subsection 303 (16 U.S.C. 1853) is amended further by striking subsections (d), (e), and (f), and inserting the following:

''(d) INDIVIDUAL FISHING QUOTAS.—

''(1)(A) A Council may not submit and the Secretary may not approve or implement before October 1, 2000, any fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program.

''(B) Any fishery management plan, plan amendment, or regulation approved by the Secretary on or after January 4, 1995, which creates any new individual fishing quota program shall be repealed and immediately returned by the Secretary to the appropriate Council and shall not be resubmitted, reapproved, or implemented during the moratorium set forth in subparagraph (A).

''(2)(A) No provision of law shall be construed to limit the authority of a Council to submit and the Secretary to approve the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including an individual fishing quota program.

''(B) This subsection shall not be construed to prohibit a Council from submitting, or the Secretary from approving and implementing, amendments to the North Pacific halibut and sablefish, South Atlantic wreckfish, or Mid-Atlantic surf clam and ocean (including mahogany) quahog individual fishing quota programs.

''(3) An individual fishing quota or other limited access system authorization—

''(A) shall be considered a permit for the purposes of sections 307, 308, and 309;

''(B) may be revoked or limited at any time in accordance with this Act;

''(C) shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access system authorization if it is revoked or limited; and

''(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested.

''(4)(A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the—

''(i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and

''(ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

''(B) A Council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.

''(5) In submitting and approving any new individual fishing quota program on or after October 1, 2000, the Councils and the Secretary shall consider the report of the National Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program—

''(A) establishes procedures and requirements for the review and revision of the terms of any such program (including any revisions that may be necessary once a national policy with respect to individual fishing quota programs is implemented), and, if appropriate, for the renewal, reallocation, or reissuance of individual fishing quotas;

''(B) provides for the effective enforcement and management of any such program, including adequate observer coverage, and for fees under section 304(d)(2) to recover actual

costs directly related to such enforcement and management; and

''(C) provides for a fair and equitable initial allocation of individual fishing quotas, prevents any person from acquiring an excessive share of the individual fishing quotas issued, and considers the allocation of a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, and crew members who do not hold or qualify for individual fishing quotas.''.

(f) INDIVIDUAL FISHING QUOTA REPORT.— (1) Not later than October 1, 1998, the National Academy of Sciences, in consultation with the Secretary of Commerce and the Regional Fishery Management Councils, shall submit to the Congress a comprehensive final report on individual fishing quotas, which shall include recommendations to implement a national policy with respect to individual fishing quotas. The report shall address all aspects of such quotas, including an analysis of—

(A) the effects of limiting or prohibiting the transferability of such quotas;

(B) mechanisms to prevent foreign control of the harvest of United States fisheries under individual fishing quota programs, including mechanisms to prohibit persons who are not eligible to be deemed a citizen of the United States for the purpose of operating a vessel in the coastwise trade under section 2(a) and section 2(c) of the Shipping Act, 1916 (46 U.S.C. 802 (a) and (c)) from holding individual fishing quotas;

(C) the impact of limiting the duration of individual fishing quota programs;

(D) the impact of authorizing Federal permits to process a quantity of fish that correspond to individual fishing quotas, and of the value created for recipients of any such permits, including a comparison of such value to the value of the corresponding individual fishing quotas;

(E) mechanisms to provide for diversity and to minimize adverse social and economic impacts on fishing communities, other fisheries affected by the displacement of vessels, and any impacts associated with the shifting of capital value from fishing vessels to individual fishing quotas, as well as the use of capital construction funds to purchase individual fishing quotas;

(F) mechanisms to provide for effective monitoring and enforcement, including the inspection of fish harvested and incentives to reduce bycatch, and in particular economic discards;

(G) threshold criteria for determining whether a fishery may be considered for individual fishing quota management, including criteria related to the geographical range, population dynamics and condition of a fish stock, the socioeconomic characteristics of a fishery (including participants' involvement in multiple fisheries in the region), and participation by commercial, charter, and recreational fishing sectors in the fishery;

(H) mechanisms to ensure that vessel owners, vessel masters, crew members, and United States fish processors are treated fairly and equitably in initial allocations, to require persons holding individual fishing quotas to be on board the vessel using such quotas, and to facilitate new entry under individual fishing quota programs;

(I) potential social and economic costs and benefits to the nation, individual fishing quota recipients, and any recipients of Federal permits described in subparagraph (D) under individual fishing quota programs, including from capital gains revenue, the allocation of such quotas or permits through Federal auctions, annual fees and transfer fees at various levels, or other measures;

(J) the value created for recipients of individual fishing quotas, including a comparison of such value to the value of the fish harvested under such quotas and to the value of permits created by other types of limited access systems, and the effects of creating such value on fishery management and conservation; and

(K) such other matters as the National Academy of Sciences deems appropriate.

(2) The report shall include a detailed analysis of individual fishing quota programs already implemented in the United States, including the impacts: of any limits on transferability, on past and present participants, on fishing communities, on the rate and total amount of bycatch (including economic and regulatory discards) in the fishery, on the safety of life and vessels in the fishery, on any excess harvesting or processing capacity in the fishery, on any gear conflicts in the fishery, on product quality from the fishery, on the effectiveness of enforcement in the fishery, on the size and composition of fishing vessel fleets, of the economic value created by individual fishing quotas for initial recipients and non-recipients, on conservation of the fishery resource, on fishermen who rely on participation in several fisheries, on the success in meeting any fishery management plan goals, and the fairness and effectiveness of the methods used for allocating quotas and controlling transferability. The report shall also include any information about individual fishing quota programs in other countries that may be useful.

(3) The report shall identify and analyze alternative conservation and management measures, including other limited access systems such as individual transferable effort systems, that could accomplish the same objectives as individual fishing quota programs, as well as characteristics that are unique to individual fishing quota programs.

(4) The Secretary of Commerce shall, in consultation with the National Academy of Sciences, the Councils, the fishing industry, affected States, conservation organizations and other interested persons, establish two individual fishing quota review groups to assist in the preparation of the report, which shall represent: (A) Alaska, Hawaii, and the other Pacific coastal States; and (B) Atlantic coastal States and the Gulf of Mexico coastal States. The Secretary shall, to the extent practicable, achieve a balanced representation of viewpoints among the individuals on each review group. The review groups shall be deemed to be advisory panels under section 302(g) of the Magnuson Fishery Conservation and Management Act, as amended by this Act.

(5) The Secretary of Commerce, in consultation with the National Academy of Sciences and the Councils, shall conduct public hearings in each Council region to obtain comments on individual fishing quotas for use by the National Academy of Sciences in preparing the report required by this subsection. The National Academy of Sciences shall submit a draft report to the Secretary of Commerce by January 1, 1998. The Secretary of Commerce shall publish in the Federal Register a notice and opportunity for public comment on the draft of the report, or any revision thereof. A detailed summary of comments received and views presented at the hearings, including any dissenting views, shall be included by the National Academy of Sciences in the final report.

(6) Section 210 of Public Law 104-134 is hereby repealed.

(g) NORTH PACIFIC LOAN PROGRAM.—(1) By not later than October 1, 1997 the North Pacific Fishery Management Council shall recommend to the Secretary of Commerce a program which uses the full amount of fees authorized to be used under section 303(d)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, in the halibut and sablefish fisheries off Alaska to guarantee obligations in accordance with such section.

(2)(A) For the purposes of this subsection, the phrase ''fishermen who fish from small vessels'' in section 303(d)(4)(A)(i) of such Act shall mean fishermen wishing to purchase individual fishing quotas for use from Category B, Category C, or Category D vessels, as defined in part 676.20(c) of title 50, Code of Federal Regulations (as revised as of October 1, 1995), whose aggregate ownership of individual fishing quotas will not exceed the equivalent of a total of 50,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made if the guarantee is approved, who will participate aboard the fishing vessel in the harvest of fish caught under such quotas, who have at least 150 days of experience working as part of the harvesting crew in any U.S. commercial fishery, and who do not own in whole or in part any Category A or Category B vessel, as defined in such part and title of the Code of Federal Regulations.

(B) For the purposes of this subsection, the phrase ''entry level fishermen'' in section 303(d)(4)(A)(ii) of such Act shall mean fishermen who do not own any individual fishing quotas, who wish to obtain the equivalent of not more than a total of 8,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made, and who will participate aboard the fishing vessel in the harvest of fish caught under such quotas.

(h) COMMUNITY DEVELOPMENT QUOTA REPORT.—Not later than October 1, 1998, the National Academy of Sciences, in consultation with the Secretary, the North Pacific and Western Pacific Councils, communities and organizations participating in the program, participants in affected fisheries, and the affected States, shall submit to the Secretary of Commerce and Congress a comprehensive report on the performance and effectiveness of the community development quota programs under the authority of the North Pacific and Western Pacific Councils. The report shall—

(1) evaluate the extent to which such programs have met the objective of providing communities with the means to develop ongoing commercial fishing activities;

(2) evaluate the manner and extent to which such programs have resulted in the communities and residents—

(A) receiving employment opportunities in commercial fishing and processing; and

(B) obtaining the capital necessary to invest in commercial fishing, fish processing, and commercial fishing support projects (including infrastructure to support commercial fishing);

(3) evaluate the social and economic conditions in the participating communities and the extent to which alternative private sector employment opportunities exist;

(4) evaluate the economic impacts on participants in the affected fisheries, taking into account the condition of the fishery resource, the market, and other relevant factors;

(5) recommend a proposed schedule for accomplishing the developmental purposes of community development quotas; and

(6) address such other matters as the National Academy of Sciences deems appropriate.

(i) EXISTING QUOTA PLANS.—Nothing in this Act or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 109. ACTION BY THE SECRETARY.

(a) SECRETARIAL REVIEW OF PLANS AND REGULATIONS.—Section 304 (16 U.S.C. 1854) is

amended by striking subsections (a) and (b) and inserting the following:

''(a) REVIEW OF PLANS.—

''(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

''(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

''(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

''(2) In undertaking the review required under paragraph (1), the Secretary shall—

''(A) take into account the information, views, and comments received from interested persons;

''(B) consult with the Secretary of State with respect to foreign fishing; and

''(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

''(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

''(A) the applicable law with which the plan or amendment is inconsistent;

''(B) the nature of such inconsistencies; and

''(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

''(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

''(5) For purposes of this subsection and subsection (b), the term 'immediately' means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

''(b) REVIEW OF REGULATIONS.—

''(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

''(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

''(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

''(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

''(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.''.

(b) PREPARATION BY THE SECRETARY.—Section 304(c) (16 U.S.C. 1854(c)) is amended—

(1) by striking the subsection heading and inserting ''PREPARATION AND REVIEW OF SECRETARIAL PLANS'';

(2) by striking ''or'' at the end of paragraph (1)(A);

(3) by striking all that follows ''further revised plan'' in paragraph (1) and inserting ''or amendment; or'';

(4) by inserting after subparagraph (1)(B), as amended, the following new subparagraph:

''(C) the Secretary is given authority to prepare such plan or amendment under this section.'';

(5) by striking paragraph (2) and inserting:

''(2) In preparing any plan or amendment under this subsection, the Secretary shall—

''(A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and

''(B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.'';

(6) by inserting ''for a fishery under the authority of a Council'' after ''paragraph (1)'' in paragraph (3);

(7) by striking ''system described in section 303(b)(6)'' in paragraph (3) and inserting ''system, including any individual fishing quota program''; and

(8) by inserting after paragraph (3) the following new paragraphs:

''(4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately—

''(A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and

''(B) publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

''(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

''(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

''(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.''.

(c) INDIVIDUAL FISHING QUOTA AND COMMUNITY DEVELOPMENT QUOTA FEES.—Section 304(d) (16 U.S.C. 1854(d)) is amended—

(1) by inserting ''(1)'' immediately before the first sentence; and

(2) by inserting the at the end the following:

''(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any—

''(i) individual fishing quota program; and

''(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

''(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

''(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).

''(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.''.

(d) DELAY OF FEES.—Notwithstanding any other provision of law, the Secretary shall not begin the collection of fees under section 304(d)(2) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, in the surf clam and ocean (including mahogany) quahog fishery or in the wreckfish fishery until after January 1, 2000.

(e) OVERFISHING.—Section 304(e) (16 U.S.C. 1854(e)) is amended to read as follows:

''(e) REBUILDING OVERFISHED FISHERIES.—

''(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

''(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

''(3) Within one year of an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

''(A) to end overfishing in the fishery and to rebuild affected stocks of fish; or

''(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

''(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

''(A) specify a time period for ending overfishing and rebuilding the fishery that shall—

''(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

''(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

''(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

''(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

''(5) If, within the one-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

''(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

''(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—

''(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

''(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.''.

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—Section 304(f) is amended by striking paragraph (3).

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—Section 304 (16 U.S.C. 1854) is amended further by striking subsection (g) and inserting the following:

''(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—(1) PREPARATION AND IMPLEMENTATION OF PLAN OR PLAN AMENDMENT.—The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall—

''(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);

''(B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

''(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

''(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

''(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

''(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

''(G) ensure that conservation and management measures under this subsection—

''(i) promote international conservation of the affected fishery;

''(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

''(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

''(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

''(2) CERTAIN FISH EXCLUDED FROM 'BYCATCH' DEFINITION.—Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d) that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.''.

(h) COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC LONGLINE FISHERY.—(1) The Secretary of Commerce shall—

(A) establish an advisory panel under section 302(g)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species;

(B) conduct surveys and workshops with affected fishery participants to provide information and identify options for future management programs;

(C) to the extent practicable and necessary for the evaluation of options for a comprehensive management system, recover vessel production records; and

(D) complete by January 1, 1998, a comprehensive study on the feasibility of implementing a comprehensive management system for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species, including, but not limited to, individual fishing quota programs and other limited access systems.

(2) Based on the study under paragraph (1)(D) and consistent with the requirements of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), in cooperation with affected participants in the fishery, the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas, and the advisory panel established under paragraph (1)(A), the Secretary of Commerce may, after October 1, 1998, implement a comprehensive management system pursuant to section 304 of such Act (16 U.S.C. 1854) for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species. Such a system may not implement an individual fishing quota program until after October 1, 2000.

(i) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—Section 304, as amended, is further amended by adding at the end the following:

''(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.''.

(j) AMERICAN LOBSTER FISHERY.—Section 304(h) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, shall not apply to the American Lobster Fishery Management Plan.

SEC. 110. OTHER REQUIREMENTS AND AUTHORITY.

(a) Section 305 (18 U.S.C. 1855) is amended—

(1) by striking the title and subsection (a);

(2) by redesignating subsection (b) as subsection (f); and

(3) by inserting the following before subsection (c):

''SEC. 305. OTHER REQUIREMENTS AND AUTHORITY.

''(a) GEAR EVALUATION AND NOTIFICATION OF ENTRY.—

''(1) Not later than 18 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries—

''(A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 303(a); and

''(B) to which section 302(a)(3) applies and all fishing gear used in such fisheries.

''(2) The Secretary shall include with such list guidelines for determining when fishing

gear or a fishery is sufficiently different from those listed as to require notification under paragraph (3).

''(3) Effective 180 days after the publication of such list, no person or vessel may employ fishing gear or engage in a fishery not included on such list without giving 90 days advance written notice to the appropriate Council, or the Secretary with respect to a fishery to which section 302(a)(3) applies. A signed return receipt shall serve as adequate evidence of such notice and as the date upon which the 90-day period begins.

''(4) A Council may submit to the Secretary any proposed changes to such list or such guidelines the Council deems appropriate. The Secretary shall publish a revised list, after notice and an opportunity for public comment, upon receiving any such proposed changes from a Council.

''(5) A Council may request the Secretary to promulgate emergency regulations under subsection (c) to prohibit any persons or vessels from using an unlisted fishing gear or engaging in an unlisted fishery if the appropriate Council, or the Secretary for fisheries to which section 302(a)(3) applies, determines that such unlisted gear or unlisted fishery would compromise the effectiveness of conservation and management efforts under this Act.

''(6) Nothing in this subsection shall be construed to permit a person or vessel to engage in fishing or employ fishing gear when such fishing or gear is prohibited or restricted by regulation under a fishery management plan or plan amendment, or under other applicable law.

''(b) FISH HABITAT.—(1)(A) The Secretary shall, within 6 months of the date of enactment of the Sustainable Fisheries Act, establish by regulation guidelines to assist the Councils in the description and identification of essential fish habitat in fishery management plans (including adverse impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat. The Secretary shall set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitat and for the review and updating of such identifications based on new scientific evidence or other relevant information.

''(B) The Secretary, in consultation with participants in the fishery, shall provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it in the identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat.

''(C) The Secretary shall review programs administered by the Department of Commerce and ensure that any relevant programs further the conservation and enhancement of essential fish habitat.

''(D) The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat.

''(2) Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.

''(3) Each Council—

''(A) may comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority; and

''(B) shall comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority.

''(4)(A) If the Secretary receives information from a Council or Federal or State agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency would adversely affect any essential fish habitat identified under this Act, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.

''(B) Within 30 days after receiving a recommendation under subparagraph (A), a Federal agency shall provide a detailed response in writing to any Council commenting under paragraph (3) and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.''.

(b) Section 305(c) (16 U.S.C. 1855(c) is amended—

(1) in the heading by striking ''ACTIONS'' and inserting ''ACTIONS AND INTERIM MEASURES'';

(2) in paragraphs (1) and (2)—

(A) by striking ''involving'' and inserting ''or that interim measures are needed to reduce overfishing for''; and

(B) by inserting ''or interim measures'' after ''emergency regulations''; and

(C) by inserting ''or overfishing'' after ''emergency''; and

(3) in paragraph (3)—

(A) by inserting ''or interim measure'' after ''emergency regulation'' each place such term appears;

(B) by striking subparagraph (B);

(C) by redesignating subparagraph (C) as subparagraph (D); and

(D) by inserting after subparagraph (A) the following:

''(B) shall, except as provided in subparagraph (C), remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 180 days, provided the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;

''(C) that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist, provided that the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action; and''.

(c) Section 305(e) is amended—

(1) by striking ''12291, dated February 17, 1981,'' and inserting ''12866, dated September 30, 1993,''; and

(2) by striking ''subsection (c) or section 304(a) and (b)'' and inserting ''subsections (a), (b), and (c) of section 304''.

(d) Section 305, as amended, is further amended by adding at the end the following:

''(g) NEGOTIATED CONSERVATION AND MANAGEMENT MEASURES.—

''(1)(A) In accordance with regulations promulgated by the Secretary pursuant to this paragraph, a Council may establish a fishery negotiation panel to assist in the development of specific conservation and management measures for a fishery under its authority. The Secretary may establish a fishery negotiation panel to assist in the development of specific conservation and management measures required for a fishery under section 304(e)(5), for a fishery for which the Secretary has authority under section 304(g), or for any other fishery with the approval of the appropriate Council.

''(B) No later than 180 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations establishing procedures, developed in cooperation with the Administrative Conference of the United States, for the establishment and operation of fishery negotiation panels. Such procedures shall be comparable to the procedures for negotiated rulemaking established by subchapter III of chapter 5 of title 5, United States Code.

''(2) If a negotiation panel submits a report, such report shall specify all the areas where consensus was reached by the panel, including, if appropriate, proposed conservation and management measures, as well as any other information submitted by members of the negotiation panel. Upon receipt, the Secretary shall publish such report in the Federal Register for public comment.

''(3) Nothing in this subsection shall be construed to require either a Council or the Secretary, whichever is appropriate, to use all or any portion of a report from a negotiation panel established under this subsection in the development of specific conservation and management measures for the fishery for which the panel was established.

''(h) CENTRAL REGISTRY SYSTEM FOR LIMITED ACCESS SYSTEM PERMITS.—

''(1) Within 6 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits established under section 303(b)(6) or other Federal law, including individual fishing quotas, which shall provide for the registration of title to, and interests in, such permits, as well as for procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial or nonjudicial foreclosure of interests, enforcement of judgments thereon, and related matters deemed appropriate by the Secretary. Such registry system shall—

''(A) provide a mechanism for filing notice of a nonjudicial foreclosure or enforcement of a judgment by which the holder of a senior security interest acquires or conveys ownership of a permit, and in the event of a nonjudicial foreclosure, by which the interests of the holders of junior security interests are released when the permit is transferred;

''(B) provide for public access to the information filed under such system, notwithstanding section 402(b); and

''(C) provide such notice and other requirements of applicable law that the Secretary deems necessary for an effective registry system.

''(2) The Secretary shall promulgate such regulations as may be necessary to carry out this subsection, after consulting with the Councils and providing an opportunity for public comment. The Secretary is authorized to contract with non-federal entities to administer the central registry system.

''(3) To be effective and perfected against any person except the transferor, its heirs

and devisees, and persons having actual notice thereof, all security interests, and all sales and other transfers of permits described in paragraph (1), shall be registered in compliance with the regulations promulgated under paragraph (2). Such registration shall constitute the exclusive means of perfection of title to, and security interests in, such permits, except for federal tax liens thereon, which shall be perfected exclusively in accordance with the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.). The Secretary shall notify both the buyer and seller of a permit if a lien has been filed by the Secretary of Treasury against the permit before collecting any transfer fee under paragraph (5) of this subsection.

''(4) The priority of security interests shall be determined in order of filing, the first filed having the highest priority. A validly-filed security interest shall remain valid and perfected notwithstanding a change in residence or place of business of the owner of record. For the purposes of this subsection, 'security interest' shall include security interests, assignments, liens and other encumbrances of whatever kind.

''(5)(A) Notwithstanding section 304(d)(1), the Secretary shall collect a reasonable fee of not more than one-half of one percent of the value of a limited access system permit upon registration of the title to such permit with the central registry system and upon the transfer of such registered title. Any such fee collected shall be deposited in the Limited Access System Administration Fund established under subparagraph (B).

''(B) There is established in the Treasury a Limited Access System Administration Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purposes of—

''(i) administering the central registry system; and

''(ii) administering and implementing this Act in the fishery in which the fees were collected. Sums in the Fund that are not currently needed for these purposes shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.''.

(e) REGISTRY TRANSITION.—Security interests on permits described under section 305(h)(1) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, that are effective and perfected by otherwise applicable law on the date of the final regulations implementing section 305(h) shall remain effective and perfected if, within 120 days after such date, the secured party submits evidence satisfactory to the Secretary of Commerce and in compliance with such regulations of the perfection of such security.

SEC. 111. PACIFIC COMMUNITY FISHERIES.

(a) HAROLD SPARCK MEMORIAL COMMUNITY DEVELOPMENT QUOTA PROGRAM.—Section 305, as amended, is amended further by adding at the end:

''(i) ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT PROGRAMS.—

''(1)(A) The North Pacific Council and the Secretary shall establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program.

''(B) To be eligible to participate in the western Alaska community development quota program under subparagraph (A) a community shall—

''(i) be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering Sea;

''(ii) not be located on the Gulf of Alaska coast of the north Pacific Ocean;

''(iii) meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register;

''(iv) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to be a Native village;

''(v) consist of residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea or waters surrounding the Aleutian Islands; and

''(vi) not have previously developed harvesting or processing capability sufficient to support substantial participation in the groundfish fisheries in the Bering Sea, unless the community can show that the benefits from an approved Community Development Plan would be the only way for the community to realize a return from previous investments.

''(C)(i) Prior to October 1, 2001, the North Pacific Council may not submit to the Secretary any fishery management plan, plan amendment, or regulation that allocates to the western Alaska community development quota program a percentage of the total allowable catch of any Bering Sea fishery for which, prior to October 1, 1995, the Council had not approved a percentage of the total allowable catch for allocation to such community development quota program. The expiration of any plan, amendment, or regulation that meets the requirements of clause (ii) prior to October 1, 2001, shall not be construed to prohibit the Council from submitting a revision or extension of such plan, amendment, or regulation to the Secretary if such revision or extension complies with the other requirements of this paragraph.

''(ii) With respect to a fishery management plan, plan amendment, or regulation for a Bering Sea fishery that—

''(I) allocates to the western Alaska community development quota program a percentage of the total allowable catch of such fishery; and

''(II) was approved by the North Pacific Council prior to October 1, 1995;

the Secretary shall, except as provided in clause (iii) and after approval of such plan, amendment, or regulation under section 304, allocate to the program the percentage of the total allowable catch described in such plan, amendment, or regulation. Prior to October 1, 2001, the percentage submitted by the Council and approved by the Secretary for any such plan, amendment, or regulation shall be no greater than the percentage approved by the Council for such fishery prior to October 1, 1995.

''(iii) The Secretary shall phase in the percentage for community development quotas approved in 1995 by the North Pacific Council for the Bering Sea crab fisheries as follows:

''(I) 3.5 percent of the total allowable catch of each such fishery for 1998 shall be allocated to the western Alaska community development quota program;

''(II) 5 percent of the total allowable catch of each such fishery for 1999 shall be allocated to the western Alaska community development quota program; and

''(III) 7.5 percent of the total allowable catch of each such fishery for 2000 and thereafter shall be allocated to the western Alaska community development quota program, unless the North Pacific Council submits and the Secretary approves a percentage that is no greater than 7.5 percent of the total allowable catch of each such fishery for 2001 or the North Pacific Council submits and the Secretary approves any other percentage on or after October 1, 2001.

''(D) This paragraph shall not be construed to require the North Pacific Council to resubmit, or the Secretary to reapprove, any fishery management plan or plan amendment approved by the North Pacific Council prior to October 1, 1995, that includes a community development quota program, or any regulations to implement such plan or amendment.

''(2)(A) The Western Pacific Council and the Secretary may establish a western Pacific community development program for any fishery under the authority of such Council in order to provide access to such fishery for western Pacific communities that participate in the program.

''(B) To be eligible to participate in the western Pacific community development program, a community shall—

''(i) be located within the Western Pacific Regional Fishery Management Area;

''(ii) meet criteria developed by the Western Pacific Council, approved by the Secretary and published in the Federal Register;

''(iii) consist of community residents who are descended from the aboriginal people indigenous to the area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the Western Pacific region;

''(iv) not have previously developed harvesting or processing capability sufficient to support substantial participation in fisheries in the Western Pacific Regional Fishery Management Area; and

''(v) develop and submit a Community Development Plan to the Western Pacific Council and the Secretary.

''(C) In developing the criteria for eligible communities under subparagraph (B)(ii), the Western Pacific Council shall base such criteria on traditional fishing practices in or dependence on the fishery, the cultural and social framework relevant to the fishery, and economic barriers to access to the fishery.

''(D) For the purposes of this subsection 'Western Pacific Regional Fishery Management Area' means the area under the jurisdiction of the Western Pacific Council, or an island within such area.

''(E) Notwithstanding any other provision of this Act, the Western Pacific Council shall take into account traditional indigenous fishing practices in preparing any fishery management plan.

''(3) The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.

''(4) After the date of enactment of the Sustainable Fisheries Act, the North Pacific Council and Western Pacific Council may not submit to the Secretary a community development quota program that is not in compliance with this subsection.''.

(b) WESTERN PACIFIC DEMONSTRATION PROJECTS.—(1) The Secretary of Commerce and the Secretary of the Interior are authorized to make direct grants to eligible western Pacific communities, as recommended by the Western Pacific Fishery Management Council, for the purpose of establishing not less than three and not more than five fishery demonstration projects to foster and promote traditional indigenous fishing practices. The total amount of grants awarded under this subsection shall not exceed $500,000 in each fiscal year.

(2) Demonstration projects funded pursuant to this subsection shall foster and promote the involvement of western Pacific communities in western Pacific fisheries and may—

(A) identify and apply traditional indigenous fishing practices;

(B) develop or enhance western Pacific community-based fishing opportunities; and

(C) involve research, community education, or the acquisition of materials and equipment necessary to carry out any such demonstration project.

(3)(A) The Western Pacific Fishery Management Council, in consultation with the Secretary of Commerce, shall establish an advisory panel under section 302(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(g)) to evaluate, determine the relative merits of, and annually rank applications for such grants. The panel shall consist of not more than 8 individuals who are knowledgeable or experienced in traditional indigenous fishery practices of western Pacific communities and who are not members or employees of the Western Pacific Fishery Management Council.

(B) If the Secretary of Commerce or the Secretary of the Interior awards a grant for a demonstration project not in accordance with the rank given to such project by the advisory panel, the Secretary shall provide a detailed written explanation of the reasons therefor.

(4) The Western Pacific Fishery Management Council shall, with the assistance of such advisory panel, submit an annual report to the Congress assessing the status and progress of demonstration projects carried out under this subsection.

(5) Appropriate Federal agencies may provide technical assistance to western Pacific community-based entities to assist in carrying out demonstration projects under this subsection.

(6) For the purposes of this subsection, 'western Pacific community' shall mean a community eligible to participate under section 305(i)(2)(B) of the Magnuson Fishery Conservation and Management Act, as amended by this Act.

SEC. 112. STATE JURISDICTION.

(a) Paragraph (3) of section 306(a) (16 U.S.C. 1856(a)) is amended to read as follows:

''(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

''(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable federal fishing regulations for the fishery in which the vessel is operating.

''(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

''(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this Act is approved and implemented for such fishery.''.

(b) Section 306(b) (16 U.S.C. 1856(b)) is amended by adding at the end the following:

''(3) If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).''.

(c) Section 306(c)(1) (16 U.S.C. 1856(c)(1)) is amended—

(1) by striking ''(4)(C); and'' in subparagraph (A) and inserting ''(4)(C) or has received a permit under section 204(d);'';

(2) by striking the period at the end of subparagraph (B) and inserting a semicolon and the word ''and''; and

(3) by inserting after subparagraph (B) the following:

''(C) the owner or operator of the vessel submits reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.''.

(d) INTERIM AUTHORITY FOR DUNGENESS CRAB.—(1) Subject to the provisions of this subsection and notwithstanding section 306(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856(a)), the States of Washington, Oregon, and California may each enforce State laws and regulations governing fish harvesting and processing against any vessel operating in the exclusive economic zone off each respective State in a fishery for Dungeness crab (Cancer magister) for which there is no fishery management plan implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(2) Any law or regulation promulgated under this subsection shall apply equally to vessels operating in the exclusive economic zone and adjacent State waters and shall be limited to—

(A) establishment of season opening and closing dates, including presoak dates for crab pots;

(B) setting of minimum sizes and crab meat recovery rates;

(C) restrictions on the retention of crab of a certain sex; and

(D) closure of areas or pot limitations to meet the harvest requirements arising under the jurisdiction of United States v. Washington, subproceeding 89-3.

(3) With respect to the States of Washington, Oregon, and California—

(A) any State law limiting entry to a fishery subject to regulation under this subsection may not be enforced against a vessel that is operating in the exclusive economic zone off that State and is not registered under the law of that State, if the vessel is otherwise legally fishing in the exclusive economic zone, except that State laws regulating landings may be enforced; and

(B) no vessel may harvest or process fish which is subject to regulation under this subsection unless under an appropriate State permit or pursuant to a Federal court order.

(4) The authority provided under this subsection to regulate the Dungeness crab fishery shall terminate on October 1, 1999, or when a fishery management plan is implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) for such fishery, whichever date is earlier.

(5) Nothing in this subsection shall reduce the authority of any State, as such authority existed on July 1, 1996, to regulate fishing, fish processing, or landing of fish.

(6)(A) It is the sense of Congress that the Pacific Fishery Management Council, at the earliest practicable date, should develop and submit to the Secretary fishery management plans for shellfish fisheries conducted in the geographic area of authority of the Council, especially Dungeness crab, which are not subject to a fishery management plan on the date of enactment of this Act.

(B) Not later than December 1, 1997, the Pacific Fishery Management Council shall provide a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives describing the progress in developing the fishery management plans referred to in subparagraph (A) and any impediments to such progress.

SEC. 113. PROHIBITED ACTS.

(a) Section 307(1)(J)(i) (16 U.S.C. 1857(1)(J)(i)) is amended—

(1) by striking ''plan,'' and inserting ''plan''; and

(2) by inserting before the semicolon the following: '', or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.)''.

(b) Section 307(1)(K) (16 U.S.C. 1857(1)(K)) is amended—

(1) by striking ''knowingly steal or without authorization, to'' and inserting ''to steal or attempt to steal or to negligently and without authorization''; and

(2) by striking ''gear, or attempt to do so;'' and insert ''gear;''.

(c) Section 307(1)(L) (16 U.S.C. 1857(1)(L)) is amended to read as follows:

''(L) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act;''.

(d) Section 307(1) (16 U.S.C. 1857(1)) is amended—

(1) by striking ''or'' at the end of subparagraph (M);

(2) by striking ''pollock.'' in subparagraph (N) and inserting ''pollock; or''; and

(3) by adding at the end the following:

''(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A).''.

(e) Section 307(2)(A) (16 U.S.C. 1857(2)(A)) is amended to read as follows:

''(A) in fishing within the boundaries of any State, except—

''(i) recreational fishing permitted under section 201(i);

''(ii) fish processing permitted under section 306(c); or

''(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);''.

(f) Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is amended—

(1) by striking ''(j)'' and inserting ''(i)''; and

(2) by striking ''204(b) or (c)'' and inserting ''204(b), (c), or (d)''.

(g) Section 307(3) (16 U.S.C. 1857(3)) is amended to read as follows:

''(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(d) or section 306(c) to receive such fish;''.

(h) Section 307(4) (16 U.S.C. 1857(4)) is amended by inserting ''or within the boundaries of any State'' after ''zone''.

SEC. 114. CIVIL PENALTIES AND PERMIT SANCTIONS; REBUTTABLE PRESUMPTIONS.

(a) Section 308(a) (16 U.S.C. 1858(a)) is amended by striking ''ability to pay,'' and adding at the end the following new sentence: ''In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, provided that the information is served on the Secretary at least 30 days prior to an administrative hearing.''.

(b) The first sentence of section 308(b) (16 U.S.C. 1858(b)) is amended to read as follows: ''Any person against whom a civil penalty is assessed under subsection (a) or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order.''.

(c) Section 308(g)(1)(C) (16 U.S.C. 1858(g)(1)(C)) is amended by striking the matter from ''or (C) any'' through ''overdue,'' and inserting the following: ''(C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue,''.

(d) Section 310(e) (16 U.S.C. 1860(e)) is amended by adding at the end the following new paragraph:

''(3) For purposes of this Act, it shall be a rebuttable presumption that any vessel that is shoreward of the outer boundary of the exclusive economic zone of the United States or beyond the exclusive economic zone of any nation, and that has gear on board that is capable of use for large-scale driftnet fishing, is engaged in such fishing.''.

SEC. 115. ENFORCEMENT.

(a) The second sentence of section 311(d) (16 U.S.C. 1861(d)) is amended—

(1) by striking ''Guam, any Commonwealth, territory, or'' and inserting ''Guam or any''; and

(2) by inserting a comma before the period and the following: ''and except that in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands''.

(b) Section 311(e)(1) (16 U.S.C. 1861(e)(1)) is amended—

(1) by striking ''fishery'' each place it appears and inserting ''marine'';

(2) by inserting ''of not less than 20 percent of the penalty collected or $20,000, whichever is the lesser amount,'' after ''reward'' in subparagraph (B), and

(3) by striking subparagraph (E) and inserting the following:

''(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), as made applicable by section 310(c) of this Act or by any other marine resource law enforced by the Secretary, to seizures made by the Secretary, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and''.

(c) Section 311(e)(2) (16 U.S.C. 1861(e)(2)) is amended to read as follows:

''(2) Any person found in an administrative or judicial proceeding to have violated this Act or any other marine resource law enforced by the Secretary shall be liable for the cost incurred in the sale, storage, care, and maintenance of any fish or other property lawfully seized in connection with the violation.''.

(d) Section 311 (16 U.S.C. 1861) is amended by redesignating subsection (g) as subsection (h) , and by inserting the following after subsection (f):

''(g) ENFORCEMENT IN THE PACIFIC INSULAR AREAS.—The Secretary, in consultation with the Governors of the Pacific Insular Areas and the Western Pacific Council, shall to the extent practicable support cooperative enforcement agreements between Federal and Pacific Insular Area authorities.''.

(e) Section 311 (16 U.S.C. 1861), as amended by subsection (d), is amended by striking ''201(b), (c),'' in subsection (i)(1), as redesignated, and inserting ''201(b) or (c), or section 204(d),''.

SEC. 116. TRANSITION TO SUSTAINABLE FISHERIES.

(a) Section 312 is amended to read as follows:

''SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.

''(a) FISHERIES DISASTER RELIEF.—(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

''(A) natural causes;

''(B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures; or

''(C) undetermined causes.

''(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

''(3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

''(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 1996, 1997, 1998, and 1999.

''(b) FISHING CAPACITY REDUCTION PROGRAM.—(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, or the Governor of a State for fisheries under State authority, may conduct a fishing capacity reduction program (referred to in this section as the 'program') in a fishery if the Secretary determines that the program—

''(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

''(B) is consistent with the federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan—

''(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

''(ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

''(C) is cost-effective and capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.

''(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—

''(A) the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established; or

''(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.

''(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

''(4) The Secretary shall consult, as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.

''(c) PROGRAM FUNDING.—(1) The program may be funded by any combination of amounts—

''(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);

''(B) appropriated for the purposes of this section;

''(C) provided by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or

''(D) provided from any State or other public sources or private or non-profit organizations.

''(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

''(d) INDUSTRY FEE SYSTEM.—(1)(A) If an industry fee system is necessary to fund the program, the Secretary, at the request of the appropriate Council, may conduct a referendum on such system. Prior to the referendum, the Secretary, in consultation with the Council, shall—

''(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

''(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

''(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute a two-thirds majority of the participants voting.

''(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act, 1936. The fees for a program established under this section shall—

''(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

''(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

''(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish; and

''(D) be in effect only until such time as the debt obligation has been fully paid.

''(e) IMPLEMENTATION PLAN.—(1) The Secretary, in consultation with the appropriate Council or State and other interested parties, shall prepare and publish in the Federal Register for a 60-day public comment period an implementation plan, including proposed regulations, for each program. The implementation plan shall—

''(A) define criteria for determining types and numbers of vessels which are eligible for participation in the program taking into account characteristics of the fishery, the requirements of applicable fishery management plans, the needs of fishing communities, and the need to minimize program costs; and

''(B) establish procedures for program participation (such as submission of owner bid under an auction system or fair market-value assessment) including any terms and conditions for participation which the Secretary deems to be reasonably necessary to meet the goals of the program.

''(2) During the 60-day public comment period—

''(A) the Secretary shall conduct a public hearing in each State affected by the program; and

''(B) the appropriate Council or State shall submit its comments and recommendations, if any, regarding the plan and regulations.

''(3) Within 45 days after the close of the public comment period, the Secretary, in consultation with the appropriate Council or State, shall analyze the public comment received and publish in the Federal Register a final implementation plan for the program and regulations for its implementation. The Secretary may not adopt a final implementation plan involving industry fees or debt obligation unless an industry fee system has been approved by a referendum under this section.''.

(b) STUDY OF FEDERAL INVESTMENT.—The Secretary of Commerce shall establish a task force comprised of interested parties to study and report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives within 2 years of the date of enactment of this Act on the role of the Federal Government in—

(1) subsidizing the expansion and contraction of fishing capacity in fishing fleets managed under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

(2) otherwise influencing the aggregate capital investments in fisheries.

(c) Section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c3(b)(1)(A)) is amended—

(1) by striking ''and'' at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting a semicolon and the word ''and''; and

(3) by adding at the end the following new clause:

''(iv) to fund the Federal share of a fishing capacity reduction program established under section 312 of the Magnuson Fishery Conservation and Management Act; and''.

SEC. 117. NORTH PACIFIC AND NORTHWEST ATLANTIC OCEAN FISHERIES.

(a) NORTH PACIFIC FISHERIES CONSERVATION.—Section 313 (16 U.S.C. 1862) is amended—

(1) by striking ''RESEARCH PLAN'' in the section heading and inserting ''CONSERVATION'';

(2) in subsection (a) by striking ''North Pacific Fishery Management Council'' and inserting ''North Pacific Council''; and

(3) by adding at the end the following:

''(f) BYCATCH REDUCTION.—In implementing section 303(a)(11) and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

''(g) BYCATCH REDUCTION INCENTIVES.—(1) Notwithstanding section 304(d), the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this Act, a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fines shall not exceed $25,000 per vessel per season. Any fines collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fines were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such penalties were derived or in fisheries in which the State is directly involved in management or enforcement and which are directly affected by the fishery from which such penalties were derived.

''(2)(A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may submit, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, provided that—

''(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

''(ii) any such conservation and management measures will meet the requirements of subsection (h) and will result in an actual reduction in regulatory discards in the fishery.

''(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

''(h) CATCH MEASUREMENT.—(1) By June 1, 1997 the North Pacific Council shall submit, and the Secretary may approve, consistent with the other provisions of this Act, conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of such Council. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.

''(2) To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46, United States Code) to weigh fish, the North Pacific Council and the Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

''(i) FULL RETENTION AND UTILIZATION.—(1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.

''(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, 'processing waste' means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.''.

(b) NORTHWEST ATLANTIC OCEAN FISHERIES.—Section 314 (16 U.S.C. 1863) is amended by striking ''1997'' in subsection (a)(4) and inserting ''1999''.

TITLE II—FISHERY MONITORING AND RESEARCH

SEC. 201. CHANGE OF TITLE.

The heading of title IV (16 U.S.C. 1881 et seq.) is amended to read as follows:

''TITLE IV—FISHERY MONITORING AND RESEARCH''.

SEC. 202. REGISTRATION AND INFORMATION MANAGEMENT.

Title IV (16 U.S.C. 1881 et seq.) is amended by inserting after the title heading the following:

''SEC. 401. REGISTRATION AND INFORMATION MANAGEMENT.

''(a) STANDARDIZED FISHING VESSEL REGISTRATION AND INFORMATION MANAGEMENT SYSTEM.—The Secretary shall, in cooperation with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, develop recommendations for implementation of a standardized fishing

vessel registration and information management system on a regional basis. The recommendations shall be developed after consultation with interested governmental and nongovernmental parties and shall—

''(1) be designed to standardize the requirements of vessel registration and information collection systems required by this Act, the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), and any other marine resource law implemented by the Secretary, and, with the permission of a State, any marine resource law implemented by such State;

''(2) integrate information collection programs under existing fishery management plans into a non-duplicative information collection and management system;

''(3) avoid duplication of existing state, tribal, or federal systems and shall utilize, to the maximum extent practicable, information collected from existing systems;

''(4) provide for implementation of the system through cooperative agreements with appropriate State, regional, or tribal entities and Marine Fisheries Commissions;

''(5) provide for funding (subject to appropriations) to assist appropriate State, regional, or tribal entities and Marine Fisheries Commissions in implementation;

''(6) establish standardized units of measurement, nomenclature, and formats for the collection and submission of information;

''(7) minimize the paperwork required for vessels registered under the system;

''(8) include all species of fish within the geographic areas of authority of the Councils and all fishing vessels including charter fishing vessels, but excluding recreational fishing vessels;

''(9) require United States fish processors, and fish dealers and other first ex-vessel purchasers of fish that are subject to the proposed system, to submit information (other than economic information) which may be necessary to meet the goals of the proposed system; and

''(10) include procedures necessary to ensure—

''(A) the confidentiality of information collected under this section in accordance with section 402(b); and

''(B) the timely release or availability to the public of information collected under this section consistent with section 402(b).

''(b) FISHING VESSEL REGISTRATION.—The proposed registration system should, at a minimum, obtain the following information for each fishing vessel—

''(1) the name and official number or other identification, together with the name and address of the owner or operator or both;

''(2) gross tonnage, vessel capacity, type and quantity of fishing gear, mode of operation (catcher, catcher processor, or other), and such other pertinent information with respect to vessel characteristics as the Secretary may require; and

''(3) identification (by species, gear type, geographic area of operations, and season) of the fisheries in which the fishing vessel participates.

''(c) FISHERY INFORMATION.—The proposed information management system should, at a minimum, provide basic fisheries performance information for each fishery, including—

''(1) the number of vessels participating in the fishery including charter fishing vessels;

''(2) the time period in which the fishery occurs;

''(3) the approximate geographic location or official reporting area where the fishery occurs;

''(4) a description of fishing gear used in the fishery, including the amount and type of such gear and the appropriate unit of fishing effort; and

''(5) other information required under subsection 303(a)(5) or requested by the Council under section 402 .

''(d) USE OF REGISTRATION.—Any registration recommended under this section shall not be considered a permit for the purposes of this Act, and the Secretary may not propose to revoke, suspend, deny, or impose any other conditions or restrictions on any such registration or the use of such registration under this Act.

''(e) PUBLIC COMMENT.—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register for a 60-day public comment period a proposal that would provide for implementation of a standardized fishing vessel registration and information collection system that meets the requirements of subsections (a) through (c). The proposal shall include—

''(1) a description of the arrangements of the Secretary for consultation and cooperation with the department in which the Coast Guard is operating, the States, the Councils, Marine Fisheries Commissions, the fishing industry and other interested parties; and

''(2) any proposed regulations or legislation necessary to implement the proposal.

''(f) CONGRESSIONAL TRANSMITTAL.—Within 60 days after the end of the comment period and after consideration of comments received under subsection (e), the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a recommended proposal for implementation of a national fishing vessel registration system that includes—

''(1) any modifications made after comment and consultation;

''(2) a proposed implementation schedule, including a schedule for the proposed cooperative agreements required under subsection (a)(4); and

''(3) recommendations for any such additional legislation as the Secretary considers necessary or desirable to implement the proposed system.

''(g) REPORT TO CONGRESS.—Within 15 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall report to Congress on the need to include recreational fishing vessels into a national fishing vessel registration and information collection system. In preparing its report, the Secretary shall cooperate with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, and consult with governmental and nongovernmental parties.''.

SEC. 203. INFORMATION COLLECTION.

Section 402 is amended to read as follows:

''SEC. 402. INFORMATION COLLECTION.

''(a) COUNCIL REQUESTS.—If a Council determines that additional information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after receipt of that request.

''(b) CONFIDENTIALITY OF INFORMATION.—(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except—

''(A) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

''(B) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

''(C) when required by court order;

''(D) when such information is used to verify catch under an individual fishing quota program;

''(E) that observer information collected in fisheries under the authority of the North Pacific Council may be released to the public as specified in a fishery management plan or regulation for weekly summary bycatch information identified by vessel, and for haul-specific bycatch information without vessel identification; or

''(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.

''(2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E) .

''(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

''(2) The Secretary may not require the submission of a federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

''(d) CONTRACTING AUTHORITY.—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

''(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

''(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

''(e) RESOURCE ASSESSMENTS.—(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

''(2) The Secretary, in consultation with the appropriate Council and the fishing industry—

''(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

''(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

''(C) may permit fish harvested during such survey to count towards a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

''(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.''.

SEC. 204. OBSERVERS.

Section 403 is amended to read as follows:

''SEC. 403. OBSERVERS.

''(a) GUIDELINES FOR CARRYING OBSERVERS.—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

''(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

''(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

''(b) TRAINING.—The Secretary, in cooperation with the appropriate States and the National Sea Grant College Program, shall—

''(1) establish programs to ensure that each observer receives adequate training in collecting and analyzing the information necessary for the conservation and management purposes of the fishery to which such observer is assigned;

''(2) require that an observer demonstrate competence in fisheries science and statistical analysis at a level sufficient to enable such person to fulfill the responsibilities of the position;

''(3) ensure that an observer has received adequate training in basic vessel safety; and

''(4) make use of university and any appropriate private nonprofit organization training facilities and resources, where possible, in carrying out this subsection.

''(c) OBSERVER STATUS.—An observer on a vessel and under contract to carry out responsibilities under this Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) shall be deemed to be a Federal employee for the purpose of compensation under the Federal Employee Compensation Act (5 U.S.C. 8101 et seq.).''.

SEC. 205. FISHERIES RESEARCH.

Section 404 is amended to read as follows:

''SEC. 404. FISHERIES RESEARCH.

''(a) IN GENERAL.—The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics and social characteristics of the fisheries.

''(b) STRATEGIC PLAN.—Within one year after the date of enactment of the Sustainable Fisheries Act, and at least every 3 years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the five years immediately following such publication. The plan shall—

''(1) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in subsection (c);

''(2) indicate goals and timetables for the program described in paragraph (1);

''(3) provide a role for commercial fishermen in such research, including involvement in field testing;

''(4) provide for collection and dissemination, in a timely manner, of complete and accurate information concerning fishing activities, catch, effort, stock assessments, and other research conducted under this section; and

''(5) be developed in cooperation with the Councils and affected States, and provide for coordination with the Councils, affected States, and other research entities.

''(c) AREAS OF RESEARCH.—Areas of research are as follows:

''(1) Research to support fishery conservation and management, including but not limited to, biological research concerning the abundance and life history parameters of stocks of fish, the interdependence of fisheries or stocks of fish, the identification of essential fish habitat, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other factors affecting the abundance and availability of fish.

''(2) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch and any adverse effects on essential fish habitat and promote efficient harvest of target species.

''(3) Research on the fisheries, including the social, cultural, and economic relationships among fishing vessel owners, crew, United States fish processors, associated shoreside labor, seafood markets and fishing communities.

''(4) Information management research, including the development of a fishery information base and an information management system under section 401 that will permit the full use of information in the support of effective fishery conservation and management.

''(d) PUBLIC NOTICE.—In developing the plan required under subsection (a), the Secretary shall consult with relevant Federal, State, and international agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.''.

SEC. 206. INCIDENTAL HARVEST RESEARCH.

Section 405 is amended to read as follows:

''SEC. 405. INCIDENTAL HARVEST RESEARCH.

''(a) COLLECTION OF INFORMATION.—Within nine months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall, after consultation with the Gulf Council and South Atlantic Council, conclude the collection of information in the program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils. Within the same time period, the Secretary shall make available to the public aggregated summaries of information collected prior to June 30, 1994 under such program.

''(b) IDENTIFICATION OF STOCK.—The program concluded pursuant to subsection (a) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

''(c) COLLECTION AND ASSESSMENT OF SPECIFIC STOCK INFORMATION.—For stocks of fish identified pursuant to subsection (b), with priority given to stocks which (based upon the best available scientific information) are considered to be overfished, the Secretary shall conduct—

''(1) a program to collect and evaluate information on the nature and extent (including the spatial and temporal distribution) of incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

''(2) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

''(3) a program of information collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

''(d) BYCATCH REDUCTION PROGRAM.—Not later than 12 months after the enactment of the Sustainable Fisheries Act, the Secretary shall, in cooperation with affected interests, and based upon the best scientific information available, complete a program to—

''(1) develop technological devices and other changes in fishing operations necessary and appropriate to minimize the incidental mortality of bycatch in the course of shrimp trawl activity to the extent practicable, taking into account the level of bycatch mortality in the fishery on November 28, 1990;

''(2) evaluate the ecological impacts and the benefits and costs of such devices and changes in fishing operations; and

''(3) assess whether it is practicable to utilize bycatch which is not avoidable.

''(e) REPORT TO CONGRESS.—The Secretary shall, within one year of completing the programs required by this section, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the

Committee on Resources of the House of Representatives.

''(f) IMPLEMENTATION CRITERIA.—To the extent practicable, any conservation and management measure implemented under this Act to reduce the incidental mortality of bycatch in the course of shrimp trawl fishing shall be consistent with—

''(1) measures applicable to fishing throughout the range in United States waters of the bycatch species concerned; and

''(2) the need to avoid any serious adverse environmental impacts on such bycatch species or the ecology of the affected area.''.

SEC. 207. MISCELLANEOUS RESEARCH.

(a) FISHERIES SYSTEMS RESEARCH.—Section 406 (16 U.S.C. 1882) is amended to read as follows:

''SEC. 406. FISHERIES SYSTEMS RESEARCH.

''(a) ESTABLISHMENT OF PANEL.—Not later than 180 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an advisory panel under this Act to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities.

''(b) PANEL MEMBERSHIP.—The advisory panel shall consist of not more than 20 individuals and include—

''(1) individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems; and

''(2) representatives from the Councils, States, fishing industry, conservation organizations, or others with expertise in the management of marine resources.

''(c) RECOMMENDATIONS.—Prior to selecting advisory panel members, the Secretary shall, with respect to panel members described in subsection (b)(1), solicit recommendations from the National Academy of Sciences.

''(d) REPORT.—Within 2 years after the date of enactment of this Act, the Secretary shall submit to the Congress a completed report of the panel established under this section, which shall include—

''(1) an analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities;

''(2) proposed actions by the Secretary and by the Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and

''(3) such other information as may be appropriate.

''(e) PROCEDURAL MATTER.—The advisory panel established under this section shall be deemed an advisory panel under section 302(g).''.

(b) GULF OF MEXICO RED SNAPPER RESEARCH.—Title IV of the Act (16 U.S.C. 1882) is amended by adding the following new section:

''SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH.

''(a) INDEPENDENT PEER REVIEW.—(1) Within 30 days of the date of enactment of the Sustainable Fisheries Act, the Secretary shall initiate an independent peer review to evaluate—

''(A) the accuracy and adequacy of fishery statistics used by the Secretary for the red snapper fishery in the Gulf of Mexico to account for all commercial, recreational, and charter fishing harvests and fishing effort on the stock;

''(B) the appropriateness of the scientific methods, information, and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock and as the basis for the fishery management plan for the Gulf of Mexico red snapper fishery;

''(C) the appropriateness and adequacy of the management measures in the fishery management plan for red snapper in the Gulf of Mexico for conserving and managing the red snapper fishery under this Act; and

''(D) the costs and benefits of all reasonable alternatives to an individual fishing quota program for the red snapper fishery in the Gulf of Mexico.

''(2) The Secretary shall ensure that commercial, recreational, and charter fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to—

''(A) participate in the peer review under this subsection; and

''(B) provide information to the Secretary concerning the review of fishery statistics under this subsection without being subject to penalty under this Act or other applicable law for any past violation of a requirement to report such information to the Secretary.

''(3) The Secretary shall submit a detailed written report on the findings of the peer review conducted under this subsection to the Gulf Council no later than one year after the date of enactment of the Sustainable Fisheries Act.

''(b) PROHIBITION.—In addition to the restrictions under section 303(d)(1)(A), the Gulf Council may not, prior to October 1, 2000, undertake or continue the preparation of any fishery management plan, plan amendment or regulation under this Act for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class.

''(c) REFERENDUM.—

''(1) On or after October 1, 2000, the Gulf Council may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class, only if the preparation of such plan, amendment, or regulation is approved in a referendum conducted under paragraph (2) and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum conducted under paragraph (2).

''(2) The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weight votes based on the proportional harvest under each such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996. Prior to each referendum, the Secretary, in consultation with the Council, shall—

''(A) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and

''(B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.

''(d) CATCH LIMITS.—Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act shall contain conservation and management measures that—

''(1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and

''(2) ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.''.

SEC. 208. STUDY OF CONTRIBUTION OF BYCATCH TO CHARITABLE ORGANIZATIONS.

(a) STUDY.—The Secretary of Commerce shall conduct a study of the contribution of bycatch to charitable organizations by commercial fishermen. The study shall include determinations of—

(1) the amount of bycatch that is contributed each year to charitable organizations by commercial fishermen;

(2) the economic benefits to commercial fishermen from those contributions; and

(3) the impact on fisheries of the availability of those benefits.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce shall submit to the Congress a report containing determinations made in the study under subsection (a).

(c) BYCATCH DEFINED.—In this section the term ''bycatch'' has the meaning given that term in section 3 of the Magnuson Fishery Conservation and Management Act, as amended by section 102 of this Act.

SEC. 209. STUDY OF IDENTIFICATION METHODS FOR HARVEST STOCKS.

(a) IN GENERAL.—The Secretary of Commerce shall conduct a study to determine the best possible method of identifying various Atlantic and Pacific salmon and steelhead stocks in the ocean at time of harvest. The study shall include an assessment of—

(1) coded wire tags;

(2) fin clipping; and

(3) other identification methods.

(b) REPORT.—The Secretary shall report the results of the study, together with any recommendations for legislation deemed necessary based on the study, within 6 months after the date of enactment of this Act to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 210. REVIEW OF NORTHEAST FISHERY STOCK ASSESSMENTS.

The National Academy of Sciences, in consultation with regionally recognized fishery experts, shall conduct a peer review of Canadian and United States stock assessments, information collection methodologies, biological assumptions and projections, and other relevant scientific information used as the basis for conservation and management in the Northeast multispecies fishery. The National Academy of Sciences shall submit the results of such review to the Congress and the Secretary of Commerce no later than March 1, 1997.

SEC. 211. CLERICAL AMENDMENTS.

The table of contents is amended by striking the matter relating to title IV and inserting the following:

''Sec. 312. Transition to sustainable fisheries.
''Sec. 313. North Pacific fisheries conservation.
''Sec. 314. Northwest Atlantic Ocean fisheries reinvestment program.
''TITLE IV—FISHERY MONITORING AND RESEARCH
''Sec. 401. Registration and information management.

''Sec. 402. Information collection.
''Sec. 403. Observers.
''Sec. 404. Fisheries research.
''Sec. 405. Incidental harvest research.
''Sec. 406. Fisheries systems research.
''Sec. 407. Gulf of Mexico red snapper research.''.

TITLE III—FISHERIES FINANCING

SEC. 301. SHORT TITLE.

This title may be cited as the ''Fisheries Financing Act''.

SEC. 302. INDIVIDUAL FISHING QUOTA LOANS.

(a) AMENDMENT OF MERCHANT MARINE ACT, 1936.—Section 1104A of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274) is amended—

(1) by striking ''or'' at the end of subsection (a)(5);

(2) by striking the period at the end of subsection (a)(6) and inserting a semicolon and ''or'';

(3) by adding at the end of subsection (a) the following:

''(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).''; and

(4) by striking ''paragraph (6)'' in the last sentence of subsection (a) and inserting ''paragraphs (6) and (7)''; and

(5) by striking ''equal to'' in the third proviso of subsection (b)(2) and inserting ''not to exceed''.

(b) PROHIBITION.—Until October 1, 2001, no new loans may be guaranteed by the Federal Government for the construction of new fishing vessels if the construction will result in an increased harvesting capacity within the United States exclusive economic zone.

SEC. 303. FISHERIES FINANCING AND CAPACITY REDUCTION.

(a) CAPACITY REDUCTION AND FINANCING AUTHORITY.—Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), is amended by adding at the end the following new sections:

''SEC. 1111. (a) The Secretary is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to such conditions as the Secretary deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

''(b) Any debt obligation guaranteed under this section shall—

''(1) be treated in the same manner and to the same extent as other obligations guaranteed under this title, except with respect to provisions of this title that by their nature cannot be applied to obligations guaranteed under this section;

''(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

''(3) not exceed $100,000,000 in an unpaid principal amount outstanding at any one time for a program;

''(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

''(5) have as the exclusive source of repayment (subject to the proviso in subsection (c)(2)) and as the exclusive payment security, the fishing fees established under the program; and

''(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

''(c)(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the 'fund'). Within the fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

''(2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section; provided that funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

''(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

''(d) The Secretary is authorized and directed to issue such regulations as the Secretary deems necessary to carry out this section.

''(e) For the purposes of this section, the term 'program' means a fishing capacity reduction program established under section 312 of the Magnuson Fishery Conservation and Management Act.

''SEC. 1112. (a) Notwithstanding any other provision of this title, all obligations involving any fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this title after the date of enactment of the Sustainable Fisheries Act shall be direct loan obligations, for which the Secretary shall be the obligee, rather than obligations issued to obligees other than the Secretary and guaranteed by the Secretary. All direct loan obligations under this section shall be treated in the same manner and to the same extent as obligations guaranteed under this title except with respect to provisions of this title which by their nature can only be applied to obligations guaranteed under this title.

''(b) Notwithstanding any other provisions of this title, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.''.

TITLE IV—MARINE FISHERY STATUTE REAUTHORIZATIONS

SEC. 401. MARINE FISH PROGRAM AUTHORIZATION OF APPROPRIATIONS.

(a) FISHERIES INFORMATION COLLECTION AND ANALYSIS.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out fisheries information and analysis activities under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, $51,800,000 for fiscal year 1997, and $52,345,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, the collection, analysis, and dissemination of scientific information necessary for the management of living marine resources and associated marine habitat.

(b) FISHERIES CONSERVATION AND MANAGEMENT OPERATIONS.— There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out activities relating to fisheries conservation and management operations under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, $29,028,000 for fiscal year 1997, and $29,899,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, development, implementation, and enforcement of conservation and management measures to achieve continued optimum use of living marine resources, hatchery operations, habitat conservation, and protected species management.

(c) FISHERIES STATE AND INDUSTRY COOPERATIVE PROGRAMS.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out State and industry cooperative programs under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, $27,932,000 for fiscal year 1997, and $28,226,000 for each of the fiscal years 1998, 1999, and 2000. These activities include, but are not limited to, ensuring the quality and safety of seafood products and providing grants to States for improving the management of interstate fisheries.

(d) AUTHORIZATION OF APPROPRIATIONS FOR CHESAPEAKE BAY OFFICE.—Section 2(e) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended—

(1) by striking ''1992 and 1993'' and inserting ''1997 and 1998'';

(2) by striking ''establish'' and inserting ''operate'';

(3) by striking ''306'' and inserting ''307''; and

(4) by striking ''1991'' and inserting ''1992''.

(e) RELATION TO OTHER LAWS.—Authorizations under this section shall be in addition to monies authorized under the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 3301 et seq.), the Anadromous Fish Conservation Act (16 U.S.C. 757 et seq.), and the Interjurisdictional Fisheries Act (16 U.S.C. 4107 et seq.).

(f) NEW ENGLAND HEALTH PLAN.—The Secretary of Commerce is authorized to provide up to $2,000,000 from previously appropriated funds to Caritas Christi for the implementation of a health care plan for fishermen in New England if Caritas Christi submits such plan to the Secretary no later than January 1, 1997, and the Secretary, in consultation with the Secretary of Health and Human Services, approves such plan.

SEC. 402. INTERJURISDICTIONAL FISHERIES ACT AMENDMENTS.

(a) REAUTHORIZATION.—Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) by amending subsection (a) to read as follows:

''(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title—

''(1) $3,400,000 for fiscal year 1996;

''(2) $3,900,000 for fiscal year 1997;

''(3) $4,400,000 for each of the fiscal years 1998, 1999, and 2000.'';

(2) by striking ''$350,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993, and $600,000 for each of the fiscal years 1994 and 1995,'' in subsection (c) and inserting ''$700,000 for fiscal year 1997, and $750,000 for each of the fiscal years 1998, 1999, and 2000,''.

(b) NEW ENGLAND REPORT.—Section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)) is amended by adding at the end the following new paragraph:

''(7) With respect to funds available for the New England region, the Secretary shall submit to the Congress by January 1, 1997, with annual updates thereafter as appropriate, a

report on the New England fishing capacity reduction initiative which provides:

''(A) the total number of Northeast multispecies permits in each permit category and calculates the maximum potential fishing capacity of vessels holding such permits based on the principal gear, gross registered tonnage, engine horsepower, length, age, and other relevant characteristics;

''(B) the total number of days at sea available to the permitted Northeast multispecies fishing fleet and the total days at sea weighted by the maximum potential fishing capacity of the fleet;

''(C) an analysis of the extent to which the weighted days at sea are used by the active participants in the fishery and of the reduction in such days as a result of the fishing capacity reduction program; and

''(D) an estimate of conservation benefits (such as reduction in fishing mortality) directly attributable to the fishing capacity reduction program.''.

SEC. 403. ANADROMOUS FISHERIES AMENDMENTS.

Section 4 of the Anadromous Fish Conservation Act (16 U.S.C. 757d) is amended to read as follows:

''SEC. 4. (a)(1) There are authorized to be appropriated to carry out the purposes of this Act not to exceed the following sums:

''(A) $4,000,000 for fiscal year 1997; and

''(B) $4,250,000 for each of fiscal years 1998, 1999, and 2000.

''(2) Sums appropriated under this subsection are authorized to remain available until expended.

''(b) Not more than $625,000 of the funds appropriated under this section in any one fiscal year shall be obligated in any one State.''.

SEC. 404. ATLANTIC COASTAL FISHERIES AMENDMENTS.

(a) DEFINITION.—Paragraph (1) of section 803 of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5102) is amended—

(1) by inserting ''and'' after the semicolon in subparagraph (A);

(2) by striking ''States; and'' in subparagraph (B) and inserting ''States.''; and

(3) by striking subparagraph (C).

(b) IMPLEMENTATION STANDARD FOR FEDERAL REGULATION.—Subparagraph (A) of section 804(b)(1) of such Act (16 U.S.C. 5103(b)(1)) is amended by striking ''necessary to support'' and inserting ''compatible with''.

(c) AMERICAN LOBSTER MANAGEMENT.—Section 809 (16 U.S.C. 5108) and section 810 of such Act are redesignated as sections 811 and 812, respectively, and the following new sections are inserted at the end of section 808:

''SEC. 809. STATE PERMITS VALID IN CERTAIN WATERS.

''(a) PERMITS.—Notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.), or any requirement of a fishery management plan or coastal fishery management plan to the contrary, a person holding a valid license issued by the State of Maine which lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American Lobster in the following areas designated as federal waters, if such fishing is conducted in such waters in accordance with all other applicable federal and state regulations:

''(1) west of Monhegan Island in the area located north of the line 43° 42′ 08″ N, 69° 34′ 18″ W and 43° 42′ 15″ N, 69° 19′ 18″ W;

''(2) east of Monhegan Island in the area located west of the line 43° 44′ 00″ N, 69° 15′ 05″ W and 43° 48′ 10″ N, 69° 08′ 01″ W;

''(3) south of Vinalhaven in the area located west of the line 43° 52′ 21″ N, 68° 39′ 54″ W and 43° 48′ 10″ N, 69° 08′ 01″ W; and

''(4) south of Bois Bubert Island in the area located north of the line 44° 19′ 15″ N, 67° 49′ 30″ W and 44° 23′ 45″ N, 67° 40′ 33″ W.

''(b) ENFORCEMENT.—The exemption from federal fishery permitting requirements granted by subsection (a) may be revoked or suspended by the Secretary in accordance with section 308(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858(g)) for violations of such Act or this Act.

''SEC. 810. TRANSITION TO MANAGEMENT OF AMERICAN LOBSTER FISHERY BY COMMISSION.

''(a) TEMPORARY LIMITS.—Notwithstanding any other provision of this Act or of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), if no regulations have been issued under section 804(b) of this Act by December 31, 1997, to implement a coastal fishery management plan for American lobster, then the Secretary shall issue interim regulations before March 1, 1998, that will prohibit any vessel that takes lobsters in the exclusive economic zone by a method other than pots or traps from landing lobsters (or any parts thereof) at any location within the United States in excess of—

''(1) 100 lobsters (or parts thereof) for each fishing trip of 24 hours or less duration (up to a maximum of 500 lobsters, or parts thereof, during any 5-day period); or

''(2) 500 lobsters (or parts thereof) for a fishing trip of 5 days or longer.

''(b) SECRETARY TO MONITOR LANDINGS.—Before January 1, 1998, the Secretary shall monitor, on a timely basis, landings of American lobster, and, if the Secretary determines that catches from vessels that take lobsters in the exclusive economic zone by a method other than pots or traps have increased significantly, then the Secretary may, consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801), and after opportunity for public comment and consultation with the Atlantic States Marine Fisheries Commission, implement regulations under section 804(b) of this Act that are necessary for the conservation of American lobster.

''(c) REGULATIONS TO REMAIN IN EFFECT UNTIL PLAN IMPLEMENTED.—Regulations issued under subsection (a) or (b) shall remain in effect until the Secretary implements regulations under section 804(b) of this Act to implement a coastal fishery management plan for American lobster.''.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 810 of such Act, as amended by this Act, is amended further by striking ''1996.'' and inserting ''1996, and $7,000,000 for each of the fiscal years 1997, 1998, 1999, and 2000.''.

SEC. 405. TECHNICAL AMENDMENTS TO MARITIME BOUNDARY AGREEMENT.

(a) EXECUTION OF PRIOR AMENDMENTS TO DEFINITIONS.—Notwithstanding section 308 of the Act entitled ''An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary'', approved March 9, 1992 (Public Law 102-251; 106 Stat. 66) hereinafter referred to as the ''FGB Act'', section 301(b) of that Act (adding a definition of the term ''special areas'') shall take effect on the date of enactment of this Act.

(b) CONFORMING AMENDMENTS.—

(1) Section 301(h)(2)(A) of the FGB Act is repealed.

(2) Section 304 of the FGB Act is repealed.

(3) Section 3(15) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)) is amended to read as follows:

''(15) The term 'waters under the jurisdiction of the United States' means—

''(A) the territorial sea of the United States;

''(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the other boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

''(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.''.

SEC. 406. AMENDMENTS TO THE FISHERIES ACT.

Section 309(b) of the Fisheries Act of 1995 (Public Law 104-43) is amended by striking ''July 1, 1996'' and inserting ''July 1, 1997''.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, once again I thank and congratulate all those who worked on this very important legislation. I especially thank the distinguished Senator from Alaska for the work that he did from the Commerce Committee at the subcommittee level.

There was a lot of pressure to move earlier. If we had, there would have been all kinds of problems. By persistence and negotiations, I think we came up with really good legislation.

I thank the Senator from Alaska, the Senator from Washington, Senator GORTON, the Senator from Massachusetts, Senator KERRY, and everybody who worked on it. This is very, very important legislation.

Now we want to move forward getting through the process so we have it done before we go out.

UNANIMOUS-CONSENT AGREEMENT—S. 1505

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 540, S. 1505, and that no amendment relative to the tuna-dolphin issue or the Panama declaration issue be in order.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Mr. President, reserving the right to object, it was my understanding that request would be notwithstanding the previous unanimous consent request regarding 10 minutes.

Mr. LOTT. Absolutely, Mr. President. At least one Senator wanted to speak and was not able to get here before the vote.

The PRESIDING OFFICER. There will be 10 minutes.

Mr. LOTT. That 10 minutes will be the next thing we go to, so we can get the closing statements. That is our intent.

MR. BRADLEY. Reserving my right to object, it is my understanding the amendment that had been discussed between the majority leader and the Senator from New Jersey is on its way to the floor and the manager will offer it as an amendment to the committee amendment; is that correct, that would be in order?

Mr. LOTT. That is absolutely correct. We apologize for our not getting a highlighted copy of it to the Senator. We are going to get that to him. I am absolutely committed to the agreement we have.

Mr. STEVENS. Reserving the right to object, Mr. President, does the leader's unanimous-consent request apply to the pipeline safety bill?

Mr. LOTT. It only applies to the pipeline safety bill, Mr. President, except that it does say we would not go to the tuna-dolphin issue or the Panama declaration issue, that they would not be in order, but it only takes up the pipeline safety bill.

Mr. STEVENS. Thank you.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LOTT. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table—Mr. President, I withdraw that request. I understand there has been objection.

SUSTAINABLE FISHERIES ACT

The PRESIDING OFFICER. Under the previous order, the Senators who wish to speak on S. 39 have 10 minutes.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I again thank the people who were involved in this. As I said, prior to the passage of the bill, this is a bill we have worked out in 18 months. When it was previously before the Senate, it took 5 years. This has required a tremendous amount of staff time.

I am particularly indebted to my staff people:

Trevor McCabe and Earl Comstock; and to Tom Melius, who has worked with the chairman of the committee, Senator PRESSLER, and Penny Dalton, who has worked with Senator KERRY and Senator HOLLINGS from on the committee.

Let me also thank Jeanne Bumpus with Senator GORTON; Justin LeBlanc with Senator MURRAY; Margaret Commisky and Scott Atkinson with Senator INOUYE; Clark LeBlanc who is with Senator SNOWE; Mike Parks and Darla Romfo with Senator BREAUX; GLENN Merrill and Alex Elkan, Sea Grant fellows with the Commerce Committee; Peter Hill and Tom Richy on Senator KERRY's staff; Alex Buell on Senator WYDEN's staff; Carl Biersak, who has worked with the majority leader, Senator LOTT; Carol Dubard with Senator HUTCHISON; Rick Murphy with Senator CHAFEE; and Wayne Boyles with Senator HELMS.

Mr. President, this bill would not have come before us if it had not been for the tremendous support from the Marine Fish Conservation Network. I particularly want to thank Greenpeace and the Alaska Marine Conservation Network for working very actively for the passage of S. 39, as well as the Center for Marine Conservation and the World Wildlife Fund.

I ask unanimous consent to have printed in the RECORD the entire list of the fish network, who have all been helpful.

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

THE MARINE FISH CONSERVATION NETWORK

(100 Member Organizations Representing More Than Six Million Americans, as of June, 1996)

Alaska Longline Fishermen's Association
Alaska Marine Conservation Council
Alliance of Rhode Island Saltwater Fishing Clubs
W.H. Amaru Fisheries Research and Conservation
American Oceans Campaign
Atlantic Salmon Federation
Bass Anglers Sportsman's Society
The Billfish Foundation
Biodiversity Legal Foundation
Caribbean Conservation Corporation
Carrying Capacity Network
Center for Marine Conservation
Chesapeake Bay Foundation
City of St. Paul/Bering Sea Coalition
Coastal Waters Project
Columbus (OH) Zoological Gardens
Concerned Citizens of Montauk
Connecticut River Stripped Bass Club
Conservation Law Foundation
Croal Reef Action Group
Deep Pacific Fishing Company
Defenders of Wildlife
Environmental Advocacy Outreach
Environmental Defense Fund
Environmental Solutions International
Federation of Fly Fishers
Fisheries Defense Fund
Fishermen's Emergency Fund
Fish Forever
Fish Unlimited
Florida League of Anglers
Friends of the Earth
Glacier Creek Smoked Salmon
Good Knight Campaign for Protection of Children and the Earth
GreenLife Society—North American Chapter
Greenpeace
Hawaii Fishermen's Foundation
Hawaiian International Billfish Association
Interfaith Council for the Protection of Animals and Nature
International Game Fish Association
Jersey Coast Anglers Association
King and Sons Fishing Company, Inc.
Kodiak Conservation Network
F/V Lady Anne, Inc.
Maine Animal Coalition
Maine Lobsterman's Association
The Marine Mammal Center
Maryland Saltwater Sportfishermen's Association
Massachusetts Audubon Society
Massachusetts Wildlife Federation
Mid-Coast Anglers
Monterey Bay Aquarium
Mystic River-Whitford Brook Watershed Association
Nahant SWIM (Safer Waters in Massachusetts)
The National Aquarium (DC)
NAUI (National Assoc. of Underwater Instructors)
National Audubon Society
National Coalition for Marine Conservation
National Fishing Association
Natural Resource Consultants (Idaho)
Natural Resources Defense Council
New England Aquarium
New England Coast Conservation Association
New Pioneer Co-op Fresh Food Market (IA)
NY/NJ Harbor Baykeeper
New York Sportfishing Federation
North Pacific Fisheries Protection Association
North Pacific Longline Association
Ocean Futures Foundation
Oregon Natural Resources Council
Oregon Trout
Oregon Wildlife Federation
People for Puget Sound
PADI (Professional Assoc. of Diving Instructors)
Project ReefKeeper
Puget Soundkeeper Alliance
Reid International
Salt Water Sportsman Magazine
Save Our Shores
Save the Sound
Save the Bay
Sierra Club
Sierra Club Legal Defense Fund
Society for Conservation Biology
Sport Fishing Institute
Stripers Unlimited
Surfer Environmental Alliance
Surfrider Foundation
Tampa BAYWATCH, Inc.
Trout Unlimited
Trustees for Alaska
United Anglers of California
United Fishermen's Association
Wildlife Conservation Society
World Wildlife Fund

Mr. STEVENS. Let me also thank representatives of the Western Alaska Fisheries Development Association, the Pacific Seafoods Processors Association, the Alaska Groundfish Data Bank, the Alaska Draggers Association, the Petersburg Vessel Owners Association, and the Kodiak Longline Vessel Owners Association.

Mr. President, I am sad to report that the two people who urged me in the first instance to support the original act and introduce it in 1971 and then helped us get started once again on the revision that passed in 1976, Oscar Dyson and Harold Sparck, two Alaskans, are now deceased. I do want to recognize their memory in connection with this legislation, which they have also been instrumental in creating.

Mr. President, I will not take all the time, but I do once again want to thank my good friend from Massachusetts. Had it not been for his determination and consistency, we would not be where we are today, having passed a significant, bipartisan bill.

But beyond that, Mr. President, I want to issue one word of warning as I close. We have passed a bill to try to eliminate waste in the fisheries off our shores. Mr. President, if these mechanisms we have adopted through compromise do not work, I intend to be back with a stronger bill because it is the area off my shores, the shores of Alaska, that produce over half of the fisheries of this country.

The waste has become just unacceptable, totally unacceptable. When we reached the level of 500 to 700 million pounds a year of fish being wasted because of the distant water fishing vessels, we have reached a level beyond our acceptance in the fisheries.

Mr. President, I introduced the original 200-mile bill in 1971 because I flew from Kodiak to the Pribilof Islands and counted over 100 Japanese trollers off our shores. We sought to find a way to eliminate that scourge on our fisheries, and we did so by passing, finally 5 years later, the bill that is now known as the Magnuson Act, at my request.

That law brought into effect a new distant water fleet. It is the factory trollers. And 75 percent of that waste comes from the factory trollers. If they do not put their business back in order and get away from bottom line fisheries and start thinking about the conservation of our fisheries and the sustainability of our fisheries, we will be back because Alaska will not put up with the total depletion of our fisheries.

There are no known species off our shores that are overfished now. Several may be very close to it. The day that we get one—even one—caused by factory trollers, I will be back with another bill, because we demand that the reproductive capability of our fisheries be sustained. That is what this bill does. That is the intent of the bill. If it does not work, Mr. President, thanks to God and my Alaska voters, I will be here 6 more years, and we will see to it that a bill will pass that will eliminate these vessels that are destroying the reproductive capability of the North Pacific. Thank you, Mr. President.

Mr. KERRY. Mr. President, how much time remains on the 10 minutes allotted?

The PRESIDING OFFICER. Four minutes.

Mr. STEVENS. Mr. President, I used too much time. Mr. President, I ask unanimous consent for an extra 5 minutes on this bill.

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

Mr. KERRY. Mr. President, I thank the distinguished Senator from Alaska for his comments. It is my hope that both God and some other voters will help me be back here to work with him.

Let me just say, Mr. President, I thank the Senator for his comments about our joint work. It has been a great privilege working with the Senator from Alaska and his staff in an effort to try to move this very important piece of legislation. I think it is fair to say—and I know the Senator from Alaska will join me in this—a lot of countries around the world were waiting to see how the United States was going to respond to its crisis of dealing with its fishing stocks and the protection of our available fishing grounds from the waters off Alaska to the waters south all the way to San Diego, the tuna fleet, all through the gulf coast, the Gulf of Mexico, around to Florida all the way up to Charleston, SC, North Carolina, New York, New Jersey, to Maine.

We have had different interests that have been tugging within this bill. We have commercial fishermen tugging against recreational fishermen. This is a $50 billion a year industry to the United States on the commercial side and it is a $7 billion industry with respect to the recreational side. There are enormous pressures by that monetary interest to continue to deplete. But this is a finite resource, and we have to manage it.

Other countries are wrestling with this. Great Britain is doing a buyout. Iceland, Russia, other nations, Norway, all of them have implemented particular environmental concerns. What we did here today was important to say that we are going to be a leader in that international effort and that we are serious. I join the Senator from Alaska in saying that this must work. If it does not, we will come back with tougher measures in order to guarantee that the stocks are able to replenish and that fishing is an ongoing effort.

I simply repeat what I said yesterday. This is not a signal of an end to fishing nor even the downturn. If we do our job properly and if the management councils do their jobs properly, 300,000 new jobs can be created. This can be a growth industry for the United States of America. That is our goal.

I want to thank the Senator from Louisiana for his continued and ever-present counsel and assistance in these efforts. He understands the issues as well as any person in the Senate, and his help has been instrumental in building the consensus that we brought here today. I yield the remainder of the time to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I will just take a moment, but I say, that if the work on this legislation is any measure of the voters of Alaska and voters of Massachusetts, both of our colleagues will in fact be back in the next Congress to work on this legislation and many other areas.

I just say to the Senator from Massachusetts, who has just spoken, that his fisheries area was on the brink of disaster, but because of his outstanding work on this legislation, I suggest that the New England fisheries are going to be much better off. Maybe not just this afternoon, but in the next year and the years after that and for the next several decades, that very vital fisheries area of the United States, the New England fisheries, is going to be better off because this bill will provide better science, better management tools for local fishery management organizations to manage the fisheries in that area.

I think he deserves a great deal of credit, as does the Senator from Alaska, for putting together a bill that really has been nonpartisan. To be able to get the Gulf of Mexico and the New England fisheries to agree with the fishermen in the Northwest and in Alaska is quite a political achievement. I want to say to both of these leaders what an outstanding job they have done in bringing forward this piece of legislation. Millions and millions will be much better off because of their work today in this legislation.

I want to also thank two members of my staff, Mr. Mike Parks, who has worked on this legislation for so long, and also my legislative director, Ms. Darla Romfo, for stepping in at the last minute. This is not her area, not her expertise, but she became a very quick expert in the area of fisheries. We thank them both for their effort. I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I see that the chairman of the committee is here now, Senator PRESSLER. I want to add to the comments that I made previously that he and Senator HOLLINGS, the leader and ranking member on our committee, the Commerce Committee, have allowed us broad leeway and literally allowed us, with almost all our funding from the Commerce Committee, to travel in connection with the hearings we conducted on this bill in the period of 2 years.

Senator PRESSLER has contributed very greatly to the outcome of this legislation. I want to acknowledge his leadership as well as his cooperation. Both he and the staff of the full committee have assisted us in every way. I do thank him. And Senator HOLLINGS has done the same for Senator KERRY. So it was with the absolute cooperation of the leadership of the committee that we were able to achieve the passage of this bill. It is another bipartisan bill that goes down on the record of Senator PRESSLER during his chairmanship of this committee. We look forward to working with him in the years to come.

I would also like to add my special thanks to Senator INOUYE, who has stood beside us and made a major contribution to this bill.

Mrs. HUTCHISON. I just want to add, once again, my thanks to the leaders of this bill. We have talked about the importance of this bill to the management of the waters of the United States. It could not have come about without the leadership of Senator PRESSLER, the chairman of the committee, who really made it come together when there were many issues still left on the table.

Certainly, the distinguished chairman of the subcommittee, Senator STEVENS, along with Senator KERRY, Senator HOLLINGS, Senator BREAUX, Senator LOTT—everyone worked so hard to do something that I think really will be for the benefit of all of the people who care about our waters, and use them either for commercial use or for recreation and conservation. Kudos to all.

I yield the floor.

MORNING BUSINESS

Mr. LOTT. Mr. President, we do have one issue we need to get resolved on this bill. While that is being worked on, I ask unanimous consent that there be a period of morning business for the next 30 minutes with time limited to 5 minutes each.

The PRESIDING OFFICER (Mr. ASHCROFT). Without objection, it is so ordered.

Mr. LOTT. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, is the Senate now in a period of morning business?

The PRESIDING OFFICER. The Senate is in a period of morning business, with a unanimous consent order limiting the time of each Senator to 5 minutes.

Mr. DORGAN. I ask unanimous consent that I be allowed to speak for 8 minutes.

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

GUNS IN SCHOOLS

Mr. DORGAN. Mr. President, this morning I was watching a morning television show and heard a report that was dumbfounding to me. It was a report on a decision by an appellate court of New York State dealing with a young man who had brought a gun to school. The gun had been discovered and taken from the youth. The boy was expelled from school. This case has made its way through the New York court system to the appellate court, which ruled Tuesday that the security guard had acted improperly in removing the gun from the boy who was in a school.

I came to the office this morning after hearing that report and asked for some information about the appellate court decision and got it. I read through it and there are times when you scratch your head and wonder why there are people serving in public office in any branch of government who are so completely devoid of common sense. I read this decision and wondered how anyone could really have decided that it is all right for a boy to carry a gun in school and not be punished for it.

There is a law on the books now, the Gun-Free Schools Act, that says schools must have zero tolerance for guns in our Nation's classrooms and hallways. I wrote it. I, along with the Senator from California, Senator FEINSTEIN, wrote this legislation that is now law. It says with respect to the issue of guns in schools, we are sending a message that is very clear anywhere in America.

The message ought to be clear to every student and every parent: There is zero tolerance for guns in schools. Do not bring a gun to school. If you do, you will face certain punishment. Now, that is law.

In the report I heard today about the court case in New York regarding the young man, identified as Juan, in the Bronx, at William Howard Taft High School, a security guard testified that he spotted what looked like the handle of a gun inside Juan's jacket. A search turned up the weapon, which was loaded. Juan was suspended for a year, and criminal charges were filed against him. A Bronx family court kicked out the charges, ruling that the outline of the gun was not clearly visible. The slight bulge was not, in any particular shape or form, remotely suspicious, so the security guard had conducted an unreasonable search. The appellate court went a step further and said, since the guard improperly removed the gun, the boy should not have been suspended from school.

I think that is nuts. When I get on an airplane to fly to North Dakota, I have to walk through a metal detector. They want to know whether I have a weapon on my person. They also have a right to search my briefcase and my luggage, and they have a right to determine that the people who board that airplane have no guns or weapons on them.

This court says that a security guard, or teachers, or principals have no right to determine whether a student with a suspicious bulge in his clothing has a gun in his pocket or in his jacket as he walks down a hallway or sits in a classroom at a school in the Bronx. Where is the common sense here? Of course, we have a right to determine that no kids in schools have guns. When a court says that a school has no right to expel a student who was caught with a gun by a security guard who saw a bulge in the student's pocket, then there is something fundamentally wrong with that court.

Now, as I said, I wrote the provision 2 years ago that says there is zero tolerance for guns in schools, and there are certain penalties for every student who brings a gun to school anywhere in this country. That does not vary from New Mexico to Indiana to North Dakota. If you bring a gun, you are expelled—no ifs, ands, or buts. This court decision, along with some background on other court decisions that I just heard about this morning on television, so angered me—to believe that we have the capacity in a country like this to prevent people from bringing guns onto airplanes but we can't expel a kid who is caught with a gun in school.

I have a young son in school today. He is 9 years old. He is sitting in a classroom in a wonderful school. I, just like every other parent in this country, want to make certain that if there is any kid that comes into that school, or any other school, with a gun, our children are safe, and that someone can intercept those students, and if they find a gun, they are going to remove the gun and the student. We have every right to expect that to be the case in our schools.

This court decision, as I said, denies all common sense. I fully intend to pursue additional Federal legislation, if necessary, in order to remedy this sort of circumstance. A country that can decide that people who board airplanes can be searched—and we can make certain that people will not take guns in airplanes—ought to be able to decide that children in school will be free from having another child in a classroom or in the hallway packing a .45 or a .38.

Parents ought to be able to believe that security guards who intercept people with guns in schools will be able to remove those students. Not too long ago, at a school about 2 miles from where I stand, a young boy was shot. I had visited that school about a month before the young boy was shot. I went to a school with nine students in the senior class, in a town of 300. But I wanted to tour this inner-city school and see what it was like. As I walked in, I went through a metal detector, and I saw security guards. I went into a school that is in a lockdown state when the school day begins. When the students are in, the doors are locked. They have metal detectors and security guards to try to make certain there are no students bringing in weapons and no unauthorized people are coming through the doors. Frankly, the security was pretty good at that school. They felt that there was a need to have substantial security.

About a month or so after I toured that school, a young boy was in the basement of that school in the lunch room at a water fountain. Another young boy named Jerome bumped him at the water fountain. For bumping the boy at the water fountain, Jerome was shot four times. I just read about it in the papers. I didn't know Jerome. He was shot four times and he lay on the floor critically wounded. He survived those wounds. He graduated from school. I visited with Jerome a couple of times, just trying to understand what is happening in these schools. It was prior to my passing legislation here dealing with the issue of zero tolerance and guns in schools. I found it unusual that a school with that security still had a boy in the cafeteria with a gun—a gun available to shoot

someone who bumped him at a water fountain.

Now comes, this morning, a court case where this boy Juan was in school 4 years ago. It has taken that long for this case to get through the courts. This boy isn't even in school anymore. But the decision is that a security guard at school improperly removed a gun from the pocket of this student. I find this so preposterous. I know if we talk to the judges, they would give a million reasons why they reached this decision. I don't want 10 reasons or 5 reasons. I want one person to give me one reason why we ought to believe it is ever appropriate for a young student to put a pistol in his pocket in order to go to school in this country.

If we can't keep guns out of schools, we can't take the first baby step in dealing with this country's education problems. So I come to the floor to express enormous dismay over what I heard and read this morning and to say to those who are making these decisions: If need be, there will be Federal legislation, once again, telling those who are trying to keep guns out of our schools that you have the authority to do it. We are going to give school officials the ability to keep our children safe.

I am not antigun. I hunt. In my State we have great hunting. But guns have no place in schools. No kid ought to bring a pistol to school. Those who do ought not to be told by the courts that it is OK. They ought to be told by parents and security guards, and by the law in this country, that it is not OK. If necessary, we are going to pass Federal legislation to make that occur.

Mr. President, I thank the Chair. I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Before the distinguished Senator from North Dakota leaves the floor, I would like to ask him a question or two.

I have been listening, with keen interest, to his addressing this issue that I know he has been involved in for a long, long time. I have some comments to make on this. But I simply would like to ask him, who brought the action? Under whose auspices was the case filed that he has just addressed, where the decision came down yesterday? Where was this case and who brought the action?

Mr. DORGAN. Well, I say to the Senator from Nebraska, this was in an appellate court of New York State. I don't have, at this moment, the information about who brought the action. I assume that attorneys on behalf of the student, or the student's parents, brought an action against the school and, also, of course, contested the criminal charges. This student who brought a gun to school, which was then seized by the security guard, eventually had the criminal charges against him dropped.

Mr. EXON. Were there any other organizations involved in this, to your knowledge? Or was it just an individual action by a parent?

Mr. DORGAN. Well, other organizations are quoted in the press stories, but there is not a reference about whether they were involved in the case. So I will not use their names, except to say that my expectation is that there are organizations who would join parents of the student and who would contest these sorts of policies. But it is beyond my comprehension to understand how anyone can argue anywhere that it is appropriate under any circumstance for a kid to pack a weapon to go to school. If we can't as parents, as school administrators, and as public officials decide that our schools are places where kids can learn and feel safe in an environment in which they can learn, then we cannot solve our education problems in this country.

Mr. EXON. I have not seen the information that the Senator from North Dakota has. I guess I am specifically asking whether or not there were other organizations who hired attorneys or had attorneys there representing those who brought the action.

Mr. DORGAN. I will get that information. I do not feel comfortable giving you the names of the other organizations named in the news articles I have because I do not know whether they were actively involved in bringing the case. But I hope by Monday or so to have all of that information, and I will come to the floor again and provide it for the Senator.

Mr. EXON. I appreciate that very, very much. The fact that the Senator has the courage to stand up on the floor of the U.S. Senate and make such an obvious, commonsense argument encourages me that we are beginning to look at some of the real problems in America. One of the problems in America today is kids with guns. Certainly I would agree with my friend from North Dakota. If we are powerless to do anything about that, regardless of the status, the opinion, the background of one court, or one judge, then we are in serious trouble.

As a former Governor who had appointed lots of judges, I have never launched an attack on the courts per se because I think by and large the courts do a good job. Unfortunately, it is obvious to me from some of the recent decisions that I have seen on a whole series of areas—it indicates to me that perhaps all too often the courts think they are not the third branch of Government but they are the branch of Government, and they seemingly are becoming all powerful.

There was a time when the courts of the United States were somewhat restrained and did not become activists for causes. It seems to me that all too often those who are foremost in bringing these actions have scrutinized the judiciary to the point where they know what judge to go to on a certain issue and what judge would be most likely to go along with this particular point of view. To me, that is not a good comment on the judiciary that is supposed to be under the law, ones that make legitimate decisions based on law. And breaking new ground in the judiciary at one time was somewhat reserved. These days the judiciary is breaking more new ground more often and, in the opinion of this Senator, more wrongly than ever before.

So I will be looking forward to hearing the next comment on this.

Mr. DORGAN. I am mindful of the dilemma of criticizing the courts. I generally don't do that. I may have used some intemperate language today to do so, but I am a little tired of the judiciary saying, ''Well, you know, don't ever comment about us. We are over here way above comment.'' I called a judge one day when I picked up the Washington Post some while ago. A couple of people put a pistol to a man's head in a pizza delivery murder and killed him. The trigger man was let out on, I think, $10,000 bond by the judge. I read that story. I thought to myself, ''What on Earth are we doing?'' I called the judge. The judge says, ''How dare you call me. You have no right to call me.'' I said, ''Of course, I have a right to call you.'' It turned out a lot of other people in that community called him, and he decided to change the bail. That young fellow was brought back to jail and was subsequently convicted of murder and put into prison.

But the point is that I do not criticize the judiciary lightly. I do not want to taint the judiciary. The fact is a lot of people are doing a lot of wonderful work, I am sure. But there are times when you see decisions come out that are so unsound and so devoid of common sense.

I try to be mindful of the point about criticizing the judiciary. But, frankly, I think sometimes they deserve a little criticism. I am going to do it when I feel they have made decisions like this that we can remedy with some Federal legislation, and they should know it is coming.

Mr. EXON. Mr. President, I thank my friend. I find myself aligned almost identically with the viewpoints that the Senator has just addressed. I was very much interested to see how a judge resented the fact that a U.S. Senator called him asking the reasons for the decision that the judge had rendered. That takes me to the place that, while I recognize the courts as the legitimate third force of government, the courts are not sacrosanct, and the courts had better get off of the kick that they seem to be increasingly on, as evidenced at least by the one instance that the Senator from North Dakota addressed. Judges are human beings like all of us. Those of us who are in public service expect to receive criticism. That is what making hard decisions is all about.

But I simply say that, from what I know of the case that the Senator from North Dakota referenced today about the most recent decision, probably the most recent outrage by at least one

court against what thinking people are trying to do to provide at least some degree of safe haven for our kids in school, highlights the point that the Senator from North Dakota is making and this Senator from Nebraska is making about the way things are happening today. The three equal branches of Government—the executive, the judiciary, and the legislative—had better be looked on.

I say as a legislator to the courts, ''Do your job but don't trample on us as a second-class part of the equal three-part series of our Government that has served this Nation and this country so well for so very long.''

ORDER OF PROCEDURE

Mr. EXON. Mr. President, before I yield the floor, I will simply advise the Senate that we were ready to take up a bill that came out of the Justice Department, and I think through misunderstanding it was temporarily delayed. I simply say that the previous matter before the Senate that was temporarily set aside has now been cleared for action—the pipeline safety bill, with amendments. As the manager on this side on that bill, I am prepared to move ahead, if that is the will of the majority.

I thank the Chair.

The PRESIDING OFFICER. The Chair in his capacity as a Senator from Missouri suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ACCOUNTABLE PIPELINE SAFETY AND PARTNERSHIP ACT OF 1996

Mr. EXON. May I inquire of the Chair, what is currently the procedure in the Senate and what matter are we on?

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

The legislative clerk read as follows:

A bill (S. 1505) to reduce risks to public safety and the environment associated with pipeline transportation of natural gas and hazardous liquid, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Accountable Pipeline Safety and Partnership Act of 1996''.

SEC. 2. REFERENCES.

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 title 49, United States Code.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—Section 60101(a) is amended—

(1) by striking the periods at the end of paragraphs (1) through (22) and inserting semicolons;

(2) by striking paragraph (21)(B) and inserting the following:

''(B) does not include the gathering of gas, other than gathering through regulated gathering lines, in those rural locations that are located outside the limits of any incorporated or unincorporated city, town, or village, or any other designated residential or commercial area (including a subdivision, business, shopping center, or community development) or any similar populated area that the Secretary of Transportation determines to be a nonrural area, except that the term 'transporting gas' includes the movement of gas through regulated gathering lines;''; and

(3) by adding at the end the following:

''(23) 'risk management' means the systematic application, by the owner or operator of a pipeline facility, of management policies, procedures, finite resources, and practices to the tasks of identifying, analyzing, assessing, reducing, and controlling risk in order to protect employees, the general public, the environment, and pipeline facilities;

''(24) 'risk management plan' means a management plan utilized by a gas or hazardous liquid pipeline facility owner or operator that encompasses risk management; and

''(25) 'Secretary' means the Secretary of Transportation.''.

(b) GATHERING LINES.—Section 60101(b)(2) is amended by inserting '', if appropriate,'' after ''Secretary'' the first place it appears.

SEC. 4. GENERAL AUTHORITY.

(a) MINIMUM SAFETY STANDARDS.—Section 60102(a) is amended—

(1) by striking ''transporters of gas and hazardous liquid and to'' in paragraph (1)(A);

(2) by striking paragraph (1)(C) and inserting the following:

''(C) shall include a requirement that all individuals who operate and maintain pipeline facilities shall be qualified to operate and maintain the pipeline facilities.''; and

(3) by striking paragraph (2) and inserting the following:

''(2) The qualifications applicable to an individual who operates and maintains a pipeline facility shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits. The operator of a pipeline facility shall ensure that employees who operate and maintain the facility are qualified to operate and maintain the pipeline facilities.''.

(b) PRACTICABILITY AND SAFETY NEEDS STANDARDS.—Section 60102(b) is amended to read as follows:

''(b) PRACTICABILITY AND SAFETY NEEDS STANDARDS.—

''(1) IN GENERAL.—A standard prescribed under subsection (a) shall be—

''(A) practicable; and

''(B) designed to meet the need for—

''(i) gas pipeline safety, or safely transporting hazardous liquids, as appropriate; and

''(ii) protecting the environment.

''(2) FACTORS FOR CONSIDERATION.—When prescribing any standard under this section or section 60101(b), 60103, 60108, 60109, 60110, or 60113, the Secretary shall consider—

''(A) relevant available—

''(i) gas pipeline safety information;

''(ii) hazardous liquid pipeline safety information; and

''(iii) environmental information;

''(B) the appropriateness of the standard for the particular type of pipeline transportation or facility;

''(C) the reasonableness of the standard;

''(D) based on a risk assessment, the reasonably identifiable or estimated benefits expected to result from implementation or compliance with the standard;

''(E) based on a risk assessment, the reasonably identifiable or estimated costs expected to result from implementation or compliance with the standard;

''(F) comments and information received from the public; and

''(G) the comments and recommendations of the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate.

''(3) RISK ASSESSMENT.—In prescribing a standard referred to in paragraph (2), the Secretary shall—

''(A) identify the regulatory and nonregulatory options that the Secretary considered in prescribing a proposed standard;

''(B) identify the costs and benefits associated with the proposed standard;

''(C) include—

''(i) an explanation of the reasons for the selection of the proposed standard in lieu of the other options identified; and

''(ii) with respect to each of those other options, a brief explanation of the reasons that the Secretary did not select the option; and

''(D) identify technical data or other information upon which the risk assessment information and proposed standard is based.

''(4) REVIEW.—

''(A) IN GENERAL.—The Secretary shall—

''(i) submit risk assessment information prepared under paragraph (3) of this subsection to the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate; and

''(ii) make that risk assessment information available to the general public.

''(B) PEER REVIEW PANELS.—The committees referred to in subparagraph (A) shall serve as peer review panels to review risk assessment information prepared under this section. Not later than 90 days after receiving risk assessment information for review pursuant to subparagraph (A), each committee that receives that risk assessment information shall prepare and submit to the Secretary a report that includes—

''(i) an evaluation of the merit of the data and methods used; and

''(ii) any recommended options relating to that risk assessment information and the associated standard that the committee determines to be appropriate.

''(C) REVIEW BY SECRETARY.—Not later than 90 days after receiving a report submitted by a committee under subparagraph (B), the Secretary—

''(i) shall review the report;

''(ii) shall provide a written response to the committee that is the author of the report concerning all significant peer review comments and recommended alternatives contained in the report; and

''(iii) may revise the risk assessment and the proposed standard before promulgating the final standard.

''(5) SECRETARIAL DECISIONMAKING.—Except where otherwise required by statute, the Secretary shall propose or issue a standard under this Chapter only upon a reasoned determination that the benefits of the intended standard justify its costs.

''(6) EXCEPTIONS FROM APPLICATION.—The requirements of this subsection do not apply when—

''(A) the standard is the product of a negotiated rulemaking, or other rulemaking including the adoption of industry standards that receives no significant adverse comment within 60 days of notice in the Federal Register;

''(B) based on a recommendation (in which three-fourths of the members voting concur) by the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as applicable, the Secretary waives the requirements; or

''(C) the Secretary finds, pursuant to section 553(b)(3)(B) of title 5, United States Code, that notice and public procedure are not required.

''(7) REPORT.—Not later than March 31, 2000, the Secretary shall transmit to the Congress a report that—

''(A) describes the implementation of the risk assessment requirements of this section, including the extent to which those requirements have improved regulatory decision making; and

''(B) includes any recommendations that the Secretary determines would make the risk assessment process conducted pursuant to the requirements under this chapter a more effective means of assessing the benefits and costs associated with alternative regulatory and nonregulatory options in prescribing standards under the Federal pipeline safety regulatory program under this chapter.''.

(c) FACILITY OPERATION INFORMATION STANDARDS.—The first sentence of section 60102(d) is amended—

(1) by inserting ''as required by the standards prescribed under this chapter'' after ''operating the facility'';

(2) by striking ''to provide the information'' and inserting ''to make the information available''; and

(3) by inserting ''as determined by the Secretary'' after ''to the Secretary and an appropriate State official''.

(d) PIPE INVENTORY STANDARDS.—The first sentence of section 60102(e) is amended—

(1) by striking ''and, to the extent the Secretary considers necessary, an operator of a gathering line that is not a regulated gather line (as defined under section 60101(b)(2) of this title),''; and

(2) by striking ''transmission'' and inserting ''transportation''.

(e) SMART PIGS.—

(1) MINIMUM SAFETY STANDARDS.—Section 60102(f) is amended by striking paragraph (1) and inserting the following:

''(1) MINIMUM SAFETY STANDARDS.—The Secretary shall prescribe minimum safety standards requiring that—

''(A) the design and construction of new natural gas transmission pipeline or hazardous liquid pipeline facilities, and

''(B) when the replacement of existing natural gas transmission pipeline or hazardous liquid pipeline facilities or equipment is required, the replacement of such existing facilities be carried out, to the extent practicable, in a manner so as to accommodate the passage through such natural gas transmission pipeline or hazardous liquid pipeline facilities of instrumented internal inspection devices (commonly referred to as 'smart pigs'). The Secretary may extend such standards to require existing natural gas transmission pipeline or hazardous liquid pipeline facilities, whose basic construction would accommodate an instrumented internal inspection device to be modified to permit the inspection of such facilities with instrumented internal inspection devices.''.

(2) PERIODIC INSPECTIONS.—Section 60102(f)(2) is amended—

(A) by striking ''(2) Not later than'' and inserting the following:

''(2) PERIODIC INSPECTIONS.—Not later than''; and

(B) by inserting '', if necessary, additional'' after ''the Secretary shall prescribe''.

(f) UPDATING STANDARDS.—Section 60102 is amended by adding at the end the following:

''(l) UPDATING STANDARDS.—The Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as part of the Federal pipeline safety regulatory program under this chapter.''.

SEC. 5. RISK MANAGEMENT.

(a) IN GENERAL.—Chapter 601 is amended by adding at the end the following:

''§ 60126. Risk management

''(a) RISK MANAGEMENT PROGRAM DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Secretary shall establish risk management demonstration projects—

''(A) to demonstrate, through the voluntary participation by owners and operators of gas pipeline facilities and hazardous liquid pipeline facilities, the application of risk management; and

''(B) to evaluate the application of risk management referred to in subparagraph (A).

''(2) EXEMPTIONS.—In carrying out a demonstration project under this subsection, the Secretary, by order—

''(A) may exempt an owner or operator of the pipeline facility covered under the project (referred to in this subsection as a 'covered pipeline facility'), from the applicability of all or a portion of the requirements under this chapter that would otherwise apply to the covered pipeline facility; and

''(B) shall exempt, for the period of the project, an owner or operator of the covered pipeline facility, from the applicability of any new standard that the Secretary promulgates under this chapter during the period of that participation, with respect to the covered facility.

''(b) REQUIREMENTS.—In carrying out a demonstration project under this section, the Secretary shall—

''(1) invite owners and operators of pipeline facilities to submit risk management plans for timely approval by the Secretary;

''(2) require, as a condition of approval, that a risk management plan submitted under this subsection contain measures that are designed to achieve an equivalent or greater overall level of safety than would otherwise be achieved through compliance with the standards contained in this chapter or promulgated by the Secretary under this chapter;

''(3) provide for—

''(A) collaborative government and industry training;

''(B) methods to measure the safety performance of risk management plans;

''(C) the development and application of new technologies;

''(D) the promotion of community awareness concerning how the overall level of safety will be maintained or enhanced by the demonstration project;

''(E) the development of models that categorize the risks inherent to each covered pipeline facility, taking into consideration the location, volume, pressure, and material transported or stored by that pipeline facility;

''(F) the application of risk assessment and risk management methodologies that are suitable to the inherent risks that are determined to exist through the use of models developed under subparagraph (E);

''(G) the development of project elements that are necessary to ensure that—

''(i) the owners and operators that participate in the demonstration project demonstrate that they are effectively managing the risks referred to in subparagraph (E); and

''(ii) the risk management plans carried out under the demonstration project under this subsection can be audited;

''(H) a process whereby an owner or operator of a pipeline facility is able to terminate a risk management plan or, with the approval of the Secretary, to amend, modify, or otherwise adjust a risk management plan referred to in paragraph (1) that has been approved by the Secretary pursuant to that paragraph to respond to—

''(i) changed circumstances; or

''(ii) a determination by the Secretary that the owner or operator is not achieving an overall level of safety that is at least equivalent to the level that would otherwise be achieved through compliance with the standards contained in this chapter or promulgated by the Secretary under this chapter; and

''(I) such other elements as the Secretary, with the agreement of the owners and operators that participate in the demonstration project under this section, determines to further the purposes of this section; and

''(4) in selecting participants for the demonstration project, take into consideration the past safety and regulatory performance of each applicant who submits a risk management plan pursuant to paragraph (1).

''(c) EMERGENCIES AND REVOCATIONS.—Nothing in this section diminishes or modifies the Secretary's authority under this title to act in case of an emergency. The Secretary may revoke any exemption granted under this section for substantial noncompliance with the terms and conditions of an approved risk management plan.

''(d) PARTICIPATION BY STATE AUTHORITY.—In carrying out this section, the Secretary may provide for consultation by a State that has in effect a certification under section 60105. To the extent that a demonstration project comprises an intrastate natural gas pipeline or an intrastate hazardous liquid pipeline facility, the Secretary may make an agreement with the State agency to carry out the duties of the Secretary for approval and administration of the project.

''(e) REPORT.—Not later than March 31, 2000, the Secretary shall transmit to the Congress a report on the results of the demonstration projects carried out under this section that includes—

''(1) an evaluation of each such demonstration project, including an evaluation of the performance of each participant in that project with respect to safety and environmental protection; and

''(2) recommendations concerning whether the applications of risk management demonstrated under the demonstration project should be incorporated into the Federal pipeline safety program under this chapter on a permanent basis.''.

(f) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by adding at the end the following:

''60126. Risk management.''.

SEC. 6. INSPECTION AND MAINTENANCE.

Section 60108 is amended—

(1) by striking ''transporting gas or hazardous liquid or'' in subsection (a)(1) each place it appears;

(2) by striking the second sentence in subsection (b)(2);

(3) by striking ''NAVIGABLE WATERS'' in the heading for subsection (c) and inserting ''OTHER WATERS''; and

(4) by striking clause (ii) of subsection (c)(2)(A) and inserting the following:

''(ii) any other pipeline facility crossing under, over, or through waters where a substantial likelihood of commercial navigation exists, if the Secretary decides that the location of the facility in those waters could pose a hazard to navigation or public safety.''.

SEC. 7. HIGH-DENSITY POPULATION AREAS AND ENVIRONMENTALLY SENSITIVE AREAS.

(a) IDENTIFICATION.—Section 60109(a)(1)(B)(i) is amended by striking ''a navigable waterway (as the Secretary defines by regulation)'' and inserting ''waters where a substantial likelihood of commercial navigation exists''.

(b) UNUSUALLY SENSITIVE AREAS.—Section 60109(b) is amended to read as follows:

''(b) AREAS TO BE INCLUDED AS UNUSUALLY SENSITIVE.—When describing areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident, the Secretary shall consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage, including—

''(1) locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical sole source aquifer protection areas; and

''(2) locations near pipeline rights-of-way that have been identified as critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.''.

SEC. 8. EXCESS FLOW VALVES.

Section 60110 is amended—

(1) by inserting '', if any,'' in the first sentence of subsection (b)(1) after ''circumstances'';

(2) by inserting '', operating, and maintaining'' in subsection (b)(4) after ''cost of installing'';

(3) by inserting '', maintenance, and replacement'' in subsection (c)(1)(C) after ''installation''; and

(4) by inserting after the first sentence in subsection (e) the following: ''The Secretary may adopt industry accepted performance standards in order to comply with the requirement under the preceding sentence.''.

SEC. 9. CUSTOMER-OWNED NATURAL GAS SERVICE LINES.

Section 60113 is amended—

(1) by striking the caption of subsection (a); and

(2) by striking subsection (b).

SEC. 10. TECHNICAL SAFETY STANDARDS COMMITTEES.

(a) PEER REVIEW.—Section 60115(a) is amended by adding at the end the following: ''The committees referred to in the preceding sentence shall serve as peer review committees for carrying out this chapter. Peer reviews conducted by the committees shall be treated for purposes of all Federal laws relating to risk assessment and peer review (including laws that take effect after the date of the enactment of the Accountable Pipeline Safety and Partnership Act of 1996) as meeting any peer review requirements of such laws.''.

(b) COMPOSITION AND APPOINTMENT.—Section 60115(b) is amended—

(1) by inserting ''or risk management principles'' in paragraph (1) before the period at the end;

(2) by inserting ''or risk management principles'' in paragraph (2) before the period at the end;

(3) by striking ''4'' in paragraph (3)(B) and inserting ''5'';

(4) by striking ''6'' in paragraph (3)(C) and inserting ''5'';

(5) by adding at the end of paragraph (4)(B) the following: ''At least 1 of the individuals selected for each committee under paragraph (3)(B) shall have education, background, or experience in risk assessment and cost-benefit analysis. The Secretary shall consult with the national organizations representing the owners and operators of pipeline facilities before selecting individuals under paragraph (3)(B).''; and

(6) by inserting after the first sentence of paragraph (4)(C) the following: ''At least 1 of the individuals selected for each committee under paragraph (3)(C) shall have education, background, or experience in risk assessment and cost-benefit analysis.''.

(c) COMMITTEE REPORTS.—Section 60115(c) is amended—

(1) by inserting ''including the risk assessment information and other analyses supporting each proposed standard'' before the semicolon in paragraph (1)(A);

(2) by inserting ''including the risk assessment information and other analyses supporting each proposed standard'' before the period in paragraph (1)(B);

(3) by inserting ''and supporting analyses'' before the first comma in the first sentence of paragraph (2);

(4) by inserting ''and submit to the Secretary'' in the first sentence of paragraph (2) after ''prepare'';

(5) by inserting ''cost-effectiveness,'' in the first sentence of paragraph (2) after ''reasonableness,''; and

(6) by inserting ''and include in the report recommended actions'' before the period at the end of the first sentence of paragraph (2); and

(7) by inserting ''any recommended actions and'' in the second sentence of paragraph (2) after ''including''.

(d) MEETINGS.—Section 60115(e) is amended by striking ''twice'' and inserting ''up to 4 times''.

(e) EXPENSES.—Section 60115(f) is amended—

(1) by striking ''PAY AND'' in the subsection heading;

(2) by striking the first 2 sentences; and

(3) by inserting ''of a committee under this section'' after ''A member''.

SEC. 11. PUBLIC EDUCATION PROGRAMS.

Section 60116 is amended—

(1) by striking ''person transporting gas'' and inserting ''owner or operator of a gas pipeline facility'';

(2) by inserting ''the use of a one-call notification system prior to excavation,'' after ''educate the public on''; and

(3) by inserting a comma after ''gas leaks''.

SEC. 12. ADMINISTRATIVE.

Section 60117 is amended—

(1) by adding at the end of subsection (b) the following: ''The Secretary may require owners and operators of gathering lines to provide the Secretary information pertinent to the Secretary's ability to make a determination as to whether and to what extent to regulate gathering lines.'';

(2) by adding at the end thereof the following:

''(k) AUTHORITY FOR COOPERATIVE AGREEMENTS.—To carry out this chapter, the Secretary may enter into grants, cooperative agreements, and other transactions with any person, agency, or instrumentality of the United States, any unit of State or local government, any educational institution, or any other entity to further the objectives of this chapter. The objectives of this chapter include the development, improvement, and promotion of one-call damage prevention programs, research, risk assessment, and mapping.''; and

(3) by striking ''transporting gas or hazardous liquid'' in subsection (b) and inserting ''owning''.

SEC. 13. COMPLIANCE.

(a) Section 60118 (a) is amended—

(1) by striking ''transporting gas or hazardous liquid or'' in subsection (a); and

(2) by striking paragraph (1) and inserting the following:

''(1) comply with applicable safety standards prescribed under this chapter, except as provided in this section or in section 60126;''.

(b) Section 60118 (b) is amended to read as follows:

''(b) COMPLIANCE ORDERS.—The Secretary of Transportation may issue orders directing compliance with this chapter, an order under section 60126, or a regulation prescribed under this chapter. An order shall state clearly the action a person must take to comply.''.

(c) Section 60118(c) is amended by striking ''transporting gas or hazardous liquid'' and inserting ''owning''.

SEC. 14. DAMAGE REPORTING.

Section 60123(d)(2) is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following:

''(B) a pipeline facility that does not report the damage promptly to the operator of the pipeline facility and to other appropriate authorities; or''.

SEC. 15. BIENNIAL REPORTS.

(a) BIENNIAL REPORTS.—

(1) SECTION HEADING.—The section heading of section 60124 is amended to read as follows:

''§ 60124. Biennial reports''.

(2) REPORTS.—Section 60124(a) is amended by striking the first sentence and inserting the following: ''Not later than August 15, 1997, and every 2 years thereafter, the Secretary of Transportation shall submit to Congress a report on carrying out this chapter for the 2 immediately preceding calendar years for gas and a report on carrying out this chapter for such period for hazardous liquid.''.

(c) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by striking the item relating to section 60124 and inserting the following:

''60124. Biennial reports.''.

SEC. 16. POPULATION ENCROACHMENT.

(a) IN GENERAL.—Chapter 601, as amended by section 5, is further amended by adding at the end the following new section:

''§ 60127. Population encroachment

''(a) LAND USE RECOMMENDATIONS.—The Secretary of Transportation shall make available to an appropriate official of each State, as determined by the Secretary, the land use recommendations of the special report numbered 219 of the Transportation Research Board, entitled 'Pipelines and Public Safety'.

''(b) EVALUATION.—The Secretary shall—

''(1) evaluate the recommendations in the report referred to in subsection (a);

''(2) determine to what extent the recommendations are being implemented;

''(3) consider ways to improve the implementation of the recommendations; and

''(4) consider other initiatives to further improve awareness of local planning and zoning entities regarding issues involved with population encroachment in proximity to the rights-of-way of any interstate gas pipeline facility or interstate hazardous liquid pipeline facility.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by inserting after the item relating to section 60126 the following:

''60127. Population encroachment.''.

SEC. 17. USER FEES.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall transmit to the Congress a report analyzing the present assessment of pipeline safety user fees solely on the basis of mileage to determine whether—

(1) that measure of the resources of the Department of Transportation is the most appropriate measure of the resources used by the Department of Transportation in the regulation of pipeline transportation; or

(2) another basis of assessment would be a more appropriate measure of those resources.

(b) CONSIDERATIONS.—In making the report, the Secretary shall consider a wide range of assessment factors and suggestions and comments from the public.

SEC. 18. DUMPING WITHIN PIPELINE RIGHTS-OF-WAY.

(a) AMENDMENT.—Chapter 601, as amended by section 16, is further amended by adding at the end the following new section:

''§ 60128. Dumping within pipeline rights-of-way

''(a) PROHIBITION.—No person shall excavate for the purpose of unauthorized disposal within the right-of-way of an interstate gas pipeline facility or interstate hazardous liquid pipeline facility, or any other limited area in the vicinity of any such interstate pipeline facility established by the Secretary of Transportation, and dispose solid waste therein.

''(b) DEFINITION.—For purposes of this section, the term 'solid waste' has the meaning given that term in section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).''.

(b) CONFORMING AMENDMENTS.—

(1) CROSS-REFERENCE.—Section 60123(a) is amended by striking ''or 60118(a)'' and inserting '', 60118(a), or 60128''.

(2) CHAPTER ANALYSIS.—The analysis for chapter 601 is amended by adding at the end the following new item:

''60128. Dumping within pipeline rights-of-way.''.

SEC. 19. PREVENTION OF DAMAGE TO PIPELINE FACILITIES.

Section 60117(a) is amended by inserting after ''and training activities'' the following: ''and promotional activities relating to prevention of damage to pipeline facilities''.

SEC. 20. TECHNICAL CORRECTIONS.

*(a) SECTION 60105.—The heading for section 60105 is amended by inserting ''**pipeline safety program''** after ''**State''.***

*(b) SECTION 60106.—The heading for section 60106 is amended by inserting ''**pipeline safety**'' after ''**State**''.*

*(c) SECTION 60107.—The heading for section 60107 is amended by inserting ''**pipeline safety**'' after ''**State**''.*

(d) SECTION 60114.—Section 60114 is amended—

(1) by striking ''60120, 60122, and 60123'' in subsection (a)(9) and inserting ''60120 and 60122'';

(2) by striking subsections (b) and (d); and

(3) by redesignating subsections (c) and (e) as subsections (b) and (d), respectively.

(e) CHAPTER ANALYSIS.—The analysis for chapter 601 is amended—

(1) by inserting ''pipeline safety program'' in the item relating to section 60105 after ''State'';

(2) by inserting ''pipeline safety'' in the item relating to section 60106 after ''State''; and

(3) by inserting ''pipeline safety'' in the item relating to section 60107 after ''State''.

(f) SECTION 60101.—Section 60101(b) is amended by striking ''define by regulation'' each place it appears and inserting ''prescribe standards defining''.

(g) SECTION 60102.—Section 60102 is amended by striking ''regulations'' each place it appears in subsections (f)(2), (i), and (j)(2) and inserting ''standards''.

(h) SECTION 60108.—Section 60108 is amended—

(1) by striking ''regulations'' in subsections (c)(2)(B), (c)(4)(B), and (d)(3) and inserting ''standards''; and

(2) by striking ''require by regulation'' in subsection (c)(4)(A) and inserting ''establish a standard''.

(i) SECTION 60109.—Section 60109(a) is amended by striking ''regulations'' and inserting ''standards''.

(j) SECTION 60110.—Section 60110 is amended by striking ''regulations'' in subsections (b), (c)(1), and (c)(2) and inserting ''standards''.

(k) SECTION 60113.—Section 60113(a) is amended by striking ''regulations'' and inserting ''standards''.

SEC. 21. AUTHORIZATION OF APPROPRIATIONS.

(a) GAS AND HAZARDOUS LIQUID.—Section 60125 is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) GAS AND HAZARDOUS LIQUID.—To carry out this chapter (except for sections 60107 and 60114(b)) related to gas and hazardous liquid, there are authorized to be appropriated to the Department of Transportation—

''(1) $19,448,000 for fiscal year 1996;

''(2) $20,028,000 for fiscal year 1997, of which $14,600,000 is to be derived from user fees for fiscal year 1997 collected under section 60301 of this title;

''(3) $20,729,000 for fiscal year 1998, of which $15,100,000 is to be derived from user fees for fiscal year 1998 collected under section 60301 of this title;

''(4) $21,442,000 for fiscal year 1999, of which $15,700,000 is to be derived from user fees for fiscal year 1999 collected under section 60301 of this title''; and

''(5) $22,194,000 for fiscal year 2000, of which $16,300,000 is to be derived from user fees for fiscal year 2000 collected under section 60301 of this title.''.

(b) STATE GRANTS.—Section 60125(c)(1) is amended by adding at the end the following:

''(D) $12,000,000 for fiscal year 1996.

''(E) $14,000,000 for fiscal year 1997, of which $12,500,000 is to be derived from user fees for fiscal year 1997 collected under section 60301 of this title.

''(F) $14,490,000 for fiscal year 1998, of which $12,900,000 is to be derived from user fees for fiscal year 1998 collected under section 60301 of this title.

''(G) $15,000,000 for fiscal year 1999, of which $13,300,000 is to be derived from user fees for fiscal year 1999 collected under section 60301 of this title.

''(H) $15,524,000 for fiscal year 2000, of which $13,700,000 is to be derived from user fees for fiscal year 2000 collected under section 60301 of this title.''.

Mr. EXON. Mr. President, as I understand it, the manager of the bill on the other side will be here briefly. Since this matter is now before the Senate, I would like to proceed with a statement on this particular measure. I assure all that contrary to the misunderstanding of half an hour ago, I am convinced that all possible disagreement with certain points of the bill had been earlier cleared today. The bill I believe is ready for acceptance on both sides of the aisle, so I will, since the measure, S. 1505, is before us, continue with my statement on the bill, with the hopes that the manager on the other side will be here and ready to act on the measure, and we will not attempt to act on the measure until the majority representative is here.

Mr. President, the amendment in the nature of a substitute to S. 1505, the Accountable Pipeline Safety and Partnership Act of 1996, is an important piece of legislation. We worked this out in the Commerce Committee. We have worked out some word and language concerns with other Members of the Senate, and I think the measure is ready to pass.

Pipeline safety is an extremely important issue for me. I have tried during my years in the Senate to give the issue of pipeline safety the visibility that it deserves, which it did not receive previously. I am very proud of what the Senate has been able to accomplish in this important area.

Just to name one such recent effort, we can point to the Pipeline Safety Improvement Act of 1991. With favorable Senate action on the Accountable Pipeline Safety and Partnership Act today, we will continue our efforts to make gas and hazardous liquid pipelines safer and to do it while allowing the pipeline industry to continue to provide effective and efficient service to the Nation's consumers, as they obviously do today.

The bill is aptly named. After long negotiations between the regulators, the Department of Transportation Office of Pipeline Safety, and the pipeline industry, the parties agree that this bill can create a working partnership to improve pipeline safety while allowing the safe pipelines to operate with a reduced regulatory burden and allowing the OPS to put its resources where and when the problems exist. In other words, putting cops on the beat in the neighborhoods that need them.

The cornerstone of this bill is the risk management program. The program would allow the Secretary of Transportation to establish criteria under which the pipeline owners and operators can present pipeline safety plans that provide at least an equivalent level of safety with the level of safety already provided by the existing OPS regulations. In return for participation in the program, the eligible pipeline owner will be allowed to operate free of regulations that the Secretary determines are no longer necessary in light of the facility's safety plan.

In return, the OPS can concentrate its resources on those pipeline facilities, the safety record of which can and should be improved. I believe that the parties have agreed to a workable plan for increasing the safety of gas and hazardous liquid pipelines while reducing the regulatory burden on the affected industries. I ask my Senate colleagues to join in supporting this legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I be allowed to speak for up to 5 minutes as if in morning business.

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

EDUCATION FUNDING

Mr. BINGAMAN. Mr. President, I wanted to address for just a few minutes the issue I spoke about yesterday, and that is the level of support we are providing in this Congress to education. I wanted to do it by showing some charts that I was shown yesterday which I think are particularly instructive. Let me just put them up for the benefit of my colleagues so that they can see what we are talking about.

There are really two items on this first chart. The first is projected enrollment. You see here, starting in 1996, we have 52 million students enrolled and by the year 2002 that goes up to 70 million. We are seeing that kind of increase and even more of a percentage increase in my State, in States like New Mexico, where there is substantial growth in population.

This chart also shows the funding proposal which was in the budget resolution that was adopted last year during the Congress, and that is to go from $39.5 billion in 1995 down to $35

billion, an absolute cut of over $4 billion in that period. This is an issue about which I think there is some confusion. As I travel around my State, people say, well, there is really not a cut in education being considered; it is only a cut in the level of increase.

That is not accurate. This is a cut. When you go from $39.5 billion in 1995 to $35 billion in 2002, that is a cut that is not a cut in the rate of increase.

Mr. President, this second chart makes the same point. That is, each year up until the last few years, we had seen an increase in education. Some years it was a modest increase, some years it was a more significant increase, but there was always some increase and there was bipartisan agreement to do that. Beginning in fiscal year 1995 this Congress for the first time saw a $3.7 billion cut and, of course, we are trying to reduce the level of that cut this year.

Another chart which makes the same point, Mr. President, is this one which says ''Education Is Cut $3.2 Billion From the Original FY 1995 Program Level Spending.''

This shows in 1995 through rescissions of spending in that year we eliminated $600 million; in the fiscal year 1996 appropriations, it was a cumulative $1.1 billion cut; the 1997 House appropriation was a $1.5 billion cut and the total funding loss from the original 1995 level is $3.2 billion.

Mr. President, let me just show this final chart here which I think makes the obvious point that I think all Americans would understand, and that is that our ''Unmet Education Needs'' are large and growing. This shows that in the school year 1994 through 1995, there were 10 million students eligible for title I funding—that is, they attended schools where the income level was such that they should have been receiving title I funding. Only 6.5 million of them actually received it. There were 3.5 million students in that school year who were not able to receive the funding because of funding levels. When you combine this chart with the first of the charts that I showed, which is the increase in enrollment that our schools are experiencing, you can see the problem is growing worse, and that is the only point I am trying to make here.

In this last 2 weeks of the session, I hope very much we can get back to the 1995 funding level for education. It is a small request to make. I think it is one that is certainly justified.

I appreciate the chance to point out these charts to my colleagues.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ACCOUNTABLE PIPELINE SAFETY AND PARTNERSHIP ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. PRESSLER. Mr. President, I am pleased we are considering S. 1505, the Accountable Pipeline Safety and Partnership Act of 1996. This is needed and important legislation, and I urge my colleagues' full and enthusiastic support.

On June 6, 1996, S. 1505 was amended by the Committee on Commerce, Science, and Transportation and ordered to be reported without objection. I also have one technical amendment that I believe has been cleared by the majority and the minority.

S. 1505 reauthorizes appropriations for Natural Gas and Hazardous Liquid Pipeline Safety Programs and seeks to reduce the risks and enhance environmental protection associated with pipeline transportation. As chairman of the Senate Committee on Commerce, Science, and Transportation, I want to take a moment to highlight some of the most important provisions of S. 1505.

But first, Mr. President, I want to share some brief background on how S. 1505 reached this point. It was a long, but fruitful journey.

Last December, our distinguished majority leader, Mr. LOTT, introduced S. 1505. Mr. LOTT's original bill was cosponsored by Mr. BREAUX, Mrs. HUTCHISON, Mr. EXON, Mr. BURNS, Mr. FORD, Mr. INOUYE, Mr. SHELBY, Mr. COCHRAN, Mr. FRIST, Mr. INHOFE, and myself.

S. 1505 was based on a bill (H.R. 1323) pending in the House. The House legislation had been approved by two panels, but it has not been debated on the House floor. Because of the majority leader's initiative, emphasis shifted to our Chamber.

On April 16, my committee held a hearing on pipeline transportation safety and S. 1505. At the hearing, pipeline owners and operators, as well as Federal and State safety regulators, voiced their individual views on how to reauthorize and enhance pipeline safety.

At the hearing, I stated my view that with a little give and take, we could reach agreement on how best to improve pipeline safety. I am pleased that our efforts succeeded.

The text of S. 1505 reflects an agreement reached over several months. The negotiators in this process represented two offices in the Department of Transportation DOT—one of which was the Office of Pipeline Safety OPS—natural gas pipeline operators, hazardous liquid pipeline operators, and majority and minority committee staff. Valuable input was also received from the dedicated staff of the Congressional Research Service and groups like the National Association of Pipeline Safety Representatives and the Natural Resources Defense Council. I commend the work of all those involved.

Mr. President, I have been involved with pipeline safety issues for several years. A vast network of underground pipes safely transports fuel to our homes and businesses.

National Transportation Safety Board statistics show pipelines to be one of the safest modes of transportation. Among all modes—highway, rail, aviation, marine, and pipeline—fatalities from pipeline accidents represent less than 3/1000 of 1 percent of the total number of transportation fatalities on an annual basis.

At the same time, we must do everything possible to prevent natural gas and hazardous liquid pipeline transportation accidents. A few years ago, a pipeline leak occurred near Sioux Falls in my home State of South Dakota. I met with Federal, state and local officials at the time to discuss many public health and safety aspects of pipeline transportation. I also initiated efforts to improve hazardous liquid pipeline inspection programs and to add inspectors to focus on States like South Dakota that did not have their own hazardous liquid pipeline safety programs.

Through this experience, I came to realize that pipeline transportation is one of the United States' most unique transportation modes. There are individual product characteristics and product-specific types of piping materials. A subterranean network of underground pipelines runs under farms, rural communities, suburbs, metropolitan regions, rivers, and environmentally sensitive areas. Given this unique transportation environment, it became clear that a single uniform set of safety standards cannot effectively address all risks.

S. 1505 responds to this unique pipeline operating environment by applying a simple, flexible, commonsense risk assessment and cost-benefit analysis for new pipeline safety standards. The legislation moves pipeline safety away from prescriptive, command-and-control approaches and focuses future standards on actions that address assessed safety risks.

S. 1505 also provides statutory authority for the Office of Pipeline Safety to initiate the risk management demonstration project it has had under development for 2 years. Under the demonstration program, pipeline operators would be given more flexibility in applying their resources to solutions that best fit their unique pipeline operation problems.

As I mentioned earlier, the technical provision at the desk to be added to S. 1505 has been cleared by both the majority and the minority. The language in the provision provides for the opportunity for public comment in a demonstration project's approval process.

The Office of Pipeline Safety testified that there ''are too many variations'' in pipeline operations to think ''we in Washington are in a position to mandate solutions to fit all problems.''

I wholeheartedly agree. One-size-fits-all regulations do not and cannot address the thousands of differences between pipeline operations nationwide.

S. 1505 is a responsible bill and it represents sound public policy. The risk assessment and risk management provisions of the legislation rest on the foundation already built by the Office of Pipeline Safety. The bill also builds on initiatives undertaken at OPS to focus its regulatory and programmatic agenda on the most important public safety and environmental protection standards.

Aside from the risk assessment and risk management provisions, S. 1505 contains many other noteworthy provisions. Although I cannot mention each one individually, I do want to touch on one particular issue.

States currently represent more than 90 percent of the State/Federal inspector work force that oversees pipelines nationwide. For more than two decades, OPS has leveraged its resources, thereby increasing its pipeline inspection capabilities, by reimbursing States for up to fifty percent of their program costs. This leverage is a key link in the pipeline safety network. I am pleased that despite severe budget pressures, S. 1505 maintains this important State/Federal cost-sharing partnership.

Mr. President, I again want to thank all those involved in bringing S. 1505 to the floor today. I want to again acknowledge the role the majority leader played. S. 1505's development and evolution was difficult, but the end result is a bill worthy of enactment.

Also, I would like to cite the staff who did a great deal of work:

Charlotte Casey, Tom Hohenthaner, and Paddy Link of the majority staff of the Commerce Committee; Carl Biersack with Senator LOTT; Clyde Hart, Carl Bentzel and Jim Drewry of the minority staff of the Commerce Committee; and Chris McLean with Senator EXON.

Mr. President, I have completed my statement. On this side of the aisle, we are ready to proceed. At this time, I suggest the absence of a quorum.

Mr. EXON. Will the Senator withhold that? Mr. President, has he offered a manager's amendment? We have it here now. It is his amendment. You must have it. We approve it as drafted. Therefore, I suggest if the Senator will go ahead and offer that, we can probably pass the bill.

MODIFICATIONS TO THE COMMITTEE AMENDMENT

Mr. PRESSLER. Mr. President, I ask unanimous consent to send modifications to the committee substitute to the desk and ask that the committee substitute, as modified, be considered as original text for purpose of further amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The committee amendment is so modified.

The modifications are as follows:

On page 48, line 4, strike ''and''.

On page 48, between lines 9 and 10, insert the following:

''(J) an opportunity for public comment in the approval process; and

On page 44, between lines 11 and 12, insert the following:

(g) MAPPING.—Section 60102(c) is amended by adding at the end thereof the following:

''(4) PROMOTING PUBLIC AWARENESS.—

''(A) Not later than one year after the date of enactment of Accountable Pipeline Safety and Accountability Act of 1996, and annually thereafter, the owner or operator of each interstate gas pipeline facility shall provide to the governing body of each municipality in which the interstate gas pipeline facility is located, a map identifying the location of such facility; and

''(B)(i) Not later than June 1, 1998, the Secretary shall survey and assess the public education programs under section 60116 and the public safety programs under section 60102(c) and determine their effectiveness and applicability as components of a model program. In particular, the survey shall include the methods by which operators notify residents of the location of the facility and its right of way, public information regarding existing One-Call programs, and appropriate procedures to be followed by residents of affected municipalities in the event of accidents involving interstate gas pipeline facilities.

''(ii) Not later than one year after the survey and assessment are completed, the Secretary shall institute a rulemaking to determine the most effective public safety and education program components and promulgate if appropriate, standards implementing those components on a nationwide basis. In the event that the Secretary finds that promulgation of such standards are not appropriate, the Secretary shall report to Congress the reasons for that finding.''.

(h) REMOTE CONTROL.—Section 60102(j) is amended by adding at the end thereof the following:

''(3) REMOTELY CONTROLLED VALVES.—(A) Not later than June 1, 1998, the Secretary shall survey and assess the effectiveness of remotely controlled valves to shut off the flow of natural gas in the event of a rupture of an interstate natural gas pipeline facility and shall make a determination about whether the use of remotely controlled valves is technically and economically feasible and would reduce risks associated with a rupture of an interstate natural gas pipeline facility.

''(B) Not later than one year after the survey and assessment are completed, if the Secretary has determined that the use of remotely controlled valves is technically and economically feasible and would reduce risks associated with a rupture of an interstate natural gas pipeline facility, the Secretary shall prescribe standards under which an operator of an interstate natural gas pipeline facility must use a remotely controlled valve. These standards shall include but not be limited to requirements for high-density population areas.''

On page 38, beginning in line 1, strike ''In prescribing a standard referred to in paragraph (2),'' and inserts ''In conducting a risk assessment referred to in subparagraph (D) and (E) of paragraph (2),''.

On page 38, line 22, insert ''any'' after ''submit''.

On page 40, line 15, strike ''this subsection'' and insert ''subparagraphs (D) and (E) of paragraph (2)''.

On page 41, line 13, strike ''improved regulatory decision making'' and insert ''affected regulatory decision making and pipeline safety''.

On page 45, strike lines 1 and 2 and insert the following:

''(B) to evaluate the safety and cost-effectiveness of the program.''

Mr. EXON. Have we adopted the manager's amendment?

Mr. PRESSLER. Yes.

Mr. EXON. It was my hope, Mr. President, that we were ready to pass the bill. It was my hope that we would pass the bill in wrap-up last night. That was not possible. It was my hope that we would wrap it up and pass it earlier today at noon. That was not possible.

It was my hope, Mr. President, that we could wrap it up now. I am advised that is not possible, and the responsibility at this time is on this side of the aisle, I say to my friends on the other side of the aisle. The measure is open to amendment, and if anyone ever wonders why it takes so long to get anything done in the U.S. Senate, after endless hours of consultation, double consultation, this is a typical case in point. Therefore, I suggest the absence of a quorum.

Mr. PRESSLER. Mr. President, I join that request for a quorum call, but I just would like to join in those remarks 100 percent. I might also take this opportunity to say that I am in the process of placing a statement in the CONGRESSIONAL RECORD relative to what a great Senator Senator EXON has been in the Senate and what a great colleague he has been to work with.

I share his frustration at this moment. He is a lucky man in that he is retiring from this body, so he will not have these frustrations in the future. I do not think they are going to change very much, but I am equally frustrated. We are ready to pass this bill on this side of the aisle. Whenever you give me the nod, we will go.

Mr. EXON. Mr. President, I thank my friend from South Dakota for those kind remarks. I simply say to him that I was misinformed. I will check into this. I will see who in the world it is that wants to make an amendment to this measure but is not here to do it in an orderly fashion. I will report back to the Senate and to my friend from South Dakota as soon as I am able to get that information, if I can get the information.

Mr. PRESSLER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. PRESSLER. Mr. President, I ask unanimous consent that Jim Sartucci, a Coast Guard Fellow with the Committee on Commerce, Science, and Transportation, be granted floor privileges today and during Senate consideration of H.R. 1350, an act to amend the Merchant Marine Act.

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

Mr. PRESSLER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CHAFEE. Mr. President, I ask unanimous consent that I might proceed for 5 minutes as in morning business.

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

TRIBUTE TO THE U.S. HOCKEY TEAM

Mr. CHAFEE. Mr. President, I will take a moment to pay tribute to the U.S. hockey team. As many of my colleagues may know, Team USA won the World Cup of Hockey last Saturday night with a decisive 5–2 victory over Canada.

This was an extraordinary tournament. All the traditional hockey powers—countries such as Canada, Russia, and Sweden—sent their very best players to this competition. Unlike the Olympics, in which the teams have been made up principally of amateur players, these players were strictly professionals. It was the best in the world against the best in the world.

At the outset, the Americans were the underdogs. In the end, however, not only did we win, but we dominated play throughout the tournament.

As an American, I was thrilled to read about Team USA's outstanding performance. But I am particularly proud of this team's accomplishments as a Rhode Islander.

The team was assembled by Lou Lamoriello—a native of Rhode Island and a former head coach of the Providence College hockey team. Lou is now the president and general manager of the New Jersey Devils.

The team's assistant general manager was Jack Ferreira, a graduate of LaSalle Academy in Providence, and a former assistant coach for Brown University.

The team was coached by Ron Wilson. He grew up in East Providence and played hockey for Providence College. He's now the head coach of the Anaheim Mighty Ducks.

Defenseman Mathieu Schneider is a graduate of Mount Saint Charles High School in Woonsocket, RI.

The athletic trainer, Peter Demers, a long-time trainer for the Los Angeles Kings, is originally from Pawtucket.

To top it off, the team trained at Providence College's Schneider Arena.

So you can see that this team had a distinct Rhode Island flavor to it. And so, I join with all Rhode Islanders and Americans in congratulating the U.S. hockey team for their marvelous achievement.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, has the Pastore rule expired?

The PRESIDING OFFICER. It has not expired.

Mr. BYRD. It has not? Mr. President, I ask unanimous consent to speak out of order for not to exceed 15 minutes.

The PRESIDING OFFICER. Hearing no objection, the Senator is recognized for 15 minutes.

Mr. BYRD. I thank the Chair.

SENATOR DAVID PRYOR

Mr. BYRD. Mr. President, Senator DAVID PRYOR is retiring from the Senate at the end of this session after giving 18 years of exceptional service to the people of Arkansas and to the Nation. His quiet, thoughtful manner, his unfailing good humor, his wise counsel, and his natural leadership will be missed here.

I think of that quotation from Edmund Burke, the great Irish statesman, orator, and writer, who observed in his ''Reflections on the Revolution in France'':

> Because half a dozen grasshoppers under a fern make the field ring with their importunate chink, whilst thousands of great cattle, reposed beneath the shadow of the British oak, chew the cud and are silent, pray do not imagine that those who make the noise are the only inhabitants of the field . . .

The Congress is an open field for serenading grasshoppers, who make a lot of noise unmatched by significant accomplishment. Senator PRYOR, on the other hand, shuns the limelight of the Senate stage to devote his energies to quietly and tenaciously improving living conditions for American citizens, particularly the elderly.

Senator PRYOR began his political career in Arkansas investigating abuses in nursing homes, even working undercover as an orderly to gather firsthand evidence. As the Chairman of the Senate Special Committee on Aging for 6 years, Senator PRYOR has led the crusade to protect America's elderly and to oversee Medicare. On the health care front, Senator PRYOR labored valiantly to craft a workable solution to the massive health care reform effort in the last Congress.

His concern for the elderly has led Senator PRYOR to become an expert on, and a vocal critic of, the prices pharmaceutical companies charge for prescription drugs. And he has matched his criticism with action. Senator PRYOR was instrumental in requiring drug companies to charge the same prices to state-federal Medicaid programs for the poor as they do to other bulk-drug purchasers.

During this Congress, Senator PRYOR has led a fight to close a loophole in the General Agreement on Tariffs and Trade legislation that creates a windfall for name-brand pharmaceutical companies by protecting them from generic competition under GATT. This loophole, a creation of error rather than of intent, means that consumers, and especially pensioners dependent on prescriptions that eat up a large percentage of their fixed incomes, are paying more for their prescriptions than otherwise would have been the case. I am proud to have supported Senator PRYOR's tenacious and repeated efforts to remedy this problem. Although unsuccessful to date, Senator PRYOR's leadership on this important issue merits commendation.

On the Finance Committee, Senator PRYOR has consistently worked to improve the notoriously painful interactions between the IRS and individual taxpayers. On the Agriculture Committee, he has championed issues important to the hardworking farmers laboring in the cotton and rice fields of Arkansas. This search for a balm to smooth the rough edges of life, to offer oil to calm the troubled waters of public exchange, is characteristic of the gentle Senator from Arkansas.

In the behind-the-scenes life of the Senate, Senator PRYOR has worked to encourage civility and order. He has provided leadership as the Secretary of the Democratic Conference in the 102nd and 103rd Congresses. He built the consensus that over a decade ago introduced family-friendly procedural changes, some of which are still in effect today, that restored some discipline to the way this body conducts its business. The time limits on votes and the recess schedule that we still attempt to follow are the lasting fruits of his labors.

Senator PRYOR has not limited his concern for family time to Senators alone. He cast a critical vote to override President Bush's veto of the Family and Medical Leave Act in the 102nd Congress, helping to provide a safety net for family members to look after a newborn, or a sick or dying relative, without risking the loss of their job.

Another way in which Senator PRYOR has enriched the life of the Senate and demonstrated his sincere devotion to young people is his continuing consideration for the Senate pages. These young people, whom we see every day on the floor and busily running our errands throughout the Capitol complex, have come from around the Nation to learn from us, as well as to assist us. Whether from large cities or rural areas, few, if any, of these young people are ever fully prepared for the demands and challenges of life on Capitol Hill, as many of us are not, until they have plunged into the midst of it. Having been a page himself, Senator PRYOR knows firsthand that sometimes the learning part of this heady experience can be swamped under the working part.

But he makes the time and takes the time to talk with the pages—and that

is quite a learning experience, for those of us who take the time to talk with them; I have often done that over the years—and to share with them his insight and his wisdom, to decipher for them the importance of what might be occurring on the floor, and to listen to their questions and their concerns.

His interest in them is genuine, and it has made him a favorite of generations of pages. This is yet another facet of the quiet but extraordinary legacy of courtesy and accomplishment bequeathed to the Senate and to the Nation by Senator PRYOR.

Mr. President, I thank Senator PRYOR for his service to the Senate and to the Nation. He has not trumpeted his ambitions, not made big noises like half a dozen grasshoppers under a fern, but has led by example, earning the genuine esteem and respect of his colleagues and the admiration of so many others whose lives he has touched. I wish him good health and happiness in his retirement. As he listens to the crickets chirping in the Arkansas dusk, raising their noisy chorus to the rising Arkansas moon, I hope that he remembers us as fondly as we will remember him.

Mr. President, I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota [Mr. PRESSLER] is recognized.

Mr. PRESSLER. Mr. President, I want to commend our former majority leader on his great remarks about DAVID PRYOR. His remarks have inspired me to say a few words about DAVID. I have been trying to say a few words about each retiring Senator. But DAVID PRYOR has been a friend of mine. In fact, I have been down to Arkansas to his charitable event that he has to raise money in Texarkana several times. I have also been down to Little Rock to speak at college events. I feel that I have gotten to know DAVID and Barbara Pryor quite well.

He is a legendary figure in this body because he is, I think, one of the President's best friends, and DAVID PRYOR can go straight to the President with certain information or projects. That is an unusual responsibility for a Senator to have.

But he is sort of a legendary U.S. Senator in that he came here as a page, I believe. He was in the House of Representatives when I was over in the House. I have followed his career for a number of years with great admiration.

I shall miss DAVID PRYOR a great deal. He has done a lot of legislation. I serve with him on the Senate Finance Committee. I serve with him on the Senate Committee on Aging. But more than that, he is my friend. I shall miss DAVID PRYOR. We all come and go. DAVID PRYOR is leaving a little early, in my opinion, and I shall miss him very much. I join in those wonderful remarks paying tribute to Senator DAVID PRYOR of Arkansas.

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

The PRESIDING OFFICER (Ms. SNOWE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. I object.

The PRESIDING OFFICER. The objection is heard.

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

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

Mr. PRESSLER. Madam President, I objected regarding the Pipeline Safety Act, which I am trying very hard to pass. I will not object if the Senator desires to discuss issues unrelated.

Mr. KENNEDY. I would like to discuss an unrelated matter. If it becomes apparent that you can move ahead in terms of final disposition, I will withhold further comments. If I could, I ask unanimous consent to proceed with what I expect to be 12 or 15 minutes on the issue of education.

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

EDUCATION

Mr. KENNEDY. Madam President, on Tuesday, the Republicans announced, with great fanfare, an education amendment that is a day late and $800 million short. It restores $2.3 billion of $3.1 billion necessary to meet the President's request for fiscal year 1997. But this amendment is hardly motivated by concern for the students of America. It is an election-eve conversion, and the American people should not be fooled.

As costs, student enrollments and college debts soar, the Republicans are offering ''education lite.'' The increase they offer falls well short of the funding needed just to keep pace with inflation and enrollment increases.

Senator LOTT himself admitted the amendment was designed to meet the political needs of the Republican Party, not the educational needs of American students. Senator LOTT said on Tuesday, ''We can either get our brains beat out politically, or we can get in there and mix it up with them, and that's what we are going to do.''

Republicans are running scared from the fact that the American people support education. Their change of heart is cynical and hypocritical, and it will not last past the November election.

What TRENT LOTT gives with one hand, NEWT GINGRICH is already planning to take away with the other. The Republican leaders in the House are telling their rank and file not to get excited because they can rescind the money later. House Republican conference member JOHN BOEHNER said, in appropriations —and BOB LIVINGSTONE agreed—that ''we can always have a rescissions bill in January.''

Senator LOTT and the Republicans are fleeing from their anti-education record, but they better not look back, because if they do, the sight of all their cuts in education might turn them into pillars of salt.

When the Dole-Gingrich Republican leadership took over in 1995, their education agenda was stark and severe: abolish the Department of Education and slash Federal support for schools and college students.

From January 1995 to the present, Republicans have proposed education cuts every chance they have had: on rescission bills, on budget resolutions, on appropriations bills and continuing resolutions. When Democrats refused to let these devastating cuts pass, Republicans shut down the Government because they could not get their way.

With the help of students and parents across the country, we turned back the worst of these anti-education funding measures for fiscal year 1996.

Republicans did not learn. In this year's budget resolution, they again propose to slash education, this time by 20 percent over the next 6 years.

The record of the past 2 years is clear. It is clear that Republicans are no friends of education, and it is equally clear that the American people do not want education cut. The current election-eve Republican ''education lite'' amendment has no credibility. It is written in disappearing ink. NEWT GINGRICH, Bob Dole, and their allies have an irresistible impulse to slash education to pay for tax breaks for the wealthy. And Democrats will not let that happen.

Madam President, this chart illustrates clearly exactly where we are on the issue of education. The black line going back to 1995 is President Clinton's request. That line represents inflation plus expanded enrollment. We have expanded enrollment in the elementary and secondary schools, going up to 52 million or 53 million, and expanded enrollment as well in higher education. This particular line reflects the increase that is necessary to deal with the problems of inflation, expanded student population in the K–12 well as in higher education.

This line here reflects what was actually the fiscal year 1995 level of funding in terms of constant dollars. This $600 million loss represents the figure that was effectively agreed to after the proposal by the Republicans of $1.7 billion in rescissions in 1995. Their proposal was to cut $1.7 billion. We were able to resist that, and the final figure that was set was $600 million in rescissions. These were moneys already going out to schools all across the country, K–12—also available, some of the funding, in terms of higher education appropriated in previous years. Their proposal reduced this by $1.7 billion.

We see that this $3.9 billion cut represents the House appropriations in 1995. The continuing resolution brought it back to $3.1 billion. Finally, just before the Government shutdown

that took place here, there was an add-on of $2.7 billion, and the negotiation which took place at that time brought us to $400 million less than level funding—in absolute dollars. There is a significant reduction here in terms of the real purchasing power in education. We see, once again, in this year's House appropriations, a cut of $1.5 billion. The Senate cuts in appropriations are not as severe as in the House appropriations.

The press asked us why we are bringing this up at this particular time. The fact is that the Senate Appropriations Committee met last week and finally resolved the dollar figure that was reached by that committee. Within a day, under the leadership of Senator DASCHLE, Senator HARKIN, Senator KERRY, Senator LEVIN, Senator WELLSTONE, and others, we announced that we would be offering an amendment that would restore the $3.1 billion difference between the President's request and what was actually coming out of the Senate Appropriations Committee. So we did that at the end of last week. We tried to offer the amendment earlier this week. We were denied that opportunity, and we were notified then that the Republicans had decided to an add-on of some $2.3 billion.

Mr. President, of course, if they had made that add-on last week, for a good chunk of these education programs, we would not have this kind of difference. So I say election year conversion because what a difference a week makes. What a difference a week makes in terms of the Republican position.

The fact of the matter is, on each and every occasion since 1995, on any budget, any appropriation, any reconciliation, any continuing resolution, any time the issue of funding for education has been out there, there has been a reduction.

I want to take notice here, Madam President, and say that there have been some notable exceptions among our Republican friends. I acknowledge the Senator from Maine, who has placed a high priority in education, and Senator HATFIELD, and a few others. But this chart represents the ongoing and continuing record that has taken place.

Basically, we are talking about the rescissions of 1995, where it was $1.7 billion. In the 7-year budget resolution of 1996, they proposed a Federal slash of one-third over 7 years in Federal investment in education. The deep cuts came in college aid, $10.6 billion in student loan cuts, and a freeze on Pell grants, which reduces their value by 40 percent, or effectively eliminates grants to 1 million students. You can have it either way. That is the effect of their recommendation in terms of funding the Pell grant. Cutbacks in other education—and this is in 1996—such as 350,000 preschool children who would lose Head Start, 2 million children who would lose title I, reading and math, and programs to keep schools safe and drug-free would be cut back for 39 million students. That was in 1996.

On the budget reconciliation, listen to what was recommended. The Republican majority carried out of our Labor Committee a 2-percent student loan tax on every college and university in the country. Do we understand that? A 2-percent tax on every college. That 2-percent tax would be on the amount of scholarship aid and assistance. So when you take a school like Northeastern University, 80 percent of the kids that go there, their parents never have completed college; 85 percent are working 25 hours a week or more. These are individuals who are hungry, they are gifted, but they don't have great resources and they are trying to make it to enhance their own opportunities for advancement in our society. This 2-percent tax would have particularly hit Boston University by $750,000 to $800,000 a year, which meant anywhere from 18 to 20 students' scholarship help that the university would not have been able to provide. That was one aspect. They raised interest rates on the Plus Loan. The Plus Loans are basically for middle-income, working families. It gives them additional opportunity at a somewhat lower rate for educational loans to supplement their children who are in college. The Republicans eliminated the interest-free grace period for students beginning to repay after graduation. We now have a 6-month period.

The fact remains that that 6 months is a key period for the student to get a decent job. They wanted to eliminate it and start repayment at the time of graduation, which would have put additional pressure on the students to become employed because they would have had to start repaying their debt. If you ask Secretary Riley what is the impact of that grace period on students repaying their debt, his testimony, and all the testimony, is that if you give them a grace period, they have more time to get a good job, one that they want to stay with and one where they will have an enhanced opportunity for repayment.

So those are some of the areas of the cuts, as well as cutting back and putting a cap of 10 percent on the direct loan program. That direct loan program, which moved us up toward a division of total student aid so that we would have competition between the guarantee and direct loan programs, was agreed to by Republicans and Democrats in the previous Congress. Nonetheless, this was closed down, and it would only be 10 percent.

The amendment that was offered here on the floor of the U.S. Senate to permit each college to make its own judgment whether it wanted to go to direct loan or guaranteed loan was overwhelmingly defeated by those who want to continue the guaranteed loan program, which will mean that $127 billion will go through the guaranteed agencies over a 6- to 7-year period. It means anywhere from $7 to $10 billion in profits to those agencies, which is basically money that is coming out of the pockets and pocketbooks of working families.

The 1996 appropriations bill is cutting education 16 percent. It terminated Perkins loans and student initiative grants for the neediest students. It raised the Pell minimum grant to $600. The effect of that is that you eliminate awards to 175,000 low-income students. The bill cuts back title I by $1.1 billion to deny reading and math to over a million children. It cuts back Head Start by $140 million, denying preschool to 48,000 children.

Then we come to the continuing resolution of January 26, 1996. That cut education by $3.1 billion from 1995 levels, a 13-percent cut.

The final omnibus resolution reduced education $400 million, after the Senate adopted the Specter-Harkin amendment, which restored $2.7 billion in education. That amendment passed 84 to 16.

So during this national debate about how there is a distortion and misrepresentation about who is for education, even when we had the principal instrument to recover and restore some of that education, supported at that time by a number of Republicans—there were 16 Republican Members of the Senate who said ''no.''

Now, a 6-year budget resolution, which was passed in May and June 1996, cuts Pell grants by $6.2 billion over 6 years. It cuts work study for 800,000 students. It cuts title I for over 300,000 children. The list goes on.

The final point I make, Mr. President—and I will include this analysis as part of the RECORD—is that the Republican platform, in August, said, ''We will abolish the Department of Education.''

Maybe there have to be adjustments in some of the agencies of Government. But I would suggest that most American families want to have the Secretary of Education at the President's elbow every single day of the year saying, ''What about the education of the children of this country? What are we going to do about that?''

Money can't solve all of the problems. But what changes are necessary to make academic achievement and accomplishment, enhanced standards, and improved quality education available? I think most Americans would say of all the agencies of Government, certainly you need Defense, certainly you need the Secretary of State and maybe the Treasury. But I tell you. The Secretary of Education is right up there among American priorities.

So why do the Republicans want to abolish the Department of Education, and now in the final hours come back and say, ''Oh, well, we are really for education—we are the education Congress?'' It is something that I have difficulty understanding.

Earlier in the day we were asked, ''What about the Republicans' proposal, the Lott amendment?'' I just

point out very briefly that this amendment does not meet critical needs—no increase in the Head Start Program, and no increase in teacher training.

We just had the Carnegie Commission report a week ago that one of the principal deficiencies in our educational system is that we are not getting enough teachers that are well trained, nor are teachers getting enhanced training. We have tried to restore the administration's request in this area. The Republicans offer no additional funding for teacher training; no money for the TRIO Program, which is academic support for disadvantaged students; and no money for School to Work. These are crucial programs. Twenty years ago, if you graduated from high school you were making 65 or 70 percent of what a college graduate was making. That percentage has dropped to about 55 percent—the growing income gap that is taking place.

We tried with School to Work to move three out of four kids that do not go on to college into the private sector. It has been strongly supported by Republicans in a number of States.

Again, I refer to the distinguished Governor of Maine, the husband of our chair, who is one of the very innovative Governors in moving toward the School to Work Program, and other Republican Governors and Democratic Governors as well.

There is no money for summer jobs, even though about 40 percent of all the summer job programs have academic provisions. There were funds in terms of other education programs. I had hoped that we would take those increases and put them in for increases to the President's request here on the floor of the Senate, or in the continuing resolution. We would get a positive response—an overwhelming response—in favor of those measures.

Madam President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. KASSEBAUM. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

FUNDING EDUCATION

Mrs. KASSEBAUM. Madam President, I am here to answer some of the statements made by the distinguished ranking member of the Senate Labor and Human Resources Committee, Senator KENNEDY. Unfortunately, I did not hear all of the comments but some that I heard made by Senator KENNEDY regarding education need to be answered.

It just is not the case that education has been slashed by Republicans over the last 6 to 8 years, and I really find it very disappointing that somehow this keeps coming up. It is easy to make a statement saying education has been slashed and decimated by Republicans without any real understanding of the programs under discussion, what has been debated and what resolutions have been made because, actually, education budgets have continued to climb.

I think nearly all of us at least would acknowledge that money alone is not the answer to quality education. It certainly has been important for us to have a support system when we are asked to help with special education moneys, moneys for disadvantaged students, moneys for disabled students, for the student loan program. But money alone is not the answer.

We are now spending more than $25 billion in our budget for education, and there has to be some understanding of what it is all about. For one thing, we have dramatically increased money for Head Start programs, which are preschool programs for those young children who need most to have that assistance.

At the time we worked on the legislation to increase Head Start funding, we also incorporated changes in the program which were designed to enhance the quality of delivery of Head Start programs. Some States have outstanding Head Start programs. Other States have not pulled together the network that I think is necessary for quality preschool education. But that money has been increased.

As for student loans, I think it is exceptionally misleading to claim that the student loan program has been decimated. For one thing, all eligible students applying for a student loan receive a student loan. In 1993, the volume of student loans was $16.1 billion; 3 years later, it is $26.6 billion. Students are not being denied student loans.

The Pell grant program and the other grant and work-study programs have not been appropriated to the level that has been authorized, and that has always been a concern. But it is also a fact that funding for those programs has not been reduced. Whether it has grown to the level it should grow perhaps should be the question. I think it is very important for us to debate these issues in the context of understanding what is, and is not, occurring in education.

We have figures which show, as I pointed out earlier, that we are increasing, and have continued to increase every year, the budget for our education programs. Whether it should be increased more or less has been a subject of debate.

I particularly would like to address the student loan program because the Senator from Massachusetts, Mr. KENNEDY, attacked the efforts to cut the student loan program. When we debated whether to have direct lending for student loans, the intent was to help if students wanted to get their student loan money immediately when they registered for postsecondary education. It did not in any way mean a student was going to pay less on their student loan, and in fact, it was through Republican initiatives in trying to reduce some of the bureaucracy and some of the requirements on the student loan that did produce what savings could be achieved for students.

Direct lending, as such, in no way changed the amount of funding that is available to students. This has been, I think, poorly understood. Somehow it has been portrayed as a choice between supposedly greedy banks or the Federal Government that would handle student loans. We missed completely, I think, the part of the debate regarding who should be responsible for cutting the checks for the student loan program, who can do it the best, and who should bear the responsibility for those loans and for payments that have not been collected.

I, myself, thought it was something we should go somewhat slowly on, so that we could understand the effects of the Federal Government totally handling the student loan program, or whether we should continue to let it also be an initiative in which the banks and the student lending guaranty agencies could be involved, believing they were going to be better able to collect on the loans than the Federal Government. I believe it is something we can and should continue to debate. But that program has not been decimated by efforts of Republicans to somehow cut student loans.

I think it is interesting that, in the first half of President Clinton's administration, when the Democrats controlled the Congress, actual spending for education programs fell on the average of $1 billion below the President's request. I do not intend to get into a tit for tat on educational spending, however. Being a member of a local school board at one time before I came to the Senate, and as chairman of the Labor and Human Resources Committee responsible for education funding, there is nothing that I care more about than being certain that we do have quality education in this country. That is something everyone is dedicated to. How much of that can be guaranteed by moneys we spend here in Washington is another matter. In some cases it is clearly something we need to do, particularly when we mandate certain requirements on schools. Then, we must be willing to be a participant in helping to pay for those mandates. That, I think, has been particularly true with initiatives such as the education for disabled students. We mandated the inclusion of those students in public schools, and I think we should be willing to help continue to fund the needs of that mandate.

But I suggest that, as we debate education today, most citizens in this country realize the success of excellence in education really depends on our local communities, our local school boards, and students and parents who will recognize the importance of quality education and are willing to invest the time and the resources to see that

we have it. I think there is no sadder indictment of education in general than the fact that some students are taking student loans when they graduate from high school but then have to take remedial reading when they get to college. We are doing a great disservice to the students in our Nation when they pile up an indebtedness of student loans but are not prepared to take advantage of the higher education they are receiving, whether it be in liberal arts or vocational-technical education.

We have to give those students—and it is not just we here in the Federal Government, but each and every one of us—the ability and the opportunity to achieve excellence in education. It should be the students themselves who will have the self-discipline to recognize the importance of that to them.

But right here in the Nation's Capitol we have not been able, with all the money that has gone into the District of Columbia, to hold up our heads with the primary and secondary schools that we have here in the District of Columbia. It is a shame that we have students who have to walk through metal detectors for fear of what might occur, a shooting in a high school. It is a shame that we have leaking roofs and crumbling infrastructure in our elementary schools. Every child in this country should be able to attend the elementary school in their neighborhood that has the highest quality of education to be offered.

But I would just suggest, and I am sure the Senator from Massachusetts believes the same as I do, that this is something that our Nation does care about. We have always been a country that cares about education. We have always been a country that hands off, as a legacy to the next generation, our belief in the importance of education. But it is totally wrong to say that we have decimated this opportunity for excellence in education because Republicans have slashed the education budget. That is not the case, Madam President, and that is not the answer to excellence and quality in education. We need to work together to the extent that we can to find those programs that can be of help. We have done that before and we should continue to do so.

It has been a big disappointment to me that the Democratic side of the aisle has not been supportive of efforts which we have undertaken, and which we passed unanimously, except for two votes, to initiate job training reform efforts and strong support for vocational education initiatives, which are an important component of our desires to achieve a working partnership between the Federal, State and local governments. That, I think, is one of the answers that we need to look to when we look at what the Federal responsibilities may be in assisting in education.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I made some comments earlier in a presentation about the record, about the resources of the Congress in the last several years. When I returned to my office, I saw my good friend and colleague, Senator KASSEBAUM, addressing the issue of education, and returned to hear her pearls of wisdom on this issue.

Senator KASSEBAUM's suggestion that education funding has been slashed over a 6-year period is simply mistaken. In every year since fiscal year 1990, education spending has increased. In fiscal years 1994 and 1995, education appropriations increased by $1.1 billion and $0.9 billion. It was not until the Republican takeover that Congress proposed to slash education spending.

There are just a few more points I want to add at this time. I tried earlier to point out what the Congress had actually done in allocating resources. The fact that you spend money does not necessarily mean you are going to end up with good education. That is a given. But it is a reflection of your priorities. And when we have a reduction in real terms, given the expanded student population, both in K–12 and higher education, cutting back in technology and other programs, that is a reflection of national priorities.

What basically we do as legislators, as the Senator from Kansas understands so well, is make choices. And we make choices about priorities. When we see, now, funding in education at about 1.3 percent of our national budget, I think most American families think it is considerably higher. That number is not concomitant with our commitment to the young people of this country. I think it is worthy of pointing that out.

The fact of the matter is, if a child goes to school hungry in the morning, that child is not going to be able to learn, even if you spend money on books and teachers. If you go to a school, you will find that classrooms are in a deteriorating condition. Many of the classrooms in my own State are. A recent report by the General Accounting Office shows the deterioration of the physical structures. It is primarily a State and local responsibility. But some of the schools in my own city of Boston will reach a temperature in the wintertime that is sufficiently cold that many of the students will be affected by that cold. It will be difficult to teach. If you have inadequate books or inadequate training for teachers, students will not learn.

We know in many of the schools that we have in this country they are spending, by and large, probably double what is being expended in other schools, and we know they are getting, by and large, students who are graduating with high abilities. We know, really, what needs to be done.

There are shared responsibilities in attempting to do it, but I would think our challenge is how we will push the envelope in this area. How are we going to encourage the local communities to enhance and support additional help? How are we going to get the States to recognize this as the priority? If we here in the Congress of the United States are seen as constantly reducing our commitment in this area, that sends a very powerful message. It is a very powerful message.

I do take exception to what has happened in recent years, frankly, under Republican administrations, in higher education. Education in the 1960 election was one of the prime differences, that, I think, played a major role: Was the Federal Government going to become involved in scholarship help and assistance? One candidate said yes. The other candidate, effectively, said no.

And then it was set up for higher education that $3 out of every $4 invested by the Federal Government went into grants, not into loans. Now it is just the reverse: $3 out of the $4 are loans, not grants. Yet reviews have demonstrated, time and again, that the Federal Treasury profited $8 for every dollar invested in education grants through the GI bill.

Investments in education pay off, and that has been the lesson. Maybe there are some programs that should be changed. To move back from that ongoing and continuing commitment is a reflection of different priorities, and that is essentially what I think is the point being made.

The fact of the matter is, a week ago when we saw the significant cuts made by the Senate Republicans and then a week later they come back and add $2.2 billion, I doubt very much that somehow the Republican leadership suddenly discovered increasing value in education.

A final point I want to make is about questions of higher education and the indebtedness of students. One of the very important aspects of the Direct Loan Program is not only in the facility of lower interest rates and the facility of students to deal with those, but also tuition contingency repayments, which said that if you are a student and you graduate, you might have $10,000 or $15,000 of loans obligated; if you want to be a teacher or you want to be a social worker or you want to be a police officer or you want to be a child care worker or you want to be a teacher's aide, then what it is going to mean, in terms of your repayment, is a percent of your income—just a percent —for a period of time.

That says to the young people, OK, maybe we haven't gotten it quite right at the Federal level in terms of the ratio of direct loans to grants, but I tell you what we are going to do. Even if you have to borrow, we will make it affordable so you only have to pay it at 5 percent or 7 percent.

That is an enormous, enormous advantage to students. I don't think you could find a handful of students in this country who would turn their backs on that particular opportunity. That was part of our Direct Loan Program. We stood out here on the floor of the U.S. Senate and said, ''Let the colleges make their own decision whether they

want the Direct Loan Program or the Guaranteed Loan Program. Let the colleges, let the students.''

What is more democratic than that? What is more local empowerment than that? What gets more power from the Federal Government back to the States and the colleges than that particular proposal? You would think that was a proposal that would carry. Absolutely not. We were closed down. Virtually unanimous support in opposition to that by our Republican friends.

So I hope as we come into these last days that parents, students, business leaders, and young people who are not going on to college—those who are concerned about the future of this country—really study this record well.

Any time Senator KASSEBAUM speaks about education, there is a great deal for us to learn from her comments. I always do. Although I missed her remarks earlier, I look forward to reading them in the RECORD.

But I do think there is a pretty central difference in the record of the two political parties on the priority of education. The President has stated that education, Medicare, and environmental issues are his priorities, and it was only after there were significant cuts in those that the Government was shut down. I think the American people remember that.

We speak today about one aspect of those priorities, and it is education. I think the American people place a very high priority on it. They place a great responsibility on all of us to try and make whatever we allocate more effective in enhancing student achievement and accomplishments in schools and colleges across this country.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, if I can comment for a moment. We can probably go on all afternoon talking about education, but I am sure there are those who would like to get back to the pipeline bill.

We can have dueling charts. I don't think that helps us at this juncture. The Senator from Massachusetts raised many of the same priorities in education that I did. We worry about crumbling infrastructure, we worry about the quality of education, we worry about being able to attract the best and the brightest teachers into teaching. All of these things are a part of the educational debate.

I think where we differ, and differ significantly, is whether the Federal Government is the answer to all of those questions, and I suggest not. I believe most Americans realize that is so. Federal dollars in education are less than 10 percent of the education dollars spent in this country. Local and State governments spend, I think, about $508 billion in education. I happen to believe that it still should be a question of local and State authority on education.

The Federal Government can provide support, but if we start to rely more and more on Federal dollars coming from here in Washington and believe that solves the problem, then I suggest, Mr. President, that we are in trouble. That is where we differ: Who bears the main responsibility for the funding of our educational system?

I suggest it has worked well, and it will continue and should work best, at the local level. I think that is where there is a fundamental difference.

I yield the floor, Mr. President.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Texas is recognized.

ACCOUNTABLE PIPELINE SAFETY AND PARTNERSHIP ACT OF 1996

The Senate continued with the consideration of the bill.

Mrs. HUTCHISON. Mr. President, I would like to make a few remarks about the pipeline bill, because I think this is a very important bill for the future and safety of our country. This is a bill that has been worked on for quite a long time. It is a bipartisan bill.

I am very pleased that we have a safety pipeline program, we have a funding source. We are reauthorizing the Federal Pipeline Safety Program. I think everyone has worked in good faith. In fact, the bill is sponsored by Senator LOTT, cosponsored by Senators PRESSLER, STEVENS, HUTCHISON, BURNS, SHELBY, COCHRAN, FRIST, INHOFE, BREAUX, FORD, EXON, INOUYE, JOHNSTON, and HEFLIN. I think all of us want to make sure that the pipelines that are running through the ground in our country are as safe as they can possibly be.

Of course, we have user fees that pay for the safety inspections and the Office of Pipeline Safety. I think this bill also adds some simple and flexible risk assessments and cost-benefit analyses to some of these new regulations. So I think we are going to be taking a giant step in the right direction with this bill.

It does authorize the Office of Pipeline Safety funding through the year 2000 so that we will know that the source is good and that it is at a reasonable level. It is about what our budget resolution is today, and I think that we have made a great improvement.

So I am very pleased to support this bill as the new chairman of the subcommittee from which this bill came.

I think we have a good, bipartisan compromise that is going to move pipeline safety very, very much into the forefront of our consciousness as we continue to put down more pipeline and take more energy to the people of this country.

Mr. President, I think Senator LAUTENBERG, who has also worked very hard on this bill, has remarks to make. Is that correct?

Mr. LAUTENBERG. Yes. Thank you.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I thank the Senator from Texas. I know that she has an interest in safety with our pipelines. Obviously, coming from a State like she does, there is a great deal of interest in providing the resource, the gas, that travels through these pipelines because it is an efficient and cost-effective way of taking care of our energy needs.

I want to also extend my accommodation to the majority leader, Senator LOTT, for his work on this bill, as well as the chairman and the ranking minority member of the Commerce Committee, Senator PRESSLER and Senator HOLLINGS, and the other Senators who have worked hard and who have contributed to this legislation.

The bill before us enhances our existing pipeline safety program in a number of ways. For example, it would promote one-call programs to ensure that those who dig in the ground can easily find out where the pipelines are located—not only find out, but must know where the pipelines are located.

The bill would also increase funding for pipeline safety programs and make other improvements. At the same time, I do have some concerns about certain provisions in the legislation which could limit the regulators' abilities to adequately manage the program.

Frankly, it does not go all the way that I would like it to go, but it certainly is an improvement on the status quo and should improve pipeline safety significantly.

Mr. President, I have a special interest in this bill—I am sure many in this room are aware of it—because an explosion took place in my State a couple of years ago, and our experience with it was one that will stay permanently etched in the memories of people in New Jersey.

What happened there was almost inexplicable because, though the damage, the physical damage, was extensive, fortunately it was limited to one death. There could have been many more. That one death was as a result of someone's physical disability who had come in to be in touch with friends who lived in the neighborhood. It was terrible. That was 2½ years ago.

That rupture in a gas pipeline led to a terrible explosion in Edison, NJ. The blast created an enormous fireball that could be seen for miles around. It leveled eight apartment buildings and left a gaping hole in the ground. It reminded me, very frankly, Mr. President, of some of my wartime experiences when bombed-out areas were left with buildings flattened and holes, craters, in the ground. That is what this looked like.

The explosion and the fire injured more than 100 people and brought on, as I said, the death of one person, a fatal heart attack of a 32-year-old woman who had come to visit friends who were in the area. And 150 families

were made homeless. Not surprisingly, many of the victims are still dealing with the emotional, psychological, and financial consequences of the explosion.

Mr. President, I visited the site of this disaster with Senator BRADLEY very shortly after it took place. We saw the devastation firsthand. It was a sobering experience. Nobody could witness a scene like that without being committed to doing everything possible to prevent similar tragedies from happening in the future.

In response to the explosion in New Jersey, I began to explore various ways that pipelines could be made safer. I talked with experts from around the country, and I developed legislation, now introduced as S. 162, that did propose a variety of steps.

First, my bill promoted the establishment of the so-called one-call program. One-call very simply requires anyone who is about to dig—a builder, construction company—to simply make a telephone call to make sure that where they are going to dig is not dangerous because of pipelines. This is important because two-thirds of all pipeline accidents are caused by people who dig without knowing where they are digging.

So I say, they must know. So I am pleased that the bill before us, like my own, would promote one-call programs and direct the Office of Pipeline Safety to help States establish these programs.

Another provision in my bill required the use of remote control shutoff valves. Mr. President, given the state of technology in the world today, you would think this kind of thing would be used routinely, which simply means that someone in a remote location with some visual contact through electronic means could see what is happening and start turning down the cutoff valves. Unfortunately, that very simple technology was not used in this case. But it is now being used.

Too often when a major leak occurs, pipeline operators must physically travel to the site of the leak and manually turn off a huge valve. This process can take many hours. After the Edison explosion, it took over 3 hours to shut off the valve, the valve that was producing the gas flow to continue the flames and the destruction that was taking place, in large part, because the shutoff valve was manual and took over 700 turns to close. Meanwhile, again, the dangerous gas was escaping into the environment. Remote control shutoff valves would have solved this problem in fairly quick fashion.

So I am pleased that the managers of the bill were able to include a provision in the managers' amendment that would require that DOT, which has jurisdiction here, study the feasibility of these devices. If, as I expect, the Secretary determines that the devices are feasible and would reduce risks of pipeline accidents, the Secretary would be required to mandate their use.

Another proposal in my bill would allow residents to be notified of the location of the pipelines in their neighborhoods. Citizens have a right to know this information. A better informed public leads to improved safety. So I am pleased that the managers of the bill have included in their amendment, the managers' amendment, a provision that requires that all operators provide a pipeline map to local communities.

The provision also requires that the Secretary review existing pipeline safety education programs, determine which ones are the most effective, and implement appropriate programs nationwide.

My legislation also would have helped ensure that pipeline leaks and weaknesses were detected before disasters by promoting the use of so-called smart pigs. The term ''smart pigs'' refers to technology that essentially permits a device to travel through a pipeline and evaluate whether or not there are weaknesses that have to be attended to or that otherwise could lead to problems in the future. The use of this smart pig technology is important, especially as more pipes grow older and thus more vulnerable to problems.

The bill before us would authorize OPS, the Office of Pipeline Safety, to require the use of smart pigs, though it does not mandate their regular use, as I would prefer. I am hopeful that OPS will promote these tools aggressively.

There are other provisions in this bill before us that also mirror proposals of mine. One provision would make it a Federal crime to dump waste in pipeline rights of way. This will help protect these rights of way from large volumes of material which can damage the pipeline.

So, Mr. President, there are several provisions in this bill that I support and that can help, and will help, to improve pipeline safety. At the same time, however, in my view, the legislation should go farther.

For example, I am concerned that the public will not have adequate input in the review of proposed risk demonstration projects. I am also concerned that the bill could make it harder for the Office of Pipeline Safety to propose and adopt pipeline safety standards because of new cost/benefit requirements.

On balance, though, Mr. President, this bill represents a very good step forward. Although far from perfect—and we know around here that the perfect is the enemy of the good; it is said so often and proves true almost every time—although far from perfect, it should improve pipeline safety, and it deserves our support.

Once more, I thank the majority leader and the other Senators involved for their work on this bill. I look forward to working with them in the future to ensure that the legislation is implemented properly and effectively, and to consider other steps that can be taken that promote pipeline safety in our communities.

I yield the floor.

Mr. LOTT. Mr. President, I rise today in support of the reauthorization of the Office of Pipeline Safety (S. 1505).

This is a bill which is bipartisan with seven Democratic and nine Republican cosponsors.

This is a bill which was unanimously approved by our Commerce Committee.

This is a bill which is supported by both the administration and the regulated pipeline industry.

This is a bill which focuses on just the statute which regulates the natural gas and liquid transmission and distribution industry.

This is a bill which is targeted on the role and responsibilities of the Office of Pipeline Safety within the Department of Transportation.

This is a bill which deals in a responsive and responsible manner the way rules are made for this sector of the energy community; but, I want to be very very clear, nothing in this bill will jeopardize the integrity and safety of America's natural gas transmission system. And nothing in this bill will reverse the environmental success story of this industry.

This is a bill which permits demonstration projects by recognizing opportunities for regulatory flexibility.

This is a bill where the one-size-fits-all mandate mentality is replaced by responsible creative yet accountable rulemaking.

This is a bill which will intimately affect 160 million Americans because they live in gas heated buildings.

This is a bill which governs enough natural gas pipes to go around the Earth 48 times.

And, finally this is a bill which has direct impact on under a million Americans because they work in some aspect of the natural gas industry.

The leadership of Senator PRESSLER and Senator EXON has made this manager's amendment possible, and I want to publicly thank them for both their time and attention to advancing this consensus compromise.

Let me say in conclusion: Safety on America's interstate natural gas pipelines will be enhanced by this legislation. And I want to underscore that environmental protection along America's pipeline right-of-ways will also be enhanced by S. 1505.

Mr. HOLLINGS. Mr. President, I rise in support of S. 1505, the Accountable Pipeline Safety and Partnership Act of 1996.

This legislation reauthorizes the pipeline safety programs that are the responsibility of the Department of Transportation's Office of Pipeline Safety (OPS). OPS has a tremendous responsibility in ensuring the safety of the nation's gas and hazardous liquid pipelines. The combined interstate pipeline system has approximately 1.8 million miles of pipeline, consisting of approximately 1.6 million miles of gas pipeline and 155,000 miles of hazardous liquid pipeline. Any map of the nation's pipeline system shows how much

our population depends on safe pipelines. The question is not whether pipeline safety programs should be reauthorized. Rather, we must determine the best way to maintain the safety of the interstate pipeline system while allowing the pipeline operators and owners to provide the service so necessary to the nation's well-being.

The importance of OPS is not theoretical. Many of us can report on gas line ruptures and spills in our states in the past. For example, there was a gas pipeline rupture in New Jersey two years ago. There was a horrible spill in my home state of South Carolina this summer. Over 1 million gallons was spilled. My staff has spent countless hours in monitoring this disaster. Luckily, the skill and dedication of OPS prevented that spill from becoming a major environmental disaster. The OPS training exercise with the pipeline owner held just prior to the spill contributed to the speed with which the adverse effects of this spill were mitigated—most of the spill was cleaned up and the remainder evaporated. In this regard, I extend my appreciation to OPS for keeping me informed of the spill and the efforts to redress the harm done to the land and water in South Carolina. Of course, I intend to continue monitoring our pipeline situation in South Carolina until I am satisfied that our pipelines are truly safe.

This bill provides authorization levels that are consistent with the Administration's budget request for OPS, but unfortunately, the appropriations for OPS that just passed the Congress are about 10 percent below the budget request. Obviously, OPS will be able to do its job better if it does not have to shift resources constantly to cope with funding difficulties. Despite its funding shortfall, however, I have reason to believe that OPS will ensure that our situation in South Carolina is rectified.

This legislation was crafted from many discussions between OPS and the pipeline industry. The bill refines the present OPS regulatory program so that OPS's scarce resources are put to the nation's best advantage. This greater ability to target its resources will help OPS to concentrate on the most serious problems, like the one we have faced in South Carolina. The bill also allows OPS and the pipeline industry to cooperate in designing risk management programs which will provide an appropriate level of safety while relieving pipeline facility owners and operators of unnecessary paperwork. In addition, this legislation contemplates a true partnership between the parties by including the states in the regulatory process with OPS and the pipeline industry.

Mr. President, I urge my colleagues to support passage of S. 1505.

Mr. LEVIN. Mr. President, the bill before us would establish a new statutory standard for the Secretary of Transportation to meet when issuing a standard for pipeline safety. Section 4 of the bill provides that: ''Except where otherwise required by statute, the Secretary shall propose or issue a standard under this Chapter only upon a reasoned determination that the benefits of the intended standard justify its costs.''

When the Senate was debating governmentwide regulatory reform legislation earlier in this Congress, much of the debate focused on the issue of whether or not it was appropriate to set an across-the-board standard for the application of cost-benefit analysis to major rules. We referred to this issue as ''decisional criteria''—which basically meant the standard to be applied by the agency in selecting a rule for promulgation based on an analysis of the rule's benefits and costs. We were unable to reach agreement.

Some thought there should be a strict standard—that the head of an agency should have to show that the benefits of the rule justify the costs. Some thought we should apply that standard, but permit important exceptions for uncertainty in the data and rules where the public interest was significantly at stake. Others thought we should require the agency to do the analysis and explain, based on the cost-benefit analysis, whether the benefits of the rule justify its costs and if not, explain why the rule is still being issued.

As a body, we have not been able to agree on the formulation for this standard. That is why Senator GLENN and I have had some concern about the standard being adopted for the Office of Pipeline Safety. We don't want anyone to view acceptance of the standard in this bill as a precedent for adopting a similar standard in any other Federal program. That's because what may work well and be appropriate for the Office of Pipeline Safety and the safety rules issued by that office, is not necessarily an appropriate standard for any other Federal agency.

So I wish to ask my colleagues who have been working on this bill a few questions about the scope of the standard contained in this bill.

Mr. President, would the Senator from Nebraska, Senator EXON, who has worked so hard on this legislation, agree that it is not the committee's intent that the standard for the application of cost-benefit analysis included in this legislation be applied to any other agency?

Mr. EXON. Mr. President, the provision in this legislation with respect to cost-benefit analysis is unique to the Office of Pipeline Safety. It is not my intent, nor was it ever suggested by any member of the committee that the standard we use in this bill, be applied to the regulatory process of any other Federal agency.

Cost benefit analysis for pipeline safety is straight forward and largely quantifiable. Assessing the effects of pipeline safety ruptures is not as uncertain as health-related analyses, such as lead exposure levels or other long-term exposure to toxics. Pipelines are fixed facilities in known locations that carry finite quantities of specific products. The consequences of different types of ruptures or problems is therefore very quantifiable. The costs of various proposed requirements is usually also very quantifiable as most proposals seek to use existing procedures, processes, or tools with which pipeline operators have actual field experience. This makes cost and benefits more readily identifiable regarding pipeline safety regulations.

Mr. PRESSLER. Mr. President, will the Senator yield for a comment? If I may, I agree with the Senator from Nebraska. This standard we've set in this bill for the issuance of pipeline safety standards is unique to the Pipeline Safety Office. That's why we have the support for this legislation of the Department of Transportation and the regulated industry. The Department of Transportation says it can live with this standard, and that's why we are able to include it in this bill.

Mr. GLENN. Will the Senator from Michigan yield?

Mr. LEVIN. I am happy to yield to the Senator from Ohio.

Mr. GLENN. Mr. President, I have been pleased to work with the Senator from Michigan on this matter as well as the overall issue of regulatory reform. In August I wrote to the majority leader, Senator LOTT, who has taken a strong interest in drafting this legislation, and explained to him our concern about the cost-benefit standard contained in this bill. My concern, like Senator LEVIN's, was that this legislation could be used as a precedent in the debate on the larger regulatory reform bill. The majority leader, in a letter dated August 9, 1996, assured me that would not be the case. He said in that letter, ''S. 1505 only applies to the federal pipeline statute. In fact, it will affect only one federal agency with 100 employees and could impact less than ten rules per year. This is not a precedent setting proposal.''

Would the majority leader be able to confirm his earlier statement?

Mr. LOTT. Mr. President, I would be happy to respond to the Senator's request. The cost-benefit standard included in S. 1505 is not intended to be used, nor will I use it, as a precedent for a cost-benefit standard to be applied to other agencies. It works for pipeline safety, because it was specifically written with the knowledge of that office and its unique responsibilities in mind.

Mr. GLENN. I thank the Senator from Mississippi and I yield the floor.

Mr. LEVIN. Mr. President, with those assurances by the majority leader and the key members of the Commerce subcommittee who've been working on this bill, I can support this legislation.

In the recently enacted, bipartisan Safe Drinking Water Act, we adopted a very different standard for rulemaking. In that legislation we said: ''At the time the Administrator (of EPA) proposes a national primary drinking

water regulation under this paragraph, the Administrator shall publish a determination as to whether the benefits of the maximum contaminant level justify, or do not justify, the costs based on the analysis conducted under paragraph (3)(C).''

We will now be able to see how each of these proposals works in real life. I look forward to seeing and analyzing the results.

Mr. GLENN. Mr. President, I join with my colleague and friend from Michigan, Senator LEVIN, in saying that I can support this legislation with respect to this issue. I am also happy to support the inclusion of added language to protect the public's right to participate in the development and approval of the risk management demonstration projects provided udner this bill.

I was concerned that as initially drafted, communities affected by these projects might not have a voice in commenting on the proposals made by pipeline owners and operators for alternative methods of complying with the law. The sponsors of the legislation agreed to add statutory language to protect that right to public participation. With that addition, as well as the statement of the sponsors as to the scope of the bill, I will support this legislation.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MARITIME SECURITY ACT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate temporarily set aside Senate bill 1505 and that the Senate now proceed to the consideration of Calendar No. 262, House bill 1350, the maritime security bill.

I further ask unanimous consent that no amendment relative to the tuna-dolphin issue on the Panama declaration issue be in order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1350) to amend the Merchant Marine Act, 1936 to revitalize the United States-flag merchant marine, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, the Senate will soon consider House bill 1350, the Maritime Security Act of 1995. This is the companion legislation to Senate bill 1139, the maritime reform legislation approved by the Senate Committee on Commerce, Science, and Transportation earlier this year.

This historic legislation is the culmination of over two decades of work by the Senate Commerce Committee. I said two decades.

For most of the 1980's the senior Senator from Hawaii and myself spent hundreds of hours in congressional hearings, consultation with administration officials, and discussions with affected industry in seeking to find a way to stabilize and reform the Federal maritime programs.

We became involved in this debate in large part because of our responsibility to the Senate and the Nation to find methods of improving our military support capabilities for the Department of Defense.

The Navy and the Marines deploy the Maritime Prepositioning Force, which is our core capability to respond in an emergency to hostile actions worldwide which threaten the security interests of the United States.

We have known for many years that advance military capability must be combined with the ability to provide both surge sealift capability and sustainment sealift capability.

Without both surge and sustainment, we expose our fighting men and women to the dangers inherent in any military involvement far from our shores.

The Congress has appropriated billions of dollars over the last 15 years to improve our surge sealift transportation capability.

We have procured Fast Sealift Ships, Large Roll-On, Roll-Off ships, Ready Reserve Force vessels, and strategic lift aircraft to support our military forces in the initial days and months of battle.

We now have the most technologically advanced surge sealift capability in the history of the world, and are approaching a maximum state of initial readiness.

Military capability and surge sealift capability are, however, only two legs of the three legged stool for our advance deployed military force.

The third leg is the ability to sustain these forces over extended periods of time, after we place them in foreign territory, far from home. The maritime security program in H.R. 1350 provides that third leg.

Why is it necessary for the Federal Government to provide supplemental payments to U.S. companies to keep their ships under U.S.-flag?

The answer is simple. We hold our U.S.-flag carriers to operating, safety, and labor standards far superior and far more costly than those imposed on foreign-flag carriers by their governments.

Operators of U.S.-flag vessels must meet payroll taxes, including social security, unemployment insurance, Medicare, and Medicaid. U.S. carriers pay income taxes and a 50 percent penalty for repairing their ships overseas.

These ships must be in compliance with more restrictive Coast Guard and OSHA safety regulations. In short, our Federal laws build in economic disincentives for U.S. companies to keep their vessels under the national flag.

What is the national interest in keeping these ships under U.S.-flag? Opponents of the bill have pointed to Desert Shield/Desert Storm as evidence that commercial sealift can be procured in times of emergency.

My questions to the Senate are twofold: At what price, and in what state of readiness? Let me reemphasize to my colleagues in the Senate that there are no free meals in the real world.

There will always be a price for an immediately available sustainment sealift capability in a trained and effective state of readiness.

As chairman of the Senate Defense Appropriations Subcommittee responsible for managing the long-term costs of the Defense Department, I have come away with a much different lesson learned from Desert Storm.

The costs of contracting with the private sector in an emergency come at a high premium and the state of readiness is inadequate.

Logistical support is like an athlete's muscle—you must exercise these muscles early and often if you are going to compete and win in the field.

The first lesson we learned from Desert Shield/Desert Storm is that foreign shipping companies can easily gauge the needs of the U.S. military and the availability of tonnage to meet these needs.

The average cost to the United States for procuring U.S.-flag ships for sustainment sealift during Desert Shield was $122 per ton. Foreign-flag shipping, in contrast, charged rates averaging $174 per ton of cargo.

Norwegian and Italian shipping companies, for example, extracted premiums in excess of 50 percent higher than their normal charter price and, in some cases, doubled their charter price.

The second lesson from Desert Shield/Desert Storm is that the callup and coordination of civilian private sector operations to meet military surge requirements takes time.

At the height of Desert Shield, we had over 120 U.S.-flag vessels called up and in service in the supply line to the Persian Gulf.

Fifty-one of these ships were immediately available to the Department of Defense pursuant to their subsidy contracts with the Department of Transportation, and sixty ships were called up from the Ready Reserve Force [RRF] to supplement the commercial fleet.

We also chartered over a dozen large roll-on, roll-off vessels from foreign shipping companies to carry heavy equipment and inventories.

The RRF callup was painful in its early stages. The ships were being operated in a reduced state of readiness, and many were required to undergo extensive repair work in our shipyards before they could accept cargo.

We experienced serious short-term manning problems as our maritime labor force scrambled to bring people out of retirement or other sectors of the economy to fill the berths in a national emergency.

We had to wipe the cobwebs off the RRF and scrape for anybody who had ever sailed the high seas with a mariner's license.

At the end, we had an active force of U.S. Flag ships with 3000 civilian, volunteer merchant mariners crewing the RRF ships and 100 U.S.-flag private sector ships time chartered to the Military Sealift Command.

It was the U.S.-flag fleet which stepped into the gap and provided the sustainment sealift during the initial months of Desert Storm.

These ships were fully crewed and ready to serve because they were operating in regular commercial service in the foreign waterborne commerce. These companies and mariners were ready when our Nation called, and they honored their contractual commitments to the Federal Government.

The United States was not treated the same way by the foreign shipping community.

We had foreign ships refuse to enter the war zone and saw foreign crews desert their ships rather than carry cargo to the Persian Gulf.

In many instances the promise of double pay was not sufficient to keep these crews recruited and in active service during the Desert Shield/Desert Storm period.

When we were able to get the foreign ships under contract, we paid the premium.

It is my message to the Senate that we must not repeat the mistakes of the past. The Congress owes an obligation to this Nation to properly sustain our fighting men and women when the U.S. asks them to risk their lives in protecting America's security interests abroad.

I do not stand before the Senate today to defend an old and obsolete subsidy program.

With my good friend from Hawaii, I know the current system is dysfunctional and in need of a comprehensive overhaul.

The task that began in the 1970's and ends today is simple: How do we ensure an adequate U.S.-flag, U.S.-crewed private sector fleet to provide sustained sealift in a cost-effective and logistically efficient manner?

This Bill, H.R. 1350, is the answer to that question.

There are two cornerstones of this proposed revision of our sustainment strategy: reform of the maritime program itself and inclusion of a new, state-of-the-art commercial fleet into the Emergency Preparedness Program.

The first removes the inefficiencies that have crept into the old maritime programs over the last 50 years.

The second acts as our Nation's insurance policy on the costs of sealift and provides the link between those water-borne assets and the Department of Defense mobility structure.

When I served as chairman of the Senate Merchant Marine Subcommittee in the 1980's, the existing operating differential subsidy—the ODS program—was costing the Federal Government well over $350 million per year. U.S. companies were receiving differential payments for crew costs, insurance, vessel maintenance, and other associated ship costs.

The per ship costs ranged between $4 and $5 million annually. We had no effective fiscal controls over this program because ODS was a contract entitlement.

Today, the administration has the authority to enter into new subsidy contracts without the approval of the Congress or any prior appropriation of funds.

We first started the discussion about substitution for the system of contract entitlement with a system of annual appropriations in 1986. This bill, H.R. 1350, would finally accomplish this objective, which is what the Senator from Hawaii and I started out to achieve.

This bill would authorize only $100 million annually for the new sustainment sealift program, $250 million less than the funded levels in the 1980's and $150 million less than the costs of the existing program as it stands today.

We are proposing a firm fixed price system rather than a differential cost program. Participating companies are to receive roughly $2 million per ship per year, half the amount these companies receive under the current entitlement program.

U.S. companies will be forced to continue their improvements in productivity, capital and labor cost reductions, and intermodal transportation capability in order to remain competitive in the foreign water-borne commerce.

In order to assist them in this goal, this bill would eliminate unnecessary trade route regulation and allow them to better adjust to the changing trends in international cargo movements.

We would also be procuring participation in the Emergency Preparedness Program.

There has been surprisingly little discussion about one of the more important features of the proposed reform effort in this bill.

A major requirement of the new Maritime Security Program is enrollment in the Emergency Preparedness Program. This program is currently being tested as a pilot called the Voluntary Intermodal Sealift Agreement, or the VISA program. The United States Transportation Company, in consultation with the Maritime Administration, developed VISA in response to lessons learned in the Persian Gulf war.

The objective of VISA is to tie U.S. carrier sustainment commercial sealift and their worldwide intermodal transportation and management networks into the DOD sealift program.

Mr. President, worldwide water-borne transportation is no longer just a port-to-port movement of goods. It now involves multibillion-dollar intermodal transportation networks, including ships, the rail industry, the trucking industry, and aviation links.

The industry's capital base includes sophisticated marine terminal and port facilities, worldwide computerization of cargo movements, and new age management systems.

The VISA program accesses this multibillion-dollar shipping network. The objective of VISA is to promote and facilitate Department of Defense use of these existing systems.

It would literally break the bank if Congress were forced to replicate, operate, and maintain a similar system.

The Government costs for such a transportation system ranges from $800 million per year and up, we are told, and we simply cannot afford those costs in this time of budget control.

An essential feature of the Maritime Security Program envisioned by this bill, H.R. 1350, is advance rate-setting through the Emergency Preparedness Program.

As a precondition for a fixed price MSP contract, the participating company must agree to rates established in advance for the chartering of its ships to DOD in the event of a call-up.

The MSP contract price paid to the carriers is, in its essential form, an insurance premium being paid for access to the multibillion dollar intermodal transportation network. This is clearly, in my judgment, the most cost-effective method yet proposed to allow for DOD access to sophisticated sustainment capability.

Finally, the Emergency Preparedness Program will also require periodic training exercises with the commercial fleet.

The United States Transportation Command is already conducting training exercises with select carriers on a voluntary basis as part of the VISA pilot program.

As part of the Maritime Security Program, training exercises through simulated call-ups will become an integral part of the Department of Defense's Sealift Readiness Program.

We will begin to exercise our sustained commercial sealift muscles on a regular basis. The next time an international incident, such as the Persian Gulf, arises, God forbid, the United States should be and will be ready under this bill.

As we debate this bill today, I ask my colleagues in the Senate to look at the large picture now and avoid getting caught up in issues and subissues that are being raised as reasons to block the passage of the House bill, H.R. 1350, today.

I believe that if we do not act on this bill today, there will be no U.S. flag sustainment fleet in the immediate future. The loss of our private commercial sealift will, in turn, result in huge defense costs and a gaping hole in our national sealift strategy.

Mr. President, the Senate has the opportunity to close the book on an issue that has been ongoing for decades and, I believe, may and should act in a manner which strengthens our national security.

I commend this bill to the Senate on the basis of the many hours I have spent with my colleague from Hawaii in trying to find a solution to the problems which beset our sealift capability.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, I wish to congratulate Senator LOTT, the distinguished former chairman of the Subcommittee on Surface Transportation and Merchant Marine, for his commitment to the cause of reformulating our maritime policies, and also welcome Senator HUTCHISON, who was recently appointed chairman of the subcommittee.

I also wish to commend my colleague from Alaska for once again coming to the front and distinguishing himself in managing this bill before us.

Mr. President, the measure before us truly represents a bipartisan effort, and I urge all of the Members of this body to support this bill.

In recent years, we have spent a great deal of time and effort in evaluating and discussing maritime policy. Unfortunately, to date, this evaluation and discussion has not resulted in action. It is time to step forward and to ensure the continuing presence of U.S.-flag vessels.

This country, the sole remaining superpower, cannot be put in a position of relying on the goodwill of foreign nations to transport vital military cargo. And, we cannot rely on the goodwill of foreign nations to achieve the transportation of cargoes vital to our economic interests. It is not an acceptable or prudent national policy.

One of the issues that the Department of Defense [DOD] was forced to confront in the aftermath of the Persian Gulf conflict was the inadequacy of U.S. sealift assets.

While the logistical efforts put forth by the military in the gulf war were truly astounding, including the sealift of more than 10 million tons of surge and sustainment materiel by sea, it was evident that U.S. forces could not have accomplished this sealift alone without the support of foreign nations.

While the Persian Gulf conflict unified international opposition to the actions of the Iraqi government, and allowed for the international coordination of sealift, we cannot expect international support for every conflict.

We must be able to ensure that U.S.-flag shipping is available to bring materiel and ammunition to soldiers who are defending our interests on foreign soil.

One only has to look as far as the recent developments in Iraq. Our allies were less than forthcoming in efforts to provide assistance. If we need to proceed on a unilateral basis we must have the requisite sealift.

We must also remember that the United States is a maritime nation.

As a Senator from the only island State in the United States, I appreciate the importance of ocean shipping. The continued disintegration of the U.S.-flag transportation fleet greatly concerns me. I fear the possibility of being completely reliant on foreign corporations and foreign nations for transportation service.

A study of history will reveal the cyclical patterns of U.S. maritime development. Historically, the U.S.-flag fleet has suffered through long periods of neglect and disregard, only to reemerge. Reemergence usually occurs in times of national emergency, and usually only after the Government has spent considerable sums in reestablishing our fleet. Today we cannot afford to repeat this cycle again. Once more we are approaching a precipice. But this time it is one from which we may not be able to turn back. We are facing the total elimination of the international presence of U.S.-flag carriage.

After the end of the Civil War, interest in maritime activities waned, leaving waterborne commerce and shipbuilding mainly in the hands of foreign countries. In 1914, with the onset of World War I, ocean shipping rates rose 300 to 400 percent. In 1916, the U.S. Government realized the need for a strong U.S.-flag merchant fleet and began a massive shipbuilding campaign.

However, most of these ships were not complete by the end of the war and throughout the war, the United States depended largely on foreign shipping to support American soldiers. Unfortunately, little was learned from this, and most of these ships were allowed to fall into disuse within only a few years.

In 1936, Congress passed the Merchant Marine Act which would revolutionize American shipping. It provided a workable basis for building and maintaining a strong U.S.-flag merchant marine. This act came at precisely the right time—with the onset of World War II just a few years later.

In this war, once again, one of the most critical shortages was merchant shipping, but the United States was prepared and able to construct many vessels. By the end of the war, the United States had used over 4,000 war-built merchant ships. The U.S.-flag merchant marine was vital to war efforts and suffered great casualties.

At the end of the war more than 700 U.S.-flag vessels had been sunk and more than 6,000 civilian merchant mariners had lost their lives. Their casualty rate was second only to the U.S. Marine Corps.

In 1950, the private U.S.-flag merchant marine was comprised of 1,170 ships totaling 14.1 million deadweight tonnage. With this surplus of ships, once again, the merchant marine was allowed to become stagnant and shipbuilding was greatly reduced.

In 1970, the U.S.-flag merchant marine comprised 793 ships totaling 14.4 million deadweight tons. The number of ships had been greatly reduced, but, because of new, larger vessels, tonnage was increased by 300,000 tons. The United States was then ranked No. 8 in the world in deadweight tonnage. As we all know, in 1945, at the end of the Great War, we were No. 1. It may interest you to know we are at this moment No. 14. The superpower of this planet is No. 14 when it comes to shipping.

Today our merchant fleet has fewer than 350 vessels, although our tonnage capacity is over 20 million deadweight tons as U.S. operators use larger, more efficient vessels.

Although the United States has many of the most innovative ships in the world in its fleet, it still is increasingly difficult for American vessels to compete in the international trades against foreign subsidies, state-owned fleets, and the tax advantages and lack of meaningful foreign regulation of foreign vessels.

In addition, we have seen the promulgation of the operation of vessels under flags of convenience. Flag-of-convenience vessels have nominal connection to the country whose flag it flies. They sail under the Liberian flag, Panamanian flag and, believe it or not, under the Swiss flag. There are no harbors in Switzerland, but they have a fleet which, incidentally is larger than ours. They do not pay taxes, nor do their workers pay tax to the nation whose law they operate under. In fact, they do not even employ citizens from the host nation, and they may never even visit that nation.

In the last decade many U.S. shipping companies have begun placing their vessels under flag-of-convenience registries. The high cost of doing business under the American flag—paying full U.S. taxes, abiding by all U.S. laws and the numerous rules and regulations imposed by the Federal Government—have contributed greatly to this movement.

The simple fact is that today, if these trends continue, the U.S.-flag fleet will disappear from the sealanes of the world in less than 10 years. We cannot allow this to happen. This is why we must act now.

In the early 1990's, the Persian Gulf war once again proved the importance of a strong, vital U.S.-flag merchant marine. This conflict proved that the only reliable choice is to use American vessels with American crews. Too often during the Persian Gulf war, foreign-flag ships with foreign crews refused to enter the war zone.

We did not see this on our front pages, but on 16 different occasions foreign-flag vessels with our cargo declined to provide transportation service into the Persian Gulf. But we were fortunate in the Persian Gulf war. Saddam Hussein did not attack Saudi Arabia. Why he hesitated we have no idea. We had the time to get the job done with a unified coalition. We may not be so lucky in the future.

We must, therefore, have in place a modern, capable, and reliable U.S.-flag

fleet with the same loyal Americans to crew them whose predecessors have never let us down in the more than 200 years of our Nation's history.

The Maritime Security Act of 1995 is essential to the military security of our Nation.

Specifically, this legislation will do the following: It will guarantee a pool of American citizen crews and a 50-ship fleet of militarily useful U.S.-flag commercial sealift vessels for our national security; it will also provide that the companies' entire intermodal logistical support systems—containers, rail cars, computer tracking, port operations, and management—will be available to the DOD when needed; it will guarantee the availability of American mariners to crew the DOD's sealift fleet of fast sealift ships, prepositioned ships and Ready Reserve Force vessels; and it will ensure that military supplies are on reliable U.S.-flag ships with patriotic, dependable American citizen crews. Many people are unaware that even our DOD reserve fleet vessels are operated by civilian merchant marines, because they cost less to operate than vessels directly controlled by the Navy.

This Maritime Security Act will cut costs by more than 50 percent compared to today's program. It will reduce burdensome Government regulations that hamstring U.S.-flag operators which give competitive advantage to foreign-flag companies.

And it will save the Defense Department billions of dollars—because the DOD will be able to use modern, state-of-the-art commercial assets rather than buying and maintaining this capability on their own. It is eight times cheaper to have the private sector perform this vital national security task—and this point alone makes the Maritime Security Act a commonsense bargain for America.

My fellow colleagues, in the past we have often taken for granted the role of the merchant marine in the economy and security of the United States. We cannot afford to do so today—nor can we suddenly rebuild a maritime capability in the future if we need it urgently.

It is simply not economically feasible or realistic to repeat the mistakes—the ups and downs of maritime support—we have made in the past.

We need a merchant marine in place that is strong and reliable in both peacetime and wartime. The new maritime security program will help our Nation reach this goal in a cost-effective, more efficient and more competitive manner. So I urge all my colleagues to support this program, and to enact it into law.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I think the Senate will note my partner across the aisle and I have been involved in a lot of issues together, particularly defense issues. With regard to these issues, at times the Senator from Hawaii has been chairman of the subcommittee. At other times, I have, depending upon the political winds of our country. But the Senator from Hawaii and I, as I have said in my opening statement, spent many hours over the last two decades trying to find a way to solve this problem.

At one time when I was both chairman of the subcommittee of Appropriations and the subcommittee of Commerce, I secured the approval of the Senate, not once but twice, of a special program, the Eisenhower Build and Lease program. We tried to put it back into effect. We actually had the Congress appropriate more than $1 billion in a reserve to start that program. It was not possible to get it started because of the various conflicts within our merchant marine industry.

We are now in a position of, really, suggesting to the Senate what amounts to a proposal like the Civil Air Reserve Fleet that we use in the event of emergency, where we have preexisting contracts with airlines that enable us to, really, commandeer our civilian airline fleet in order to meet our emergency needs. That is what we are talking about.

We have now switched over to a concept of relying upon the private sector to build and we will lease. The Eisenhower program was building and then leasing. That went on for a period of time, but it just did not work because of the problem within the industry of subsidizing one line and not subsidizing another. It led to, really, problems within the merchant marine fleet.

This answer that has come to us from the House, I think, is the most worthwhile approach that I have seen. It has taken a long time to work out. I am hopeful we will see approval of it today.

Does the Senator from Iowa seek the floor at this time?

Mr. GRASSLEY. Shortly.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. THOMPSON). Without objection, it is so ordered.

Mr. FORD. Mr. President, I have checked with the participants in this piece of legislation. It may be some time before they will be able to start their deliberation. Therefore, I ask unanimous consent that I might proceed for up to 10 minutes, as in morning business.

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

AMENDMENT TO THE FISCAL YEAR 1997 INTERIOR APPROPRIATIONS BILL

Mr. FORD. Mr. President, when the Senate returns to the consideration of the Interior appropriations bill, I intend to offer an amendment that would redirect the bill's earmark of $3 million to create a 20,000 acre national wildlife refuge in western Kentucky.

On Monday, the Senate approved the energy and water appropriations bill that, due to budget constraints imposed by this Congress, will not adequately fund an important, existing environmental project in western Kentucky called the Land Between the Lakes. LBL is a 170,000-acre preserve located just 15 miles east of the Interior bill's proposed wildlife refuge.

I fail to see the logic of what some people are proposing here: inadequately fund one outdoor facility, the Land Between the Lakes, on Monday, and then, just days later, try to appropriate funding for a new facility just 15 miles away. In Marshall County, where most of the proposed refuge would be located, the judge/executive has asked me, ''why don't we take care of what we've got before we open a new nature preserve?'' I could not agree more. The fact of the matter is that we are not taking care of the Land Between the Lakes. Its appropriation has dropped by one-third since 1994 even as millions of dollars' worth of maintenance projects pile up.

The rider in the Interior appropriations bill will ensure that LBL and other wilderness projects continue to go begging in years to come. That is because the $3 million earmarked in the Interior appropriations bill is just a fraction of the $15–20 million it will cost to actually create the refuge. That is not just me talking. Those estimates are from the Congressional Budget Office and the U.S. Fish and Wildlife Service. So, Mr. President, supporters of the earmark will be back next year, and the year after, looking for more money for this new project.

What is worse is that Kentuckians living in the surrounding counties do not even support the proposed wildlife refuge created by the bill. I have already mentioned the statement of the Marshall County Judge executive. Well, the Marshall County Soil and Water Conservation District has also gone on record, saying, ''Our opposition to making a Federal Wildlife Refuge of the East Ford of Clark's River stems from the overwhelming opposition of land owners and tenants in the proposed area.''

The sentiment if the same in Murray, KY, located in the adjacent county of Calloway. I ask unanimous consent to have printed in the RECORD an editorial from the Murray Ledger-Times.

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

[From the Murray Ledger & Times, Feb. 8, 1996]

NATIONAL REFUGE AT ODDS WITH LBL DILEMMA

We're scratching our heads over the latest from Sen. Mitch McConnell.

What could McConnell be thinking?

We know it's an election year, but can his plan to create a national wildlife refuge just

15 miles west of Land Between the Lakes be serious?

The senator wants to buy up to 20,000 acres of land located on the east fork of Clarks River which is the site of the only major bottomland hardwood area left in Kentucky.

Listening to McConnell's plans for the area reminds us of a brochure for LBL.

The senator stresses the environmental and educational benefits of such a wildlife refuge.

Hmmm—they say the same thing about LBL.

McConnell's proposal is puzzling in light of his involvement in securing operational funds for LBL.

The Tennessee Valley Authority has been under a constant barrage from congressional critics the last two years. We don't expect that scrutiny to lessen in the future.

McConnell has created his own catch-22 with a plan to spend federal money to establish a wildlife refuge while TVA officials are busy peddling a commercialized LBL.

If adequate funding can be assured for both wildlife areas, we gladly embrace McConnell's plan.

However, Washington, D.C. becomes a twilight zone for such promises.

Unless LBL's status becomes more secure, we'll have to say thanks, but no thanks, Mitch.

Mr. FORD. The Ledger-Times reminds us that the refuge and the project at Land Between the Lakes would provide very similar services and that the creation of the refuge will put future LBL funding at risk.

Mr. President, supporters of the refuge have compiled a seemingly impressive list of endorsements. But listen to who is on the list: Mall Interiors, the Rocky Mountain Elk Foundation, and Pride, Inc. I have no doubt that these are fine organizations, but how are they qualified to speak to a proposed wildlife refuge in western Kentucky?

Of course, there is also a list of Kentucky environmental organizations who support the refuge. But again, you will not hear the name of a single county or county organization in or near the proposed wildlife refuge that supports it. In fact, the closes organization is located over 80 miles and five counties away from where the refuge would be located.

We should listen to the people of western Kentucky before creating a refuge that currently includes at least 7,000 acres of cropland. What will happen to that cropland? What about the communities and families in and around the refuge? At a minimum, we should be holding official public hearings in the community and inviting public comment before establishing a wildlife refuge instead of creating it through an appropriations earmark.

Mr. President, my amendment redirects the bill's earmarked funds toward Land Between the Lakes projects that already enjoy wide support in Kentucky. First, my amendment provides $2.25 million for the repair and maintenance costs of ''the Trace,'' which is the north-south roadway in the Land Between the Lakes. Over 2 million people visit the LBL every year and they ought to be able to get from one end to the other on a decent, safe road.

Second, my amendment directs $275,000 to repair the Brandon Springs Resident Center, which serves as a youth camp for underprivileged and disabled children. Brandon Springs is a great resource that we need to protect and preserve, but its facilities are inadequate and overextended. We need to make a commitment to Brandon Springs, not just for children from Kentucky, but for the children who come from Tennessee, Alabama, the Carolinas, Arkansas, Missouri, Illinois, Virginia, and Ohio for a real wilderness experience. This is not just a local operation. It is a national operation, Mr. President.

Last, my amendment directs $475,000 to provide water and sewer service and disabled access for the youth station in the Land Between the Lakes. Mr. President, it was heartbreaking to see this facility closed due to lack of funds, which gave kids the chance to live in the great outdoors and learn how to be good stewards of our natural resources. Until it was closed due to lack of funding, the youth station provided environmental education to thousands of schoolchildren, including my own grandchildren—and I have that personal experience, Mr. President—as well as adults. Teachers came to youth station to receive valuable training in environmental education at the facility and took that information back to their students. If the center is reopened, I understand that at least two different universities in the area have offered to assume the operational and programming responsibilities of the facility, which will allow programs to continue with virtually no Federal cost.

I have letters of support for what I propose today, and I ask unanimous consent that they be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

MAYFIELD, KY.

Senator WENDELL FORD,
Russell Senate Office Building, Washington, DC.

TO SENATOR FORD: I am writing this letter to you about a matter I feel is of great importance to our region in Western Kentucky. My name is Tawnya Hunter and I am a teacher at Graves County High School in Mayfield, Kentucky. The matter which I would like to inform you about is the closing of the Youth Station in Land Between the Lakes.

As you know TVA has been cutting back on its funding of LBL and one of its major cut backs was the closing of the Youth Station. The Youth Station has been serving children and adults of this area as well as across the country for about twenty years. Children come and stay for various camps though fewer and fewer have been offered to them in the last five to six years. Murray State has been using the Youth Station for about twelve years for several different teacher training courses. This is how I got involved. I attended a week long class on Environmental Education in which I got graduate credit for. The experiences and materials obtained during that week far surpass other classes and courses that are required to take for masters classes. The same course taught in a regular classroom would not have the same effect.

Since the impending closure Murray State has come up with a proposal to run the Youth Station for TVA. TVA turned the proposal down stating it could not afford what Murray State proposed. What was proposed was that TVA allow Murray State to run the facility and take over all costs after TVA restored the place to a running condition (i.e., fix the plumbing, telephones). This is where TVA said they could not afford this. To let a facility like this go would be a tremendous waste. If TVA truly cannot afford this proposal then maybe Congress could pass a one time appropriation to cover the initial cost to fix the Youth Station. This is where I need your help. I am not in the habit of writing Congressmen about problems but this is something that I feel very strongly about, and I do not know where else to turn. If there is anything that you could do to help, it would be well worth your time and would be greatly appreciated. Dr. Joseph Baust is the contact person at Murray State and has been working extensively on saving the Youth Station since 1991. He would be more than willing to meet with you or talk to you about this any place and at any time. He can also tell you much more about this than I can. I have really only told you the very basics of this issue. Irene Riley is my ''Granny'' (my husband's Grandma but I consider her mine too) and I know that she talked to you on your trip to Mayfield. Thank you in advance for any consideration you give this issue.

Sincerely yours,

TAWNYA HUNTER.

HOPKINSVILLE ELECTRIC SYSTEM,
Hopkinsville, KY, May 7, 1996.

MS. MOIRA SHEA,
Senator Ford's Office, Russell Senate Office Building, Washington, DC.

DEAR MOIRA: Thank you for your call and Senator Ford's interest in Land Between the Lakes (LBL). As I mentioned, the LBL budget request for this year is $6.6 million which includes $900,000 for TVA police services not included last year.

As a user of LBL, I personally think the budget has already been cut too far. Attractions have been closed and roads and facilities continue to deteriorate.

For example, ''The Trace'', which is the major north/south roadway, is falling into disrepair. The cost to repave it this year is $2.15 million which is not in the budget request.

The Brandon Spring Group Camp had to be closed because there was just not enough money to keep it in repair. This facility was used by Murray State and other schools as a youth camp, including under-privileged and disabled kids. There, these kids could feel the great outdoors and study the protection of our natural environment. The cost to refurbish this facility, which includes repairing the ceilings, a new HVAC unit, along with trail, fishing pier and parking lot renovation (handicapped access), is $261,000—also not in the budget request.

Funding of the above projects would go a long way toward restoring LBL to a more usable state and would be much appreciated by this region. However, this needs to be an add-on to the budget request as funding of TVA's other Land and Water Stewardship projects has already been cut to the bone. We, the friends of LBL, certainly would be obliged by any assistance Senator Ford could provide. Say ''hello'' to Senator Ford and Charles for me.

Sincerely,

AUSTIN B. CARROLL,
General Manager.

Mr. FORD. Mr. President, I am not opposed to the creation of a wildlife refuge, as proposed in the bill. What concerns me is the idea that we here in the Senate can or should designate thousands of acres of cropland—over 7,000 acres of cropland—as a wildlife refuge without even consulting affected farmers. What concerns me is that we would make this designation without consulting or seeking the consent of the affected localities. What concerns me is a proposal that results in Kentuckians writing to me to say, ''no one seems to listen'' isn't that something?—''no one seems to listen to what the majority of landowners and farmers, who are directly involved, are saying.''

With my amendment, we will be listening to the people of western Kentucky. My amendment, unlike the proposal in the bill, has the support of citizens in Kentucky who live around the Land Between the Lakes and helps to preserve a vital natural resource we already have.

I urge my colleagues, if we get to the Interior bill, that they support the adoption of my amendment.

I thank the Chair and yield the floor.

UNANIMOUS-CONSENT AGREEMENT—VETO MESSAGE TO ACCOMPANY H.R. 1833

Mr. LOTT. Mr. President, I ask unanimous consent that the veto message to accompany H.R. 1833 be temporarily set aside to be called up by the majority leader after consultation with the Democratic leader.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MARITIME SECURITY ACT

The Senate continued with the consideration of the bill.

Mr. GRASSLEY. Mr. President, I rise to speak on the maritime bill that is before us. I, first of all, want to compliment the leadership of the Senate, plus the managers of this legislation, because we are bringing up maritime legislation in the daylight. The last time it was brought up it was the last item on an omnibus bill, a very big omnibus bill. It was at 9 o'clock at night. It was just before we were taking a week's recess. And it was to finance a subsidy for the maritime industry.

For something that costly, for something that important, it seems to me it is not something that we should try to sneak through in the dark of night as the last piece of business because controversy that is connected with it might not be so welcomed to be answered. And, consequently, we just avoided all the necessary discussion we ought to have of very costly legislation.

So here we are not doing it on a Friday. We are not doing it late in the evening. And I want to compliment the leadership for bringing up a very important new program, a very costly new program, at a time when it can be given some legitimate consideration.

I also want to compliment our majority leader because he has been very forthright with me and very open with me in making sure that I had opportunities to present my point of view and to offer amendments. And it was not handled in the stealth manner that I have teased him about in the past as this bill was working its way out of committee. So I think again it is being done in an open and very forthright manner so we can have discussion on this.

I see the leader has come in. And if he is here to do other business, I would be happy to yield to him for that sole purpose.

Mr. LOTT. Mr. President, would the Senator yield just briefly?

Mr. GRASSLEY. I will yield, not losing my right to the floor, yes.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. I want to thank the distinguished Senator from Iowa for his comments. I know that this is an issue that he has an interest in. We talked about it. And I had indicated to him earlier, even though we picked at each other for years on this subject, that this would certainly be something that he would be given notice on and that we would meet with him and talk to him about the substance, about what was within it and not within it, and to give him ample time to study it and prepare remarks and amendments.

The only reason we are starting as late in the afternoon as we are is because I believe he had a conflict, and we wanted to try to accommodate him earlier. We are going to continue to proceed in that way. We want to make sure everybody has a chance to make their case and look at this legislation very carefully. I appreciate his attitude and his comments very much. I just wanted to thank him for that.

Mr. GRASSLEY. While we are talking about accommodating me, from 8 to 8:30 I have my monthly town meeting via television satellite with the people of Iowa. I would like to be able to keep that.

Mr. LOTT. If the Senator would yield for me to respond to that, and for no other purposes, Mr. President, we certainly have other Senators that want to make statements and maybe debate on amendments. We will make sure that nothing happens during that time that would be a problem for him. I yield the floor.

Mr. GRASSLEY. Mr. President, why are the taxpayers up in arms about Washington, DC? I think it is because they know how to spend their money better than Washington does. Americans are overtaxed. Ask any of them. Washington is also overweight. Today American workers work longer, they work harder, just so that Washington can spend more of their money. Taxpayers sacrifice more, I am sorry to say, so that Washington can spend more. That is just not right.

I want to make it possible for taxpayers to keep more of their own money. Part of that is to get Congress then to stop spending so darn much of it in the first place. That is why whenever I see a grossly wasteful program, I feel obliged to squeeze the fat out of it. And I urge my colleagues to help in that effort.

Maritime subsidies, the subject of this legislation, is one, one blatant example of how Washington wastes taxpayers' hard-earned money. It is a case study in how Washington turns common sense upside down. Instead of competition for lower costs, this program creates a monopoly that raises costs. Now we all expect competition to lower costs, and in most instances it does lower costs, but the program that is in this legislation creates a monopoly. And you know what happens most of the time when you have a monopoly? That ends up raising costs.

Instead of supporting the national security, as this program purports to do, this program is becoming irrelevant to national security.

This program delivers to the taxpayers higher costs and no national security benefit. Should that not be a clue that this program is wasteful? I know how the taxpayers would answer that question, Mr. President, but I am not sure yet how my 99 other colleagues will answer that question.

There is an old way and a new way of doing business in Washington. The old way is to spend money to get reelected. Just tax the citizenry more to pay for that effort. The money goes to wealthy companies—we call that corporate welfare—and it goes to powerful unions. It becomes corporate and union welfare. They keep getting more money from the Treasury and then they have clout. They pay contributions to reelect friends; that way they do not have to be accountable for the taxpayers' money.

A very ineffective program can exist and survive in Washington simply because it has so much clout. That is the political game in Washington. That is the political game that the grassroots of America, if people are candid with you, are sick and tired of. That is also how Washington wastes the taxpayers' money. To Washington, it is not waste. No, it is not waste. It is currency. It is the cost of getting reelected. That is the old way of doing business in Washington.

The new way, beginning with this Congress, is to be frugal. The era of big Government is over. Even President Clinton said that in his State of the

Union Message. Of course, even big-spending liberals are saying that. We are a vote or two shy of the balanced budget constitutional amendment, and maybe then, eventually, of getting a balanced budget. The days of fiscal responsibility are nearly upon us.

That is why, Mr. President, I view this vote on this bill, my amendments to this bill, as a test case for this Congress, a test between doing business the old way and doing business the new way. Taxpayers are tired of the burden we place on the taxpayers to feed the appetite of Washington bureaucracy. It is time for Washington to sacrifice for a change.

Mr. President, I am pleased to have this opportunity to share my concerns about the bill before the Senate. That bill is H.R. 1350, the Maritime Security Act. I am pleased to have the opportunity to offer a few amendments to address these problems.

Frankly, if these amendments pass, I intend to support the bill. When I talk about supporting and when I talk about amendments, because of my historical opposition to maritime legislation subsidies, the subsidies that are in the legislation, people might feel, well, I am gearing up to talk this bill to death and to not let it come to a vote. I have assured the leader that we are talking about minutes on amendments and some time for me to make opening statements. The legislative process in this body on this bill, even though maybe the outcome may not be to my liking, should work its will.

Mr. President, my criticism of maritime subsidies has centered upon the fact that taxpayers and consumers have suffered under the burden of monopoly. Let me emphasize that monopoly, maritime rates, and also hidden back-door subsidies, all meant to materially and beneficially impact our national security, but all the time we have these monopoly rates and these hidden back-door subsidies, the sad commentary is that it only marginally assists. I want to emphasize, only marginally assists our national defense.

This may be one reason that the Defense Department resisted so strongly having to pay for H.R. 1350, the Maritime Security Act. The Department of Defense resists paying for this cost, and yet it is being offered to us as necessary for our national security. Who is more concerned about the national security of the United States of America and our responsibilities in the world than, of course, the Department of Defense? Yet, let me say to you, this bill is being offered as necessary for our national security, yet the Department of Defense resists strongly having to pay for H.R. 1350.

It seems these subsidies have far more to do with maritime union welfare and with corporate welfare and much less to do with the defense of our Nation. The maritime union welfare focus is clearly borne out by the 1993 maritime decision memo prepared by President Clinton's very own Cabinet officials. These Cabinet officials told President Clinton that the primary purpose of these maritime subsidies is to pay high-priced wages and benefits of seafarers. This is not Republican Senator Chuck GRASSLEY saying why we are having this bill before the Senate. This is the President's own Cabinet people saying that the primary purpose of these subsidies is to pay high-priced wages and benefits of seafarers.

Mr. President, now, again, besides the President's own Cabinet, I am not alone in opposition to our current system of maritime subsidies. Prominent public interest in taxpayer organizations such as the Citizens Against Government Waste, the National Taxpayers Union, Citizens for a Sound Economy, and Americans for Tax Reform all oppose H.R. 1350, the Maritime Security Act. These are the people who issue report cards at election time. These are the people that your constituents—who expect you to be fiscally responsible—look at how they rate you, as fiscally responsible or fiscally irresponsible, who put out reports, and legitimately so, in the spirit of free speech and the process of representative government, to tell you or your constituents, are you pro-taxpayer or anti-taxpayer? These organizations oppose this legislation.

I might add, however, that these groups do support the changes I seek, the amendments I offer. They support my amendments because this is clearly a taxpayer/good government issue. My amendments are also supported by a number of retired admirals.

Now, for my colleagues on the floor who are so closely and legitimately associated with uniform military leadership of America, I want to remind you the very same admirals I am talking about are the ones who had previously been listed as supporters of this legislation but had been given some sparse information about it. Their comments are revealing.

I refer, first of all, to a letter I received June 8, 1996, from Vice Adm. George P. Steele, U.S. Navy, retired. I will not read the entire letter, but he said in part:

> My signature is on a form submitted by the American Security Council. I only signed that form to gain time for a mature study of a then-pending bill which could have resulted in subsidies for the VLCC's, and now that I see how my name is being used, I much regret it. I was invited to help that council formulate positions and I met with their representative, and I have not heard from them since, but I am not surprised that my opinions do not suit them.
>
> I do believe that this country needs and should pay for only that part of the U.S. Merchant Marine that is configured in type and numbers to support our authenticated defense requirements. I am opposed to the continuation of Federal programs mostly designed to line the pockets of unions, owners, and shipbuilders unwilling to give up grossly inefficient practices. We desperately need a fresh start, not a continuing jobs program.

Signed, ''George P. Steele, Vice Admiral, U.S. Navy, retired.''

Then we have a Karl J. Bernstein. This is a handwritten note that I received in June 1996:

> Thank you for your letter of May 30, 1996. It was most informative. Had I been aware of the facts, I certainly would not have agreed to the Maritime Reform and Security Act of 1995, as recommended by the American Security Council. Their pitch was the usual one: ''We need adequate sealift.'' Of course, everyone will agree to that.

Then I have a letter from Rear Adm. J. L. Abbott, retired, U.S. Navy, June 11, 1996:

> Of all the words, those quoted from a Defense Department memo—

That is the one that I said the Clinton Cabinet presented to the President to make a final choice on this legislation.

I will start over:

> Of all the words, those quoted from a Defense Department memo strike me as most compelling. The issue of two major U.S.-flag container ship operators disposing of their U.S.-flag fleet is primarily an economic policy issue rather than a national security issue and should be treated accordingly. I certainly support additional hearings by both the Senate Commerce Committee and the Senate Armed Services Committee to probe exhaustively into the above-quoted statement in order to find out where the truth lies.

Mr. President, my staff has just advised me that when I was quoting from that last letter and I referred to the Defense Department memo, I said that was the very same memo the Cabinet people had given to the President for him to make his judgment on. I was in error. That memo referred to in Admiral Abbott's letter was the memo of former DOD Assistant Secretary Colin McMillen. That was Colin McMillen's quote I just gave.

I could give a lot of letters. I want to finish with this one. These are Charles Minter's comments, a vice admiral, and this is penciled in at the top of a questionnaire that I sent to him asking him to fill out. He said:

> I greatly appreciate your bringing to my attention facts of which I was previously unaware. I strongly support additional hearings at which voices in opposition can be heard so that legislation which best deals with our sealift capability to be effected.

I only bring these letters to my colleagues' attention because there is going to be a lot of weight put on by the proponents of this legislation in support of this legislation, saying that we have all these retired admirals who are saying this legislation is absolutely essential. I didn't know what sort of reaction I would get from these admirals. Obviously, all of them did not write back saying that they disagreed with their original position. But I would like to have my colleagues take with some caution this reference to their support, because we have a lot of these admirals who have questioned the use of their name.

We also have Admirals Minter, Edward Martin, Victor Long, Theodore Almstedt, Robert Stroh, and I have already talked about Karl Bernstein.

These folks particularly were on record that we needed further hearings on this bill. We worked very hard with the chairman of the Commerce Committee to get hearings, and he consented to have those hearings, and they never materialized because of legislative responsibilities. But the reason for further hearings was that, at the time this bill had a hearing on it, opponents asked for an opportunity to be heard and there was no opportunity for the opposition to be heard. So the committee record, obviously, is not complete, because you should have both a balance between those who support legislation and those against the legislation. But the leadership wanted to move this bill out of committee very rapidly. That caused me some concern a year ago. I wish it hadn't happened, but it does happen, and when those hurdles are crossed, we are where we are now. So, hopefully, some of these things could have been worked out in committee.

Now, these admirals that I referred to also support my amendments to, first of all, restrict tax-supported seafarer war bonuses to those given regular military, so that there is a parity between our full-time military people who get war bonuses along with seafarers who get bonuses. I will show you where there is a terrible distortion and unfairness in that.

Seafarers, unlike people in the military, reserve some right to serve when called on, and our full-time military people do not have that right. So I have an amendment dealing with that subject. The next one requires subsidized U.S. carriers to provide both U.S.-flag vessels and crews in meeting its military obligations and does not allow them to substitute foreign flags and foreign crews for any or all of their military sustainment voyage responsibilities.

That amendment is a direct result of something Senator LOTT said before he was floor leader, when this issue was up, as I referred to well over a year ago, when it was brought up late in the evening on a Friday before we were taking a recess. He said that we have to have this program because we have to make sure that American merchant mariners with American-flag ships are available to transport our materiel. This legislation does not require that. This legislation allows contracting for non-American-flag ships to do that.

Fourth, we would provide for the Department of Defense, and other agencies, buy-America type laws that protect taxpayers from price gouging. Again, all of these admirals are listed by the American Security Council as supporters of this bill before us. Yet, when given some facts—and we mailed them the Rubin-Clinton maritime memo, which is a memo that I previously referred to that the Cabinet sent to the President to make his decision as to whether or not he should get behind this legislation. These admirals, particularly after reading the Rubin-Clinton maritime memo, agreed that my amendment should pass and that further hearings should have been held.

I offer these as basic commonsense amendments. They are protaxpayer and prodefense amendments. If we continue to subsidize maritime in the name of national defense then the U.S.-flag carriers and seafarers must serve when called. It must not be optional. It is not optional for the people right now who are leaving the United States on their way to Kuwait because of problems in Iraq with Saddam Hussein, and the President defines those problems as needing another 5,000 troops on the ground in Kuwait. You saw those families on television last night with tears in their eyes but with an understanding that this is their job. And without question, they just pack up and go when called. The people operating our maritime fleets have an option.

Of course, as with any taxpayer subsidies, taxpayer protections ought to be provided. So my amendments will do that.

I want to highlight a few problems, and be more specific than I have with H.R. 1350.

Problem No. 1: It is simple—maritime union and corporate welfare. If someone told you, Mr. President, that the Clinton administration was trying to mislead us, someone might respond, ''What's new?'' What would be new is after receiving clear evidence that this ploy involves a jobs program for the maritime union that the Republican-controlled Congress went along with it. And the Republican Congress, when I am done, is going to know that this is what this is. How people vote is their choice. But it is not the Clinton administration that is misleading us. We bear some responsibility on the majority side of the aisle for that. Earlier this year, Citizens Against Government Waste delivered to every Senate office such evidence. And it is this internal White House memo from Secretary of the Treasury, Robert Rubin, to President Clinton discussing maritime subsidies. This memo represents the deliberations and conclusions of the political heads of 16 different executive branch agencies—departments, and agencies. We have a memo from the President's own people to the President. I suggest that it was never intended that this would ever get into the public domain. This memo now shows that 15 of 16 agencies supported a deficit-neutral maritime subsidy option that—this is from the memo—''would meet the Department of Defense maximum military requirements.''

There were three options in this memo. There was one of deficit neutral. That means, if you change your program, there is enough money someplace else in the budget to pay for it, or it is not going to cost any more than what is in the budget presently for that program. You have 15 out of 16 agencies. These are appointed by a Democratic President. They support a deficit-neutral option. Only the Transportation Secretary opposed this prodefense, taxpayer-friendly option because—again from the memo—''it provides less support than is sought by the industry and its supporters.'' Fifteen out of sixteen Democratic heads of agencies say we ought to take this option because it is deficit neutral, and it would still meet our military needs. You have 1 out of the 16, the Department of Transportation Secretary, who suggests that the other 15 ought to be ignored because their option provides less support than is sought by the industry and its supporters.

Here is the President of the United States representing 269 million people, the only political office representing the entire Nation, who is given a memo by 15 of his advisers saying here is a revenue-neutral option that will meet our military needs. But he has one who says, ''Well, forget about the military needs. Forget about being deficit neutral. The industry wants this, and its supporters want this.''

So instead of listening to the people, instead of listening to 15 of your 16 department heads, you get a recommendation from one person who says it is based upon what the industry wants and what its supporters want.

And that is what we have before us. What is truly remarkable about this memo is the admission that ''subsidies are needed principally to offset the higher wages of U.S. mariners.'' President Clinton ignored the plan supported by 15 of his agency heads including, let me say, the agency that is concerned and which administers our national security—the Defense Department —and sent to Congress a far more expensive bill that 3 years later is basically included in H.R. 1350.

In other words, for President Clinton, the era of expensive Government is not over. With regard to the maritime labor subsidies he still supports wasteful Washington spending, and the subsidies that that spending means.

We all thought that this Congress was going to reform welfare as we know it. If we can eliminate welfare affecting the poor, you would think that we could eliminate welfare of the wealthy maritime companies such as Sealand and powerful maritime unions. But, of course, as we all know, welfare is great, if you can get it.

I suppose that might be what MIT's Defense and Arms Control Studies Institute Director, Harvey Sapolsky, was driving at when he was quoted in the August 1991 Defense News. He said this, and I quote: ''Despite any accompanying rhetoric about national security, subsidies for the Merchant Marine fulfill the commonplace desire of obtaining a livelihood without the burden of having to compete to earn a living.''

So I want to get it straight from the beginning of this debate. Both the Clinton administration officials and the Massachusetts Institute of Technology defense experts agree that maritime subsidies are little more than welfare.

What I find really interesting in this whole approach is that Members of

Congress—particularly my friends on the other side of the aisle—denounce corporate welfare. And you even have Republicans saying that because we had in our tax bill of a year ago $30 billion for elimination of corporate welfare. So you are on to something. Yet, I will bet most Democrats plan to vote in favor of H.R. 1350 which will give wealthy maritime corporations hard-earned taxpayer dollars that these companies hardly need; hardly need.

For instance, after years of opposing subsidies, Sealand looks to gain the most from H.R. 1350. Why should taxpayers of this great country, people that work 40 hours or more a week, or families where two people work and can't pay their bills at the end of the week because so much of their income goes for taxes—why should these hard-working American taxpayers subsidize one of the world's largest and most successful container vessel companies that in recent years has posted record-breaking profits? Are Democrats for corporate welfare? Are these the Democrats, who have awakened Republicans to the crime of corporate welfare so that we put $30 billion of reduction of corporate welfare in our tax bill—are they for corporate welfare now when they support this bill? It appears so. But now what is really up? It is that, while Republicans complained about the millions upon millions of dollars that the AFL-CIO is spending to return Congress to Democratic Party control, my Republican-controlled Congress is on the verge of approving $1 billion in subsidies for some of the most politically active labor unions in the country.

How many Tuesdays and Wednesdays that Republicans meet—this is no clandestine meeting. These meetings are on everybody's schedule. How often do we meet as a Republican Party —I suppose the Democrats meet as the Democratic Party, and they may talk about the same things we talk about but from a different perspective—how many times do we meet and the subject is always coming up of the $35 million that the AFL-CIO is raising by taxing their members more—that $35 million is on top of what they are paying in labor union dues—this $35 million for the campaign for Democrats to regain control of the U.S. Senate?

We are always talking about that. We are nervous about that. We think it is awful that 40 percent of the union members who vote Republican are taxed by their leadership to run these horrible ads, and let me say intellectually dishonest ads, scaring the old people of America against Republicans. Forty percent of those union members vote Republican. They are taxed to run these ads against the political philosophy that they agree with, and they do not even have anything to say about it because this administration rescinded a rule that the Supreme Court gave the minority of American union members the right to ask for their dues back, that portion of which goes for political education. That rule was rescinded by this administration, so that 40 percent of the union members this year pay these dues to perpetuate a lie on television.

We are concerned about that in our Republican caucus, and yet here we have a Republican-controlled Congress on the verge of approving $1 billion in subsidies for some of the most politically active labor unions in this country.

Now, I want to give this some perspective because this is not just $1 billion, and this is not just $35 million that is being spent for this advertising now; this is real money per seafarer.

In an old report, in 1977, by the former House Merchant Marine Subcommittee ranking Republican, because the Republicans were in the minority then, Congressman McCloskey of California said all of the AFL-CIO members each averaged about 11 cents towards campaign contributions.

Obviously, that is way up now with the $35 million.

But there is a contrast between the rest of the AFL–CIO and the Seafarers International Union that contributed $29.06 to political activity. The Marine Engineers Beneficial Association gave a whopping $56.81 per seafarer, which is over 500 times what the average AFL-CIO member gave.

So here we Republicans stand today about to approve a 10-year $1 billion subsidy to pay maritime labor which, at least back in the 1970's, was about 500 times more politically active than the rest of the AFL-CIO unions.

Remember, that is what the Clinton Cabinet told us these subsidies were for—to pay for high-cost maritime labor unions. And I want to read that quote again. Secretary Peña said that you could not go with that option that 15 out of 16 Democrat agency heads wanted because it provided ''less support than is sought by the industry and its supporters.''

Now, that is problem No. 1 of this bill.

Problem No. 2 is that the Department of Defense already has VISA. VISA is an acronym for Volunteer Intermodal Sealift Agreement—VISA, V-I-S-A, Volunteer Intermodal Sealift Agreement. We are being told that this bill, H.R. 1350, will provide our national defense with a wonderful new intermodal transportation system that is crucial in time of national emergency. What is not commonly known is that VISA—again, the Volunteer Intermodal Sealift Agreement—is already in place and will be used to implement H.R. 1350.

Most U.S.-flag carriers have already transferred from the Sealift Readiness Program to VISA. The key point is legal authority already exists for VISA, and that is the Defense Production Act of 1950, and therefore H.R. 1350 and S. 1139 are not needed—not needed unless, of course, you want to funnel welfare subsidies to maritime unions, as revealed in the Rubin-Clinton memo.

So not only is this a high-cost program, but it adds little national security benefit. What kind of a deal is that for the already heavily burdened taxpayers of this great country, people who are spending for State, local, and Federal taxation 40 cents. A Washington bureaucracy is going to waste this money.

Problem No. 3 is that in the process of consideration of this legislation and building grassroots support for it, the active and retired military was misinformed. So some would ask the question, is this merely labor and corporate welfare? And, if so, why does our military support H.R. 1350 and S. 1139? The answer is simple. The Rubin-Clinton memo is evidence of the real position of our defense officials—not this bill. They offered a deficit-neutral plan that would subsidize their true military requirements—as few as 20 U.S.-flag vessels.

But when the Commander in Chief—and that is President Clinton—ignores his defense officials—he ignored the Department of Defense; he ignored 14 other agency heads—and he chooses a more expensive plan, the subsidies that are now included in this bill, then, of course, at that point you know he is the Commander in Chief. The military heads have no other choice but to publicly support their Commander in Chief's decision. Anybody participating in defense budget hearings has experienced firsthand this problem. Military leaders have to fall in line with the Commander in Chief.

But what about all of those retired admirals who support the Maritime Security Act? You can legitimately ask, shouldn't their view be entertained with some degree of authority because of their lifetime commitment to the national security of our country?

It has become clear to me that these retired admirals lent their name to an effort for which they had few reliable facts. Certainly, they did not know about the specific problems with the bill, nor did they know anything about the Defense Department's position, and they surely did not know about the Rubin-Clinton maritime memo.

As I stated earlier, I wrote to a number of these retired admirals giving them a copy of the Rubin-Clinton maritime memo, and I also sent them other information.

I received those very interesting responses that I have already quoted from. Some felt that they had not been fully informed and now support, at the very least, further hearings, and some support these amendments.

Problem No. 4 is that we have adequate sealift capacity with or without these subsidies. Now, here you get to the nitty-gritty of this legislation. It has been the same nitty-gritty for 50 years that we have been trying to promote a strong maritime industry. The excuse is we need it for our national security. I say, and the Department of Defense says, in a deficit-neutral way, with one of the other three options,

their demands for the shipment of materiel in wartime can be met.

U.S.-flag companies have made it clear that their vessels will be available for national defense sealift if they reflag. In fact, our Government makes certain that, if they reflag, they flag under a country that allows the United States to maintain control over the vessels. The Defense Department Joint Chiefs of Staff prepared a definitive analysis of the sealift capacity and availability. It is included in the MRS Mobility Review Study, Bottom-Up Review update.

I ask unanimous consent to have printed in the RECORD an unclassified table from this study, which details the projected sealift capacity upon which our military can depend.

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

TABLE C–17.—(U) FISCAL YEAR 2001 PROJECTED SEALIFT ASSETS WITHOUT MARITIME REFORM

[Unclassified]

Fleet	Ship type	Number	SqFt capacity	TEU capacity	Cube capacity
RRF	Breakbulk	47	551,111	0	842,074
	RO/RO	36	5,699,660	0	0
	Barge Trans	7		1,264	299,000
	CONT—RO/RO	1	47,906	501	
	T—ACS	9	359,816	667	48,170
	Passenger	2		175	42,140
MSC	FSS	8	1,705,385	360	
	LMSR	11	3,955,276		
	Breakbulk	3	44,361		68,200
	RO/RO	3	525,464		
	CONT—BB	1		726	34,600
MPS	RO/RO	13	2,044,835	6,053	
T–AVB	CONT—RO/RO	2		600	
APS	LMSR	8	2,721,388	2,400	
	RO/RO	3	274,663		34,500
	CONT—NSS40	2		4,000	
	Barge Trans	5			174,888
	Heavy Lift	2	88,912	—	—
	T–ACS	1	53,642	36	5,785
U.S. Flag [1]	Breakbulk	1	4,054		3,250
	RO/RO	2	284,902		
	CONT—NSS20	2		2,140	
	CONT—NSS40	6		13,700	
EUSC	Breakbulk	24	558,553		309,195
	Car Transport	7	1,235,000		
	CONT—RO/RO	3	36,450	5,580	
	CONT—NSS20	2		890	
	CONT—NSS40	52		175,368	
	CONT—SS40	2		1,136	
Allied	Breakbulk	22	205,108		135,000
	Car Transport	3	733,482		
	CONT—NSS20	5		9,583	
	CONT—NSS40	10		12,003	
	CONT—SS40	1		250	
	CONT—BB40	2		276	12,386

[1] U.S. flag numbers are less economic withholds.

Mr. GRASSLEY. What is striking about this table is the extent of the vast array of sealift capacity that will be available to the United States in the event that H.R. 1350 subsidies are not passed.

I want my colleagues to note in particular the large number of vessels available to us. These vessels are what we call ''effective U.S.-controlled vessels,'' and they include vessels that are owned by American companies. Foreign flags are reliable. First of all, keep in mind that many foreign-flag vessels are actually owned and controlled by American companies. They flag foreign, they flag under a foreign nation primarily to avoid the unbearable cost of the high salaries and benefits of U.S. seafarers. Foreign-flag vessels delivered about 50 percent of all cargo in the Persian Gulf war. Nearly 200 foreign ships were chartered from 36 nations. Only one ship loaded under DOD contract did not complete its voyage. The handful of small foreign feeder problems were the result of contract disputes with U.S.-flag carriers, not foreign flags.

But far more important is the fact that Congress has already funded the Department of Defense's wartime sealift requirements. Congress provided over $7 billion in the 1980's and will provide another $10 billion in this decade to meet the Department of Defense's unique strategic sealift requirements. The Department of Defense has, over the last two decades, constructed and purchased a sealift force to unilaterally meet our prepositioning and surge sealift wartime requirements as specified by the Bottom-Up Review. The ships of the Department of Defense's strategic sealift force are of the unique military design required to transport heavy tanks and other outsized fighting equipment.

Remember, most of the vessels subsidized by the Maritime Security Act are container vessels that will carry, primarily, sustainment supplies, such as clothing and food, and not sensitive military equipment. This brings all the more light to the significance of the conclusion of Massachusetts Institute of Technology's defense expert, Harvey Sapolsky, who stated:

> Most of the amount hauled in a crisis is done by government-owned standby and reserve ships.
>
> Moreover, there is a ready charter market for commercial cargo vessels when more ships are needed.
>
> The price required for these services in a crisis is cheaper than the cost of maintaining a large subsidized commercial fleet for a mobilization that may not happen again for years.

So, with problem No. 4, the Department of Defense has the capability of meeting our national security needs, getting our materiel from wherever it is now to wherever it must be to conduct war. They do not need this legislation. The Department of Defense said that when they recommended, along with 14 other department heads, to the President of the United States that there is a revenue-neutral, there is a budget-neutral way of doing this that meets our national security needs. That is the Department of Defense. That is 14 other department heads that say that.

Problem No. 5, this bill is not needed to maintain an adequate pool of American seafarers for defense sealift. This, again, refers to the Rubin-Clinton maritime memo. These subsidies will preserve about 2,500 seafaring jobs. There are numerous other sealift manning options. Mr. President, $100 million a year to save 2,500 jobs is too steep a price for taxpayers, in view of all these other options; $100 million to save 2,500 jobs.

This is the high cost of maintaining a monopoly, as I said earlier. This high cost reflects the great success in playing the Washington power game.

Modern, highly automated ships require fewer seafarers. The Government has carefully studied many measures to crew sealift. These include expanding the Naval and Merchant Marine Reserve programs.

What would be particularly cost effective is the option of certifying the mariners employed in the Great Lakes and inland waterways. This option would provide a very large labor pool of over 60,000 mariners who could be used during a national emergency.

Again, if you read the Rubin-Clinton memo, at the bottom of page 3—and this will be made available; it has been made available for everybody this morning in their offices, so every staff

person has this. The Clinton administration argues this:

Subsidizing carriers simply to preserve jobs would leave the Administration hard pressed to explain why it should not also subsidize every other industry that suffers job losses.

It is too bad that part of the Rubin memo was not followed, because that lays it out as plain and simple as you can. If you spend $100 million to save these 2,500 jobs, it is going to open it up so the President is letting down the floodgates for efforts for other new subsidies for other whole industries that suffer job losses.

I might ask, just what kind of seafarers' salaries and benefits are we forcing taxpayers to support? Again, in the Massachusetts Institute of Technology Manning study—according to this study, a master or a captain billet costs about $34,000 per month to pay for salary, benefits, and overtime; $34,000 per month. The earlier draft report placed the monthly cost at $44,000, but was lowered in the final report when I made it public that the taxpayers are forced to subsidize about 85 percent of these salary and benefit costs.

This MIT study concluded that with adequate reforms, such as eliminating featherbedding, we can lower subsidies to a little over $1 million per year. Unfortunately, H.R. 1350 provides well over twice that recommended by the Massachusetts Institute of Technology, which is $2 million per year.

Again, the Rubin-Clinton memo says at the bottom of page 9:

Subsidies are needed principally to offset the higher wages of U.S. mariners.

Let's face it, these high-priced wages and benefits taxpayers are forced to subsidize are at the heart of the demise of our merchant marine fleet. A dozen years ago, then military sealift commander, Vice Adm. Kent Carroll, warned our merchant marine was crumbling. Twelve years ago, we had a vice admiral warning us about the crumbling of our merchant marine:

Why are we in such a mess? One of the reasons is that crew costs continue to be the highest in the world. Monthly crew costs of U.S.-flag ships are as much as three times higher than those of countries with comparable standards of living, such as Norway.

Mr. President, the former military sealift commander hit it on the head. The taxpayer-supported crew costs are driving U.S. carriers to reflag. It makes a mess of the U.S.-flag merchant marine, and it makes a mess for the American taxpayers. It is time for real reform, but that has to be real commonsense reform.

I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Texas.

Mrs. HUTCHISON. Mr. President, for more than 5 years, the Congress and two administrations have worked on a bipartisan basis to develop and enact into law a critical program to reform Federal support for the U.S. flag maritime industry and to revitalize our merchant marine as an element of our national defense sealift.

As chairman of the Subcommittee on Surface Transportation and Merchant Marine of the Commerce Committee, I am proud to say that this job is nearly complete. On December 6 of last year, the legislation that embodies this program, H.R. 1350, the Maritime Security Act of 1995, passed the House of Representatives with overwhelming support by voice vote, with full leadership support on both sides of the aisle. Here in the Senate, we have held full, open and public hearings in the Commerce Committee with all interested parties having the opportunity to present their views for and against this program. Significantly, all individuals or organizations affiliated or associated with national defense indicated support for this proposal.

I think you can see from the bipartisan nature of this bill—my colleague on the other side of the aisle and I, working with Senator STEVENS, who is the manager of this bill—that there is agreement on a very important reform that we must produce, and it improves the efficiency of the current program.

Here is what the bill does:

The Maritime Security Act will provide a fleet of militarily useful U.S.-flag commercial vessels and their American citizen crews for our Nation's defense airlift and sealift, as well as guaranteed access to modern intermodal transportation networks and management that can deliver cargo from Kansas to Kuwait and track it every step of the way.

For DOD to duplicate this necessary capability, it would cost over $800 million per year, eight times the yearly cost of the Maritime Security Program. When you think about it, maintaining that kind of ship fleet would be something that the Department of Defense would say would certainly increase their budget. But here we can do it for half the amount than has been done in the past, and it will do the job.

The Maritime Security Program Act, the bill we are discussing, will cut the cost of Federal support for these sealift vessels more than 50 percent from the program now in existence. This will have a spending limit of $100 million a year, compared to the current level of roughly $210 million per year, and this funding is subject to appropriations, not an entitlement, which is currently the case. So you can see that we are cutting back on the subsidy while maintaining this fleet at a much more efficient rate than we could do if we had to maintain the fleets within the Department of Defense.

The Maritime Security Act will eliminate outdated and unnecessary rules and regulations which impede the ability of U.S.-flag commercial vessels to compete, and that prevents, of course, the expansion and modernization of the U.S.-flag fleet. These changes will give our fleet more incentive to hold down costs.

This act will encourage the construction of commercial vessels in U.S. shipyards, a vital program for our economy and for our defense industrial base.

This act is essential to our defense. It is needed now, more than ever. Let me give you an example of how this works.

During Operation Desert Shield and Desert Storm, more than 350 ships in more than 500 voyages supported the multinational coalition, delivering an average of 42,000 tons of cargo each day. Under this program, 350 ships participated. At the height of this activity, there was a ship every 50 miles, a steel bridge along an 8,000-mile sea lane between the United States and the Persian Gulf. Ninety-five percent of all equipment and supplies needed by American soldiers in the field was moved by sealift. One-third was shipped on privately owned U.S. flag vessels, just what we are talking about today.

Using U.S.-flag vessels was more cost effective during Desert Storm. It cost about $174 per ton of cargo under non-U.S.-flag vessels, but with U.S. flags, it was $122, a 30-percent savings.

But more important, we were able to put American cargo on American ships using American crews to deliver to our American troops. In a time of crisis, we cannot depend on foreign ships. We cannot depend on foreign crews for sealift and sustainment requirements. Without this legislation, our Armed Forces would have to trust foreign vessels for the supplies and support they need to fight and win.

Mr. President, that is not right, and we are not going to let it happen. More recent events in the Persian Gulf area, where many of our closest allies have either refused to participate or refused to allow their soil to support American military operations, should make it very clear to everyone that we must have sealift fleets of vessels that we can count on under our flag and manned by Americans, and that is what this act does.

This act has the strong endorsement of the Department of Defense. General Rutherford, the commander in chief of the U.S. Transportation Command, our Nation's top logistics commander, testified at our Commerce Committee hearing last July that his command wants assured access to this type of quality and quantity of sealift capacity and mariners necessary to meet Department of Defense contingency operations.

This bill provides that. Without the enactment of this legislation this year, America's merchant marine on the sea lanes of the world could essentially disappear.

I am told that our number of U.S.-flagged ships could drop to below 100. Forty years ago, this country had the largest merchant marine fleet in the world and over 4,000 vessels flying the U.S. flag in international trade. Today, there are fewer than 400. Today, we are the world's largest trading nation, but 15 countries have bigger fleets than we

do. We send 96 percent of U.S. exports overseas on foreign-flagged ships. The United States must not become a second-class maritime power.

Geography dictates that lesson today as much as it did 50 years ago. This Maritime Security Act is sound and vitally important. It is important legislation for our Nation's security, and it has been carefully developed by both Houses of Congress. It is essential to maintaining our maritime industry and defense readiness.

Mr. President, this bill is a bill whose time has come. I urge all of my colleagues to support it. I yield the floor.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. I thank the Chair and my colleagues.

Mr. President, I would like to start off by saying how much we all appreciate the work that Senator INOUYE and Senator STEVENS and other members of the committee have done in bringing this legislation to the floor.

It was interesting that one of our colleagues earlier said this is a new subsidy program. Well, it certainly is not a new subsidy program. We have had a maritime bill since 1936 which has done essentially what this bill does, and that is to support the American maritime industry. There is nothing new about this program. It certainly is not a new subsidy program.

It is new only in the sense that it is a major reform plan. It is a major reform plan in a number of significant ways because we on the committee, and I think most Members of Congress, know that while the old program has been a great help to our American maritime industry, there were some ways it could be improved.

I am not going to take a long time to hear myself talk on this proposition because I am not sure that there are right now any amendments even pending to the bill. I would like to think we ought to go ahead and pass it and move on to something else rather than spend time talking to each other about why we think it is a good bill.

I have only heard one of our colleagues talk in opposition to the bill. I think we ought to go along and get it passed. If anybody has any amendments, bring them up, let us debate them and move on with them.

I would like to point out that this is a major improvement. This is a major reform bill. No. 1, it greatly reduces the amount of money available to the American maritime industry to keep these private vessels available for the Department of Defense. It used to be running about $225 million a year. We have cut it by more than half. The assistance that is in this bill is less than half of what the assistance to the ships in the American fleet used to be. When there is a greater demand for more, we in this bill have come up with substantially less.

So to those who say, well, we may have been spending more than we should have, this bill addresses it. Instead of $225 million a year being available to keep these ships afloat, this bill has $100 million a year.

The second major improvement is that it is not an entitlement program. Throughout the history of the bill it has been an entitlement program. Whatever money was required was automatically available to the ship owners. This bill provides, for the first time—and this is a major, major change—that any of the assistance programs available to any of these ships has to be appropriated funds, appropriated by the Congress of the United States. It is no longer an entitlement program. That, obviously, is a major, major, and a very substantial improvement over the existing program.

It is subject to annual appropriations. That simply means—we all understand this—that every Member of Congress will get to look at this piece of legislation and this program, see how it is working, see whether we can justify the money each year and, if so, appropriate those amounts of money. On the other hand, if they think it is not working, then we have the same ability to lessen those appropriations. I think this is an absolute minimum that cannot go down any further than this.

As the distinguished Senator from Texas—and I was listening to her remarks—was talking about, this bill is important to the national security, the national defense of the United States. Simply put, we are spending a lot less money to have ships available in times of a national emergency than if we did not have this program, because if we did not have this program we would be spending up to $300 million per ship to have them just sit there and wait to be used in a time of national emergency.

It is far better to say that we are going to help the operation of some American commercial vessels that are operating every day out there, that are crewed with U.S. men and women who have been trained and who are able-bodied seamen, who understand how to run these ships, do it every day, that we can call on those ships and say, yes, this is an emergency in a particular part of the world, and we need this ship right away to transport ammunition and equipment to some far part of the world to take care of a national emergency.

If we had to spend defense dollars to have these ships sitting there when there is not an emergency, we would be spending a lot more money than a paltry $100 million. It would pale in comparison, if we had to build five or six $300 million vessels just to sit there in case someday we might need them and they will be there.

Not only that, if we had the ships there, there is no guarantee the crew would be there. If the ships are just sitting somewhere in dry dock, what is the crew doing? The crew is not doing anything—it probably does not have a crew. So then you have to go out and find the crew members in the time of a national emergency. Guess what? They are not going to be there.

So this legislation takes a very careful approach by helping to assist commercial vessels to operate with U.S.-trained crews, to have them available in times of a national emergency. They are ready to go from day one. And every private company that gets an assistance program under this legislation has to agree in advance that that ship will be available in times of a national emergency.

That is what this program is all about. It has been there since 1936. I suggest that when everybody says, well, we should not have subsidy programs, let us start off by saying, well, let us eliminate subsidies all over the world. It would be a great world. But that is not the real world. We have agricultural programs which have subsidies. I have supported them. I think they are necessary. But we also ought to have programs that make sense from a national security standpoint, from a national defense standpoint. I suggest that this is that bill.

This is not a new bill. This is not a new subsidy bill. It is a major reform bill subject to annual appropriations every year, and we have reduced the amount available by over 50 percent, from $225 to $100 million a year. That is a substantial and major, major change.

The other good news is, it has always been bipartisan. This has never been a Democrat-versus-Republican piece of legislation. It has the support that we have today. The majority leader, TRENT LOTT, from Mississippi, strongly supports it. Senator INOUYE from Hawaii strongly supports it. Senator STEVENS strongly supports it. Senator HUTCHISON, from Texas, myself, from Louisiana, we all recognize that this is important for the national security of this country. It has always been bipartisan.

The first proposal which, in fact, really moved toward reforming this program was by President Bush, who really, for the first time in a long time, got involved in this and really had a Secretary of Transportation, Andy Card, who really said, ''Yes, I'm going to put this deal together.'' And we worked on it in a bipartisan fashion. And, lo and behold, we now have this bill that President Clinton supports, that Secretary Peña has worked on for so long and so hard. It has been bipartisan. It was very similar before under President Bush and is very similar now under President Clinton and the Secretary of Transportation.

So this is truly a bipartisan piece of legislation. It has national defense implications. It is not a runaway program. We have drastically curtailed it. We have made it subject to annual appropriations.

I suggest, let us get on with the voting. I mean, if we have amendments, let us offer them and let us debate

them. Let us finish this. We are wasting time by just, I think, looking at it and talking about it and talking about it and talking about it and talking about it. I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I want to say that I agree totally with the Senator from Louisiana. This is a bill that has been worked on for a long time, and if there are going to be amendments—and that is fine—let us bring them up. Let us talk about them.

I think it is time to move this bill. It is a good bill. It is reform. It is going to save the taxpayers of this country $100 million while preserving the right of our Department of Defense to take those ships when we need them, as we did in Desert Storm. It worked. It worked. And it is going to be better.

I think it is time for us to come together. Let us talk about the amendments. Let them have their fair shot, and let us get on with it. I appreciate his remarks. I yield the floor.

Mr. GRASSLEY. Mr. President, I had the opportunity to hear the Republican manager of the bill, the Senator from Texas, speak about her support of this legislation, and for part of my remarks, she was absent. I wanted to remind her of some concerns I have about this legislation.

That concern is the oddity we have here of the Democratic Members of this body campaigning to end corporate welfare, to such an extent that they even have us Republicans proposing tax legislation to eliminate $30 billion of corporate welfare in our tax bill last year, and now the party that encourages doing away with corporate welfare, the Democratic Party, is very much for this legislation. Then you have the oddity of Republicans who considering the upcoming election are very, very concerned about the labor unions spending $35 million for the Democratic Party, to help the Democratic Party regain control of the Congress, and Republicans abhorring that situation. Then here we have a bill that is corporate welfare. It is also maritime union welfare.

So we have the oddity of Democrats who condemn corporate welfare voting for a bill that is going to establish more corporate welfare, and you have Republicans who say how awful it is that men and women who belong to unions do not have any choice about the assessment for $35 million more so that the unions can run ads against Republicans when 40 percent of the union Members vote Republican. Then here we are as Republicans, promoting legislation that is going to feed the treasury of the maritime unions.

This follows on that memo to the President where Secretary Peña was advising the President to ignore the recommendations of 15 out of 16 Cabinet agencies who said an option that was budget neutral and would still meet the national security demands of our country should be ignored because the industry—meaning the maritime industry; and its supporters, meaning the maritime unions—wanted this legislation that had this subsidy in it.

So I hear the Senator from Texas suggesting support for this legislation, contrary to a lot of concerns we have on this side of the aisle. And when we have meetings of our party—and she is one of the leader's of our party—very concerned about what is being done through the use of mandatory checkoff of union dues. In our councils, we are concerned about this. Then I see the leaders of our party supporting, almost, the buying of the rope to hang ourselves.

I remind the Senator from Texas that we have letters here from four organizations who I think she would agree with 95 percent of the time, who we would agree with 95 percent of the time, who oppose this legislation. From Americans for Tax Reform, I have a letter that says:

> This legislation, the Maritime Reform and Security Act of 1995 now pending in the Senate, Americans for Tax Reform strongly oppose the continuation of commercial maritime subsidies in any form, and strongly urges you to remove any such subsidies from this bill.

I have a letter from the National Taxpayer Union, also cosigned by the Council for Citizens Against Government Waste that says:

> Most Members of the 104th Congress have prided themselves in ending welfare as we know it. Unfortunately, the Senate may soon consider H.R. 1350, the Maritime Security Act, which is nothing more than a corporate and labor union welfare. The Council for Citizens Against Government Waste will key vote these votes for 1996 congressional ratings,

and then it says that they are very much against this legislation.

Then I will read from Citizens for a Sound Economy:

> On behalf of the 250,000 members across America, I want to express our strong opposition to H.R. 1350, the so-called Maritime Security Act and our strong support for amendments to this bill offered by Senator CHARLES GRASSLEY. The amendments would limit the cost to the taxpayer from this proposal without weakening our national defense.

I encourage leaders of our party, particularly those who are leaders of the group of us that have the most fiscally sound voting records, people who are always abhorring in our party meetings the waste of the taxpayers' money, and particularly when we have respected organizations like I just quoted from, those which we agree with about 90 percent of the time, why are we off the beaten path on this issue? Why are we Republicans, who pride ourselves for fiscal conservatism, subsidizing an industry, some of the same companies in the industry, that have the very highest of profits in recent months?

I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, before the Senator from Iowa leaves, let me tell him I compliment him for his courage in taking on this issue. I agree with him. I think the subsidies that the Senator outlined are outlandish, they are not sustainable, they are not necessary, and they should be eliminated.

I look forward to working with the Senator in the near future to have an amendment to do that. I compliment him for his statement, for his work, and for the work of the organizations trying to save taxpayers' dollars and to ensure that Government act responsibly.

Mr. HOLLINGS. Mr. President, I rise in support of H.R. 1350, legislation to revitalize and stabilize our maritime industry. It is long past time for legislation to stop the flight away from the U.S. flag. The United States has a long and honorable maritime heritage and tradition, but we are facing the prospect that our maritime industry might not be part of our future.

The U.S. Government has imposed regulatory demands on the U.S. shipping industry, demands that are similar to those we impose on other industries. These demands reflect our national interest in protecting the safety of our workers and our environment and include tax liabilities, safety regulations, and operating requirements. While our maritime industry carries these regulatory responsibilities, other advanced nations have given special treatment to their maritime industries in efforts to maintain core shipping capacity. But even such special treatment has often been insufficient to help shipping companies to resist the temptation to shift their operations to unregulated, untaxed flags of convenience offered by certain less developed countries. Currently, over two-thirds of the world ocean-going fleet is operated under flags of convenience.

The Maritime Security Program is designed to offset the costs of operating under the application of U.S. law, and to stem the flight of U.S. vessels from U.S.-flag to flags of convenience. H.R. 1350 completely overhauls the existing maritime subsidy program, and ultimately will reduce Government expenditures on maritime policies by over one-half. The program will help our vessels compete globally by reducing some of the regulatory burdens that have restricted the commercial operations of U.S.-flag operators.

In exchange for receiving payments under this program, U.S.-flag operators will be required to sign agreements to make their vessels and related intermodal assets available to the Department of Defense [DOD] to sustain U.S. defense operations. Additionally, the operation of U.S. vessels generates a surplus of U.S. mariners. U.S. vessels operate 7 days a week, all year round, thus necessitating more than one mariner for each particular position. This

surplus of mariners is instrumental in the crewing and operation of our reserve fleet of vessels. In the Persian Gulf war, the ability to crew our reserve fleet was seriously questioned, and the United States was forced to rely on 60- and 70-year-old merchant marine pensioners. Without the Maritime Security Program, we will not be able to crew the reserve fleet.

The United States relies on ocean transportation for international trade purposes and almost 99 percent of our international trade arrives on board a ship. Without a U.S.-flag merchant marine, we will be held hostage to the trade policies of foreign nations who would transport our goods abroad. The United States also relies on ocean transportation to protect our national security interests. U.S. shipping companies are required to sustain U.S. troops in foreign conflicts, and U.S. seamen not presently serving aboard ships are capable of being utilized to activate our reserve fleet of vessels in order to transport military equipment and other military surge cargoes. The continued presence of an active maritime industry ensures that the United States will not have to rely on the kindness of other nations to achieve important national economic and national security objectives.

The United States is the world's only remaining superpower, but we could be put in the position of sending U.S. troops into war with only the promise that we would supply them, and then only if DOD can charter vessels willing to deliver cargo into the war zone. This position would be simply unacceptable. Ironically, DOD has spent billions of dollars in the construction of surge sealift vessels, and billions of dollars in maintaining a Reserve Fleet of vessels. However, DOD has neglected the most important component in marine transportation: who will navigate those ships and deliver the cargo. The commercial U.S.-flag industry provides a labor pool of experienced personnel capable of contributing to any defense logistical support need. If we do not pass this legislation, DOD will be forced to implement a new, and I will guarantee, costly program to train mariners for use in reserve situations.

Attempts to formulate a maritime reform bill over the years have had bipartisan support, and I look forward to continued efforts with my colleagues to revitalize our maritime industry. However, today we should take the necessary steps forward to ensure that the United States continues to have a maritime industrial base—it is simply too important to our national and economic interests to allow to vanish into the mist.

Mr. BAUCUS. Mr. President, the U.S. merchant marine is facing an uncertain future. The U.S. commercial fleet is falling behind which diminishes its power to protect the United States' interests abroad and at home.

This is why I strongly support the Maritime Security Act of 1995, H.R. 1350. This bill would be the beginning of the rebuilding of the U.S. merchant marine fleet. It will establish a fleet of privately owned, active and military capable ships to help maintain the defense of the United States' interests. This will help maintain peace and protect cargo during times of crisis in the world. The fleet would also be updated because of the bylines in the bill which in itself would make the merchant marine stronger and allow it to continue being competitive in the world market.

This bill through the building of the fleet will create jobs in many sectors of the economy. The increase in the economy will range from the workers on the ship all the way to those manufacturing the parts. The bill will also change the way that the costs of running a ship in the United States are offset. This will encourage more owners to register their ships under the U.S. flag. From the changes, old outdated regulations will be cut, such as the way to replace older vessels. This in itself will help keep costs down and help generate profits and revenues for all.

This legislation is very much in our national interest. And I, therefore urge its passage.

Mr. McCAIN. Mr. President, I would like to take this opportunity to address a very serious concern about the pending legislation.

The bill authorizes the payment of $1 billion to American shipping companies over the next 10 years to subsidize a 47-vessel, commercially owned Maritime Security Fleet.

Operators of American-owned, flagged and manned merchant marine ships participating in the MSF will receive a yearly $2.1-million retainer to remain on call to provide sealift services in the time of national emergency.

I appreciate that this new approach replaces the current, more costly program, which pays American shipowners an ''operating differential subsidy'' to remain available in the event of conflict. Under the ODS program, the Federal Treasury pays carriers the added cost of operating a ship under the American flag rather than foreign flag—a yearly figure that has hovered around $4 million.

So, I agree this program improves on the current situation. But, Mr. President, I believe we can do much better. I hope all Senators would agree we have an obligation to fully meet our military needs as cost-effectively as possible. The fact that the new program is more cost-effective than the existing scheme does not relieve us of our obligation to ensure that we continue to pursue the most cost-effective approach to meet our needs.

Let me emphasize: I profoundly appreciate that sealift is essential to effectively meet our security obligations across the globe, and that we must assure access to dependable vessels and qualified crews who will remain loyal to our cause.

Nevertheless, I am concerned that we are embarking on a program that may be excessively expensive. One that is not based on reasonable contingency scenarios and one that does not take into account our access to vessels and manpower other than the domestic carriers qualified to participate in the MSF.

When I asked the Joint Chiefs of Staff the number of American commercial ships which are necessary to meet our readiness needs, I was informed that they do not have a definitive answer to that question. I am very dubious about authorizing a $1-billion program without such basic information.

It is important to point out that the 47-ship level is based on assumptions that the United States must fight two major wars simultaneously with no allied assistance.

Sealift planning, like all readiness programs, should be based on realistic scenarios. Failing to plan realistically wastes money and skews priorities.

For instance, I don't believe it is realistic to expect that, in a scenario in which the United States is fighting two major wars, we will not have access to any allied ships.

Second, according to the Bottom-Up Review, the United States has access to nearly 90 ships which are operated under a foreign flag but are owned by United States citizens or companies and can be called upon in time of war. Our planning scenarios do not take into consideration our access to those vessels, many of which might be militarily useful.

My overwhelming desire is that we have strong and prosperous domestic merchant marine. I would hope, however, that we could accomplish that goal without having to resort to expensive subsidy programs. I would prefer that we address the core problems that make it much more expensive and difficult to operate under the American flag and eliminate incentives for carriers to operate under foreign flag.

I have discussed this matter with the distinguished majority leader. He understands my concerns, and we have agreed to jointly request from the Pentagon an analysis to determine the number of ships needed for the MSF, taking into account reasonable planning scenarios and our needs, factoring in: our access to allied ships; the availability of U.S.-owned vessels operated under a foreign flag; the impact of the ongoing equipment prepositioning program; and the Pentagon's own sealift shipbuilding program. We should only subsidize those ships to provide services which far less costly alternatives cannot provide. We will request the Pentagon to report its findings no later than May 1, 1997.

Mr. LOTT. I first want to thank my colleague for his careful attention to this very important matter of national security and economic security. The Senator from Arizona has given our Nation's future maritime policy very thorough scrutiny, and he should be applauded for his efforts. Our colleague, Senator PRESSLER, has also

been in close consultation with me regarding maritime policy, and I wish to acknowledge his concern and his constructive efforts as well.

Let me begin by saying to the Senator from Arizona that I understand his concern and will join with him to request a report from the Department of Defense which describes under various reasonable and realistic scenarios the number of ships that should be included in the Maritime Security Fleet Program. I am firmly convinced that American-flag ships, crewed with loyal, American-citizen mariners, provide the most reliable, effective, and efficient means of meeting our Nation's sustainment sealift requirements and for providing the dedicated manpower to crew the Defense Department's organic surge vessels. At the same time, I agree it will be helpful for the Defense Department's report to also include information relating to DOD's reasonable expectations for access to allied ships; the availability of vessels operated under foreign flag but owned by U.S. interests; the impact of prepositioning programs; the need to crew the Ready Reserve Fleet; and the Pentagon's own shipbuilding program.

But I also want to emphasize that the Maritime Security Act is first and foremost about security. It is about protecting our national security, by ensuring that we will continue to have at our disposal a fleet of militarily useful U.S.-flag commercial vessels, and a trained, loyal American-citizen maritime workforce, to provide our military with reliable, global sustainment sealift capabilities. And it is about economic security, because only through maintaining a viable U.S.-flag merchant fleet in international commerce can we ensure fair ocean transportation rates for American businesses and consumers.

I want to assure the Senator that I understand his concerns with our Government's past maritime policies. That is why it is so important for me to make it clear that the Maritime Security Act is not business as usual. First, it will replace the existing Operating Differential Subsidy Program—at less than half the cost. Second, it is not an entitlement program. Only militarily useful vessels will be accepted into the Maritime Security Program; the vessel owners must apply to the Maritime Administration for admittance into the program. And third, for the first time ever, the military will have guaranteed access to the state-of-the-art land and sea intermodal logistical apparatus of the U.S.-flag commercial fleet. The people whose business it is to move cargo around the world will be actively assisting the Pentagon's transportation commanders, providing logistical know-how, intermodal equipment, and port facilities around the world.

The Maritime Security Program is the product of years of consultation among the military, the U.S. maritime community, and Congress. It is a well-designed, bipartisan solution to meeting our Nation's military sealift requirements for the next 10 years.

That said, I would like to briefly address some of my colleague's concerns with this legislation.

It is most significant that we are engaged in this debate at a time when the United States is deeply involved in military operations in different parts of the world—specifically, Bosnia and the Middle East—which demonstrates the wisdom of our top military planners who have sought to prepare contingency plans should the United States become involved in two major regional conflicts simultaneously. And this discussion also comes at a time when we have seen several of our closest friends in the Middle East and elsewhere refuse to cooperate with the United States in opposing Saddam Hussein's aggression.

The events of the past few weeks in Iraq demonstrate most clearly that the United States cannot, and should not, rely on other countries to support our military operations. If some of our closest allies cannot be counted upon to allow the U.S. military to overfly their airspace, or to use our own American military bases located on their soil to carry out our Commander-in-Chief's instructions, then how can we put the safety and well-being of our troops in the hands of foreign-flag ships and foreign crews?

Furthermore, in recent years many of the vessels once in our allies' fleets have flagged out to flags of convenience, or joined second registers, and most of their crews come from Third World nations. The report that the Senator from Arizona is proposing may reinforce the need for the Maritime Security Program, because the fleets of our allies are no longer what they once were.

Some of our Nation's most distinguished current and former military leaders have said, time and again, that we must have U.S.-flag commercial ships and American-citizen crews to effectively and reliably meet our sustainment sealift requirements. I agree with their assessment. We must make sure that our soldiers, sailors, marines, and airmen will not have to count on foreign-flag ships to bring their supplies and ammunition to a hostile shore. They have also urged us to support the U.S.-flag merchant marine, because they know that the Government-owned Ready Reserve Force—the Pentagon's rapid deployment fleet—relies absolutely on the availability of American-citizen merchant mariners to crew its ships. If there is no maritime employment, there will be no merchant mariners, and we will be forced to turn elsewhere.

Foreign-flag ships and foreign crews have proved unreliable in the past, they have turned around and fled in the face of danger. The U.S.-flag merchant marine, on the other hand, has served with distinction and honor since the Revolutionary War.

Additionally, if we put our trust in foreign-flag vessel operators to provide our sustainment sealift, we can count on them to do one thing—gouge us on shipping rates. During operations Desert Shield and Desert Storm, our Government paid $122 per ton for U.S.-flag ships to carry our military cargo. We had to pay foreign ships $172 per ton. If there is no U.S.-flag alternative to carry that cargo, I cannot imagine how that price could go anywhere but up.

It is true that there are foreign-flag ships under the effective control of U.S. citizens. But I would point out to my colleagues that some of these are vessels that are not useful to the military, and some of them have foreign crews upon which we cannot rely in a crisis or conflict. I would also point out that the Maritime Security Act would create a partnership between U.S.-flag vessel operators and military logistics planners—a partnership that is already underway, and that promotes joint planning and shared logistics capabilities. That, to me, is a much more preferable alternative to requisitioning a foreign-flag ship that happens to be owned by an American citizen, and then facing the task of refitting it, or forcing its owners to bring it to a U.S. port. The latter solution gets America a vessel at best, if all goes well. The MSP gets America an entire intermodal network that can carry a container from Kansas to Kuwait—under any circumstances, with complete reliability, and tracked every single step of the way.

Once again, I would like to thank my colleague for his input on this issue. I respect his recommendations and I welcome his assistance in this matter.

Mr. McCAIN. The majority leader agrees then that before any contracts are renewed for the second year of the program, the fleet will be adjusted to the number of ships identified by the Pentagon as truly necessary?

Mr. LOTT. As I noted earlier, the legislation we are considering subjects the Maritime Security Fleet Program to the annual appropriations process. Consequently, my colleague is correct in that we have guaranteed Congress the right to review each year the size and scope of the Maritime Security Fleet.

Mr. McCAIN. I might add the quadrennial defense review provides an excellent opportunity to examine and update our needs in the area of commercial sealift.

The majority leader is aware of a second concern I have about the pending legislation regarding $2.1 million per vessel subsidy.

While the $2.1 million figure is roughly half of the per ships ODS subsidy, the figure is still somewhat an arbitrary amount.

I believe that in acquiring necessary sealift services, we should apply the same mechanisms of competition that we employ in other areas of Federal procurement and acquisition.

I'm disappointed that the bill contains no competitive bid process. It may be that the number of available vessels to fully meet MSF requirements will exceed the number of MSP slots.

In that case, we should have some mechanism to test the market and acquire the needed services at the lowest cost to the taxpayer through some appropriate bidding procedure. Again, the majority leader and I have discussed this issue. We have agreed to request the Pentagon, the Department of Transportation, and the General Accounting Office to work together to craft an appropriate competitive bidding procedure. The Agencies will report their recommendation no later than April 1, 1997, so that the procedure can be employed prior to the renewal of any contracts in fiscal year 1998. Implementing the procedure will require statutory changes and the majority leader has pledged to assist in effecting this modification.

Mr. LOTT. My colleague is correct in that I am pleased to join with him to request the appropriate Federal agencies to determine whether a competitive bidding process is appropriate to the Maritime Security Program and, if so, to recommend procedures for Congress to consider. Such a determination and any recommendations should be submitted to us so that we can proceed accordingly for fiscal year 1998 appropriations.

In finally deciding on a competitive bidding process, however, we must not undermine the program in the interest of competition. If operators do not have some assurance of stability if they are doing a good job, they will not participate in the program and upgrade their vessels. In that event, we will be throwing our money away.

Mr. McCAIN. Mr. President, I would like to raise with the majority leader an additional question. Section 16(e) of the bill requires the Secretary of Defense to select nine ships in the DOD's Ready Reserve Fleet to receive regular maintenance and the bill directs the Secretary to geographically distribute the maintenance contracts. As we learned in the Gulf war, properly maintaining RRF vessels is critical to ensuring timely and efficient sealift capabilities.

Two issues are raised. First, we must make it absolutely clear that in selecting which Ready Reserve ships will be maintained, our national defense needs take priority over any secondary goal of geographically distributing the contracts.

Those ships best able to meet our sealift needs under the most likely contingency scenarios should be selected without any extraneous considerations.

Second, the goal of geographically spreading out the maintenance work must not take precedence over the Secretary's responsibility to obtain the highest quality services at the lowest price to the taxpayers. Quality and price must remain the primary consideration of where we choose to have maintenance work conducted. Would the majority leader comment on that?

Mr. LOTT. I appreciate the Senator's concerns. It is certainly our intent that the Secretary choose those ships that are most militarily useful no matter where they are ported. Furthermore, it is not our intention that efforts to geographically distribute RRF maintenance contracts take precedence over quality and cost considerations.

Mr. McCAIN. So the intent of the legislation is that the Government acquire the highest quality services at the lowest prices, irrespective of where the shipyard is located, and that the ships are selected for maintenance based on their military utility first and foremost.

Mr. LOTT. The Senator is correct. I appreciate the opportunity to make the clarification.

Mr. McCAIN. Finally, Mr. President, I would like to express my concern about a perhaps unintended impact of a provision of this legislation regarding Maritime Security Fleet carriers who also contract with the Federal Government to carry non-military cargo and are paid the U.S.-flag vessel contract price.

Such carriers will now be allowed to subcontract non-contingency related Government work to foreign-flag carriers as a replacement for U.S. vessels called up under the Maritime Security Fleet Program to serve in a time of conflict.

We must be sure that when such subcontracts are entered into, the U.S. carrier receives from the Federal Government only the amount it pays for the subcontracted services, not the amount the carrier would otherwise receive for providing the services directly. I think this is a very important point.

Mr. LOTT. I thank the Senator. It is certainly our intention that carriers do not automatically receive the U.S.-flag vessel contract price if an MSP carrier subcontracts its work to a foreign-flag vessel. It is our intent that the Federal Government be able to renegotiate such contracts, based on the cost of the replacement vessel. Again, I thank the Senator for making this clarification.

Mr. McCAIN. One final point: When the Pentagon analyzes our sea lift need they should work with the DOT to determine what the availability of American-flagged ships would be without the subsidy program. This is important information we must have before any contracts are renewed.

Mr. BURNS. I understand the benefits that the Maritime Security Program will bring to the United States. However, I am concerned that, because this program will be funded through yearly appropriations, folks will come looking for offsets every year, which might result in new tax proposals, user fee proposals, new duties, or other revenue raising mechanisms to be imposed upon the maritime industry at some point down the road.

This would be devastating to the export/import trade in my home State of Montana, as well as in other States, because a tonnage tax is particularly harmful to bulk commodities. Bulk commodities, as we all know, are highly price sensitive in the extremely competitive world market—an increase of a few cents a ton, caused by new taxes or fees, can make the difference between whether a foreign purchaser buys U.S. grain or grain from some other country.

I do not believe that exporters and importers should bear the burden of funding—through tonnage taxes or user fees—this program. On the contrary, because the program is designed to benefit the country as a whole, it should be funded from general receipts from the treasury, and, as I understand it, that is what this act does, is that correct?

Mr. STEVENS. That is correct. It is an annual appropriation.

Mr. BURNS. So this act does not, in any way, contemplate funding this program by imposing new taxes, user fees, or other revenue raising devices that would adversely affect the maritime industry customers like the good farmers in Montana.

Mr. STEVENS. That is correct.

Mr. NICKLES. I ask unanimous consent to speak as in morning business for not to exceed 15 minutes.

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

THE DISTRICT OF COLUMBIA WELFARE WAIVER

Mr. NICKLES. Mr. President, most of my colleagues are well aware that I have introduced legislation to rescind the portion of the DC welfare waiver that was recently enacted by President Clinton, because it went directly in opposition to the welfare bill that was passed overwhelmingly by this body and the House of Representatives and was signed by the President and is now the law of the land.

What a lot of people didn't know—I didn't know it—is that when the President signed the welfare reform bill that had 5-year time limits for everybody in America, where no longer could you get cash assistance for the rest of your life—and President Clinton campaigned on 5-year limits, on limitations of cash benefits, and also on work requirements—what I didn't know is that the District of Columbia was granted a waiver, which the President signed a couple of days before, that allowed the District of Columbia to have a 10-year waiver from time limits. So there is a 5-year limit in Michigan, a 5-year limit everywhere else in the country, but not for the District of Columbia, and there are no work requirements for the District of Columbia.

Frankly, I find that to be very deceitful and misleading by the administration—to go out and tell everybody,

hey, we have ended welfare as we know it—and every time I have heard that line, I applaud, because I know the present welfare system hasn't worked. It has hurt a lot of people who it tried to help. You don't need anymore evidence than to look at the District of Columbia. If anywhere is in need of welfare reform, it is the District of Columbia.

Why in the world would the President, at the same time he is signing welfare reform for the rest of the country, and bragging about it, getting great accolades—and it helps his rise in the polls and his move back toward the political center—suddenly decide to support a bill that had already passed Congress twice? He vetoed it the first time. The third time was a charm. He decided to sign it the third time. But at the same time he signs it, he exempts the District of Columbia from welfare reform, from time limits, and he exempts the District of Columbia from work requirements.

Unbelievable. Misleading. Deceitful. All of the above apply to President Clinton's position on welfare reform. Guess what? He got caught. I didn't know about the DC waiver when he signed the welfare bill. Somebody started to tell me about it, and I looked at it and I said, ''I can't believe it. I can't believe that the same administration that has said, yes, we are going to have real time limits, real limitations, real work requirements, would totally exempt the District of Columbia where 1 out of 6 people is now on welfare. That is so misleading, it is unbelievable.

Now, I am very pleased that the Department of Health and Human Services has withdrawn the waiver today. I have a letter that I will have inserted into the CONGRESSIONAL RECORD, signed by Mary Jo Bane, Assistant Secretary for Children and Families, stating that DC's waiver approval as it pertained to work requirements and time limits has been withdrawn by HHS.

Why did they decide to do this? I think because they got caught. I know the House was interested in legislation I introduced, with time limits that would apply to every State and the District of Columbia. We were going to pass that. I think the administration realized they were going to be embarrassed politically for trying to be on both sides of welfare reform, saying they are for welfare reform and, at the same time, exempting the District of Columbia. They realized that that wasn't politically defensible. They figured they better cut their losses and repeal the waiver. That is my guess.

It is interesting to note—and I will put this in the RECORD. I received this. This waiver that protects the District of Columbia from potential welfare reforms is getting a cool reception from some members of the city council. Linda Cropp, a DC council member who chairs the subcommittee on human services, announced Tuesday, at a September 30 hearing on the Federal waiver, that she was concerned that welfare waiver would make the city a ''welfare magnet'' since there are tougher standards in nearby jurisdictions.

She is exactly right. If you have tougher restrictions in Virginia and Maryland, and in every other State, but you have no restrictions and no limitations on welfare in the District of Columbia, it would be more than a welfare magnet, it would be receiving welfare recipients from all around. DC council member Harold Brazil said the waiver ''encourages dependency and ruins initiative.'' He is exactly right. I will enter that in the RECORD as well.

I have a couple of articles that dealt with this issue. One was an op ed piece that was in the Washington Post on September 15, 1996. It is entitled, ''Welfare as Usual in D.C.; The bureaucrats Conspire to Block Reforms,'' by Matthew Rees, as well as an op ed article by Naomi Lopes and Michael Tanner, entitled, ''Welfare Reform Bypass for DC,'' and one final op ed piece from Investor's Business Daily, ''Will Clinton Undo Welfare Reform?''

I ask unanimous consent that all of the material I have referenced be printed in the RECORD at this point.

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

[From the Washington Post, Sept. 15, 1996]

WELFARE AS USUAL IN D.C.; THE BUREAUCRATS CONSPIRED TO BLOCK REFORMS HERE

(By Matthew Rees)

It doesn't really matter how you measure the District's social conditions, because by nearly every standard they are appalling. The infant mortality rate is the highest in the nation, the percentage of the population receiving benefits through Aid to Families with Dependent Children (AFDC) is double the national average, more than one-third of the children are living in poverty and more than two-thirds are born to single mothers. With the District leading the nation in so many of the wrong categories, it could be an ideal place to gauge the effectiveness of the welfare bill President Clinton signed last month. Unfortunately, some last-minute collaboration between the District and the federal government means the nation's capital will be experiencing little in the way of genuine welfare reform.

To better understand why the prospects for reform are dim, you have to go back to Aug. 19. That was the day the Clinton administration's Department of Health and Human Services (HHS) issued a landmark announcement, telling the District it was free to make cash payments to welfare recipients for up to 10 years so long as the recipients ''made a good-faith effort to find employment.'' The announcement also declared that the District would be granted a relatively liberal definition of what constitutes ''work.'' According to top District officials, obtaining a driver's license, or attending self-esteem classes, would meet the work standard.

The net effect of this decision was obvious: It undermined the welfare legislation the president was about to sign. The District would have no real obligation to comply with the bill's five-year time limit on cash welfare benefits, and the requirement that 50 percent of each state's welfare caseload be engaged in strictly defined work activities by 2002 would be considerably watered down. ''If you wanted to send a message to the District that 'we're not serious about welfare reform,' a 10-year waiver was a pretty good way to do it,'' intones Mickey Kaus, a neoliberal commentator who's written extensively on welfare.

Some see nothing wrong with the HHS exemption, known as a ''waiver,'' because it gets the District out from under the new law's mandates and allows for local flexibility. That would be an attractive argument if the District had followed the lead of states with pioneering welfare reform projects, such as Michigan and Wisconsin. Unfortunately, just the opposite has been the case: The District maintains a welfare system that is viewed by many welfare experts as one of the country's least demanding, and least oriented toward reform. The results speak for themselves.

That's why allowing the District to opt out of major provisions of the new welfare law is such a grave error. Even when confronted with scenes straight out of Dickens, the District government has chosen to maintain the infrastructure supporting these conditions. The genius of the federal welfare bill is that while it gives states the freedom to craft their own public assistance programs, it also gives them positive and negative incentives to get people off welfare before five years and require them to go to work after two years. For the District to even come close to complying with these demands would require trying new and innovative approaches to old problems. With the waiver, however, it's unlikely such approaches will be considered.

The pro-waiver arguments rested on a simple belief: The District would suffocate under the new rules. It was, therefore, preferable to preserve the old ones. HHS spokeswoman Melissa Scolfield justified the waiver with the explanation that ''we are, of course, sympathetic to the special situation of the District.''

The shortcoming in this paternalistic approach is self evident. Given the option of doing nothing versus implementing reforms that result in some short-term pain for some greater long-term gain, it's all too easy to choose the former. The Clinton administration was in a position to remove this option by denying the waiver request. But far from discouraging it, top HHS officials saw the District as an opportunity to subvert Clinton's stated intentions of ending ''welfare as we know it.'' The waiver was originally needed because of the welfare reform legislation approved by Mayor Marion Barry in August 1995. Among other things, that legislation instituted a ''family cap,'' which meant mothers on welfare who had additional children would be denied increased AFDC payments. Teen mothers could also be required to attend school and live with a parent, guardian or adult relative. While these are steps in the right direction—though they appear to have substantial loopholes—they are not the sweeping reforms the District desperately needs. Nonetheless the District needed a waiver before it could proceed because parts of the legislation conflicted with federal law. Financial constraints meant the waiver application wasn't submitted to HHS for nearly a year, and it only happened then because President Clinton announced the he would sign the Republican welfare bill.

The president's July 31 announcement set off a flurry of activity at the upper echelons of HHS. Many of the agency's welfare analysts opposed Clinton's decision—three of them have resigned in protest—and they immediately set out to soften the bill's impact, on the District in particular. Top welfare officials in the District government were alerted to the consequences of the legislation by Wendell Primus—one of the HHS officials who has since resigned—and Robert Greenstein, an influential private welfare analyst.

HHS helped fill out the waiver and put it through the ''fast track'' approval process.

Most striking was the waiver's approval time. Republican governors such as Tommy Thompson of Wisconsin and John Engler of Michigan have been highly critical of waiver delays, charging that HHS bureaucrats have taken forever to approve changes that have already been approved by their state legislatures. Some have been held up for years, yet the District's sailed through in just 13 days. Mary Jo Bane, another of the HHS officials who resigned, was one of the lead staffers who decided that the D.C. waiver—and seven others—would be granted at the last minute.

This incurred the wrath of Bob Dole, the Republican presidential nominee and congressional Republicans such as Representative E. Clay Shaw, chairman of the congressional subcommittee responsible for welfare legislation. Senator Don Nickles, an Oklahoma Republican, has gone so far as to introduce legislation seeking to repeal the waiver, charging that the administration had approved it only because the president was ''trying to placate some liberal people who did not like him signing the welfare reform bill.'' The House Ways and Means Committee will also be holding hearings on the matter this week.

Certainly there are reasons for concern about how the District would fare under a more restrictive system. HHS officials were sure that the District wouldn't be able to meet the legislation's work participation rates. Stephen Fuller, a professor at George Mason University, points out that the District had a net loss of 15,000 jobs over the past 12 months and has lost 60,000 job over the previous five years. While there's been healthy employment growth in Northern Virginia over the past year (25,000 new jobs), nearly all of this growth has occurred outside the Beltway, and it's been in sectors such as engineering and business services.

Another factor is the District's unique demographics: Welfare populations tend to be concentrated in the inner cities, but each state's overall percentage of welfare recipients levels out once it's balanced against the lower percentage found in rural and suburban areas. The District has no suburbs within its rapidly declining population of 560,000—the only state with fewer people is Wyoming—and most of the recent population loss has come from those not on welfare. In other words, there's good reason to expect the proportion of District residents receiving AFDC—currently about 13 percent—to remain stable or increase.

Yet some of these concerns may be exaggerated. The work participation rates, for example, are nowhere near as demanding as many analysts have claimed. Indeed, the District—and all 50 states—have considerable flexibility in determining how they meet the rates. Because the law contains an array of loopholes, a state could have work participation as low as 20 percent—as opposed to the 50 percent rate spelled out in the legislation—and still be in full compliance.

When the federal welfare legislation is viewed in this light, the District's situation doesn't look so dire. The current work participation rate among District welfare recipients is 6 percent, and the District program is recognized as one of the most poorly run in the country. Once the new rules went into effect, as much as 10 percent of the caseload could be expected to stop asking for welfare (studies have shown this has happened elsewhere, probably because some portion of welfare recipients are already working in underground jobs). And at least some of the rest would presumably respond to the threat of having their benefits cut off and go to work. But extending the waiver for such a long period of time ensures only that the status quo will be preserved.

Or, it could get worse. One long-term effect of the waiver could be that it attracts the poor of nearby states such as Virginia and Maryland, which do have tough reforms in place. In Virginia, for example, welfare recipients must go to work within 90 days of beginning to receive public assistance.

''We want to make sure the District doesn't become a welfare magnet,'' says D.C. Council member Linda W. Cropp (D-At Large).

The fear grows out of the District's past experience with providing relatively generous benefits to the homeless, only to see the homeless population rapidly expand. The situation with welfare is similar: The District's 1994 AFDC benefits were $428 per month for a parent and two children (the 18th highest when compared to the 50 states). This was $55 a month higher than in Maryland, and $137 a month higher than in Virginia, according to a recent study by the Washington-based Population Reference Bureau. When these figures are mixed with the generous time limits on the receipt of cash benefits, and liberal regulations on work, the magnet effect begins to look plausible.

District and HHS officials emphasize there was nothing extraordinary about the waiver, which they claim was similar to those granted other states, such as Wisconsin. But the Wisconsin waiver is part of a strongly reform-oriented plan, where the District's is not. The District will allow welfare recipients to continue receiving cash benefits for a decade or more, with minimal threat of being cut off. That guarantees the District will have little or no real incentive to begin the welfare-to-work experiments found in so many other states.

At a time when the District's social conditions so clearly scream out for major changes, it seems tragically misguided to declare that the nation's capital will be not the first place where there's welfare reform, but the last.

[Briefs from Washington]

WASHINGTON.—A waiver that protects the District of Columbia from stringent welfare reforms is getting a cool reception from some members of the city council.

Council member Linda Cropp, who chairs the committee on human services, announced on Tuesday a September 30 hearing on the Federal waiver.

Cropp said she was concerned the waiver will make the city a ''welfare magnet'' since there are tougher standards in nearby jurisdictions.

Under reform legislation passed by Congress, most welfare recipients who do not find work cannot continue to receive benefits for more than five years.

The waiver backed by President Clinton and Mayor Marion Barry gives the city a 10-year exemption.

Councilman Harold Brazil said the waiver encourages dependency and ''ruins initiative.''

The council members aren't alone. Some Republicans in Congress have already voiced their opposition to the waiver.

At a hearing Tuesday before the Human Resources subcommittee of the House Ways and Means Committee, Congressman E. Clay Shaw Jr., R-Fla., said if the city plans to use the waiver to exempt more than 20 percent of its current caseload, he will move to repeal the exemption.

Democrats countered by saying Idaho, Michigan, Massachusetts and Washington state have all been granted similar exemptions.

WILL CLINTON UNDO WELFARE REFORM?

Having shifted right by signing the Republican welfare-reform bill, President Clinton is now doing all he can to assure the left that he will ''correct'' the new law. Machiavelli would be proud.

We can see why Clinton would like political cover on welfare: the left is dead certain the new law will cause untold suffering. And the media seem to feel obliged to give heavy play to anything—instant studies, predictable resignations—that feeds those fears.

Why is the hue and cry so much greater after the fact? Some on the left no doubt were surprised when the president signed the law. Others may think the suffering they expect to see is necessary, but still feel guilty about it. Now that it's too late to change matters, they can safely stand on principle—and demonstrate their purity, too.

Such mixed motives are natural to any large group. Much stranger are the conflicting signals that come from a single man: our president.

Clinton has already promised that, if he can't get the members of Congress to revise the law in the ways he wants, he'll enforce it as if they had.

Thus, he signed a bill into law, but he's actually going to implement something else. It's an incredible bait-and-switch, even for Bill Clinton.

But this is just the culmination of his welfare politics. In 1992, ''New Democrat'' Clinton vowed to ''end welfare as we know it.'' But in 1993 and 1994, when his own Democrats ran Congress, he dropped the ball.

After voters handed Congress to Republicans, the GOP called Clinton's bluff by sending him a welfare-reform bill not wholly unlike the one he just signed. Clinton vetoed it. Congress sent up another: He vetoed that, too.

Enter '96, a campaign year. Republicans drafted a third welfare-reform bill. Bob Dole prepared to bash Clinton for delivering three vetoes where he had promised reform. So the president finally, reluctantly, signed.

As he's done so often before, Clinton thus signaled to the voters that he'd learned his ways, that he'd moved permanently to the right. Yet he knows full well that he'll turn left after the election. With welfare reform, though, he's signaling left at the same time. Clinton has his hazard lights on.

The welfare backflip exposes what's fundamentally wrong with this White House: It governs by fraud. What's more, it has no shame.

Take Vice President Al Gore's comments on a recent Sunday talk show:

The vice president admitted the welfare system is ''cruel'' and needs to be changed. Yet, seconds later, he pointed out that the welfare act's changes do not go into effect until July 1, 1997—leaving plenty of time for Clinton and a Democrat Congress to scrap the law.

And if Republicans maintain control, Gore added, Clinton would use the line-item veto to fix things Clinton and liberals don't like about the bill.

What things are those? Ask the first lady. Interviewed in Chicago, she said she didn't like the limits on food stamps or on payouts to legal immigrants. She said she'll speak out next year to ''correct'' the welfare-reform bill that her husband signed.

If the bill was so flawed, why sign it in the first place? No one held a gun to the president's head. Why not work to fix it, and sign it later?

The questions are obvious. But such logic doesn't work with Clinton. Stand on principle? Avoid shame? This politician never shoots straight: Everything is a bank-shot, or worse.

It's no wonder polls show a majority of us do not trust our president. How can we? Not only can we not trust him to do what he says. We can't even trust him to do what he

does, because he undoes what he does. Next thing, he'll be telling us that's not what he did.

Accepting the GOP nomination, Bob Dole spoke scornfully of leaders ''unwilling to risk the truth, to speak without calculation.'' he went on: ''All things flow from doing what is right.''

Reforming welfare is right. Now we just need a leader who will do what is right.

[From the Washington Times]

WELFARE REFORM BYPASS FOR D.C.

(By Naomi Lopez/Michael Tanner)

''Welfare as we know it'' has been ended, right? Well, not in the District of Columbia. Even as President Clinton was signing the new welfare reform bill with one hand, with the other he was simultaneously granting the District, a 10-year waiver exempting it from most of the requirements in the new welfare bill, including time-limited assistance and certain work requirements.

The waiver for D.C.'s ''Project on Work, Employment, and Responsibility'' (POWER), submitted in early August, was rushed through the Department of Health and Human Services' ''fast track'' waiver approval process just three days before Mr. Clinton signed welfare reform into law. As a result, welfare reform will have only a minimal impact on welfare dependency in the District and an even smaller impact on D.C. welfare spending.

For example, the welfare reform bill calls for a five-year lifetime limit on welfare benefits. Not under the District's waiver; there would be no cutoff of benefits for any D.C. resident who could not find a job that pays more than welfare benefits. The most unfortunate aspect of this exemption is that the District, aided and abetted by the Clinton administration, is sending a message that the rules will not apply to its residents and that cash assistance is still an entitlement.

While one of the big selling points of the new welfare reform law was its requirement that welfare recipients work in exchange for benefits, the District's waiver defines work activities so liberally as to be meaningless. Attending a job-training program or engaging in job search (i.e., looking for work) will be enough to satisfy the District's work requirement. Thus, welfare in the District will remain pretty much as we know it. Yet few welfare systems are as badly in need of reform.

Despite the fact that 1 in 6 District residents are on welfare, more than a third of District children still live in poverty. Out-of-wedlock births have reached alarming proportions. Of the District's more than 50,000 children in welfare families, 83 percent were born out of wedlock and 10 percent come from broken homes. Only a mere 1 percent of Aid to Families with Dependent Children (AFDC) households contain two parents. * * *

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Despite the fact that 1 in 6 District residents are on welfare, more than a third of District children still live in poverty. Out-of-wedlock births have reached alarming proportions. Of the District's more than 50,000 children in welfare families, 83 percent were born out of wedlock and 10 percent come from broken homes. Only a mere 1 percent of Aid to Families with Dependent Children (AFDC) households contain two parents. Long-term dependency is increasingly the norm as is second- and third-generation welfare dependence.

D.C. has followed the liberal route of trying to solve its welfare problems with money. On a per capita basis, the District has the highest federal social welfare program spending in the nation. Of the 50 states and District, the District ranks:

First in per capita federal spending on AFDC, food stamps, Medicaid, housing assistance, job training under the Job Training Partnership Act, and community development.

Second on Medicare and state employment services.

Fourth on compensatory education for disadvantaged children.

Fifth on Supplemental Security Income and the social service block grant.

Twelfth on child nutrition programs.

The value of the full package of welfare benefits in the District (including cash assistance, food stamps and nutrition assistance, housing assistance, Medicaid and so on) totals more than $22,745 per year for a single mother with two children. Because welfare benefits are tax-free, a working person would have to earn nearly $14 per hour to take home an equivalent paycheck. Indeed, the District's welfare package is the fifth-most-generous in the nation. Is it any wonder that so many recipients make the rational choice of welfare over work?

The welfare reform bill fell far short of what is necessary to truly end welfare as we know it. But the District, with the complicity of the Clinton administration, seems unwilling to make any change in the status quo.

The District government is setting up a social time bomb that the rest of the nation will, most likely, be responsible for defusing. In 10 years, the District's waiver will expire only after it will have promoted and perpetuated a failed and reckless system. And at that time, the federal government will be called upon to bail out the District again. By that time, the damage may be irreversible.

Mr. NICKLES. Mr. President, the Washington Post today had an editorial that was critical of me. Basically, it said, wait a minute, we granted waivers to other areas. Why would you try and take away parts of the waiver—they actually said we were repealing the entire waiver. They were wrong. Why would you do this just for the District of Columbia if not for other areas?

The legislation I introduced, frankly, did not apply just to the District of Columbia. It says a 5-year time limit applies to everybody in the country. There won't be a single waiver to exempt someone from the 5-year limit. That was the guts of the bill. There would not be a waiver that would undo work requirements. Those were the two major elements of the bill. It just so happens that the District of Columbia was the only waiver request that went directly away from welfare reform.

There are 30 States, plus the District of Columbia, who have received welfare waivers. Guess what? All 30, except for the District of Columbia, moved toward work requirements, toward time limits—most of which had shorter time limits than 5 years. But not the District of Columbia; it was a waiver away from welfare reform, a waiver for the status quo, and it was a waiver, basically, where President Clinton and the Clinton administration was saying: District of Columbia, you are exempt from welfare reform. We don't think you need to do it.

I am pleased I finally hear that HHS has rescinded the order. I believe they did it because it is the political season, and they knew they were going to take some heat. They made a serious mistake. But we have to make sure they are not just postponing it for 2 months. We want to make absolutely sure that there is no way that sometime after the election, in November or December, they would go ahead and grant a 10-year waiver. We want to make sure that is not up their sleeve. If we have to pass legislation to make sure of that, we will do it. There is no reason in the world why we would work as hard as we did for real welfare reform for everybody in the country—to end cash assistance as an open-ended entitlement, a perpetual way of living—and not do it in the District of Columbia.

I might mention, Mr. President, I think there are some games that were played. This waiver request by the Clinton administration was granted in 14 days. I might tell my colleagues that some areas have had waiver requests pending before the administration for months, some for years, some for 2 years, all of which were trying to have a waiver from the old law, which would not allow time limits. Most of the waivers that States wanted to enact, like Wisconsin, Illinois, Oklahoma, and others, wanted to have time limits and work requirements. They wanted people to get off welfare and go to work. They wanted to have learnfare requirements where children of welfare recipients would be required to go to school, like every other child. If they didn't have their kids in school, they would lose welfare payments; or they have to make sure their kids receive vaccinations, or they might receive penalties.

States have had great initiatives. So this administration has been very slow on many of those States. As a matter of fact, the President, in May, made a nationwide radio address complimenting Wisconsin on their welfare reform and talked about granting their waiver, and this is great. Guess what? He hasn't granted the Wisconsin waiver yet. That was months ago. But he granted the DC waiver in 14 days. That was granted right before signing the welfare reform bill. And the DC waiver had no time limits. It has a 10-year exemption. How is that fair to the people in New Hampshire? They are going to have a limitation on how long they can receive cash payments. The State of Hawaii had a waiver request granted by the administration in just the last couple of months, since signing the bill. But the State of Hawaii had a 5-year limit. Indiana got a waiver request signed, but it was a 2-year limit, not a 5-year limit. But the District of Columbia comes up and, in 14 days—unbelievable speed for the Department of

Health Human Services—they get a waiver signed by the President that says you are going to have a 10-year exemption—10 years, no limit, and no work requirement. What a sham. What a shame. What a shame that this President and this administration would be so deceitful as to try to pull that over on the American people.

I am pleased that the Department of Health and Human Services realized their mistake. My guess is that the political people said, ''Hey. This could come back to hurt us, or haunt us. Therefore, let us withdraw it.''

I am pleased that the District of Columbia City Council, which never requested a 10-year waiver on work requirements, never requested a 10-year waiver on lifetime benefits—I am pleased that some of the council members realized that this is terrible. This would be a disaster for the District of Columbia. So I am pleased that evidently not only are they going to have some hearings but some Members think it would be a serious mistake, and they don't want the District of Columbia to become the welfare capital of the United States.

So I am pleased with the announcement of HHS today. I think the administration got caught in trying to have it both ways on welfare reform. To say ''Yes, we need welfare reform with time limits and work requirements'' while at the same time trying to undo welfare reform—to exempt work requirements, to exempt time limits—they should be ashamed of themselves. I am pleased they reversed themselves for about the fourth time on this issue.

I thank the Chair. I yield the floor.

MARITIME SECURITY ACT

The Senate resumed the consideration of the bill.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Hawaii.

Mr. INOUYE. What is the pending business, Mr. President?

The PRESIDING OFFICER. H.R. 1350 is the pending business.

Mr. INOUYE. Mr. President, I just wanted to advise my colleagues that we have not received any requests to submit amendments on this side. Do we have any amendments pending at this moment?

The PRESIDING OFFICER. There are no amendments pending that the Chair is aware of.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. INOUYE. Yes.

Mr. STEVENS. Mr. President, the Senator from Iowa is conferring off the floor concerning amendments that he may offer. So I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate stand in recess subject to the call of the Chair. I will state to the Chair it will be about 30 minutes.

There being no objection, at 6:27 p.m., the Senate recessed subject to the call of the Chair.

The Senate reassembled at 7:08 p.m., when called to order by the Presiding Officer (Mr. SANTORUM).

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, what is the pending business?

The PRESIDING OFFICER. H.R. 1350.

Mr. MCCONNELL. I ask unanimous consent to proceed for 8 minutes as in morning business.

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

FEDERAL WILDLIFE REFUGES

Mr. MCCONNELL. Mr. President, in the United States, there are 571 Federal wildlife refuges. There is only one State that doesn't have any, and that, unfortunately, is the Commonwealth of Kentucky.

To look at a couple of States that are comparable in the size of population to my State, Oklahoma has 9, Louisiana has 16, Alabama has 7.

Mr. President, it is pretty clear that Kentucky, when it comes to Federal wildlife refuges, has not been treated properly down through the years. I have been working on this issue since 1989. I introduced the first bill to create the first Federal wildlife refuge in Kentucky. It is not easy to find appropriate spots in the east. Many of our friends out west have more public land than they want. But in the east, it is not so.

We isolated—''we,'' working with the Kentucky Fish and Wildlife Service and the U.S. Fish and Wildlife Service—identified an area in Kentucky that makes sense. I introduced a bill which was reported out of the Environment and Public Works committee to authorize this refuge. It is my hope that the Interior appropriations bill will include both the authorization and appropriation to begin the acquisition.

Let me just say that no land will be condemned under this proposal. Only land will be purchased from willing sellers. That is a little bit different from the way some Federal wildlife refuges have been created. As a result of that, there is very minor opposition in our State to the creation of our first Federal wildlife refuge.

My dear colleague from Kentucky earlier today took to the floor to point out that this was not needed, and that we had another facility called the Land Between the Lakes—which is operated by the Tennessee Valley Authority; it is a wonderful facility; a wonderful place—but that it really needed the money; and, if he were given the opportunity to do so, would offer an amendment to take the money away from the Federal wildlife refuge and give it to the Land Between the Lakes.

Mr. President, the Land Between the Lakes has already been given all the money they asked for. I am on the appropriations Subcommittee of Energy and Water which receives the request. We gave them all they asked for. They may ask for more someplace down the road, and it may be appropriate to give them more someplace down the road. But I do not think, particularly in these tight times, that it makes sense to throw money at a group, or a project, or an activity that is not asking for it.

So, if this amendment is offered at some subsequent time, obviously I am going to oppose it. I find it somewhat astonishing that my colleague would find it inappropriate for Kentucky to finally—it came into the Union in 1792—to finally have a Federal wildlife refuge.

It was suggested by my colleague that this was an incredibly controversial proposal. In fact, it is just the opposite. There are few who may oppose it, although if they own land in the area and don't want to sell they don't have to. And a wildlife refuge is a good neighbor. If you do not want to sell, it is a great neighbor to have right next to you. There is nothing that would keep any landowner in this area from keeping this property forever in this proposal.

There are 57 conservation groups and sportsmen from Kentucky who support this.

I ask unanimous consent that it be printed in the RECORD, Mr. President.

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

ORGANIZATIONS THAT HAVE ENDORSED THE CREATION OF THE KENTUCKY NATIONAL WILDLIFE REFUGE

Appalachia Science in the Public Interest.
Association of Chenoweth Run Environmentalists.
Audubon Society of Kentucky.
Bell County Beautification Association.
Berea College Biology Club.
Brushy Fork Water Watch.
Community Farm Alliance.
Daviess County Audubon Society & Kentucky Ornithological Society.
Department of Parks.
Eastern Kentucky University Wildlife Society.
Elkhorn Land & Historic Trust Inc.
Floyds Fork Environmental Association.
Friends of Mill Creek.
Gun Powder Creek Water Watch.
Harlan County Clean Community Association.
Hart County Environmental Group.
Highlands Group Cumberland Chapter Sierra Club.
Kentucky Academy of Science.
Kentucky Association for Environmental Education.
Kentucky Audubon Council.
Kentucky Citizens Accountability Project.
Kentucky Conservation Committee.

Kentucky Fish & Wildlife Education & Resource Foundation.
Kentucky Houndsmen Association.
Kentucky Native Plant Society.
Kentucky Society of Natural History.
Kentucky State Nature Preserve Commission.
Lake Cumberland Water Watch.
Land & Nature Trust of the Bluegrass.
League of Kentucky Sportsman.
League of Women Voters of Kentucky.
Leslie County KAB System.
Little River Audubon Society.
Louisville Audobon Society.
Louisville Chapter 476 of Trout Unlimited.
Louisville Nature Center.
Madison County Clean Community Committee.
Madison Environment.
Mall Interiors.
Midway Area Environmental Committee.
National Wild Turkey Federation.
Oldham Community Center & Nature Preserve, Inc.
Peterson's Fault Farm.
Pleasant Hill Recreation Association.
Pride Inc.
Quail Unlimited.
Rockcastle River Rebirth.
Rocky Mountain Elk Foundation.
Ruddles Mill Conservation Project.
Scenic Kentucky.
Shelby Clean Community Program.
Shelby County Clean Community Council.
Sierra Club Cumberland Chapter.
Steve & Janet Kistler.
The Nature Conservancy/Kentucky Chapter.
The Wildlife Connection.
Trout Unlimited/KYOUA Chapter.

Mr. McCONNELL. Mr. President, my colleague made reference to the Rocky Mountain Elk Foundation, and said that was a bunch of ''foreigners'' and didn't have a presence in Kentucky. He might want to know that there are several thousand supporters of this group in Kentucky. Just because it is called the Rocky Mountain Elk Foundation does not mean it does not have a lot of Kentucky members. Mr. President, I have a letter from the Kentucky State chairman of the Rocky Mountain Elk Foundation.

I ask unanimous consent that it be printed in the RECORD.

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

ROCKY MOUNTAIN ELK FOUNDATION,
Bowling Green, KY, March 19, 1996.

Senator MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: Please accept this letter as my support of your intention to propose legislation that would establish and fund the Clark's River National Wildlife Refuge in Western Kentucky. I sincerely appreciate your efforts to establish this area as Kentucky's first National Wildlife Refuge.

I am the Kentucky State Chairman for the Rocky Mountain Elk Foundation. The Rocky Mountain Elk Foundation is one of the cooperating partners that have helped to establish the Elk and Bison Prairie at TVA's Land Between the Lakes. Additionally, I am the Co-Chairman for the fund raising committee charged with the effort of raising $244,000 for the first phases of this very important project at Land Between the Lakes. I am very happy to report to you that this project is not even open to the public yet and we have already raised $222,000 toward our goal. However, I certainly see a distinction and a need for you to create Kentucky's first National Wildlife Refuge at the East Fork of the Clark's River. As you are aware, the NWR site evaluation team determined that not only did this site best fit the Untied States Fish and Wildlife Services biological and feasibility criteria, this area was deemed most worthy of perpetual protection from degradation and development that would be afforded by establishment of a refuge.

I am certainly one of the strongest supporters of LBL and am aware of the budget problems that this agency faces. I can assure you, as State Chairman for the RMEF that I donate hundreds of hours of my time in support of LBL and the Elk and Bison Prairie project. The bottom line is both of these projects are very worthy projects and both of these projects are worthy of your support, but in my opinion, the creation of Kentucky's first National Wildlife Refuge should be established at the Clark's River.

I would be happy to discuss this issue with you personally if you should have any other questions.

Working for Wildlife.

Sincerely,

THOMAS M. BAKER,
Kentucky State Chairman.

Mr. McCONNELL. Mr. President, in addition to that we worked with the Kentucky Farm Bureau. They typically don't endorse these kinds of projects. But what is interesting to note is that they chose not to oppose this one, and the reason they chose not to is because we worked with them on the ''willing seller provision'' so that nobody involved in agriculture in this area would be required to sell. It is very important to me that we protect farmers property rights.

Mr. President, with regard to the Land Between the Lakes, which my colleague would give more funding than they asked for by taking it away from the Federal wildlife refuge, I would like to place in the RECORD a letter from the chairman of the Tennessee Valley Authority, Mr. Craven Crowell, who said, ''I want to express my sincere appreciation for your support for TVA's fiscal year 1997 budget. You played a significant role in achieving our goals.''

In other words, with regard to LBL, TVA got everything it wanted.

In addition to that, Mr. President, I would like to also have printed in the RECORD a letter I received yesterday from William Kennoy, who is the Director of the Tennessee Valley Authority, and a Kentuckian, who also confirms that the Land Between the Lakes operated by TVA was given all they asked for in this year's budget.

I ask unanimous consent that it, along with the letters from Mr. Crowell and the Kentucky Farm Bureau, be printed in the RECORD.

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

KENTUCKY FARM
BUREAU FEDERATION
Louisville, KY, April 20, 1996.

Mr. DON OVERBY,
President, Calloway County Farm Bureau, Almo, KY.

DEAR DONNIE: This is to acknowledge and thank you and Calloway County for your attendance and participation in the Measure the Candidate training session held April 8. Also, I wanted to reply to your question on the proposed Clarks River National Wildlife Refuge.

As I had mentioned, Laura Knoth has been working diligently with Senator McConnell's staff to ensure Farm Bureau's policy is contained in the language of the proposed legislation. Specifically, language which protects farmer's property rights. The following provisions, your Farm bureau policy, have been successfully integrated into S. 1611, ''The Kentucky National Wildlife Refuge Authorization Act:''

Section 2:6 . . . the refuge should not restrict agricultural and silvicultural activities on private lands.

Section 6C(I) no activity carried out in the refuge will result in the obstruction of the flow of water so as to affect any private land adjacent to the refuge; and

(ii) no buffer zone regulating any land use (other than hunting and fishing) is established.

On March 28, the Environment and Public Works Committee passed S. 1611 by unanimous consent. As of this date, it has not been placed on the Senate calendar to receive floor action.

Donnie, I have also enclosed for your review a copy of a letter from Tom Bennett, Commissioner, Kentucky Department of Fish and Wildlife Resources, which outlines significant and unique criteria the Clarks River possesses for the proposed wildlife refuge. I am hopeful that his information is helpful. If you have any further questions, please do not hesitate to contact Laura, or myself.

Sincerely,

TIMOTHY A. CANSLER,
Director, National Affairs and Political Education.

TENNESSEE VALLEY AUTHORITY,
Knoxville, TN, September 13, 1996.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR: I want to express my sincere appreciation for your support of TVA's fiscal year 1997 budget. You played a significant role in achieving our goals.

We will wisely manage these funds for the benefit of the people of the Tennessee Valley. We hope you will be pleased with the results.

Thank you for being a good friend to TVA.

With warm regards,

CRAVEN CROWELL.

TENNESSEE VALLEY AUTHORITY,
Knoxville, TN, September 18, 1996.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: Yesterday an article appeared in the Paducah Sun referring to a letter I sent Congressman Whitfield on funding for LBL. The letter was inadvertently faxed without my authorization or signature.

The level of funding provided in the Energy and Water Conference report will fully meet TVA and LBL requirements that we have requested of Congress.

I am in the process of preparing an inventory of the needs of LBL's infrastructure for the next few years but this is not yet complete and we have, therefore, made no request to Congress for this future funding.

I understand TVA Chairman Crowell recently wrote you expressing his appreciation for your support for TVA's Budget and noted the ''significant role you played in achieving our goals.'' You have been a strong supporter of TVA and we have no desire to jeopardize that relationship because of inaccurate comments through miscommunications. We appreciate your dedication to LBL over the years.

Sincerely,

WILLIAM H. KENNOY, P.E.

Mr. McCONNELL. Mr. President, in conclusion, let me say that it is unusual, to say the least, for two Senators from the same State to differ on projects of this matter. I am sorry that seems to be the case here. But let me say in conclusion and in summary that there are 571 Federal wildlife refuges in the Nation but not one in Kentucky. We are long overdue for our first Federal wildlife refuge. This proposal was developed over a number of years in cooperation with the Kentucky Fish and Wildlife Service, and over 57 sportsmen and conservation groups from across Kentucky feel that this great need should be met.

No land under this proposal will be taken from anyone—only from willing sellers. It is my hope, Mr. President, that this proposal authorizing and appropriating some money to begin Kentucky's first Federal wildlife refuge will be a part of the Interior appropriations bill.

I hope my colleague will not offer an amendment to strip out the money provided—whatever money is ultimately provided—for this first Federal wildlife refuge in order to give it to the Tennessee Valley Authority which says it does not need it.

With that, Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. LOTT. I know there are a number of Members who are waiting and wondering what the schedule might be for the remainder of the evening. We are working very aggressively to try to come to a unanimous consent agreement that would allow us to go forward with amendments and debate on those amendments tonight and complete those amendments tonight, if we could get this agreement worked out, with the votes stacked beginning at 10 o'clock on Friday morning.

We are still working with Members on both sides. I think it is, frankly, urgent that we go ahead and get this agreement entered into momentarily. We are very close to that. But as usual, we are trying to check with all the Senators who are interested in the subject matter to see if we can get that worked out.

In the meantime, Mr. President, before I do a statement, let me again observe the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—S. 1174

Mr. SMITH. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of S. 1174, regarding the Lamprey River in New Hampshire, the bill be advanced to third reading and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. INOUYE. Mr. President, speaking on behalf of the leader on our side, I reserve the right to object.

I wonder if the Senator from New Hampshire would amend his request to include the following: That the Senate proceed to the immediate consideration of Calendar No. 599, S. 608, that the committee amendments be agreed to, the bill be read a third time, passed, and the motion to reconsider be laid on the table?

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, on behalf of the leadership, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SMITH. Mr. President, do I still have the floor?

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH. Mr. President, I do not know about the other bill that was attempted to be added to my request for consideration of a bill, but I would just like my colleagues to know that this bill, S. 1174, passed unanimously out of committee with bipartisan support. It was placed on the calendar by the majority leader. It has the unanimous support of everyone on the Republican side. It has the support of my State of New Hampshire. It has the support of the individuals who helped to put this river into the wild and scenic bill. It is 12 miles of a beautiful river that we now preserve under the National Wild and Scenic Rivers Act, if this legislation passes.

I find it outrageous that, for whatever reasons, political or otherwise, a piece of legislation that has that much support would be objected to; tying it, linking it to some other legislation. I think the other legislation can rise or fall on its own merit. This is a good bill.

Mr. President, on August 10, 1995, Senator GREGG and I introduced S. 1174, the Lamprey Wild and Scenic River Act, to designate a segment of the Lamprey River in New Hampshire as part of the National Wild and Scenic Rivers System. Since introduction, a hearing was held on the legislation in the Energy and Natural Resources Committee, and soon thereafter, as I said, the bill was reported unanimously out of the committee.

I introduced this legislation after receiving the vote of support from each of the affected communities along this segment of the River. Ordinarily I do not encourage Federal ownership and control of State or private property, however, this legislation is different.

The process for developing this legislation was different for two reasons. First, the legislation was developed from the bottom up, from environmentally conscious communities and local people. It is not a Washington initiative. Second, the bill is drafted to allow for maximum control at the local level in making land use and conservation decisions.

The history of this legislation goes back almost 5 years when Senator Rudman and I introduced the Lamprey River study bill in February 1991, which was subsequently signed into law by President Bush later that year. Once the National Park Service determined the Lamprey River's eligibility for the National Wild and Scenic Rivers System, a local advisory committee was formed to work with local communities, landowners, the National Park Service and New Hampshire's environment department in preparing a comprehensive management plan. This management plan was completed in January 1995.

The Lamprey River Management Plan was subsequently endorsed by the advisory committee as well as the local governments affected by this designation. The primary criteria for my sponsorship of this legislation was the support of the local communities. If the affected towns did not vote in favor of designation, I would not be here today seeking support for this legislation.

In fact, the town of Epping had expressed some reservation about designating the segment of the Lamprey which runs through the town and, out of respect for their concerns, the bill excludes that segment of the river. However, that segment was studied and found to be eligible, so we have included a section in our bill that would allow the town of Epping to be involved in the implementation of the management plan and, upon the town's request, be considered for future designation.

The Lamprey River is well deserving of this designation for a number of reasons. Not only is the river listed on the 1982 National Park Service's inventory of outstanding rivers, but it has also been recognized by the State of New Hampshire as the ''most important coastal river for anadromous fish in the State.'' Herring, Shad and Salmon are among the anadromous species found in the river. In fact, New Hampshire fishing maps describe the Lamprey as ''a truly exceptional river offering a vast variety of fishing. It contains every type of stream and river fish you could expect to find in New England.''

The Lamprey is approximately 60 miles in length and serves as the major

tributary for the Great Bay, which is part of the National Estuarine Research Reserve System. The Great Bay Refuge is also nearby, which was established several years ago following the closure of Pease Air Force Base. The preservation of the Lamprey is a significant component to protecting this entire ecosystem.

The 11.5-mile segment, as proposed by our legislation, has been the focus of local protection efforts for many years. The towns of Lee, Durham, and Newmarket, local conservationists, the State government, as well as the congressional delegation have all come together in support of this legislation. I believe the management philosophy adopted by the Advisory Committee best articulates our goals for this legislation:

> . . . management of the river must strike a balance among desires to protect the river as an ecosystem, maintain the river for legitimate community use, and protect the interests and property rights of those who own its shorelands.

I just cannot understand why, at this hour, with all the work and all of the background, that the other side would play politics on this issue. It is an outrage. I think everybody should know it. I hope the people in New Hampshire hear me and know it, that this very significant piece of environmental legislation is being deliberately held up for whatever purposes. I will leave people to decide.

But I do want to recognize two members of the Lamprey River Advisory Committee, Judith Spang of Durham, NH, and Richard Wellington of Lee, NH, who worked so hard and so long to pass this legislation.

I might say to them, I apologize to you for the outrage that is being committed here on the floor of the Senate tonight. This is not the way we should do business in the U.S. Senate. This is an environmentally sound piece of legislation. It has the support of the communities, support of the State, support of every single Republican on my side, the support of most Democrats on the other side, and it has been passed out of the committee unanimously. And here it is held up deliberately.

I find it an outrage. I do not know what I can do about it. Obviously, Senators have rights and I respect those rights. They have a right to object. But, having the right to object and objecting for good reason are two different things. There should be a good reason to object. There is no good reason to object to a piece of legislation that has unanimous support.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MARITIME SECURITY ACT

The Senate continued with the consideration of the bill.

Mr. LOTT. Mr. President, we have been working very hard to get a unanimous consent agreement on a major piece of legislation, maritime security. It, I think, is urgent we get this legislation passed. It has bipartisan support. It is a major move in making sure that we have an American merchant marine. It also actually would save money. We have worked very hard to accommodate all of the interests and clear up some concerns about this major legislation.

I had hoped we could get an agreement tonight that would allow us to complete action with a series of votes tomorrow morning at 10 o'clock. It appears now that that may not be possible. I would like to announce now that there will be no further votes tonight. We will continue to work to see if we can get an agreement. We will have debate. Hopefully, we will get an agreement still tonight to have these stacked votes in the morning at 10 o'clock. We have not been able to reach that agreement.

Senator GRASSLEY has been here. He has made his statements. He has identified seven amendments that he is very interested in. We had an agreement that would have said that all debate on all amendments—we were trying to get an agreement that said seven amendments would be offered by Senator GRASSLEY, and if votes were necessary, they would all occur starting at 10 o'clock in the morning.

I think Senator GRASSLEY has had the opportunity to make his points on the bill in general. I know he would like to be heard on these amendments. I think that he has been reasonable in working out the framework of an agreement here, but we do not yet have it clear. But I think it is important we go ahead and notify Members there will not be additional votes tonight.

I will not make this unanimous consent request at this time. The distinguished manager of the bill on the Democratic side of the aisle, the great Senator from Hawaii, will be talking to Senators that are concerned.

I just want to emphasize, we are on the verge of passing major legislation. We have an agreement in hand that would limit the amendments, get it done, and get it to final passage. If we do not get this agreement tonight, I fear this bill will never get passed this year, because Senators will be leaving tomorrow around noon. If we cannot get the votes done tomorrow, if we are going to have seven votes—and we have no guarantee that we could even get those on Tuesday morning—plus on Tuesday of next week we are going to be very much into the continuing resolution debate. We need to get that done. That is the overall final agreement that will allow the Senate to leave for the year.

So I urge my colleagues, let us see if we can come to final closure on the amendments and a series of votes at 10 o'clock in the morning. But I want to emphasize, no further votes tonight. We do not have an agreement at this point that we will definitely have votes at 10 o'clock in the morning but we will keep working on that. We will notify all Members through the rotary announcement and in every other way we can, but you should expect the possibility of votes in the morning at 10 o'clock.

Mr. President, I now turn to a statement so that Senators can be checking with their colleagues and see if we can get an agreement on the unanimous consent request.

The Senate has been considering this afternoon the Maritime Security Act, H.R. 1350. I urge my colleagues, when we do get an agreement, if we get an agreement, to support this critically important national security legislation.

H.R. 1350 will ensure that our Nation and our Armed Forces will have available a modern fleet of vessels, and reliable, loyal American crews to provide a readily available sealift.

It also puts at the disposal of the Department of Defense vast intermodal and management transportation assets that are essential to modern military logistics.

For the Department of Defense to duplicate the capabilities this legislation will provide would cost $800 million a year—eight times the yearly cost of the entire maritime security program.

So this legislation is quite simply a cost-effective bargain for our Nation's security. It is also essential.

If any of my colleagues were undecided on this legislation before the recent crisis in the Persian Gulf, they should not be now. What has happened in the last 2 weeks has demonstrated that we must be prepared and able to act on our own when our national interest so requires.

During the Persian Gulf war in 1990 and 1991, we had the support of a worldwide coalition with almost unlimited access to staging areas, to modern ports and infrastructure, and to vessels and crews of many nations. Even then, however, some foreign-flag vessels and crews refused to enter the Gulf, or it took weeks to decide whether they would sail or not—delays that could have been catastrophic in certain circumstances or in future conflicts. Still, with U.S.-flag ships and crews carrying nearly 80 percent of all the seaborne cargo, the job did get done and, frankly, done quite well.

During this recent crisis, however, we are seeing that our relatively good fortune in that war was probably the exception rather than what might be the rule in the future.

For example, according to press reports, every Arab State, even those on our side in 1990 and 1991, condemned the strikes on Saddam Hussein.

Our B–52 bombers had to fly the long way around—all the way from Louisiana to Guam to the Middle East—in

order to avoid overflying countries that disagreed with the U.S. actions.

Our cruise missiles came from U.S. Navy ships in the Persian Gulf and could not be supplemented by aircraft based in Jordan, Turkey, and even Saudi Arabia because these nations could not permit their strikes to originate from their soil.

A proposed western-Iraqi no-fly zone was rejected because of our ability to use Jordanian, Turkish, and Saudi bases.

And France—France—refused to participate in the new expanded air patrol zone over Iraq.

I ask my colleagues tonight, what will happen in some future conflict if the issue is not just overflight rights but access to ports, transportation infrastructure, and vessels?

What will happen if the crews of foreign-flag vessels refuse to carry our supplies for political or even religious reasons?

What will happen if foreign vessels and foreign companies are pressured to take a walk?

During the Yom Kippur War in 1973, Arab nations pressured flag-of-convenience vessels not to sail to Israel—and they did not sail. It has happened before—and it will happen again.

In the future, we may have allies and vessels—and we may not. H.R. 1350, the Maritime Security Act, is an insurance policy that we will always have at least the essential minimum of vessels and crews ready and able to serve our Nation whenever they are called to do so.

We are, after all, the world's only remaining superpower—with global interests and responsibilities.

No nation in history has survived very long without a strong maritime, without a strong merchants fleet. The Navy cannot do the job unless there are ships to carry the cargo and to carry the men and women that need to get to a troubled site. I think that is a very strong reason to vote for this bill.

This bill is also clearly beneficial in many other respects. First of all, it is identical to the one that passed the House, so we can complete action and send this bill straight to the President for his signature.

By authorizing investment in the operation of U.S.-flag vessels, the bill would strengthen and improve our economy, also. It achieves the dual goals of improving defense and our economy because it is highly effective in the way it is set up. The private sealift capability that this program helps make available to DOD would come at a small fraction of the cost it would take to the Department of Defense to acquire the ships and the crews that would be needed.

By helping ensure that there is a U.S.-flag merchant fleet, the bill also would help ensure that there is a pool of U.S. citizen mariners to man DOD's own Reserve ships in times of emergency. We found out during the Persian Gulf War that if we had not had a lot of old merchant mariners to come out of retirement, we could not have had the ships manned. They did come out of retirement, and a lot of them worked long hours. Obviously, they did the job.

It would help ensure that we will not have to depend on foreign vessels or crews to supply these ships overseas.

Economically, the bill would help ensure that our Nation's commerce is not entirely under the control of foreign-flag vessels. It would also help level the playing field for U.S.-based carriers whose foreign-based competitors usually operate under more generous tax codes and have other advantages.

In my own hometown, when I come over the bridge entering my hometown, I look down at the river and I see ships with flags from Panama, Liberia, Greece, Russia—no U.S. flags, no U.S. flags. That worries me. They are lined up along the docks, the grain elevators, and the other cargo-loading areas, right next to one of the world's most sophisticated shipyards where we build cruisers, destroyers, and LHD's, and there, right next to those various sophisticated ships and the construction that goes on, there lies a Russian ship or a Greek ship. There is something that is bent out of sorts in my mind to see that sight. I would like there to be a guarantee that we would have at least a minimum of U.S.-flag ships. This bill would do that.

On a program basis, this bill is a major improvement compared to the present support program for U.S.-flag vessels. This bill would reduce—I want to emphasize that, reduce—the annual payments per ship by perhaps as much as 50 percent and achieve similar reductions in annual program levels.

I worked on this bill for 2 years and I went into it saying we have to put the merchant marine fleet on a basis where we can call on them if we need them, and also where we will not waste money, and to save money in the way it is set up. That is what we have done. This will be a highly efficient program.

Let me also say that to the extent anyone has heard loose talk about this bill establishing a new program, that is not the case. A Maritime Support Program exists now. It is not as efficient as it should be, and it is not structured the way it should be, but we are changing that with this bill and continuing an existing program. It retains the benefits of the maritime program, but by far more efficiency. This is, in terms of real impact, a program streamlining, not creating a new program.

I am also pleased to tell my colleagues this bill would greatly reduce regulation accompanying the program. Our American carriers need to be able to respond quickly to meet foreign competition. If they have to wait for Government rulings before taking steps needed to meet foreign competition, it costs them money, it costs them business. So I need hardly say what the commercial consequences would be for these carriers.

The Nation, in turn, could lose the benefits of having privately owned U.S.-flag merchant ships. This has already happened to a large degree under the outdated present program. The ships are going down to nothing, and that is where we are headed.

If we do not pass this bill, we will not have a merchant marine in a very few years. If we do not have this program improved and in place when we go into the next century, there will not be a U.S. merchant fleet.

This bill would promptly end regulation concerning where vessels can go in foreign commerce or how frequently. Some of the regulations that have been on the books do not make any sense at all. Why should we have this kind of regulatory control of where they go in foreign commerce or how frequently?

It also would newly ensure the U.S.-flag carriers, like their foreign-based competitors, will have the flexibility to respond to commercial needs by time chartering or using space on the vessels of others—without having to ask our Government for approval. Why should they? If space is available and you can save money by using it, why should you have to go through the process of asking the Government's approval, and maybe even having it denied?

Other provisions eliminate reporting, recordkeeping and other requirements. When you are involved with the Federal program, there is plenty of that to be done if you get rid of some of the paperwork. With such changes, we can expect the executive branch to be able to implement the bill effectively and promptly.

The application process, for example, should not be burdensome and should require carriers to provide data only to the extent that it is necessary for decisions which the statute requires the agency to make.

The bill will allow our Nation to have the defense and economic benefits of a merchant marine but overhauls the past program so that we can achieve those benefits in a way that is far more cost efficient and reduces the regulatory burdens on the carriers.

Let me also make clear that, in taking up H.R. 1350, we are taking up a bill which is virtually identical to S. 1139 as reported by the Commerce Committee.

Very few provisions differ at all.

As a result, the Senate Committee report will be completely applicable as to the meaning of provisions of the House bill which are comparable to those in the Senate reported bill.

There are only a handful of aspects of the House bill that differ from the Senate bill. Let me note some of them.

Under the bill, carriers participating in the program are to be available to provide assistance to the Nation under certain emergency circumstances.

Compensation for providing resources which includes, for the purposes of this provision, services is required and is in addition to basic program payments

made by the Transportation Department.

The House bill differs from the Senate committee bill on a few aspects of this Emergency Preparedness Program [EPP].

One provision added on the House floor would make clear that a carrier's obligations under the emergency preparedness program do not continue when an operating agreement under the basic program is no longer in effect.

Another change made on the House floor would make clear that the range of circumstances in which the Defense Department can activate an emergency preparedness agreement is not limited to times of declared war, but also makes clear that the authority to activate an emergency preparedness agreement requires a significant event, and a considered and carefully coordinated decision.

These are both clarifying changes, consistent with the intent set forth in the Commerce Committee report.

The House bill would also specify, in proposed section 653(c)(3), that the amount of compensation paid under an Emergency Preparedness Agreement must be approved by the Secretary of Defense.

We support this clarification because it is DOD, not DOT, that is expected to provide this EPP compensation, which is in addition to basic program payments made by DOT. Section 653(c)(3), however, does not authorize the Defense Department to fail to meet the compensation requirements set forth in section 653.

Let me note here, in conjunction with the EPP, that we have seen some erroneous statements that this bill would eliminate the requirement in law today that U.S.-flag vessels be made available in times of emergency.

What the bill does is say that certain of today's statutory provisions would not be in effect for a vessel during such time as that vessel is covered by an Emergency Preparedness Agreement.

We have developed the EPP because it will provide more flexible, better sealift service to the Government than is available now.

This concept, which focuses on the whole transportation system and process, not individual vessels, has been worked on by DOD, and the industry for years.

That program allows for calling up U.S.-flag vessels to meet true emergencies, but it allows other options not expressly available under current statute.

The creation of this alternative is a plus for the Government. And, as I said, at such time as a U.S.-flag vessel is not covered by an Emergency Preparedness Agreement, the present statutes continue.

So, any statements that this bill removes obligations for vessel operators to help the Government in emergency is simply wrong. To the contrary, we have improved the program for the Government.

The House bill does not include the Senate bill's provision which would ensure that companies which choose to enroll their modern, foreign-flag vessels in this program do not have to incur additional costs to comply with Coast Guard vessel regulations.

I intend to continue to pursue legislative reform in this area, but the specific changes may not be enacted before implementation of this bill. In that regard, I want to make clear that the Secretary of Transportation has the authority, to swiftly take clear and conclusive administrative action in this area.

The Secretary can and should ensure that operators of modern vessels, vessels which the Coast Guard accepts as safe under international standards, will not incur additional vessel costs if they do what we want them to do—which is to put those vessels under U.S.-flag and enter into contracts under this program.

I will be looking to the Secretary to ensure that before a carrier changes the registry of a foreign-flag ship meeting international standards to United States to participate in this program, it will not be required to incur additional costs due to U.S.-flag vessel standards.

The House bill includes a provision, section 651(b)(4), not in the Senate bill. This provision specifies that, to be eligible for the program, a vessel ''will be'' eligible for U.S. documentation at the time an operating agreement is entered into for the vessel.

As a technical matter, this does not mean that the vessel must be eligible at the time the operating agreement is entered into, but means that it must be determined at the time the operating agreement is signed that the vessel will be eligible at the appropriate later point—as it cannot receive payments under the program until it is actually documented as a U.S.-flag vessel.

Also, under the Senate bill, a provision for certain vessel operators to notify certain U.S. shipyards with respect to certain possible construction opportunities was to be effectuated by having the vessel operator notify the Secretary of Transportation, who would, in turn, notify shipyards. It is our view that, under the bill, DOT has the authority to make an administrative determination to utilize such an approach, so that vessel operators would be able to meet the requirement without having to separately notify various shipyards.

While there are a handful of other differences between the House passed and Senate reported bill, these technical explanations indicate how small those differences are. Their relatively minor scope underscores that it is appropriate for us to proceed to pass the House bill and enact this long overdue legislation—so that the American people can receive the defense and economic benefits it provides at such a low cost.

Mr. President, I hope that our colleagues and those that are outside following this debate will review all of the remarks I have put in the RECORD, because I did go into some additional specific changes that we have made. That has been my intent all along, to improve the system and to save money while we are doing it. I think we have accomplished that in this bill.

I have worked with parties on all sides. Obviously, Senator STEVENS has been very involved in this, as has Senator INOUYE, Senator BREAUX, and Senator HUTCHISON has a lot of interest in it. We are this close to getting it done. And yet, because of the objection that we have heard so far tonight, we could lose this whole bill. I think it would be a great mistake. But I am going to yield the floor in a moment. I understand that Senator GRASSLEY will be back in just a few moments and he will then, hopefully, begin offering amendments. In the meantime, we will continue to work for a unanimous-consent agreement as to how it will be considered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRAMS. Mr. President, I rise to discuss some of the concerns I have about the Maritime Security Act, H.R. 1350, pending before the Senate today.

On March 6, 1996, I joined several of my colleagues in a letter to Commerce Committee Chairman PRESSLER requesting that additional hearings be held on this bill. While there had been one hearing, groups opposing this legislation did not testify. Since many groups vigorously oppose H.R. 1350, such as Citizens Against Government Waste, National Taxpayers Union, Citizens for a Sound Economy, Heritage Foundation, Competitive Enterprise Institute, CATO, and National Grain and Feed Association, we believe a hearing should be held to fully air these concerns.

That hearing did not occur. Nor did a markup of the Senate companion bill occur. We are today taking a controversial House bill from the desk that has not gone through the Senate process. The bill was rushed through the House in a similar manner and passed by a voice vote. I understand, however, that there are now many House Members who believe they did not have a good understanding of the bill at the time of the vote and would now have preferred a more thorough consideration.

Mr. President, maritime subsidies have long been on priority lists for termination by many deficit hawks. They were heralded by Republicans early in the 104th Congress as a prime example of corporate welfare that must be terminated. Correspondingly, it has been

known for some time that operating differential subsidies would be terminated. Now that we are closer to termination, the subsidies were dusted off and repacked in new authorization legislation called the ''Maritime Security Bill.'' Now, subsidizing U.S.-flag ships, and their noncompetitive labor rates, is an important U.S. security interest.

National security is vitally important to me. But I am not convinced that this bill has raised national security concerns that justify the authorization of $100 million to subsidize 50 U.S. ships to the tune of $2 million a piece.

During the gulf war, the Government has the authority to call up commercial vessels receiving maritime subsidies. However, three-quarters of the ships chartered during the crisis were foreign-flagged—and only 20 percent of the cargo rode on these ships. Most of the cargo was carried on Government ships. There is also a ready charter market for commercial cargo vessels when more ships are needed. Further, the few U.S.-flagged ships that were called up didn't even deliver their 8 percent of the total cargo to the war zone. They transferred their cargo to foreign-flagged ships at foreign ports. And they charged the Government far more than the cost incurred by either military or foreign-flagged crews—on top of the subsidies.

There is no evidence that this continuation of the ODI subsidies would work any differently. Also, there is plenty of room for shipping companies to continue to substitute foreign flag ships if they are too busy, as they can now. Why subsidize ships that are not even available in crisis times? Doesn't that gut the intent of the national security argument?

Even the Clinton administration has admitted that this program is just one which is necessary to preserve union jobs by subsidizing higher U.S. maritime wages. Why not subsidize all union jobs, not just those of the maritime unions?

Mr. President, in my judgment, there are many reasons why we should terminate maritime subsidies, including cargo preference and Jones Act preferences. Since my colleague, Senator GRASSLEY, had done such a good job of presenting them, I will not repeat them other than to say that it is my preference that all of the maritime subsidies be terminated—for the industry to become competitive on its own without the Government crutch—and the burdensome Government regulations that come with the subsidies.

There is no reason to believe that the Government, during times of crisis, cannot call into service its own vessels, foreign-flagged ships owned by American companies, charter vessels or obtain this kind of assistance from our allies. These subsidies are not needed and should be terminated, as determined earlier.

Vice President GORE's National Performance Review recommended that maritime subsidies be ended. In 1995, the DOT Inspector General recommended termination. A MIT study opposes them. Many deficit hawks decry the waste of taxpayers money.

Senator GRASSLEY has also determined that nine retired Navy admirals who originally supported the American Security Council's effort to promote this legislation now have questions about it and support additional hearings before further consideration. They were as snowed as our colleagues on the House side.

The extension of the shipbuilding loan guarantee program has also been criticized by many and deserves a closer examination as well.

The one positive aspect of this bill is the relief it gives the Great Lakes Ports, including the Port of Duluth, to cargo preference restrictions. While I would prefer to terminate this subsidy as well, the bill does give the ports the ability to compete based on price rather than whether the ship is U.S. or foreign flagged. While cargo preference laws act to subsidize U.S.-flagged crews, they can actually jeopardize jobs of dockworkers in ports, such as the Port of Duluth, where U.S.-flag ships are scarce.

Mr. President, I realize that this bill may pass. The proponents carry a lot of weight in this body, and the national security argument, flawed as it is, is one that many choose not to challenge. Again, I have great admiration for the good work of my colleague, Senator GRASSLEY, who is willing to call a spade a spade.

For that reason, and because of the great respect Senator GRASSLEY holds in this body, I would urge my colleagues to listen carefully as he offers his amendments to this bill. Each one of them attempts to ameliorate a serious concern in this legislation. They should not be dismissed for procedural or substantive reasons. They are not offerred to filibuster the bill. They are offerred to improve it. Each one should have been considered in a committee markup, which, again, was never held.

In my judgment, the Grassley amendments are no-brainers that should not be controversial. One would ensure that the ships receiving the subsidies are available for service, not foreign-flagged subsitutes. Why would we subsidize ships that don't even have to be available in emergencies?

Another amendment would force U.S. seafarers to serve in these crises. If the Government is subsidizing sizable seafarer wages, shouldn't they be required to serve if called? Right now that is not a requirement. Senator GRASSLEY would include exceptions similar to those granted to military reservists. Again, what is controversial about this amendment?

The next Grassley amendment would equalize seafarer war bonuses to the same rate as military reservists. Right now they receive far more. Why?

An amendment would prohibit use of the subsidies for pro-maritime lobbying efforts. Last year we voted to restrict use of public funds from lobbying use. These funds should be restricted as well.

Another amendment would prohibit subsidies being used for campaign contributions. Subsidized wages of seafarers have enabled these workers to contribute 500 times more than other union workers to campaigns.

One amendment will require U.S.-flag ships and crews to deliver their cargoes directly to the war zone. Incredibly, now they can, and have, shifted their cargo to a foreign-flagged and foreign-crewed vessel at a port far from the war zone. They then can charge the Government U.S.-flag premium rates while providing lower foreign-flag rates. Or they can use a foreign-flag ship the entire route, receiving the same premium rates. Why is this acceptable if all of the proponents of this bill claim that we need a U.S.-flag capability.

The bill provides for fair and reasonable reimbursement during use by the Government. The Pentagon paid $70,000 to the U.S. cargo ship operators to send war materiels to the gulf. The foreign bid was $6,000. This is wrong—a betrayal of the taxpayers. The last Grassley amendment would give the government the right to hire foreign-flag vessels if U.S.-flag costs are greater than 6 percent over the foreign cost. U.S. flags would also have to charge the government the same rate provided to volume customers.

If the amendments offered by Senator GRASSLEY are adopted, it would be easier for me to consider supporting this legislation. However, the entire premise for this bill is flawed. There simply is not a good case for this expenditure of taxpayers' dollars.

Mr. GRASSLEY. Mr. President, before I send an amendment to the desk, I am going to talk about the amendment. This is one of those seven amendments that I had suggested, and it deals with our seafarers being paid bonuses during time of war and to equalize the bonuses between people who are seafarers and the bonuses that people in our Navy would receive in the very same part of the world under the very same conditions.

If seafarers do decide to serve, I think I pointed out in my original remarks on the bill, they have many more options than people who are military. When the people in Texas were told by the President of the United States, ''Pack up, you're going to go to Kuwait,'' the families had tears in their eyes, and we saw on television the men and women of America who are committed to the defense of our country respond to the Commander in Chief.

Seafarers have options: to go or not. And if seafarers do decide to serve and sail into the designated war zone, they are paid 100-percent base pay as a war-zone bonus. The military sealift command reported to me that one seafarer was paid $15,700 for a 2-month Persian

Gulf war bonus. That is on top of the regular pay that they would get.

The most that our men and women in the regular military or Reserve could get for that 2-month period is $300, or $150 a month. So compare this $15,700 for a 2-month war bonus for a seafarer with the $300 that one of our men or women would have received during that same period of time.

But that isn't the end of it. Our seafarers are eligible for much more—much, much more. If their vessel is in a harbor that is attacked, a seafarer can get an extra $400 per day. If their vessel is actually attacked, not just in the harbor that is attacked, they get an extra $600 per day.

So the amendment that I am offering puts an end to this nonsensical approach and inequitable approach between our men and women in the regular military or Reserve compared with what the seafarers get. Taxpayers' support for seafarers' war bonuses will be limited to the level provided for the men and women in our Reserves and regular military.

This amendment makes very certain taxpayers don't pay seafarers higher war bonuses than the active military.

Seafarers get this extra 100-percent base pay. I think everybody would agree that this is clearly nonsense and unfair. It ought to be demoralizing to our troops to look at the paycheck of one person and have $300 compared to the paycheck of a person in the same environment with $15,700 and some. We ought to realize that this is inequitable. It might even be considered a huge waste of taxpayers' money, or it could be equitable to pay our men and women in uniform more.

The seafarers get incredibly large salary and benefits year in and year out from taxpayers supposedly so they will serve Uncle Sam when needed. It seems to me it is not right to gouge the taxpayers a second time when they are actually called into a war zone.

It is fair for them to get a bonus, but it is not fair for them to get a bonus well beyond what regular military people get who, by the way, get paid a lot less than the seafarers get anyway. I want to talk about the biggest war bonus paid to a civilian mariner assigned to an MSC ship during Operation Desert Shield/Desert Storm. On March 27, 1991, the Department of Defense approved the payment of war zone bonuses to those mariners operating in the Persian Gulf area west of 53 degrees east longitude. Civilian mariners were eligible for war zone bonuses equal to 100 percent of pay for each day their ships were within the designated war zone. Payments were effective retroactive to January 17, 1991, and ceased on April 11, 1991, the day of the final cease-fire.

The largest war bonus payment made to a civilian mariner aboard an MSC controlled ship was approximately $15,700 for that 2-month period. The ship was anchored within the designated war zone area approximately 56 consecutive days. Consequently, the crew members earned larger payments than those assigned to other MSC controlled ships.

The vast majority of the MSC's vessels transported military equipment and other supplies from the continental United States and European ports to the Middle East. These ships were only in the war zone area for approximately 2 to 5 days per voyage. As a result, war bonus payments for these civilian mariners averaged approximately $69.50 to $1,467 per voyage.

The war zone areas for military personnel included the Persian Gulf, the Gulf of Oman, that portion of the Arabian Sea which lies north of the 10 degrees north latitude and west of the 68th degrees east longitude or the Gulf Aden and all of the Red Sea. This made it more likely that active-duty sailors would qualify for hazardous pay.

This is the guidance that clarified which bonuses are paid and when under Desert Shield/Desert Storm. The imminent danger pay on applicable contracts, the actual direct costs of a reasonable crew imminent danger pay mandated by compulsory regulations or collective bargaining agreements, not to exceed $130 per month, are payable to each crew member under the following circumstances: Vessels in the Persian Gulf, the Red Sea, the Gulf of Oman, the portion of the Arabian Sea that lies north of the 10 degrees north latitude, west of the 68th degrees east longitude, or the Gulf of Aden, and vessels in this zone for a minimum of 6 days within one calendar month or 6 consecutive days beginning in one month and ending in the next, and vessels in this zone between August 2, 1990, and until the time in which the Secretary of Defense determines that an imminent danger no longer exists in the region. And the $130 is not prorated. The full amount is paid to anyone satisfying the above criteria.

Time spent in the war bonus zone described below does not count toward the 6 days criteria.

Let me point out that my war bonus amendment is supported by the retired admirals. These were the admirals that I had named earlier. I think it is fair to say that retired admirals know that it is not fair to pay $15,700 to a seafarer for 2 months, but only $300 to our men and women in the reserve or the regular military and Navy.

In regard to the war bonus—because I just told you about the imminent danger pay—in regard to the war bonus, on applicable contracts, actual direct costs of the reasonable crew war bonuses, mandated by compulsory regulation or collective bargaining agreement not in excess of an extra 100 percent of the crew's base pay, exclusive of supply penalties, are payable to each crew member under these circumstances: The vessel is in the Persian Gulf west of the 53 degrees east longitude, a bonus is payable for any day or portion of a day in this zone continuing until one day after the vessel passes east of the zone, and the vessel then is zoned between January 17, 1991 and the time when the final cease-fire marks an end to the hostilities, as referred to in the U.N. Security Resolution 686 of April 11, 1991.

Then we have next the war bonus for harbor attack. I gave a slight definition of this earlier. But this would apply in circumstances where war bonuses are applicable. It would then be $400, payable to each crew member aboard a ship in a harbor which is attacked. This is MARAD's determination. Only one harbor attack bonus is payable per day. A harbor attack bonus is not payable to a crew member earning a vessel attack bonus for the same day.

Then we have the war bonus that applies, not to the harbor attack, but to the actual attack on the vessel. In circumstances where war bonuses are applicable, $600 is payable to each crew member aboard a ship which is attacked. And that also is MARAD's determination.

There are certain document requirements. There is a requirement to submit imminent danger pay and war bonus invoices to appropriate MARAD paying offices in accordance with billing instructions clearly identifying which imminent danger war zone is being built, the corresponding dates and times in the zone. Note that the base wages must be identified for each rating, and MARAD then will request vessel deck logs and payroll sheets and individual pay vouchers containing crew's signatures for reconciliation of crew wages.

We have had some instances where seafaring unions sued the U.S. Government to obtain bonuses for gulf war trips. Seafaring labor unions sued the Government. According to this article, they sued the Government in an effort to win war bonus payments for their members who worked on Government cargo ships during the war against Iraq.

The Sailors Union of the Pacific, the Marine Firemen's Union, and the Seafarers International Union filed suit in Federal District Court claiming the U.S. Maritime Administration unfairly cheated their members out of hazardous duty pay. War bonus payments, of course, as I said are extra compensation for ship crews that go into risky shipping zones. Generally, crews get twice their regular pay, plus extra lump sum payments, should their vessels or harboring areas come under direct attack.

The shipping areas where war bonus payments apply are usually the traffic lanes within war zone areas designated by the White House. When the Persian gulf conflict began in 1991, the unions and the American President Line, a primary carrier for U.S. forces agreed to use a war zone designated by President Bush as the area where the war bonus payments would apply. However, the Maritime Administration later established a war zone area that was

smaller than the original White House designation.

The American President Line which operated 23 of its own ships, 11 Ready Reserve force ships for MARAD, argued that it had to use a smaller war zone area because it was relying on reimbursement from the Government for the Ready Reserve force operations.

The unions brought the case to an arbitrator from the Federal Mediation and Conciliation Service. Arbitrator William Eaton ruled that because of its earlier agreement, APL should pay seafarers on its own ships at war bonus rates for the entire zone established by the White House, but seafarers on the RRF ships could not be included, he decided. The union failed in an earlier attempt to get the Federal district court here to overturn the arbitration denial of war bonus payments to the RRF workers.

Another newspaper report on these bonuses says:

The Defense Department officials have agreed to reimburse civilian ship operators for war bonuses up to 100 percent of normal wages paid to seafarers who crewed scores of military cargo ships supplying the Persian Gulf. Although strict conditions will apply, the Navy notified ship owners this week that it will pay for war bonuses given to men and women who entered the war zone after August 2, 1990, the day that Iraq invaded Kuwait. The higher levels of benefit will be paid for voyages after January 17, 1991, when the United States launched its air war against Iraq. The bonuses will continue to be reimbursed until the formal cease-fire is declared by the United Nations according to a notice from the Military Sealift Command, the Navy agency in charge of the ocean transportation.

Marge Holtz, director of public affairs for the Sealift Command, said she did not know how many ship crews would be affected or what the total costs would be. She added that certain military censorship policies are still in effect and will not be relaxed until the cease-fire is declared.

Sealift commander Admiral Francis Donavan said in early March that 446 voyages had been made into the gulf during the first 7 months of the operation. Some individual ships, especially those under the U.S. flag, have made multiple voyages.

At its peek operation, Desert Storm-Desert Shield employed 128 U.S.-flag ships, 111 foreign-flag ships; crew sizes of the ship ranged from about 20 to more than 70 on some specialized vessels. According to the Sealift Command notice, crew members on the ships sailing through much of the Persian Gulf, the Red Sea, the Gulf of Oman, and portions of the Arabian Sea will have their war bonuses paid by the U.S. Government. The maximum of $135 a month will be paid for voyages in the period leading up to January 17. After that and into the future, until the U.N. cease-fire, the war bonuses will be 100 percent of base daily wage of each crew member. The notice, however, will not ease one festering controversy with the U.S. merchant marine. It stems from the fact that reimbursement is not yet being made for ships that are part of the Government's Ready Reserve Fleet, a fleet of aging cargo ships kept for use in military enterprises. Seventy-eight ships for the Ready Reserve were activated to participate in the Persian Gulf buildup, and a fight is already on for war bonuses for those crews, said one West Coast maritime labor leader.

Whitey Disley, president of the Marine Firemen, Oilers, Watertenders and Wipers Association, said that shipping companies that operate Ready Reserve ships under contract to the Government are not paying war bonuses. Companies are refusing to pay, even though some of them have labor contracts that specifically call for war bonuses.

One such company is American President Line, Ltd., of Oakland, but representatives of the company indicated they will pay if the Government offers reimbursement.

''It looks like we will have to go to arbitration, a grievance procedure on this,'' the union leader said.

The issue is under ''active review'' by the Maritime Administration, the Transportation Department agency responsible for the Ready Reserve force. MARAD officials contacted this newspaper and had not responded with any comment at press time.

It is pretty complicated, Mr. President, but one thing that stands out here is that we do not have an equitable situation between people who are in the full-time military in a war zone with their life just as endangered as seafarers who get 100 percent base pay war bonuses. And remember, seafarer pay is already higher than what our military people get in the first place. It seems to me that we have a responsibility to our military personnel that they be treated fairly with the seafarers.

I want to alert my colleagues to actual amounts of money that are paid for these war bonuses to specific shipping companies. We paid $29,197.56 to Gulf Trader of the All Marine Service; to the American Foreign Shipping Company, war bonuses we paid, $40,512.48; to the American Overseas Marine, we paid a total of $599,747.98. That is broken down into separate figures for eight different ships, ranging in payment from a small amount of $5,937.58, all the way up to figures like $253,334.18 and $239,430.80 for a couple of other ships.

The International Marine Carriers received for two ships $259,642 total; for the Interocean Management Corporation, war bonuses totaled $369,279.27, ranging from a low of $14,276 for one ship to $105,884 for another ship; to the Marine Carriers, we paid $55,299.47, ranging from a low of $7,553 up to a high of $30,000 for another ship, spread out over four ships. Marine Transport Lines received $193,170. OMI Ship Management received a total of $439,646. That is a grand total of $1,987,496 war bonuses for these shipping lines.

As I stated previously, these are not the only bonuses that are available.

AMENDMENT NO. 5391

(Purpose: To provide for a uniform system of incentive pay for certain hazardous duties performed by merchant seamen)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 5391.

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

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . UNIFORM PAYMENT FOR HAZARDOUS DUTY.

Title III of the Merchant Marine Act, 1936 (46 App. U.S.C. 1131), as amended by section 10 of this Act, is further amended by adding at the end the following new section:

''SEC. 303. PAYMENT OF MERCHANT SEAMEN FOR HAZARDOUS DUTY.

''(a) IN GENERAL.—The Secretary of Transportation, in cooperation with the Secretary of Defense, shall establish a wage scale for hazardous duty applicable to an individual who is employed on a vessel that is used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including training purposes or testing for readiness and suitability for mission performance).

''(b) CONTENT OF WAGE SCALE.—The wage scale established under this section shall be commensurate with the incentive pay for hazardous duty provided to members of the uniformed services under section 301 of title 37, United States Code.''.

Mr. GRASSLEY. Mr. President, this is the language, this is the amendment that is going to bring war bonus parity between our seafarers—and added war bonus pay in some instances, 100 percent increases in pay—and regular military. Seafarers ought to get additional pay, because their life is endangered, but it must be equalized with that our full-time military personnel, who get a lot less for war bonuses for the endangerment that comes from being in a war zone situation.

We do this by giving the Secretary of Transportation, in cooperation with the Secretary of Defense, the right and power to establish a wage scale for hazardous duty applicable to an individual who is employed on a vessel that is used by the United States for a war, armed conflict, national emergency, or maritime mobilization need, including training purposes for testing for readiness and suitability for mission performance. And the content of the wage scale, then, as established, shall be commensurate with incentive pay for hazardous duty provided to members of the uniformed service under sections 301, title 37 U.S. Code.

I yield the floor.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, most respectfully, I wish to suggest that this

amendment is demeaning, unfair, and I say insulting to the civilian merchant mariner of the United States of America.

In World War II, I had the great honor and privilege of serving my country, and it is true that my pay, even as that of a captain, was less than that of most of the merchant mariners. But as a result of my injury, for the rest of my life, I will receive a pension. The merchant mariner who was injured in World War II is not receiving that pension. As a result of my service in the military, I received the bountiful gift of this Nation, the GI Bill of Rights. I received my law degree and my baccalaureate through the GI Bill of Rights. The merchant mariner who served during World War II did not receive the GI Bill of Rights. And because of my injury, Mr. President—and this sounds rather facetious—in order to assist me in my mobility throughout the neighborhood, my country gave me a car, an automobile. The disabled merchant mariner did not receive a car. Today, as a result of my injury in World War II, my wife and I receive full medical benefits for the rest of our lives. The merchant mariner doesn't receive that.

As a result of that, understandably, the merchant mariner said this will never happen again. So, since then, they have organized and they have said, ''Though we cannot get the GI Bill, nor can we get lifetime pensions and hospitalization and dependents' benefits, we are going to insist that if we are going to stand in harm's way and risk our lives, we should be covered.''

Mr. President, we are, by this amendment, comparing apples to coconuts—apples and oranges look alike in some cases, but this is apples and coconuts. I hope that at the appropriate time tomorrow morning—whatever my leader wishes to do—we will dispose of this with an overwhelming vote, because this is not fair. It is insulting to our merchant mariners.

Mr. STEVENS. Mr. President, unfortunately, the amendment that the Senator from Iowa has offered deals with another situation. Under this bill before the Senate, the U.S. Government will pay a flat fee for the use of the vessel fully crewed. What the shipowners pay the crew is a private matter. It will not affect the payment at all.

As I said in my opening statement, the problem with the Persian Gulf, Desert Shield and Desert Storm, was we had to go to get foreign shipping. And in most instances, the premiums extracted were 50 percent of the total cost, not just the crew cost. In some instances, it was double the charter price. In spite of that, crews refused to enter the war zone.

Now, the Senator's amendment deals with something that happened in the past, which would not be the situation in the future with regard to this bill. But even with regard to what happened under Desert Shield/Desert Storm, I think the Senator forgets that we recovered the cost of our participation in that crisis, that war, from Kuwait and Saudi Arabia. This wasn't taxpayer cost that the Senator was talking about at all.

So, as I indicated, if we had had an agreement, I would not make a motion to table.

I now move to table the amendment.

Under the leader's direction, there will be no vote on that tonight. The vote will occur tomorrow morning at 10 o'clock.

MORNING BUSINESS

Mr. STEVENS. Mr. President, I now ask unanimous consent that the Senate go into a period of routine morning business so that we can bring about the closing of this day, and we will continue on this bill tomorrow morning following a vote on my motion to table.

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

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

THE 125TH ANNIVERSARY OF THE SENATE LIBRARY

Mr. BYRD. Mr. President, Shakespeare wrote in *The Tempest*, ''My library was dukedom large enough.'' With those few words he expressed the satisfaction, fulfillment and power available through the knowledge recorded and preserved in a well-stocked library.

With those thoughts in mind, I rise to pay tribute to the 125th anniversary of the establishment of the Senate's own ''dukedom,'' the Senate Library.

The Library of the Senate is a legislative and general reference library that provides a wide variety of information services to Senate offices in a prompt and timely fashion.

It maintains a comprehensive collection of congressional and governmental publications, and of materials relating to the specialized information needs of the Senate: government and politics, history, political biography, economics, international relations and other topics. The Library's resources and services are dedicated to providing the Members of the Senate and their staffs with critically needed information on issues affecting legislative deliberation and decisionmaking.

The origins of the Senate Library can be traced back as early as 1792 when the Senate, then meeting in Philadelphia, directed the Secretary ''to procure, and deposit in his office, the laws of the several states, for the use of the Senate,'' as well as maps of the country. During the first half of the nineteenth century, the Chief Clerk of the Senate added to these materials by collecting copies of the bills, resolutions and reports of each Congress. By the end of the 1850's, the need for a library to maintain this collection had become evident; efforts to establish the library culminated in resolutions in 1870 to designate rooms to be fitted—and I quote from the *Senate Journal*—''to hold and arrange for the convenience of the Senate books and documents now in charge of the Secretary of the Senate.''

Let me say that again: ''to hold and arrange for the convenience of the Senate books and documents now in charge of the Secretary of the Senate.''

The first librarian to be appointed was George S. Wagner, who officially commenced his duties on July 1, 1871.

While today's Senate Library continues to maintain the core collection of legislative materials that necessitated its establishment 125 years ago, its operations have been transformed by modern technology. The current Senate Librarian, Roger K. Haley, is a veteran of 32 years in the library, and he has witnessed the transition from a completely paper-based service to one that now relies as well on electronic databases, the Internet, and microform. Another significant change occurring over the last twenty years has been the growth in professional staffing in response to the more diverse and sophisticated information needs of Senate patrons.

More than half of the current library staff of 22 consists of highly skilled librarians trained to meet the special requirements of Senate offices. This dedicated team performs an outstanding job in responding quickly to the some 70,000 inquiries that were received last year.

It is a pleasure for me to take this opportunity to commend the Senate Library for its vital service to the Senate and to extend a warm congratulations as it celebrates its 125th anniversary year.

Thomas Carlyle wrote that, ''All that mankind has done, thought, gained or been: it is lying as in magic preservation in the pages of books.''

Especially in this day and age when our Nation faces the turmoil of dramatic, far-reaching change, the knowledge, wisdom, and experience available to us through the source of an extensive and efficient in-house library is critical to helping us make considered judgments.

I thank all of the fine personnel involved with the Senate Library for helping us to light the corridors of our minds so that we may better lead the way for our Nation.

Mr. President, I know of no Senator—I would not have any reason to know if there were—any Senator who calls upon the Senate library more than I call upon it, more than my staff and I lean upon it and depend upon it. And I want to express my gratitude to the people in the Senate library who always respond so courteously and are so cooperative.

So there is a list of 16 persons who have served the Senate as Librarian

since 1871. And I ask unanimous consent that they be printed in the RECORD.

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

LIBRARIANS OF THE UNITED STATES SENATE

George S. Wagner, 1871–1875.
George F. Dawson, 1875–1879.
P. J. Pierce, 1879–1884.
George M. Weston, 1884–1887.
Alonzo W. Church, 1887–1906.
James M. Baker, 1898–1901[1].
Cliff Warden, 1901–1904[1].
James M. Baker, 1904–1904[1].
Edward C. Goodwin, 1904–1906[1].
Edward C. Goodwin, 1906–1921.
Walter P. Scott, 1921–1923.
Edward C. Goodwin, 1923–1930.
James D. Preston, 1931–1935.
Ruskin McArdle, 1935–1947.
George W. Straubinger, 1947–1951.
Richard D. Hupman, 1951–1953.
Sterling Dean, 1953–1954.
Richard D. Hupman, 1954–1954[1].
Gus J. Miller, 1954–1955.
Richard D. Hupman, 1955–1973.
Roger K. Haley, 1973– .

[1] Acting Librarian

Mr. BYRD. Mr. President, I yield the floor.

CONVENTION SPEECH OF SENATOR JAY ROCKEFELLER

Mr. BYRD. Mr. President, recently at the Democratic National Convention in Chicago, my colleague, Senator JAY ROCKEFELLER addressed the delegates assembled there. His remarks were, as usual, right on point, discussing some of the most important issues of our times. I ask unanimous consent that the full text of Senator ROCKEFELLER's remarks be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

[The Charleston Gazette, Wednesday, Aug. 28, 1996]

TEXT OF ROCKEFELLER'S CONVENTION SPEECH

(The Associated Press)

Prepared remarks of Sen. Jay Rockefeller, D-W.Va., at the Democratic National Convention in Chicago on Tuesday:

My name is Jay Rockefeller: I'm from West Virginia. And I'm a Democrat. Let me tell you why.

We Democrats understand what makes America different. In America, a lifetime of hard work adds up to something: owning your own home; putting your kids through college; having peace of mind when you retire.

And no return on a lifetime of hard work means more to more Americans than the peace of mind provided by Medicare and Medicaid.

Medicare—the rock solid guarantee that poor health won't put you in the poor house.

Medicare—part of the sacred trust that binds us together.

Medicare—conceived by Democrats. Passed by Democrats. Defended by Democrats.

In 1964, I went to West Virginia as a VISTA worker—to the small coal camp of Emmons. I worked in Emmons for two years to make a difference, to change some lives. But in the end, I was the one who was transformed. I learned that even the smallest changes can take a lifetime of effort. And I learned that even the smallest efforts count.

In 1965, Lyndon Johnson signed the Medicare and Medicaid bills into law. He carried on the work of Harry Truman and Jack Kennedy, fighting to see health security guaranteed for every senior citizen and working family.

Today, Democrats are fighting to extend that same peace of mind to every American. Today, we are fighting to protect our legacy from Republican rollbacks.

At the Republican convention, Bob Dole talked about going back to the America of his youth. Yes, there is a lot to be said about a time when life was simpler. But nostalgia can play tricks on you * * * not all aspects of the good old days were so good.

There was a time in America when our elderly often lived out the end of their lives in poverty and despair. There was a time when widows were left with nothing, when husbands would lose their homes after caring for a terminally ill spouse. There was a time in America when families' college savings could be wiped out and family farms were sold to pay parents' hospital bills.

But in 1965, we turned a corner. Because of Medicare and Medicaid, we live in a different America. A better America.

Remember, no family is immune to sudden tragedy, old age or illness. The heartbreak is the same for every one of us. That is why we must remember that Medicare and Medicaid are the only safety net protecting working families against impoverishment caused by catastrophic illness.

Today, Americans can all look toward their retirement years with hope and confidence, not fear and anxiety. Today, older Americans and people with disabilities can be assured that they will be treated with dignity.

Democrats are committed to a balanced budget, but we won't do it on the backs of the people who built this country and made it great.

Last year, Republicans tried to give out $245 billion of tax breaks for the rich and cut $270 billion to try to pay for it. And watch out! If the Republicans win, Medicare and Medicaid will be back on the chopping block.

Thirty years ago, Republicans fought against the creation of Medicare. Bob Dole voted against it. Remember what he said only a year ago, and I quote, ''I was there, fighting the fight, one of the 12, voting against Medicare in 1965 . . . because it wouldn't work.'' And Newt Gingrich talks of letting Medicare wither on the vine. We will not let that happen.

And why will we defend Medicare for the family trying to take care of an aging parent? Because that's what families do.

And why will we defend Medicare for senior Americans who have lost their spouses? Because that's what families do.

And why will we be there to defend Medicaid for the family of a child with a disability? Because that's what families do.

And why will we be there to defend Medicare for the couple approaching retirement who need peace of mind? Because that's what families do.

Why will we safeguard Medicaid for children? Because that's what families do.

Why do we continue to push for health care for all Americans? Because that's what families do.

And why are we going to vote Clinton-Gore in '96?

Because that's what families do. And because of what they do for families.

TRIBUTE TO HELEN RILEY

Mr. THURMOND. Mr. President, I rise today to pay tribute to a special South Carolinian and well known Charlestonian, Mrs. Helen Schachte Riley, who passed away last week at the age of 81.

Mrs. Riley was a respected community servant and devoted Christian, mother, and wife. Throughout her long and distinguished life, this enthusiastic woman was actively involved in her community and many local and charitable organizations.

The strength of a community lies within its citizens, and Helen Riley contributed much to our great city of Charleston. Unquestionably, Mrs. Riley is a role model to many South Carolinians, including her son, Joe Riley, who serves as the Mayor of Charleston. Her legacy lives on and she leaves her children, grandchildren and great grand-children a proud heritage and fond memories of an outstanding and gracious lady.

Mr. President, Helen Schachte Riley's family has my deepest sympathies and condolences on their loss. I believe an article from yesterday's Charleston Post and Courier nicely sums up Mrs. Riley's life and many accomplishments, and I ask unanimous consent that this article be printed in the RECORD.

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

[Charleston Post and Courier, Sept. 18, 1996]

HELEN SCHACHTE RILEY

Helen Schachte Riley didn't make headlines, as did her late husband, prominent civic leader Joseph P. Riley Sr., or her son, the long-time, popular mayor of Charleston. But she was a much-admired force in the community, known for her devotion to her family, the quality of her character and her gracious style.

While naturally shy, Helen Riley had long been in the limelight, either at the side of her husband, or as one of her sons staunchest supporters. She handled her public role with dignity and charm.

A native of the city in which her family would play such a prominent role, she was a bright student at the College of Charleston, graduating second in her class. Then it was on to Jefferson Medical College where she became a medical technologist.

But most of her life was spent as a wife and as a mother to three daughters and a son. Before her death last week at age 81, her devotion had extended to 12 grandchildren and one great-grandchild.

Mayor Joseph P. Riley Jr., who delivered the eulogy at his mother's funeral mass at the Roman Catholic Cathedral of St. John the Baptist, remembered her Tuesday as the ''the best role model'' and as ''the-glue that held us together—our center of gravity.''

Helen Riley's parents taught her the importance of community service, the mayor said, noting her involvement with the Association for the Blind and the Florence Crittenton Home. And she was ''a wonderful child to her parents,'' he noted, ''teaching us the joy and responsibility of caring for three generations at one time.''

Her husband and her children had no question about their importance in her life. They knew, the mayor said, that they were her ''very center'' . . . ''it was the bedrock of our existence.'' Deeply religious, she also taught the value of character above all else, according to her son, setting ''a standard of goodness.''

She has left behind many warm memories, not just for her family but for a multitude of her friends and acquaintances. The mayor said he has childhood friends who, 40 years later, can still describe the smell and taste of a typical Helen Riley summer dinner.

She also leaves behind the legacy of a gracious lady who became a role model, not just for her family, but for her community, of a life well-lived.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, September 18, 1996 the Federal debt stood at $5,193,856,710,104.18.

One year ago, September 18, 1995, the Federal debt stood at $4,963,469,000,000.

Five years ago, September 18, 1991, the Federal debt stood at $3,627,589,000,000.

Ten years ago, September 18, 1986, the Federal debt stood at $2,108,613,000,000.

Fifteen years ago, September 18, 1981, the Federal debt stood at $976,715,000,000. This reflects an increase of more than $4 trillion ($4,17,141,710,104.18) during the 15 years from 1981 to 1996.

FOREIGN OIL CONSUMPTION: HERE'S WEEKLY U.S. BOX SCORE

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending September 13, the U.S. imported 7,572,000 barrels of oil each day, 393,000 less than the 7,965,000 imported during the same week a year ago.

Nevertheless, Americans relied on foreign oil for 54 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf War, the United States obtained about 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970s, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil—by U.S. producers using American workers? Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the U.S.—now 7,572,000 barrels a day.

Mr. PELL. Mr. President, it appears to me that we find ourselves in a pleasant predicament when it comes to education appropriations for fiscal year 1997. On each side of the aisle we have leadership packages that would add some $2.3 billion in additional funding to education.

In several areas, the Democratic package, of which I am a cosponsor, is larger than the Republican package. It would, for instance, add $585 million to the Pell Grant program in order to fund a $2,700 maximum grant for the coming year. It would also add funds to the Goals 2000 Program, to the Professional Development Program for Teachers, to Education Technology, and to important higher education programs, such as TRIO and the SSIG Program.

In other areas, however, the Republican package is larger. In areas such as Title I, Adult Education, the SEOG Program, College Work Study, and Special Education, the Republican package contains more funding than the Democratic package.

Mr. President, there is a solution to the dilemma with which we are faced that is in the best interests of our nation. It is also an outcome that would get us out of a bipartisan battle, and bring the spirit of bipartisanship back to education policy making and appropriations. Very simply, I believe we should take the higher number from each package, put them together, and pass a package for which we can all take credit.

This would mean more money for education, and to my mind, that would be very good news, indeed. It would mean better funding in such critical areas as Pell Grants, Title I, Professional Development for Teachers, Special Education, and the campus-based student aid programs.

Instead of discussing which proposal is better in which area, we should resolve the dilemma and conclude an agreement that is in the best interests not of one political party or the other but of the American people.

NOTICE OF ADOPTION OF AMENDMENTS TO PROCEDURAL RULES

Mr. THURMOND. Mr. President, pursuant to section 303 of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1383(b)), a notice of adoption of amendments to procedural rules was submitted by the Office of Compliance, U.S. Congress. The notice publishes adopted amendments to the rules governing the procedures for the Office of Compliance under the Congressional Accountability Act.

Section 304(b) requires this notice and the amendments to the rules be printed in the CONGRESSIONAL RECORD. Therefore I ask unanimous consent that the notice and amendments be printed in the RECORD.

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

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: AMENDMENTS TO PROCEDURAL RULES

NOTICE OF ADOPTION OF AMENDMENTS TO PROCEDURAL RULES

Summary: After considering comments to the Notice of Proposed Rulemaking published July 11, 1996 in the Congressional Record, the Executive Director has adopted and is publishing amendments to the rules governing the procedures for the Office of Compliance under the Congressional Accountability Act of 1995 (P.L. 104-1, 109 Stat. 3). The amendments to the procedural rules have been approved by the Board of Directors, Office of Compliance.

For Further Information Contact: Executive Director, Office of Compliance, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540–1999. Telephone No. 202–724–9250.

SUPPLEMENTARY INFORMATION:

I. Background

The Congressional Accountability Act of 1995 (''CAA'' or ''Act'') was enacted into law on January 23, 1995. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 303 of the CAA directs that the Executive Director of the Office of Compliance (''Office'') shall, subject to the approval of the Board of Directors (''Board'') of the Office, adopt rules governing the procedures for the Office, and may amend those rules in the same manner. The procedural rules currently in effect, approved by the Board and adopted by the Executive Director, were published December 22, 1995 in the Congressional Record (141 Cong. R. S 19239 (daily ed., Dec. 22, 1995)). The revisions and additions that follow amend certain of the existing procedures by which the Office provides for the consideration and resolution of alleged violations of the laws made applicable under Part A of title II of the CAA, and establish procedures for consideration of matters arising under Part D of title II of the CAA, which is generally effective October 1, 1996.

Pursuant to section 303(b) of the CAA, the Executive Director published for comment a Notice of Proposed Rulemaking in the Congressional Record on July 11, 1996 (142 Cong. R. S7685-88, H7450-54 (daily ed., July 11, 1996)) inviting comments regarding the proposed amendments to the procedural rules. Three comments were received in response to the NPR: two from Congressional offices and one from a labor organization. After full consideration of the comments received, the Executive Director has, with the approval of the Board, adopted these amendments to the procedural rules.

II. Consideration of Comments and Conclusions

A. Definition of participant

One commenter suggested deleting the terms ''labor organization'' and ''employing office'' from the definition of ''participant'' found at section 1.07(c) of the proposed rules. The commenter noted that a ''party'' is included in the definition of participant and the term ''party'' is defined in section 1.02(i) of the rules as including a labor organization or employing office.

The final rule, as adopted and approved, incorporates the modification suggested by the commenter.

B. Contents or records of confidential proceedings

One commenter asked that section 1.07(d) of the rules be revised to reflect the commenter s understanding that ''an employing office may acknowledge the existence of a complaint and the general allegations being made by an employee, and the employing office may deny the allegations.'' This commenter further requested that the phrase ''information forming the basis for the allegation,'' found in the same section of the rules, be defined. According to the commenter, the phrase is ambiguous. The commenter did not, however, identify the asserted ambiguity.

The statute requires that the filing of a complaint and its subject matter be kept confidential. Thus, it is not permissible under the statute, as enacted—much less the procedural rules implementing the statute—for an employing office to disclose the information described. Moreover, no ambiguity has been identified or is apparent which would warrant modifying the proposed rule. Accordingly, the rule has been adopted and approved without modification.

C. Requests for extension of the mediation period

Two commenters correctly point out that, although it was noted in the preamble of the NPR that section 2.04(e)(2) is proposed to be modified to allow oral as well as written requests for the extension of the mediation period, the actual text of the proposed revision was inadvertently omitted. Although neither commenter stated an objection to the substance of the proposed revision, one commenter requested that the text of the proposed amendment be published and the comment period be extended prior to its adoption.

The proposed amendment, and its intent, were clearly explained in the NPR so as to give sufficient notice of the proposed modification. And as the adoption of the amended rule will not work a disservice to any party to a mediation, but rather will enable all parties to more fully utilize the mediation process, the proposed modification to the rule has been adopted and approved.

D. Answer to complaint

All three commenters expressed concern that proposed section 5.01(f) could be interpreted to foreclose a respondent from raising certain affirmative defenses or interposing certain denials. One commenter further urged the adoption of a specific rule that would allow the filing of a motion to dismiss or a motion for a more definitive statement in lieu of an answer.

With respect to the request that the Executive Director adopt a rule allowing for the filing of the specific motions suggested, it is noted that, although not specifically provided for, such matters are already permitted under the existing procedural rules. Thus, no modification is necessary.

As to the commenters' other concerns, the language of section 5.01(f), as adopted and approved, has been clarified to provide that only affirmative defenses that could have reasonably been anticipated based on the facts alleged in the complaint shall be deemed waived if not raised in an answer. In addition, the rule has been modified to describe the circumstances under which motions for leave to amend an answer to raise defenses or interpose denials will be granted.

E. Withdrawal of complaints

One commenter argued that the requirement contained in section 5.03 that the withdrawal of a complaint be approved by a Hearing Officer should be deleted because, according to the commenter, under the CAA a complaint may be withdrawn at any time. In the commenter's view, a rule requiring Hearing Officer approval of such a withdrawal is ''an inappropriate exercise of the Executive Director's authority.'' This commenter further took issue with the distinction made in the rule between approval of the withdrawal of a complaint by a covered employee, which must always be approved by a Hearing Officer, and the withdrawal of a complaint by the General Counsel, which may occur without Hearing Officer approval prior to the opening of a hearing.

Contrary to the commenter's assertion, it is entirely appropriate and, indeed, the norm in our legal system to require approval of the withdrawal of an action after formal proceedings have been initiated. *See, e.g.*, Federal Rule of Civil Procedure 41. Moreover, the different restrictions placed on covered employees and the General Counsel are also appropriate. Under section 220 of the CAA, and the regulations adopted by the Board pursuant to section 220(d) to implement section 220, the General Counsel's prosecutorial discretion has been properly acknowledged by permitting the General Counsel to withdraw a complaint without Hearing Officer approval prior to the opening of the hearing. Accordingly, the final rule, as adopted and approved, has not been modified.

F. Objections not made are deemed waived

Two commenters expressed the concern that proposed section 7.01(e) could operate to work a disservice to unrepresented parties or to preclude Board consideration of appropriate matters on appeal.

The rule, as adopted and approved, has been modified. Further, it is noted that a Hearing Officer is always free to consider issues about which objections were not made.

G. Reconsideration

One commenter asked that proposed section 8.02 be clarified to advise parties concerning how the filing of a motion for reconsideration of a Board decision affects the requirements for filing an appeal of that decision.

The final rule makes clear that the filing of a motion for reconsideration does not relieve a party of the obligation to file a timely appeal.

H. Judicial review

One commenter asserted that section 8.04 should be deleted either as superfluous because it merely reiterates parts of section 407 of the CAA or as confusing because it does not incorporate all of section 407.

Section 8.04 incorporates the provisions of section 407 that are applicable to the provisions of the CAA that are currently in effect. As section 8.04 is neither superfluous nor confusing, the proposed rule has been adopted and approved unmodified.

I. Signing of Pleadings, motions and other filings; violation of rules; sanctions

One commenter recommended that ''the Board further elaborate'' on proposed section 9.02 and that there be an extension of time to comment ''after the Board provides further explanation.'' In the event the commenter's recommendation was not accepted, the commenter proposed adding the requirement that a pleading must be warranted by a ''non-frivolous'' argument. Another commenter objected to the possible sanction of attorney s fees, arguing that it could have a chilling effect on individual complainants.

Section 9.02 of the rules is virtually identical to Rule 11 of the Federal Rules of Civil Procedure. Rule 11 has a rich history and tradition and is an essential procedural part of any sound dispute resolution scheme. Therefore, further explanation or modification is unnecessary and, the rule, as adopted and approved, is the same as that proposed.

J. Ex parte communications

Two commenters asked for a definition of the term ''interested person'' as used in proposed section 9.04. One of these commenters argued that, as drafted, the proposed rule appeared to be so broad as to restrict access to the Office of Compliance personnel, including the Executive Director and Deputy Executive Directors. The same two commenters also urged the deletion of proposed section 9.04(e)(2), which provides that censure or the suspension or revocation of the privilege of practice before the Office is a possible sanction for engaging in prohibited communications. Both commenters considered such sanctions to be too harsh and questioned the authority of the Board to impose such sanctions. The third commenter urged that section 9.04(c)(3)(iii) be modified to disallow communications on matters of general significance because, according to the commenter, such communications could have an impact on specific pending matters. This commenter also expressed concern about the imposition of sanctions on unrepresented complainants who might inadvertently violate the prohibitions on ex parte communications.

In response to the commenters' concerns, the Executive Director is modifying section 9.04(a)(1) to define ''interested person'' for the purposes of the rule. But, contrary to one commenter s understanding, the rule only prohibits interested persons from engaging in prohibited communications with Hearing Officers and Board members; nothing in the proposed or adopted rule prohibits contact with Office of Compliance personnel, including the Office's statutory appointees. Indeed, interaction between Office personnel and employing offices, covered employees, labor organizations and their agents, as well as other interested individuals or organizations, is encouraged.

With respect to proposed section 9.04(e)(2), the sanctions of censure or suspension or revocation of the privilege of practice before the Board, although substantial, may properly be imposed in certain circumstances. However, as they are available to the Board under section 9.04(e)(1), proposed section 9.04(e)(2) has been omitted from the final rule. In addition, to further address concerns, language has been added to section 9.04(e)(1) to confirm that sanctions shall be commensurate with the nature of the offense.

K. Informal resolutions and settlement agreements

One commenter offered specific suggested revisions to proposed section 9.05(a). The commenter believed that these revisions are necessary to make it clear that section 9.05 applies only after a covered employee has initiated counseling.

The proposed rule, by its terms, applies only in instances where a covered employee has filed a formal request for counseling. Moreover, in the NPR, it was specifically noted that the rule is being amended to make it clear that section 9.05 of the rules applies only where covered employees have initiated proceedings under the CAA. Accordingly, the proposed rule has been adopted and approved without modification.

L. Additional comments

Two of the commenters also offered several comments and suggestions on existing procedural rules and other matters that were not the subject of or germane to the proposals in the NPR. For example, the commenters suggested: (1) changes in the special procedures for the Architect of the Capitol and Capitol Police; (2) a rule allowing parties to negotiate changes to the Agreement to Mediate; (3) a procedure by which the parties, instead of the Executive Director, would select Hearing Officers; (4) procedures by which the Office would notify employing offices of various matters; (5) additional requirements for the filing of a complaint; (6) changes in counseling procedures; and (7) a procedure which would allow parties to petition for the recusal of individual Board members.

As there was no notice given to the public or interested persons that such amendments to the procedural rules were being considered, it would be inappropriate to amend the rules in the manner requested by the commenters. However, the Office will consider the comments as part of its ongoing review of its operations and, to the extent appropriate, may issue another notice of proposed rulemaking at an appropriate time to address some or all of these comments.

Signed at Washington, D.C., on this 18th day of September, 1996.

R. GAULL SILBERMAN,
Executive Director,
Office of Compliance.

Adopted Amendment to the Procedural Rules

A. Comparison table

The rules have been reorganized and re-ordered; as a result, some sections have been

moved and/or renumbered. Cross-references in appropriate sections of the procedural rules have been modified accordingly. The organizational changes are listed in the following comparison table.

Former Section No.	*New Section No.*
§ 2.06 Complaints	§ 5.01
§ 2.07 Appointment of the Hearing Officer	§ 5.02
§ 2.08 Filing, Service and Size Limitations of Motions, Briefs, Responses and Other Documents	§ 9.01
§ 2.09 Dismissal of Complaint	§ 5.03
§ 2.10 Confidentiality	§ 5.04
§ 2.11 Filing of Civil Action	§ 2.06
§ 8.02 Compliance with Final Decisions, Requests for Enforcement	§ 8.03
§ 8.03 Judicial Review	§ 8.04
§ 9.01 Attorney's Fees and Costs	§ 9.03
§ 9.02 Ex Parte Communications	§ 9.04
§ 9.03 Settlement Agreements	§ 9.05
§ 9.04 Revocation, Amendment or Waiver of Rules	§ 9.06

B. Text of Amendments to Procedural Rules

§ 1.01 Scope and policy

These rules of the Office of Compliance govern the procedures for consideration and resolution of alleged violations of the laws made applicable under Parts A and D of title II of the Congressional Accountability Act of 1995. The rules include procedures for counseling, mediation, and for electing between filing a complaint with the Office of Compliance and filing a civil action in a district court of the United States. The rules also address the procedures for the conduct of hearings held as a result of the filing of a complaint and for appeals to the Board of Directors of the Office of Compliance from Hearing Officer decisions, as well as other matters of general applicability to the dispute resolution process and to the operations of the Office of Compliance. It is the policy of the Office that these rules shall be applied with due regard to the rights of all parties and in a manner that expedites the resolution of disputes.

§ 1.02(c)

Employee. The term employee includes an applicant for employment and a former employee, except as provided in section 2421.3(b) of the Board s rules under section 220 of the Act.

§ 1.02(i)

Party. The term party means: (1) the employee or the employing office in a proceeding under Part A of title II of the Act; or (2) the labor organization, individual employing office or employing activity, or, as appropriate, the General Counsel in a proceeding under Part D of title II of the Act.

§ 1.02(j)

Respondent. The term ''respondent'' means the party against which a complaint is filed.

§ 1.05 Designation of Representative.

(a) An employee, a witness, a labor organization, or an employing office wishing to be represented by another individual must file with the Office a written notice of designation of representative. The representative may be, but is not required to be, an attorney.

(b) *Service where there is a representative*. All service of documents shall be directed to the representative, unless the represented individual, labor organization, or employing office specifies otherwise and until such time as that individual, labor organization, or employing office notifies the Executive Director of an amendment or revocation of the designation of representative. Where a designation of representative is in effect, all time limitations for receipt of materials by the represented individual or entity shall be computed in the same manner as for unrepresented individuals or entities with service of the documents, however, directed to the representative, as provided.

§ 1.07(b)

Prohibition. Unless specifically authorized by the provisions of the CAA or by order of the Board, the Hearing Officer or a court, or by the procedural rules of the Office, no participant in counseling, mediation or other proceedings made confidential under section 416 of the CAA (''confidential proceedings'') may disclose the contents or records of those proceedings to any person or entity. Nothing in these rules prohibits a bona fide representative of a party under section 1.05 from engaging in communications with that party for the purpose of participation in the proceedings, provided that such disclosure is not made in the presence of individuals not reasonably necessary to the representative's representation of that party. Moreover, nothing in these rules prohibits a party or its representative from disclosing information obtained in confidential proceedings for the limited purposes of investigating claims, ensuring compliance with the Act or preparing its prosecution or defense, to the extent that such disclosure is reasonably necessary to accomplish the aforementioned purposes and provided that the party making the disclosure takes all reasonably appropriate steps to ensure that persons to whom the information is disclosed maintain the confidentiality of such information.

§ 1.07(c)

Participant. For the purposes of this rule, participant means any individual or party, including a designated representative, that becomes a participant in counseling under section 402, mediation under section 403, the complaint and hearing process under section 405, or an appeal to the Board under section 406 of the Act, or any related proceeding which is expressly or by necessity deemed confidential under the Act or these rules.

§ 1.07(d)

Contents or records of confidential proceedings. For the purpose of this rule, the contents or records of counseling, mediation or other proceeding includes the information disclosed by participants to the proceedings, and records disclosed by either the opposing party, witnesses or the Office. A participant is free to disclose facts and other information obtained from any source outside of the confidential proceedings. For example, an employing office or its representatives may disclose information about its employment practices and personnel actions, provided that the information was not obtained in a confidential proceeding. However, an employee who obtains that information in mediation or other confidential proceeding may not disclose such information. Similarly, information forming the basis for the allegation of a complaining employee may be disclosed by that employee, provided that the information contained in those allegations was not obtained in a confidential proceeding. However, the employing office or its representatives may not disclose that information if it was obtained in a confidential proceeding.

§ 2.04(a)

(a) *Explanation*. Mediation is a process in which employees, employing offices and their representatives, if any, meet separately and/or jointly with a neutral trained to assist them in resolving disputes. As parties to the mediation, employees, employing offices and their representatives discuss alternatives to continuing their dispute, including the possibility of reaching a voluntary, mutually satisfactory resolution. The neutral has no power to impose a specific resolution, and the mediation process, whether or not a resolution is reached, is strictly confidential, pursuant to section 416 of the Act.

§ 2.04(e)

(e) *Duration and Extension*. (1) The mediation period shall be 30 days beginning on the date the request for mediation is received, unless the Office grants an extension.

(2) The Office may extend the mediation period upon the joint request of the parties. The request may be oral or written and shall be noted and filed with the Office no later than the last day of the mediation period. The request shall set forth the joint nature of the request and the reasons therefor, and specify when the parties expect to conclude their discussions. Requests for additional extensions may be made in the same manner. Approval of any extensions shall be within the sole discretion of the Office.

§ 2.04(f)(2)

(2) *The Agreement to Mediate*. At the commencement of the mediation, the neutral will ask the parties to sign an agreement prepared by the Office (''the Agreement to Mediate''). The Agreement to Mediate will set out the conditions under which mediation will occur, including the requirement that the participants adhere to the confidentiality of the process. The Agreement to Mediate will also provide that the parties to the mediation will not seek to have the counselor or the neutral participate, testify or otherwise present evidence in any subsequent civil action under section 408 of the Act or any other proceeding.

§ 2.04(h)

Informal Resolutions and Settlement Agreements. At any time during mediation the parties may resolve or settle a dispute in accordance with section 9.05 of these rules.

§ 5.01 Complaints

(a) *Who may file*. (1) An employee who has completed mediation under section 2.04 may timely file a complaint with the Office alleging any violation of sections 201 through 207 of the Act.

(2) The General Counsel may file a complaint alleging a violation of section 220 of the Act.

(b) *When to file*. (1) A complaint may be filed by an employee no sooner than 30 days after the date of receipt of the notice under section 2.04(i), but no later than 90 days after receipt of that notice.

(2) A complaint may be filed by the General Counsel after the investigation of a charge filed under section 220 of the Act.

(c) *Form and Contents*. (1) Complaints filed by covered employees. A complaint shall be written or typed on a complaint form available from the Office. All complaints shall be signed by the covered employee, or his or her representative, and shall contain the following information:

(i) the name, mailing address, and telephone number(s) of the complainant;

(ii) the name, address and telephone number of the employing office against which the complaint is brought;

(iii) the name(s) and title(s) of the individual(s) involved in the conduct that the employee claims is a violation of the Act;

(iv) a description of the conduct being challenged, including the date(s) of the conduct;

(v) a brief description of why the complainant believes the challenged conduct is a violation of the Act and the section(s) of the Act involved;

(vi) a statement of the relief or remedy sought; and

(vii) the name, address, and telephone number of the representative, if any, who will act on behalf of the complainant.

(2) Complaints filed by the General Counsel. A complaint filed by the General Counsel shall be typed, signed by the General Counsel or his designee and shall contain the following information:

(i) the name, address and telephone number of the employing office and/or labor organization alleged to have violated section 220 against which the complaint is brought;

(ii) notice of the charge filed alleging a violation of section 220;

(iii) a description of the acts and conduct that are alleged to be violations of the Act, including all relevant dates and places and the names and titles of the responsible individuals; and

(iv) a statement of the relief or remedy sought.

(d) *Amendments*. Amendments to the complaint may be permitted by the Office or, after assignment, by a Hearing Officer, on the following conditions: that all parties to the proceeding have adequate notice to prepare to meet the new allegations; that the amendments, as appropriate, relate to the violations for which the employee has completed counseling and mediation, or relate to the charge(s) investigated by the General Counsel; and that permitting such amendments will not unduly prejudice the rights of the employing office, the labor organization, or other parties, unduly delay the completion of the hearing or otherwise interfere with or impede the proceedings.

(e) *Service of Complaint*. Upon receipt of a complaint or an amended complaint, the Office shall serve the respondent, or its designated representative, by hand delivery or certified mail, with a copy of the complaint or amended complaint and a copy of these rules. The Office shall include a service list containing the names and addresses of the parties and their designated representatives.

(f) *Answer*. Within 15 days after receipt of a copy of a complaint or an amended complaint, the respondent shall file an answer with the Office and serve one copy on the complainant. The answer shall contain a statement of the position of the respondent on each of the issues raised in the complaint or amended complaint, including admissions, denials, or explanations of each allegation made in the complaint and any affirmative defenses or other defenses to the complaint.

Failure to file an answer or to raise a claim or defense as to any allegation(s) shall constitute an admission of such allegation(s). Affirmative defenses not raised in an answer that could have reasonably been anticipated based on the facts alleged in the complaint shall be deemed waived. A respondent's motion for leave to amend an answer to interpose a denial or affirmative defense will ordinarily be granted unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

§ 5.03 Dismissal of complaints

(a) A Hearing Officer may, after notice and an opportunity to respond, dismiss any claim that the Hearing Officer finds to be frivolous or that fails to state a claim upon which relief may be granted, including, but not limited to, claims that were not advanced in counseling or mediation.

(b) A Hearing Officer may, after notice and an opportunity to respond, dismiss a complaint because it fails to comply with the applicable time limits or other requirements under the Act or these rules.

(c) If the General Counsel or any complainant fails to proceed with an action, the Hearing Officer may dismiss the complaint with prejudice.

(d) *Appeal*. A dismissal by the Hearing Officer made under section 5.03(a)-(c) or 7.16 of these rules may be subject to appeal before the Board if the aggrieved party files a timely petition for review under section 8.01.

(e) *Withdrawal of Complaint by Complainant*. At any time a complainant may withdraw his or her own complaint by filing a notice with the Office for transmittal to the Hearing Officer and by serving a copy on the employing office or representative. Any such withdrawal must be approved by the Hearing Officer.

(f) *Withdrawal of Complaint by the General Counsel*. At any time prior to the opening of the hearing the General Counsel may withdraw his complaint by filing a notice with the Executive Director and the Hearing Officer and by serving a copy on the respondent. After opening of the hearing, any such withdrawal must be approved by the Hearing Officer.

§ 7.04(b)

Scheduling of the Prehearing Conference. Within 7 days after assignment, the Hearing Officer shall serve on the parties and their designated representatives written notice setting forth the time, date, and place of the prehearing conference.

§ 7.07(e)

(e) Any evidentiary objection not timely made before a Hearing Officer shall, in the absence of clear error, be deemed waived on appeal to the Board.

§ 7.07(f)

(f) If the Hearing Officer concludes that a representative of an employee, a witness, a labor organization, or an employing office has a conflict of interest, he or she may, after giving the representative an opportunity to respond, disqualify the representative. In that event, within the time limits for hearing and decision established by the Act, the affected party will have a reasonable time to retain other representation.

§ 8.01(i)

The Board may invite amicus participation, in appropriate circumstances, in a manner consistent with the requirements of section 416 of the CAA.

§ 8.02 Reconsideration

After a final decision or order of the Board has been issued, a party to the proceeding before the Board, who can establish in its moving papers that reconsideration is necessary because the Board has overlooked or misapprehended points of law or fact, may move for reconsideration of such final decision or order. The motion shall be filed within 15 days after service of the Board's decision or order. No response shall be filed unless the Board so orders. The filing and pendency of a motion under this provision shall not relieve a party of the obligation to file a timely appeal or operate to stay the action of the Board unless so ordered by the Board.

§ 8.04 Judicial review

Pursuant to section 407 of the Act,

(a) the United States Court of Appeals for the Federal Circuit shall have jurisdiction over any proceeding commenced by a petition of:

(1) a party aggrieved by a final decision of the Board under section 406(e) in cases arising under part A of title II, or

(2) the General Counsel or a respondent before the Board who files a petition under section 220(c)(3) of the Act.

(b) The U.S. Court of Appeals for the Federal Circuit shall have jurisdiction over any petition of the General Counsel, filed in the name of the Office and at the direction of the Board, to enforce a final decision under section 405(g) or 406(e) with respect to a violation of part A or D of title II of the Act.

(c) The party filing a petition for review shall serve a copy on the opposing party or parties or their representative(s).

§ 9.02 Signing of pleadings, motions and other filings; violation of rules; sanctions

Every pleading, motion, and other filing of a party represented by an attorney or other designated representative shall be signed by the attorney or representative. A party who is not represented shall sign the pleading, motion or other filing. The signature of a representative or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other filing; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other filing is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person who is required to sign. If a pleading, motion, or other filing is signed in violation of this rule, a Hearing Officer or the Board, as appropriate, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other filing, including a reasonable attorney's fee. A Hearing Officer or the Board, as appropriate, upon motion or its own initiative may also impose an appropriate sanction, which may include the sanctions specified in section 7.02, for any other violation of these rules that does not result from reasonable error.

§ 9.04 Ex parte communications.

(a) *Definitions*. (1) The term *interested person outside the Office* means any covered employee and agent thereof who is not an employee or agent of the Office, any labor organization and agent thereof, any employing office and agent thereof, and any individual or organization and agent thereof, who is or may reasonably be expected to be involved in a proceeding or a rulemaking, and the General Counsel and any agent thereof when prosecuting a complaint proceeding before the Office pursuant to sections 210, 215, or 220 of the CAA. The term also includes any employee of the Office who becomes a party or a witness for a party other than the Office in proceedings as defined in these rules.

(2) The term *ex parte communication* means an oral or written communication (a) that is between an interested person outside the Office and a Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking; (b) that is related to a proceeding or a rulemaking; (c) that is not made on the public record; (d) that is not made in the presence of all parties to a proceeding or a rulemaking; and (5) that is made without reasonable prior notice to all parties to a proceeding or a rulemaking.

(3) For purposes of section 9.04, the term *proceeding* means the complaint and hearing proceeding under section 405 of the CAA, an appeal to the Board under section 406 of the CAA, a pre-election investigatory hearing under section 220 of the CAA, and any other proceeding of the Office established pursuant to regulations issued by the Board under the CAA.

(4) The term *period of rulemaking* means the period commencing with the issuance of an

advance notice of proposed rulemaking or of a notice of proposed rulemaking, whichever issues first, and concluding with the issuance of a final rule.

(b) *Exception to Coverage.* The rules set forth in this section do not apply during periods that the Board designates as periods of negotiated rulemaking.

(c) *Prohibited Ex Parte Communications and Exceptions.* (1) During a proceeding, it is prohibited knowingly to make or cause to be made:

(i) a written ex parte communication if copies thereof are not promptly served by the communicator on all parties to the proceeding in accordance with section 9.01 of these Rules; or

(ii) an oral ex parte communication unless all parties have received advance notice thereof by the communicator and have an adequate opportunity to be present.

(2) During the period of rulemaking, it is prohibited knowingly to make or cause to be made a written or an oral ex parte communication. During the period of rulemaking, the Office shall treat any written ex parte communication as a comment in response to the advance notice of proposed rulemaking or the notice of proposed rulemaking, whichever is pending, and such communications will therefore be part of the public rulemaking record.

(3) Notwithstanding the prohibitions set forth in (1) and (2), the following ex parte communications are not prohibited:

(i) those which relate solely to matters which the Board member or Hearing Officer is authorized by law, Office rules, or order of the Board or Hearing Officer to entertain or dispose of on an ex parte basis;

(ii) those which all parties to the proceeding agree, or which the responsible official formally rules, may be made on an ex parte basis;

(iii) those which concern only matters of general significance to the field of labor and employment law or administrative practice;

(iv) those from the General Counsel to the Office or the Board when the General Counsel is acting on behalf of the Office or the Board under any section of the CAA; and

(v) those which could not reasonably be construed to create either unfairness or the appearance of unfairness in a proceeding or rulemaking.

(4) It is prohibited knowingly to solicit or cause to be solicited any prohibited ex parte communication.

(d) *Reporting of Prohibited Ex Parte Communications.* (1) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who determines that he or she is being asked to receive a prohibited ex parte communication shall refuse to do so and inform the communicator of this rule.

(2) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding who knowingly receives a prohibited ex parte communication shall (a) notify the parties to the proceeding that such a communication has been received; and (b) provide the parties with a copy of the communication and of any response thereto (if written) or with a memorandum stating the substance of the communication and any response thereto (if oral). If a proceeding is then pending before either the Board or a Hearing Officer, and if the Board or Hearing Officer so orders, these materials shall then be placed in the record of the proceeding. Upon order of the Hearing Officer or the Board, the parties may be provided with a full opportunity to respond to the alleged prohibited ex parte communication and to address what action, if any, should be taken in the proceeding as a result of the prohibited communication.

(3) Any Board member involved in a rulemaking who knowingly receives a prohibited ex parte communication shall cause to be published in the Congressional Record a notice that such a communication has been received and a copy of the communication and of any response thereto (if written) or with a memorandum stating the substance of the communication and any response thereto (if oral). Upon order of the Board, these materials shall then be placed in the record of the rulemaking and the Board shall provide interested persons with a full opportunity to respond to the alleged prohibited ex parte communication and to address what action, if any, should be taken in the proceeding as a result of the prohibited communication.

(4) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who knowingly receives a prohibited ex parte communication and who fails to comply with the requirements of subsections (1), (2), or (3) above, is subject to internal censure or discipline through the same procedures that the Board utilizes to address and resolve ethical issues.

(e) *Penalties and Enforcement.* (1) Where a person is alleged to have made or caused another to make a prohibited ex parte communication, the Board or the Hearing Officer (as appropriate) may issue to the person a notice to show cause, returnable within a stated period not less than seven days from the date thereof, why the Board or the Hearing Officer should not determine that the interests of law or justice require that the person be sanctioned by, where applicable, dismissal of his or her claim or interest, the striking of his or her answer, or the imposition of some other appropriate sanction, including but not limited to the award of attorneys' fees and costs incurred in responding to a prohibited ex parte communication. Sanctions shall be commensurate with the seriousness and unreasonableness of the offense, accounting for, among other things, the advertency or inadvertency of the prohibited communication.

(2) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who knowingly makes or causes to be made a prohibited ex parte communication is subject to internal censure or discipline through the same procedures that the Board utilizes to address and resolve ethical issues.

§ 9.05(a)

(a) *Informal Resolution.* At any time before a covered employee who has filed a formal request for counseling files a complaint under section 405, a covered employee and the employing office, on their own, may agree voluntarily and informally to resolve a dispute, so long as the resolution does not require a waiver of a covered employee's rights or the commitment by the employing office to an enforceable obligation.

NOTICE OF PROPOSED RULEMAKING

Mr. THURMOND. Mr. President, pursuant to section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a notice of proposed rulemaking was submitted by the Office of Compliance, U.S. Congress. The notice publishes proposed regulations to implement section 210 and section 215 of the Congressional Accountability Act of 1995.

Section 210 concerns the extension of rights and protections under the Americans with Disabilities Act of 1990 relating to public services and accommodations. Section 215 concerns the extension of rights and protections under the Occupational Safety and Health Act of 1970.

Section 304(b) requires this notice to be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

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

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990 RELATING TO PUBLIC SERVICES AND ACCOMMODATIONS

NOTICE OF PROPOSED RULEMAKING

Summary: The Board of Directors of the Office of Compliance is publishing proposed regulations to implement Section 210 of the Congressional Accountability Act of 1995 (''CAA''), 2 U.S.C. §§1301–1438, as applied to covered entities of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

The CAA applies the rights and protections of eleven labor and employment and public access statutes to covered entities within the Legislative Branch. Section 210(b) provides that the rights and protections against discrimination in the provision of public services and accommodations established by sections 201 through 230, 302, 303, and 309 of the Americans With Disabilities Act of 1990, 42 U.S.C. §§12131–12150, 12182, 12183, and 12189 (''ADA'') shall apply to certain covered entities. 2 U.S.C. §1331(b). The above provisions of section 210 are effective on January 1, 1997. 2 U.S.C. §1331(h).

In addition to inviting comment in this Notice, the Board, through the statutory appointees of the Office, sought consultation with the Department of Justice and the Secretary of Transportation regarding the development of these regulations in accordance with section 304(g)(2) of the CAA. The Civil Rights Division of the Justice Department and the Department of Transportation provided helpful comments and assistance during the development of these regulations. The Board also notes that the General Counsel of the Office of Compliance has completed an inspection of all covered facilities for compliance with disability access standards under section 210 of the CAA and has submitted his final report to Congress. Based on information gleaned from these consultations and the experience gained from the General Counsel's inspections, the Board is publishing these proposed regulations, pursuant to section 210(e) of the CAA, 2 U.S.C. §1331(e).

The purpose of these regulations is to implement section 210 of the CAA. In this Notice of Proposed Rulemaking (''NPRM'' or ''Notice'') the Board proposes that virtually identical regulations be adopted for the Senate, the House of Representatives, and the seven Congressional instrumentalities. Accordingly:

(1) *Senate.* It is proposed that regulations as described in this Notice be included in the body of regulations that shall apply to entities within the Senate, and this proposal regarding the Senate entities is recommended by the Office of Compliance's Deputy Executive Director for the Senate.

(2) *House of Representatives.* It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to entities within the House of Representatives, and this proposal

regarding the House of Representatives entities is recommended by the Office of Compliance's Deputy Executive Director for the House of Representatives.

(3) *Certain Congressional instrumentalities*. It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the Capitol Guide Service, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance; and this proposal regarding these six Congressional instrumentalities is recommended by the Office of Compliance s Executive Director.

Dates: Comments are due within 30 days after the date of publication of this Notice in the Congressional Record.

Addresses: Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540-1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 426-1913. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM-201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Executive Director, Office of Compliance, at (202) 724-9250 (voice), (202) 426-1912 (TTY). This Notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Services Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, at (202) 224-2705 (voice), (202) 224-5574 (TTY).

SUPPLEMENTARY INFORMATION

Background and Summary

The Congressional Accountability Act of 1995 (''CAA''), Pub.L. 104-1, 109 Stat. 3, was enacted on January 23, 1995. 2 U.S.C. §§1301-1438. In general, the CAA applies the rights and protections of eleven federal labor and employment and public access statutes to covered employees and employing offices.

Section 210(b) provides that the rights and protections against discrimination in the provision of public services and accommodations established by the provisions of Titles II and III (sections 201 through 230, 302, 303, and 309) of the Americans With Disabilities Act of 1990, 42 U.S.C. §§12131-12150, 12182, 12183, and 12189 (''ADA'') shall apply to the following entities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

2 U.S.C. §1331(b).

Title II of the ADA generally prohibits discrimination on the basis of disability in the provision of services, programs, or activities by any ''public entity''. Section 210(b)(2) of the CAA defines the term ''public entity'' for Title II purposes as any entity listed above that provides public services, programs, or activities. 2 U.S.C. §1331(b)(2).

Title III of the ADA generally prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with accessibility standards. Section 225(f) of the CAA provides that, ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions of the [ADA] shall apply under this Act.'' 2 U.S.C. §1361(f)(1).

Section 210(f) of the CAA requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and report to Congress on compliance with disability access standards under section 210. 2 U.S.C. §1331(f).

Section 210(e) of the CAA requires the Board of Directors of the Office of Compliance established under the CAA to issue regulations implementing the section. 2 U.S.C. §1331(e). Section 210(e) further states that such regulations ''shall be the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' *Id*. Section 210(e) further provides that the regulations shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (b), the entity responsible for correction of a particular violation. 2 U.S.C. §1331(e).

In developing these proposed regulations, a number of issues have been identified and explored. The Board has proposed to resolve these issues as described below.

A. In general

1. *Public services and accommodations regulations promulgated by the Attorney General and the Secretary of Transportation that the board will adopt under section 210(e) of the CAA.*— Section 210(e) requires the Board to issue regulations that are the same as ''substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. §1331(e).

Consistent with its prior decisions on this issue, the Board has determined that all regulations promulgated after a notice and comment by the Attorney General and/or the Secretary of Transportation to implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA are ''substantive regulations'' within the meaning of section 210(e). *See, e.g.*, 142 Cong.Rec. S5070, S5071–72 (daily ed. May 15, 1996) (NPRM implementing section 220(d) regulations); 141 Cong. Rec. S17605 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations). *See also Reves v. Ernst & Young*, 113 S.Ct. 1163, 1169 (1993) (where same phrase or term is used in two different places in the same statute, it is reasonable for court to give each use a similar construction); *Sorenson v. Secretary of the Treasury*, 475 U.S. 851, 860 (1986) (normal rule of statutory construction assumes that identical words in different parts of the same act are intended to have the same meaning).

In this regard, the Board has reviewed the provisions of section 210 of the CAA, the sections of the ADA applied by that section, and the regulations of the Attorney General and the Secretary of Transportation, to determine whether and to what extent those regulations are substantive regulations which implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA. As explained more fully below, the Board proposes to adopt the following otherwise applicable regulations of the Attorney General published at Parts 35 and 36 of Title 28 of the Code of Federal Regulations (''CFR'') and those of the Secretary of Transportation published at Parts 37 and 38 of Title 49 of the CFR:

1. *Attorney General's regulations at Part 35 of Title 28 of the CFR:* The Attorney General's regulations at Part 35 implement subtitle A of Title II of the ADA (sections 201 through 205), the rights and protections of which are applied to covered entities under section 210(b) of the CAA. *See* 28 CFR §35.101 (Purpose). Therefore, the Board determines that these regulations will be adopted in the proposed regulations under section 210(e).

2. *Attorney General's regulations at Part 36 of Title 28 of the CFR:* The Attorney General's regulations at Part 36 implement Title III of the ADA (sections 301 through 309). *See* 28 CFR §36.101 (Purpose). Section 210(b) only applies the rights and protections of three sections of Title III with respect to public accommodations: prohibitions against discrimination (section 302), provisions regarding new construction and alterations (section 303), and provisions regarding examinations and courses (section 309). Therefore, only those regulations in Part 36 that are reasonably necessary to implement the statutory provisions of sections 302, 303, and 309 will be adopted by the Board under section 210(e) of the CAA.

3. *Secretary of Transportation regulations at Parts 37 and 38 of Title 49 of the CFR:* The Secretary's regulations at Parts 37 and 38 implement the transportation provisions of Title II and Title III of the ADA. *See* 49 CFR §§37.101 (Purpose) and 38.1 (Purpose). The provisions of Title II and Title III of the ADA relating to transportation and applied to covered entities by section 210(b) of the CAA are subtitle B of Title II (sections 221 through 230) and certain portions of section 302 of Title III. Thus, those regulations of the Secretary that are reasonably necessary to implement the statutory provisions of sections 221 through 230, 302, and 303 of the ADA will be adopted by the Board under section 210(e) of the CAA.

The Board proposes not to adopt those regulatory provisions of the regulations of the Attorney General or those of the Secretary that have no conceivable applicability to operations of entities within the Legislative Branch or are unlikely to be invoked. *See* 141 Cong. Rec. at S17604 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations). Unless public comments demonstrate otherwise, the Board intends to include in the adopted regulations a provision stating that the Board has issued substantive regulations on all matters for which section 210(e) requires a regulation. *See* section 411 of the CAA, 2 U.S.C. §1411.

In addition, the Board has proposed to make technical changes in definitions and nomenclature so that the regulations comport with the CAA and the organizational structure of the Office of Compliance. In the Board's judgment, making such changes satisfies the CAA's ''good cause'' requirement. With the exception of these technical and nomenclature changes, the Board does not propose substantial departure from otherwise applicable Secretary's regulations.

The Board notes that the General Counsel applied the above-referenced standards of

Parts 35 and 36 of the Attorney General's regulations and Parts 37 and 38 of the Secretary's regulations during his initial inspection of all Legislative Branch facilities pursuant to section 210(f) of the CAA. In contrast to other sections of the CAA, which generally give the Office of Compliance only adjudicatory and regulatory responsibilities, the General Counsel has the authority to investigate and prosecute alleged violations of disability standards under section 210, as well as the responsibility for inspecting covered facilities to ensure compliance. According to the General Counsel's final inspection report, the Title II and Title III regulations encompass the following requirements:

1. *Program accessibility:* This standard is applied to ensure physical access to public programs, services, or activities. Under this standard, covered entities must modify policies, practices, and procedures to ensure an equal opportunity for individuals with disabilities. If policy and procedural modifications are ineffective, then structural modifications may be required.

2. *Effective communication:* This standard requires covered entities to make sure that their communications with individuals with disabilities (such as in the context of constituent meetings and committee hearings) are as effective as their communications with others. Covered entities are required to make information available in alternate formats such as large print, Braille, or audio tape, or use methods that provide individuals with disabilities the opportunity to effectively communicate, such as sign language interpreters or the use of pen and paper. Primary consideration must be given to the method preferred by the individual. For telecommunications, the use of text telephones (TTY's) or the use of relay services is required.

3. *ADA Standards for Accessible Design:* These standards are applied to architectural barriers, including structural barriers to communication, such as telephone booths, to ensure that existing facilities, new construction, and new alterations, are accessible to individuals with disabilities.

See Inspection Report, App. A-3—A-4.

The Board recognizes that, as with other obligations under the CAA, covered entities will need information and guidance regarding compliance with these ADA standards as adopted in these proposed regulations, which the Office will provide as part of its education and information activities.

2. *Modification of regulations of the Attorney General and the Secretary*.—The Board has considered whether and to what extent it should modify otherwise applicable substantive public service and accommodation standards of the Attorney General and the Secretary. As the Board has noted in prior rulemakings, the language and legislative history of the CAA leads the Board to conclude that, absent clear statutory language to the contrary, the Board should hew as closely as possible to the text of otherwise applicable regulations promulgated by the appropriate executive branch agency to implement the statutory provisions applied to the Legislative Branch by the CAA. *See* 142 Cong. Rec. S221, S222 (daily ed. Jan. 22, 1996) (Notice of Adoption of Rules Implementing Section 203 regulations) (''The CAA was intended not only to bring covered employees the benefits of the . . . incorporated laws, but also require Congress to experience the same compliance burdens faced by other employers so that it could more fairly legislate in this area.''). Thus, consistent with its prior decisions, the Board proposes to issue the regulations of the Attorney General and the Secretary with only technical changes in the nomenclature and deletion of those sections clearly inapplicable to the Legislative Branch. *See, e.g.*, 141 Cong. Rec. S17603-S17604 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations).

This conclusion is supported by the General Counsel's inspection report, which applied the substantive public service and accommodation standards to covered facilities in the course of his initial inspections under section 210(f) of the CAA. Specifically, there was nothing about the reported condition of facilities within the Legislative Branch that suggested that they were so different from comparable private sector and state and local governmental facilities as to require a public service and accommodations standard different than those applied by the Attorney General and the Secretary. *See generally* Gen. Couns., Off. Compliance, ''Report on Initial Inspections of Facilities for Compliance with Americans With Disability Act Standards Under Section 210'' (1996) (''Disability Access Report''). Thus, with the exception of nonsubstantive technical and nomenclature changes, the Board proposes no departure from the text of otherwise applicable portions of the regulations of the Attorney General and those of the Secretary.

3. Specific issues regarding the Attorney General's title II regulations (part 35, 28 CFR).

a. *Self-evaluation, notice, and designation of responsible employee and adoption of grievance provisions (sections 35.105, 35.106, and 35.107)*.—Section 35.105 of the Attorney General's regulations establishes a requirement that all ''public entities'' evaluate their current policies and practices to identify and correct any that are inconsistent with accessibility requirements under the regulation. Those that employ 50 or more persons are required to maintain the self-evaluation on file and make it available for public inspection for three years. This self-evaluation does not cover activities covered by the Department of Transportation regulations (implementing sections 221 through 230 of the ADA). Section 35.106 requires a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and the regulations. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public and that describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio. *See* 56 Fed. Reg. 35694, 35702 (July 26, 1991) (preamble to final rule regarding Part 35). Section 35.107 requires that public entities with 50 or more employees designate a responsible employee and adopt grievance procedures. This provision establishes an alternative dispute resolution mechanism without requiring the complainant to resort to legal complaint procedures under the ADA. However, the complainant is not required to exhaust these procedures before filing a complaint under the ADA. *See* 56 Fed. Reg. at 35702.

The Board has considered whether and to what extent it may and should impose these recordkeeping, notice, and grievance requirements on covered entities. In contrast to the recordkeeping requirements of other laws applied by the CAA (such as the Fair Labor Standards Act) which were not included in sections of the laws applied to covered employees and employing offices by the CAA, the recordkeeping, notice, and grievance requirements in sections 35.105, 35.106, and 35.107 of the Attorney General's regulations implement subtitle A of Title II of the ADA, which is applied to covered entities under section 210(b) of the CAA. *See* 28 CFR § 35.101; *see also* 28 CFR, pt. 35, App. A at 456–57 (section-by-section analysis). Thus, these regulations have been included in the Board's proposed regulations. *Compare* 141 Cong. Rec. S17603, S17604 (daily ed. Nov. 28, 1995) (recordkeeping requirements of the FLSA not included within the provisions applied by section 203 of the CAA cannot be the subject of Board rulemaking), 142 Cong. Rec. S221, S222 (daily ed. Jan. 22, 1996) (Notice of Adoption of Regulations Implementing Section 203) (same), and 141 Cong. Rec. S17628 (same rationale regarding recordkeeping requirements of the Family and Medical Leave Act) *with* 141 Cong. Rec. at 17657 (daily ed. Jan. 22, 1996) (recordkeeping requirements included within portion of Employee Polygraph Protection Act applied by section 204 of the CAA must be included within the proposed rules).

The Board also retains the 50 employee cut-off for imposing self-evaluation recordkeeping and grievance requirements on covered entities. Given that state and local government entities covered by Title II of the ADA have agencies of comparable size to entities within the Legislative Branch, the Board at present sees no reason to impose a different threshold for such obligations. Therefore, these provisions will be adopted as written, unless comments establish that there is ''good cause'' for modification.

b. *Retaliation or coercion (section 35.134)*.—Section 35.134 of the Attorney General's regulations implements section 503 of the ADA, which prohibits retaliation against any individual who exercises his or her rights under the ADA. 28 CFR pt. 35, App. A at 464 (section-by-section analysis). Section 35.134 is not a provision which implements a right or protection applied to covered entities under section 210(b) of the CAA and, therefore, it will not be included within the adopted regulations.

c. *Employment discrimination provisions (section 35.140)*.—Section 35.140 of the Attorney General's regulations prohibits employment discrimination by covered public entities. Section 35.140 implements Title II of the ADA, which has been interpreted to apply to all activities of a public entity, including employment. *See* 56 Fed. Reg. at 35707 (preamble to final rule regarding Part 35). However, section 210(c) of the CAA states that, ''with respect to any claim of employment discrimination asserted by any covered employee, the exclusive remedy shall be under section 201 of [the CAA].'' 2 U.S.C. § 1331(c). The Board proposes to adopt the employment discrimination provisions of section 35.140 as part of its regulations under section 210(e), and also to add a statement that, pursuant to section 210(c) of the CAA, section 201 of the CAA provides the exclusive remedy for any such employment discrimination. In the Board's judgment, making such a change satisfies the CAA's ''good cause'' requirement.

d. *Effective dates*.—In several portions of Part 35 of the Attorney General's regulations, references are made to dates such as the effective date of the Part 35 regulations or effective dates derived from the statutory provisions of the ADA. *See, e.g.*, 28 CFR §§ 35.150(c), (d), and 35.151(a); *see also* 56 Fed. Reg. at 35710 (preamble to final rule regarding Part 35). The Board proposes to substitute dates which correspond to analogous periods for the purposes of the CAA. In this way covered entities under section 210 may have the same time to come into compliance relative to the effective date of section 210 of the CAA afforded public entities subject to Title II of the ADA. In the Board's judgment, such changes satisfy the CAA's ''good cause'' requirement.

e. *Compliance procedures*.—Subpart F of the Attorney General's regulations (sections 35.170 through 35.189) set forth administrative enforcement procedures under Title II.

Subpart F implements the provisions of section 203 of the ADA, which is applied to covered entities under section 210 of the CAA. Although procedural in nature, such provisions address the remedies, procedures, and rights under section 203 of the ADA, and thus the otherwise applicable provisions of these regulations are ''substantive regulations'' for section 210(e) purposes. *See* 142 Cong. Rec. at S5071–72 (similar analysis under section 220(d) of the CAA). However, since section 303 reserves to the Executive Director the authority to promulgate regulations that ''govern the procedures of the Office,'' and since the Board believes that the benefit of having one set of procedural rules provides the ''good cause'' for modifying the Attorney General's regulations, the Board proposes to incorporate the provisions of Subpart F into the Office's procedural rules, to omit provisions that set forth procedures which conflict with express provisions of section 210 of the CAA or are already provided for under comparable provisions of the Office s rules, and to omit rules with no applicability to the Legislative Branch (such as provisions covering entities subject to section 504 of the Rehabilitation Act, provisions regarding State immunity, and provisions regarding referral of complaints to the Justice Department). *See* 142 Cong. Rec. at S5071–72 (similar analysis and conclusion under section 220(d) of the CAA).

f. *Designated agencies (Subpart G).*—Subpart G of the Attorney General's regulations designates the Federal agencies responsible for investigating complaints under Title II of the ADA. Given the structure of the CAA, such provisions are not applicable to covered Legislative Branch entities and, therefore, will not be adopted under section 210(e).

g. *Appendix to Part 35.*—The Board proposes not to adopt Appendix A to Part 35, the section-by-section analysis of Part 35. Since the Board has only adopted portions of the Attorney General's Part 35 regulations and modified several provisions to conform to the CAA, it does not appear appropriate to include Appendix A. However, the Board notes that the section-by-section analysis may have some relevance to interpreting sections of Part 35 which the Board has adopted without change.

4. *Specific issues regarding the Attorney General's title III regulations (part 36, 28 CFR).*

a. *''Ownership'' or ''leasing'' of places of public accommodation, landlord and tenant obligations (sections 36.104 and 36.201(b)).*—In section 36.104 of the Attorney General's regulations (Definitions), the term ''public accommodations'' is defined as ''a private entity that owns, leases (or leases to), or operates a place of public accommodation.'' Section 36.201(b) delineates the respective obligations of landlords and tenants under the ADA. It provides that the landlord that owns the building that houses the place of public accommodation, as well as the tenant that owns or operates the place of public accommodation, are public accommodations that have obligations under the regulations. Section 36.201(b) further provides that, as between the parties, allocation of responsibility for compliance may be determined by lease or other contract. *See* 36 CFR, pt. 36, App. B at 593–94 (section-by-section analysis).

On its face, these provisions do not apply to facilities within the Legislative Branch. For example, covered entities do not ''own'' the buildings or facilities housing a place of public accommodation in the way that private entities do. Similarly, the Board is unaware of any situations in which an otherwise covered entity within the Legislative Branch may ''lease'' its facilities to another Legislative Branch entity. The only lease agreements of which the Board is aware would be between otherwise covered entities and persons or entities over which the CAA has no jurisdiction. For example, the General Services Administration or a private building owner may lease space to Congressional offices, but neither entity would fall within the CAA's definition of a covered entity.

Although the concepts of ''ownership'' or ''leasing'' do not appear to apply to facilities within the Legislative Branch, the Architect of the Capitol does have statutory superintendence responsibility for certain legislative branch buildings and facilities, including the Capitol Building, which includes duties and responsibilities analogous to those of a ''landlord''. *See* 40 U.S.C. §§ 163–166 (Capitol Building), 167–175 and 185a (House and Senate office buildings), 193a (Capitol grounds), and 216b (Botanical Garden). As noted in section B.2 of this Notice, *infra*, the concept of ''superintendence'' may be relevant to determining whether an entity ''operates'' a place of public accommodation within the meaning of section 210(b). Although the provisions of section 36.201(b) of the Attorney General's regulations are not directly applicable, the Board believes that, where two or more entities may have compliance obligations under section 210(b) as ''responsible entities'' under the proposed regulations, those entities should have the ability to allocate responsibility by agreement similar to the case of landlords and tenants with respect to public accommodations under Title III of the ADA. Thus, the proposed regulations adopt such provisions modeled after section 36.201(b) of the Attorney General's regulations. However, by promulgating this provision, the Board does not intend any substantive change in the statutory responsibility of entities under section 210(b) or the applicable substantive rights and protections of the ADA applied thereunder. *See* 142 Cong. Rec. at S270 (final rule under section 205 of the CAA substitutes the term ''privatization'' for ''sale of business'' in the Secretary of Labor's regulations under the Worker Adjustment Retraining and Notification Act).

b. *Effective dates.*—Section 36.401(a) of the Attorney General's regulations provides generally that all facilities designed and constructed for first occupancy later than January 26, 1993 (30 months after the date of enactment of the ADA) must be readily accessible to and usable by individual with disabilities. Section 36.401 implements section 303 of the ADA, which is applied to covered facilities under section 210(b) of the CAA. Section 303 provides the compliance date regarding new construction is 30 months after the date of enactment. Consistent with its resolution of a similar issue with respect to adoption of the Attorney General's Title II regulations, the Board proposes to substitute a date 30 months after the date of enactment of section 210 of the CAA (*i.e.*, July 23, 1997) in the places that it appears in section 36.401(a)(1), (a)(2), (a)(2)(i), and (a)(2)(ii). In the Board's judgment, making such changes satisfies the CAA's ''good cause'' requirement. Similarly, the Board will substitute the effective date of section 210 of the CAA (January 1, 1997) for the effective date of Titles II and III of the ADA (July 26, 1992) wherever it appears in sections 36.151, 36.401, 36.402, and 36.403 to give covered entities the equivalent time benefits under the CAA that public and private entities enjoyed prior to the effective date of their obligations under the ADA. *See* 56 Fed. Reg. 7452, 7472 (Feb. 22, 1991) (preamble to NPRM regarding Part 36), and section 3.d. of this Notice (similar resolution of issue under Part 35 regulations). Other dates contained in these regulations are derived from the statutory provisions of the ADA. The Board has determined there is ''good cause'' to substitute dates that correspond to analogous periods for the purposes of the CAA.

c. *Retaliation or coercion (section 36.206).*—Section 36.206 of the Attorney General's regulations implements section 503 of the ADA, which prohibits retaliation against any individual who exercises his or her rights under the ADA. 56 Fed. Reg. at 7462–63 (preamble to NPRM regarding Part 36); 28 CFR pt. 36, App. B at 598 (section-by-section analysis). Section 36.206 is not a provision which implements a right or protection applied to covered entities under section 210(b) of the CAA and therefore will not be included within the adopted regulations. The Board notes, however, that section 207 of the CAA provides a comprehensive retaliation protection for employees (including applicants and former employees) who may invoke their rights under section 210, although section 207 does not apply to nonemployees who may enjoy rights and protections against discrimination under section 210.

d. *Places of public accommodations in private residences (section 36.207).*—Section 36.207 of the Attorney General's regulations deals with the situation where all or part of a home may be used to house a place of public accommodation. *See* 28 CFR pt. 36, App. B at 599 (section-by-section analysis). The Board takes notice that some Members of the Congress may use all or part of their own residences as a District or State office in which they may receive constituents, conduct meetings, and other activities which may result in the area being deemed a place of public accommodation within the meaning of section 210 of the CAA. Therefore, the Board proposes adoption of this provision.

e. *Insurance provisions (section 36.212).*—Section 36.212 of the Attorney General's regulations restates section 501(c) of the ADA, which provides that the ADA shall not be construed to restrict certain insurance practices on the part of insurance companies and employers, so long as such practices are not used to evade the purposes of the ADA. *See* 56 Fed. Reg. at 7464-65 (preamble to NPRM regarding Part 36); 28 CFR pt. 36, App. B at 603 (section-by-section analysis). As a limitation on the scope of the rights and protections of Title III of the ADA, these provisions may be applied under the CAA. *See* section 225(f) of the CAA, 2 U.S.C. §1361(f). Although section 36.212 appears intended primarily to cover insurance companies, some of the terms of its provisions may be broad enough to have applicability to covered entities. Accordingly, the Board proposes to adopt, with appropriate modifications, section 36.212.

f. *Enforcement Procedures (Subpart E).*—Subpart E of the Attorney General's regulations (sections 36.501 through 36.599) set forth the enforcement procedures under Title III of the ADA. As the Justice Department noted in its NPRM regarding subpart E, the Department of Justice does not have the authority to establish procedures for judicial review and enforcement and, therefore, ''Subpart E generally restates the statutory procedures for enforcement''. 28 CFR pt. 36, App. B at 638 (section-by-section analysis). Additionally, the regulations derive from the provisions of section 308 of the ADA, which is not applied to covered entities under section 210(b) of the CAA. Thus, the regulations in subpart E are not promulgated by the Attorney General as substantive regulations to implement the statutory provisions of the ADA referred to in section 210(b), within the meaning of section 210(e).

g. *Certification of State Laws or Local Building Codes (subpart F).*—Subpart F of the Attorney General's regulations establishes procedures to implement section 308(b)(1)(A)(ii) of the ADA regarding compliance with State laws or building codes as evidence of compliance with accessibility standards under the

ADA. 28 CFR pt. 36, App. B at 640 (section-by-section analysis). Section 308 is not one of the laws applied to covered entities under section 210(b) of the CAA and, therefore, these regulations will not be adopted under section 210(e).

h. *Appendices to Part 36.*—Part 36 of the Attorney General's regulations includes two appendices, only one of which the Board proposes to adopt as part of these regulations. The Board proposes to adopt as an appendix to these regulations Appendix A (ADA Accessibility Guidelines for Buildings and Facilities (''ADAAG'')), which provides guidance regarding the design, construction, and alteration of buildings and facilities covered by Titles II and III of the ADA. 28 CFR pt. 36, App. A. The Board also proposes to adopt as Appendix B to these regulations the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR pt. 101–19.6). Such guidelines, where not inconsistent with express provisions of the CAA or of the regulations adopted by the Board, may be relied upon by covered entities and others in proceedings under section 210 of the CAA to the same extent as similarly situated persons may rely upon them in actions brought under Title III of the ADA. *See* 142 Cong. Rec. at S222 and 141 Cong. Rec. at S17606 (similar resolution regarding Secretary of Labor's interpretative bulletins under the Fair Labor Standards Act for section 203 purposes). Covered entities may also use the Attorney General's ADA Technical Assistance Manual and other similar publications for guidance regarding their obligations under regulations adopted by the Board without change.

The Board proposes not to adopt Appendix B, the section-by-section analysis of Part 36. Since the Board has only adopted portions of the Attorney General's Part 36 regulations and modified several provisions to conform to the CAA, it does not appear appropriate to include Appendix B. However, the Board notes that the section-by-section analysis may have some relevance to interpreting the sections of Part 36 that the Board has adopted without change.

5. *Specific issues regarding the Secretary of Transportation's title II and title III regulations (parts 37 and 38, 49 CFR).*

a. *Definitions (section 37.3).*—As noted above, the Board will make technical and nomenclature changes to the included regulations to adapt them to the CAA. In addition, certain definitions in section 37.3 of the Secretary's regulations relate strictly to implementation of Part II of Title II of the ADA (sections 241 through 246), dealing with public transportation by intercity and commuter rail. Sections 241 through 246 of the ADA were not within the rights and protections applied to covered entities under section 210(b) and, therefore, the regulations implementing such sections are not substantive regulations of the Secretary required to be adopted by the Board within the meaning of section 210(e). Accordingly, the Board will exclude from its regulations the definitions of terms such as ''commerce,'' ''commuter authority,'' ''commuter rail car,'' ''commuter rail transportation,'' ''intercity rail passenger car,'' and ''intercity rail transportation,'' which relate to sections 241 through 246 of the ADA.

b. *Nondiscrimination (section 37.5).*—Subsection (f) of section 37.5 of the Secretary's regulations relates to private entities primarily engaged in the business of transporting people and whose operations affect commerce. This subsection implements section 304 of the ADA, which is not a right or protection applied to covered entities under section 210(b) of the CAA. *See* 56 Fed. Reg. 13856, 13858 (April 4, 1991) (preamble to NPRM regarding Part 37). Therefore, it is not a regulation of the Secretary included within the scope of rulemaking under section 210(e) of the CAA and will not be included in these regulations.

c. *References to the Administrator.*—In several provisions of the Secretary's regulations which the Board will include as substantive regulations, reference is made to the Administrator of the Federal Transit Administration (''Administrator'' or ''FTA''). Several regulations provide that entities may make requests to the Administrator for waivers or other relief from the accessibility requirements of the regulations. *See, e.g.*, section 37.7(b) (determination of equivalent facilitation), 37.71 (waiver of accessibility requirements for new buses), 37.135 (submission of paratransit plans), and 37.153 (FTA waiver determinations).

These provisions will be invoked rarely, if at all. Nevertheless, the Board proposes to adopt these provisions and has determined that there is ''good cause'' to substitute the General Counsel of the Office of Compliance for the Administrator of the FTA. There is some concern that authorizing the FTA, an executive branch agency, to relieve covered entities from the accessibility requirements of section 210 may be tantamount to executive enforcement of section 210. *See* section 225(f)(3) (''This Act shall not be construed to authorize enforcement by the executive branch of this Act.''). In this context, the General Counsel, as the officer responsible for investigating and prosecuting complaints under section 210, *see* section 210(d) and (f) of the CAA, is the appropriate analogue for the Administrator. Moreover, if such a waiver request is made by covered entities which requires FTA expertise, such assistance may be obtained by the Executive Director through the use of detailees or consultants. *See* CAA sections 210(f)(4) and 302(e) and (f).

d. *State Administering Agencies.*— Several portions of the Secretary's regulations refer to obligations of entities regulated by state agencies administering federal transportation funds. *See, e.g.*, sections 37.77(d) (requires filing of equivalent service certificates with state administering agency), 37.135(f) (submission of paratransit development plan to state administering agency) and 37.145 (State comments on paratransit plans). Any references to obligations not imposed on covered entities, such as state law requirements and laws regulating entities that receive Federal financial assistance, will be excluded from these proposed regulations.

e. *Dates (sections 37.9, 37.71 through 37.87, 37.91, and 37.151).*—There are several references in the Secretary's regulations to dates from which duties commence and by which certain action should be taken. *See* sections 37.9, 37.13, 37.41, 37.43, 37.47, 37.71 through 37.87, 37.91, and 37.151. The dates set forth in the regulations are derived from the statutory provisions of the ADA. *See, e.g.*, 49 CFR, pt. 37, App. D at 497, 501-02 (section-by-section analysis). The Board has determined that there is ''good cause'' to substitute dates which correspond to analogous periods for purposes of the CAA.

f. *Administrative Enforcement (section 37.11).*—Section 37.11 of the Secretary's regulations does not implement any provision of the ADA applied to covered entities under section 210 of the CAA. Moreover, the enforcement procedures of section 210 are explicitly provided for in section 210(d) (''Available Procedures''). Accordingly, this section will not be included within the Board's proposed regulations. The subject matter of enforcement procedures will be addressed, if necessary, under the Office's procedural rules.

g. *Applicability and Transportation Facilities (subparts B and C).*—Certain sections of Subparts B (Applicability) and C (Transportation Facilities) of the Secretary's regulations were promulgated to implement sections 242 and 304 of the ADA, provisions that are not applied to covered entities under section 210(b) of the CAA or are otherwise inapplicable to Legislative Branch entities. Therefore, the Board will exclude the following sections from its substantive regulations on that basis: 37.21(a)(2) and (b) (relating to private entities under section 304 of the ADA and private entities receiving Federal assistance from the Transportation Department), 37.25 (university transportation systems), 37.29 (private taxi services), 37.33 (airport transportation systems), 37.37(a) and 37.37(e)-(g) (relating to coverage of private entities and other entities under section 304 of the ADA), and 37.49–37.57 (relating to intercity and commuter rail systems). Similarly, the Board proposes modifying sections 37.21(c), 37.37(d), and 37.37(h) and other sections where references are made to requirements or circumstances strictly encompassed by the provisions of section 304 of the ADA and, therefore, not applicable to covered entities under the CAA. *See, e.g.*, sections 37.25–37.27 (transportation for elementary and secondary education systems).

h. *Acquisition of Accessible Vehicles by Public Entities (Subpart D).*—Subpart D (sections 37.71 through 37.95) of the Secretary's regulations relate to acquisition of accessible vehicles by public entities. Certain sections of subpart D were promulgated to implement sections 242 and 304 of the ADA, which were not applied to covered entities under section 210(b) of the CAA, or are otherwise inapplicable to Legislative Branch entities. Therefore, the Board will exclude the following sections from its substantive regulations on that basis: 37.87–37.91 and 37.93(b) (relating to intercity and commuter rail service).

i. *Acquisition of Accessible Vehicles by Private Entities (Subpart E).*—Subpart E (sections 37.101 through 37.109) of the Secretary's regulations relates to acquisition of accessible vehicles by private entities. Section 37.101, relating to acquisition of vehicles by private entities not primarily engaged in the business of transporting people, implements section 302 of the ADA, which is applied to covered entities under section 210(b). Therefore, the Board will adopt section 37.101 as part of its section 210(e) regulations. Sections 37.103, 37.107, and 37.109 of the regulations implement section 304 of the ADA, which is inapplicable to covered entities under the ADA. Therefore, the Board proposes not to include them within its substantive regulations under section 210(e) of the CAA.

j. *Appendices to Part 37.*—Part 37 of the Secretary's regulations includes several appendices, only one of which the Board proposes to adopt as part of these regulations. The Board proposes to adopt as an appendix to these regulations Appendix A (Standards for Accessible Transportation Facilities, ADA Accessibility Guidelines for Buildings and Facilities), which provides guidance regarding the design, construction, and alteration of buildings and facilities covered by Titles II and III of the ADA. 49 CFR pt. 37, App. A. Such guidelines, where not inconsistent with express provisions of the CAA or of the regulations adopted by the Board, may be relied upon by covered entities and other in proceedings under section 210 of the CAA to the same extent as similarly situated persons may rely upon them in actions brought under Title II and Title III of the ADA. *See* 142 Cong. Rec. at S222 and 141 Cong. Rec. at S17606 (similar resolution regarding Secretary of Labor's interpretative bulletins under the Fair Labor Standards Act for section 203 purposes).

The Board proposes not to adopt Appendix B, which gives the addresses of FTA regional offices. Such information is not relevant to

covered entities under the CAA. The Board also proposes to adopt portions of Appendix C, which contain forms for certification of equivalent service. The Board will delete reference to the requirement that public entities receiving financial assistance under the Federal Transit Act submit the certification to their state program office before procuring any inaccessible vehicle. This certification form appears to be irrelevant to entities covered by the CAA and therefore will not be adopted by the Board.

Finally, the Board does not adopt Appendix D to Part 37, the section-by-section analysis of Part 37. Since the Board has only adopted portions of the Secretary's Part 37 regulations and has modified several provisions to conform to the CAA, it does not appear appropriate to include Appendix D. However, the Board notes that the section-by-section analysis may have some relevance in interpreting the sections of Part 37 that the Board has adopted without change.

k. *ADA Accessibility Specifications for Transportation Vehicles (Part 38).*—Part 38 of the Secretary's regulations contains accessibility standards for all types of transportation vehicles. Part 38 is divided into vehicle types: Subpart B, Buses, Vans, and Systems; Subpart C, Rapid Rail Vehicles and Systems; Subpart D, Light Rail Vehicles and Systems; Subpart E, Commuter Rail Cars and Systems; Subpart F, Intercity Rail Cars and Systems; Subpart G, Over-the-Road Buses and Systems; and Subpart H, Other Vehicles and Systems. Section 38.2 contains the concept of equivalent facilitation, under which an entity is permitted to request approval for an alternative method of compliance. As noted in section 5.c. of this Notice, the Board proposes that such determinations be made by the General Counsel rather than the Administrator.

The Board proposes to adopt, with minimal technical and nomenclature changes, the regulations contained in Part 38 and accompanying appendix, with the exception of the following subparts which the Board has determined implement portions of the ADA not applied to covered entities under section 210(b) of the CAA and/or the Board believe have no conceivable applicability to legislative branch operations: Subpart E, Commuter Rail Cars and Systems; and Subpart F, Intercity Rail Cars and Systems.

B. Proposed regulations

1. *General Provisions.*—The proposed regulations include a section on matters of general applicability including the purpose and scope of the regulations, definitions, coverage, and the administrative authority of the Board and the Office of Compliance.

2. *Method for Identifying Responsible Entities and Establishing Categories of Violations.*—Section 210(e)(3) of the CAA directs the Board to include in its regulations a method for identifying, for purposes of section 210 and for different categories of violations of subsection (b), the entity responsible for correction of a particular violation. In developing these proposed rules, the Board considered the final Report of the General Counsel, which applied the public services and accommodations standards of section 210 to covered entities during his initial inspections under section 210(f). *See* Disability Access Report.

In developing a method for identifying the entity responsible for a correction of a violation of section 210, the Board must consider the terms of section 210 of the CAA and the precise nature of the obligations imposed on covered entities under Titles II and III of the ADA under section 210(b). The Board cannot promulgate regulations which purport to expand or limit these obligations contrary to the language of the statute or the intent of Congress. *See, e.g., White v. I.N.S.*, 75 F.3d 213, 215 (5th Cir. 1996) (agency cannot promulgate even substantive rules that are contrary to statute; if intent of Congress is clear, agency must give effect to that unambiguously expressed intent); *Conlan v. U.S. Dep't of Labor*, 76 F.3d 271, 274 (9th Cir. 1996). As set forth below, the Board has developed a method for identifying the entity responsible for correction of a violation of section 210(b) which includes providing definitions for terms such as ''operate a place of public accommodation,'' and ''public entity'' for the purpose of section 210.

Section 210(b) applies the rights and protections of two separate and independent provisions of the ADA to covered entities:

The rights and protections of Title II of the ADA (sections 201 through 230) applied by section 210(b) of the CAA deals with ''public entities.'' It prohibits discrimination against any qualified individual with a disability by any ''public entity'' regarding all public activities, programs, and services of that entity. Title II imposes an obligation on public entities to make ''reasonable modifications to rules, policies, or practices,'' to achieve ''the removal of architectural, communication, or transportation barriers,'' and to ensure ''provision of auxiliary aids and services.'' Title II also includes provisions regarding accessibility of public transportation systems.

The rights and protections of Title III of the ADA applied by section 210(b) of the CAA (sections 302, 303, and 309) deals with ''public accommodations.'' It prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of ''any place of public accommodation.'' Specifically, such discrimination includes: (1) discriminatory eligibility criteria; (2) failure to make reasonable modifications; (3) failure to provide auxiliary aids and services; (4) failure to remove architectural barriers and communication barriers that are structural in nature where removal of such barriers are ''readily achievable''; and (5) failure to make goods, services, facilities, privileges, advantages, or accommodations available through alternative methods where removal of barriers is not readily achievable. In contrast to Title II, Title III defines a ''place of public accommodation'' as ''private entities'' (which excludes ''public entities'' covered under Title II) falling within twelve specified categories of activities. Title III also contains requirements regarding specified transportation services.

As set forth in the ADA, Title II and Title III were designed to impose separate legal obligations (which are expressed in slightly different terms) on two separate and independent classes of actors: ''public entities'' (which have Title II obligations) and private entities that are 'places of public accommodation'' (which have Title III obligations). Under the ADA, a public entity, by definition, can never be subjected to Title III of the ADA, which covers only private entities. Conversely, private entities cannot be covered by Title II. *See, e.g.*, 28 CFR, pt. 36, App. B at 587 (section-by-section analysis of Part 36) (''Facilities operated by government agencies or other public entities as defined in this section do not qualify as places of public accommodation. The action of public entities are governed by title II of the ADA''); ADA Title III Technical Assistance Manual at p. 7 (1993).

In section 210(b) of the CAA, Congress applied the rights and protections of all of Title II and parts of Title III to specified Legislative Branch entities without making either Title's coverage mutually exclusive. Thus, in contrast to the ADA, under the CAA, a single entity could conceivably have obligations under both Title II and Title III, if it meets the criteria for coverage under both Titles.

The method developed by the Board in these regulations to identify the entity responsible for correcting a violation of section 210(b) is set forth in section 1.105 of the proposed regulations. Section 1.105 is based on the Board's interpretation of the statutory coverage for Legislative Branch entities under Title II and Title III, as applied by section 210(b).

Under the proposed rule, the entity responsible for correcting a violation of the obligations under Title II of the ADA with respect to the provision of public services, programs, or activities, as applied by section 210(b) is the entity that, with respect to the particular violation, is a covered ''public entity'' within the meaning of section 210(b) that provided the particular public service, program, or activity that forms the basis of the violation. Similarly, the entity responsible for correcting a violation of the obligations under Title III of the ADA, as applied by section 210(b) is the entity that, with respect to the particular violation, operates the ''place of public accommodation'' within the meaning of section 210(b) that forms the basis of the violation. Thus, the regulations distinguish responsible entities for Title II and Title III purposes as follows:

1. *The rights and protections of Title II (sections 201 through 203 of the ADA):* For the purpose of the rights and protections against discrimination under Title II of the ADA, the entity responsible for a violation would be any entity listed in subsection (a) of section 210 of the CAA that is a ''public entity'' as defined by section 210(b)(2) of the CAA and that provided the public service, program, or activity that formed the basis for the particular violation of Title II set forth in the charge filed with the General Counsel or the complaint filed by the General Counsel with the Office under section 210(d) of the CAA. Conversely, if the entity is not a ''public entity'' (that is, the entity provides no public services, programs, or activities) or did not provide the public service, program, or activity that formed the basis for the particular violation of Title II, the entity is not an ''entity responsible for correction of the violation'' within the meaning of these regulations.

2. *The rights and protections of Title III (sections 302, 303, and 309 of the ADA):* For the purpose of the rights and protections against discrimination under Title III of the ADA, the entity responsible for a violation would be any entity listed in subsection (a) of section 210 of the CAA that ''operates a place of public accommodation'' (as defined in these regulations) that forms in whole or in part the basis for the particular violation of Title III.

a. ''Place of public accommodation.'' As used in these regulations, the term ''place of public accommodation'' follows the definition of section 301(7) of the ADA, with appropriate modification to delete the phrase ''private'' and the requirement that the activities affect commerce. These modifications conform the definition to the CAA. *See* section 225(f) of the CAA, 2 U.S.C. §1361(f).

b. ''Operate (a place of public accommodation).'' As applied by section 210(b) of the CAA, section 302(a) of the ADA prohibits discrimination on the basis of disability by any ''[Legislative Branch entity that] owns, leases (or leases to), or operates a place of public accommodation.'' On its face, the terms ''owns, leases (or leases to)'' do not apply to entities within the Legislative Branch. For example, the Board is not aware of any individual covered entity that owns the buildings or facilities housing a place of

public accommodation in the way that private entities do. Similarly, the Board is unaware of any situations in which an otherwise covered entity within the Legislative Branch may ''lease'' its facilities to another Legislative Branch entity. The only lease agreements of which the Board is aware would be between otherwise covered entities and persons or entities over which the CAA has no jurisdiction. For example, the General Services Administration or a private building owner may lease space to Congressional offices, but neither entity would fall within the CAA's definition of covered entity. Thus, the only issue in any case under Title III of the ADA as applied under section 210 would be whether a Legislative Branch entity ''operates'' a place of public accommodation within the meaning of the ADA.

The ADA does not define the term ''operate.'' Thus, the Board ''construe[s] it in accord with its ordinary and natural meaning.'' *Smith v. United States*, 113 S.Ct. 2050, 2054 (1993); *White v. I.N.S.*, 75 F.3d 213, 215 (5th Cir. 1996), *quoting Pioneer Investment Servs. v. Brunswick Assocs.*, 113 S.Ct. 1489, 1495 (1993) (''Congress intends the words in its enactments to carry their ordinary, contemporary, common meaning.'').

To ''operate,'' in the context of a business operation, means ''to put or keep in operation,'' The Random House College Dictionary 931 (Rev. ed. 1980), ''[t]o control or direct the functioning of,'' Webster's II: New Riverside Dictionary 823 (1988), ''[t]o conduct the affairs of; manage,'' The American Heritage Dictionary 1268 (3d ed. 1992). *Neff v. American Dairy Queen Corp.*, 58 F.3d 1063, 1066 (5th Cir. 1995), *cert. denied* 116 S.Ct. 704 (1996). *See also* Webster's New Universal Unabridged Dictionary 1253 (2d ed. 1983) (''to superintend; to manage; to direct the affairs of; as, to *operate* a mine.'').

In Neff v. American Dairy Queen Corp., supra, the Fifth Circuit considered the meaning of the term ''operate'' in the ADA in the context of franchise store operations. The plaintiff sued American Dairy Queen (''ADQ'') under Title III of the ADA, arguing that the franchise agreement between ADQ and its franchisee (R & S Dairy Queens), in which ADQ retained the right to set standards for buildings and equipment maintenance and the right to ''veto'' proposed structural changes, made it an ''operator'' of the franchisees' stores within the meaning of section 302. The Fifth Circuit rejected this argument:

''Instead, the relevant question in this case is whether ADQ, according to the terms of the franchise agreements with R & S Dairy Queens, controls modification of the

San Antonio Stores to cause them to comply with the ADA. * * *

* * * * *

''In sum, while the terms of the [agreement] demonstrate that ADQ retains the right to set standards for building and equipment maintenance and to ''veto'' proposed structural changes, we hold that this supervisory authority, without more, is insufficient to support a holding that ADQ ''operates,'' in the ordinary and natural meaning of that term, the [franchisee store].'' 58 F.3d at 1068. The Board finds the reasoning of the *Neff* court persuasive and adopts its application of the term ''operate'' for Title III purposes in these regulations.

Specifically, for the purposes of determining responsibility under Title III, an entity ''operates'' a place of public accommodation if it superintends, directly controls, or directs the functioning of or manages the specific aspects of the public accommodation that constitute an architectural barrier or a communication barrier that is structural in nature or that otherwise forms the basis for a violation of section 302 of the ADA, as applied by section 210(b) of the CAA. In addition, an entity ''operates'' a place of public accommodation if it assigns such superintendence, control, direction, or management to another entity or person by means of contract or other arrangement. An entity, whether or not a covered entity under these regulations, which contracts with a covered entity stands in the shoes of the covered entity for purposes of determining the application of Title III requirements. Thus, the definition of ''operate'' in these regulations ''includes operation of the place of public accommodation by a person under a contractual or other arrangement or relationship with a covered entity.''

In the absence of such a provision, it is possible that a covered entity, instead of directly controlling the inaccessible features of places of public accommodation, could contract with a private entity, which would then manage the accommodation in such a way as to maintain its inaccessible features. Allowing such self-insulation from liability would clearly conflict with the principles of the ADA as applied by section 210(b) of the CAA. The proposed definition is intended to prevent an otherwise covered entity from ''contracting out'' of its Title III obligations. Where the entity exercises no authority with respect to the modification of the specific aspects of the facilities, programs, activities, or other features of the place of public accommodation that make them inaccessible within the meaning of section 302 of the CAA, the proposed regulation states that the entity does not ''operate'' the place of public accommodation within the meaning of these regulations.

Where an entity merely maintains the general authority to set standards regarding a particular facility or condition at issue, and to ''veto'' proposed changes in the facility or condition, this oversight or supervisory authority, without more, is insufficient to support a finding that the entity ''operates'' the facility or condition within the meaning of these regulations. *See Neff*, 58 F.3d at 1068. Conversely, if the correction of a violation of section 210 of the CAA, including the modification of the facility or condition at issue, can only be accomplished with the active approval or permission of a particular entity, then that entity ''operates'' the facility or condition and is otherwise a responsible entity under this section of the regulations, but only to the extent that the entity withholds such approval or permission.

3. *Future changes in the text of regulations of the Attorney General and the Secretary which have been adopted by the Board.*—The Board proposes that the section 210 regulations adopt the text of the referenced portions of parts the regulations of the Attorney General and the Secretary of Transportation in effect as of the effective date of these regulations. The Board takes notice that the Attorney General and the Secretary have in recent years made frequent changes, both technical and nontechnical, to their Title II and Title III regulations and to the ADAAG standards incorporated by reference therein. The Board interprets the incorporation by reference in the text of the adopted Title II and Title III regulations of documents (such as the ADAAG standards at appendix A to Part 36) to include any future changes to such documents. As the Office receives notice of such changes by the Attorney General or the Secretary, it will advise covered entities and employees as part of its education and information activities. As to changes in the text of the adopted regulations themselves, however, the Board finds that, under the CAA statutory scheme, additional Board rulemaking under section 210(e) will be required. The Board believes that it should afford covered Legislative Branch entities and employees potentially affected by adoption of such changes the opportunity to comment on the propriety of Board adoption of any such changes, and that the Congress should have the opportunity to specifically approve such adoption by the Board. The Board specifically invites comments on this proposal.

4. *Technical and nomenclature changes.*—The proposed regulations make technical and nomenclature changes, where appropriate, to conform to the provisions of the CAA.

Recommended method of approval: The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and entities and facilities of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and entities and facilities of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered entities and facilities be approved by the Congress by concurrent resolution. Signed at Washington, D.C., on this 18th day of September, 1996.

GLEN D. NAGER,
Chair of the Board, Office of Compliance.

APPLICATION OF RIGHTS AND PROTECTIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990 RELATING TO PUBLIC SERVICES AND ACCOMMODATIONS (SECTION 210 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995)

Part 1—Matters of General Applicability to All Regulations Promulgated Under Section 210 of the Congressional Accountability Act of 1995

Sec.
1.101 Purpose and scope
1.102 Definitions
1.103 Coverage
1.104 Notice of protection
1.105 Authority of the Board
1.106 Method for identifying the entity responsible for correction of violations of section 210

§1.101 Purpose and scope.

(a) *Section 210 of the CAA.* Enacted into law on January 23, 1995, the Congressional Accountability Act (''CAA'') directly applies the rights and protections of eleven federal labor and employment law and public access statutes to covered employees and employing offices within the legislative branch. Section 210(b) of the CAA provides that the rights and protections against discrimination in the provision of public services and accommodations established by the provisions of Title II and III (sections 201 through 230, 302, 303, and 309) of the Americans With Disabilities Act of 1990, 42 U.S.C. §§12131–12150, 12182, 12183, and 12189 (''ADA'') shall apply to the following entities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician and

(9) the Office of Compliance.

2 U.S.C. §1331(b). Title II of the ADA generally prohibits discrimination on the basis of disability in the provision of public services, programs, activities by any ''public entity.'' Section 210(b)(2) of the CAA provides

that for the purpose of applying Title II of the ADA the term ''public entity'' means any entity listed above that provides public services, programs, or activities. Title III of the ADA generally prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with accessibility standards. Section 225(f) of the CAA provides that, ''[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions of the [ADA] shall apply under this Act.'' 2 U.S.C. §1361(f)(1).

Section 210(f) of the CAA requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and to report to Congress on compliance with disability access standards under section 210. 2 U.S.C. §1331(f).

(b) *Purpose and scope of regulations.* The regulations set forth herein (Parts 1, 35, 36, 37, and 38) are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 210(e) of the CAA. Part 1 contains the general provisions applicable to all regulations under section 210, including the method of identifying entities responsible for correcting a violation of section 210. Part 35 contains the provisions regarding nondiscrimination on the basis of disability in the provision of public services, programs, or activities of covered entities. Part 36 contains the provisions regarding nondiscrimination on the basis of disability by public accommodations. Part 37 contains the provisions regarding transportation services for individuals with disabilities. Part 38 contains the provisions regarding accessibility specifications for transportation vehicles.

§1.102 Definitions.

Except as otherwise specifically provided in these regulations, as used in these regulations:

(a) *Act* or *CAA* means the Congressional Accountability Act of 1995 (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) *ADA* means the Americans With Disabilities Act of 1990 (42 U.S.C. §§12131–12150, 12182, 12183, and 12189) as applied to covered entities by Section 210 of the CAA.

(c) The term *covered entity* includes any of the following entities that either provides public services, programs, or activities, and/or that operates a place of public accommodation within the meaning of section 210 of the CAA: (1) each office of the Senate, including each office of a Senator and each committee; (2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee; (3) each joint committee of the Congress; (4) the Capitol Guide Service; (5) the Capitol Police; (6) the Congressional Budget Office; (7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden); (8) the Office of the Attending Physician; and (9) the Office of Compliance.

(d) *Board* means the Board of Directors of the Office of Compliance.

(e) *Office* means the Office of Compliance.

(f) *General Counsel* means the General Counsel of the Office of Compliance.

§1.103 Notice of protection.

Pursuant to section 301(h) of the CAA, the Office shall prepare, in a manner suitable for posting, a notice explaining the provisions of section 210 of the CAA. Copies of such notice may be obtained from the Office of Compliance.

§1.104 Authority of the Board.

Pursuant to sections 210 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections against discrimination on the basis of disability in the provision of public services and accommodations under the ADA. Section 210(e) of the CAA directs the Board to promulgate regulations implementing section 210 that are ''the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. §1331(e). The regulations issued by the Board herein are on all matters for which section 210 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) [of section 210 of the CAA]'' that need be adopted.

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Attorney General and the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the Legislative Branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Attorney General and/or the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulations or of the statutory provisions of the CAA upon which they are based.

§1.105 Method for identifying the entity responsible for correction of violations of section 210.

(a) *Purpose and scope.* Section 210(e)(3) of the CAA provides that regulations under section 210(e) include a method of identifying, for purposes of this section and for categories of violations of section 210(b), the entity responsible for correcting a particular violation. This section 1.105 sets forth the method for identifying responsible entities for the purpose of allocating responsibility for correcting violations of section 210(b).

(b) *Categories of violations.* Violations of the rights and protections established in section 210(b) of the CAA that may form the basis for a charge filed with the General Counsel under section 210(d)(1) of the CAA or for a complaint filed by the General Counsel under section 210(d)(3) of the CAA fall into one (or both) of two categories:

(i) *Title II violations.* A covered entity may violate section 210(b) if it discriminates against a qualified individual with a disability within the meaning of Title II of the ADA (sections 210 through 230), as applied to Legislative Branch entities under section 210(b) of the CAA.

(ii) *Title III violations.* A covered entity may also violate section 210(b) if it discriminates against a qualified individual with a disability within the meaning of Title III of the ADA (sections 302, 303, and 309), as applied to Legislative Branch entities under section 210(b) of the CAA.

(c) *Entity Responsible for Correcting a Violation of Title II Rights and Protections.* Correction of a violation of the rights and protections against discrimination under Title II of the ADA, as applied by section 210(b) of the CAA, is the responsibility of any entity listed in subsection (a) of section 210 of the CAA that is a ''public entity,'' as defined by section 210(b)(2) of the CAA, and that provides the specific public service, program, or activity that forms the basis for the particular violation of Title II rights and protections set forth in the charge of discrimination filed with the General Counsel under section 210(d)(1) of the CAA or the complaint filed by the General Counsel with the Office under section 210(d)(3) of the CAA. As used in this section, an entity provides a public service, program, or activity if it does so itself, or by a person or other entity (whether public or private and regardless of whether that entity is covered under the CAA) under a contractual or other arrangement or relationship with the entity.

(d) *Entity Responsible for Correction of Title III Rights and Protections.* Correction of a violation of the rights and protections against discrimination under Title III of the ADA, as applied by section 210(b) of the CAA, is the responsibility of any entity listed in subsection (a) of section 210 of the CAA that ''operates a place of public accommodation'' (as defined in this section) that forms the basis, in whole or in part, for the particular violation of Title III rights and protections set forth in the charge filed with the General Counsel under section 210(d)(1) of the CAA and/or the complaint filed by the General Counsel with the Office under section 210(d)(3) of the CAA.

(i) Definitions.

As used in this section:

Public accommodation has the meaning set forth in Part 36 of these regulations.

Operates, with respect to the operations of a place of public accommodation, includes the superintendence, control, management, or direction of the function of the aspects of the public accommodation that constitute an architectural barrier or communication barrier that is structural in nature, or that otherwise forms the basis for a violation of the rights and protections of Title III of the ADA as applied under section 210(b) of the CAA.

(ii) As used in this section, an entity operates a place of public accommodation if it does so itself, or by a person or other entity (whether public or private and regardless of whether that entity is covered under the CAA) under a contractual or other arrangement or relationship with the entity.

(e) *Allocation of Responsibility for Correction of Title II and/or Title III Violations.* Where more than one entity is deemed an entity responsible for correction of a violation of Title II and/or Title III rights and protections under the method set forth in this section, as between those parties, allocation of responsibility for complying with the obligations of Title II and/or Title III of the ADA as applied by section 210(b), and for correction of violations thereunder, may be determined by contract or other enforceable arrangement or relationship.

Part 35—Nondiscrimination on the Basis of Disability in Public Services, Programs, or Activities

Subpart A—General

Sec.
35.101 Purpose.
35.102 Application.
35.103 Relationship to other laws.
35.104 Definitions.
35.105 Self-evaluation.
35.106 Notice.
35.107 Designation of responsible employee and adoption of grievance procedures.
35.108–35.129 [Reserved]

Subpart B—General Requirements

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SUBPART A—GENERAL

§ 35.101 Purpose.

The purpose of this part is to effectuate section 210 of the Congressional Accountability Act of 1995 (2 U.S.C. 1331 *et seq.*) which, *inter alia*, applies the rights and protections of subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131-12150), which prohibits discrimination on the basis of disability by public entities.

§ 35.102 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all public services, programs, and activities provided or made available by public entities as defined by section 210 of the Congressional Accountability Act of 1995.

(b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA, as applied by section 210 of the Congressional Accountability Act, they are not subject to the requirements of this part.

§ 35.103 Relationship to other laws.

(a) *Rule of interpretation.* Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.

(b) *Other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws otherwise applicable to covered entities that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

§ 35.104 Definitions.

For purposes of this part, the term—

Act or *CAA* means the Congressional Accountability Act of 1995 (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301-1438).

ADA means the Americans with Disabilities Act (Pub. L. 101–336, 104 Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and 611), as applied to covered entities by section 210 of the CAA.

Auxiliary aids and services includes—

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, text telephones (TTY's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Board means the Board of Directors of the Office of Compliance.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase *physical or mental impairment* means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having an impairment means—*

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

General Counsel means the General Counsel of the Office of Compliance.

Historic preservation programs means programs conducted by a public entity that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term *illegal use of drugs* does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term *individual with a disability* does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Public entity means any of the following entities that provides public services, programs, or activities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended.

§ 35.105 Self-evaluation.

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 35.106 Notice.

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the public services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the CAA and this part.

§ 35.107 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

§§35.108—35.129 [Reserved]

SUBPART B—GENERAL REQUIREMENTS

§ 35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the public services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any public aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the public aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the public aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with a public aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate public aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with public aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any public aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the public aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in public services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's public program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control.

(4) A public entity may not, in determining the site or location of a facility, make selections—

(i) That have the effect of excluding individuals with disabilities from, denying them the public benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the public service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the public programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The public programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the public service, program, or activity.

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any public service, program, or activity, unless such criteria can be shown to be necessary for the provision of the public service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing public benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer public services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the CAA or this part which such individual chooses not to accept.

(2) Nothing in the CAA or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the CAA or this part.

(g) A public entity shall not exclude or otherwise deny equal public services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

§ 35.131 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) A public entity shall not deny public health services, or public services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit a public entity from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§ 35.132 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in transportation covered by this part.

§ 35.133 Maintenance of accessible features.

(a) A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the CAA or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

§ 35.134 [Reserved]

§ 35.135 Personal devices and services.

This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for

personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

§§ 35.136–35.139 [Reserved]

SUBPART C—EMPLOYMENT

§ 35.140 Employment discrimination prohibited.

(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.

(b)(1) For purposes of this part, the requirements of title I of the Americans With Disabilities Act (''ADA''), as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to employment in any service, program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of title I of the ADA, as applied by section 201 of the CAA.

(2) For the purposes of this part, the requirements of section 504 of the Rehabilitation Act of 1973, as established by the regulations of the Department of Justice in 28 CFR part 41, as those requirements pertain to employment, apply to employment in any service, program, or activity conducted by a public entity if that public entity is not also subject to the jurisdiction of title I of the ADA, as applied by section 201 of the CAA.

(c) Notwithstanding anything contained in this subpart, with respect to any claim of employment discrimination asserted by any covered employee, the exclusive remedy shall be under section 201 of the CAA.

§§35.141–35.148 [Reserved]

SUBPART D—PROGRAM ACCESSIBILITY

§ 35.149 Discrimination prohibited.

Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the public services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

§ 35.150 Existing facilities.

(a) *General.* A public entity shall operate each public service, program, or activity so that the public service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a public service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the public service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the public benefits or services provided by the public entity.

(b) *Methods*—(1) *General.* A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its public services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of § 35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer public services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made by within three years of January 1, 1997, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 1, 1997, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the CAA, including covered offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum—

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its public programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

§ 35.151 New construction and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 1, 1997.

(b) *Alteration.* Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 1, 1997.

(c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix B to Part 36 of these regulations) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to Part 36 of these regulations) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at 4.1.3(5) and 4.1.6(1)(j) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(d) *Alterations: Historic properties.* (1) Alterations to historic properties shall comply, to the maximum extent feasible, with section 4.1.7 of UFAS or section 4.1.7 of ADAAG.

(2) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of § 35.150.

(e) *Curb ramps.* (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

§§ 35.152—35.159 [Reserved]

SUBPART E—COMMUNICATIONS

§ 35.160 General.

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a public service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

§ 35.161 Text telephones (TTY's).

Where a public entity communicates by telephone with applicants and beneficiaries,

TTY's or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech.

§ 35.162 Telephone emergency services.

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TTY's and computer modems.

§ 35.163 Information and signage.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible public services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its public facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible public facilities. The international symbol for accessibility shall be used at each accessible entrance of a public facility.

§ 35.164 Duties.

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a public service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the public service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the public service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the public benefits or services provided by the public entity.

§§ 35.165—35.169 [Reserved]
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Part 36—Nondiscrimination on the Basis of Disability by Public Accommodations

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SUBPART A—GENERAL

§ 36.101 Purpose.

The purpose of this part is to implement section 210 of the Congressional Accountability Act of 1995 (2 U.S.C. 1331 et seq.) which, *inter alia*, applies the rights and protections of sections of title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181), which prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation to be designed, constructed, and altered in compliance with the accessibility standards established by this part.

§ 36.102 Application.

(a) *General.* This part applies to any—(1) Public accommodation; or

(2) covered entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes.

(b) *Public accommodations.* (1) The requirements of this part applicable to public accommodations are set forth in subparts B, C, and D of this part.

(2) The requirements of subparts B and C of this part obligate a public accommodation only with respect to the operations of a place of public accommodation.

(3) The requirements of subpart D of this part obligate a public accommodation only with respect to a facility used as, or designed or constructed for use as, a place of public accommodation.

(c) *Examinations and courses.* The requirements of this part applicable to covered entities that offer examinations or courses as specified in paragraph (a) of this section are set forth in § 36.309.

§ 36.103 Relationship to other laws.

(a) *Rule of interpretation.* Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.

(b) *Other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws otherwise applicable to covered entities that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

§ 36.104 Definitions.

For purposes of this part, the term—

Act or *CAA* means the Congressional Accountability Act of 1995 (Pub. L. 104-1, 109 Stat. 3, 2 U.S.C. §§ 1301-1438).

ADA means the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 104 Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and 611), as applied to covered entities by section 210 of the CAA.

Covered entity means any entity listed in section 210(a) of the CAA that operates a place of public accommodation.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) The phrase *physical or mental impairment* means

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism;

(iv) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *has a record of such an impairment* means has a history of, or as been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase is *regarded as having an impairment* means

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a covered entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a covered entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term ''illegal use of drugs'' does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term ''individual with a disability'' does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

Place of public accommodation means a facility, operated by a covered entity, whose operations fall within at least one of the following categories—

(1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor;

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) An auditorium, convention center, lecture hall, or other place of public gathering;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) A terminal, depot, or other station used for specified public transportation;

(8) A museum, library, gallery, or other place of public display or collection;

(9) A park, zoo, amusement park, or other place of recreation;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate covered school, or other place of education;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Public accommodation means a covered entity that operates a place of public accommodation.

Public entity means any of the following entities that provides public services, programs, or activities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable factors to be considered include—

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent entity;

(4) If applicable, the overall financial resources of any parent entity; the overall size of the parent entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent entity, including the composition, structure, and functions of the workforce of the parent entity.

Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include—

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent entity;

(4) If applicable, the overall financial resources of any parent entity; the overall size of the parent entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent entity, including the composition, structure, and functions of the workforce of the parent entity.

SUBPART B GENERAL REQUIREMENTS

§ 36.201 General.

Prohibition of discrimination. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any covered entity who operates a place of public accommodation.

§ 36.202 Activities.

(a) *Denial of participation.* A public accommodation shall not subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(b) *Participation in unequal benefit.* A public accommodation shall not afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(c) *Separate benefit.* A public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(d) *Individual or class of individuals.* For purposes of paragraphs (a) through (c) of this section, the term individual or class of individuals refers to the clients or customers of the public accommodation that enter into the contractual, licensing, or other arrangement.

§ 36.203 Integrated settings.

(a) *General.* A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(b) *Opportunity to participate.* Notwithstanding the existence of separate or different programs or activities provided in accordance with this subpart, a public accommodation shall not deny an individual with a disability an opportunity to participate in such programs or activities that are not separate or different.

(c) *Accommodations and services.* (1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept.

(2) Nothing in the CAA or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

§ 36.204 Administrative methods.

A public accommodation shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.

§ 36.205 Association.

A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

§ 36.206 [Reserved]

§ 36.207 Places of public accommodation located in private residences.

(a) When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this part, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for residential purposes is covered by this part.

(b) The portion of the residence covered under paragraph (a) of this section extends to those elements used to enter the place of public accommodation, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by customers or clients, including restrooms.

§ 36.208 Direct threat.

(a) This part does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others.

(b) *Direct threat* means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(c) In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

§ 36.209 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public accommodation shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) A public accommodation shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit a public accommodation from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in this paragraph (c) shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

§ 36.210 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in places of public accommodation.

§ 36.211 Maintenance of accessible features.

(a) A public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the CAA or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

§ 36.212 Insurance.

(a) This part shall not be construed to prohibit or restrict—

(1) A covered entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with applicable law; or

(2) A person or organization covered by this part from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with applicable law; or

(3) A person or organization covered by this part from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to applicable laws that regulate insurance.

(b) Paragraphs (a)(1), (2), and (3) of this section shall not be used as a subterfuge to evade the purposes of the CAA or this part.

(c) A public accommodation shall not refuse to serve an individual with a disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities.

§ 36.213 Relationship of subpart B to subparts C and D of this part.

Subpart B of this part sets forth the general principles of nondiscrimination applicable to all entities subject to this part. Subparts C and D of this part provide guidance on the application of the statute to specific situations. The specific provisions, including the limitations on those provisions, control over the general provisions in circumstances where both specific and general provisions apply.

§§ 36.214–36.299 [Reserved]

SUBPART C SPECIFIC REQUIREMENTS

§ 36.301 Eligibility criteria.

(a) *General.* A public accommodation shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

(b) *Safety.* A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(c) *Charges.* A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the CAA or this part.

§ 36.302 Modifications in policies, practices, or procedures.

(a) *General.* A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(b) *Specialties*—(1) *General.* A public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.

(2) *Illustration—medical specialties.* A health care provider may refer an individual with a disability to another provider, if that individual is seeking, or requires, treatment or services outside of the referring provider's area of specialization, and if the referring provider would make a similar referral for an individual without a disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition cannot refuse to treat an individual with a disability for that condition, but is not required to treat the individual for a different condition.

(c) *Service animals*—(1) *General.* Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(2) *Care or supervision of service animals.* Nothing in this part requires a public accommodation to supervise or care for a service animal.

(d) *Check-out aisles.* A store with check-out aisles shall ensure that an adequate number of accessible check-out aisles is kept open during store hours, or shall otherwise modify its policies and practices, in order to ensure that an equivalent level of convenient service is provided to individuals with disabilities as is provided to others. If only one check-out aisle is accessible, and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.

§ 36.303 Auxiliary aids and services.

(a) *General.* A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

(b) *Examples.* The term ''auxiliary aids and service'' includes—

(1) Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, text telephones (TTY's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

(c) *Effective communication*. A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

(d) Text telephones (TTY's). (1) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TTY for the use of an individual who has impaired hearing or a communication disorder.

(2) This part does not require a public accommodation to use a TTY for receiving or making telephone calls incident to its operations.

(f) *Alternatives*. If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or is an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in such an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

§ 36.304 Removal of barriers.

(a) *General*. A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

(b) *Examples*. Examples of steps to remove barriers include, but are not limited to, the following actions—

(1) Installing ramps;

(2) Making curb cuts in sidewalks and entrances;

(3) Repositioning shelves;

(4) Rearranging tables, chairs, vending machines, display racks, and other furniture;

(5) Repositioning telephones;

(6) Adding raised markings on elevator control buttons;

(7) Installing flashing alarm lights;

(8) Widening doors;

(9) Installing offset hinges to widen doorways;

(10) Eliminating a turnstile or providing an alternative accessible path;

(11) Installing accessible door hardware;

(12) Installing grab bars in toilet stalls;

(13) Rearranging toilet partitions to increase maneuvering space;

(14) Insulating lavatory pipes under sinks to prevent burns;

(15) Installing a raised toilet seat;

(16) Installing a full-length bathroom mirror;

(17) Repositioning the paper towel dispenser in a bathroom;

(18) Creating designated accessible parking spaces;

(19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;

(20) Removing high pile, low density carpeting; or

(21) Installing vehicle hand controls.

(c) *Priorities*. A public accommodation is urged to take measures to comply with the barrier removal requirements of this section in accordance with the following order of priorities.

(1) First, a public accommodation should take measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces.

(2) Second, a public accommodation should take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. These measures include, for example, adjusting the layout of display racks, rearranging tables, providing Brailled and raised character signage, widening doors, providing visual alarms, and installing ramps.

(3) Third, a public accommodation should take measures to provide access to restroom facilities. These measures include, for example, removal of obstructing furniture or vending machines, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars.

(4) Fourth, a public accommodation should take any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(d) *Relationship to alterations requirements of subpart D of this part*. (1) Except as provided in paragraph (d)(2) of this section, measures taken to comply with the barrier removal requirements of this section shall comply with the applicable requirements for alterations in § 36.402 and §§ 36.404–36.406 of this part for the element being altered. The path of travel requirements of § 36.403 shall not apply to measures taken solely to comply with the barrier removal requirements of this section.

(2) If, as a result of compliance with the alterations requirements specified in paragraph (d)(1) of this section, the measures required to remove a barrier would not be readily achievable, a public accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements. Such measures include, for example, providing a ramp with a steeper slope or widening a doorway to a narrower width than that mandated by the alterations requirements. No measure shall be taken, however, that poses a significant risk to the health or safety of individuals with disabilities or others.

(e) *Portable ramps*. Portable ramps should be used to comply with this section only when installation of a permanent ramp is not readily achievable. In order to avoid any significant risk to the health or safety of individuals with disabilities or others in using portable ramps, due consideration shall be given to safety features such as nonslip surfaces, railings, anchoring, and strength of materials.

(f) *Selling or serving space*. The rearrangement of temporary or movable structures, such as furniture, equipment, and display racks is not readily achievable to the extent that it results in a significant loss of selling or serving space.

(g) *Limitation on barrier removal obligations*. (1) The requirements for barrier removal under § 36.304 shall not be interpreted to exceed the standards for alterations in subpart D of this part.

(2) To the extent that relevant standards for alterations are not provided in subpart D of this part, then the requirements of § 36.304 shall not be interpreted to exceed the standards for new construction in subpart D of this part.

(3) This section does not apply to rolling stock and other conveyances to the extent that § 36.310 applies to rolling stock and other conveyances.

§ 36.305 Alternatives to barrier removal.

(a) *General*. Where a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall not fail to make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those methods are readily achievable.

(b) *Examples*. Examples of alternatives to barrier removal include, but are not limited to, the following actions—

(1) Providing curb service or home delivery;

(2) Retrieving merchandise from inaccessible shelves or racks;

(3) Relocating activities to accessible locations;

(c) *Multiscreen cinemas*. If it is not readily achievable to remove barriers to provide access by persons with mobility impairments to all of the theaters of a multiscreen cinema, the cinema shall establish a film rotation schedule that provides reasonable access for individuals who use wheelchairs to all films. Reasonable notice shall be provided to the public as to the location and time of accessible showings.

§ 36.306 Personal devices and services.

This part does not require a public accommodation to provide its customers, clients, or participants with personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; or services of a personal nature including assistance in eating, toileting, or dressing.

§ 36.307 Accessible or special goods.

(a) This part does not require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with disabilities.

(b) A public accommodation shall order accessible or special goods at the request of an individual with disabilities, if, in the normal course of its operation, it makes special orders on request for unstocked goods, and if the accessible or special goods can be obtained from a supplier with whom the public accommodation customarily does business.

(c) Examples of accessible or special goods include items such as Brailled versions of books, books on audio cassettes, closed-captioned video tapes, special sizes or lines of clothing, and special foods to meet particular dietary needs.

§ 36.308 Seating in assembly areas.

(a) *Existing facilities*. (1) To the extent that it is readily achievable, a public accommodation in assembly areas shall—

(i) Provide a reasonable number of wheelchair seating spaces and seats with removable aisle-side arm rests; and

(ii) Locate the wheelchair seating spaces so that they—

(A) Are dispersed throughout the seating area;

(B) Provide lines of sight and choice of admission prices comparable to those for members of the general public;

(C) Adjoin an accessible route that also serves as a means of egress in case of emergency; and

(D) Permit individuals who use wheelchairs to sit with family members or other companions.

(2) If removal of seats is not readily achievable, a public accommodation shall provide, to the extent that it is readily achievable to do so, a portable chair or other means to permit a family member or other companion to sit with an individual who uses a wheelchair.

(3) The requirements of paragraph (a) of this section shall not be interpreted to exceed the standards for alterations in subpart D of this part.

(b) *New construction and alterations.* The provision and location of wheelchair seating spaces in newly constructed or altered assembly areas shall be governed by the standards for new construction and alterations in subpart D of this part.

§ 36.309 Examinations and courses.

(a) *General.* Any covered entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(b) *Examinations.* (1) Any covered entity offering an examination covered by this section must assure that—

(i) The examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (except where those skills are the factors that the examination purports to measure);

(ii) An examination that is designed for individuals with impaired sensory, manual, or speaking skills is offered at equally convenient locations, as often, and in as timely a manner as are other examinations; and

(iii) The examination is administered in facilities that are accessible to individuals with disabilities or alternative accessible arrangements are made.

(2) Required modifications to an examination may include changes in the length of time permitted for completion of the examination and adaptation of the manner in which the examination is given.

(3) A covered entity offering an examination covered by this section shall provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills, unless that covered entity can demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement of the skills or knowledge the examination is intended to test or would result in an undue burden. Auxiliary aids and services required by this section may include taped examinations, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments, Brailled or large print examinations and answer sheets or qualified readers for individuals with visual impairments or learning disabilities, transcribers for individuals with manual impairments, and other similar services and actions.

(4) Alternative accessible arrangements may include, for example, provision of an examination at an individual's home with a proctor if accessible facilities or equipment are unavailable. Alternative arrangements must provide comparable conditions to those provided for nondisabled individuals.

(c) *Courses.* (1) Any covered entity that offers a course covered by this section must make such modifications to that course as are necessary to ensure that the place and manner in which the course is given are accessible to individuals with disabilities.

(2) Required modifications may include changes in the length of time permitted for the completion of the course, substitution of specific requirements, or adaptation of the manner in which the course is conducted or course materials are distributed.

(3) A covered entity that offers a course covered by this section shall provide appropriate auxiliary aids and services for persons with impaired sensory, manual, or speaking skills, unless the covered entity can demonstrate that offering a particular auxiliary aid or service would fundamentally alter the course or would result in an undue burden. Auxiliary aids and services required by this section may include taped texts, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments, Brailled or large print texts or qualified readers for individuals with visual impairments and learning disabilities, classroom equipment adapted for use by individuals with manual impairments, and other similar services and actions.

(4) Courses must be administered in facilities that are accessible to individuals with disabilities or alternative accessible arrangements must be made.

(5) Alternative accessible arrangements may include, for example, provision of the course through videotape, cassettes, or prepared notes. Alternative arrangements must provide comparable conditions to those provided for nondisabled individuals.

§ 36.310 Transportation provided by public accommodations.

(a) *General.* (1) A public accommodation that provides transportation services, but that is not primarily engaged in the business of transporting people, is subject to the general and specific provisions in subparts B, C, and D of this part for its transportation operations, except as provided in this section.

(2) *Examples.* Transportation services subject to this section include, but are not limited to, shuttle services operated between transportation terminals and places of public accommodation and customer shuttle bus services operated by covered entities

(b) *Barrier removal.* A public accommodation subject to this section shall remove transportation barriers in existing vehicles and rail passenger cars used for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift) where such removal is readily achievable.

(c) *Requirements for vehicles and systems.* A public accommodation subject to this section shall comply with the requirements pertaining to vehicles and transportation systems in the regulations issued by the Board of Directors of the Office of Compliance.

§§ 36.311–36.400 [Reserved]

SUBPART D—NEW CONSTRUCTION AND ALTERATIONS

§ 36.401 New construction.

(a) *General.* (1) Except as provided in paragraphs (b) and (c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after July 23, 1997, that are readily accessible to and usable by individuals with disabilities.

(2) For purposes of this section, a facility is designed and constructed for first occupancy after July 23, 1997, only—

(i) If the last application for a building permit or permit extension for the facility is certified to be complete, by an appropriate governmental authority after January 1, 1997 (or, in those jurisdictions where the government does not certify completion of applications, if the last application for a building permit or permit extension for the facility is received by the appropriate governmental authority after January 1, 1997); and

(ii) If the first certificate of occupancy for the facility is issued after July 23, 1997.

(b) *Place of public accommodation located in private residences.* (1) When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this subpart, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for residential purposes is covered by the new construction and alterations requirements of this subpart.

(2) The portion of the residence covered under paragraph (b)(1) of this section extends to those elements used to enter the place of public accommodation, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by employees or visitors of the place of public accommodation, including restrooms.

(c) *Exception for structural impracticability.* (1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

(d) *Elevator exemption.* (1) For purposes of this paragraph (d)—

Professional office of a health care provider means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility housing the ''professional office of a health care provider'' only includes floor levels housing at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(2) This section does not require the installation of an elevator in a facility that is less than three stories or has less than 3000 square feet per story, except with respect to any facility that houses one or more of the following:

(i) A professional office of a health care provider.

(ii) A terminal, depot, or other station used for specified public transportation. In such a facility, any area housing passenger services, including boarding and debarking, loading and unloading, baggage claim, dining facilities, and other common areas open to the public, must be on an accessible route from an accessible entrance.

(3) The elevator exemption set forth in this paragraph (d) does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in paragraph (a) of this section. For example, in a facility that houses a professional office of a health care provider, the floors that are above or below an accessible ground floor and that do not house a professional office of a health care provider, must meet the requirements of this section but for the elevator.

§ 36.402 Alterations.

(a) *General.* (1) Any alteration to a place of public accommodation, after January 1, 1997,

shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) An alteration is deemed to be undertaken after January 1, 1997, if the physical alteration of the property begins after that date.

(b) *Alteration*. For the purposes of this part, an alteration is a change to a place of public accommodation that affects or could affect the usability of the building or facility or any part thereof.

(1) Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

(2) If existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the applicable provisions of appendix A to this part.

(c) *To the maximum extent feasible*. The phrase ''to the maximum extent feasible,'' as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

§ 36.403 Alterations: Path of travel.

(a) *General*. An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(b) *Primary function*. A primary function is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public accommodation or other covered entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function.

(c) *Alterations to an area containing a primary function*. (1) Alterations that affect the usability of or access to an area containing a primary function include, but are not limited to—

(i) Remodeling merchandise display areas or employee work areas in a department store;

(ii) Replacing an inaccessible floor surface in the customer service or employee work areas of a bank;

(iii) Redesigning the assembly line area of a factory; or

(iv) Installing a computer center in an accounting firm.

(2) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

(d) *Path of travel*. (1) A ''path of travel'' includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(3) For the purposes of this part, the term ''path of travel'' also includes the restrooms, telephones, and drinking fountains serving the altered area.

(e) *Disproportionality*. (1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

(2) Costs that may be counted as expenditures required to provide an accessible path of travel may include:

(i) Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;

(ii) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;

(iii) Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY);

(iv) Costs associated with relocating an inaccessible drinking fountain.

(f) *Duty to provide accessible features in the event of disproportionality*. (1) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(2) In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order:

(i) An accessible entrance;

(ii) An accessible route to the altered area;

(iii) At least one accessible restroom for each sex or a single unisex restroom;

(iv) Accessible telephones;

(v) Accessible drinking fountains; and

(vi) When possible, additional accessible elements such as parking, storage, and alarms.

(g) *Series of smaller alterations*. (1) The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(2)(i) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

(ii) Only alterations undertaken after January 1, 1997, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.

§ 36.404 Alterations: Elevator exemption.

(a) This section does not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story, except with respect to any facility that houses the professional office of a health care provider, a terminal, depot, or other station used for specified public transportation.

For the purposes of this section, ''professional office of a health care provider'' means a location where a person or entity employed by a covered entity and/or regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility that houses a ''professional office of a health care provider'' only includes floor levels housing by at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(b) The exemption provided in paragraph (a) of this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in this subpart. For example, alterations to floors above or below the accessible ground floor must be accessible regardless of whether the altered facility has an elevator.

§ 36.405 Alterations: Historic preservation.

(a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), or are designated as historic under State or local law, shall comply to the maximum extent feasible with section 4.1.7 of appendix A to this part.

(b) If it is determined under the procedures set out in section 4.1.7 of appendix A that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.

§ 36.406 Standards for new construction and alterations.

(a) New construction and alterations subject to this part shall comply with the standards for accessible design published as appendix A to this part (ADAAG).

(b) The chart in the appendix to this section provides guidance to the user in reading appendix A to this part (ADAAG) together with subparts A through D of this part, when determining requirements for a particular facility.

Appendix to § 36.406

This chart has no effect for purposes of compliance or enforcement. It does not necessarily provide complete or mandatory information.

	Subparts A–D	ADAAG
Application: General.	36.102(b)(3): public accommodations	1,2,3,4.1.1.
	36.102(c): commercial facilities	
	36.102(e): public entities	
	36.103 (other laws)	
	36.401 ("for first occupancy")	
	36.402(a)(alterations)	
Definitions	36.104: facility, place of public accommodation, public accommodation, public entity.	3.5 Definitions, including; addition, alteration, building, element, facility, space, story.
	36.401(d)(1)(i), 36.404(a)(1): professional office of a health care provider	4.1.6(i), technical infeasibility.
	36.402: alteration; usability.	
	36.402(c): to the maximum extent feasible.	
	36.401(a) General	4.1.2.
New construction: General	36.207 Places of public accommodation in private residences	4.1.3.
Work areas		4.1.1(3)
Structural impracticability	36.401(c)	4.1.1(5)(a).
Elevator exemption	36.401(d)	4.1.3(5).
	36.404	
Other exceptions		4.1.1(5), 4.1.3(5) and throughout.
Alterations: general	36.402	4.1.6(1).
Alterations affecting an area containing a primary function; path of travel; disproportionality.	36.403	4.1.6(2).
Alterations: Special Technical provisions		4.1.6(3).
Additions	36.401–36.405	4.1.5.
Historic preservation	36.405	4.1.7.
Technical provisions		4.2 through 4.35.
Restaurants and cafeterias		5.
Facilites		6.
Business and mercantile		7.
Libraries		8.
Transient lodging (hotels, homeless shelters, etc.)		9.
Transportation facilities		10.

§ 36.407. Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until July 26, 1998.

§§ 36.408–36.499 [Reserved]

§§ 36.501–36.608 [Reserved]

Appendix A to Part 36—Standards for Accessible Design

[Copies of this appendix may be obtained from the Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540-1999.]

Appendix B to Part 36—Uniform Federal Accessibility Standards

[Copies of this appendix may be obtained from the Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540-1999.]

Part 37—Transportation Services for Individuals With Disabilities (CAA)

Subpart A—General

Sec.
37.1 Purpose.
37.3 Definitions
37.5 Nondiscrimination.
37.7 Standards for accessible vehicles.
37.9 Standards for accessible transportation facilities.
37.11 [Reserved]
37.13 Effective date for certain vehicle lift specifications.
37.15–37.19 [Reserved]

Subpart B—Applicability

37.21 Applicability: General.
37.23 Service under contract.
37.25 [Reserved]
37.27 Transportation for elementary and secondary education systems.
37.29 [Reserved]
37.31 Vanpools.
37.33–37.35 [Reserved]
37.37 Other applications.
37.39 [Reserved]

Subpart C—Transportation Facilities

37.41 Construction of transportation facilities by public entities.
37.43 Alteration of transportation facilities by public entities.
37.45 Construction and alteration of transportation facilities by covered entities.
37.47 Key stations in light and rapid rail systems.
37.49–37.59 [Reserved]
37.61 Public transportation programs and activities in existing facilities.
37.63–37.69 [Reserved]

Subpart D—Acquisition of Accessible Vehicles by Public Entities

37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.
37.73 Purchase or lease of used non-rail vehicles by public entities operating fixed route systems.
37.75 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems.
37.77 Purchase or lease of new non-rail vehicles by public entities operating demand responsive systems for the general public.
37.79 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.
37.81 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.
37.83 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.
37.85–37.91 [Reserved]
37.93 One car per train rule.
37.95 [Reserved]
37.97–37.99 [Reserved]

Subpart E—Acquisition of Accessible Vehicles by Covered Entities

37.101 Purchase or lease of vehicles by covered entities not primarily engaged in the business of transporting people.
37.103 [Reserved]
37.105 Equivalent service standard.
37.107–37.109 [Reserved]
37.111–37.119 [Reserved]

Subpart F—Paratransit as a complement to fixed route service

37.121 Requirement for comparable complementary paratransit service
37.123 ADA paratransit eligibility: Standards
37.125 ADA paratransit eligibility: Process.
37.127 Complementary paratransit for visitors.
37.129 Types of service.
37.131 Service criteria for complementary paratransit.
37.133 Subscription service.
37.135 Submission of paratransit plan.
37.137 Paratransit plan development.
37.139 Plan contents.
37.141 Requirements for a joint paratransit plan.
37.143 Paratransit plan implementation.
37.145 [Reserved]
37.147 Considerations during General Counsel review.
37.149 Disapproved plans.
37.151 Waiver for undue financial burden.
37.153 General Counsel waiver determination.
37.155 Factors in decision to grant undue financial burden waiver.
37.157–37.159 [Reserved]

Subpart G—Provision of Service.

37.161 Maintenance of accessible features: General.
37.163 Keeping vehicle lifts in operative condition public entities.
37.165 Lift and securement use.
37.167 Other service requirements.
37.169 Interim requirements for over-the-road bus service operated by covered entities.
37.171 Equivalency requirement for demand responsive service by covered entities not primarily engaged in the business of transporting people.
37.173 Training requirements.
Appendix A to Part 37 Standards for Accessible Transportation Facilities
Appendix B to Part 37 Certifications

SUBPART A—GENERAL

§ 37.1 Purpose.

The purpose of this part is to implement the transportation and related provisions of titles II and III of the Americans with Disabilities Act of 1990, as applied by section 210 of the Congressional Accountability Act of 1995 (2 U.S.C. 1331 *et seq.*).

§ 37.3 Definitions

As used in this part:

Accessible means, with respect to vehicles and facilities, complying with the accessibility requirements of parts 37 and 38 of these regulations.

Act or *CAA* means the Congressional Accountability Act of 1995 (Pub.L. 104-1, 109 Stat. 3, 2 U.S.C. §§ 1301-1438).

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131- 12150, 12182, 12183, and 12189) as applied to covered entities by section 210 of the CAA.

Alteration means a change to an existing facility, including, but not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical or electrical systems are not alterations unless they affect the usability of the building or facility.

Automated guideway transit system or AGT means a fixed-guideway transit system which operates with automated (driverless) individual vehicles or multi-car trains. Service may be on a fixed schedule or in response to a passenger-activated call button.

Auxiliary aids and services includes:

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone headset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, closed and open captioning, text telephones (also known as TTYs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; or

(4) Other similar services or actions.

Board means the Board of Directors of the Office of Compliance.

Bus means any of several types of self-propelled vehicles, generally rubber-tired, intended for use on city streets, highways, and busways, including but not limited to minibuses, forty- and thirty- foot buses, articulated buses, double-deck buses, and electrically powered trolley buses, used by public entities to provide designated public transportation service and by covered entities to provide transportation service including, but not limited to, specified public transportation services. Self-propelled, rubber-tired vehicles designed to look like antique or vintage trolleys are considered buses.

Commuter bus service means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.

Covered entity means any entity listed in section 210(a) of the CAA that operates a place of public accommodation within the meaning of section 210 of the CAA.

Demand responsive system means any system of transporting individuals, including the provision of designated public transportation service by public entities and the provision of transportation service by covered entities, including but not limited to specified public transportation service, which is not a fixed route system.

Designated public transportation means transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) *The phrase* physical or mental impairment means

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) The term *physical or mental impairment* includes, but is not limited to, such contagious or noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism;

(iv) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; or

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities; or

(4) The phrase *is regarded as having such an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities, but which is treated by a public or covered entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public or covered entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania;

(iii) Psychoactive substance abuse disorders resulting from the current illegal use of drugs.

Facility means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Fixed route system means a system of transporting individuals (other than by aircraft), including the provision of designated public transportation service by public entities and the provision of transportation service by covered entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule.

General Counsel means the General Counsel of the Office of Compliance.

Individual with a disability means a person who has a disability, but does not include an individual who is currently engaging in the illegal use of drugs, when a public or covered entity acts on the basis of such use.

Light rail means a streetcar-type vehicle operated on city streets, semi-exclusive rights of way, or exclusive rights of way. Service may be provided by step-entry vehicles or by level boarding.

New vehicle means a vehicle which is offered for sale or lease after manufacture without any prior use.

Office means the Office of Compliance.

Operates includes, with respect to a fixed route or demand responsive system, the provision of transportation service by a public or covered entity itself or by a person under a contractual or other arrangement or relationship with the entity.

Over-the-road bus means a bus characterized by an elevated passenger deck located over a baggage compartment.

Paratransit means comparable transportation service required by the CAA for individuals with disabilities who are unable to use fixed route transportation systems.

Private entity means any entity other than a public or covered entity.

Public entity means any of the following entities that provides public services, programs, or activities:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

Purchase or lease, with respect to vehicles, means the time at which a public or covered entity is legally obligated to obtain the vehicles, such as the time of contract execution.

Public school transportation means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

Rapid rail means a subway-type transit vehicle railway operated on exclusive private rights of way with high level platform stations. Rapid rail also may operate on elevated or at grade level track separated from other traffic.

Remanufactured vehicle means a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life.

Service animal means any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Solicitation means the closing date for the submission of bids or offers in a procurement.

Station means where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but this term does not include flag stops (i.e., stations which are not regularly scheduled stops but at which trains will stop board or detrain passengers only on signal or advance notice).

Transit facility means, for purposes of determining the number of text telephones needed consistent with §10.3.1(12) of Appendix A to this part, a physical structure the primary function of which is to facilitate access to and from a transportation system which has scheduled stops at the structure. The term does not include an open structure or a physical structure the primary purpose of which is other than providing transportation services.

Used vehicle means a vehicle with prior use.

Vanpool means a voluntary commuter ridesharing arrangement, using vans with a seating capacity greater than 7 persons (including the driver) or buses, which provides

transportation to a group of individuals traveling directly from their homes to their regular places of work within the same geographical area, and in which the commuter/driver does not receive compensation beyond reimbursement for his or her costs of providing the service.

Vehicle, as the term is applied to covered entities, does not include a rail passenger car, railroad locomotive, railroad freight car, or railroad caboose, or other rail rolling stock described in section 242 or title III of the Americans With Disabilities Act, which is not applied to covered entities by section 210 of the CAA.

Wheelchair means a mobility aid belonging to any class of three or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered. A ''*common wheelchair*'' is such a device which does not exceed 30 inches in width and 48 inches in length measured two inches above the ground, and does not weigh more than 600 pounds when occupied.

§ 37.5 Nondiscrimination.

(a) No covered entity shall discriminate against an individual with a disability in connection with the provision of transportation service.

(b) Notwithstanding the provision of any special transportation service to individuals with disabilities, an entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation service for the general public, if the individual is capable of using that service.

(c) An entity shall not require an individual with a disability to use designated priority seats, if the individual does not choose to use these seats.

(d) An entity shall not impose special charges, not authorized by this part, on individuals with disabilities, including individuals who use wheelchairs, for providing services required by this part or otherwise necessary to accommodate them.

(e) An entity shall not require that an individual with disabilities be accompanied by an attendant.

(f) An entity shall not refuse to serve an individual with a disability or require anything contrary to this part because its insurance company conditions coverage or rates on the absence of individuals with disabilities or requirements contrary to this part.

(g) It is not discrimination under this part for an entity to refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct. However, an entity shall not refuse to provide service to an individual with disabilities solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons.

§ 37.7 Standards for accessible vehicles.

(a) For purposes of this part, a vehicle shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the standards set forth in part 38 of these regulations.

(b)(1) For purposes of implementing the equivalent facilitation provision in § 38.2 of these regulations, the following parties may submit to the General Counsel of the applicable operating administration a request for a determination of equivalent facilitation:

(i) A public or covered entity that provides transportation services and is subject to the provisions of subpart D or subpart E of this part; or

(ii) The manufacturer of a vehicle or a vehicle component or subsystem to be used by such entity to comply with this part.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision of part 38 of these regulations concerning which the entity is seeking a determination of equivalent facilitation;

(iii) [Reserved]

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in part 38; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation services subject to the provisions of subpart D of this part, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request to members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to the General Counsel. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a covered entity that provides transportation services subject to the provisions of subpart E of this part, the covered entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the General Counsel of the concerned operating administration on a case-by-case basis.

(6) Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services covered by subpart D or subpart E of this part, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a product or method constitute equivalent facilitation in situations other than those to which the determination is made. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Office.

(c) Over-the-road buses acquired by public entities (or by a contractor to a public entity as provided in § 37.23 of this part) shall comply with § 38.23 and subpart G of part 38 of these regulations.

§ 37.9 Standards for accessible transportation facilities.

(a) For purposes of this part, a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the standards set forth in Appendix A to this part.

(b) Facility alterations begun before January 1, 1997, in a good faith effort to make a facility accessible to individuals with disabilities may be used to meet the key station requirements set forth in § 37.47 of this part, even if these alterations are not consistent with the standards set forth in Appendix A to this part, if the modifications complied with the Uniform Federal Accessibility Standard (UFAS) or ANSI A117.1(1980) (American National Standards Specification for Making Buildings and Facilities Accessible to and Usable by, the Physically Handicapped). This paragraph applies only to alterations of individual elements and spaces and only to the extent that provisions covering those elements or spaces are contained in UFAS or ANSI A117.1, as applicable.

(c) Public entities shall ensure the construction of new bus stop pads are in compliance with section 10.2.1(1) of appendix A to this part, to the extent construction specifications are within their control.

(d)(1) For purposes of implementing the equivalent facilitation provision in section 2.2 of appendix A to this part, the following parties may submit to the General Counsel a request for a determination of equivalent facilitation:

(i) A public or covered entity that provides transportation services subject to the provisions of subpart C of this part, or any other appropriate party with the concurrence of the General Counsel.

(ii) The manufacturer of a product or accessibility feature to be used in the facility of such entity to comply with this part.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision of appendix A to part 37 of these regulations concerning which the entity is seeking a determination of equivalent facilitation;

(iii) [Reserved];

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in appendix A to this part; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation facilities, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request to members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to the General Counsel. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate medial, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a covered entity, the covered entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the General Counsel on a case-by-case basis.

(6) Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services covered by subpart D or subpart E of this part, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a product or method constitute equivalent facilitations in situations other than those to which the determination is made. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Office.

§ 37.11 [Reserved]

§ 37.13 Effective date for certain vehicle lift specifications.

The vehicle lift specifications identified in §§38.23(b)(6) and 38.83(b)(6) apply to solicitations for vehicles under this part after December 31, 1996.

§§ 37.15 Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 3.29.6 of appendix A to this part are suspended temporarily until July 26, 1998.

§§ 37.17–37.19 [Reserved]

SUBPART B—APPLICABILITY.

§ 37.21 Applicability: General

(a) This part applies to the following entities:

(1) Any public entity that provides designated public transportation; and

(2) Any covered entity that is not primarily engaged in the business of transporting people but operates a demand responsive or fixed route system.

(b) Entities to which this part applies also may be subject to CAA regulations of the Office of Compliance (parts 35 or 36, as applicable). The provisions of this part shall be interpreted in a manner that will make them consistent with applicable Office of Compliance regulations. In any case of apparent inconsistency, the provisions of this part shall prevail.

§ 37.23 Service under contract.

(a) When a public entity enters into a contractual or other arrangement or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A public entity which enters into a contractual or other arrangement or relationship with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

§ 37.25 [Reserved]

§ 37.27 Transportation for elementary and secondary education systems.

(a) The requirements of this part do not apply to public school transportation.

(b) The requirements of this part do not apply to the transportation of school children to and from a covered elementary or secondary school, and its school-related activities, if the school is providing transportation service to students with disabilities equivalent to that provided to students without disabilities. The test of equivalence is the same as that provided in §37.105. If the school does not meet the criteria of this paragraph for exemption from the requirements of this part, it is subject to the requirements of this part for covered entities not primarily engaged in transporting people.

§ 37.29 [Reserved]

§ 37.31 Vanpools.

Vanpool systems which are operated by public entities, or in which public entities own or purchase or lease the vehicles, are subject to the requirements of this part for demand responsive service for the general public operated by public entities. A vanpool system in this category is deemed to be providing equivalent service to individuals with disabilities if a vehicle that an individual with disabilities can use is made available to and used by a vanpool in which such an individual chooses to participate.

§§ 37.33–37.35 [Reserved]

§ 37.37 Other applications.

(a) Shuttle systems and other transportation services operated by public accommodations are subject to the requirements of this part for covered entities not primarily engaged in the business of transporting people. Either the requirements for demand responsive or fixed route service may apply, depending upon the characteristics of each individual system of transportation.

(b) Conveyances used by members of the public primarily for recreational purposes rather than for transportation (e.g., amusement park rides, ski lifts, or historic rail cars or trolleys operated in museum settings) are not subject to the requirements of this part. Such conveyances are subject to the Board's regulations implementing the nontransportation provisions of title II or title III of the ADA, as applied by section 210 of the CAA, as applicable.

(c) Transportation services provided by an employer solely for its own employees are not subject to the requirements of this part. Such services are subject to the requirements of section 201 of the CAA .

§ 37.39 [Reserved]

SUBPART C TRANSPORTATION FACILITIES

§ 37.41 Construction of transportation facilities by public entities.

A public entity shall construct any new facility to be used in providing designated public transportation services so that the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. For purposes of this section, a facility or station is "new" if its construction begins (i.e., issuance of notice to proceed) after December 31, 1996.

§ 37.43 Alteration of transportation facilities by public entity.

(a)(1) When a public entity alters an existing facility or a part of an existing facility used in providing designated public transportation services in a way that affects or could affect the usability of the facility or part of the facility, the entity shall make the alterations (or ensure that the alterations are made) in such a manner, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations.

(2) When a public entity undertakes an alteration that affects or could affect the usability of or access to an area of a facility containing a primary function, the entity shall make the alteration in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of the alterations. *Provided,* that alterations to the path of travel, drinking fountains, telephones and bathrooms are not required to be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if the cost and scope of doing so would be disproportionate.

(3) The requirements of this paragraph also apply to the alteration of existing intercity or commuter rail stations by the responsible person for, owner of, or person in control of the station.

(4) The requirements of this section apply to any alteration which begins (i.e., issuance of notice to proceed or work order, as applicable) after December 31, 1996.

(b) As used in this section, the phrase *to the maximum extent feasible* applies to the occasional case where the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the entity shall provide the maximum physical accessibility feasible. Any altered features of the facility or portion of the facility that can be made accessible shall be made accessible. If providing accessibility to certain individuals with disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to individuals with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

(c) As used in this section, a *primary function* is a major activity for which the facility is intended. Areas of transportation facilities that involve primary functions include, but are not necessarily limited to, ticket purchase and collection areas, passenger waiting areas, train or bus platforms, baggage checking and return areas and employment areas (except those involving non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, vary narrow passageways, or freight [non-passenger] elevators which are frequented only by repair personnel).

(d) As used in this section, a *path of travel* includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, parking areas, and streets), an entrance to the facility, and other parts of the facility. The term also includes the restrooms, telephones, and drinking fountains serving the altered area. An accessible path of travel may include walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps, clear floor paths through corridors, waiting areas, concourses, and other improved areas, parking access aisles, elevators and lifts, bridges, tunnels, or other passageways between platforms, or a combination of these and other elements.

(e)(1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 percent of the cost of the alteration to the primary function area (without regard to the costs of accessibility modifications).

(2) Costs that may be counted as expenditures required to provide an accessible path of travel include:

(i) Costs associated with providing an accessible entrance and an accessible route to the altered area (e.g., widening doorways and installing ramps);

(ii) Costs associated with making restrooms accessible (e.g., grab bars, enlarged toilet stalls, accessible faucet controls);

(iii) Costs associated with providing accessible telephones (e.g., relocation of phones to an accessible height, installation of amplification devices or TTYs);

(iv) Costs associated with relocating an inaccessible drinking fountain.

(f)(1) When the cost of alterations necessary to make a path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, then

such areas shall be made accessible to the maximum extent without resulting in disproportionate costs;

(2) In this situation, the public entity should give priority to accessible elements that will provide the greatest access, in the following order:

(i) An accessible entrance;

(ii) An accessible route to the altered area;

(iii) At least one accessible restroom for each sex or a single unisex restroom (where there are one or more restrooms);

(iv) Accessible telephones;

(v) Accessible drinking fountains;

(vi) When possible, other accessible elements (e.g., parking, storage, alarms).

(g) If a public entity performs a series of small alterations to the area served by a single path of travel rather than making the alterations as part of a single undertaking, it shall nonetheless be responsible for providing an accessible path of travel.

(h)(1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alteration to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel is disproportionate;

(2) For the first three years after January 1, 1997, only alterations undertaken between that date and the date of the alteration at issue shall be considered in determining if the cost of providing accessible features is disproportionate to the overall cost of the alteration.

(3) Only alterations undertaken after January 1, 1997, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alteration.

§ 37.45 Construction and alteration of transportation facilities by covered entities.

In constructing and altering transit facilities, covered entities shall comply with the regulations of the Board implementing title III of the ADA, as applied by section 210 of the CAA (part 36).

§ 37.47 Key stations in light and rapid rail systems.

(a) Each public entity that provides designated public transportation by means of a light or rapid rail system shall make key stations on its system readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement is separate from and in addition to requirements set forth in § 37.43 of this part.

(b) Each public entity shall determine which stations on its system are key stations. The entity shall identify key stations, using the planning and public participation process set forth in paragraph (d) of this section, and taking into consideration the following criteria:

(1) Stations where passenger boardings exceed average station passenger boardings on the rail system by at least fifteen percent, unless such a station is close to another accessible station;

(2) Transfer stations on a rail line or between rail lines;

(3) Major interchange points with other transportation modes, including stations connecting with major parking facilities, bus terminals, intercity or commuter rail stations, passenger vessel terminals, or airports;

(4) End stations, unless an end station is close to another accessible station; and

(5) Stations serving major activity centers, such as employment or government centers, institutions of higher education, hospitals or other major health care facilities, or other facilities that are major trip generators for individuals with disabilities.

(c) (1) Unless an entity receives an extension under paragraph (c)(2) of this section, the public entity shall achieve accessibility of key stations as soon as practicable, but in no case later than January 1, 2000, except that an entity is not required to complete installation of detectable warnings required by section 10.3.2(2) of appendix A to this part until January 1, 2001.

(2) The General Counsel may grant an extension of this completion date for key station accessibility for a period up to January 1, 2025, provided that two-thirds of key stations are made accessible by January 1, 2015. Extensions may be granted as provided in paragraph (e) of this section.

(d) The public entity shall develop a plan for compliance for this section. The plan shall be submitted to the General Counsel's office by July 1, 1997.

(1) The public entity shall consult with individuals with disabilities affected by the plan. The public entity also shall hold at least one public hearing on the plan and solicit comments on it. The plan submitted to General Counsel shall document this public participation, including summaries of the consultation with individuals with disabilities and the comments received at the hearing and during the comment period. The plan also shall summarize the public entity's responses to the comments and consultation.

(2) The plan shall establish milestones for the achievement of required accessibility of key stations, consistent with the requirements of this section.

(e) A public entity wishing to apply for an extension of the January 1, 2000, deadline for key station accessibility shall include a request for an extension with its plan submitted to the General Counsel under paragraph (d) of this section. Extensions may be granted only with respect to key stations which need extraordinarily expensive structural changes to, or replacement of, existing facilities (e.g., installations of elevators, raising the entire passenger platform, or alterations of similar magnitude and cost). Requests for extensions shall provide for completion of key station accessibility within the time limits set forth in paragraph (c) of this section. The General Counsel may approve, approve with conditions, modify, or disapprove any request for an extension.

§§ 37.49–37.59 [Reserved]

§ 37.61 Public transportation programs and activities in existing facilities.

(a) A public entity shall operate a designated public transportation program or activity conducted in an existing facility so that, when viewed in its entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(b) This section does not require a public entity to make structural changes to existing facilities in order to make the facilities accessible by individuals who use wheelchairs, unless and to the extent required by § 37.43 (with respect to alterations) or § 37.47 of this part (with respect to key stations). Entities shall comply with other applicable accessibility requirements for such facilities.

(c) Public entities, with respect to facilities that, as provided in paragraph (b) of this section, are not required to be made accessible to individuals who use wheelchairs, are not required to provide to such individuals services made available to the general public at such facilities when the individuals could not utilize or benefit from the services.

§§ 37.63–37.69 [Reserved]

SUBPART D—ACQUISITION OF ACCESSIBLE VEHICLES BY PUBLIC ENTITIES.

§ 37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system making a solicitation after January 31, 1997, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a new bus that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if it applies for, and the General Counsel grants, a waiver as provided for in this section.

(c) Before submitting a request for such a waiver, the public entity shall hold at least one public hearing concerning the proposed request.

(d) The General Counsel may grant a request for such a waiver if the public entity demonstrates to the General Counsel's satisfaction that—

(1) The initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) Hydraulic, electromechanical, or other lifts for such new buses could not be provided by any qualified lift manufacturer to the manufacturer of such new buses in sufficient time to comply with the solicitation; and

(3) Any further delay in purchasing new buses equipped with such necessary lifts would significantly impair transportation services in the community served by the public entity.

(e) The public entity shall include with its waiver request a copy of the initial solicitation and written documentation from the bus manufacturer of its good faith efforts to obtain lifts in time to comply with the solicitation, and a full justification for the assertion that the delay in bus procurement needed to obtain a lift-equipped bus would significantly impair transportation services in the community. This documentation shall include a specific date at which the lifts could be supplied, copies of advertisements in trade publications and inquiries to trade associations seeking lifts, and documentation of the public hearing.

(f) Any waiver granted by the General Counsel under this section shall be subject to the following conditions:

(1) The waiver shall apply only to the particular bus delivery to which the waiver request pertains;

(2) The waiver shall include a termination date, which will be based on information concerning when lifts will become available for installation on the new buses the public entity is purchasing. Buses delivered after this date, even though procured under a solicitation to which a waiver applied, shall be equipped with lifts;

(3) Any bus obtained subject to the waiver shall be capable of accepting a lift, and the public entity shall install a lift as soon as soon as one becomes available;

(4) Such other terms and conditions as the General Counsel may impose.

(g)(1) When the General Counsel grants a waiver under this section, he/she shall promptly notify any appropriate committees of Congress.

(2) If the General Counsel has reasonable cause to believe that a public entity fraudulently applied for a waiver under this section, the General Counsel shall:

(i) Cancel the waiver if it is still in effect; and

(ii) Take other appropriate action.

§ 37.73 Purchase or lease of used non-rail vehicles by public entities operating a fixed route system.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system purchasing or leasing, after January 31, 1997, a used bus or other used vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a used vehicle for use on its fixed route system that is not readily accessible to and usable by individuals with disabilities if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles are to be lift-equipped and otherwise accessible to and usable by individuals with disabilities, or, if an initial solicitation is not used, a documented communication so stating;

(2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for three years from the date the vehicles were purchased. These records shall be made available, on request, to the General Counsel and the public.

§ 37.75 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems.

(a) This section applies to any public entity operating a fixed route system which takes one of the following actions:

(1) After January 31, 1997, remanufactures a bus or other vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or

(2) Purchases or leases a bus or other vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after January 31, 1997, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture a bus or other motor vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by this part would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a fixed route system, any segment of which is included on the National Register of Historic Places, and if making a vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity has only to make (or purchase or lease a remanufactured vehicle with) those modifications to make the vehicle accessible which do not alter the historic character of such vehicle, in consultation with the National Register of Historic Places.

(e) A public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the General Counsel for a determination of the historic character of the vehicle. The General Counsel shall refer such requests to the National Register of Historic Places, and shall rely on its advice in making determinations of the historic character of the vehicle.

§ 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.

(a) Except as provided in this section, a public entity operating a demand responsive system for the general public making a solicitation after January 31, 1997, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.

(c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time;

(2) Fares;

(3) Geographic area of service;

(4) Hours and days of service;

(5) Restrictions or priorities based on trip purpose;

(6) Availability of information and reservations capability; and

(7) Any constraints on capacity or service availability.

(d) A public entity, which determines that its service to individuals with disabilities is equivalent to that provided other persons shall, before any procurement of an inaccessible vehicle, make a certificate that it provides equivalent service meeting the standards of paragraph (c) of this section. A public entity shall make such a certificate and retain it in its files, subject to inspection on request of the General Counsel. All certificates under this paragraph may be made in connection with a particular procurement or in advance of a procurement; however, no certificate shall be valid for more than one year.

(e) The waiver mechanism set forth in § 37.71(b)–(g) (unavailability of lifts) of this subpart shall also be available to public entities operating a demand responsive system for the general public.

§ 37.79 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.

Each public entity operating a rapid or light rail system making a solicitation after January 31, 1997, to purchase or lease a new rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

§ 37.81 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.

(a) Except as provided elsewhere in this section, each public entity operating a rapid or light rail system which, after January 31, 1997, purchases or leases a used rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a used rapid or light rail vehicle for use on its rapid or light rail system that is not readily accessible to and usable by individuals if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

(c) Good faith efforts shall include at least the following steps:

(1) The initial solicitation for used vehicles made by the public entity specifying that all used vehicles were to be accessible to and usable by individuals with disabilities, or, if a solicitation is not used, a documented communication so stating;

(2) A nationwide search for accessible vehicles, involving specific inquiries to manufacturers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used rapid or light rail vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for three years from the date the vehicles were purchased. These records shall be made available, on request, to the General Counsel and the public.

§ 37.83 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.

(a) This section applies to any public entity operating a rapid or light rail system which takes one of the following actions:

(1) After January 31, 1997, remanufactures a light or rapid rail vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing;

(2) Purchases or leases a light or rapid rail vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after January 31, 1997, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture a rapid or light rail vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that doing so would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a rapid or light rail system any segment of which is included on the National Register of Historic Places and if making a rapid or light rail vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity need only make (or purchase or lease a remanufactured vehicle with) those modifications that do not alter the historic character of such vehicle.

(e) A public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the General Counsel for a determination of the historic character of the vehicle. The General Counsel shall refer such requests to the National Register of Historic Places and shall rely on

its advice in making a determination of the historic character of the vehicle.

§§ 37.85–37.91 [Reserved]

§ 37.93 One car per train rule.

(a) The definition of accessible for purposes of meeting the one car per train rule is spelled out in the applicable subpart for each transportation system type in part 38 of these regulations.

(b) Each public entity providing light or rapid rail service shall ensure that each train, consisting of two or more vehicles, includes at least one car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no case later than December 31, 2001.

§ 37.95 [Reserved]

§§ 37.97–37.99 [Reserved]

SUBPART E—ACQUISITION OF ACCESSIBLE VEHICLES BY COVERED ENTITIES

§ 37.101 Purchase or lease of vehicles by covered entities not primarily engaged in the business of transporting people.

(a) *Application*. This section applies to all purchases or leases of vehicles by covered entities which are not primarily engaged in the business of transporting people, in which a solicitation for the vehicle is made after January 31, 1997.

(b) *Fixed Route System, Vehicle Capacity Over 16*. If the entity operates a fixed route system and purchases or leases a vehicle with a seating capacity of over 16 passengers (including the driver) for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) *Fixed Route System, Vehicle Capacity of 16 or Fewer*. If the entity operates a fixed route system and purchases or leases a vehicle with a seating capacity of 16 or fewer passengers (including the driver) for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, meets the standard for equivalent service of § 37.105 of this part.

(d) *Demand Responsive System, Vehicle Capacity Over 16*. If the entity operates a demand responsive system, and purchases or leases a vehicle with a seating capacity of over 16 passengers (including the driver) for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, meets the standard for equivalent service of § 37.105 of this part.

(e) *Demand Responsive System, Vehicle Capacity of 16 or Fewer*. Entities providing demand responsive transportation covered under this section are not specifically required to ensure that new vehicles with seating capacity of 16 or fewer are accessible to individuals with wheelchairs. These entities are required to ensure that their systems, when viewed in their entirety, meet the equivalent service requirements of §§ 37.171 and 37.105, regardless of whether or not the entities purchase a new vehicle.

§ 37.103 [Reserved]

§ 37.105 Equivalent service standard.

For purposes of § 37.101 of this part, a fixed route system or demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

(a) (1) Schedules/headways (if the system is fixed route);

(2) Response time (if the system is demand responsive);

(b) Fares;

(c) Geographic area of service;

(d) Hours and days of service;

(e) Availability of information;

(f) Reservations capability (if the system is demand responsive);

(g) Any constraints on capacity or service availability;

(h) Restrictions priorities based on trip purpose (if the system is demand responsive).

§§ 37.107–37.109 [Reserved]

§§ 37.111–37.119 [Reserved]

SUBPART F—PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE

§ 37.121 Requirement for comparable complementary paratransit service.

(a) Except as provided in paragraph (c) of this section, each public entity operating a fixed route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.

(b) To be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements of §§ 37.123–37.133 of this subpart. The requirement to comply with § 37.131 may be modified in accordance with the provisions of this subpart relating to undue financial burden.

(c) Requirements for complementary paratransit do not apply to commuter bus systems.

§ 37.123 CAA paratransit eligibility—standards.

(a) Public entities required by § 37.121 of this subpart to provide complementary paratransit service shall provide the service to the CAA paratransit eligible individuals described in paragraph (e) of this section.

(b) If an individual meets the eligibility criteria of this section with respect to some trips but not others, the individual shall be CAA paratransit eligible only for those trips for which he or she meets the criteria.

(c) Individuals may be CAA paratransit eligible on the basis of a permanent or temporary disability.

(d) Public entities may provide complementary paratransit service to persons other than CAA paratransit eligible individuals. However, only the cost of service to CAA paratransit eligible individuals may be considered in a public entity's request for an undue financial burden waiver under §§ 37.151–37.155 of this part.

(e) The following individuals are CAA paratransit eligible:

(1) Any individual with a disability who is unable, as the result of a physical or mental impairment (including a vision impairment), and without the assistance of another individual (except the operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities.

(2) Any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device and is able, with such assistance, to board, ride and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time, or within a reasonable period of such time, when such a vehicle is not being used to provide designated public transportation on the route.

(i) An individual is eligible under this paragraph with respect to travel on an otherwise accessible route on which the boarding or disembarking location which the individual would use is one at which boarding or disembarking from the vehicle is precluded as provided in § 37.167(g) of this part.

(ii) An individual using a common wheelchair is eligible under this paragraph if the individual's wheelchair cannot be accommodated on an existing vehicle (e.g., because the vehicle's lift does not meet the standards of part 38 of these regulations), even if that vehicle is accessible to other individuals with disabilities and their mobility wheelchairs.

(iii) With respect to rail systems, an individual is eligible under this paragraph if the individual could use an accessible rail system, but

(A) there is not yet one accessible car per train on the system; or

(B) key stations have not yet been made accessible.

(3) Any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system.

(i) Only a specific impairment-related condition which prevents the individual from traveling to a boarding location or from a disembarking location is a basis for eligibility under this paragraph. A condition which makes traveling to boarding location or from a disembarking location more difficult for a person with a specific impairment-related condition than for an individual who does not have the condition, but does not prevent the travel, is not a basis for eligibility under this paragraph.

(ii) Architectural barriers not under the control of the public entity providing fixed route service and environmental barriers (e.g., distance, terrain, weather) do not, standing alone, form a basis for eligibility under this paragraph. The interaction of such barriers with an individual's specific impairment-related condition may form a basis for eligibility under this paragraph, if the effect is to prevent the individual from traveling to a boarding location or from a disembarking location.

(f) Individuals accompanying a CAA paratransit eligible individual shall be provided service as follows:

(1) One other individual accompanying the CAA paratransit eligible individual shall be provided service.

(i) If the CAA paratransit eligible individual is traveling with a personal care attendant, the entity shall provide service to one other individual in addition to the attendant who is accompanying the eligible individual.

(ii) A family member or friend is regarded as a person accompanying the eligible individual, and not as a personal care attendant, unless the family member or friend registered is acting in the capacity of a personal care attendant;

(2) Additional individuals accompanying the CAA paratransit eligible individual shall be provided service, provided that space is available for them on the paratransit vehicle carrying the CAA paratransit eligible individual and that transportation of the additional individuals will not result in a denial of service to CAA paratransit eligible individuals.

(3) In order to be considered as ''accompanying'' the eligible individual for purposes of this paragraph, the other individual(s) shall have the same origin and destination as the eligible individual.

§ 37.125 CAA paratransit eligibility: process.

Each public entity required to provide complementary paratransit service by § 37.121 of this part shall establish a process for determining CAA paratransit eligibility.

(a) The process shall strictly limit CAA paratransit eligibility to individuals specified in § 37.123 of this part.

(b) All information about the process, materials necessary to apply for eligibility, and notices and determinations concerning eligibility shall be made available in accessible formats, upon request.

(c) If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application.

(d) The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding.

(e) The public entity shall provide documentation to each eligible individual stating that he or she is ''CAA Paratransit Eligible.'' The documentation shall include the name of the eligible individual, the name of the transit provider, the telephone number of the entity's paratransit coordinator, an expiration date for eligibility, and any conditions or limitations on the individual's eligibility including the use of a personal care attendant.

(f) The entity may require recertification of the eligibility of CAA paratransit eligible individuals at reasonable intervals.

(g) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.

(1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.

(2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it;

(3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued.

(h) The entity may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to CAA eligible individuals who establish a pattern or practice of missing scheduled trips.

(1) Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.

(2) Before suspending service, the entity shall take the following steps:

(i) Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction;

(ii) Provide the individual an opportunity to be heard and to present information and arguments;

(iii) Provide the individual with written notification of the decision and the reasons for it.

(3) The appeals process of paragraph (g) of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal.

(i) In applications for CAA paratransit eligibility, the entity may require the applicant to indicate whether or not he or she travels with a personal care attendant.

§ 37.127 Complementary paratransit service for visitors.

(a) Each public entity required to provide complementary paratransit service under § 37.121 of this part shall make the service available to visitors as provided in this section.

(b) For purposes of this section, a visitor is an individual with disabilities who does not reside in the jurisdiction(s) served by the public entity or other entities with which the public entity provides coordinated complementary paratransit service within a region.

(c) Each public entity shall treat as eligible for its complementary paratransit service all visitors who present documentation that they are CAA paratransit eligible, under the criteria of § 37.125 of this part, in the jurisdiction in which they reside.

(d) With respect to visitors with disabilities who do not present such documentation, the public entity may require the documentation of the individual's place of residence and, if the individual's disability is not apparent, of his or her disability. The entity shall provide paratransit service to individuals with disabilities who qualify as visitors under paragraph (b) of this section. The entity shall accept a certification by such individuals that they are unable to use fixed route transit.

(e) A public entity shall make the service to a visitor required by this section available for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during such 365-day period. In no case shall the public entity require a visitor to apply for or receive eligibility certification from the public entity before receiving the service required by this section.

§ 37.129 Types of service.

(a) Except as provided in this section, complementary paratransit service for CAA paratransit eligible persons shall be origin-to-destination service.

(b) Complementary paratransit service for CAA paratransit eligible persons described in § 37.123(e)(2) of this part may also be provided by on-call bus service or paratransit feeder service to an accessible fixed route, where such service enables the individual to use the fixed route bus system for his or her trip.

(c) Complementary paratransit service for CAA eligible persons described in § 37.123 (e)(3) of this part also may be provided by paratransit feeder service to and/or from an accessible fixed route.

§ 37.131 Service criteria for complementary paratransit.

The following service criteria apply to complementary paratransit required by § 37.121 of this part.

(a) *Service Area*—(1) Bus. (i) The entity shall provide complementary paratransit service to origins and destinations within corridors with a width of three-fourths of a mile on each side of each fixed route. The corridor shall include an area with a three-fourths of a mile radius at the ends of each fixed route.

(ii) Within the core service area, the entity also shall provide service to small areas not inside any of the corridors but which are surrounded by corridors.

(iii) Outside the core service area, the entity may designate corridors with widths from three-fourths of a mile up to one and one-half miles on each side of a fixed route, based on local circumstances.

(iv) For purposes of this paragraph, the core service area is that area in which corridors with a width of three-fourths of a mile on each side of each fixed route merge together such that, with few and small exceptions, all origins and destinations within the area would be served.

(2) *Rail.* (i) For rail systems, the service area shall consist of a circle with a radius of a mile around each station.

(ii) At end stations and other stations in outlying areas, the entity may designate circles with radii of up to 1½ miles as part of its service area, based on local circumstances.

(3) *Jurisdictional Boundaries.* Notwithstanding any other provision of this paragraph, an entity is not required to provide paratransit service in an area outside the boundaries of the jurisdiction(s) in which it operates, if the entity does not have legal authority to operate in that area. The entity shall take all practicable steps to provide paratransit service to any part of its service area.

(b) *Response Time.* The entity shall schedule and provide paratransit service to any CAA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day. Reservations may be taken by reservation agents or by mechanical means.

(1) The entity shall make reservation service available during at least all normal business hours of the entity's administrative offices, as well as during times, comparable to normal business hours, on a day when the entity's offices are not open before a service day.

(2) The entity may negotiate pickup times with the individual, but the entity shall not require a CAA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time.

(3) The entity may use real-time scheduling in providing complementary paratransit service.

(4) The entity may permit advance reservations to be made up to 14 days in advance of a CAA paratransit eligible individual's desired trips. When an entity proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of § 37.131(b) and (c).

(c) *Fares.* The fare for a trip charged to a CAA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard to discounts) for a trip of similar length, at a similar time of day, on the entity's fixed route system.

(1) In calculating the full fare that would be paid by an individual using the fixed route system, the entity may include transfer and premium charges applicable to a trip of similar length, at a similar time of day, on the fixed route system.

(2) The fares for individuals accompanying CAA paratransit eligible individuals, who are provided service under § 37.123 (f) of this part, shall be the same as for the CAA paratransit eligible individuals they are accompanying.

(3) A personal care attendant shall not be charged for complementary paratransit service.

(4) The entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (i.e., trips guaranteed to the organization).

(d) *Trip Purpose Restrictions.* The entity shall not impose restrictions or priorities based on trip purpose.

(e) *Hours and Days of Service.* The complementary paratransit service shall be available throughout the same hours and days as the entity's fixed route service.

(f) *Capacity Constraints.* The entity shall not limit the availability of complementary paratransit service to CAA paratransit eligible individuals by any of the following:

(1) Restrictions on the number of trips an individual will be provided;

(2) Waiting lists for access to the service; or

(3) Any operational pattern or practice that significantly limits the availability of service to CAA paratransit eligible persons.

(i) Such patterns or practices include, but are not limited to, the following:

(A) Substantial numbers of significantly untimely pickups for initial or return trips;

(B) Substantial numbers of trip denials or missed trips;

(C) Substantial numbers of trips with excessive trip lengths.

(ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.

(g) *Additional Service*. Public entities may provide complementary paratransit service to CAA paratransit eligible individuals exceeding that provided for in this section. However, only the cost of service provided for in this section may be considered in a public entity's request for an undue financial burden waiver under §§37.151–37.155 of this part.

§37.133 Subscription Service.

(a) This part does not prohibit the use of subscription service by public entities as part of a complementary paratransit system, subject to the limitations in this section.

(b) Subscription service may not absorb more than fifty percent of the number of trips available at a given time of day, unless there is excess non-subscription capacity.

(c) Notwithstanding any other provision of this part, the entity may establish waiting lists or other capacity constraints and trip purpose restrictions or priorities for participation in the subscription service only.

§37.135 Submission of paratransit plan.

(a) *General*. Each public entity operating fixed route transportation service, which is required by §37.121 to provide complementary paratransit service, shall develop a paratransit plan.

(b) *Initial Submission*. Except as provided in §37.141 of this part, each entity shall submit its initial plan for compliance with the complementary paratransit service provision by June 1, 1998, to the appropriate location identified in paragraph (f) of this section.

(c) *Annual Updates*. Except as provided in this paragraph, each entity shall submit its annual update to the plan on June 1 of each succeeding year.

(1) If an entity has met and is continuing to meet all requirements for complementary paratransit in §§37.121–37.133 of this part, the entity may submit to the General Counsel an annual certification of continued compliance in lieu of a plan update. Entities that have submitted a joint plan under §37.141 may submit a joint certification under this paragraph. The requirements of §§37.137(a) and (b), 37.138 and 37.139 do not apply when a certification is submitted under this paragraph.

(2) In the event of any change in circumstances that results in an entity which has submitted a certification of continued compliance falling short of compliance with §§37.121–37.133, the entity shall immediately notify the General Counsel in writing of the problem. In this case, the entity shall also file a plan update meeting the requirements of §§37.137–37.139 of this part on the next following June 1 and in each succeeding year until the entity returns to full compliance.

(3) An entity that has demonstrated undue financial burden to the General Counsel shall file a plan update meeting the requirements of §§37.137–37.139 of this part on each June 1 until full compliance with §§37.121–37.133 is attained.

(4) If the General Counsel reasonably believes that an entity may not be fully complying with all service criteria, the General Counsel may require the entity to provide an annual update to its plan.

(d) *Phase-in of Implementation*. Each plan shall provide for full compliance by no later than June 1, 2003, unless the entity has received a waiver based on undue financial burden. If the date for full compliance specified in the plan is after June 1, 1999, the plan shall include milestones, providing for measured, proportional progress toward full compliance.

(e) *Plan Implementation*. Each entity shall begin implementation of its plan on June 1, 1998.

(f) *Submission Locations*. An entity shall submit its plan to the General Counsel's office.

§37.137 Paratransit plan development.

(a) *Survey of existing services*. Each submitting entity shall survey the area to be covered by the plan to identify any person or entity (public or covered) which provides a paratransit or other special transportation service for CAA paratransit eligible individuals in the service area to which the plan applies.

(b) *Public participation*.

Each submitting entity shall ensure public participation in the development of its paratransit plan, including at least the following:

(1) *Outreach*. Each submitting entity shall solicit participation in the development of its plan by the widest range of persons anticipated to use its paratransit service. Each entity shall develop contacts, mailing lists and other appropriate means for notification of opportunities to participate in the development of the paratransit plan.

(2) *Consultation with individuals with disabilities*. Each entity shall contact individuals with disabilities and groups representing them in the community. Consultation shall begin at an early stage in the plan development and should involve persons with disabilities in all phases of plan development. All documents and other information concerning the planning procedure and the provision of service shall be available, upon request, to members of the pubic, except where disclosure would be an unwarranted invasion of personal privacy.

(3) *Opportunity for public comment*. The submitting entity shall make its plan available for review before the plan is finalized. In making the plan available for public review, the entity shall ensure that the plan is available upon request in accessible formats.

(4) *Public hearing*. The entity shall sponsor at a minimum one public hearing and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements; and

(5) *Special requirements*. If the entity intends to phase-in its paratransit service over a multi-year period, or request a waiver based on undue financial burden, the public hearing shall afford the opportunity for interested citizens to express their views concerning the phase-in, the request, and which service criteria may be delayed in implementation.

(c) *Ongoing requirement*. The entity shall create an ongoing mechanism for the participation of individuals with disabilities in the continued development and assessment of services to persons with disabilities. This includes, but is not limited to, the development of the initial plan, any request for an undue financial burden waiver, and each annual submission.

§37.139 Plan contents.

Each plan shall contain the following information:

(a) Identification of the entity or entities submitting the plan, specifying for each

(1) Name and address; and

(2) Contact person for the plan, with telephone number and facsimile telephone number (FAX), if applicable.

(b) A description of the fixed route system as of January 1, 1997 (or subsequent year for annual updates), including—

(1) A description of the service area, route structure, days and hours of service, fare structure, and population served. This includes maps and tables, if appropriate;

(2) The total number of vehicles (bus, van, or rail) operated in fixed route service (including contracted service), and percentage of accessible vehicles and percentage of routes accessible to and usable by persons with disabilities, including persons who use wheelchairs;

(3) Any other information about the fixed route service that is relevant to establishing the basis for comparability of fixed route and paratransit service.

(c) A description of existing paratransit services, including:

(1) An inventory of service provided by the public entity submitting the plan;

(2) An inventory of service provided by other agencies or organizations, which may in whole or in part be used to meet the requirement for complementary paratransit service; and

(3) A description of the available paratransit services in paragraphs (c)(2) and (c)(3) of this section as they relate to the service criteria described in §37.131 of this part of service area, response time, fares, restrictions on trip purpose, hours and days of service, and capacity constraints; and to the requirements of CAA paratransit eligibility.

(d) A description of the plan to provide comparable paratransit, including:

(1) An estimate of demand for comparable paratransit service by CAA eligible individuals and a brief description of the demand estimation methodology used;

(2) An analysis of differences between the paratransit service currently provided and what is required under this part by the entity(ies) submitting the plan and other entities, as described in paragraph (c) of this section;

(3) A brief description of planned modifications to existing paratransit and fixed route service and the new paratransit service planned to comply with the CAA paratransit service criteria;

(4) A description of the planned comparable paratransit service as it relates to each of the service criteria described in § 37.131 of this part-service area, absence of restrictions or priorities based on trip purpose, response time, fares, hours and days of service, and lack of capacity constraints. If the paratransit plan is to be phased in, this paragraph shall be coordinated with the information being provided in paragraphs (d)(5) and (d)(6) of this paragraph;

(5) A timetable for implementing comparable paratransit service, with a specific date indicating when the planned service will be completely operational. In no case may full implementation be completed later than June 1, 2003. The plan shall include milestones for implementing phases of the plan, with progress that can be objectively measured yearly;

(6) A budget for comparable paratransit service, including capital and operating expenditures over five years.

(e) A description of the process used to certify individuals with disabilities as CAA paratransit eligible. At a minimum, this must include—

(1) A description of the application and certification process, including—

(i) The availability of information about the process and application materials in accessible formats;

(ii) The process for determining eligibility according to the provisions of §§37.123–37.125 of this part and notifying individuals of the determination made;

(iii) The entity's system and timetable for processing applications and allowing presumptive eligibility; and

(iv) The documentation given to eligible individuals.

(2) A description of the administrative appeals process for individuals denied eligibility.

(3) A policy for visitors, consistent with §37.127 of this part.

(f) Description of the public participation process including—

(1) Notice given of opportunity for public comment, the date(s) of completed public hearing(s), availability of the plan in accessible formats, outreach efforts, and consultation with persons with disabilities.

(2) A summary of significant issues raised during the public comment period, along with a response to significant comments and discussion of how the issues were resolved.

(g) Efforts to coordinate service with other entities subject to the complementary paratransit requirements of this part which have overlapping or contiguous service areas or jurisdictions.

(h) The following endorsements or certifications:

(1) a resolution adopted by the entity authorizing the plan, as submitted. If more than one entity is submitting the plan there must be an authorizing resolution from each board. If the entity does not function with a board, a statement shall be submitted by the entity's chief executive;

(2) a certification that the survey of existing paratransit service was conducted as required in § 37.137(a) of this part;

(3) To the extent service provided by other entities is included in the entity's plan for comparable paratransit service, the entity must certify that:

(i) CAA paratransit eligible individuals have access to the service;

(ii) The service is provided in the manner represented; and

(iii) Efforts will be made to coordinate the provision of paratransit service by other providers.

(i) a request for a waiver based on undue financial burden, if applicable. The waiver request should include information sufficient for the General Counsel to consider the factors in § 37.155 of this part. If a request for an undue financial burden waiver is made, the plan must include a description of additional paratransit services that would be provided to achieve full compliance with the requirement for comparable paratransit in the event the waiver is not granted, and the timetable for the implementation of these additional services.

(j) *Annual plan updates.* (1) The annual plan updates submitted June 1, 1999, and annually thereafter, shall include information necessary to update the information requirements of this section. Information submitted annually must include all significant changes and revisions to the timetable for implementation;

(2) If the paratransit service is being phased in over more than one year, the entity must demonstrate that the milestones identified in the current paratransit plans have been achieved. If the milestones have not been achieved, the plan must explain any slippage and what actions are being taken to compensate for the slippage.

(3) The annual plan must describe specifically the means used to comply with the public participation requirements, as described in § 37.137 of this part.

§ 37.141 Requirements for a joint paratransit plan.

(a) Two or more public entities with overlapping or contiguous service areas or jurisdictions may develop and submit a joint plan providing for coordinated paratransit service. Joint plans shall identify the participating entities and indicate their commitment to participate in the plan.

(b) To the maximum extent feasible, all elements of the coordinated plan shall be submitted on June 1, 1998. If a coordinated plan is not completed by June 1, 1998, those entities intending to coordinate paratransit service must submit a general statement declaring their intention to provide coordinated service and each element of the plan specified in § 37.139 to the extent practicable. In addition, the plan must include the following certifications from each entity involved in the coordination effort:

(1) a certification that the entity is committed to providing CAA paratransit service as part of a coordinated plan.

(2) a certification from each public entity participating in the plan that it will maintain current levels of paratransit service until the coordinated plan goes into effect.

(c) Entities submitting the above certifications and plan elements in lieu of a completed plan on June 1, 1998, must submit a complete plan by December 1, 1998.

(d) Filing of an individual plan does not preclude an entity from cooperating with other entities in the development or implementation of a joint plan. An entity wishing to join with other entities after its initial submission may do so by meeting the filing requirements of this section.

§ 37.143 Paratransit plan implementation.

(a) Each entity shall begin implementation of its complementary paratransit plan, pending notice from the General Counsel. The implementation of the plan shall be consistent with the terms of the plan, including any specified phase-in period.

(b) If the plan contains a request for a waiver based on undue financial burden, the entity shall begin implementation of its plan, pending a determination on its waiver request.

§ 37.145 [Reserved]

§ 37.147 Considerations during General Counsel review.

In reviewing each plan, at a minimum the General Counsel will consider the following:

(a) Whether the plan was filed on time;

(b) Comments submitted by the state, if applicable;

(c) Whether the plan contains responsive elements for each component required under § 37.139 of this part;

(d) Whether the plan, when viewed in its entirety, provides for paratransit service comparable to the entity's fixed route service;

(e) Whether the entity complied with the public participation efforts required by this part; and

(f) The extent to which efforts were made to coordinate with other public entities with overlapping or contiguous service areas or jurisdictions.

§ 37.149 Disapproved plans.

(a) If a plan is disapproved in whole or in part, the General Counsel will specify which provisions are disapproved. Each entity shall amend its plan consistent with this information and resubmit the plan to the General Counsel's office within 90 days of receipt of the disapproval letter.

(b) Each entity revising its plan shall continue to comply with the public participation requirements applicable to the initial development of the plan (set out in §37.137 of this part).

§ 37.151 Waiver for undue financial burden.

If compliance with the service criteria of §37.131 of this part creates an undue financial burden, an entity may request a waiver from all or some of the provisions if the entity has complied with the public participation requirements in §37.137 of this part and if the following conditions apply:

(a) At the time of submission of the initial plan on June 1, 1998

(1) The entity determines that it cannot meet all of the service criteria by June 1, 2003; or

(2) The entity determines that it cannot make measured progress toward compliance in any year before full compliance is required. For purposes of this part, measured progress means implementing milestones as scheduled, such as incorporating an additional paratransit service criterion or improving an aspect of a specific service criterion.

(b) At the time of its annual plan update submission, if the entity believes that circumstances have changed since its last submission, and it is no longer able to comply by June 1, 2003, or make measured progress in any year before 2003, as described in paragraph (a)(2) of this section.

§ 37.153 General Counsel waiver determination.

(a) The General Counsel will determine whether to grant a waiver for undue financial burden on a case-by-case basis, after considering the factors identified in §37.155 of this part and the information accompanying the request. If necessary, the General Counsel will return the application with a request for additional information.

(b) Any waiver granted will be for a limited and specified period of time. (c) If the General Counsel grants the applicant a waiver, the General Counsel will do one of the following:

(1) Require the public entity to provide complementary paratransit to the extent it can do so without incurring an undue financial burden. The entity shall make changes in its plan that the General Counsel determines are appropriate to maximize the complementary paratransit service that is provided to CAA paratransit eligible individuals. When making changes to its plan, the entity shall use the public participation process specified for plan development and shall consider first a reduction in number of trips provided to each CAA paratransit eligible person per month, while attempting to meet all other service criteria.

(2) Require the public entity to provide basic complementary paratransit services to all CAA paratransit eligible individuals, even if doing so would cause the public entity to incur an undue financial burden. Basic complementary paratransit service shall include at least complementary paratransit service in corridors defined as provided in § 37.131(a) along the public entity's key routes during core service hours.

(i) For purposes of this section, key routes are defined as routes along which there is service at least hourly throughout the day.

(ii) For purposes of this section, core service hours encompass at least peak periods, as these periods are defined locally for fixed route service, consistent with industry practice.

(3) If the General Counsel determines that the public entity will incur an undue financial burden as the result of providing basic complementary paratransit service, such that it is infeasible for the entity to provide basic complementary paratransit service, the Administrator shall require the public entity to coordinate with other available providers of demand responsive service in

the area served by the public entity to maximize the service to CAA paratransit eligible individuals to the maximum extent feasible.

§ 37.155 Factors in decision to grant an undue financial burden waiver.

(a) In making an undue financial burden determination, the General Counsel will consider the following factors:

(1) Effects on current fixed route service, including reallocation of accessible fixed route vehicles and potential reduction in service, measured by service miles;

(2) Average number of trips made by the entity's general population, on a per capita basis, compared with the average number of trips to be made by registered CAA paratransit eligible persons, on a per capita basis;

(3) Reductions in other services, including other special services;

(4) Increases in fares;

(5) Resources available to implement complementary paratransit service over the period covered by the plan;

(6) Percentage of budget needed to implement the plan, both as a percentage of operating budget and a percentage of entire budget;

(7) The current level of accessible service, both fixed route and paratransit;

(8) Cooperation/coordination among area transportation providers;

(9) Evidence of increased efficiencies, that have been or could be effectuated, that would benefit the level and quality of available resources for complementary paratransit service; and

(10) Unique circumstances in the submitting entity's area that affect the ability of the entity to provide paratransit, that militate against the need to provide paratransit, or in some other respect create a circumstance considered exceptional by the submitting entity.

(b)(1) Costs attributable to complementary paratransit shall be limited to costs of providing service specifically required by this part to CAA paratransit eligible individuals, by entities responsible under this part for providing such service.

(2) If the entity determines that it is impracticable to distinguish between trips mandated by the CAA and other trips on a trip-by-trip basis, the entity shall attribute to CAA complementary paratransit requirements a percentage of its overall paratransit costs. This percentage shall be determined by a statistically valid methodology that determines the percentage of trips that are required by this part. The entity shall submit information concerning its methodology and the data on which its percentage is based with its request for a waiver. Only costs attributable to CAA-mandated trips may be considered with respect to a request for an undue financial burden waiver.

(3) Funds to which the entity would be legally entitled, but which, as a matter of state or local funding arrangements, are provided to another entity and used by that entity to provide paratransit service which is part of a coordinated system of paratransit meeting the requirements of this part, may be counted in determining the burden associated with the waiver request.

SUBPART G—PROVISION OF SERVICE

§ 37.161 Maintenance of accessible features: general.

(a) Public and covered entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities. These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage and systems to facilitate communications with persons with impaired vision or hearing.

(b) Accessibility features shall be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

(c) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

§ 37.163 Keeping vehicle lifts in operative condition: public entities.

(a) This section applies only to public entities with respect to lifts in non-rail vehicles.

(b) The entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.

(c) The entity shall ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service.

(d) Except as provided in paragraph (e) of this section, when a lift is discovered to be inoperative, the entity shall take the vehicle out of service before the beginning of the vehicle's next service day and ensure that the lift is repaired before the vehicle returns to service.

(e) If there is no spare vehicle available to take the place of a vehicle with an inoperable lift, such that taking the vehicle out of service will reduce the transportation service the entity is able to provide, the public entity may keep the vehicle in service with an inoperable lift for no more than five days (if the entity serves an area of 50,000 or less population) or three days (if the entity serves an area of over 50,000 population) from the day on which the lift is discovered to be inoperative.

(f) In any case in which a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.

§37.165 Lift and securement use.

(a) This section applies to public and covered entities.

(b) All common wheelchairs and their users shall be transported in the entity's vehicles or other conveyances. The entity is not required to permit wheelchairs to ride in places other than designated securement locations in the vehicle, where such locations exist.

(c)(1) For vehicles complying with part 38 of these regulations, the entity shall use the securement system to secure wheelchairs as provided in that part.

(2) For other vehicles transporting individuals who use wheelchairs, the entity shall provide and use a securement system to ensure that the wheelchair remains within the securement area.

(3) The entity may require that an individual permit his or her wheelchair to be secured.

(d) The entity may not deny transportation to a wheelchair or its user on the ground that the device cannot be secured or restrained satisfactorily by the vehicle's securement system.

(e) The entity may recommend to a user of a wheelchair that the individual transfer to a vehicle seat. The entity may not require the individual to transfer.

(f) Where necessary or upon request, the entity's personnel shall assist individuals with disabilities with the use of securement systems, ramps and lifts. If it is necessary for the personnel to leave their seats to provide this assistance, they shall do so.

(g) The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle. Provided that an entity is not required to permit such individuals to use a lift Model 141 manufactured by EEC, Inc. If the entity chooses not to allow such individuals to use such a lift, it shall clearly notify consumers of this fact by signage on the exterior of the vehicle (adjacent to and of equivalent size with the accessibility symbol).

§ 37.167 Other service requirements

(a) This section applies to public and covered entities.

(b) On fixed route systems, the entity shall announce stops as follows:

(1) The entity shall announce at least at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with visual impairments or other disabilities to be oriented to their location.

(2) The entity shall announce any stop on request of an individual with a disability.

(c) Where vehicles or other conveyances for more than one route serve the same stop, the entity shall provide a means by which an individual with a visual impairment or other disability can identify the proper vehicle to enter or be identified to the vehicle operator as a person seeking a ride on a particular route.

(d) The entity shall permit service animals to accompany individuals with disabilities in vehicles and facilities.

(e) The entity shall ensure that vehicle operators and other personnel make use of accessibility-related equipment or features required by part 38 of these regulations.

(f) The entity shall make available to individuals with disabilities adequate information concerning transportation services. This obligation includes making adequate communications capacity available, through accessible formats and technology, to enable users to obtain information and schedule service.

(g) The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.

(h) The entity shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply, consistent with applicable Department of Transportation rules on the transportation of hazardous materials.

(i) The entity shall ensure that adequate time is provided to allow individuals with disabilities to complete boarding or disembarking from the vehicle.

(j)(1) When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following person to move in order to allow the individual with a disability to occupy the seat or securement location:

(i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);

(ii) Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.

(2) This requirement applies to light rail and rapid rail systems only to the extent practicable.

(3) The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.

(4) In all signage designating priority seating areas for elderly persons or persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons siting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability. This requirement applies to all fixed route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed route vehicles.

§ 37.169 Interim requirements for over-the-road bus service operated by covered entities.

(a) Covered entities operating over-the-road buses, in addition to compliance with other applicable provisions of this part, shall provide accessible service as provided in this section.

(b) The covered entity shall provide assistance, as needed, to individuals with disabilities in boarding and disembarking, including moving to and from the bus seat for the purpose of boarding and disembarking. The covered entity shall ensure that personnel are trained to provide this assistance safely and appropriately.

(c) To the extent that they can be accommodated in the areas of the passenger compartment provided for passengers' personal effects, wheelchairs or other mobility aids and assistive devices used by individuals with disabilities, or components of such devices, shall be permitted in the passenger compartment. When the bus is at rest at a stop, the driver or other personnel shall assist individuals with disabilities with the stowage and retrieval of mobility aids, assistive devices, or other items that can be accommodated in the passenger compartment of the bus.

(d) Wheelchairs and other mobility aids or assistive devices that cannot be accommodated in the passenger compartment (including electric wheelchairs) shall be accommodated in the baggage compartment of the bus, unless the size of the baggage compartment prevents such accommodation.

(e) At any given stop, individuals with disabilities shall have the opportunity to have their wheelchairs or other mobility aids or assistive devices stowed in the baggage compartment before other baggage or cargo is loaded, but baggage or cargo already on the bus does not have to be off-loaded in order to make room for such devices.

(f) The entity may require up to 48 hours' advance notice only for providing boarding assistance. If the individual does not provide such notice, the entity shall nonetheless provide the service if it can do so by making a reasonable effort, without delaying the bus service.

§ 37.171 Equivalency requirement for demand responsive service operated by covered entities not primarily engaged in the business of transporting people.

A covered entity not primarily engaged in the business of transporting people which operates a demand responsive system shall ensure that its system, when viewed in its entirety, provides equivalent service to individuals with disabilities, including individuals who use wheelchairs, as it does to individuals without disabilities. The standards of § 37.105 shall be used to determine if the entity is providing equivalent service.

§ 37.173 Training.

Each public or covered entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among individuals with disabilities.

Appendix A to Part 37—Standards for Accessible Transportation Facilities

[Copies of this appendix may be obtained from the Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540-1999.]

Appendix B to Part 37—Certifications

Certification of Equivalent Service

The (name of agency) certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:

(1) Response time;
(2) Fares;
(3) Geographic service area;
(4) Hours and days of service;
(5) Restrictions on trip purpose;
(6) Availability of information and reservation capability; and
(7) Constraints on capacity or service availability.

This certification is valid for no longer than one year from its date of filing.

_____
signature

_____
name of authorized official

_____
title

_____
date

Existing Paratransit Service Survey

This is to certify that (name of public entity (ies)) has conducted a survey of existing paratransit services as required by section 37.137 (a) of the CAA regulations.

_____
signature

_____
name of authorized official

_____
title

_____
date

Included Service Certification

This is to certify that service provided by other entities but included in the CAA paratransit plan submitted by (name of submitting entity (ies)) meets the requirements of part 37, subpart F of the CAA regulations providing that CAA eligible individuals have access to the service; the service is provided in the manner represented; and, that efforts will be made to coordinate the provision of paratransit service offered by other providers.

_____
signature

_____
name of authorized official

_____
title

_____
date

Joint Plan Certification I

This is to certify that (name of entity covered by joint plan) is committed to providing CAA paratransit service as part of this coordinated plan and in conformance with the requirements of part 37 subpart F of the CAA regulations.

_____
signature

_____
name of authorized official

_____
title

_____
date

Joint Plan Certification II

This is to certify that (name of entity covered by joint plan) will, in accordance with section 37.141 of the CAA regulations, maintain current levels of paratransit service until the coordinated plan goes into effect.

_____
signature

_____
name of authorized official

_____
title

_____
date

Part 38—Congressional Accountability Act [CAA] Accessibility Guidelines for Transportation Vehicles

Subpart A—General

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Subpart B—Buses, Vans and Systems

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Subpart F—Over-the-Road Buses and Systems

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Subpart G—Other Vehicles and Systems

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38.177 [Reserved]
38.179 Trams, similar vehicles, and systems.
Figures in Part 38
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SUBPART A—GENERAL

§ 38.1 Purpose.

This part provides minimum guidelines and requirements for accessibility standards

in part 37 of these regulations for transportation vehicles required to be accessible by section 210 of the Congressional Accountability Act (2 U.S.C. 1331, *et seq.*) which, *inter alia*, applies the rights and protections of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 *et seq.*) to covered entities within the Legislative Branch.

§ 38.2 Equivalent facilitation.

Departures from particular technical and scoping requirements of these guidelines by use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the vehicle. Departures are to be considered on a case-by-case basis by the Office of Compliance under the procedure set forth in § 37.7 of these regulations.

§ 38.3 Definitions.

See § 37.3 of these regulations.

§ 38.4 Miscellaneous instructions.

(a) *Dimensional conventions.* Dimensions that are not noted as minimum or maximum are absolute.

(b) *Dimensional tolerances.* All dimensions are subject to conventional engineering tolerances for material properties and field conditions, including normal anticipated wear not exceeding accepted industry-wide standards and practices.

(c) *Notes.* The text of these guidelines does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix.

(d) *General terminology.* (1) *Comply with* means meet one or more specification of these guidelines.

(2) *If*, or *if* * * * *then* denotes a specification that applies only when the conditions described are present.

(3) *May* denotes an option or alternative.

(4) *Shall* denotes a mandatory specification or requirement.

(5) *Should* denotes an advisory specification or recommendation and is used only in the appendix to this part.

SUBPART B—BUSES, VANS AND SYSTEMS

§ 38.21 General.

(a) New, used or remanufactured buses and vans (except over-the-road buses covered by subpart G of this part), to be considered accessible by regulations issued by the Board of Directors of the Office of Compliance in part 37 of these regulations, shall comply with the applicable provisions of this subpart.

(b) If portions of the vehicle are modified in a way that affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible buses be retrofitted with lifts, ramps or other boarding devices.

§ 38.23 Mobility aid accessibility.

(a) *General.* All vehicles covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift or ramp) complying with paragraph (b) or (c) of this section and sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location. At least two securement locations and devices, complying with paragraph (d) of this section, shall be provided on vehicles in excess of 22 feet in length; at least one securement location and device, complying with paragraph (d) of this section, shall be provided on vehicles 22 feet in length or less.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the vehicle brakes, transmission, or door, or shall provide other appropriate mechanisms or systems, to ensure that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. The lift shall deploy to all levels (i.e., ground, curb, and intermediate positions) normally encountered in the operating environment. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* Where the lift is designed to deploy with its long dimension parallel to the vehicle axis and which pivots into or out of the vehicle while occupied (i.e., ''rotary lift''), the requirements of this paragraph prohibiting the lift from being stowed while occupied shall not apply if the stowed position is within the passenger compartment and the lift is intended to be stowed while occupied.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions, and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary lift and is intended to be stowed while occupied.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a single failure of any load carrying component.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform which extends beyond the vehicle in its raised position shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with maneuvering into or out of the aisle. The loading-edge barrier (outer barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficient when raised or closed, or a supplementary system shall be provided, to prevent a power wheelchair or mobility aid from riding over or defeating it. The outer barrier of the lift shall automatically raise or close, or a supplementary system shall automatically engage, and remain raised, closed, or engaged at all times that the platform is more than 3 inches above the roadway or sidewalk and the platform is occupied. Alternatively, a barrier or system may be raised, lowered, opened, closed, engaged, or disengaged by the lift operator, provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed or the supplementary system is engaged.

(6) *Platform surface.* The platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The platform shall have a minimum clear width of 28½ inches at the platform, a minimum clear width of 30 inches measured from 2 inches above the platform surface to 30 inches above the platform, and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface of the platform. (See Fig. 1)

(7) *Platform gaps.* Any openings between the platform surface and the raised barriers shall not exceed ⅝ inch in width. When the platform is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward lift platform edge and the vehicle floor shall not exceed ½ inch horizontally and ⅝ inch vertically. Platforms on semiautomatic lifts may have a hand hold not exceeding 1½ inches by 4½ inches located between the edge barriers.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, measured on level ground, for a maximum rise of 3 inches, and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch high shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees (exclusive of vehicle roll or pitch) in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the platform.

(10) *Platform movement.* No part of the platform shall move at a rate exceeding 6 inches/second during lowering and lifting an occupant, and shall not exceed 12 inches/second during deploying or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration when occupied shall be 0.3g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchair and mobility aid users.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise have difficulty using steps. The platform may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails on two sides, which move in tandem with the lift, and which shall be graspable and provide support to standees throughout the entire lift operation. Handrails shall have a usable component at least 8 inches long with the lowest portion a minimum 30 inches above the platform and the highest portion a maximum 38 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall be placed to provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp*—(1) *Design load.* Ramps 30 inches or longer shall support a load of 600

pounds, placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material. Ramps shorter than 30 inches shall support a load of 300 pounds.

(2) *Ramp surface*. The ramp surface shall be continuous and slip resistant; shall not have protrusions from the surface greater than ¼ inch high; shall have a clear width of 30 inches; and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold*. The transition from roadway or sidewalk and the transition from vehicle floor to the ramp may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers*. Each side of the ramp shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope*. Ramps shall have the least slope practicable and shall not exceed 1:4 when deployed to ground level. If the height of the vehicle floor from which the ramp is deployed is 3 inches or less above a 6-inch curb, a maximum slope of 1:4 is permitted; if the height of the vehicle floor from which the ramp is deployed is 6 inches or less, but greater than 3 inches, above a 6-inch curb, a maximum slope of 1:6 is permitted; if the height of the vehicle floor from which the ramp is deployed is 9 inches or less, but greater than 6 inches, above a 6-inch curb, a maximum slope of 1:8 is permitted; if the height of the vehicle floor from which the ramp is deployed is greater than 9 inches above a 6-inch curb, a slope of 1:12 shall be achieved. Folding or telescoping ramps are permitted provided they meet all structural requirements of this section.

(6) *Attachment*. When in use for boarding or alighting, the ramp shall be firmly attached to the vehicle so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that no gap between vehicle and ramp exceeds inch.

(7) *Stowage*. A compartment, securement system, or other appropriate method shall be provided to ensure that stowed ramps, including portable ramps stowed in the passenger area, do not impinge on a passenger's wheelchair or mobility aid or pose any hazard to passengers in the event of a sudden stop or maneuver.

(8) *Handrails*. If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 38 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Securement devices*—(1) *Design load*. Securement systems on vehicles with GVWRs of 30,000 pounds or above, and their attachments to such vehicles, shall restrain a force in the forward longitudinal direction of up to 2,000 pounds per securement leg or clamping mechanism and a minimum of 4,000 pounds for each mobility aid. Securement systems on vehicles with GVWRs of up to 30,000 pounds, and their attachments to such vehicles, shall restrain a force in the forward longitudinal direction of up to 2,500 pounds per securement leg or clamping mechanism and a minimum of 5,000 pounds for each mobility aid.

(2) *Location and size*. The securement system shall be placed as near to the accessible entrance as practicable and shall have a clear floor area of 30 inches by 48 inches. Such space shall adjoin, and may overlap, an access path. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Securement areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space required.

(3) *Mobility aids accommodated*. The securement system shall secure common wheelchairs and mobility aids and shall either be automatic or easily attached by a person familiar with the system and mobility aid and having average dexterity.

(4) *Orientation*. In vehicles in excess of 22 feet in length, at least one securement device or system required by paragraph (a) of this section shall secure the wheelchair or mobility aid facing toward the front of the vehicle. In vehicles 22 feet in length or less, the required securement device may secure the wheelchair or mobility aid either facing toward the front of the vehicle or rearward. Additional securement devices or systems shall secure the wheelchair or mobility aid facing forward or rearward. Where the wheelchair or mobility aid is secured facing the rear of the vehicle, a padded barrier shall be provided. The padded barrier shall extend from a height of 38 inches from the vehicle floor to a height of 56 inches from the vehicle floor with a width of 18 inches, laterally centered immediately in back of the seated individual. Such barriers need not be solid provided equivalent protection is afforded.

(5) *Movement*. When the wheelchair or mobility aid is secured in accordance with manufacturer's instructions, the securement system shall limit the movement of an occupied wheelchair or mobility aid to no more than 2 inches in any direction under normal vehicle operating conditions.

(6) *Stowage*. When not being used for securement, or when the securement area can be used by standees, the securement system shall not interfere with passenger movement, shall not present any hazardous condition, shall be reasonably protected from vandalism, and shall be readily accessed when needed for use.

(7) *Seat belt and shoulder harness*. For each wheelchair or mobility aid securement device provided, a passenger seat belt and shoulder harness, complying with all applicable provisions of part 571 of title 49 CFR, shall also be provided for use by wheelchair or mobility aid users. Such seat belts and shoulder harnesses shall not be used in lieu of a device which secures the wheelchair or mobility aid itself.

§ 38.25 Doors, steps and thresholds.

(a) *Slip resistance*. All aisles, steps, floor areas where people walk and floors in securement locations shall have slip-resistant surfaces.

(b) *Contrast*. All step edges, thresholds, and the boarding edge of ramps or lift platforms shall have a band of color(s) running the full width of the step or edge which contrasts from the step tread and riser, or lift or ramp surface, either light-on-dark or dark-on-light.

(c) *Door height*. For vehicles in excess of 22 feet in length, the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 68 inches. For vehicles of 22 feet in length or less, the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 56 inches.

§ 38.27 Priority seating signs.

(a) Each vehicle shall contain sign(s) which indicate that seats in the front of the vehicle are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them. At least one set of forward-facing seats shall be so designated.

(b) Each securement location shall have a sign designating it as such.

(c) Characters on signs required by paragraphs (a) and (b) of this section shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case ''X'') of ⅝ inch, with ''wide'' spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background either light-on-dark or dark-on-light.

§ 38.29 Interior circulation, handrails and stanchions.

(a) Interior handrails and stanchions shall permit sufficient turning and maneuvering space for wheelchairs and other mobility aids to reach a securement location from the lift or ramp.

(b) Handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows persons with disabilities to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding and fare collection process. Handrails shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall be placed to provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface. Where on-board fare collection devices are used on vehicles in excess of 22 feet in length, a horizontal passenger assist shall be located across the front of the vehicle and shall prevent passengers from sustaining injuries on the fare collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the front door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(c) For vehicles in excess of 22 feet in length, overhead handrail(s) shall be provided which shall be continuous except for a gap at the rear doorway.

(d) Handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(e) For vehicles in excess of 22 feet in length with front-door lifts or ramps, vertical stanchions immediately behind the driver shall either terminate at the lower edge of the aisle-facing seats, if applicable, or be ''dog-legged'' so that the floor attachment does not impede or interfere with wheelchair footrests. If the driver seat platform must be passed by a wheelchair or mobility aid user entering the vehicle, the platform, to the maximum extent practicable, shall not extend into the aisle or vestibule beyond the wheel housing.

(f) For vehicles in excess of 22 feet in length, the minimum interior height along the path from the lift to the securement location shall be 68 inches. For vehicles of 22 feet in length or less, the minimum interior height from lift to securement location shall be 56 inches.

§ 38.31 Lighting.

(a) Any stepwell or doorway immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread or lift platform.

(b) Other stepwells and doorways, including doorways in which lifts or ramps are installed, shall have, at all times, at least 2 foot-candles of illumination measured on the step tread, or lift or ramp, when deployed at the vehicle floor level.

(c) The vehicle doorways, including doorways in which lifts or ramps are installed, shall have outside light(s) which, when the door is open, provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet perpendicular to all points on the bottom step tread outer edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

§ 38.33 Fare box.

Where provided, the farebox shall be located as far forward as practicable and shall not obstruct traffic in the vestibule, especially wheelchairs or mobility aids.

§ 38.35 Public information system.

(a) Vehicles in excess of 22 feet in length, used in multiple-stop, fixed-route service, shall be equipped with a public address system permitting the driver, or recorded or digitized human speech messages, to announce stops and provide other passenger information within the vehicle.

(b) [Reserved]

§ 38.37 Stop request.

(a) Where passengers may board or alight at multiple stops at their option, vehicles in excess of 22 feet in length shall provide controls adjacent to the securement location for requesting stops and which alerts the driver that a mobility aid user wishes to disembark. Such a system shall provide auditory and visual indications that the request has been made.

(b) Controls required by paragraph (a) of this section shall be mounted no higher than 48 inches and no lower than 15 inches above the floor, shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

§ 38.39 Destination and route signs.

(a) Where destination or route information is displayed on the exterior of a vehicle, each vehicle shall have illuminated signs on the front and boarding side of the vehicle.

(b) Characters on signs required by paragraph (a) of this section shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case ''X'') of 1 inch for signs on the boarding side and a minimum character height of 2 inches for front ''headsigns'', with ''wide'' spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background, either dark-on-light or light-on-dark.

SUBPART C—RAPID RAIL VEHICLES AND SYSTEMS

§ 38.51 General.

(a) New, used and remanufactured rapid rail vehicles, to be considered accessible by regulations in part 37 of these regulations, shall comply with this subpart.

(b) If portions of the vehicle are modified in a way that affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

(c) Existing vehicles which are retrofitted to comply with the one-car-per-train rule of § 37.93 of these regulations shall comply with §§ 38.55, 38.57(b), 38.59 of this part and shall have, in new and key stations, at least one door complying with §§ 38.53(a)(1), (b) and (d) of this part. Removal of seats is not required. Vehicles previously designed and manufactured in accordance with the accessibility requirements of part 609 of title 49 CFR or the Secretary of Transportation regulations implementing section 504 of the Rehabilitation Act of 1973 that were in effect before October 7, 1991 and which can be entered and used from stations in which they are to be operated, may be used to satisfy the requirements of § 37.93 of these regulations.

§ 38.53 Doorways.

(a) *Clear width.* (1) Passenger doorways on vehicle sides shall have clear openings at least 32 inches wide when open.

(2) If doorways connecting adjoining cars in a multi-car train are provided, and if such doorway is connected by an aisle with a minimum clear width of 30 inches to one or more spaces where wheelchair or mobility aid users can be accommodated, then such doorway shall have a minimum clear opening of 30 inches to permit wheelchair and mobility aid users to be evacuated to an adjoining vehicle in an emergency.

(b) *Signage.* The International Symbol of Accessibility shall be displayed on the exterior of accessible vehicles operating on an accessible rapid rail system unless all vehicles are accessible and are not marked by the access symbol. (See Fig. 6)

(c) *Signals.* Auditory and visual warning signals shall be provided to alert passengers of closing doors.

(d) *Coordination with boarding platform*—(1) *Requirements.* Where new vehicles will operate in new stations, the design of vehicles shall be coordinated with the boarding platform design such that the horizontal gap between each vehicle door at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be within plus or minus 5/8 inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by vehicle air suspension or other suitable means of meeting the requirement.

(2) *Exception.* New vehicles operating in existing stations may have a floor height within plus or minus 1½ inches of the platform height. At key stations, the horizontal gap between at least one door of each such vehicle and the platform shall be no greater than 3 inches.

(3) *Exception.* Retrofitted vehicles shall be coordinated with the platform in new and key stations such that the horizontal gap shall be no greater than 4 inches and the height of the vehicle floor, under 50% passenger load, shall be within plus or minus 2 inches of the platform height.

§ 38.55 Priority seating signs.

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

(b) Characters on signs required by paragraph (a) of this section shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case ''X'') of 5/8 inch, with ''wide'' spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background, either light-on-dark or dark-on-light.

§ 38.57 Interior circulation, handrails and stanchions.

(a) Handrails and stanchions shall be provided to assist safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(b) Handrails, stanchions, and seats shall allow a route at least 32 inches wide so that at least two wheelchair or mobility aid users can enter the vehicle and position the wheelchairs or mobility aids in areas, each having a minimum clear space of 48 inches by 30 inches, which do not unduly restrict movement of other passengers. Space to accommodate wheelchairs and mobility aids may be provided within the normal area used by standees and designation of specific spaces is not required. Particular attention shall be given to ensuring maximum maneuverability immediately inside doors. Ample vertical stanchions from ceiling to seat-back rails shall be provided. Vertical stanchions from ceiling to floor shall not interfere with wheelchair or mobility aid user circulation and shall be kept to a minimum in the vicinity of doors.

(c) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or provide an equivalent gripping surface and shall provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface.

§ 38.59 Floor surfaces.

Floor surfaces on aisles, places for standees, and areas where wheelchair and mobility aid users are to be accommodated shall be slip-resistant.

§ 38.61 Public information system.

(a)(1) *Requirements.* Each vehicle shall be equipped with a public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other passenger information. Alternative systems or devices which provide equivalent access are also permitted. Each vehicle operating in stations having more than one line or route shall have an external public address system to permit transportation system personnel, or recorded or digitized human speech messages, to announce train, route, or line identification information.

(2) *Exception.* Where station announcement systems provide information on arriving trains, an external train speaker is not required.

(b) [Reserved]

§ 38.63 Between-car barriers.

(a) *Requirement.* Suitable devices or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Acceptable solutions include, but are not limited to, pantograph gates, chains, motion detectors or similar devices.

(b) *Exception.* Between-car barriers are not required where platform screens are provided which close off the platform edge and open only when trains are correctly aligned with the doors.

SUBPART D—LIGHT RAIL VEHICLES AND SYSTEMS

§ 38.71 General.

(a) New, used and remanufactured light rail vehicles, to be considered accessible by regulations in part 37 of these regulations, shall comply with this subpart.

(b)(1) Vehicles intended to be operated solely in light rail systems confined entirely to a dedicated right-of-way, and for which all stations or stops are designed and constructed for revenue service after the effective date of standards for design and construction § 37.21 and § 37.23 of these regulations, shall provide level boarding and shall

comply with §38.73(d)(1) and §38.85 of this part.

(2) Vehicles designed for, and operated on, pedestrian malls, city streets, or other areas where level boarding is not practicable shall provide wayside or car-borne lifts, mini-high platforms, or other means of access in compliance with §38.83(b) or (c) of this part.

(c) If portions of the vehicle are modified in a way that affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

(d) Existing vehicles retrofitted to comply with the ''one-car-per-train rule'' at §37.93 of these regulations shall comply with §38.75, §38.77(c), §38.79(a) and §38.83(a) of this part and shall have, in new and key stations, at least one door which complies with §§38.73(a)(1), (b) and (d). Vehicles previously designed and manufactured in accordance with the accessibility requirements of 49 CFR part 609 or the Secretary of Transportation regulations implementing section 504 of the Rehabilitation Act of 1973 that were in effect before October 7, 1991 and which can be entered and used from stations in which they are to be operated, may be used to satisfy the requirements of §37.93 of these regulations.

§38.73 Doorways.

(a) *Clear width.* (1) All passenger doorways on vehicle sides shall have minimum clear openings of 32 inches when open.

(2) If doorways connecting adjoining cars in a multi-car train are provided, and if such doorway is connected by an aisle with a minimum clear width of 30 inches to one or more spaces where wheelchair or mobility aid users can be accommodated, then such doorway shall have a minimum clear opening of 30 inches to permit wheelchair and mobility aid users to be evacuated to an adjoining vehicle in an emergency.

(b) *Signage.* The International Symbol of Accessibility shall be displayed on the exterior of each vehicle operating on an accessible light rail system unless all vehicles are accessible and are not marked by the access symbol. (See Fig. 6)

(c) *Signals.* Auditory and visual warning signals shall be provided to alert passengers of closing doors.

(d) *Coordination with boarding platform*—(1) *Requirements.* The design of level-entry vehicles shall be coordinated with the boarding platform or mini-high platform design so that the horizontal gap between a vehicle at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be within plus or minus ⅝ inch of the platform height. Vertical alignment may be accomplished by vehicle air suspension, automatic ramps or lifts, or any combination.

(2) *Exception.* New vehicles operating in existing stations may have a floor height within plus or minus 1½ inches of the platform height. At key stations, the horizontal gap between at least one door of each such vehicle and the platform shall be no greater than 3 inches.

(3) *Exception.* Retrofitted vehicles shall be coordinated with the platform in new and key stations such that the horizontal gap shall be no greater than 4 inches and the height of the vehicle floor, under 50% passenger load, shall be within plus or minus 2 inches of the platform height.

(4) *Exception.* Where it is not operationally or structurally practicable to meet the horizontal or vertical requirements of paragraphs (d)(1), (2) or (3) of this section, platform or vehicle devices complying with §38.83(b) or platform or vehicle mounted ramps or bridge plates complying with §38.83(c) shall be provided.

§38.75 Priority seating signs.

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

(b) Where designated wheelchair or mobility aid seating locations are provided, signs shall indicate the location and advise other passengers of the need to permit wheelchair and mobility aid users to occupy them.

(c) Characters on signs required by paragraphs (a) or (b) of this section shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case X'') of ⅝ inch, with wide spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background, either light-on-dark or dark-on-light.

§38.77 Interior circulation, handrails and stanchions.

(a) Handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(b) At entrances equipped with steps, handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows passengers to grasp such assists from outside the vehicle while starting to board, and to continue using such handrails or stanchions throughout the boarding process. Handrails shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall be placed to provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface. Where on-board fare collection devices are used, a horizontal passenger assist shall be located between boarding passengers and the fare collection device and shall prevent passengers from sustaining injuries on the fare collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(c) At all doors on level-entry vehicles, and at each entrance accessible by lift, ramp, bridge plate or other suitable means, handrails, stanchions, passenger seats, vehicle driver seat platforms, and fare boxes, if applicable, shall be located so as to allow a route at least 32 inches wide so that at least two wheelchair or mobility aid users can enter the vehicle and position the wheelchairs or mobility aids in areas, each having a minimum clear space of 48 inches by 30 inches, which do not unduly restrict movement of other passengers. Space to accommodate wheelchairs and mobility aids may be provided within the normal area used by standees and designation of specific spaces is not required. Particular attention shall be given to ensuring maximum maneuverability immediately inside doors. Ample vertical stanchions from ceiling to seat-back rails shall be provided. Vertical stanchions from ceiling to floor shall not interfere with wheelchair or mobility aid circulation and shall be kept to a minimum in the vicinity of accessible doors.

§38.79 Floors, steps and thresholds.

(a) Floor surfaces on aisles, step treads, places for standees, and areas where wheelchair and mobility aid users are to be accommodated shall be slip-resistant.

(b) All thresholds and step edges shall have a band of color(s) running the full width of the step or threshold which contrasts from the step tread and riser or adjacent floor, either light-on-dark or dark-on-light.

§38.81 Lighting.

(a) Any stepwell or doorway with a lift, ramp or bridge plate immediately adjacent to the driver shall have, when the door is open, at least 2 footcandles of illumination measured on the step tread or lift platform.

(b) Other stepwells, and doorways with lifts, ramps or bridge plates, shall have, at all times, at least 2 footcandles of illumination measured on the step tread or lift or ramp, when deployed at the vehicle floor level.

(c) The doorways of vehicles not operating at lighted station platforms shall have outside lights which provide at least 1 foot candle of illumination on the station platform or street surface for a distance of 3 feet perpendicular to all points on the bottom step tread. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

§38.83 Mobility aid accessibility.

(a)(1) *General.* All new light rail vehicles, other than level entry vehicles, covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift, ramp or bridge plate) complying with either paragraph (b) or (c) of this section and sufficient clearances to permit at least two wheelchair or mobility aid users to reach areas, each with a minimum clear floor space of 48 inches by 30 inches, which do not unduly restrict passenger flow. Space to accommodate wheelchairs and mobility aids may be provided within the normal area used by standees and designation of specific spaces is not required.

(2) *Exception.* If lifts, ramps or bridge plates meeting the requirements of this section are provided on station platforms or other stops required to be accessible, or mini-high platforms complying with §38.73(d) of this part are provided, the vehicle is not required to be equipped with a car-borne device. Where each new vehicle is compatible with a single platform-mounted access system or device, additional systems or devices are not required for each vehicle provided that the single device could be used to provide access to each new vehicle if passengers using wheelchairs or mobility aids could not be accommodated on a single vehicle.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the vehicle brakes, propulsion system, or door, or shall provide other appropriate mechanisms or systems, to ensure that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. The lift shall deploy to all levels (i.e., ground, curb, and intermediate positions) normally encountered in the operating environment. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift

operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception*. Where physical or safety constraints prevent the deployment at some stops of a lift having its long dimension perpendicular to the vehicle axis, the transportation entity may specify a lift which is designed to deploy with its long dimension parallel to the vehicle axis and which pivots into or out of the vehicle while occupied (i.e., ''rotary lift''). The requirements of paragraph (b)(2)(i) of this section prohibiting the lift from being stowed while occupied shall not apply to a lift design of this type if the stowed position is within the passenger compartment and the lift is intended to be stowed while occupied.

(iii) *Exception*. The brake or propulsion system interlocks requirement does not apply to a station platform mounted lift provided that a mechanical, electrical or other system operates to ensure that vehicles do not move when the lift is in use.

(3) *Emergency operation*. The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions, and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary lift intended to be stowed while occupied.

(4) *Power or equipment failure*. Lift platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a single failure of any load carrying component.

(5) *Platform barriers*. The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the lift during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the lift is in its fully raised position. Each side of the lift platform which extends beyond the vehicle in its raised position shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with maneuvering into or out of the aisle. The loading-edge barrier (outer barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficient when raised or closed, or a supplementary system shall be provided, to prevent a power wheelchair or mobility aid from riding over or defeating it. The outer barrier of the lift shall automatically rise or close, or a supplementary system shall automatically engage, and remain raised, closed, or engaged at all times that the lift is more than 3 inches above the station platform or roadway and the lift is occupied. Alternatively, a barrier or system may be raised, lowered, opened, closed, engaged or disengaged by the lift operator provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed or the supplementary system is engaged.

(6) *Platform surface*. The lift platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The lift platform shall have a minimum clear width of 28½ inches at the platform, a minimum clear width of 30 inches measured from 2 inches above the lift platform surface to 30 inches above the surface, and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface. (See Fig. 1)

(7) *Platform gaps*. Any openings between the lift platform surface and the raised barriers shall not exceed ⅝ inch wide. When the lift is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward lift platform edge and vehicle floor shall not exceed ½ inch horizontally and ⅝ inch vertically. Platforms on semi-automatic lifts may have a hand hold not exceeding 1½ inches by 4½ inches located between the edge barriers.

(8) *Platform entrance ramp*. The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8 measured on level ground, for a maximum rise of 3 inches, and the transition from the station platform or roadway to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch high shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection*. The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees (exclusive of vehicle roll) in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the lift platform.

(10) *Platform movement*. No part of the platform shall move at a rate exceeding 6 inches/second during lowering and lifting an occupant, and shall not exceed 12 inches/second during deploying or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration when occupied shall be 0.3g.

(11) *Boarding direction*. The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Use by standees*. Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise have difficulty using steps. The lift may be marked to indicate a preferred standing position.

(13) *Handrails*. Platforms on lifts shall be equipped with handrails, on two sides, which move in tandem with the lift which shall be graspable and provide support to standees throughout the entire lift operation. Handrails shall have a usable component at least 8 inches long with the lowest portion a minimum 30 inches above the platform and the highest portion a maximum 38 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. Handrails shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall be placed to provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp or bridge plate*—(1) *Design load*. Ramps or bridge plates 30 inches or longer shall support a load of 600 pounds, placed at the centroid of the ramp or bridge plate distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material. Ramps or bridge plates shorter than 30 inches shall support a load of 300 pounds.

(2) *Ramp surface*. The ramp or bridge plate surface shall be continuous and slip resistant, shall not have protrusions from the surface greater than ¼ inch, shall have a clear width of 30 inches, and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold*. The transition from roadway or station platform and the transition from vehicle floor to the ramp or bridge plate may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers*. Each side of the ramp or bridge plate shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope*. Ramps or bridge plates shall have the least slope practicable. If the height of the vehicle floor, under 50% passenger load, from which the ramp is deployed is 3 inches or less above the station platform a maximum slope of 1:4 is permitted; if the height of the vehicle floor, under 50% passenger load, from which the ramp is deployed is 6 inches or less, but more than 3 inches, above the station platform a maximum slope of 1:6 is permitted; if the height of the vehicle floor, under 50% passenger load, from which the ramp is deployed is 9 inches or less, but more than 6 inches, above the station platform a maximum slope of 1:8 is permitted; if the height of the vehicle floor, under 50% passenger load, from which the ramp is deployed is greater than 9 inches above the station platform a slope of 1:12 shall be achieved. Folding or telescoping ramps are permitted provided they meet all structural requirements of this section.

(6) *Attachment*.—(i) *Requirement*. When in use for boarding or alighting, the ramp or bridge plate shall be attached to the vehicle, or otherwise prevented from moving such that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between vehicle and ramp or bridge plate, and station platform and ramp or bridge plate, shall not exceed ⅝ inch.

(ii) *Exception*. Ramps or bridge plates which are attached to, and deployed from, station platforms are permitted in lieu of vehicle devices provided they meet the displacement requirements of paragraph (c)(6)(i) of this section.

(7) *Stowage*. A compartment, securement system, or other appropriate method shall be provided to ensure that stowed ramps or bridge plates, including portable ramps or bridge plates stowed in the passenger area, do not impinge on a passenger's wheelchair or mobility aid or pose any hazard to passengers in the event of a sudden stop.

(8) *Handrails*. If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 38 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

§ 38.85 Between-car barriers

Where vehicles operate in a high-platform, level-boarding mode, devices or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices.

§ 38.87 Public information system.

(a) Each vehicle shall be equipped with an interior public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other passenger

information. Alternative systems or devices which provide equivalent access are also permitted.

(b) [Reserved].

38.91–38.127 [Reserved]

SUBPART F—OVER-THE-ROAD BUSES AND SYSTEMS

§ 38.151 General.

(a) New, used and remanufactured over-the-road buses, to be considered accessible by regulations in part 37 of these regulations, shall comply with this subpart.

(b) Over-the-road buses covered by § 37.7(c) of these regulations shall comply with § 38.23 and this subpart.

§ 38.153 Doors, steps and thresholds.

(a) Floor surfaces on aisles, step treads and areas where wheelchair and mobility aid users are to be accommodated shall be slip-resistant.

(b) All step edges shall have a band of color(s) running the full width of the step which contrasts from the step tread and riser, either dark-on-light or light-on-dark.

(c) To the maximum extent practicable, doors shall have a minimum clear width when open of 30 inches, but in no case less than 27 inches.

§ 38.155 Interior circulation, handrails and stanchions.

(a) Handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows passengers to grasp such assists from outside the vehicle while starting to board, and to continue using such handrails or stanchions throughout the boarding process. Handrails shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch. Handrails shall be placed to provide a minimum 1½ inches knuckle clearance from the nearest adjacent surface. Where on-board fare collection devices are used, a horizontal passenger assist shall be located between boarding passengers and the fare collection device and shall prevent passengers from sustaining injuries on the fare collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(b) Where provided within passenger compartments, handrails or stanchions shall be sufficient to permit safe on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

§ 38.157 Lighting.

(a) Any stepwell or doorway immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread.

(b) The vehicle doorway shall have outside light(s) which, when the door is open, provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet perpendicular to all points on the bottom step tread outer edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

§38.159 Mobility aid accessibility. [Reserved]

SUBPART G—OTHER VEHICLES AND SYSTEMS

§ 38.171 General.

(a) New, used and remanufactured vehicles and conveyances for systems not covered by other subparts of this part, to be considered accessible by regulations in part 37 of these regulations, shall comply with this subpart.

(b) If portions of the vehicle or conveyance are modified in a way that affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

§ 38.173 Automated guideway transit vehicles and systems.

(a) Automated Guideway Transit (AGT) vehicles and systems, sometimes called ''people movers,'' operated in airports and other areas where AGT vehicles travel at slow speed (i.e., at a speed of no more than 20 miles per hour at any location on their route during normal operation), shall comply with the provisions of § 38.53(a) through (c), and §§ 38.55 through 38.61 of this part for rapid rail vehicles and systems.

(b) Where the vehicle covered by paragraph (a) of this section will operate in an accessible station, the design of vehicles shall be coordinated with the boarding platform design such that the horizontal gap between a vehicle door at rest and the platform shall be no greater than 1 inch and the height of the vehicle floor shall be within plus or minus ½ inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by vehicle air suspension or other suitable means of meeting the requirement.

(c) In stations where open platforms are not protected by platform screens, a suitable device or system shall be provided to prevent, deter or warn individuals from stepping off the platform between cars. Acceptable devices include, but are not limited to, pantograph gates, chains, motion detectors or other appropriate devices.

(d) Light rail and rapid rail AGT vehicles and systems shall comply with subparts D and C of this part, respectively. AGT systems whose vehicles travel at a speed of more than 20 miles per hour at any location on their route during normal operation are covered under this paragraph rather than under paragraph (a) of this subsection.

§ 38.175 [Reserved]

§ 38.177 [Reserved]

§ 38.179 Trams, similar vehicles and systems.

(a) New and used trams consisting of a tractor unit, with or without passenger accommodations, and one or more passenger trailer units, including but not limited to vehicles providing shuttle service to remote parking areas, between hotels and other public accommodations, and between and within amusement parks and other recreation areas, shall comply with this section. For purposes of determining applicability of §§ 37.101 or 37.105 of these regulations, the capacity of such a vehicle or ''train'' shall consist of the total combined seating capacity of all units, plus the driver, prior to any modification for accessibility.

(b) Each tractor unit which accommodates passengers and each trailer unit shall comply with § 38.25 and § 38.29 of this part. In addition, each such unit shall comply with §§ 38.23(b) or (c) and shall provide at least one space for wheelchair or mobility aid users complying with § 38.23(d) of this part unless the complete operating unit consisting of tractor and one or more trailers can already accommodate at least two wheelchair or mobility aid users.

Figures in Part 38

[Copies of these figures may be obtained from the Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540–1999.]

Appendix to Part 38—Guidance Material

This appendix contains materials of an advisory nature and provides additional information that should help the reader to understand the minimum requirements of the guidelines or to design vehicles for greater accessibility. Each entry is applicable to all subparts of this part except where noted. Nothing in this appendix shall in any way obviate any obligation to comply with the requirements of the guidelines themselves.

I. Slip Resistant Surfaces—Aisles, Steps, Floor Area Where People Walk, Floor Areas in Securement Locations, Lift Platforms, Ramps

Slip resistance is based on the frictional force necessary to keep a shoe heel or crutch tip from slipping on a walking surface under conditions likely to be found on the surface. While the dynamic coefficient of friction during walking varies in a complex and non-uniform way, the static coefficient of friction, which can be measured in several ways, provides a close approximation of the slip resistance of a surface. Contrary to popular belief, some slippage is necessary to walking, especially for persons with restricted gaits; a truly ''non-slip'' surface could not be negotiated.

The Occupational Safety and Health Administration recommends that walking surfaces have a static coefficient of friction of 0.5. A research project sponsored by the Architectural and Transportation Barriers Compliance Board (Access Board) conducted tests with persons with disabilities and concluded that a higher coefficient of friction was needed by such persons. A static coefficient of friction of 0.6 is recommended for steps, floors, and lift platforms and 0.8 for ramps.

The coefficient of friction varies considerably due to the presence of contaminants, water, floor finishes, and other factors not under the control of transit providers and may be difficult to measure. Nevertheless, many common materials suitable for flooring are now labeled with information on the static coefficient of friction. While it may not be possible to compare one product directly with another, or to guarantee a constant measure, transit operators or vehicle designers and manufacturers are encouraged to specify materials with appropriate values. As more products include information on slip resistance, improved uniformity in measurement and specification is likely. The Access Board's advisory guidelines on Slip Resistant Surfaces provides additional information on this subject.

II. Color Contrast—Step Edges, Lift Platform Edges

The material used to provide contrast should contrast by at least 70%. Contrast in percent is determined by:

Contrast = $[(B_1–B_2)/B_1]$ 100

Where B_1 = light reflectance value (LRV) of the lighter area and B_2 = light reflectance value (LRV) of the darker area.

Note that in any application both white and black are never absolute; thus, B_1 never equals 100 and B_2 is always greater than 0.

III. Handrails and Stanchions

In addition to the requirements for handrails and stanchions for rapid, light, and commuter rail vehicles, consideration should be given to the proximity of handrails or stanchions to the area in which wheelchair or mobility aid users may position themselves. When identifying the clear floor space where a wheelchair or mobility aid user can be accommodated, it is suggested that at least one such area be adjacent or in close proximity to a handrail or stanchion. Of course, such a handrail or stanchion cannot encroach upon the required 32 inch width required for the doorway or the route leading to the clear floor space which must be at least 30 by 48 inches in size.

IV. Priority Seating Signs and Other Signage

A. *Finish and Contrast.* The characters and background of signs should be eggshell,

matte, or other non-glare finish. An eggshell finish (11 to 19 degree gloss on 60 degree glossimeter) is recommended. Characters and symbols should contrast with their background either light characters on a dark background or dark characters on a light background. Research indicates that signs are more legible for persons with low vision when characters contrast with their background by at least 70 percent. Contrast in percent is determined by:

Contrast = $[(B_1-B_2)/B_1]$ 100

Where B_1 = light reflectance value (LRV) of the lighter area and B_2 = light reflectance value (LRV) of the darker area.

Note that in any application both white and black are never absolute; thus, B_1 never equals 100 and B_2 is always greater than 0.

The greatest readability is usually achieved through the use of light-colored characters or symbols on a dark background.

B. *Destination and Route Signs.* The following specifications, which are required for buses (§38.39), are recommended for other types of vehicles, particularly light rail vehicles, where appropriate.

1. Where destination or route information is displayed on the exterior of a vehicle, each vehicle should have illuminated signs on the front and boarding side of the vehicle.

2. Characters on signs covered by paragraph IV.B.1 of this appendix should have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case ''X'') of 1 inch for signs on the boarding side and a minimum character height of 2 inches for front ''headsigns,'' with ''wide'' spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and should contrast with the background, either dark-on-light or light-on-dark, or as recommended above.

C. *Designation of Accessible Vehicles.* The International Symbol of Accessibility should be displayed as shown in Figure 6.

V. Public Information Systems

There is currently no requirement that vehicles be equipped with an information system which is capable of providing the same or equivalent information to persons with hearing loss. While the Department of Transportation assesses available and soon-to-be available technology during a study conducted during Fiscal Year 1992, entities are encouraged to employ whatever services, signage or alternative systems or devices that provide equivalent access and are available. Two possible types of devices are visual display systems and listening systems. However, it should be noted that while visual display systems accommodate persons who are deaf or are hearing impaired, assistive listening systems aid only those with a partial loss of hearing.

A. *Visual Display Systems.* Announcements may be provided in a visual format by the use of electronic message boards or video monitors.

Electronic message boards using a light emitting diode (LED) or ''flip-dot'' display are currently provided in some transit stations and terminals and may be usable in vehicles. These devices may be used to provide real time or pre-programmed messages; however, real time message displays require the availability of an employee for keyboard entry of the information to be announced.

Video monitor systems, such as visual paging systems provided in some airports (e.g., Baltimore-Washington International Airport), are another alternative. The Architectural and Transportation Barriers Compliance Board (Access Board) can provide technical assistance and information on these systems (''Airport TDD Access: Two Case Studies,'' (1990)).

B. *Assistive Listening Systems.* Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.

An assistive listening system appropriate for transit vehicles, where a group of persons or where the specific individuals are not known in advance, may be different from the system appropriate for a particular individual provided as an auxiliary aid or as part of a reasonable accommodation. The appropriate device for an individual is the type that individual can use, whereas the appropriate system for a station or vehicle will necessarily be geared toward the ''average'' or aggregate needs of various individuals. Earphone jacks with variable volume controls can benefit only people who have slight hearing loss and do not help people who use hearing aids. At the present time, magnetic induction loops are the most feasible type of listening system for people who use hearing aids equipped with ''T-coils'', but people without hearing aids or those with hearing aids not equipped with inductive pick-ups cannot use them without special receivers. Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need a special receiver to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback sources in the surrounding area.

The Architectural and Transportation Barriers Compliance Board (Access Board) has published a pamphlet on Assistive Listening Systems which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems. The state of New York has also adopted a detailed technical specification which may be useful.

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

NOTICE OF PROPOSED RULEMAKING

Summary: The Board of Directors of the Office of Compliance is publishing proposed regulations to implement Section 215 of the Congressional Accountability Act of 1995 (''CAA''), Pub. L. 104–1, 109 Stat. 3, as applied to covered employing offices and employees of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

The CAA applies the rights and protections of eleven labor and employment and public access statutes to covered employees within the Legislative Branch. Section 215(a) provides that each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970, 29 U.S.C. §654 (''OSHAct''). 2 U.S.C. §1341(a). The provisions of section 215 are effective on January 1, 1997 for all employing offices except the General Accounting Office and the Library of Congress. 2 U.S.C. §1341(g). Accordingly, the rules included in this Notice of Proposed Rulemaking (''NPRM or Notice'') do not apply to the General Accounting Office or the Library of Congress at this time.

In addition to inviting comment in this NPRM, the Board, through the statutory appointees of the Office, sought consultation with the Secretary of Labor with regard to the development of these regulations in accordance with section 304(g) of the CAA. Specifically, the Occupational Safety and Health Administration provided helpful suggestions during the development of the proposed regulations. The Board also notes that the General Counsel of the Office has completed an inspection of all covered facilities for compliance with safety and health standards under section 215 of the CAA and has submitted his final report to Congress. Based on the information gleaned from these consultations and the experience gained from the inspections, the Board of Directors of the Office of Compliance is publishing these proposed regulations, pursuant to section 215(d) of the CAA, 2 U.S.C. §1341(d).

The purpose of these regulations is to implement section 215 of the CAA. This Notice proposes that virtually identical regulations be adopted for the Senate, the House of Representatives, and the seven Congressional instrumentalities; and their employees. Accordingly:

(1) *Senate.* It is proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the Senate and employees of the Senate, and this proposal regarding the Senate and its employees is recommended by the Office of Compliance's Deputy Executive Director for the Senate.

(2) *House of Representatives.* It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the House of Representatives and employees of the House of Representatives, and this proposal regarding the House of Representatives and its employees is recommended by the Office of Compliance's Deputy Executive Director for the House of Representatives.

(3) *Certain Congressional instrumentalities.* It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the Capitol Guide Service, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance, and their employees; and this proposal regarding these six Congressional instrumentalities is recommended by the Office of Compliance's Executive Director.

Dates: Comments are due within 30 days after the date of publication of this Notice in the Congressional Record.

Addresses: Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 426–1913. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m. In addition, a copy of the material listed in the section of the proposed regulations entitled ''Incorporation by Reference'' is available for inspection and review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Executive Director, Office of Compliance, at (202) 724–

9250 (voice), (202) 426–1912 (TTY). This Notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Services Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, at (202) 224–2705 (voice), (202) 224–5574 (TTY).

SUPPLEMENTARY INFORMATION

Background and Summary

The Congressional Accountability Act of 1995 (''CAA''), Pub. L. 104–1, 109 Stat. 3, was enacted on January 23, 1995. 2 U.S.C. §§1301–1438. In general, the CAA applies the rights and protections of eleven federal labor and employment and public access statutes to covered employees and employing offices.

Section 215(a) of the CAA provides that each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970 (''OSHAct''), 29 U.S.C. §654. 2 U.S.C. §1341(a). Section 5(a) of the OSHAct provides that every covered employer has a general duty to furnish each employee with employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to those employees and a specific duty to comply with occupational safety and health standards promulgated under the law. Section 5(b) requires covered employees to comply with occupational safety and health standards and with all rules, regulations and orders issued which are applicable to their actions and conduct.

Section 215(c) of the CAA provides that, upon the written request of any employing office or covered employee, the General Counsel of the Office shall exercise the authorities granted to the Secretary of Labor by subsections (a), (d), (e), and (f) of section 8 of the OSHAct to inspect and investigate places of employment under the jurisdiction of employing offices. 2 U.S.C. §1341(c). For the purposes of section 215, the General Counsel shall exercise the authorities granted to the Secretary of Labor in sections 9 and 10 of the OSHAct to issue a citation or notice to any employing office responsible for correcting a violation, or a notification to any employing office that the General Counsel believes has failed to correct a violation for which a citation has been issued within the period permitted for its correction. *Id*. Section 215(e) also requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and report to Congress on compliance with health and safety standards. 2 U.S.C. §1341(e).

Section 215(d) of the CAA requires the Board of Directors of the Office of Compliance established under the CAA to issue regulations implementing the section. 2 U.S.C. §1341(d). Section 215(d) further states that such regulations ''shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' *Id*. Section 215(d) further provides that the regulations ''shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (a), the employing office responsible for correction of a particular violation.'' *Id*.

In developing these proposed regulations, a number of issues have been identified and explored. The Board has proposed to resolve these issues as described below.

A. In general

1. *Substantive regulations promulgated by the Secretary of Labor*.—Section 215(d)(2) requires the Board to issue regulations that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. §1341(d)(2).

Consistent with its prior decisions on this issue, the Board has determined that all regulations promulgated by the Secretary of Labor after notice and comment to implement section 5 of the OSHAct are ''substantive regulations'' within the meaning of section 215(d). *See, e.g.*, 142 Cong. Rec. S5070, S5071–72 (daily ed. May 15, 1996) (NPRM implementing section 220(d)); 141 Cong. Rec. S17605 (daily ed. Nov. 28, 1995) (NPRM implementing section 203); see also *Reves v. Ernst & Young*, 113 S.Ct. 1163, 1169 (1993) (where same phrase or term is used in two different places in the same statute, reasonable for court to give each use a similar construction); *Sorenson v. Secretary of the Treasury*, 475 U.S. 851, 860 (1986) (normal rule of statutory construction assumes that identical words in different parts of same act are intended to have the same meaning).

In this regard, the Board has reviewed the provisions of section 215 of the CAA, the provisions of the OSHAct applied by that section, and the regulations of the Secretary of Labor to determine whether and to what extent those regulations are substantive regulations promulgated to implement the substantive safety and health standards of section 5 of the OSHAct. As explained more fully below, the Board proposes to adopt otherwise applicable substantive health and safety standards of the Secretary's regulations published at Parts 1910 and 1926 of Title 29 of the Code of Federal Regulations (''29 CFR'') with only limited modifications. The Board proposes not to adopt as substantive regulations under section 215(d) of the CAA those provisions of the Secretary's regulations that were not promulgated to implement provisions of section 5 of the OSHAct.

In addition, the Board has proposed to make technical changes in definitions and nomenclature so that the regulations comport with the CAA and the organizational structure of the Office of Compliance. In the Board's judgment, making such changes satisfies the Act's ''good cause'' requirement. With the exception of such technical and nomenclature changes, however, the Board does not propose substantial departure from otherwise applicable regulations of the Secretary.

2. *The board will adopt the substantive safety and health standards contained in Parts 1910 and 1926 of title 29 of the Code of Federal Regulations*.—Section 215(a) requires each employing office and covered employee to comply with the provisions of section 5 of the OSHAct, 29 U.S.C. §654. 2 U.S.C. §1341(a). Section 5(a) of the OSHAct provides that every covered employer has a general duty to furnish each employee with employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to those employees, and a specific duty to comply with occupational safety and health standards promulgated by the Occupational Safety and Health Administration (''OSHA'') under the law. Section 5(b) requires covered employees to comply with occupational safety and health standards and with all rules, regulations and orders issued which are applicable to their actions and conduct.

The substantive occupational safety and health standards promulgated by OSHA which the Board intends to adopt are set forth at 29 CFR, Parts 1910 (general industry standards) and 1926 (construction industry standards). Although Part 1926 was originally promulgated by the Secretary under section 107 of the Contract Work Hours and Safety Standards Act, the substantive safety and health standards (subparts C through Z) are adopted and incorporated by reference into Part 1910. *See* 29 CFR §1910.12. These regulations implement the substantive safety and health standards referred to in section 5 of the OSHAct and thus are ''substantive regulations'' which the Board proposes to adopt under section 215(d) of the CAA. However, the Board proposes not to adopt those regulatory provisions in Parts 1910 and 1926 that have no conceivable applicability to operations of employing offices within the Legislative Branch or are unlikely to be invoked. See 141 Cong. Rec. at S17604 (Nov. 28, 1995) (NPRM implementing section 203).

Adoption of the substantive safety and health standards of Parts 1910 and 1926 is consistent with the language and legislative history of section 215, which confirms that Congress expected the law as enacted to require that covered employing offices and covered employees comply with the existing substantive occupational safety and health standards promulgated by the Secretary of Labor. 141 Cong. Rec. S621, S625 (Jan. 9, 1995) (section 215 ''requires employees and employing offices . . . to comply with . . . the Occupational Safety and Health Standards promulgated by the Secretary of Labor under section 6 of that act.''). Similarly, the section-by-section analysis of H.R. 4822, a precursor to the CAA, clearly states that Congress expected the Board to adopt OSHA occupational safety and health standards promulgated under section 6 of the OSHAct as its own:

''It is not intended that the Board will replicate the work of the Secretary of Labor by promulgating its own standards similar to those promulgated by the Secretary of Labor under section 6 of the OSHA [citation omitted]. Rather, it is intended that the Board will adopt the Secretary's [occupational safety and health] standards, and only where the Board believes different rules would better serve the interests of OSHA and this Act will it adopt different rules.'' S.Rep. 103–396 (Oct. 3, 1994).

Adoption of the substantive safety and health standards of Parts 1910 and 1926 is also consistent with existing safety and health practices of employing entities within the Legislative Branch. For example, the Architect of the Capitol, which has direct superintendence responsibility for the majority of facilities subject to section 215, has maintained a policy of voluntary compliance with the safety and health standards under Parts 1910 and 1926 through its safety and health program. *See Congressional Coverage Legislation: Applying Laws to Congress: Hearings on S.29, S.103, S.357, S.207, and S.2194*, Before the Senate Comm. on Govt. Affairs, 103d Cong., 3d Sess. 55–56 (1995) (testimony of J. Raymond Carroll, Director of Engineering, Office of the Architect of the Capitol).

The Board also notes that the General Counsel applied the occupational safety and health standards under Parts 1910 and 1926 in his initial inspection of Legislative Branch facilities pursuant to section 215(c) of the CAA. In contrast to other sections of the CAA, which generally give the Office of Compliance only adjudicatory and regulatory responsibilities, the General Counsel has the authority to investigate and prosecute alleged violations of safety and health standards under section 215, as well as the responsibility for inspecting covered facilities to

ensure compliance. In his final inspection report, the General Counsel stated his view that application of Parts 1910 and 1926 standards appeared appropriate for such operations. *See* Report on Initial Inspections of Facilities for Compliance with the Occupational Safety and Health Standards Under Section 215 (''Safety and Health Report''), p. I–2 (June 28, 1996).

For all of these reasons, the Board proposes to adopt all otherwise applicable sections of Parts 1910 and 1926 as substantive regulations under section 215(d).

3. *Modification of Parts 1910 and 1926, 29 CFR.*—The Board has considered whether and to what extent it should modify otherwise applicable substantive safety and health standards at 29 CFR, Parts 1910 and 1926. As the Board has noted in prior rulemakings, the language and legislative history of the CAA leads the Board to conclude that, absent clear statutory language to the contrary, the Board should hew as closely as possible to the text of otherwise applicable regulations implementing the statutory provisions applied to the Legislative Branch. *See, e.g.*, 142 Cong. Rec. S221, S222 (Jan. 22, 1996) (Notice of Adoption of Rules Implementing Section 203) (''The CAA was intended not only to bring covered employees the benefits of the . . . incorporated laws, but also require Congress to experience the same compliance burdens faced by other employers so that it could more fairly legislate in this area.''). Thus, consistent with its prior decisions, the Board proposes to issue Parts 1910 and 1926 of the Secretary's regulations with only technical changes in the nomenclature and deletion of those sections clearly inapplicable to the Legislative Branch. *See, e.g.*, 141 Cong. Rec. S17603–S17604 (Nov. 28, 1995) (preamble to NPRM under section 203 of the CAA).

This conclusion is also supported by the General Counsel's inspection report, which applied the substantive safety and health standards to covered facilities in the course of his initial inspections under section 215(e) of the CAA. Specifically, the report found nothing about work operations within facilities of the Legislative Branch that suggested that they were so different from those in comparable private sector facilities as to require a different safety and health standard. *See generally* Safety and Health Report. Thus, with the exception of nonsubstantive technical and nomenclature changes, the Board proposes no departure from the text of otherwise applicable portions of Parts 1910 and 1926.

4. *Secretary of Labor's regulations that the board proposes not to adopt.*—In reviewing the remaining parts of the Secretary's regulations, it is apparent that they either were not promulgated by the Secretary of Labor to implement the safety and health standards referred to in section 5 of the OSHAct and/or have no application to employing offices or other facilities within the Legislative Branch. For this reason, the Board is not including them within its substantive regulations. Among the excluded regulations are the following parts of 29 CFR: Part 1902 (adoption of health and safety standards and enforcement plans by States); Part 1908 (cooperative agreements between OSHA and the States); Parts 1911 and 1912 (procedure for promulgating, modifying or revoking occupational safety and health standards by OSHA); Parts 1915–1922 (occupational safety and health standards and procedures for shipyards, marine terminals, and longshoring operations); Part 1914 (safety and health standards applicable to workshops and rehabilitation facilities assisted by federal grants); Part 1925 (safety and health requirements under the Service Contract Act of 1965); Part 1928 (occupational safety and health standards applicable to agricultural operations); Part 1949 (OSHA Office of Training and Education regulations); Parts 1950–1956 (State occupational safety and health regulation and enforcement plans and planning grants to States); Part 1960 (occupational safety and health regulation of Federal executive branch employees and agencies, implementing section 19 of the OSHAct); Part 1975 (regulations clarifying the definition of employer under the OSHAct); Part 1978 (regulations implementing section 405 of the Surface Transportation Assistance Act of 1982); Part 1990 (regulations relating to identification, classification, and regulation of potential occupational carcinogens); Part 2201 (regulations implementing the Freedom of Information Act); Part 2202 (rules of ethics and conduct of Occupational Safety and Health Review Commission employees); Part 2203 (regulations implementing the Government in the Sunshine Act); Part 2204 (regulations implementing the Equal Access to Justice Act in Proceedings before the Occupational Safety and Health Review Commission); Part 2205 (regulations enforcing the provisions prohibiting discrimination on the basis of handicap in programs or activities conducted by the OSHRC); and Part 2400 (regulations implementing the Privacy Act). Unless public comments demonstrate otherwise, the Board intends to include in the adopted regulations a provision stating that the Board has issued substantive regulations on all matters for which section 215(d) requires a regulation. *See* 2 U.S.C. §1411.

The Board will also not adopt as part of its regulations under section 215(d) of the CAA the rules of agency practice and procedure for the Occupational Safety and Health Review Commission (Part 2200), rules of agency practice and procedure regarding OSHA access to employee medical records (Part 1913), and rules implementing the rights and procedures regarding the antidiscrimination and anti-retaliation provisions of section 11 of the OSHAct (Part 1977). Although not within the scope of rulemaking under section 215(d), the Board has determined that the subject matter of these provisions may have general applicability to Board and Office proceedings under the CAA. Thus, these matters should be addressed, if at all, in the Office's development of appropriate changes in the procedural rules for section 215 cases that the Executive Director promulgates pursuant to section 303 of the CAA.

5. *Variance procedures.*—Section 215(c)(4) of the CAA authorizes the Board to consider and act on requests for variances by employing offices from otherwise applicable safety and health standards applied to them under this section, consistent with sections 6(b)(6) and 6(d) of the OSHAct. 2 U.S.C. §1341(c)(4). Part 1905, 29 CFR, contains the Secretary's rules of practice and procedure for variances under the OSHAct. Part 1905 was not promulgated to implement the health and safety standards referred to in section 5 of the OSHAct. Accordingly, it will not be adopted as part of the Board's section 215(d) regulations. However, the Board has determined that these regulations may concern matters ''governing the procedure of the Office'' and, therefore, may be addressed as part of a rulemaking under section 303 of the CAA.

6. *Procedure regarding inspections, citations, and notices.*—Section 215(c) of the CAA grants the General Counsel of the Office the authority under sections 8 and 9 of the OSHAct to inspect and investigate places of employment and issue citations and notices to employing offices responsible for correcting violations. 2 U.S.C. §1341(c). Part 1903 of the Secretary's regulations, which relates to the procedure for conducting inspections, and for issuing and contesting citations and proposed penalties, implements sections 8 and 9 of the OSHAct. The purpose of Part 1903, according to the Secretary, is to prescribe rules and to set forth general policies for enforcement of the inspection, citation, and proposed penalty provisions of the OSHAct. *See* 29 CFR 1903.1. Part 1903 does not implement any substantive right or protection under section 5 of the OSHAct or of any substantive health and safety standard thereunder. Accordingly, the Board will not adopt part 1903 as part of its section 215(d) regulations. However, the Executive Director may consider adopting some or all of the rules contained in Part 1903 as part of the procedural rules of the Office, as applicable and appropriate.

7. *Notice posting and recordkeeping requirements.*—Section 215(c)(1) of the CAA grants to the General Counsel of the Office of Compliance the authorities of the Secretary of Labor under the following subsections of section 8 of the OSHAct: (a) (authority of Secretary to enter, inspect, and investigate places of employment), (d) (methods of obtaining information), (e) (employer and employee representatives authorized to accompany inspectors), and (f) (requests for inspections), 29 U.S.C. section 657(a), (d), (e), and (f). 2 U.S.C. §1341(c)(1). Section 215 does not incorporate or make reference to section 8(c) of the OSHAct (requiring safety and health recordkeeping and posting of notices). More specifically, section 8(c) of the OSHAct is not a part of the rights and protections of section 5 of the OSHAct, nor is it a substantive safety and health standard referred to therein. Thus, section 215(d) of the CAA does not authorize the Board to incorporate the general notice and recordkeeping requirements promulgated by the Secretary to implement section 8(c) of the OSHAct and, consequently, such requirements (set forth at Part 1904) will not be imposed at this time. *See* 141 Cong. Rec. at S17604 (NPRM implementing section 203); 141 Cong. Rec. at S17656 (Nov. 28, 1995) (NPRM implementing section 204); 142 Cong. Rec. S221, S222 (Jan. 22, 1996) (Notice of Adoption of Regulations Implementing Section 203).

The Board also notes that there are certain recordkeeping requirements that are part of the substantive safety and health standards under parts 1910 and 1926, 29 CFR, such as employee exposure records under subpart Z. Thus, these regulations have been included in the Board's proposed regulations. *See* 141 Cong. Rec. at 17657 (daily ed. Jan. 22, 1996) (recordkeeping requirements included within portion of Employee Polygraph Protection Act applied by section 204 of the CAA must be included within the proposed rules).

The Board is also aware that Congress has enacted two special statutory provisions regarding safety and health that may already apply to some covered employing offices. Section 19(a) of the OSHAct, 29 U.S.C. §668(a), requires the head of each federal agency to ''establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated [by OSHA] under section 655.'' Agency heads are also required to submit annual reports to the Secretary on occupational accidents and injuries and on the agency programs established under section 668. However, the statute itself gives the Secretary no enforcement authority against federal agencies. OSHA regulations implementing section 668 are not binding on Legislative Branch agencies unless by agreement between OSHA and the head of the agency. *See* 29 C.F.R. §1960.2(b).

The related provisions of 5 U.S.C. §7902 cover an agency in ''any branch of the Government of the United States.'' Section 7902 imposes recordkeeping and report requirements on each agency similar to the requirements of 29 U.S.C. §668. There is no apparent

mechanism for enforcement of section 7902 obligations regarding Legislative Branch agencies.

The above two provisions may arguably impose general recordkeeping requirements with respect to occupational accidents and injuries on some covered employing offices independent of the CAA, to the extent that such employing offices are found to be ''agencies'' within the meaning of those statutory provisions. The Board's resolution of the recordkeeping issue under section 215(e) of the CAA is not an attempt to modify the statutory provisions of 29 U.S.C. §668 and 5 U.S.C. §7902 and their applicability to Legislative Branch entities. Whether section 215 of the CAA and the regulations the Board proposes to implement thereunder can be harmonized with these preexisting statutory requirements not within the scope of the CAA that might independently apply to Legislative Branch entities is an issue that the Board has no occasion to address. *See* 142 Cong. Rec. at S224 (daily ed., Jan. 22, 1996) (Notice of Adoption of Regulations and Submission for Approval and Issuance of Interim Regulations under section 203 of the CAA) (declining to address issue of harmonizing regulations regarding overtime exemption for law enforcement officers under section 203 with preexisting statutory overtime exemption for Capitol Police under 40 U.S.C. §§206b–206c).

B. Proposed regulations

1. General provisions.—The proposed regulations include a section on matters of general applicability including the purpose and scope of the regulations, definitions, coverage, and the administrative authority of the Board and the Office of Compliance.

2. *Incorporation by Reference of Part 1910 and Part 1926 Standards.—The Board will incorporate by reference the portions of 29 CFR, Parts 1910 and 1926, it proposes to adopt, rather than setting forth the full text of those provisions in this Notice.*

Incorporation by reference of the safety and health standards set forth in Parts 1910 and 1926 is appropriate under the circumstances and meets the ''good cause'' requirement of the CAA. The portions of Parts 1910 and 1926 that the Board proposes to adopt by reference contain only substantive safety and health standards that are published in Title 29 of the Code of Federal Regulations and that are thus reasonably available to commenters and to affected employing offices and covered employees. Moreover, incorporation by reference of Parts 1910 and 1926 would substantially reduce the volume of material published in the Congressional Record: Part 1910 and 1926 are set forth in three volumes of the Code of Federal Regulations. If restated herein, the material would consist of almost 6,500 pages of text and accompanying illustrations. Given that these standards are proposed to be adopted without change by the Board and are readily accessible to potential commenters, incorporation by reference is appropriate.

3. *Method for Identifying Responsible Employing Offices and Establishing Categories of Violations.*—Section 215(d)(3) of the CAA directs the Board to include in its regulations a method for identifying, for purposes of section 215 and for different categories of violations of subsection (a), the employing office responsible for correction of a particular violation. 2 U.S.C. §1341(d)(3). The method developed by the Board to identify entities responsible for correcting a violation of section 215(a) is set forth in section 1.106 of the proposed regulations. Section 1.106 is based in large part on the methods adopted and applied by the General Counsel during his initial inspections of covered employing offices under section 215(e). *See* Safety and Health Report, App. V.

a. Identifying the employing office responsible for correcting violations. In considering rules for identifying the employing office responsible for correcting violations under section 215, the Board is mindful that any regulation that it promulgates should neither expand nor contract the statutory safety and health obligations of employing offices under section 215. *See White v. I.N.S.*, 75 F.3d 213, 215 (5th Cir. 1996) (agency cannot promulgate even substantive rules that are contrary to statute; if intent of Congress is clear, agency must give effect to that unambiguously expressed intent); *Conlan v. U.S. Dep't of Labor*, 76 F.23 271, 274 (9th Cir. 1996). Therefore, the Board has considered the nature of the safety and health obligations imposed on employing offices under the OSHAct, as applied by the terms of section 215(a). Specifically, the Board notes that section 215(a)(2)(C) expressly assigns liability to the employing office responsible for correcting the violation, ''irrespective of whether the particular employing office has an employment relationship with any covered employee in any employing office in which such violation occurs.''

In many cases, the primary employing office responsible for correcting the hazards identified under section 215 and for addressing the recommendations made by the General Counsel is the Architect of the Capitol, given the Architect's statutory responsibility for superintendence and control over the Capitol Building, House and Senate office buildings, and other similar facilities. *See, e.g.*, 40 U.S.C. §§163-166 (Capitol Building), 167-175 and 185a (House and Senate office buildings), 185 (Capitol Power Plant), 193a (Capitol grounds), and 216b (Botanical Garden). However, it is recognized that in some cases other employing offices, particularly the staff or occupants of office buildings under the Architect's superintendence, may have varying degrees of actual or apparent jurisdiction, authority, and responsibility for correction of violations. In other cases, the employing office may have a responsibility to notify or coordinate abatement of the hazard with the Architect of the Capitol or other employing office actually responsible for implementing the correction. Accordingly, proposed section 1.106 assigns responsibility to employing offices in four situations:

1. The employing office that actually created the hazard or condition identified. Frequently, the employing office that created the hazard is in the best position to correct the hazard, and has control over the manner and method of operations sufficient to avoid the hazard in the first place or reduce the hazard once created.

2. The employing office that is exposing its employees to the hazard or condition. Under the OSHAct, an employer has responsibility for the safety of its own employees and is required to instruct them about the hazards that might be encountered, including what protective measures to use. In the case of hazardous conditions, facilities, or equipment over which the employer has no control, it has a duty to at least warn its employees of the hazard and/or to prevent the employees exposure to the hazard by utilizing alternative locations or means to perform the work. *See Secretary of Labor v. Baker Tank Co.*, 17 OSHC 1177, 1180 (OSHRC April 10, 1995).

3. The employing office that is responsible for safety and health conditions in the workplace and has day-to-day control, in whole or in part, of the area where the hazard or condition is found. For example, a Member has effective control over his or her own office area, and has the responsibility for notifying the Architect or other responsible offices, when hazards are identified in his or her spaces, even though the Member may have no direct responsibility in many cases for carrying out the correction of the condition.

4. The employing office that is responsible for actually carrying out the correction (or for contacting other offices or otherwise arranging for correction of the hazard or condition). In many cases, the Architect is responsible for repairing and correcting physical hazards identified in his area of superintendence, such as electrical hazards. In some cases, other employing offices may have responsibility to actually carry out the correction, such as the Chief Administrative Officer of the House of Representatives with respect to carpet repair in House office buildings. In other cases, an employing office may have responsibility for arranging for such corrections. For example, in House office buildings, repair of carpeting falls within the jurisdiction of the Chief Administrative Officer. However, the Superintendent of the House Office buildings, an Architect official, may have some responsibility for notifying the Chief Administrative Officer that such repairs are needed, if the Member or office staff does not do so.

The above rules are derived from the so-called multi-employer doctrine applied by OSHA as a means of apportioning liability for abatement and penalties at multi-employer worksites where one employer created the hazard and some employees, but not necessarily its own, are exposed to it. *See generally Brennan v. OSHRC (Underhill Construction Corp.)*, 513 F.2d 1032, 1038 (2d Cir. 1975); Mark A. Rothstein, *Occupational Safety and Health Law* §§161–169 (3d ed. 1990). Under this doctrine, an employer at a multi-employer worksite is responsible, even in the absence of exposure of its own employees, for any hazardous conditions which it creates or controls. *Id. See also H.B. Zachry Co.*, 8 OSHC 1669, 1980 OSHD ¶25,588 (1980), *affirmed* 638 F.2d 812 (5th Cir. 1981); OSHA Field Inspection Reference Manual III–28 (1994).

There is an issue whether application of the multi-employer doctrine by OSHA in the private sector context is in all situations authorized by the OSHAct. *Compare Teal v. E.I. Du Pont de Nemours & Co.*, 728 F.2d 799, 804–05 (6th Cir. 1984) (''Once an employer is deemed responsible for complying with OSHA regulations, it is obligated to protect every employee who works at its workplace.'') and *Beatty Equip. Leasing v. Secretary of Labor*, F.2d 534, 537 (9th Cir. 1978) (subcontractor who supplied and erected scaffolding liable even where his own employees not exposed) with *Melerine v. Avondale Shipyards, Inc.*, 659 F.2d 706, 712 (5th Cir. 1981) (''In this circuit, therefore, the class protected by OSHA regulations comprises only employer's own employees.''). However, the Board need not address this issue because the CAA expressly imposes responsibility for correction of health and safety violations on an otherwise covered Legislative Branch entity ''irrespective of whether the entity has an employment relationship with any covered employee in any employing office in which such a violation occurs.'' 2 U.S.C. §1341(a)(2)(C). Accordingly, the above regulations are consistent with the OSHAct as modified by the express terms of section 215 of the CAA.

b. Classifying the level of risk/seriousness of the violation. The proposed regulations do not include a provision classifying categories of violations. The method for identifying the employing offices responsible for correcting a violation of section 215(a) set forth in section 1.106 of the proposed regulations is not affected by the category or type of violation. Moreover, such categories of violations are not set forth in any substantive regulations of the Secretary required to be adopted under section 215(d). Therefore, the Board does not propose any substantive regulations which set forth categories of violations.

The Board notes that the General Counsel has developed, as part of his authority to inspect covered facilities under section 215(e), classifications of violations to guide employing offices and covered employees in assigning priority for correction and abatement of hazards. The General Counsel's guidelines are based on those issued by OSHA in determining the amount of proposed penalties in cases involving private employers. *See generally* 29 U.S.C. §§666(j) and (k). Although neither the General Counsel nor the Office has authority to impose monetary penalties under section 215 of the CAA, *see* 2 U.S.C. §§1341(b) and 1361(c) (limiting remedy under section 215 to injunctive provisions of section 13(a) of the OSHAct and providing that no civil penalty may be awarded with respect to any claim under the CAA), the factors considered by OSHA in determining the amount of penalty may be useful as an expression of the gravity of the deficiency involved. A further description of these categories is set forth in the General Counsel's inspection report. *See* Safety and Health Report, App. I.

4. *Future changes in the text of the health and safety standards which the Board has adopted.*—The Board proposes that the section 215 regulations incorporate the text of the referenced health and safety standards of parts 1910 and 1926 in effect as of the effective date of these regulations. The Board takes notice that OSHA has in recent years made frequent changes, both technical and nontechnical, to its part 1910 and 1926 regulations, and is in the process of developing additional safety and health standards in some areas. The Board interprets the incorporation by reference of external documents or standards in the text of the adopted Parts 1910 and 1926 regulations (such as the provisions of the National Electrical Code) to include any future changes to such documents or standards. As the Office receives notice of such changes by OSHA, it will advise covered employing offices and employees of them as part of its education and information activities. As to changes in the text of the adopted regulations themselves, however, the Board finds that, under the CAA statutory scheme, additional Board rulemaking under section 215(d) will be required. The Board believes that it should afford Legislative Branch entities and employees potentially affected by adoption of such changes the opportunity to comment on the propriety of Board adoption of any such changes, and that the Congress should have the opportunity to specifically approve such adoption by the Board. The Board specifically invites comments on this proposal.

5. *Technical and nomenclature changes.*—The proposed regulations make technical and nomenclature changes, where appropriate, to conform to the provisions of the CAA.

Recommended method of approval: The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and employees of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 18th day of September, 1996.

GLEN D. NAGER,
Chair of the Board, Office of Compliance.

APPLICATION OF RIGHTS AND PROTECTIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (SECTION 215 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995)

Part 1——Matters of General Applicability to All Regulations Promulgated Uuder Section 215 of the Congressional Accountability Act of 1995

Sec.
1.101 Purpose and scope
1.102 Definitions
1.103 Notice of protection
1.104 Authority of the Board
1.105 Method for identifying the entity responsible for correction of violations of section 215

§1.101 Purpose and scope.

(a) *Section 215 of the CAA.* Enacted into law on January 23, 1995, the Congressional Accountability Act (''CAA'') directly applies the rights and protections of eleven federal labor and employment law and public access statutes to covered employees and employing offices within the Legislative Branch. Section 215(a) of the CAA provides that each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970 (''OSHAct''), 29 U.S.C. §654. Section 5(a) of the OSHAct provides that every covered employer has a general duty to furnish each employee with employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to those employees, and a specific duty to comply with occupational safety and health standards promulgated under the law. Section 5(b) requires covered employees to comply with occupational safety and health standards and with all rules, regulations and orders which are applicable to their actions and conduct. Set forth herein are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 215(d) of the CAA.

(b) *Purpose and scope of regulations.* The regulations set forth herein (Parts 1 and 1900) are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 215(d) of the CAA. Part 1 contains the general provisions applicable to all regulations under section 215, including the method of identifying entities responsible for correcting a violation of section 215. Part 1900 contains the substantive safety and health standards which the Board has adopted as substantive regulations under section 215(e).

§1.102 Definitions.

Except as otherwise specifically provided in these regulations, as used in these regulations:

(a) *Act* or *CAA* means the Congressional Accountability Act of 1995 (Pub.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) *OSHAct* means the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. §§651, *et seq.*), as applied to covered employees and employing offices by Section 215 of the CAA.

(c) The term *covered employee* means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; and (8) the Office of Compliance.

(d) The term *employee* includes an applicant for employment and a former employee.

(e) The term *employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(f) The term *employee of the Capitol Police* includes any member or officer of the Capitol Police.

(g) The term *employee of the House of Representatives* includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(h) The term *employee of the Senate* includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(i) The term *employing office* means: (1) the personal office of a Member of the House of Representatives or the Senate or a joint committee; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance.

(j) The term *employing office* includes any of the following entities that is responsible for correction of a violation of this section, irrespective of whether the entity has an employment relationship with any covered employee in any employing office in which such violation occurs: (1) each office of the Senate, including each office of a Senator and each committee; (2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee; (3) each joint committee of the Congress; (4) the Capitol Guide Service; (5) the Capitol Police; (6) the Congressional Budget Office; (7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden); (8) the Office of the Attending Physician; and (9) the Office of Compliance.

(k) *Board* means the Board of Directors of the Office of Compliance.

(l) *Office* means the Office of Compliance.

(m) *General Counsel* means the General Counsel of the Office of Compliance.

§1.103 Coverage.

The coverage of Section 215 of the CAA extends to any ''covered employee.'' It also extends to any ''covered employing office,'' which includes any of the following entities that is responsible for correcting a violation of section 215 (as determined under section 1.106), irrespective of whether the entity has an employment relationship with any covered employee in any employing office in which such a violation occurs:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

§1.104 Notice of protection.

Pursuant to section 301(h) of the CAA, the Office shall prepare, in a manner suitable for

posting, a notice explaining the provisions of section 215 of the CAA. Copies of such notice may be obtained from the Office of Compliance.

§ 1.105 Authority of the Board.

Pursuant to section 215 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections of section 215(a). Section 215(d) of the CAA directs the Board to promulgate regulations implementing section 215 that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. § 1341(d). The regulations issued by the Board herein are on all matters for which section 215 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 215 of the CAA]'' that need be adopted.

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the Legislative Branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

§ 1.106 Method for identifying the entity responsible for correction of violations of section 215.

(a) *Purpose and scope.* Section 215(d)(3) of the CAA provides that regulations under section 215(d) include a method of identifying, for purposes of this section and for categories of violations of section 215(a), the employing office responsible for correcting a particular violation. This section sets forth the method for identifying responsible employing offices for the purpose of allocating responsibility for correcting violations of section 215(a) of the CAA. These rules apply to the General Counsel in the exercise of his authority to issue citations or notices to employing offices under sections 215(c)(2)(A) and (B), and to the Office and the Board in the adjudication of complaints under section 215(c)(3).

(b) *Employing Office(s) Responsible for Correcting a Violation of Section 215(a) of the CAA.* With respect to the safety and health standards and other obligations imposed upon employing offices under section 215(a) of the CAA, correction of a violation of section 215(a) is the responsibility of any employing office that is an exposing employing office, a creating employing office, a controlling employing office, and/or a correcting employing office, as defined in this subsection, to the extent that the employing office is in a position to correct or abate the hazard or to ensure its correction or abatement.

(i) *Creating employing office* means the employing office that actually created the hazard forming the basis of the violation or violations of section 215(a).

(ii) *Exposing employing office* means the employing office whose employees are exposed to the hazard forming the basis of the violation or violations of section 215(a).

(iii) *Controlling employing office* means the employing office that is responsible, by agreement or legal authority or through actual practice, for safety and health conditions in the location where the hazard forming the basis for the violation or violations of section 215(a) occurred.

(iv) *Correcting employing office* means the employing office that has the responsibility for actually performing (or the authority or power to order or arrange for) the work necessary to correct or abate the hazard forming the basis of the violation or violations of section 215(a).

(c) *Exposing Employing Office Duties.* Employing offices have direct responsibility for the safety and health of their own employees and are required to instruct them about the hazards that might be encountered, including what protective measures to use. An employing office may not contract away these legal duties to its employees or its ultimate responsibilities under section 215(a) of the CAA by requiring another party or entity to perform them. In addition, if equipment or facilities to be used by an employing office, but not under the control of the employing office, do not meet applicable health and safety standards or otherwise constitutes a violation of section 215(a), it is the responsibility of the employing office not to permit its employees to utilize such equipment or facilities. In such circumstances, the employing office is in violation if, and only if, it permits its employees to utilize such equipment or facilities. It is not the responsibility of an employing office to effect the correction of any such deficiencies itself, but this does not relieve it of its duty to use only equipment or facilities that meet the requirements of section 215(a).

Part 1900—Adoption of Occupational Safety and Health Standards

Sec.
1900.1 Purpose and scope
1900.2 Definitions; provisions regarding scope, applicability, and coverage; and exemptions
1900.3 Adoption of occupational safety and health standards

§ 1900.1 Purpose and scope.

(a) The provisions of this subpart B adopt and extend the applicability of occupational safety and health standards established and promulgated by the Occupational Safety and Health Administration (''OSHA'') and set forth at Parts 1910 and 1926 of title 29 of the Code of Federal Regulations, with respect to every employing office, employee, and employment covered by section 215 of the Congressional Accountability Act.

(b) It bears emphasis that only standards (i.e., substantive rules) relating to safety or health are adopted by any incorporations by reference of standards prescribed in this Part. Other materials contained in the referenced parts are not adopted. Illustrations of the types of materials which are not adopted are these. The incorporation by reference of part 1926, 29 CFR, is not intended to include references to interpretative rules having relevance to the application of the Construction Safety Act, but having no relevance to the Occupational Safety and Health Act. Similarly, the incorporation by reference of part 1910, 29 CFR, is not intended to include any reference to the Assistant Secretary of Labor and the authorities of the Assistant Secretary. The authority to adopt, promulgate, and amend or revoke standards applicable to covered employment under the CAA rests with the Board of Directors of the Office of Compliance pursuant to sections 215(d) and 304 of the CAA. Notwithstanding anything to the contrary contained in the incorporated standards, the exclusive means for enforcement of these standards with respect to covered employment are the procedures and remedies provided for in section 215 of the CAA.

(c) This part incorporates the referenced safety and health standards in effect as of the effective date of these regulations.

§ 1900.2 Definitions, provisions regarding scope, applicability and coverage, and exemptions.

(a) Except where inconsistent with the definitions, provisions regarding scope, application and coverage, and exemptions provided in the CAA or other sections of these regulations, the definitions, provisions regarding scope, application and coverage, and exemptions provided in Parts 1910 and 1926, 29 CFR, as incorporated into these regulations, shall apply under these regulations. For example, any reference to ''employer'' in Parts 1910 and 1926 shall be deemed to refer to ''employing office.'' Similarly, any limitation on coverage in Parts 1910 and 1926 to employers engaged ''in a business that affects commerce'' shall not apply in these regulations.

(b) The provisions of section 1910.6, 29 CFR, regarding the force and effect of standards of agencies of the U.S. Government and organizations that are not agencies of the U.S. Government, which are incorporated by reference in Part 1910, shall apply to the standards incorporated into these regulations.

(c) It is the Board's intent that the standards adopted in these regulations shall have the same force and effect as applied to covered employing offices and employees under section 215 of the CAA as those standards have when applied by OSHA to employers, employees, and places of employment under the jurisdiction of OSHA and the OSHAct.

§ 1900.3 Adoption of occupational safety and health standards.

(a) *Part 1910 Standards.* The standards prescribed in 29 CFR part 1910, Subparts B through S, and Subpart Z, as specifically referenced and set forth herein at Appendix A, are adopted as occupational safety and health standards under Section 215(d) of the CAA and shall apply, according to the provisions thereof, to every employment and place of employment of every covered employee engaged in work in an employing office. Each employing office shall protect the employment and places of employment of each of its covered employees by complying with the appropriate standards described in this paragraph.

(b) *Part 1926 Standards.* The standards prescribed in 29 CFR part 1926, Subparts C through X and Subpart Z, as specifically referenced and forth herein at Appendix B, are adopted as occupational safety and health standards under Section 215(d) of the CAA and shall apply, according to the provisions thereof, to every employment and place of employment of every covered employee engaged in work in an employing office. Each employing office shall protect the employment and places of employment of each of its covered employees by complying with the appropriate standards described in this paragraph.

(c) *Standards not adopted.* This section adopts as occupational safety and health standards under section 215(d) of the CAA the standards which are prescribed in Parts 1910 and 1926 of 29 CFR. Thus, the standards (substantive rules) published in subparts B through S and Z of part 1910 and subparts C through X and Z of part 1926 are applied. As set forth in Appendix A and Appendix B to this Part, this section does not incorporate all sections contained in these subparts. For example, this section does not incorporate sections 1910.15, 1910.16, and 1910.142, relating

to shipyard employment, longshoring and marine terminals, and temporary labor camps, because such provisions have no application to employment within entities covered by the CAA.

(d) Copies of the standards which are incorporated by reference may be examined at the Office of Compliance, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540–1999. The OSHA standards may also be found at 29 CFR Parts 1910 and 1926. Copies of the standards may also be examined at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, and their regional offices. Copies of private standards may be obtained from the issuing organizations. Their names and addresses are listed in the pertinent subparts of Parts 1910 and 1926, 29 CFR.

(e) Any changes in the standards incorporated by reference in the portions of Parts 1910 and 1926, 29 CFR, adopted herein and an official historic file of such changes are available for inspection at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210.

Appendix A To Part 1900—References to Sections of Part 1910, 29 CFR, Adopted as Occupational Safety and Health Standards Under Section 215(d) of the CAA

The following is a reference listing of the sections and subparts of Part 1910, 29 CFR, which are adopted as occupational safety and health standards under section 215(d) of the Congressional Accountability Act. Unless otherwise specifically noted, any reference to a section number includes any appendices to that section.

Part 1910—Occupational Safety and Health Standards

Subpart B—Adoption and Extension of Established Federal Standards

Sec.
1910.12 Construction work.
1910.18 Changes in established Federal standards.
1910.19 Special provisions for air contaminants.

Subpart C—General Safety and Health Provisions [Reserved]

Subpart D—Walking—Working Surfaces

1910.21 Definitions.
1910.22 General requirements.
1910.23 Guarding floor and wall openings and holes.
1910.24 Fixed industrial stairs.
1910.25 Portable wood ladders.
1910.26 Portable metal ladders.
1910.27 Fixed ladders.
1910.28 Safety requirements for scaffolding.
1910.29 Manually propelled mobile ladder stands and scaffolds (towers).
1910.30 Other working surfaces.

Subpart E—Means of Egress

1910.35 Definitions.
1910.36 General requirements.
1910.37 Means of egress, general.
1910.38 Employee emergency plans and fire prevention plans.
APPENDIX TO SUBPART E—MEANS OF EGRESS

Subpart F—Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms

1910.66 Powered platforms for building maintenance.
1910.67 Vehicle-mounted elevating and rotating work platforms.
1910.68 Manlifts.

Subpart G—Occupational Health and Environmental Control

1910.94 Ventilation.
1910.95 Occupational noise exposure.
1910.97 Nonionizing radiation.

Subpart H—Hazardous Materials

1910.101 Compressed gases (general requirements).
1910.102 Acetylene.
1910.103 Hydrogen.
1910.104 Oxygen.
1910.105 Nitrous oxide.
1910.106 Flammable and combustible liquids.
1910.107 Spray finishing using flammable and combustible materials.
1910.108 Dip tanks containing flammable or combustible liquids.
1910.109 Explosives and blasting agents.
1910.110 Storage and handling of liquefied petroleum gases.
1910.111 Storage and handling of anhydrous ammonia.
1910.112 [Reserved]
1910.113 [Reserved]
1910.119 Process safety management of highly hazardous chemicals.
1910.120 Hazardous waste operations and emergency response.

Subpart I—Personal Protective Equipment

1910.132 General requirements.
1910.133 Eye and face protection.
1910.134 Respiratory protection.
1910.135 Head protection.
1910.136 Foot protection.
1910.137 Electrical protective devices.
1910.138 Hand Protection.

Subpart J—General Environmental Controls

1910.141 Sanitation.
1910.143 Nonwater carriage disposal systems. [Reserved]
1910.144 Safety color code for marking physical hazards.
1910.145 Specifications for accident prevention signs and tags.
1910.146 Permit-required confined spaces.
1910.147 The control of hazardous energy (lockout/tagout).

Subpart K—Medical and First Aid

1910.151 Medical services and first aid.
1910.152 [Reserved]

Subpart L—Fire Protection

1910.155 Scope, application and definitions applicable to this subpart.
1910.156 Fire brigades.
PORTABLE FIRE SUPPRESSION EQUIPMENT
1910.157 Portable fire extinguishers.
1910.158 Standpipe and hose systems.
FIXED FIRE SUPPRESSION EQUIPMENT
1910.159 Automatic sprinkler systems.
1910.160 Fixed extinguishing systems, general.
1910.161 Fixed extinguishing systems, dry chemical.
1910.162 Fixed extinguishing systems, gaseous agent.
1910.163 Fixed extinguishing systems, water spray and foam.
OTHER FIRE PROTECTIVE SYSTEMS
1910.164 Fire detection systems.
1910.165 Employee alarm systems.
APPENDICES TO SUBPART L
APPENDIX A TO SUBPART L—FIRE PROTECTION
APPENDIX B TO SUBPART L—NATIONAL CONSENSUS STANDARDS
APPENDIX C TO SUBPART L—FIRE PROTECTION REFERENCES FOR FURTHER INFORMATION
APPENDIX D TO SUBPART L—AVAILABILITY OF PUBLICATIONS INCORPORATED BY REFERENCE IN SECTION 1910.156 FIRE BRIGADES
APPENDIX E TO SUBPART L—TEST METHODS FOR PROTECTIVE CLOTHING

Subpart M—Compressed Gas and Compressed Air Equipment

1910.166 [Reserved]
1910.167 [Reserved]
1910.168 [Reserved]
1910.169 Air receivers.

Subpart N—Materials Handling and Storage

1910.176 Handling material—general.
1910.177 Servicing multi-piece and single piece rim wheels.
1910.178 Powered industrial trucks.
1910.179 Overhead and gantry cranes.
1910.180 Crawler locomotive and truck cranes.
1910.181 Derricks.
1910.183 Helicopters.
1910.184 Slings.

Subpart O—Machinery and Machine Guarding

1910.211 Definitions.
1910.212 General requirements for all machines.
1910.213 Woodworking machinery requirements.
1910.215 Abrasive wheel machinery.
1910.216 Mills and calenders in the rubber and plastics industries.
1910.217 Mechanical power presses.
1910.218 Forging machines.
1910.219 Mechanical power-transmission apparatus.

Subpart P—Hand and Portable Powered Tools and Other Hand-Held Equipment

1910.241 Definitions.
1910.242 Hand and portable powered tools and equipment, general.
1910.243 Guarding of portable powered tools.
1910.244 Other portable tools and equipment.

Subpart Q—Welding, Cutting, and Brazing

1910.251 Definitions.
1910.252 General requirements.
1910.253 Oxygen-fuel gas welding and cutting.
1910.254 Arc welding and cutting.
1910.255 Resistance welding.

Subpart R—Special Industries

1910.263 Bakery equipment.
1910.264 Laundry machinery and operations.
1910.266 Logging operations.
1910.268 Telecommunications.
1910.269 Electric power generation, transmission, and distribution.

Subpart S—Electrical

GENERAL
1910.301 Introduction.
DESIGN SAFETY STANDARDS FOR ELECTRICAL SYSTEMS
1910.302 Electric utilization systems.
1910.303 General requirements.
1910.304 Wiring design and protection.
1910.305 Wiring methods, components, and equipment for general use.
1910.306 Specific purpose equipment and installations.
1910.307 Hazardous (classified) locations.
1910.308 Special systems.
1910.309–1910.330 [Reserved]
SAFETY-RELATED WORK PRACTICES
1910.331 Scope.
1910.332 Training.
1910.333 Selection and use of work practices.
1910.334 Use of equipment.
1910.335 Safeguards for personnel protection.
1910.336–1910.360 [Reserved]
SAFETY-RELATED MAINTENANCE REQUIREMENTS
1910.361–1910.380 [Reserved]
SAFETY REQUIREMENTS FOR SPECIAL EQUIPMENT
1910.381–1910.398 [Reserved]
DEFINITIONS
1910.399 Definitions applicable to this subpart.
APPENDIX A TO SUBPART S—REFERENCE DOCUMENTS
APPENDIX B TO SUBPART S—EXPLANATORY DATA [RESERVED]
APPENDIX C TO SUBPART S—TABLES, NOTES, AND CHARTS [RESERVED]

Subparts U–Y [Reserved]

1910.442–1910.999 [Reserved]

Subpart Z—Toxic and Hazardous Substances

1910.1000 Air contaminants.
1910.1001 Asbestos.
1910.1002 Coal tar pitch volatiles; interpretation of term.
1910.1003 13 Carcinogens (4-Nitrobiphenyl, etc.)
1910.1004 alpha-Naphthylamine.
1910.1005 [Reserved]
1910.1006 Methyl chloromethyl ether.
1910.1007 3,3'-Dichlorobenzidine (and its salts).
1910.1008 bis-Chloromethyl ether.
1910.1009 beta-Naphthylamine.
1910.1010 Benzidine.
1910.1011 4-Aminodiphenyl.
1910.1012 Ethyleneimine.
1910.1013 beta-Propiolactone.
1910.1014 2-Acetylaminofluorene.
1910.1015 4-Dimethylaminoazobenzene.
1910.1016 N-Nitrosodimethylamine.
1910.1017 Vinyl chloride.
1910.1018 Inorganic arsenic.
1910.1020 Access to employee exposure and medical records.
1910.1025 Lead.
1910.1027 Cadmium.
1910.1028 Benzine.
1910.1029 Coke oven emissions.
1910.1030 Bloodborne pathogens.
1910.1043 Cotton dust.
1910.1044 1,2-dibromo-3-chloropropane.
1910.1045 Acrylonitrile.
1910.1047 Ethylene oxide.
1910.1048 Formaldehyde.
1910.1050 Methylenedianiline.
1910.1096 Ionizing radiation.
1910.1200 Hazard communication.
1910.1201 Retention of DOT markings, placards and labels.
1910.1450 Occupational exposure to hazardous chemicals in laboratories.

Appendix B to Part 1900—References to Sections of Part 1926, 29 CFR, Adopted as Occupational Safety and Health Standards Under Section 215(d) of the CAA

The following is a reference listing of the sections and subparts of Part 1926, 29 CFR, which are adopted as occupational safety and health standards under section 215(d) of the Congressional Accountability Act. Unless otherwise specifically noted, any reference to a section number includes the appendices to that section.

Part 1926—Safety and Health Regulations for Construction

Part C—General Safety and Health Provisions

Sec.
1926.20 General safety and health provisions.
1926.21 Safety training and education.
1926.22 Recording and reporting of injuries. [Reserved]
1926.23 First aid and medical attention.
1926.24 Fire protection and prevention.
1926.25 Housekeeping.
1926.26 Illumination.
1926.27 Sanitation.
1926.28 Personal protective equipment.
1926.29 Acceptable certifications.
1926.31 Incorporation by reference.
1926.32 Definitions.
1926.33 Access to employee exposure and medical records.
1926.34 Means of egress.
1926.35 Employee emergency action plans.

Subpart D—Occupational Health and Environmental Controls

1926.50 Medical services and first aid.
1926.51 Sanitation.
1926.52 Occupational noise exposure.
1926.53 Ionizing radiation.
1926.54 Nonionizing radiation.
1926.55 Gases, vapors, fumes, dusts, and mists.
1926.56 Illumination.
1926.57 Ventilation.
1926.58 [Reserved]
1926.59 Hazard communication.
1926.60 Methylenedianiline.
1926.61 Retention of DOT markings, placards and labels.
1926.62 Lead.
1926.63 Cadmium (This standard has been redesignated as 1926.1127).
1926.64 Process safety management of highly hazardous chemicals.
1926.65 Hazardous waste operations and emergency response.
1926.66 Criteria for design and construction for spray booths.

Subpart E—Personal Protective and Life Saving Equipment

1926.95 Criteria for personal protective equipment.
1926.96 Occupational foot protection.
1926.97 [Reserved]
1926.98 [Reserved]
1926.99 [Reserved]
1926.100 Head protection.
1926.101 Hearing protection.
1926.102 Eye and face protection.
1926.103 Respiratory protection.
1926.104 Safety belts, lifelines, and lanyards
1926.105 Safety nets
1926.106 Working over or near water.
1926.107 Definitions applicable to this subpart.

Subpart F—Fire Protection and Prevention

1926.150 Fire protection.
1926.151 Fire prevention.
1926.152 Flammable and combustible liquids.
1926.153 Liquefied petroleum gas (LP-Gas).
1926.154 Temporary heating devices.
1926.155 Definitions applicable to this subpart.
1926.156 Fixed extinguishing systems, general.
1926.157 Fixed extinguishing systems, gaseous agent.
1926.158 Fire detection systems.
1926.159 Employee alarm systems.

Subpart G—Signs, Signals, and Barricades

1926.200 Accident prevention signs and tags.
1926.201 Signaling.
1926.202 Barricades.
1926.203 Definitions applicable to this subpart.

Subpart H—Materials Handling, Storage, Use, and Disposal

1926.250 General requirements for storage.
1926.251 Rigging equipment for material handling.
1926.252 Disposal of waste materials.

Subpart I—Tools—Hand and Power

1926.300 General requirements.
1926.301 Hand tools.
1926.302 Power operated hand tools.
1926.303 Abrasive wheels and tools.
1926.304 Woodworking tools.
1926.305 Jacks—lever and ratchet, screw and hydraulic.
1926.306 Air Receivers.
1926.307 Mechanical power-transmission apparatus.

Subpart J—Welding and Cutting

1926.350 Gas welding and cutting.
1926.351 Arc welding and cutting.
1926.352 Fire prevention.
1926.353 Ventilation and protection in welding, cutting, and heating.
1926.354 Welding, cutting and heating in way of preservative coatings.

Subpart K—Electrical

GENERAL
1926.400 Introduction.
1926.401 [Reserved]
INSTALLATION SAFETY REQUIREMENTS
1926.402 Applicability.
1926.403 General requirements.
1926.404 Wiring design and protection.
1926.405 Wiring methods, components, and equipment for general use.
1926.406 Specific purpose equipment and installations.
1926.407 Hazardous (classified) locations.
1926.408 Special systems.
1926.409–1926.415 [Reserved]
SAFETY-RELATED WORK PRACTICES
1926.416 General requirements.
1926.417 Lockout and tagging of circuits.
1926.418-1926.430 [Reserved]
SAFETY-RELATED MAINTENANCE AND ENVIRONMENTAL CONSIDERATIONS
1926.431 Maintenance of equipment.
1926.432 Environmental deterioration of equipment.
1926.433-1926.440 [Reserved]
SAFETY REQUIREMENTS FOR SPECIAL EQUIPMENT
1926.441 Battery locations and battery charging.
1926.442-1926.448 [Reserved]
DEFINITIONS
1926.449 Definitions applicable to this subpart.

Subpart L—Scaffolding

1926.450 [Reserved]
1926.451 Scaffolding.
1926.452 Guardrails, handrails, and covers.
1926.453 Manually propelled mobile ladder stands and scaffolds (towers).

Subpart M—Fall Protection

1926.500 Scope, application, and definitions applicable to this subpart.
1926.501 Duty to have fall protection.
1926.502 Fall protection systems criteria and practices.
1926.503 Training requirements.
APPENDIX A TO SUBPART M—DETERMINING ROOF WIDTHS
APPENDIX B TO SUBPART M—GUARDRAIL SYSTEMS
APPENDIX C TO SUBPART M—PERSONAL FALL ARREST SYSTEMS
APPENDIX D TO SUBPART M—POSITIONING DEVICE SYSTEMS
APPENDIX E TO SUBPART M—SAMPLE FALL PROTECTION PLANS

Subpart N—Cranes, Derricks, Hoists, Elevators, and Conveyors

1926.550 Cranes and derricks.
1926.551 Helicopters.
1926.552 Material hoists, personnel hoists and elevators.
1926.553 Base-mounted drum hoists.
1926.554 Overhead hoists.
1926.555 Conveyors.
1926.556 Aerial lifts.

Subpart O—Motor Vehicles and Mechanized Equipment

1926.600 Equipment.
1926.601 Motor vehicles.
1926.602 Material handling equipment.
1926.603 Pile driving equipment.
1926.604 Site clearing.

Subpart P—Excavations

1926.650 Scope, application, and definitions applicable to this subpart.
1926.651 Specific Excavation Requirements.
1926.652 Requirements for protective systems.
APPENDIX A TO SUBPART P—SOIL CLASSIFICATION
APPENDIX B TO SUBPART P—SLOPING AND BENCHING
APPENDIX C TO SUBPART P—TIMBER SHORING FOR TRENCHES
APPENDIX D TO SUBPART P—ALUMINUM HYDRAULIC SHORING FOR TRENCHES
APPENDIX E TO SUBPART P—ALTERNATIVES TO TIMBER SHORING

APPENDIX F TO SUBPART P—SELECTION OF PROTECTIVE SYSTEMS

Subpart Q—Concrete and Masonry Construction

1926.700 Scope, application, and definitions, applicable to this subpart.
1926.701 General requirements.
1926.702 Requirements for equipment and tools.
1926.703 Requirements for cast-in-place concrete.
1926.704 Requirements for precast concrete.
1926.705 Requirements for lift-slab construction operations.
1926.706 Requirements of masonry construction.

APPENDIX TO SUBPART Q—REFERENCES TO SUBPART Q OF PART 1926

Subpart R—Steel Erection

1926.750 Flooring requirements.
1926.751 Structural steel assembly.
1926.752 Bolting, riveting, fitting-up, and plumbing-up.
1926.753 Safety Nets.

Subpart S—Tunnels and Shafts, Caissons, Cofferdams, and Compressed Air

1926.800 Underground construction.
1926.801 Caissons.
1926.802 Cofferdams.
1926.803 Compressed air.
1926.804 Definitions applicable to this subpart.

APPENDIX A TO SUBPART S—DECOMPRESSION TABLES

Subpart T—Demolition

1926.850 Preparatory operations.
1926.851 Stairs, passageways, and ladders.
1926.852 Chutes.
1926.853 Removal of materials through floor openings.
1926.854 Removal of walls, masonry sections, and chimneys.
1926.855 Manual removal of floors.
1926.856 Removal of walls, floors, and material with equipment.
1926.857 Storage.
1926.858 Removal of steel construction.
1926.859 Mechanical demolition.
1926.860 Selective demolition by explosives.

Subpart U—Blasting and Use of Explosives

1926.900 General provisions.
1926.901 Blaster qualifications.
1926.902 Surface transportation of explosives.
1926.903 Underground transportation of explosives.
1926.904 Storage of explosives and blasting agents.
1926.905 Loading of explosives or blasting agents.
1926.906 Initiation of explosive charges—electric blasting.
1926.907 Use of safety fuse.
1926.908 Use of detonating cord.
1926.909 Firing the blast.
1926.910 Inspection after blasting.
1926.911 Misfires.
1926.912 Underwater blasting.
1926.913 Blasting in excavation work under compressed air.
1926.914 Definitions applicable to this subpart.

Subpart V—Power Transmission and Distribution

1926.950 General requirements.
1926.951 Tools and protective equipment.
1926.952 Mechanical equipment.
1926.953 Material handling.
1926.954 Grounding for protection of employees.
1926.955 Overhead lines.
1926.956 Underground lines.
1926.957 Construction in energized substations.
1926.958 External load helicopters.
1926.959 Lineman's body belts, safety straps, and lanyards.
1926.960 Definitions applicable to this subpart.

Subpart W—Rollover Protective Structures; Overhead Protection

1926.1000 Rollover protective structures (ROPS) for material handling equipment.
1926.1001 Minimum performance criteria for rollover protective structures for designated scrapers, loaders, dozers, graders, and crawler tractors.
1926.1002 Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction.
1926.1003 Overhead protection for operators of agricultural and industrial tractors.

Subpart X—Stairways and Ladders

1926.1050 Scope, application, and definitions applicable to this subpart.
1926.1051 General Requirements.
1926.1052 Stairways.
1926.1053 Ladders.
1926.1054–1926.1059 [Reserved]
1926.1060 Training Requirements

APPENDIX A TO SUBPART X—LADDERS

Subpart Z—Toxic and Hazardous Substances

1926.1100 [Reserved]
1926.1101 Asbestos
1926.1102 Coal tar pitch volatiles; interpretation of term.
1926.1103 4-Nitrobiphenyl.
1926.1104 alpha-Naphthylamine.
1926.1105 [Reserved]
1926.1106 Methyl chloromethyl ether.
1926.1107 3.3'-Dichlorobenzidine (and its salts).
1926.1108 bis-Chloromethyl ether.
1926.1109 beta-Naphthylamine.
1926.1110 Benzidine.
1926.1111 4-Aminodiphenyl.
1926.1112 Ethyleneimine.
1926.1113 beta-Propiolactone.
1926.1114 2-Acetylaminofluorene.
1926.1115 4-Dimethylaminoazobenzene.
1926.1116 N-Nitrosodimethylamine.
1926.1117 Vinyl chloride.
1926.1118 Inorganic arsenic.
1926.1127 Cadmium.
1926.1128 Benzene.
1926.1129 Coke oven emissions.
1926.1144 1,2-dibromo-3-chloropropane.
1926.1145 Acrylonitrile.
1926.1147 Ethylene oxide.
1926.1148 Formaldehyde.

APPENDIX A TO PART 1926—DESIGNATIONS FOR GENERAL INDUSTRY STANDARDS

NOTE

(Due to printing errors in the section of the RECORD of September 18, 1996 pertaining to the Carjacking Correction Act, material was omitted. The permanent RECORD will be corrected to reflect the following.)

UNANIMOUS-CONSENT AGREEMENT—H.R. 3676, S. 2006, AND S. 2007

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now proceed to the consideration en bloc of H.R. 3676, which is at the desk, calendar 560, which is S. 2006, and calendar 561, which is S. 2007, that the bills be deemed read for a third time and passed, the motions to reconsider be laid on the table en bloc, and any statements relating to these bills appear at the appropriate point in the RECORD.

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

CARJACKING CORRECTION ACT OF 1996

A bill (H.R. 3676) to amend title 18, United States Code, to clarify the intent of Congress with respect to the Federal carjacking prohibition, was considered.

Mr. HATCH. Mr. President, I rise in strong support of the Carjacking Correction Act of 1996, a bill I introduced earlier this year in the Senate, the companion of which, H.R. 3676, has now come over from the House. This bill adds an important clarification to the Federal carjacking statute, to provide that a rape committed during a carjacking should be considered a serious bodily injury.

I am pleased to be joined in this effort by the ranking member of the Judiciary Committee, Senator BIDEN. He has long been a leader in addressing the threat of violence against women, and demonstrates that again today.

I also want to thank Representative JOHN CONYERS, the ranking member of the House Judiciary Committee, who brought this matter to my attention, and has led the effort in the House for passage of this legislation.

This correction to the law is necessitated by the fact that at least one court has held that under the Federal carjacking statute, rape would not constitute a ''serious bodily injury.'' Few crimes are as brutal, vicious, and harmful to the victim than rape by an armed thug. Yet, under this interpretation, the sentencing enhancement for such injury may not be applied to a carjacker who brutally rapes his victim.

In my view, Congress should act now to clarify the law in this regard. The bill I introduced this year, S. 2006, and its companion House bill, H.R. 3676, would do this by specifically including rape as serious bodily injury under the statute.

I urge my colleagues to support this bill, and anticipate its swift passage.

The bill (H.R. 3676) was ordered to a third reading, was read the third time, and passed.

CARJACKING CORRECTION ACT OF 1996

The bill (S. 2006) to clarify the intent of Congress with respect to the Federal carjacking prohibition, was considered.

Mr. HATCH. Mr. President, I rise in strong support of the Carjacking Correction Act of 1996, a bill I introduced earlier this year. This bill adds an important clarification to the Federal carjacking statute, to provide that a rape committed during a carjacking should be considered a serious bodily injury.

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the threat of violence against women, and demonstrates that again today.

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This correction to the law is necessitated by the fact that at least one court has held that under the Federal carjacking statute, rape would not constitute a ''serious bodily injury.'' Few crimes are as brutal, vicious, and harmful to the victim than rape by an armed thug. Yet, under this interpretation, the sentencing enhancement for such injury may not be applied to a carjacker who brutally rapes his victim.

In my view, Congress should act now to clarify the law in this regard. The bill I introduced this year, S. 2006, would do this, by specifically including rape as serious bodily injury under the statute.

I urge my colleagues to support this bill, and anticipate its swift passage.

The bill (S. 2006) was ordered to be engrossed for a third reading, was read the third time, and passed; as follows:

S. 2006

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 ''Carjacking Correction Act of 1996''.

SEC. 2. CLARIFICATION OF INTENT OF CONGRESS WITH RESPECT TO THE FEDERAL CARJACKING PROHIBITION.

Section 2119(2) of title 18, United States Code, is amended by inserting '', including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title'' after ''(as defined in section 1365 of this title)''.

CARJACKING CORRECTION ACT OF 1996

A bill (S. 2007) to clarify the intent of Congress with respect to the Federal carjacking prohibition, was considered.

Mr. BIDEN. Mr. President, I am very pleased that this bill will soon become law. I commend my cosponsor, Senator HATCH. And I also commend Representative CONYERS, who championed this bill over in the House, and with whom I was proud to work on it.

A few months ago, the first circuit court of appeals made a mistake. It made, in my view, a very big mistake: It said that the term ''serious bodily injury'' in one of our federal statutes does not include rape.

Let me tell you about the case. One night near midnight, a woman went to her car after work. While she was getting something out of the back seat, a man with a knife came up from behind and forced her back into the car. He drive her to a remote beach, ordered her to take off her clothes, and made her squat down on her hands-and-knees.

Then he raped her. After the rape, he drove off in her car, leaving her alone on the side of the road.

This man was convicted under the federal carjacking statute. That statute provides an enhanced sentence of up to 25 years if the defendant inflicts serious bodily injury in the course of a carjacking.

When it got time to sentence the defendant, the prosecutor asked the court to enhance the sentence because of the rape. Mind you, there was no dispute that the defendant had, in fact, raped the victim.

The trial judge agreed with the prosecutor, and gave the defendant the statutory 25 years maximum, finding that the rape constituted serious bodily injury.

But when the case went up to the first circuit, that court said 'no'—rape is not serious bodily injury. To support its ruling, and I'm now quoting the opinion, the court said that ''there was no evidence of any cuts or bruises in her vaginal area.''

That, in my view, is absolutely outrageous—and Senator HATCH and I proposed this bill to set matters straight.

Under the code, ''seriously bodily injury'' has several definitions. It includes: a substantial risk of death; protracted and obvious disfigurement; protracted loss or impairment of a bodily part or mental faculty; and it also includes extreme physical pain.

It takes no great leap of logic to see that a rape involves extreme physical pain. And I would go so far as to say that only a panel of male judges could fail to make that leap and even think—let alone rule—that rape does not involve extreme pain.

Rape is one of the most brutal and serious crimes any woman can experience. It is a violation of the first order, but it has all too often been treated like a second-class crime. According to a report I issued a few years ago, a robber is 30 percent more likely to be convicted than a rapist; a rape prosecution is more than twice as likely as a murder prosecution to be dismissed; a convicted rapist is 50 percent more likely to receive probation than a convicted robber.

No crime carries a perfect record of arrest, prosecution, and incarceration—but the record for rape is especially wanting.

And this first circuit decision helps explain why: too often, our criminal justice system just doesn't get it.

If the first circuit decision were allowed to stand, it would mean that a criminal would spend more time behind bars for breaking a man's arm than for raping a woman.

For 5 long years, I worked to pass a piece of legislation that I have cared about like no other: The Violence Against Women Act. The act does a great many practical things:

It funds more police and prosecutors specially trained and devoted to combating rape and family violence.

It trains police, prosecutors, and judges in the ways of rape and family violence—so they can better understand and respond to the problem;

It provides shelters for more than 60,000 battered women and their children;

It provides extra lighting and emergency phones in subways, bus stops and parks;

It provides for more rape crises centers;

It set up a national hotline that battered women can call around the clock—to get advice and counseling when they are in the throes of a crisis;

And we're getting rape education efforts going with our young people—so we can break the cycle of violence before it gets started.

But the Violence Against Women Act also meant to do something else, beyond these concrete measures: it also sent a clarion call across our land that crimes against women will no longer be treated as second class crimes.

For too long, the victims of these crimes have been seen not as innocent targets of brutality, but as participants who somehow bear shame or even some responsibility for the violence.

This is especially true when it comes to victims who know their assailants. For too long, we have been quick to call theirs a private misfortune rather than a public disgrace. We have viewed the crime as less than criminal, the abuser less than culpable, and the victim less than worthy of justice.

We must remain ever vigilant in our efforts to make our streets and our neighborhoods and our homes safe for women.

And we need to make sure—right now—that no judge ever misreads the carjacking statute again. With this bill, we are telling them that we intend, that we always intended, for those words ''serious bodily injury'' to mean rape—no if's, and's or but's.

I thank my colleagues for their support.

The bill (S. 2007) was ordered to be engrossed for a third reading, was read the third time, and passed; as follows:

S. 2007

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 ''Carjacking Correction Act of 1996''.

SEC. 2. CLARIFICATION OF INTENT OF CONGRESS WITH RESPECT TO THE FEDERAL CARJACKING PROHIBITION.

Section 2119(2) of title 18, United States Code, is amended by inserting '', including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title'' after ''(as defined in section 1365 of this title)''.

NATIONAL TRANSPORTATION SAFETY BOARD AMENDMENTS OF 1996

The text of the bill (H.R. 3159) to amend title 49, United States Code, to authorize appropriations for fiscal years 1997, 1998, and 1999 for the National Transportation Safety Board, and for other purposes, as passed by the

Senate on September 18, 1996, is as follows:

H.R. 3159

Resolved, That the bill from the House of Representatives (H.R. 3159) entitled ''An Act to amend title 49, United States Code, to authorize appropriations for fiscal years 1997, 1998, and 1999 for the National Transportation Safety Board, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—NTSB AMENDMENTS

SEC. 101. SHORT TITLE.

This title may be cited as the ''National Transportation Safety Board Amendments of 1996''.

SEC. 102. FOREIGN INVESTIGATIONS.

Section 1114 of title 49, United States Code, is amended—

(1) by striking ''(b) and (c)'' in subsection (a) and inserting ''(b), (c), and (e)''; and

(2) by adding at the end the following:

''(e) FOREIGN INVESTIGATIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose records or information relating to its participation in foreign aircraft accident investigations; except that—

''(A) the Board shall release records pertaining to such an investigation when the country conducting the investigation issues its final report or 2 years following the date of the accident, whichever occurs first; and

''(B) the Board may disclose records and information when authorized to do so by the country conducting the investigation.

''(2) SAFETY RECOMMENDATIONS.—Nothing in this subsection shall restrict the Board at any time from referring to foreign accident investigation information in making safety recommendations.''.

SEC. 103. PROTECTION OF VOLUNTARY SUBMISSION OF INFORMATION.

Section 1114(b) of title 49, United States Code, is amended by adding at the end the following:

''(3) PROTECTION OF VOLUNTARY SUBMISSION OF INFORMATION.—Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose voluntarily provided safety-related information if that information is not related to the exercise of the Board's accident or incident investigation authority under this chapter and if the Board finds that the disclosure of the information would inhibit the voluntary provision of that type of information.''.

SEC. 104. TRAINING.

Section 1115 of title 49, United States Code, is amended by adding at the end the following:

''(d) TRAINING OF BOARD EMPLOYEES AND OTHERS.—The Board may conduct training of its employees in those subjects necessary for the proper performance of accident investigation. The Board may also authorize attendance at courses given under this subsection by other government personnel, personnel of foreign governments, and personnel from industry or otherwise who have a requirement for accident investigation training. The Board may require non-Board personnel to reimburse some or all of the training costs, and amounts so reimbursed shall be credited to the appropriation of the 'National Transportation Safety Board, Salaries and Expenses' as offsetting collections.''.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

Section 1118(a) of title 49, United States Code, is amended—

(1) by striking ''and''; and

(2) by inserting before the period at the end of the first sentence the following: '', $42,400,00 for fiscal year 1997, $44,400,000 for fiscal year 1998, and $46,600,000 for fiscal year 1999.''.

TITLE II—INTERMODAL TRANSPORTATION

SEC. 201. SHORT TITLE.

This title may be cited as the ''Intermodal Safe Container Transportation Amendments Act of 1996''.

SEC. 202. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this title 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 title 49 of the United States Code.

SEC. 203. DEFINITIONS.

Section 5901 (relating to definitions) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) except as otherwise provided in this chapter, the definitions in sections 10102 and 13102 of this title apply.'';

(2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(3) by inserting after paragraph (5) the following:

''(6) 'gross cargo weight' means the weight of the cargo, packaging materials (including ice), pallets, and dunnage.''.

SEC. 204. NOTIFICATION AND CERTIFICATION.

(a) PRIOR NOTIFICATION.—Subsection (a) of section 5902 (relating to prior notification) is amended—

(1) by striking ''Before a person tenders to a first carrier for intermodal transportation a'' and inserting ''If the first carrier to which any'';

(2) by striking ''10,000 pounds (including packing material and pallets), the person shall give the carrier a written'' and inserting ''29,000 pounds is tendered for intermodal transportation is a motor carrier, the person tendering the container or trailer shall give the motor carrier a'';

(3) by striking ''trailer.'' and inserting ''trailer before the tendering of the container or trailer.'';

(4) by striking ''electronically.'' and inserting ''electronically or by telephone.''; and

(5) by adding at the end thereof the following: ''This subsection applies to any person within the United States who tenders a container or trailer subject to this chapter for intermodal transportation if the first carrier is a motor carrier.''.

(b) CERTIFICATION.—Subsection (b) of section 5902 (relating to certification) is amended to read as follows:

''(b) CERTIFICATION.—

''(1) IN GENERAL.—A person who tenders a loaded container or trailer with an actual gross cargo weight of more than 29,000 pounds to a first carrier for intermodal transportation shall provide a certification of the contents of the container or trailer in writing, or electronically, before or when the container or trailer is so tendered.

''(2) CONTENTS OF CERTIFICATION.—The certification required by paragraph (1) shall include—

''(A) the actual gross cargo weight;

''(B) a reasonable description of the contents of the container or trailer;

''(C) the identity of the certifying party;

''(D) the container or trailer number; and

''(E) the date of certification or transfer of data to another document, as provided for in paragraph (3).

''(3) TRANSFER OF CERTIFICATION DATA.—A carrier who receives a certification may transfer the information contained in the certification to another document or to electric format for forwarding to a subsequent carrier. The person transferring the information shall state on the forwarded document the date on which the data was transferred and the identity of the party who performed the transfer.

''(4) SHIPPING DOCUMENTS.—For purposes of this chapter, a shipping document, prepared by the person who tenders a container or trailer to a first carrier, that contains the information required by paragraph (2) meets the requirements of paragraph (1).

''(5) USE OF 'FREIGHT ALL KINDS' TERM.—The term 'Freight All Kinds' or 'FAK' may not be used for the purpose of certification under section 5902(b) after December 31, 2000, as a commodity description for a trailer or container if the weight of any commodity in the trailer or container equals or exceeds 20 percent of the total weight of the contents of the trailer or container. This subsection does not prohibit the use of the term after that date for rating purposes.

''(6) SEPARATE DOCUMENT MARKING.—If a separate document is used to meet the requirements of paragraph (1), it shall be conspicuously marked 'INTERMODAL CERTIFICATION'.

''(7) APPLICABILITY.—This subsection applies to any person, domestic or foreign, who first tenders a container or trailer subject to this chapter for intermodal transportation within the United States.''.

(c) FORWARDING CERTIFICATIONS.—Subsection (c) of section 5902 (relating to forwarding certifications to subsequent carriers) is amended—

(1) by striking ''transportation.'' and inserting ''transportation before or when the loaded intermodal container or trailer is tendered to the subsequent carrier. If no certification is received by the subsequent carrier before or when the container or trailer is tendered to it, the subsequent carrier may presume that no certification is required.''; and

(2) by adding at the end thereof the following: ''If a person inaccurately transfers the information on the certification, or fails to forward the certification to a subsequent carrier, then that person is liable to any person who incurs any bond, fine, penalty, cost (including storage), or interest for any such fine, penalty, cost (including storage), or interest incurred as a result of the inaccurate transfer of information or failure to forward the certification. A subsequent carrier who incurs a bond, fine, penalty, or cost (including storage), or interest as a result of the inaccurate transfer of the information, or the failure to forward the certification, shall have a lien against the contents of the container or trailer under section 5905 in the amount of the bond, fine, penalty, or cost (including storage), or interest and all court costs and legal fees incurred by the carrier as a result of such inaccurate transfer or failure.''.

(d) LIABILITY.—Section 5902 is amended by redesignating subsection (d) as subsection (e), and by inserting after subsection (c) the following:

''(d) LIABILITY TO OWNER OR BENEFICIAL OWNER.—If—

''(1) a person inaccurately transfers information on a certification required by subsection (b)(1), or fails to forward a certification to the subsequent carrier;

''(2) as a result of the inaccurate transfer of such information or a failure to forward a certification, the subsequent carrier incurs a bond, fine, penalty, or cost (including storage), or interest; and

''(3) that subsequent carrier exercises its rights to a lien under section 5905,

then that person is liable to the owner or beneficial owner, or to any other person paying the amount of the lien to the subsequent carrier, for the amount of the lien and all costs related to the imposition of the lien, including court costs and legal fees incurred in connection with it.''.

(e) NONAPPLICATION.—Subsection (e) of section 5902, as redesignated, is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by inserting before paragraph (2), as redesignated, the following:

''(1) The notification and certification requirements of subsections (a) and (b) of this section do not apply to any intermodal container or

trailer containing consolidated shipments loaded by a motor carrier if that motor carrier—

''(A) performs the highway portion of the intermodal movement; or

''(B) assumes the responsibility for any weight-related fine or penalty incurred by any other motor carrier that performs a part of the highway transportation.''.

SEC. 205. PROHIBITIONS.

Section 5903 (relating to prohibitions) is amended—

(1) by inserting after ''person'' a comma and the following: ''To whom section 5902(b) applies,'';

(2) by striking subsection (b) and inserting the following:

''(b) TRANSPORTING PRIOR TO RECEIVING CERTIFICATION.—

''(1) PRESUMPTION.—If no certification is received by a motor carrier before or when a loaded intermodal container or trailer is tendered to it, the motor carrier may presume that the gross cargo weight of the container or trailer is less than 29,001 pounds.

''(2) COPY OF CERTIFICATION NOT REQUIRED TO ACCOMPANY CONTAINER OR TRAILER.—Notwithstanding any other provision of this chapter to the contrary, a copy of the certification required by section 5902(b) is not required to accompany the intermodal container or trailer.'';

(3) by striking ''10,000 pounds (including packing materials and pallets)'' in subsection (c)(1) and inserting ''29,000 pounds''; and

(4) by adding at the end the following:

''(d) NOTICE TO LEASED OPERATORS.—

''(1) IN GENERAL.—If a motor carrier knows that the gross cargo weight of an intermodal container or trailer subject to the certification requirements of section 5902(b) would result in a violation of applicable State gross vehicle weight laws, then—

''(A) the motor carrier shall give notice to the operator of a vehicle which is leased by the vehicle operator to a motor carrier that transports an intermodal container or trailer of the gross cargo weight of the container or trailer as certified to the motor carrier under section 5902(b);

''(B) the notice shall be provided to the operator prior to the operator being tendered the container or trailer;

''(C) the notice required by this subsection shall be in writing, but may be transmitted electronically; and

''(D) the motor carrier shall bear the burden of proof to establish that it tendered the required notice to the operator.

''(2) REIMBURSEMENT.—If the operator of a leased vehicle transporting a container or trailer subject to this chapter is fined because of a violation of a State's gross vehicle weight laws or regulations and the lessee motor carrier cannot establish that it tendered to the operator the notice required by paragraph (1) of this subsection, then the operator shall be entitled to reimbursement from the motor carrier in the amount of any fine and court costs resulting from the failure of the motor carrier to tender the notice to the operator.''.

SEC. 206. LIENS.

Section 5905 (relating to liens) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL.—If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required, because of a violation of a State's gross vehicle weight laws or regulations, to post a bond or pay a fine, penalty, cost (including storage), or interest resulting from—

''(1) erroneous information provided by the certifying party in the certification to the first carrier in violation of section 5903(a) of this title;

''(2) the failure of the party required to provide the certification to the first carrier to provide it;

''(3) the failure of a person required under section 5902(c) to forward the certification to forward it; or

''(4) an error occurring in the transfer of information on the certification to another document under section 5902(b)(3) or (c), then the person posting the bond, or paying the fine, penalty, costs (including storage), or interest has a lien against the contents equal to the amount of the bond, fine, penalty, cost (including storage), or interest incurred, until the person receives a payment of that amount from the owner or beneficial owner of the contents, or from the person responsible for making or forwarding the certification, or transferring the information from the certification to another document.'';

(2) by inserting a comma and ''or the owner or beneficial owner of the contents,'' after ''first carrier'' in subsection 9(b)(1); and

(3) by striking ''cost, or interest.'' in subsection (b)(1) and inserting ''cost (including storage), or interest. The lien shall remain in effect until the lien holder has received payment for all costs and expenses described in subsection (a) of this section.''.

SEC. 207. PERISHABLE AGRICULTURAL COMMODITIES.

Section 5906 (relating to perishable agricultural commodities) is amended by striking ''Sections 5904(a)(2) an 5905 of this title do'' and inserting ''Section 5905 of this title does''.

SEC. 208. EFFECTIVE DATE.

(a) IN GENERAL.—Section 5907 (relating to regulations and effective date) is amended to read as follows:

''§ 5907. Effective date

''This chapter shall take effect 180 days after the date of enactment of the Intermodal Safe Container Transportation Amendments Act of 1996.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 59 is amended by striking the item relating to section 5907 and inserting the following:

''5907. Effective date''.

SEC. 209. RELATIONSHIP TO OTHER LAWS.

(a) IN GENERAL.—Chapter 59 is amended by adding at the end thereof the following:

''§ 5908. Relationship to other laws

''Nothing in this chapter affects—

''(1) chapter 51 (relating to transportation of hazardous material) or the regulations promulgated under that chapter; or

''(2) any State highway weight or size law or regulation applicable to tractor-trailer combinations.''.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by adding at the end thereof the following:

''5908. Relationship to other laws''.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT CONCERNING THE NATIONAL EMERGENCY WITH RESPECT TO ANGOLA—MESSAGE FROM THE PRESIDENT—PM 170

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

I hereby report to the Congress on the developments since March 25, 1996, concerning the national emergency with respect to Angola that was declared in Executive Order 12865 of September 26, 1993. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c).

On September 26, 1993, I declared a national emergency with respect to Angola, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the United Nations Participation Act of 1945 (22 U.S.C. 287c). Consistent with United Nations Security Council Resolution 864, dated September 15, 1993, the order prohibited the sale or supply by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles, equipment and spare parts, and petroleum and petroleum products to the territory of Angola other than through designated points of entry. The order also prohibited such sale or supply to the National Union for the Total Independence of Angola (''UNITA''). United States persons are prohibited from activities that promote or are calculated to promote such sales or supplies, or from attempted violations, or from evasion or avoidance or transactions that have the purpose of evasion or avoidance, of the stated prohibitions. The order authorized the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as might be necessary to carry out the purposes of the order.

1. On December 10, 1993, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued the UNITA (Angola) Sanctions Regulations (the ''Regulations'') (58 *Fed. Reg.* 64904) to implement the President's declaration of a national emergency and imposition of sanctions against Angola (UNITA). There have been no amendments to the Regulations since my report of March 25, 1996.

The Regulations prohibit the sale or supply by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles, equipment and spare

parts, and petroleum and petroleum products to UNITA or to the territory of Angola other than through designated points. United States persons are also prohibited from activities that promote or are calculated to promote such sales or supplies to UNITA or Angola, or from any transaction by any United States persons that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive order. Also prohibited are transactions by United States persons, or involving the use of U.S.-registered vessels or aircraft, relating to transportation to Angola or UNITA of goods the exportation of which is prohibited.

The Government of Angola has designated the following points of entry as points in Angola to which the articles otherwise prohibited by the Regulations may be shipped: *Airports:* Luanda and Katumbela, Benguela Province; *Ports:* Luanda and Lobito, Benguela Province; and Namibe, Namibe Province; and *Entry Points:* Malongo, Cabinda Province. Although no specific license is required by the Department of the Treasury for shipments to these designated points of entry (unless the item is destined for UNITA), any such exports remain subject to the licensing requirements of the Departments of State and/or Commerce.

2. The OFAC has worked closely with the U.S. financial community to assure a heightened awareness of the sanctions against UNITA—through the dissemination of publications, seminars, and notices to electronic bulletin boards. This educational effort has resulted in frequent calls from banks to assure that they are not routing funds in violation of these prohibitions. United States exporters have also been notified of the sanctions through a variety of media, including special fliers and computer bulletin board information initiated by OFAC and posted through the U.S. Department of Commerce and the U.S. Government Printing Office. There have been no license applications under the program.

3. The expenses incurred by the Federal Government in the 6-month period from March 26, 1996, through September 25, 1996, that are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Angola (UNITA) are reported to be about $227,000, most of which represents wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the U.S. Customs Service, the Office of the Under Secretary for Enforcement, and the Office of the General Counsel) and the Department of State (particularly the Office of Southern African Affairs).

I will continue to report periodically to the Congress on significant developments, pursuant to 50 U.S.C. 1703(c).

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 19, 1996*.

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 12:04 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2679. An act to revise the boundary of the North Platte National Wildlife Refuge, to expand the Pettaquamscutt Cover National Wildlife Refuge, and for other purposes.

H.R. 3060. An act to implement the Protocol on Environmental Protection to the Antarctic Treaty.

H.R. 3553. An act to amend the Federal Trade Commission Act to authorize appropriations for the Federal Trade Commission.

H.R. 3816. An act making appropriations for energy and water development for the fiscal year ending September 30, 1997, and for other purposes.

S. 533. An act to clarify the rules governing removal of cases to Federal court, and for other purposes.

S. 677. An act to repeal a redundant venue provision, and for other purposes.

At 12:55 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 3396. An act to define and protect the institution of marriage.

At 2:55 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 2977) to reauthorize alternative means of dispute resolution in the Federal administrative process, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. HYDE, Mr. GEKAS, Mr. FLANAGAN, Mr. CONYERS, and Mr. REED as the managers of the conference on the part of the House.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the senate:

H.R. 2594. An act to amend the Railroad Unemployment Insurance Act to reduce the waiting period for benefits payable under that act, and for other purposes.

H.R. 2940. An act to amend the Deepwater Port Act of 1974.

H.R. 3348. An act to direct the president to establish standards and criteria for the provision of major disaster and emergency assistance in response to snow-related events.

H.R. 3923. An act to amend title 49, United States Code, to require the National Transportation Safety Board and individual air carriers to take actions to address the needs of families of passengers involved in aircraft accidents.

At 4:27 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House of Representatives having proceeded to reconsider the bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortions, returned by the President of the United States with his objections, to the House of Representatives, in which it originated; that the said bill pass, two-thirds of House of Representatives agreeing to pass the same.

MEASURES PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

S.J. Res. 61. Joint resolution granting the consent of Congress to the Emergency Management Assistance Compact.

The following bill, previously received from the House of Representatives for the concurrence of the senate, was read the first and second times by unanimous consent and placed on the calendar:

H.R. 3640. An act to provide for the settlement of issues and claims related to the trust lands of the Torres-Martinez Desert Cahuilla Indians, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–4109. A communication from the President of the United States, transmitting, a request relative to the Department of Transportation; to the Committee on Appropriations.

EC–4110. A communication from the Under Secretary of Defense, transmitting, pursuant to law, a report regarding the H–1 Upgrades Program; to the Committee on Armed Services.

EC–4111. A communication from the Secretary of Defense, transmitting, a report concernining U.S. military personnel; to the Committee on Armed Services.

EC–4112. A communication from the Administrator of the Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, a rule regarding limes and avocados grown in Florida (received on September 18, 1996); to the Committee on Agriculture, Nutrition, and Forestry.

EC–4113. A communication from the Administrator of the Department of Agriculture, transmitting, pursuant to law, a rule entitled ''Title 7 Part 1789, Use of Consultants Funded by Borrowers,'' (RIN 0572–AB17), received on September 18, 1996; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4114. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to law, a rule (received on September 16, 1996); to the Committee on Commerce, Science, and Transportation.

EC–4115. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, three rules including one entitled ''Stability and Control of Medium and Heavy Vehicles'' (RIN 2127–AG06, 2127–AF90, 2115–AE47), received on September 16, 1996; to the Committee on Commerce, Science, and Transportation.

EC–4116. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, twelve rules including one entitled ''Airworthiness Directives; American Champion Aircraft

Corporation Models'' (RIN 2120–AA64, 2120–AA66), received on September 16, 1996; to the Committee on Commerce, Science, and Transportation.

EC–4117. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''Reef Fish Fishery of the Gulf of Mexico; Amendment 13'' (RIN 0648–AI71), received on September 16, 1996; to the Committee on Commerce, Science, and Transportation.

EC–4118. A communication from the Acting Director of the Office of Sustainable Fisheries of the National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law a rule regarding the end of the Pacific Whiting Regular season (received on September 16, 1996); to the Committee on Commerce, Science, and Transportation.

EC–4119. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report entitled ''Regulatory Actions Affecting Tourist Railroads;'' to the Committee on Commerce, Science, and Transportation.

EC–4120. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule regarding fisheries of the Caribbean (RIN 0648–AG89), received on September 17, 1996; to the Committee on Commerce, Science, and Transportation.

EC–4121. A communication from the Program Management Officer of the National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule regarding fisheries of the exclusive economic zone off Alaska (received on September 17, 1996); to the Committee on Commerce, Science, and Transportation.

EC–4122. A communication from the Program Management Officer of the National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule regarding fisheries of the exclusive economic zone off Alaska (RIN 0648–AI57), received on September 17, 1996; to the Committee on Commerce, Science, and Transportation.

EC–4123. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule regarding fisheries of the Caribbean (RIN 0648–AI20), received on September 17, 1996; to the Committee on Commerce, Science, and Transportation.

EC–4124. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''Northern Anchovy Fishery; Quotas for the 1996–97 Fishing Year'' (received on September 17, 1996); to the Committee on Commerce, Science, and Transportation.

EC–4125. A communication from the Acting Director of the Office of Sustainable Fisheries of the National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law a rule regarding fisheries off West Coast states and in the Western Pacific (received on September 17, 1996); to the Committee on Commerce, Science, and Transportation.

EC–4126. A communication from the Acting Director of the Office of Sustainable Fisheries of the National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule regarding fisheries off West Coast states and in the Western Pacific (received on September 17, 1996); to the Committee on Commerce, Science, and Transportation.

EC–4127. A communication from the Program Management Officer of the National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule regarding fisheries of the exclusive economic zone off Alaska (received on September 17, 1996); to the Committee on Commerce, Science, and Transportation.

EC–4128. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a report regarding U.S. exports to Australia; to the Committee on Banking, Housing, and Urban Affairs.

EC–4129. A communication from the Assistant to the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, a report with respect to the Small Business Regulatory Enforcement Fairness Act of 1996; to the Committee on Banking, Housing, and Urban Affairs.

EC–4130. A communication from the Chief Counsel of the Bureau of the Public Debt, Department of the Treasury, transmitting, pursuant to law, a rule entitled ''Government Securities Act Regulations: Large Position Rules'' (RIN 1505–AA53), received on September 13, 1996; to the Committee on Banking, Housing, and Urban Affairs.

EC–4131. A communication from the Legislative and Regulatory Activities Division of the Administrator of National Banks, Comptroller of the Currency, transmitting, pursuant to law, a report with respect to a rule entitled ''Community Development Corporation and Project Investments and Other Public Welfare Investments'' (RIN 1557–AB46), received on September 18, 1996; to the Committee on Banking, Housing, and Urban Affairs.

EC–4132. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–4133. A communication from the General Counsel of the Department of Energy, transmitting, pursuant to law, a rule regarding renewable resources (received on September 16, 1996); to the Committee on Energy and Natural Resources.

EC–4134. A communication from the General Counsel of the Department of Energy, transmitting, pursuant to law, a rule relative to the Western Area Power Administration (received on September 16, 1996); to the Committee on Energy and Natural Resources.

EC–4135. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report with respect to Revenue Ruling 96-47 (received on September 16, 1996); to the Committee on Finance.

EC–4136. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report with respect to Revenue Ruling 96-48 (received on September 16, 1996); to the Committee on Finance.

EC–4137. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation regarding military beneficiaries medicare reimbursement; to the Committee on Finance.

EC–4138. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, a Presidential Determination relative to POW/MIA Military Drawdown for Cambodia; to the Committee on Foreign Relations.

EC–4139. A communication from the Chief Judge of the United States Court of Veterans Appeals, transmitting, pursuant to law, the actuarial report for the year ending December 31, 1995; to the Committee on Governmental Affairs.

EC–4140. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, a report under the Government in the Sunshine Act for calendar year 1995; to the Committee on Governmental Affairs.

EC–4141. A communication from the Deputy Director of the Office of Personnel Management, transmitting, pursuant to law, a rule regarding prevailing rate systems (RIN 3206-AH59) received on September 17, 1996; to the Committee on Governmental Affairs.

EC–4142. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, a report regarding ammended routine use of Disaster Recovery Assistance Files; to the Committee on Governmental Affairs.

EC–4143. A communication from the National President of the Women's Army Corps Veterans Association, transmitting, pursuant to law, the report on financial statements for the year ended June 30, 1996; to the Committee on the Judiciary.

EC–4144. A communication from the Director of the Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, a rule regarding editorial amendments for classification and program review (RIN 1120-AA56) received on September 16, 1996; to the Committee on the Judiciary.

EC–4145. A communication from the Assistant Attorney General, transmitting, a proposal of draft legislation regarding capital offenses and Class A felonies involving murder; to the Committee on the Judiciary.

EC–4146. A communication from the Assistant Attorney General, transmitting, a proposal of draft legislation regarding capital offenses and Class A felonies involving murder; to the Committee on the Judiciary.

EC–4147. A communication from the Executive Director of the Martin Luther King Jr. Federal Holiday Commission, transmitting, the annual report for the calendar year 1996; to the Committee on the Judiciary.

EC–4148. A communication from the Assistant Secretary of Labor for OSHA, transmitting, pursuant to law, a rule regarding occupational exposure to asbestos (RIN 1218-AB25) received on September 18, 1996; to the Committee on Labor and Human Resources.

EC–4149. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the National Institute for Occupational Safety and Health (NIOSH) and Center for Disease Control and Prevention (CDC) annual reports for fiscal years 1993 and 1994; to the Committee on Labor and Human Resources.

EC–4150. A communication from the Assistant Attorney General in the Civil Rights Division, Department of Justice, transmitting, pursuant to law, a report with respect to a rule entitled ''Americans with Disabilities Act Accessibility Guidelines; Detectable Warnings,'' (RIN 3014-AA18) received on September 16, 1996; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S. 389. A bill for the relief of Nguyen Quy An and his daughter, Nguyen Ngoc Kim Quy.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Alan H. Flanigan, of Virginia, to be Deputy Director for Supply Reduction, Office of National Drug Control Policy.

Colleen Kollar-Kotelly, of the District of Columbia, to be United States District Judge for the District of Columbia.

(The above nominations were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

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

S. 2092. A bill to prohibit further extension or establishment of any national monument in Idaho without full public participation and an express Act of Congress, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. FAIRCLOTH:

S. 2093. A bill to require the Secretary of Health and Human Services to rescind approval of the District of Columbia's welfare reform waiver; to the Committee on Finance.

By Mr. HARKIN:

S. 2094. A bill to inform and empower consumers in the United States through a voluntary labeling system for wearing apparel and sporting goods made without abusive and exploitative child labor, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SIMON (for himself and Mr. PRYOR):

S. 2095. A bill to promote the capacity and accountability of Government corporations and Government sponsored enterprises; to the Committee on Governmental Affairs.

By Mr. LAUTENBERG (for himself, Mr. KERRY, and Mrs. BOXER):

S. 2096. A bill entitled the ''Environmental Crimes and Enforcement Act of 1996''; to the Committee on Environment and Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 2092. A bill to prohibit further extension or establishment of any national monument in Idaho without full public participation and an express Act of Congress, and for other purposes; to the Committee on Energy and Natural Resources.

IDAHO NATIONAL MONUMENT LEGISLATION

Mr. CRAIG. Mr. President, yesterday afternoon President Clinton stood on the edge of the Grand Canyon and proclaimed, by Executive order, through the National Antiquities Act, the designation of a national monument in southern Utah of 1.7 million acres.

Was his action illegal? No. It certainly was not, or it does not appear to be at this moment. What is frustrating to those of us in the West who have large expanses of public land is that the President sought no counsel, did not even consult with the Senators from Utah until the very last minute, did not talk to the Governor, to the State legislators or to the county commissioners in whose counties this large expanse of 1.7 million acres was involved. He simply stood on the banks or the edge of the Grand Canyon and proclaimed—yes, this is a device that was used by President Roosevelt who set aside the Grand Canyon years ago; it was a device that was oftentimes used prior to the enactment of the National Environmental Policy Act or the Federal Land Use Management Act, NEPA and FLMPA, because there was no certain public process to ensure the protection of valuable lands or, more importantly, to involve the public in them. The Congress simply had not moved in that direction at that time when the National Antiquities Act came about.

That is not the case today. In my opinion, the President yesterday standing on the edge of the Grand Canyon violated his public trust in failing to openly and publicly involve all of the necessary people in making this decision and making sure that private rights, property rights, water rights, grazing rights, mining rights, all of those kinds of things, were taken into consideration.

In fact, I stood at a press conference yesterday afternoon in which the Democrat Congressman from whose district this large expanse of land was proclaimed by the President yesterday, and he said that at 11 o'clock the night before he was on the phone with the President saying, ''But, Mr. President,'' and the President was saying, ''Oh, don't worry. We will take care of you here and we will take care of you there. We will protect hunting rights.''

Well, Mr. President, those kind of things do not exist in a national monument. You do not allow hunting. You do not allow grazing. You do not allow mining. Yet, this President, in the dark of night, in the wee hours before he was planning this great publicity event for his reelection, was telling the Democrat Congressman, ''I will take care of you,'' after the fact.

Now, the reason that was happening is because this President sought no public process. As certainly the Presiding Officer knows, over the last good number of years we have looked at a lot of public properties. We spent 10 years designating over 5 million acres of land in southern California as wilderness. I went to California three times in public hearings. It was thoroughly debated on the floor. All of the rights were taken care of.

Finally, this Congress acted and designated as wilderness a large chunk of the southern California desert. However, every issue was taken into consideration prior to that happening. That simply did not happen yesterday with this President. He was interested in the sound bite and the evening news and his politics and the campaign. He trampled all over the rights of citizens and all over the public process. I am saddened by that.

It is for that reason today I am introducing legislation that would deny him that right in the State of Idaho. I hope other Senators would join with me who have large expanses of public land that now might be at risk, because this President, for his environmental political gains, would select another piece of property. All I am saying is that the National Antiquities Act does not apply in Idaho unless there is a public process and unless the Congress agrees or consents or authorizes.

What is important here is that I am not denying what the President did. What I am denying is his right to do it in the back rooms in the dark of night, even with his own Secretary of Interior last Friday and through the weekend not being able to say that this, in fact, was going to happen.

It was the chief of staff of the White House, Leon Panetta, who finally called the Senators from Utah just before it happened and announced that it was going to happen. That should not happen. We want public process. This President has pounded us on public process. We will have public process in Idaho. I am not denying that some lands in Idaho might one day be selected as a national monument. But what I am saying is that the citizens of the State of Idaho, the Governor of the State of Idaho, the county commissioners, the congressional delegation, and this Congress, because it's public land, will participate in the process of making those decisions. We don't want this President, or any President, running roughshod over the State of Idaho, or any other State for that matter.

By Mr. FAIRCLOTH:

S. 2093. A bill to require the Secretary of Health and Human Services to rescind approval of the District of Columbia's welfare reform waiver; to the Committee on Finance.

DISTRICT OF COLUMBIA WELFARE LEGISLATION

Mr. FAIRCLOTH. Madam President, I rise today to introduce legislation that would rescind the approval granted in August to the District of Columbia's welfare waiver.

I would first like to acknowledge and I want to recognize the leadership of my colleague from Oklahoma, Senator NICKLES, who recently introduced similar legislation which would require the enforcement of a 5-year time limit on welfare benefits in the district.

Senator NICKLES' approach requires that the District live by the 5-year requirement. My legislation simply repeals the entire waiver.

Madam President, today's Washington Post reports that the waiver was completed just 2 days before the welfare bill became law. In fact, on July 31 when the District was given notice that the President was going to sign the welfare bill, the District sent its waiver application in within one week. Now, this is the fastest anything has ever happened in the District of Columbia. This is the one efficient thing they have ever done, getting their waiver papers in. The waiver application was granted within 2 weeks. Now, have you ever heard of the bureaucrats at HHS doing anything in 2 weeks? But they got this out.

Madam President, the whole episode is a sham. The District of Columbia is a flat joke that is not funny and its government is a laughingstock. Its welfare system is worse.

Madam President, it is apparent that the Clinton administration is not serious about welfare reform. The President signed the bill with his fingers crossed behind his back. He signed it because, according to Time magazine, the man who had his ear, his political consultant guru and advisor, Dick Morris, told him to sign it and got him to sign it.

It is crystal clear that should the Democrats regain control of Congress—which is not going to happen, but if they should—the welfare bill would be repealed immediately, and they as much as said so at the Chicago convention.

Madam President, it has gotten so bad in the District of Columbia you will be able to collect welfare for 15 years—for 15 years, as long as you are making a good-faith effort to find work.

Let me give you just an example or two of what finding work in the District of Columbia involves: Getting your driver's license is finding work; attending self-esteem classes is work. Now, where else in this country could attending self-esteem classes be called work?

Madam President, only in the District of Columbia would such a laughingstock of a welfare system continue. And only with the Clinton administration in power could it continue. Sadly, the joke is on us. The joke is on the people of this Nation. The joke is on the people of Kansas and North Carolina. They are the ones that are subsidizing and paying for the District of Columbia's folly.

We just passed a bill giving the District of Columbia $660 million. We do so every year. Now, how is the money used? It is not used. It is misused and it is thrown away at a rate that the average American could not understand.

They cannot open the schools on time. Only 52 percent of high school students actually graduate despite the fact they spend more money per student than any city in the United States—52 percent graduate. The District has the same number of public employees as the City of Chicago—which is five times larger. And Chicago is 5 times larger. Can you imagine a city when 1 of every 8 citizens is a city employee? It's a disaster. It has more employees per resident than any city in the Nation. They don't pave their roads, and they don't fix their roads. In fact, they are required, by law, to have a local match for Federal road money. But we had to waive that, too. Why did we have to waive it? Because they have thrown away their money on welfare, graft, and giveaway programs, and they simply don't have the money to match it. They have thrown it away in every conceivable way, such as fake employees and employees that don't work. One out of every 8 citizens is employed. They paid Medicaid payments to 20,00 people who weren't eligible; 20,000 people who weren't eligible, they paid it to. The water is contaminated. You have to get up in the morning and boil your water before you can drink it.

The prison system is notorious for its numerous escapes. In fact, it is not a prison system, it is a sieve. Mr. President, our capital is a disaster.

Now comes the mother of all bad ideas for the capital, and that is to give the District a massive tax cut. The concept is that people will move to the district, revenue will increase, and all will be fine.

First, the tax break will give a cushy tax break to the wealthy people who seek a nice tax shelter by maintaining a phony residence in Washington and living in Palm Beach.

Second, it will give all the overpaid bureaucrats that live here a tax break. But most important, the tax cut ignores what happens to the revenue. Will it be somehow be better spent, or will it be wasted, stolen, abused, and thrown away, as it is now? Of course, it will because we have done nothing to get to the root of the problem, which is the District's government and the people running it.

Mr. President, it has gotten so bad that a Los Angeles Times article on conditions in Washington opened with a quote from an Egyptian diplomat. He said:

> Every day here in Washington reminds me more and more of Cairo.

Doesn't that say it all? There isn't any way the city could be run worse.

Mr. President, the Nation's capital is just that. It belongs to the Nation. It was set apart as the District of Columbia by the Founding Fathers so that it would not become involved in local politics, and it has become a mishmash of bad local politics.

We need a capital that the people of America can be proud of, a capital that visitors from my State and every State can come to and feel safe. That isn't the case today. Rather than a massive tax cut, we need to seriously consider another form of government for the District—not home rule, not congressional rule, but input from the 50 States who are paying for the operation of this Capital City. It should be one we can be proud of, and it's one that we have to make continuous apologies for.

It is time for the people of this country to take control of it, as was intended by our forefathers. I think the sooner we do it the better.

By Mr. HARKIN:

S. 2094. A bill to inform and empower consumers in the United States through a voluntary labeling system for wearing apparel and sporting goods made without abusive and exploitative child labor, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE CHILD LABOR FREE CONSUMER INFORMATION ACT OF 1996

Mr. HARKIN. Mr. President, I rise to introduce the Child Labor Free Consumer Information Act of 1996, legislation to establish a voluntary labeling system to help inform American consumers whether wearing apparel or sporting goods they see on the store shelves are made without the use of abusive and exploitative child labor.

Although it is late in the session, I believe we should begin a substantive dialog about ending child labor right now. That is why I am introducing this legislation today. And I intend on reintroducing this measure at the beginning of the next Congress.

A WORLDWIDE SCOURGE

When I speak about child labor, I am not talking about children helping out on the family farm or running errands after school. I am speaking about children who are forced to work in hazardous and dangerous conditions—children denied the classroom and driven into the workrooms.

Child labor is a scourge around the world. But we can't dismiss the problem simply because it may occur an ocean away. We cannot ease our conscience by declaring it a ''them'' problem, because it is not. It is an ''us'' problem. And all of us can do something to stop it.

Take a moment to look around. Maybe it's the shirt you have on right now. Or the silk tie or blouse. Or the soccer ball you kick around with the kids in the backyard. Or the tennis shoes you wear on weekends.

Chances are that you have purchased something—perhaps many things—made with abusive and exploitative child labor. And chances are you were completely unaware that was the case. That is hardly surprising. Because the tag we see for items in our stores tell us how much we have to pay to buy it. But it doesn't tell us how much someone else had to pay to make it.

For example, the price tag on a soccer ball doesn't tell us that a young child in South Asia—perhaps no older than 5 years of age—paid to make it by working in cramped conditions, stitching together balls for hours at a time and a dollar a day.

Last year, the United States imported almost 50 percent of the wearing

apparel sold in America and the garment industry netted $34 billion. According to the Department of Commerce, last year the United States imported 494.1 million pairs of athletic footwear and produced only 65.3 million here at home.

Americans may ask, ''What does this have to do with us?'' It is quite simple. By protecting the rights of workers everywhere, we will be protecting jobs and opportunities here at home. A U.S. worker cannot compete with a 12 year old working 12 hours a day for 12 cents an hour.

PUBLIC SUPPORT

As I have traveled around the country and spoken with people about the issue of abusive and exploitative child labor, I have found that consumers—ordinary Americans—want to get involved. They want information. They want to know if products on the shelves are made by children. And they do not want to buy it if it is.

Public opinion polls back that up. According to a survey sponsored by Marymount University last year, more than three out of four Americans said they would avoid shopping at stores if they were aware that the goods sold there were made by exploitative and abusive child labor. Consumers also said that they would be willing to pay an extra $1 on a $20 garment if it were guaranteed to be made under legitimate circumstances.

Mr. President, consumers have spoken. They do not want to reward companies with their hard earned dollars by buying products made with abusive and exploitative child labor.

This body has also spoken. On September 23, 1993, the Senate put itself on record in opposition to the abhorrent practice of exploiting children for commercial gain. This body passed a sense-of-the-Senate resolution that I introduced which asserted that it should be the policy of the United States to prohibit the importation of products made with the use of abusive and exploitative child labor. This was the first step to ending child labor. Now it's time for the next.

LET THE BUYER BE AWARE

The Child Labor Free Consumer Information Act of 1996 will inform and empower American consumers by establishing a voluntary labeling system for wearing apparel and sporting goods made without abusive and exploitative child labor.

In my view, a system of voluntary labeling holds the best promise of giving consumers the information they want—and giving the companies that manufacture these products the recognition they deserve.

The centerpiece of this legislation is the establishment of a working group of members from the wearing apparel and sporting goods industries; labor organizations; consumer advocacy and human rights groups; along with the Secretaries of Commerce, Treasury, and Labor. This Child Labor Free Commission would establish a labeling standard and develop a system to assure compliance that items were not made with abusive and exploitative child labor.

In my view, Congress cannot do it alone through legislation. The Department of Labor cannot do it alone through enforcement. It takes all of us—from the private sector to labor and human rights groups—to take responsibility and work together to end abusive and exploitative child labor.

VOLUNTARY APPROACH

Let me be clear, companies can choose whether to use the label. This bill is not about big government telling the private sector what to do. It is based on the commonsense approach that a fully informed American consumer will make the right and moral choice and vote against abusive and exploitative child labor with their pocketbook.

We have seen such an approach work effectively with the Rugmark label for hand-knotted oriental carpets. It is operating in some European countries. Consumers who want to buy child labor-free carpets can just look for the Rugmark label.

Over 150,000 carpets have received the Rugmark label and been shipped to Germany. Rugmark licenses already provide 30 percent of German carpet imports from India. And I am pleased to say that there are now two wholesalers in New York that offer carpets with the Rugmark label.

BUILDING ON PROGRESS

Mr. President, the progress that has been made on eradicating abusive and exploitative child labor is irreversible. We must continue working together to end child labor for all. And I believe my bill provides a road map to reaching that goal.

It allows the consumer to know more about the products they buy and it gives companies that use the label the recognition they deserve. I urge my colleagues to support my bill.

Our Nation began this century by working to end abusive and exploitative child labor in America, let us close this century by ending child labor around the world.

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:

MARYMOUNT UNIVERSITY CENTER FOR ETHICAL CONCERNS

NEW GARMENT WORKERS STUDY FINDS AMERICANS INTOLERANT OF SWEATSHOPS IN GARMENT INDUSTRY

ARLINGTON, VA—Retailers selling clothing made in sweatshops operating in the United States could feel the ire of American consumers, suggests a new survey sponsored by Marymount University in Arlington, Virginia. The new study shows that consumers would avoid stores that sell goods made in sweatshops and be more inclined to shop at stores working actively to prevent garment worker abuses.

According to the survey, more than three-fourths of Americans would avoid shopping at stores if they were aware that the stores sold goods made in sweatshops. Consumers also are willing to pay a price for assurances that the goods they buy are not made in sweatshops. An overwhelming majority (84 percent) say they would be willing to pay up to an extra $1 on a $20 garment if were guaranteed to be made in a legitimate shop.

The study, sponsored by Marymount's Center for Ethical Concerns and the Department of Fashion Design and Merchandising, was prompted by the recent discovery of sweatshops operating in the United States in which illegal aliens smuggled into the country were forced to produce garments under almost slave labor conditions. In one factory, raided earlier this year by U.S. officials, workers had been confined in a barbed wire-enclosed compound and forced to work between 16 and 22 hours a day. Workers were paid less than $1 an hour and essentially held captive until they had repaid the cost of their passage to the United States, a process that took years in some cases.

Since these revelations, the U.S. Department of Labor has been working with retailers to encourage greater diligence in policing the industry voluntarily and plans in the near future to release a list of companies that have agreed to cooperate in these efforts. The new study shows that a substantial majority of Americans (66 percent) would be more likely to patronize stores that they know are cooperating with law enforcement officials to prevent sweatshops. If such a list were published, more than two-thirds (69 percent) of consumers say they would take this information into account when deciding where to do their shopping this holiday season.

''It is gratifying to know that Americans condemn these sweatshop conditions and are willing to demonstrate that commitment when they shop, even if it costs them a few pennies. The industry, including retailers, has a responsibility to make sure it is not selling garments made in sweatshops, and the public is willing to hold them accountable,'' said Sr. Eymard Gallagher, RSHM, president of Marymount University. ''Despite the competitiveness in the industry, we can't close our eyes to these kinds of conditions that we thought had disappeared years ago,'' she said.

The telephone survey of 1,008 randomly selected adults, was conducted by ICR Survey Research Group of Media, PA, at the request of Marymount. The survey has a margin of error of plus or minus 3 percentage points.

Marymount University's fashion design and fashion merchandising programs are among the leaders in this field in the United States. Marymount is an independent, Catholic university, emphasizing excellence in teaching, attention to the individual, and values and ethics across the curriculum. Located in Arlington, Virginia, Marymount enrolls 4,200 men and women in its 34 undergraduate and 24 master's degree programs.

STUDY BACKGROUND AND OBJECTIVES

United States officials recently discovered that workers who had been smuggled into this country were making garments in sweatshops where they were forced to work long hours under extremely poor working conditions for less than the minimum wage. As a result, this research was conducted to determine:

Whether respondents would avoid shopping at retailers if aware they sold garments made in sweatshops;

Whether respondents would be more inclined to shop in retail stores cooperating with law enforcement officials to prevent sweatshops;

Whether respondents would be willing to pay $1 more for a $20 garment if it were guaranteed to be made in a legitimate shop;

Whether respondents would be more likely this holiday season to shop in retail stores on a forthcoming list of retailers assisting authorities in their effort to end abuse of United States garment workers; and

Whether the manufacturers or the retailers should have the responsibility of preventing sweatshops.

RESEARCH METHODOLOGY

The research entailed a telephone interview insert in ICR Survey Research Group's EXCEL Omnibus. Each EXCEL includes a national random sample of approximately 1,000 adults (18+), half male and half female.

Interviewing was conducted from Friday, October 27 through Tuesday, October 31. A total of 1008 interviews were completed. Data has been weighted to reflect the U.S. population 18 years of age and older (188,700,000).

IN A NUTSHELL . . . HERE ARE THE FINDINGS; RETAILERS—BEWARE OF SWEATSHOP GARMENTS

Americans overwhelmingly support the idea of officials publishing a list of retailers who assist law enforcement agencies in their effort to end abuse of United States garment workers. Seven-in-ten respondents indicate they would be more likely to shop at the stores this holiday season that cooperate to end garment worker abuse. Consumers are willing to pay a price for assurances that goods they buy are not made in sweathshops. 84% of consumers would pay an additional $1 on a $20 item if they knew the garment was guaranteed to be made in a legitimate shop.

Most Americans (76%) blame the existence of sweatshops on the manufacturers who employ the contractors or workers. However, if consumers knew a retailer sold garments that were made in sweatshops, nearly eight-in-ten would avoid shopping there. As the holiday season starts to kick-off, retailers would be wise to ensure their garments were in fact made in legitimate shops. Given the potential for enticing customers with legitimately made garments, and the potential for losing customers if caught selling sweatshop-made garments, promoting legitimately made garments provides a strategic business opportunity for retailers.

By Mr. SIMON (for himself and Mr. PRYOR):

S. 2095. A bill to promote the capacity and accountability of Government corporations and Government sponsored enterprises; to the Committee on Governmental Affairs.

THE GOVERNMENT CORPORATION AND GOVERNMENT SPONSORED ENTERPRISE STANDARDS ACT

• Mr. SIMON. Mr. President, my involvement in the issue of student aid over the past few years has given me a greater understanding of so-called government-sponsored enterprises. I have been critical of Sallie Mae, the Student Loan Marketing Association, for its lobbying activities and its high salaries. Five years ago I began calling for the elimination of Sallie Mae's ties to the Government.

But I would like to go further in addressing this question of corporations that are connected in some way with the Federal government. How do they know when their purpose has been achieved, and their ties to the government should be cut? How do we make sure that they do not become so strong politically that the ties can never be cut? Should they be exempt from federal, state, and local taxes? Should the securities laws apply them?

Today, along with my colleague, Senator PRYOR, I am introducing a bill that would address these and other questions. The bill would establish standards for the creation of new Government-sponsored enterprises, those corporations that are created by Congress but are owned by private investors. The bill also would set guidelines for a very different type of corporation: those that are actually owned by taxpayers as a part of the Federal Government structure.

This legislation is the result of concerns raised by the National Academy of Public Administration. Harold Seidman, in House testimony on behalf of the Academy last year, pointed out that the Congress has not used any consistent criteria for determining when a government corporation is appropriate and when it is not. He also raised questions about some of the privileges that have been granted to Government-sponsored enterprises.

The purpose of this legislation is to ensure that, as Congress considers the creation of new government corporations and government-sponsored enterprises, it does so with its eyes wide open. It would also require some of these entities to plan for eventual privatization, and would force Congress to review their status on a regular basis.

I know that it is not possible for Congress to act on this legislation in these final weeks. But I hope some of my colleagues will take up where I have left off, and work to establish much-needed standards where Government intersects with business.•

By Mr. LAUTENBERG (for himself, Mrs. BOXER, and Mr. KERRY):

S. 2096. A bill entitled the ''Environmental Crimes and Enforcement Act of 1996''; to the Committee on Environment and Public Works.

THE ENVIRONMENTAL CRIMES AND ENFORCEMENT ACT OF 1996

• Mr. LAUTENBERG. Mr. President, today I am joined by Senator KERRY in introducing legislation, the Environmental Crimes and Enforcement Act of 1996, to increase penalties and strengthen enforcement for environmental crimes.

Mr. President, most Americans consider themselves environmentalists. Millions of Americans participate in voluntary recycling and do what they can to save the environment. Similarly, many companies spend substantial amounts to comply with environmental laws, and many do much more than required.

Mr. President, expenditures for environmental controls are a cost of business that, in the short run, can adversely affect a company's bottom line. But these controls benefit all Americans. They lead to cleaner water, cleaner air, safer employees and healthier children.

Mr. President, when a business invests in environmental protection to comply with our laws, it should not be placed at a competitive disadvantage as a result. That is, it shouldn't have to compete against other firms that save costs by disregarding their environmental responsibilities. But to protect against that kind of unfairness, Mr. President, Government must strongly enforce environmental laws. And that is what this bill will help ensure.

Mr. President, this bill was developed by the Department of Justice after consultation with State, local and Federal prosecutors from around the country. It is aimed at bad actors who violate our environmental laws purposely, intentionally, or with knowing disregard for the impact of their actions. These are not people who accidently miss a deadline or even negligently forget to file for a needed permit.

They are criminals who know what they're doing, and who generally are flouting our laws simply to make a buck.

Mr. President, we need to get tough with those who intentionally violate environmental laws. This bill would help in several ways.

The bill would make it a federal crime to attempt to violate our environmental laws. This would make it much easier to enforce these laws, and to prevent environmental degradation before it happens. Most federal laws, other than criminal environmental laws now include provisions for attempted criminality.

The legislation also would give federal prosecutors tools to work more effectively with their state counterparts. It would improve training of law enforcement personnel in the investigation of environmental crimes. It also would facilitate prosecution by extending the statute of limitations when a violator has tried to conceal environmental crimes.

Another provision in the legislation would allow judges to force environmental criminals to pay to clean up the mess they made. That, Mr. President, is only fair. If a child has to clean up his own room, surely a corporation should have to clean up their own mess when they intentionally dump toxic chemicals.

Finally, Mr. President, this legislation would give judges the authority to increase penalties when an environmental crime leads to serious injury or death. This should help deter the most serious abuses of our laws.

Mr. President, none of these proposals, by itself, will solve the problem of environmental crime. But, together, they would make a real difference. They would help improve the quality of our environment. And they would help protect the majority of law-abiding businesses that invest in environmental protection, and that abide by our laws in good faith.

Mr. President, over the past 20 years, our economy has grown considerably, but pollution has been reduced. This has occurred not only because Congress passed environmental legislation.

It has also occurred because of the creativity of our scientists and the commitment of American businesses. These law-abiding businesses, as I have said, deserve to be treated fairly. They should be rewarded for their diligence, not placed at an unfair competitive disadvantage.

Mr. President, I recognize, given the limited time remaining in the 104th Congress, that this legislation will not become law this year. However, I intend to work in the next Congress to have hearings on this bill, and I would welcome input from any interested parties.

Next year, I am hopeful that we can move in a bipartisan manner to make any needed improvements, and to enact this legislation into law as soon as possible.

Mr. President, I ask unanimous consent that a copy of the bill, S. 2096, and a section-by-section analysis be included in the RECORD.

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

S. 2096

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 ''Environmental Crimes and Enforcement Act of 1996''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) Federal investigation and prosecution of environmental crimes play a critical role in the protection of human health, public safety, and the environment;

(2) the effectiveness of environmental criminal enforcement efforts is greatly strengthened by close cooperation and coordination among Federal, State, local, and tribal authorities; and

(3) legislation is needed to facilitate Federal investigation and prosecution of environmental crimes and to increase the effectiveness of joint Federal, State, local, and tribal criminal enforcement efforts.

SEC. 3. JOINT FEDERAL, STATE, LOCAL, AND TRIBAL ENVIRONMENTAL ENFORCEMENT.

(a) Chapter 232 of title 18 is amended by adding after section 3673 the following new section 3674—

''§ 3674. Reimbursement of State, local, or tribal government costs for assistance in Federal investigation and prosecution of environmental crimes.

''(a) Upon the motion of the United States, any person who is found guilty of a criminal violation of the Federal environmental laws set forth in subsection (b) below, or conspiracy to violate such laws, may be ordered to pay the costs incurred by a State, local, or tribal government or an agency thereof for assistance to the Federal government's investigation and criminal prosecution of the case. Such monies shall be paid to the State, local, or tribal government or agency thereof and be used solely for the purpose of environmental law enforcement.

''(b) This subsection applies to a violation of any of the following statues, or conspiracy to violate any of the following statutes—

''(1) Section 14(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136*l*(b));

''(2) Section 16(b) of the Toxic Substances Control Act (15 U.S.C. § 2615(b));

''(3) Sections 10, 12, 13, and 16 of the Rivers and Harbors Appropriations Act of 1899 (33 U.S.C. §§ 403, 406, 407, 411);

''(4) Sections 309(c) and 311(b)(5) of the Federal Water Pollution Control Act (33 U.S.C. §§ 1319(c), 1321(b)(5));

''(5) Section 105(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1415(b));

''(6) Section 9(a) of the Act to Prevent Pollution from Ships (33 U.S.C. § 1908(a));

''(7) Section 4109(c) of the Shore Protection Act of 1988 (33 U.S.C. § 2609(c));

''(8) Sections 1423 and 1432 of the Safe Drinking Water Act (42 U.S.C. §§ 300h–2, 300i–1);

''(9) Sections 3008(d), 3008(e) and 3008(i) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6928(d), 6928(e), 6928(i));

''(10) Section 113(c) of the Clean Air Act (42 U.S.C. § 7413(c));

''(11) Sections 103(b) and 103(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9603(b), 9603(d));

''(12) Section 325(b)(4) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11045(b)(4));

''(13) Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1733(a)); or

''(14) Sections 5124, 60123(a), and 60123(b) of title 49, United States Code.''.

(b) The table of sections of chapter 232 of title 18, United States Code is amended by adding the following after the item relating to section 3673;

''3674. Reimbursement of State, local, or tribal government costs for assistance in Federal investigation and prosecution of environmental crimes.''.

SEC. 4. PROTECTION OF GOVERNMENT EMPLOYEES AND THE PUBLIC.

(a) Chapter 39 of title 18, United States Code, is amended by adding the following new section:

''§ 838. Protection of government employees and the public from environmental crimes.

''(a) Any person who commits a criminal violation of a Federal environmental law identified in this subsection that is the direct or proximate cause of serious bodily injury to or death of any other person, including a Federal, State, local or tribal government employee performing official duties as a result of the violation, shall be subject to a maximum term of imprisonment of twenty years, a fine of not more than $500,000, or both, and, if the defendant is an organization, to a fine of not more than $2,000,000. The laws to which this subsection applies are—

''(1) Section 309(c)(2), 309(c)(4), or 311(b)(5) of the Federal Water Pollution Control Act (33 U.S.C. §§ 1319(c)(2), 1319(c)(4), 1321(b)(5));

''(2) Section 105(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1415(b));

''(3) Section 1423 or 1432 of the Safe Drinking Water Act (42 U.S.C. §§ 300h–2, 300i–1);

''(4) Section 3008(d) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6928(d));

''(5) Section 113(c)(1) or 113(c)(2) of the Clean Air Act (42 U.S.C. §§ 7413(c)(1), 7413(c)(2));

''(6) Section 103(b) or 103(d) of the Comprehensive Response, Compensation, and Liability Act (42 U.S.C. §§ 9603(b), 9603(d));

''(7) Section 325(b)(4) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11045(b)(4)); or

''(8) Section 5124, 60123(a), or 60123(b) of title 49, United States Code.

''(b) Any person who commits a criminal violation of Federal environmental law identified in this subsection that is the direct or proximate cause of serious bodily injury to or death of any other person, including a Federal, State, local or tribal government employee performing official duties as a result of the violation, shall be subject to a maximum term of imprisonment of five years, a fine of not more than $250,000, or both, and, if a defendant is an organization, to a fine of not more than $1,000,000. The laws to which this subsection applies are—

''(1) Section 14(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136*l*(b)); or

''(2) Section 16(b) of the Toxic Substances Control Act (15 U.S.C. § 2615(b)).

''(c) For purposes of this section, the term ''serious bodily injury'' means bodily injury which involves—

''(1) unconsciousness;

''(2) extreme physical pain;

''(3) protracted and obvious disfigurement; or

''(4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

''(d) For purposes of this section, the term ''organization'' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.''

(b) The table of sections of chapter 39 of title 18, United States Code is amended by adding the following after the item relating to section 837:

''§ 838. Protection of government employees and the public from environmental crimes.''.

SEC. 5. ENVIRONMENTAL CRIMES TRAINING FOR STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT.

(a) This section may be cited as the ''Environmental Crimes Training Act of 1996''.

(b) The Administrator of the Environmental Protection Agency, as soon as practicable, within the Office of Enforcement and Compliance Assurance, shall establish the State, Local, and Tribal Environmental Enforcement Training Program to be administered by the National Enforcement Training Institute within the Office of Criminal Enforcement, Forensics and Training. This Program shall be dedicated to training State, local, and tribal law enforcement personnel in the investigation of environmental crimes at the Federal Law Enforcement Training Center (FLETC) in Glynn County, Georgia at the EPA-FLETC training center or other training sites which are accessible to State, local, and tribal law enforcement. State, local, and tribal law enforcement personnel shall include, among others, the following: inspectors, civil and criminal investigators, technical experts, regulators, government lawyers, and police.

SEC. 6. STATUTE OF LIMITATIONS.

(a) Chapter 213 of title 18, United States Code, is amended by adding after section 3294 the following new section—

''§ 3295. Felony environmental crimes.

''(a) No person shall be prosecuted, tried, or punished for a violation of, or a conspiracy to violate, any of the offenses listed in subsection (b) unless the indictment is returned or the information is filed within five years after the offense is committed; however, when a person commits an affirmative act that conceals the offense from any Federal, State, local, or tribal government agency, that person shall not be prosecuted, tried, or punished for a violation of, or a conspiracy to violate, any of the offenses listed below in subsection (b) unless the indictment is returned or the information is filed within five years after the offense is committed, or within three years after the offense is discovered by a government agency, whichever is

later but in no event later than eight years after the offense is committed.

''(b) This section applies to a violation of—

''(1) Section 309(c)(2), 309(c)(3), 309(c)(4), or 311(b)(5) of the Federal Water Pollution Control Act (33 U.S.C. §§1319(c)(2), 1319(c)(3), 1319(c)(4), 1321(b)(5));

''(2) Section 105(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. §1415(b));

''(3) Section 9(a) of the Act to Prevent Pollution from Ships (33 U.S.C. §1908(a));

''(4) Section 4109(c) of the Shore Protection Act of 1988 (33 U.S.C. §2609(c));

''(5) Section 1423 or 1432 of the Safe Drinking Water Act (42 U.S.C. §§300h–2, 300i–1);

''(6) Section 3008(d) or 3008(e) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6928(d), 6928(e));

''(7) Section 113(c)(1), 113(c)(2), 113(c)(3), or 113(c)(5) of the Clean Air Act (42 U.S.C. §§7413(c)(1), 7413(c)(2), 7413(c)(3), 7413(c)(5));

''(8) Section 103(b) or 103(d) of the Comprehensive Response, Compensation, and Liability Act (42 U.S.C. §§9603(b), 9603(d));

''(9) Section 325(b)(4) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11045(b)(4)); or

''(10) Section 5124, 60123(a), or 60123(b) of title 49, United States Code.''.

(b) The table of sections of chapter 213 of title 18, United States Code is amended by adding after the item referring to section 3294 the following new item—

''§3295. Felony environmental crimes.''.

SEC. 7. ATTEMPTS.

(a) Section 14(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §1361(b)) is amended by adding a new paragraph 14(b)(5)—

''(5) ATTEMPTS.—Any person who attempts to commit the conduct that constitutes an offense under paragraph (1) of this subsection shall be subject to the same penalties as those prescribed for such an offense.''.

(b) Section 16(b) of the Toxic Substances Control Act (15 U.S.C. §2615(b)), is amended by inserting ''(1)'' before ''Any'' and by adding the following new paragraph—

''(2) Any person who attempts to commit the conduct that constitutes any offense under paragraph (1) of this subsection shall be subject to the same penalties as those prescribed for such offense.''.

(c) Section 309(c) of the Federal Water Pollution Control Act (33 U.S.C. §1319(c)), is amended by adding after paragraph (7) the following new paragraph 309(c)(8)—

''(8) Any person who attempts to commit the conduct that constitutes any offense under paragraphs (2), (3) or (4) of this subsection shall be subject to the same penalties as those prescribed for such offense.''.

(d) Section 105(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. §1415(b)), is amended by striking ''and'' at the end of paragraph (1), striking the period at the end of (2)(B), and inserting ''; and'', and adding after paragraph (2) the following new paragraph—

''(3) Any person who attempts to commit the conduct that constitutes any offense under paragraph (1) of this subsection shall be subject to the same penalties as those prescribed for such offense.''.

(e) Section 9(a) of the Act to Prevent Pollution from Ships (33 U.S.C. §1908(a)), is amended by inserting ''(1)'' before ''(A)'' and by adding the following new paragraph—

''(2) Any person who attempts to commit the conduct that constitutes any offense under paragraph (1) of this subsection shall be subject to the same penalties as those prescribed for such offense.''.

(f) Section 3008 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6928), is amended by adding after subsection 3008(h) the following new subsection—

''(i) Any person who attempts to commit the conduct that constitutes any offense under subsections (d) or (e) of this section shall be subject to the same penalties as those prescribed for such offense.''.

(g) Section 113(c) of the Clean Air Act (42 U.S.C. §7413(c)), is amended by adding after paragraph 6 the following new paragraph—

''(7) Any person who attempts to commit the conduct that constitutes any offense under subsections (1), (2), or (3) of this section shall be subject to the same penalties as those prescribed for such offense.''.

SEC. 8. ENVIRONMENTAL CRIMES RESTITUTION.

(a) Section 3663(a)(1) of title 18, United States Code, is amended by striking ''or'' before ''section 46312'' and inserting ''or an environmental crime listed in section 3674 of this title,'' after ''section 3663A(c),''

(b) Subsection 3663(b) of title 18, United States Code, is amended by striking ''and'' at the end of paragraph (4), striking the period at the end of paragraph (5) and inserting ''; and'', and adding after paragraph (5) the following new paragraph—

''(6) in the case of an offense resulting in pollution of or damage to the environment, pay for removal and remediation of the environmental pollution or damage and restoration of the environment, to the extent of the pollution or damage resulting from the offense; in such a case, the term 'victim' in section 3663(a)(2) includes a community or communities, whether or not the members are individually identified.''.

THE ENVIRONMENTAL CRIMES AND ENFORCEMENT ACT OF 1996

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 sets out the short title of this bill, the ''Environmental Crimes and Enforcement Act of 1996.''

Section 2

Section 2 states the Congressional findings upon which the Act is based. Specifically, the findings are that environmental criminal enforcement plays a critical role in the protection of human health, public safety, and the environment, and that these efforts are greatly enhanced by close cooperation and coordination among Federal, State, local, and tribal authorities. The purpose of the legislation is to increase protection of the environment by strengthening Federal law enforcement and by increasing the effectiveness of joint Federal, State, local, and tribal criminal environmental enforcement efforts.

Section 3

Section 3 authorizes Federal district courts to order convicted criminals to reimburse States, localities, and tribes for costs they incur during Federal environmental prosecutions. Moneys paid to State, local, and tribal governments under this provision may be used solely for environmental law enforcement. This reimbursement provision applies to prosecutions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Toxic Substances Control Act (TSCA); the Rivers and Harbors Appropriations Act of 1899; the Federal Water Pollution Control Act; the Marine Protection, Research, and Sanctuaries Act; the Act to Prevent Pollution from Ships; the Shore Protection Act; the Safe Drinking Water Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Federal Land Policy and Management Act; and 49 U.S.C. §5124, relating to transportation of hazardous materials.

This provision will strengthen criminal environmental enforcement by fostering cooperative efforts among Federal, State, local, and tribal officials. State and local inspectors, and investigators often initiate what become Federal enforcement actions, and they continue to work with Federal officials through the trial stage. For example, State laboratories provide analytical support. Many State and local prosecutors participate in joint task forces and they sometimes are cross-designated as special assistant U.S. attorneys. Although certain State courts may award costs to State and local governments in State criminal proceedings, Federal courts are not now expressly authorized to order such reimbursement. Providing for reimbursement will greatly increase the ability of State, local, and tribal officials to cooperate in Federal criminal proceedings to address violations of environmental law. Joint enforcement efforts also make the Federal program more responsive to local communities.

Because the court may order reimbursement only upon motion of the United States, the discretion of both the Federal prosecutor and the court will serve as a check against unwarranted cost awards. Allowable costs are limited to those incurred by a State, local, or tribal government or agency for assistance to the Federal Government's investigation and prosecution of a case. Costs imposed on a defendant are payable directly to the State or local government in a manner analogous to the payment of restitution directly to the victims of a crime, thus obviating the need for a separate Federal fund or Federal administrator to collect and transfer the moneys.

Section 4

Section 4 provides for enhanced punishment where a criminal violation of specified environmental laws directly or proximately causes serious bodily injury or death to any person, including any Federal, State, local, or tribal government official.

Police officers, firefighters, paramedics, and other public safety and public health personnel often are the first on the scene of an environmental crime. In their efforts to protect others from harm, they themselves may suffer serious injury or death resulting from other people's criminal mishandling of dangerous materials or failure to comply with their legal duty to notify the government of releases of dangerous substances. Members of the public can also be injured or killed as a result of environmental crimes.

Section 4 will ensure that the criminals who cause this suffering will face an appropriately severe, enhanced punishment upon conviction. It does not establish a new or different crime, but instead provides for enhanced terms of imprisonment and enhanced fines for persons convicted of felony violations under specified Federal environmental laws where death or serious injury results. The laws covered by this provision are: the Federal Water Pollution Control Act; the Marine Protection, Research, and Sanctuaries Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Emergency Planning and Community Right-to-Know Act; and 49 U.S.C. §5124. The section also provides for enhanced penalties for environmental misdemeanors under the Federal Insecticide, Fungicide and Rodenticide Act and the Toxic Substances Control Act where death or serious injury results, thereby transforming those violations into felonies.

For enhanced punishment to be imposed, section 4 requires that the defendant commit the underlying environmental crime and that the crime be the direct or proximate

cause of serious bodily injury or death. The requirement of ''direct or proximate'' causation is in line with language used in other criminal provisions, see, e.g., 18 U.S.C. §844 (personal injury resulting from arson), and limits the sentence enhancement to appropriate cases. Those who commit environmental crimes, for example, by illegally storing hazardous waste, are on notice that their actions may cause serious injury or death to other persons. Unlike existing endangerment provisions in certain environmental statutes that apply to threatened injuries, Section 4 requires actual injury or death, but does not require that the defendant intend or know of the injury or death that the defendant's crime causes.

For the most part, the definition of ''serious bodily injury'' in Section 4 follows similar definitions in 18 U.S.C. §113 (assaults within maritime and territorial jurisdiction) and 18 U.S.C. §1365(g)(3) (tampering with consumer products). The definition in Section 4, however, does not include ''substantial risk of death.'' In other words, actual serious bodily injury or death (not just the risk of injury or death) must occur for enhanced punishment to be imposed under Section 4. Section 4 also includes ''unconsciousness'' within the definition of ''serious bodily injury,'' thereby conforming to the definition of that term in the Federal hazardous waste laws at 42 U.S.C. §6928(f)(6).

Section 4 specifically lists certain government employees whose death or injury could trigger enhanced punishment. This listing is not intended to exclude other persons, including other government employees, from the provision's coverage, but rather to emphasize that the specified government employees are exposed to special risks and are thus especially likely to benefit from the added deterrence and protection engendered by this provision.

Section 5

Section 5 responds to the urgent need expressed by State, local, and tribal officials for additional Federal training on environmental criminal enforcement. It establishes within the Environmental Protection Agency a separate program dedicated to the training of State, local, and tribal law enforcement personnel in the investigation of environmental crimes.

States and local governments are undertaking an expanded role in environmental enforcement, not only of their own laws but also of Federal statutes pursuant to delegated authority. The Pollution Prosecution Act of 1990 mandated that EPA deploy 200 criminal investigators across the country and establish the National Enforcement Training Institute (NETI) to train State, local, and tribal law enforcement in safe and effective investigation of environmental crimes. Section 5 will increase training for State, local, and tribal law enforcement officials and strengthen cooperative enforcement of the Nation's environmental laws. Under the mandate of the Pollution Prosecution Act of 1990, the Environmental Protection Agency has regularly trained State, local, and tribal investigators and regulatory personnel in courses conducted at the Federal Law Enforcement Training Center (FLETC) in Glynco, GA. The need and demand for such training, however, has been greatly increasing.

Section 6

Section 6 provides for an extension of the statute of limitations where a violator has engaged in affirmative acts of concealment of specified environmental crimes.

As is the case for most Federal crimes, Federal environmental crimes are currently subject to a five-year statute of limitations, which runs from the time the offense is committed. 18 U.S.C. §3282. Some environmental crimes, including some of the most egregious ones, involve affirmative acts of concealment by the wrongdoers. Criminals who are the most deceptive, and thus able to hide their wrongdoing the longest, are most likely to escape the legal consequences of their acts through expiration of the statute of limitations.

Section 6 addresses this problem for a specified list of felony violations of environmental statutes by extending the limitations period for up to three years beyond the traditional 5-year period when the defendant commits an affirmative act of concealment. In these circumstances, the limitation period extends to three years after discovery of the crime by the government. In no event does the limitations period extend beyond eight years after the offense was committed. This extended limitations period covers violations of various provisions under the Federal Water Pollution Control Act; the Marine Protection, Research, and Sanctuaries Act; the Act to Prevent Pollution from Ships; the Shore Protection Act; the Safe Drinking Water Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Emergency Planning and Community Right-to-Know Act; and 49 U.S.C. §5124.

For example, if a violator committed an affirmative act of concealment and the environmental crime were not discovered until three, four, or five years after it was committed, Section 6 would extend the statute of limitations to 6, 7, or 8 years after the crime was committed, respectively—that is, up to three years after the time of discovery with an eight year cap. If a violator committed an affirmative act of concealment, but the crime were nevertheless discovered by any Federal, State, local, or tribal government agency immediately after it was committed, there would be no extension under Section 6, and the limitations period would be the 5-year period running from the time the crime was committed. Similarly, where there was no affirmative act of concealment, the five-year period would apply and would run from commission of the crime.

The burden rests on the government to prove an affirmative act of concealment under Section 6.

Section 7

Section 7 amends specified environmental statutes to add attempt provisions. Under these new provisions, any person who attempts to commit an offense shall be subject to the same penalties as those prescribed for the offense itself.

The rationale for these new attempt provisions is similar to that for comparable provisions in other Federal criminal statutes. Under these existing attempt laws, when law enforcement authorities uncover planned criminal activity and a substantial step is taken towards the commission of the crime, the crime can be stopped before it is completed and the perpetrator may still be prosecuted. For example, Federal law makes attempted bank robbery a crime, punishable the same as bank robbery. 18 U.S.C. §2113(a). Similar attempt provisions exist for numerous other crimes, such as uttering a Treasury check with forged endorsement (18 U.S.C. §510); bank fraud (18 U.S.C. §1344); damage to government property (18 U.S.C. §1361); obstruction of court orders (18 U.S.C. §1509); and obtaining mail by fraud or deception (18 U.S.C. §1708).

There has been only one attempt provision in Federal environmental criminal enforcement statutes. As a result, Federal agents can be placed in the untenable situation of choosing between obtaining evidence necessary for a criminal prosecution and preventing pollution from occurring. For example, without an attempt statute, if agents stop a would-be environmental criminal from dumping hazardous waste, the perpetrator cannot be prosecuted for illegal dumping because no environmental crime has occurred. Only if the agents allow the dumping to occur, with the possibility of damage to the environment and risk to the public health, could the perpetrator be prosecuted for illegal dumping. These attempt provisions allow law enforcement personnel to stop environmental crimes before they are completed and still bring the wrongdoer to justice.

Attempt statutes serve another very important purpose in law enforcement, related to undercover investigations. Attempt statutes allow prosecution where a defendant purposely engages in conduct that would constitute the crime if the circumstances were as the defendant believes them to be. Undercover operations are widely recognized as a valuable tool to ferret out serious crimes, and attempt provisions will make undercover environmental investigations safer to the public by allowing the government to substitute benign substances for the dangerous substances that make the conduct illegal, but still prosecute for attempt the person who believes he is engaging in the illegal conduct.

The new language added by Section 7 is analogous to the attempt provision contained in the Federal drug laws. 21 U.S.C. §846. An attempt to commit the conduct constituting one of specified environmental criminal offenses is punished in the same manner as the offense itself.

Section 8

Section 8 amends the Federal restitution statutes to clarify the authority of the courts to provide for restitution to victims in environmental crimes cases.

Existing restitution statutes provide for restitution for bodily injury and property loss. Those categories of restitution address the harm suffered by victims of violent and economic crimes and are intended to make them whole for their physical injuries and pecuniary damages. The victims of environmental crimes also may suffer physical injuries and pecuniary losses. Indeed, environmental crimes often are economic crimes. At the same time, however, an environmental crime also may cause more widespread and longstanding damage, with the harm inflicted on all members of a community or communities affected by the environmental pollution or damage.

Section 8 clarifies the existing authority of the courts by including environmental offenses among the crimes explicitly enumerated in the restitution statutes. It makes plain that the costs of removal and remediation of environmental pollution or damage, and required restoration of the environment, are included within the coverage of that statute, to the extent of the pollution or damage resulting from the offense. This section recognizes that environmental crimes can harm entire communities and clarifies that the definition of ''victim'' in the restitution statutes may include all members of a community or communities, whether or not they are individually identified.

Section 9

Section 9 authorizes the government, after notice to the defendant, to seek an order from the court to prevent a defendant charged with an environmental crime from dealing with its assets in a manner that would impair its ability to pay for the harm caused by its environmental violations. The government bears the burden of establishing the costs involved, and the defendant may

avert such an order by showing that it retains sufficient assets to cover those costs or that it already has paid such costs. The Federal Rules of Criminal Procedure govern any proceedings under this section for an order to prevent the disposal or alienation of assets. Such an order expires at the point of sentencing, or of dismissal or acquittal of the prosecution.

This section expressly codifies the authority already available to a court under the All Writs Act, 28 U.S.C. §1651. It will prevent a defendant, during the pendency of criminal environmental charges, from concealing, disposing of, or otherwise dealing with its assets in such a manner that, if it is convicted and is ordered to pay the costs of the harm caused by its actions, sufficient assets no longer will be available for that purpose. If such authority were not available, defendants could easily thwart the purposes of the restitution provisions of this act and those found elsewhere in the law. Similar authority, to prevent the disposal of assets to pay for violations of law, can be found at 18 U.S.C. §1345 (Injunctions against Fraud). At the same time, the section allows a defendant that can show that defendant's other assets will be sufficient to pay for such harm, or that such costs already have been paid, to avoid being burdened by such an order.

SEC. 9. PREVENTION OF ALIENATION OR DISPOSAL OF ASSETS NEEDED TO REMEDY ENVIRONMENTAL HARMS CAUSED BY ENVIRONMENTAL CRIMES.

(a) Chapter 39 of title 18, United States Code, is amended by adding after section 838 the following new section—

"§ 839. Prejudgment orders to secure payment for environmental damage

''(a) At the time of filing of an indictment or information for the violation of any of the statutory provisions set forth in section 838(a) of this chapter, or at any time thereafter, if, after notice to the defendant, the United States shows probable cause to believe that—

(1) the defendant will conceal, alienate or dispose of property, or place property outside the jurisdiction of the Federal district courts; and,

(2) the defendant will thereby reduce or impair the defendant's ability to pay restitution, in whole or in part, including removal and remediation of environmental pollution or damage and restoration of the environment resulting from the statutory violation, the district court may order the defendant not to alienate or dispose of any such property, or place such property outside the jurisdiction of the Federal district courts, without leave of the court. The United States shall bear the burden of proving, by a preponderance of the evidence, the projected cost for the removal and remediation of the environmental pollution or damage and restoration of the environment.

''(b) Defenses—

The defendant may establish the following affirmative defenses to a motion by the government under this section—

(1) that the defendant possesses other assets sufficient to pay restitution, including the costs of removal and remediation of the environmental pollution or damage and restoration of the environment resulting from the statutory violation, provided that the defendant places those other assets under the control of the court, or

(2) that the defendant has made full restitution, including the removal and remediation of the environmental pollution or damage and restoration of the environment.

''(c) Procedures—

Any proceeding under this section is governed by the Federal Rules of Criminal Procedure.

''(d) Property Defined—

For the purposes of this section, ''property'' shall include—

(1) Real property, including things growing on, affixed to, and found in land; and,

(2) Tangible and intangible personal property, including money, rights, privileges, interests, claims, and securities.

''(e) Expiration of Order—

The court may amend an Order issued pursuant to this section at any time. In no event, however, shall the Order extend beyond sentencing, in the case of a conviction, or a dismissal or acquittal of the prosecution.

''(f) All Writs Act—

Nothing in this section diminishes the powers of the court otherwise available under section 1651 of title 28 United States Code, the All Writs Act.''.

(b) The table of sections of chapter 39 of Title 18, United States Code, is amended by adding after section 838, the following new section—

''§839. Prejudgment orders to secure payment for environmental damage.''.●

Mr. KERRY. Mr. President, I am proud to introduce today with my good friend Senator LAUTENBERG the Environmental Crimes and Enforcement Act of 1996. The American people have every right to expect their Government to protect their health and safety, and take swift action against those who choose to do harm. Our bill would strengthen efforts to ensure a safer, cleaner environment for the future and would enhance the Federal-State-local government partnership in fighting environmental crimes.

This administration has the strongest record in taking action against intransigent polluters, and it has collected among the biggest fines levied on those polluters in American history. However, for too long, many industrial polluters have gone largely unchecked and have consistently evaded responsibility for the severe damage they have done to our environment.

I would like to review quickly some of the more important provisions contained in our legislation.

One of the ground-breaking measures contained in this legislation is the provision amending existing environmental statutes to define the attempt to commit an offense as a crime, subject to the penalties of the offense itself. This makes environmental law consistent with other Federal criminal statutes. With only one exception, attempting to commit an environmental crime is itself not a Federal crime. It is this area of law enforcement that would greatly benefit from such provisions, which would in turn have the effect of better protecting the public's health and safety and our environment. Furthermore, this provision closes the gap between prosecution and environmental protection. In the past, law enforcement officials could not prosecute violators of environmental law until the crime was committed, causing damage to the environment and jeopardizing public health and safety. Now, would-be wrong-doers can be stopped and prosecuted before they do harm.

Let me provide you with a good example of how this would work, using a hypothetical case of hazardous waste dumping. While haulers are required by law to dispose of toxic materials in a permitted hazardous waste disposal facility, often renegade transporters dump in vacant lots, remote areas, and other unauthorized locales. Once they have received information that illegal dumping is occurring, Federal agents conduct surveillance of hazardous waste transporters. But, because there is no attempt provision in statutes defining environmental crimes, if agents prevent a transporter from dumping hazardous waste, the perpetrator cannot be prosecuted for illegal dumping because no environmental crime has occurred. Under current law, only by damaging the environment by allowing the hazardous waste dumping to occur, can the Government build a case to prosecute a person for illegal dumping. This does not make sense and we must change these laws.

This provision adds a new dimension to the protection of the environment: the capability of officials to engage in undercover operations. These investigations will allow Federal officials to conduct ''sting'' operations by substituting benign substances for the actual pollutants, and prosecute, to the fullest extent of the law, those violators who engaged in behavior they know to be illegal.

Another provision, and arguably the most important for cleaning up the environment in a fiscally responsible way, is the authority granted to Federal district courts to order convicted criminals to reimburse States, localities, and tribes for costs they incur during Federal environmental prosecutions. These recovered costs will be used exclusively for funding the enhancement of environmental law enforcement required in this bill.

Greater protection is also given to the first line of defense in many environmental crime scenes: police, firefighters, and public health personnel. This measure will strengthen the existing penalties for violations of the Clean Water Act, the Clean Air Act, the Community Right-to-Know Act, Superfund, the Marine Sanctuaries Act, and other key environmental statutes.

Our legislation also addresses the increasing need for additional training of law enforcement personnel. In response to the urgent requests of State, local, and tribal authorities, the Environmental Crimes and Enforcement Act would establish, under the Environmental Protection Agency, a separate program for environmental crimes investigations.

In addition, the act limits the effect of the affirmative acts of concealment that violators commit to prevent prosecution during the current statute of limitations for environmental crimes, which is 5 years. This bill extends the limitations period for up to 3 years beyond the traditional 5 years for cases in which the defendant deliberately conceals the original infraction.

This bill also adds environmental crimes to the list of statutes that provide for restitution to victims, such as violent and economic crime. The act recognizes that longstanding and widespread damage, in addition to the physical injuries and financial losses, may be caused by an environmental crime. The restitution provision includes the costs of removal and remediation of pollution and the necessary restoration of the environment.

Finally, the Environmental Crimes and Enforcement Act would authorize prosecutors to seize the assets of environmental criminals before conviction so that the defendant retains sufficient assets to make reparations. This measure ensures that environmental criminals cannot hide behind bankruptcy, or hide their assets so that the Government bears the burden of the cost of repairs.

Let me conclude, Mr. President, by saying that although this legislation is long overdue, the effects of it will be far-reaching. This issue is not only about the environment, it is about fiscal responsibility and taking responsibility for one's actions. This bill does not propose newer, stricter regulations, it does not call for any burdensome Federal mandates; it merely closes loopholes through which polluters have slipped for many years. Furthermore, it reduces the burden placed of Government to pay for environmental cleanups and places it firmly on the shoulders of the criminals, where it belongs. Once again, I complement the leadership of the Senator from New Jersey. It was a pleasure working together to develop this legislation, and I look forward to working with him to pass it.●

ADDITIONAL COSPONSORS

S. 1243

At the request of Mr. SPECTER, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 1243, a bill to provide educational assistance to the dependents of Federal law enforcement officials who are killed or disabled in the performance of their duties.

S. 1385

At the request of Mr. BREAUX, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1385, a bill to amend title XVIII of the Social Security Act to provide for coverage of periodic colorectal screening services under Part B of the Medicare program.

S. 1628

At the request of Mr. BROWN, the names of the Senator from New Hampshire [Mr. GREGG] and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 1628, a bill to amend title 17, United States Code, relating to the copyright interests of certain musical performances, and for other purposes.

S. 2047

At the request of Mr. HATCH, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 2047, a bill to amend the Internal Revenue Code of 1986 to modify the application of the pension nondiscrimination rules to governmental plans.

S. 2064

At the request of Ms. SNOWE, the name of the Senator from Kansas [Mrs. FRAHM] was added as a cosponsor of S. 2064, a bill to amend the Public Health Service Act to extend the program of research on breast cancer.

S. 2089

At the request of Mr. THOMAS, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 2089, a bill to transfer land administered by the Bureau of Land Management to the States in which the land is located.

SENATE RESOLUTION 274

At the request of Mrs. FEINSTEIN, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of Senate Resolution 274, a resolution to express the sense of the Senate regarding the outstanding achievements of NetDay96.

SENATE RESOLUTION 292

At the request of Mr. GRAHAM, the names of the Senator from North Dakota [Mr. DORGAN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Washington [Mrs. MURRAY], and the Senator from West Virginia [Mr. BYRD] were added as cosponsors of Senate Resolution 292, a resolution designating the second Sunday in October 1996 as ''National Children's Day,'' and for other purposes.

AMENDMENT NO. 5383

At the request of Mrs. HUTCHISON, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of amendment No. 5383 proposed to S. 39, a bill to amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

AMENDMENTS SUBMITTED

THE MARITIME SECURITY ACT OF 1996

GRASSLEY AMENDMENT NO. 5391

Mr. GRASSLEY proposed an amendment to the bill (H.R. 1350) a bill to amend the Merchant Marine Act, 1936 to revitalize the United States-flag merchant marine, and for other purposes; as follows:

At the appropriate place, insert the following new section:

SEC. . UNIFORM PAYMENT FOR HAZARDOUS DUTY.

Title III of the Merchant Marine Act, 1936 (46 App. U.S.C. 1131), as amended by section 10 of this Act, is further amended by adding at the end the following new section:

''SEC. 303. PAYMENT OF MERCHANT SEAMEN FOR HAZARDOUS DUTY.

''(a) IN GENERAL.—The Secretary of Transportation, in cooperation with the Secretary of Defense, shall establish a wage scale for hazardous duty applicable to an individual who is employed on a vessel that is used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including training purposes or testing for readiness and suitability for mission performance).

''(b) CONTENT OF WAGE SCALE.—The wage scale established under this section shall be commensurate with the incentive pay for hazardous duty provided to members of the uniformed services under section 301 of title 37, United States Code.''.

THE INDIAN HEALTH CARE IMPROVEMENT ACT AMENDMENT ACT OF 1996

MCCAIN AMENDMENT NO. 5392

Mr. STEVENS (for Mr. MCCAIN) proposed an amendment to the bill (H.R. 3378) to amend the Indian Health Care Improvement Act to extend the demonstration program for direct billing of Medicare, Medicaid, and other third party payors; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Indian Health Care Improvement Technical Corrections Act of 1996''.

(b) REFERENCES.—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 Indian Health Care Improvement Act.

SEC. 2. TECHNICAL CORRECTIONS IN THE INDIAN HEALTH CARE IMPROVEMENT ACT.

(a) DEFINITION OF HEALTH PROFESSION.—Section 4(n) (25 U.S.C. 1603(n)) is amended—

(1) by inserting ''allopathic medicine,'' before ''family medicine''; and

(2) by striking ''and allied health professions'' and inserting ''an allied health profession, or any other health profession''.

(b) INDIAN HEALTH PROFESSIONS SCHOLARSHIPS.—Section 104(b) of the Indian Health Care Improvement Act (25 U.S.C. 1613a(b)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking the matter preceding clause (i) and inserting the following:

''(3)(A) The active duty service obligation under a written contract with the Secretary under section 338A of the Public Health Service Act (42 U.S.C. 2541) that an individual has entered into under that section shall, if that individual is a recipient of an Indian Health Scholarship, be met in full-time practice, by service—'';

(ii) by striking ''or'' at the end of clause (iii);

(iii) by striking the period at the end of clause (iv) and inserting ''; or''; and

(iv) by adding at the end the following new clause:

''(v) in an academic setting (including a program that receives funding under section 102, 112, or 114, or any other academic setting that the Secretary, acting through the Service, determines to be appropriate for the purposes of this clause) in which the major duties and responsibilities of the recipient are the recruitment and training of Indian health professionals in the discipline of that recipient in a manner consistent with the purpose of this title, as specified in section 101.'';

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(C) by inserting after subparagraph (A) the following new subparagraph:

''(B) At the request of any individual who has entered into a contract referred to in subparagraph (A) and who receives a degree in medicine (including osteopathic or allopathic medicine), dentistry, optometry, podiatry, or pharmacy, the Secretary shall defer the active duty service obligation of that individual under that contract, in order that such individual may complete any internship, residency, or other advanced clinical training that is required for the practice of that health profession, for an appropriate period (in years, as determined by the Secretary), subject to the following conditions:

''(i) No period of internship, residency, or other advanced clinical training shall be counted as satisfying any period of obligated service that is required under this section.

''(ii) The active duty service obligation of that individual shall commence not later than 90 days after the completion of that advanced clinical training (or by a date specified by the Secretary).

''(iii) The active duty service obligation will be served in the health profession of that individual, in a manner consistent with clauses (i) through (v) of subparagraph (A).'';

(D) in subparagraph (C), as so redesignated, by striking ''prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) by service in a program specified in subparagraph (A)'' and inserting ''described in subparagraph (A) by service in a program specified in that subparagraph''; and

(E) in subparagraph (D), as so redesignated—

(i) by striking ''Subject to subparagraph (B),'' and inserting ''Subject to subparagraph (C),''; and

(ii) by striking ''prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m)'' and inserting ''described in subparagraph (A)'';

(2) in paragraph (4)—

(A) in subparagraph (B), by striking the matter preceding clause (i) and inserting the following:

''(B) the period of obligated service described in paragraph (3)(A) shall be equal to the greater of—''; and

(B) in subparagraph (C), by striking ''(42 U.S.C. 254m(g)(1)(B))'' and inserting ''(42 U.S.C. 254l(g)(1)(B))''; and

(3) in paragraph (5), by adding at the end the following new subparagraphs:

''(C) Upon the death of an individual who receives an Indian Health Scholarship, any obligation of that individual for service or payment that relates to that scholarship shall be canceled.

''(D) The Secretary shall provide for the partial or total waiver or suspension of any obligation of service or payment of a recipient of an Indian Health Scholarship if the Secretary determines that—

''(i) it is not possible for the recipient to meet that obligation or make that payment;

''(ii) requiring that recipient to meet that obligation or make that payment would result in extreme hardship to the recipient; or

''(iii) the enforcement of the requirement to meet the obligation or make the payment would be unconscionable.

''(E) Notwithstanding any other provision of law, in any case of extreme hardship or for other good cause shown, the Secretary may waive, in whole or in part, the right of the United States to recover funds made available under this section.

''(F) Notwithstanding any other provision of law, with respect to a recipient of an Indian Health Scholarship, no obligation for payment may be released by a discharge in bankruptcy under title 11, United States Code, unless that discharge is granted after the expiration of the 5-year period beginning on the initial date on which that payment is due, and only if the bankruptcy court finds that the nondischarge of the obligation would be unconscionable.''.

(c) CALIFORNIA CONTRACT HEALTH SERVICES DEMONSTRATION PROGRAM.—Section 211(g) (25 U.S.C. 1621j(g)) is amended by striking ''1993, 1994, 1995, 1996, and 1997'' and inserting ''1996 through 2000''.

(d) EXTENSION OF CERTAIN DEMONSTRATION PROGRAM.—Section 405(c)(2) (25 U.S.C. 1645(c)(2)) is amended by striking ''September 30, 1996'' and inserting ''September 30, 1998''.

(e) GALLUP ALCOHOL AND SUBSTANCE ABUSE TREATMENT CENTER.—Section 706(d) (25 U.S.C. 1665e(d)) is amended to read as follows:

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, for each of fiscal years 1996 through 2000, such sums as may be necessary to carry out subsection (b).''.

(f) SUBSTANCE ABUSE COUNSELOR EDUCATION DEMONSTRATION PROGRAM.—Section 711(h) (25 U.S.C. 1665j(h)) is amended by striking ''1993, 1994, 1995, 1996, and 1997'' and inserting ''1996 through 2000''.

(g) HOME AND COMMUNITY-BASED CARE DEMONSTRATION PROGRAM.—Section 821(i) (25 U.S.C. 1680k(i)) is amended by striking ''1993, 1994, 1995, 1996, and 1997'' and inserting ''1996 through 2000''.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. McCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will meet during the session of the Senate on Tuesday, September 24, 1996, beginning at 9:30 a.m. to conduct a hearing on tribal sovereign immunity issues. The hearing will be held in room 106 of the Dirksen Senate Office Building.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. McCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will meet during the session of the Senate on Wednesday, September 25, 1996, beginning at 1:30 p.m. to conduct a hearing on the phase-out of the Office of Navajo and Hopi Indian Relocation. The hearing will be held in room 485 of the Russell Senate Office Building.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

SPECIAL COMMITTEE ON AGING

Mr. COHEN. Mr. President, I wish to announce that the Special Committee on Aging, in conjunction with the Committee on Appropriations, will hold a hearing on Thursday, September 26, 1996, at 9 a.m., in room 216 of the Hart Senate Office Building. The hearing will discuss increasing funding for biomedical research.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate at 10:30 am on Thursday, September 19, 1996, and that the Subcommittee on Near Eastern and South Asian Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, September 19, 1996, at 2:30 p.m.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. PRESSLER. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, September 19, 1996, at 10 a.m. for a hearing on S. 1724, Freedom from Government Competition Act of 1996.

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

COMMITTEE ON THE JUDICIARY

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, September 19, 1996, at 10 a.m., to hold an executive business meeting.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, September 19, 1996, at 9:30 a.m. to hold an open hearing on intelligence matters.

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

SPECIAL COMMITTEE ON AGING

Mr. COHEN. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet during the session of the Senate on Thursday, September 19, 1996, at 9:30 a.m. to hold a hearing to discuss Social Security reform.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, September 19, 1996, at 2:30 p.m. to hold a closed conference on the fiscal year 1997 intelligence authorization bill.

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

SUBCOMMITTEE ON DRINKING WATER, FISHERIES AND WILDLIFE

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Subcommittee on Drinking Water, Fisheries and Wildlife be granted permission to conduct a hearing Thursday, September 19, 1996, at 9:30 a.m. in hearing room SD–406 on S. 1660, the National Invasive Species Act of 1996, and to solicit testimony on efforts to reduce the threat posed by nonindigenous aquatic nuisance species.

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

ADDITIONAL STATEMENTS

TRIBUTE TO ADM. BRUCE DEMARS

• Mr. WARNER. Mr. President, I rise today to recognize and honor Adm. Bruce DeMars, U.S. Navy, as he prepares to retire upon completion of over 40 years of faithful service to our Nation.

During his distinguished career, he played a pivotal role in ensuring the effective and efficient employment of nuclear powered warships in providing for the security of this Nation. Over the past 8 years, Admiral DeMars provided invaluable leadership to the Naval Nuclear Propulsion Program, enabling Navy aircraft carriers, submarines, and cruisers to protect a strong, forward-deployed strategic defense force.

Among his many successes in the Navy, Admiral DeMars served as the commanding officer of the USS *Cavalla* (SSN 684), commander, U.S. Naval Forces Marianas-U.S. Naval Base Guam, and the deputy chief of Naval Operations for Submarine Warfare. Ultimately, he was appointed Director, Naval Nuclear Propulsion, where he was instrumental in addressing the worldwide Soviet threat. With the dissolution of the Soviet Union, Admiral DeMars answered the challenge to maintain the technical excellence and uncompromising safety of the Naval Nuclear Propulsion Program, while adhering to the new fiscal realities of the post-cold-war era.

Admiral DeMars' leadership was crucial to the continued exceptional performance, safety, and environmental record of the Navy's nuclear-powered ships. Under his oversight, the Nation's nuclear-powered warships steamed over 40 million miles reliably and safely. Moreover, more than 20,000 sailors and officers were trained as nuclear plant operators. The success of the program was recognized by the President in April 1994, as he wrote, ''* * * The Naval Nuclear Propulsion Program, with its high standards and efficiency, exemplifies the level of excellence we are working toward throughout our government.'' I heartily agree with the President's assessment, and encourage all to follow the example set by the admiral.

Admiral DeMars modernized our nuclear-powered fleet. Thirty-five new nuclear-powered warships were completed on his watch, as well as the overhaul, refueling, or decommissioning of 98 ships. I commend him for meeting two diverse goals: achieving long-cost savings, while sustaining the industrial base in this highly specialized area.

Looking toward the future, the admiral steadfastly oversaw the development of the *Seawolf* attack submarine class. The recent, highly successful sea trials of the lead ship substantiate the high expectations for that class. The revolutionary developments embodied in the *Seawolf* will keep our Nation in the forefront of this critical area, and ongoing developments promise to further reduce the cost of the next generation of highly capable nuclear attack submarines.

Unfortunately, men of Admiral DeMars' caliber are few and far between.

Mr. President, I commend Admiral DeMars for a career of faithful service to his Nation. I wish him ''Fair Winds and Following Seas'' as he completes his honorable and distinguished service in the U.S. Navy.•

TRIBUTE TO GEORGETOWN UNIVERSITY'S NATIONAL SECURITY STUDIES PROGRAM AS IT CELEBRATES ITS 20TH ANNIVERSARY

• Mr. NUNN. Mr. President, this year marks the 20th anniversary of the National Security Studies Program at Georgetown University. I would like to take this opportunity to congratulate Dr. Stephen Gibert, the founder and current director of the National Security Studies Program, for his vision in establishing and running this highly successful program. In addition, I want to add my best wishes to the faculty, the administration, the program's graduates, and the current students as they celebrate this important milestone in the program's history.

The National Security Studies Program was started to provide military officers and civilian officials concerned with defense issues a high-quality graduate education with a concentration in national security studies. It represented an innovative and needed approach at that time. In the ensuing 20 years, the National Security Studies Program has kept pace with the changes that have occurred in the international security environment. As we move further along in the post-cold war era and encounter new types of threats to our Nation's security, it is encouraging to see that this program is sponsoring lectures on such timely issues as the proliferation of weapons of mass destruction, information warfare, terrorism, and computer security. The focus on new security threats complements a strong selection of courses offered by the National Security Studies Program in the categories of area studies, economics, and national security, as well as functional issues.

I have kept up with this program since its inception as a number of my staff have been students. In fact, my Armed Services Committee staff director, Arnold Punaro, is not only a graduate of the program but is also a member of its adjunct faculty. I want to extend my best wishes for continued success to the National Security Studies Program at Georgetown University as it prepares a future generation of America's national security leaders to meet the challenges of the 21st century.•

TRIBUTE TO WBEJ RADIO ON THEIR 50TH ANNIVERSARY

• Mr. FRIST. Mr. President, I rise today to salute WBEJ Radio for 50 great years of broadcasting excellence in Elizabethton and upper east Tennessee. This radio station has stood the test of time and has served its community as a source of entertainment, election coverage, local news, and national events. Over the years, WBEJ has undergone many technological and managerial changes and has become a pioneer in radio broadcasting by combining innovative technology with a genuine desire to provide reliable service to a growing community.

WBEJ made its debut in 1946 with the ''Swap and Shop'' show, which was sponsored by a local furniture store and acted as a radio-operated classified ad for the Elizabethton community. That show is still popular today and continues to bring citizens together to buy and trade items. Along with ''Swap and Shop,'' news broadcasts and local entertainment combined to form the early roots of success for the radio station. In the early days, local news was broadcast three times a day. Today, the news is broadcast more often and provides a wide range of coverage from across the State and the Nation. Outdoor enthusiasts have relied on WBEJ to provide accurate reports on the hunting and fishing conditions in the Elizabethton area, and families have sat glued to the radio waiting for details and information on events like Elvis' death, the blizzard of 1993 and the *Challenger* crash of 1986.

Mr. President, budding local musicians found a welcome studio and a receptive audience when they performed live on WBEJ decades ago. And listeners were entertained by the station's many radio personalities, such as ''Curley'' the postman and his sidekick ''Sgt. Jack.''

Bill Wilkins was a sportscaster for WBEJ and his catchy phrases and nicknames for local players became slogans for community athletic events. Phrases like ''get your tranquilizers ready,'' and ''the little blond bomber'' became popular terms for teams and athletes alike, and WBEJ sportcasters became regulars at the local high school athletic events with their play-by-play coverage. Over the years, the joy, sorrow, humor, and insight from all of these programs have been woven into the community's heart.

Mr. President, since 1946, WBEJ has been a part of every major event that has occurred in Tennessee and in the Nation. WBEJ has covered it all in a span of 50 years and has only gotten better with time. As such an important member of the Elizabethton community, WBEJ can celebrate its golden anniversary among many good and loyal friends. As Elizabethton continues to grow, I am certain that WBEJ will grow with it. It will maintain its high standards and strong foundation as it crosses the threshold into the 21st century. Dedication, philanthropy, foresight, and innovation have kept this Elizabethton station golden for 50 years and those same traits will carry it successfully into the future.•

REPEAL OF SECTION 434 OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

• Mr. MOYNIHAN. Mr. President, on September 16, I introduced legislation to repeal section 434 of the recently enacted Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Section 434 provides that:

> Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service (INS) information regarding the immigration status, lawful or unlawful, of an alien in the United States.

This provision conflicts with an executive order, issued by the mayor of New York in 1985, prohibiting city employees from reporting suspected illegal aliens to the Immigration and Naturalization Service unless the alien has been charged with a crime. The executive order, which according to a report in the September 12, 1996, New York Times is similar to local laws in other States and cities, was intended to ensure that fear of deportation does not deter illegal aliens from seeking emergency medical attention, reporting crimes, and so forth.

On September 8, 1995, during Senate consideration of H.R. 4, the Work Opportunity Act of 1995, Senators SANTORUM and NICKLES offered this provision as an amendment. The amendment was adopted by a vote of 91 to 6. The Senators who voted ''no'' were: AKAKA, CAMPBELL, INOUYE, MOSELEY-BRAUN, MOYNIHAN, and SIMON.

Four of these six—Senators AKAKA, MOSELEY-BRAUN, SIMON, and the Senator from New York—were also among the 11 Democrats who voted against H.R. 4 when it passed the Senate 11 days later on September 19, 1995. The provision remained in H.R. 3734, the welfare bill recently signed by President Clinton.

Last week, Mayor Rudolph W. Giuliani of New York announced that the city planned to challenge section 434 of the new welfare law in court.•

FISCAL YEAR 1997 TRANSPORTATION APPROPRIATIONS—HIGHWAY OBLIGATION AUTHORITY

• Mr. D'AMATO. Mr. President, the Senate completed action on the conference report for the Department of Transportation and related agencies appropriations bill yesterday, voting out the legislation 85 to 14. That bill, H.R. 3675, contained funding for the various transportation programs that this Nation undertakes—aviation, Coast Guard, highways, railroads, and transit. All in all, H.R. 3675 is a good bill for the United States and for the State of New York. However, Mr. President, as occurs in most pieces of legislation, it is not entirely perfect. In this respect, I must raise issue with a provision that was contained in the final version of this bill that will have serious adverse consequences on the State of New York.

When we considered this bill on the Senate floor in July, an amendment was debated and ultimately adopted that would require the Secretary of Transportation and the Secretary of the Treasury to investigate and report back to the Congress on the impact of and need to remedy an accounting error that was made in 1994 with respect to the crediting of receipts to the Highway Trust Fund. If uncorrected, this error had the potential to change the Federal highway obligation authority in a manner that would reconfigure highway funding for a number of States, allocating more dollars to States where the dollars were not supposed to go and away from States where the dollars were supposed to be allocated. The amendment that passed in the Senate corrected this error.

During the conference with the House of Representatives, this provision was not supported by a majority of conferees and was subsequently dropped. Even efforts to hold States harmless for the coming fiscal year because of this error were not agreed upon. Because of this, we are back where we started before the adoption of the amendment, with this accounting glitch in place and certain States in our Nation facing the denial of funding they deserve.

Unfortunately, New York is one of those States that will be denied its rightful amount of highway funding. The calculations that I have seen indicate that this uncorrected error will cost New York more than $100 million in Federal highway dollars that it should rightfully receive. This is not a small amount of money by any stretch. It is roughly 11 percent of the total highway funding New York should receive in the coming fiscal year. However, because of this accounting error, and because efforts to correct this error were not agreed upon in conference, those who travel New York's roadways will bear the brunt of this 11-percent cut.

It would be an understatement to say that I am displeased that this simple error was not able to be corrected in order to prevent any adverse impact on highway users in New York. However, the members of the conference committee were not inclined to accept the Senate amendment. While I do not agree with the decision by the conferees it is by no means an issue that has been solved.

In 1997, the Congress will be facing a multitude of issues involving the reauthorization of the Intermodal Surface Transportation Efficiency Act [ISTEA]. Issues involving funding allocations for the individual States will most assuredly be heavily discussed in the course of negotiations over any reauthorization bill. Perhaps this particular issue may need to be revisited in the context of that reauthorization. In the meantime, it still demands the attention and the action of the administration. Therefore, I intend to work with my colleagues whose States are similarly impacted as New York in an effort to remedy this Treasury Department accounting error.•

NIH REVITALIZATION ACT OF 1996

• Mrs. KASSEBAUM. Mr. President, due to time constraints, the report for the National Institutes of Health Revitalization Act of 1996, S. 1897, was filed prior to the receipt of the cost estimate from the Congressional Budget Office. The following is a letter from the Congressional Budget Office scoring the National Institutes of Health Revitalization Act of 1996, S. 1897. I ask unanimous consent that this letter be printed in the RECORD.

The letter follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 19, 1996.

Hon. NANCY LANDON KASSEBAUM,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1897, the National Institutes of Health Revitalization Act of 1996, as reported by the Committee on Labor and Human Resources on September 9, 1996.

Enactment of S. 1897 could affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1897.

2. Bill title: National Institutes of Health Revitalization Act of 1996.

3. Bill status: As reported by the Committee on Labor and Human Resources on September 9, 1996.

4. Bill purpose: S. 1897 would extend expiring provisions, eliminate duplicated or unnecessary advisory boards and reports, codify certain existing programs, and create new programs within the National Institutes of Health (NIH).

5. Estimated cost to the Federal Government: Assuming appropriation of the necessary funds, CBO estimates that the federal government would spend $31.6 billion over the fiscal years 1997–2002 period to implement the provisions of S. 1897.

Table 1 summaries the estimated authorizations and outlays that would result from S. 1897. The table provides the total authorizations and outlays under two different sets of assumptions. The first set of assumptions adjusts the estimated amounts for projected inflation after 1996, while the second set makes no allowance for projected inflation.

The bill could not affect direct spending by establishing the National Fund for Health Research. But S. 1897 does not specify a revenue source for this new trust fund, and no direct spending could occur until it receives funding.

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF S. 1897

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATIONS ACTION							
Spending under current law:							
Budget authority	8,042	36	37				
Estimated outlays	7,673	4,518	756	34	10		
WITH ADJUSTMENT FOR INFLATION							
Proposed changes:							
Authorization level		10,222	10,518	10,858			
Estimated outlays		4,431	9,394	10,607	6,103	1,016	33
Spending under S. 1897							
Authorization level	8,042	10,258	10,556	10,858			
Estimated outlays	7,673	8,950	10,150	10,641	6,113	1,016	33
WITHOUT ADJUSTMENT FOR INFLATION							
Proposed changes:							
Authorization level		10,132	10,132	10,169			
Estimated outlays		4,390	9,183	10,118	5,745	953	31
Spending under S. 1897:							
Authorization level	8,042	10,168	10,169	10,169			
Estimated outlays	7,673	8,909	9,939	10,152	5,755	953	31

The cost of this bill fall within function 550.

6. Basis of the estimate: Most of the authorizations in the bill are for ''such sums as may be necessary.'' For these, the estimated costs for 1997–1999 are based on 1996 appropriations (with and without adjustments for inflation). The authorization for general activities of the National Cancer Institute and the authorizations for the National Institute on Aging, the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, the National Institute of Mental Health, the National Library of Medicine, and Parkinson's reearch are for specified amounts for 1997 and such sums as may be necessary for 1998 and 1999. For these programs, the estimated costs in 1998 and 1999 are based on the 1997 authorization, with and without adjustments for inflation.

1The authorized amount for the pediatric research initiative is 450 million over the whole 1997–1999 period. Finally, S. 1897 would authorize for diabetes research each year from 1997 through 1999 the amount appropriated for this purpose in 1996 increased by 25 percent.

The estimate reflects these specific authorizations. Table 2 displays the authorizations estimated for each program with adjustments for inflation.

TABLE 2.—ESTIMATED AUTHORIZATION LEVELS WITH ADJUSTMENTS FOR INFLATION

[By fiscal year, in millions of dollars]

	1997	1998	1999
TITLE I AND II—PROVISIONS RELATING TO THE NATIONAL INSTITUTES OF HEALTH AND TO THE NATIONAL RESEARCH INSTITUTES			
Director's Discretionary Fund	12	12	13
Children's Vaccine Initiative	19	19	20
Research on Osteoporosis, Paget's Disease, and Related Bone Disorders	120	124	128
National Human Genome Research Institute [1]	175	180	185
TITLE III—SPECIFIC INSTITUTES AND CENTERS			
National Cancer Institute:			
Institute reauthorizations	3,456	3,560	3,664
DES study [2]	8	9	9
National Heart Lung and Blood Institute	1,600	1,647	1,695
National Institute of Allergy and Infectious Diseases:			
Research regarding tuberculosis	0	0	38
Terry Beirn community-based AIDS research initiative	26	27	27
National Institute of Child Health and Human Development:			
Research centers for contraception and infertility	5	5	5
National Institute on Aging	550	567	583
National Institute on Alcohol Abuse and Alcoholism	330	340	350
National Institute on Drug Abuse	480	494	508
National Institute of Mental Health	750	772	794
National Center for Research Resources:			
Authorizations—biomedical and behavioral research facilities	21	21	22
General clinical research centers	150	155	159
Enhancement awards	1	1	1
National Library of Medicine	160	165	170
TITLE IV, V, AND VI—AWARDS AND TRAINING, AIDS RESEARCH, AND GENERAL PROVISIONS			
AIDS Loan Repayment Program and Increase in Maximum Repayment	1	1	1

TABLE 2.—ESTIMATED AUTHORIZATION LEVELS WITH ADJUSTMENTS FOR INFLATION—Continued

[By fiscal year, in millions of dollars]

	1997	1998	1999
General Loan Repayment Program	2	2	2
Clincial Research Assistance [3]	1	1	1
Comprehensive Plan for Expenditure of AIDS Appropriations	1,453	1,499	1,547
Emergency AIDS discretionary fund	10	11	11
National Research Service Awards	408	421	435
National Foundation for Biomedical Research	([4])	([4])	([4])
Establishment of a Pediatric Research Initiative	17	17	17
Diabetes Research	387	387	387
Parkinson's Research	80	80	80
Total	10,222	10,518	10,858

[1] S. 1897 would create the National Human Genome Research Institute and transfer to it all obligations and balances of the National Center for Human Genome Research. In addition, the bill would provide the authorization estimated above.

[2] The National Institute of Child Health and Human Development and the National Institute of Environmental Health Sciences also participate in the DES program. However, approximately 80 percent of the program's spending is attributable to the National Cancer Institute.

[3] The amounts shown include both the costs that would result from the expansion of the loan programs in Title IV as well as their authorization under Title VI. In addition, the bill currently authorizes the loan program regarding clinical researchers indefinitely. However, it is CBO's understanding that the committee intended to provide authorization only through 1999.

[4] Costs of less than $500,000.

Titles I and II

Director's Discretionary Fund. S. 1897 would authorize appropriations, of such sums as may be necessary over the 1997–1999 period for the Director's discretionary fund within the Office of the Director of NIH. The fund enables the Director to respond to emerging research opportunities and health priorities. In addition, the Director uses the funds to support several awards and seminars. Funding for these activities in 1996 was $11 million.

Children Vaccine Initiative. The bill would also reauthorize the Children's Vaccine Initiative, extending funding through 1999. The National Institute on Allergy and Infectious Disease (NIAID), the National Institute on Child Health and Human Development, and the National Institute on Aging are also included in this initiative, but currently NIAID is the only institute participating. If funding at the 1996 level adjusted for inflation, CBO estimates this program would cost $57 million over the three-year period.

Osteoporosis, Paget's Disease and Related Bone Disorders. The bill would also reauthorize through 1999 the coordinated research program on osteoporosis, Paget's disease, and related bone disorders. This program is coordinated by the Directors of the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Institute on Aging, the National Institute of Dental Research, and the National Institute of Diabetes and Digestive and Kidney Diseases, and includes participation by several of the other institutes and centers. If funded at the 1996 level adjusted for inflation, this program would cost $372 million over the three-year period.

National Human Genome Research Institute. S. 1897 would create the National Human Genome Research Institute and transfer to it all functions, employees, assets, liabilities, contracts, and records that the National Center for Human Genome Research (NCHGR) performed and held before the enactment of this legislation. Giving the NCHGR the status of an institute would allow it to make awards of $100,000 or less without Advisory Council approval, to establish less extensive and time-consuming clearance requirements in the publication process: to complete for funds solely designated for research performed by institutes; and other freedoms. The bill would authorize this institute from 1997 through 1999. Based on the 1996 appropriation for the NCHGR adjusted for inflation, CBO estimates this authorization would cost $450 million over the three-year period.

Title III

Reauthorizations. This title would reauthorize all of the institutes and centers of NIH through 1999. The estimated authorizations with adjustments for inflation are shown in Table 2. They total $23.3 billion over the 1997–1999 period.

DES Program. S. 1897 would reauthorize from 1997 through 1999 the DES program, which conducts and supports research and training, the dissemination of health information, and other programs with respect to the diagnosis and treatment of conditions associated with exposure to the drug diethylstilbestrol (DES). Participating institutes include the National Cancer Institute, the National Institute of Child Health and Human Development, and the National Institute of Environmental Health Sciences. In 1996, 80 percent of the spending occurred in the National Cancer Institute. CBO estimates this provision would cost $26 million over the three-year period, assuming appropriations at the 1996 level adjusted for inflation.

General Clinical Research Centers. The bill would codify the existing General Clinical Research Centers and authorize them from 1997 through 1999. The Director of the National Center for Research Resources (NCRR) awards grants for these centers, which provide the infrastructure for clinical research. The centers support clinical studies and career development in all settings of the hospital or academic medical center involved. Funding for this program in 1996 was $146 million.

Enhancement Awards. The bill would also require the Director of NCRR to create two grant programs called the Clinical Research Career Enhancement Award and the Innovative Medical Science Award. The Clinical Research Enhancement Awards would support

individual careers in clinical research, with grants not to exceed $130,000 per year per grant. The Innovative Medical Science Awards would support individual clinical research projects, with grants not to exceed $100,000 per year per grant. The Director of NIH, together with the Director of the NCRR, would establish a peer review mechanism to evaluate applications for clinical research fellowships, Clinical Research Enhancement Awards, and Innovative Medical Science Awards. The bill would authorize these programs from 1997 through 1999. Based on information provided by the NCRR, CBO estimates these grants would cost $3 million over the three-year period.

Titles IV, V, and VI

Loan Repayment Programs. S. 1897 would raise the maximum amount given to NIH to repay the educational loans of qualified health professionals who agree to conduct AIDS research, contraception and infertility research, and research generally as employees of NIH. The maximum loan repayment amount for clinical researchers would also be raised. The maximum loan repayment for each year of service would be increased from $20,000 to $35,000. Based on the number of researchers that would be affected by the loan repayment increase, CBO estimates increasing the maximum loan amount would cost $1 million over the three-year period. In addition, the bill would reauthorize from 1997–1999 the loan repayment program fro research with respect to AIDS. If funded at the 1996 level, CBO estimates the authorization would cost $2 million over the three-year period.

The bill would also establish a general loan repayment program. Like the other loan repayment programs, the Secretary of HHS would act through the Director of NIH and enter into agreements with qualified health professionals to conduct research identified by the Director. The Federal government would repay not more than $35,000 of the principal and interest of the educational loans of such professionals for each year of service. The loan repayment agreement would be for a minimum of two years. The bill authorizes funding for this program from 1997 through 1999. The Office of the Director projects that it would spend approximately $1.5 million per year as a result of this program. Based on this information, CBO estimates this new loan repayment program would cost $5 million over the three-year period.

S. 1897 would increase the cumulative number of contracts permitted for scholarships and loan repayments for the undergraduate scholarship program of the National Research Institutes and the loan repayment program for clinical researchers. Under current law, 50 such contracts are authorized from 1994 through 1996; the bill would increase the cumulative limit to 100 for the 1994 through 1999 period. It would also reauthorize these programs from 1997 through 1999. Based on past spending by these programs, CBO estimates that adding 50 contracts would cost $3 million over the 1997–1999 period.

AIDS Research. S. 1897 would reauthorize comprehensive AIDS research by the institutes and the AIDS emergency discretionary fund from 1997 through 1999. The emergency discretionary fund is used by the Director of the Office of AIDS Research to fund additional AIDS research the Director determines is needed. Assuming that appropriations are provided at the 1996 level adjusted for inflation, CBO estimates this provision would cost a total of $4,530 million over the three-year period.

National Research Service Awards. The bill would reauthorize the National Research Service Awards from 1997 through 1999. These awards are given for biomedical and behavioral research and training at NIH, at public and nonprofit entities, and for pre-doctoral and post-doctoral training of individuals to undertake biomedical and behavioral research. The Office of the Director estimates that NIH will spend $395 million on these awards in 1996. Assuming this level of spending adjusted for inflation, CBO estimates this provision would cost $1,265 million over the three-year period.

National Foundation for Biomedical Research. The bill would reauthorize the National Foundation of Biomedical Research, a nonprofit corporation, from 1997 through 1999. It was established by the Secretary of HHS to support NIH and advance collaboration with biomedical researchers from universities, industry, and nonprofit organizations. The foundation is currently in the initial stages of operation. NIH is requesting $200,000 for 1997 for this foundation and expects to need a similar level of funding for each of the fiscal years 1998 and 1999. Based on this information, CBO estimates the cost of this proposal would be less than $1 million over the three-year period.

National Fund for Health Research. The bill would establish the National Fund for Health Research. This fund would consist of amounts transferred to it and interest earned on it. The amount in the fund would be distributed each year to all of the research institutes and centers of NIH, provided that appropriations in that year are not less than those of the prior year. This provision would set up this account in the Treasury, but would not establish a source of funding for it. When and if a source of income is established for this trust fund, NIH would apparently have the authority to spend amounts in the fund, including interest earnings, without appropriations action. This would be direct spending, but CBO has no basis for estimating the amount of such spending until the source of revenues for the fund is established.

Pediatric Research Initiative. S. 1897 would require the Secretary to establish, within the Office of the Director of NIH, a Pediatric Research Initiative that would be headed by the Director. The initiative would encourage increased support for pediatric biomedical research within the NIH, enhance collaborative multi-disciplinary research among the institutes, increase pediatric research demonstrating how to improve the quality of children's health care while reducing cost, and develop clinical trials and information to promote the safe and effective use of prescription drugs in the pediatric population. The Director would have discretion in the allocation of assistance among the institutes, among the types of grants, and between basic and clinical research. The bill would authorize $50 million for the 1997–1999 period.

Diabetes Research. The bill would reauthorize and expand funding for the conduct and support of research related to diabetes by the NIH. The majority of this spending occurs within the National Institute of Diabetes and Digestive Kidney Diseases. S. 1897 would provide for each year from 1997 through 1999 the amount appropriated for this purpose in 1996 increased by 25 percent. In 1996, NIH spent $309 million on research related to diabetes. if appropriations are made for the full authorized amount, this research would cost $1,160 million over the three-year period.

Program for Parkinson's Disease. The bill would also require the Director of NIH to establish a program for the conduct and support of research and training concerning Parkinson's disease. The Director would coordinate research among all of the national research institutes conducting Parkinson's research and would convene a research planning conference at least every two years.

The Director would also be required to establish two grant programs pertaining to Parkinson's disease. The first would award up to 10 Core Center Grants to encourage the development of innovative multi-disciplinary research and provide training concerning Parkinson's disease. Support for a center would not be provided for a period longer than five years, but support could be extended after a review. The second grant program would support innovative proposals leading to significant breakthroughs in Parkinson's research.

S. 1897 would authorize $80 million for 1997 and such sums as necessary for 1998 and 1999 for the Parkinson's disease program. CBO estimates the cost of this provision to be $248 million over the three-year period, assuming adjustments for inflation.

7. Pay-as-you-go considerations: S. 1897 could affect direct spending by establishing the National Fund for Health Research. The bill does not establish a source of funding for it, but when and if a source of income is established, NIH would have the authority to spend amounts in the fund. Such spending would include any interest earned by the fund and would occur without appropriations action. This would be direct spending, but CBO has no basis for estimating the amount of such spending until the source of revenues for the fund is established.

8. Estimated cost to State and local governments: This bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) and would impose no cost on state, local, or tribal governments. Some of the funds made available by this bill for research activities would go to state and local governments, particularly public universities.

9. Estimated cost to the private sector: The bill would impose no new private-sector mandates as defined in Public Law 104–4.

10. Estimate comparison: None.

11. Previous estimate: None.

12. Estimate prepared by: Federal Cost Estimate: Cyndi Dudzinski (226–9010); Impact on State, Local, and Tribal Governments: John Patterson (225–3220); Impact on the Private Sector: Linda Bilheimer (225–2673).

13. Estimate approved by: Robert A. Sunshine, for Paul N. Van de Water, Assistant Director for Budget Analysis.●

TRIBUTE TO GEORGE SHAFFER ON COMPLETION OF HIS TERM AS PRESIDENT OF THE INDEPENDENT INSURANCE AGENTS OF AMERICA

● Mr. DOMENICI. Mr. President, I rise today to pay tribute to a fellow New Mexican and personal friend, George Shaffer of Albuquerque, who is nearing completion of his 1-year term as president of the Independent Insurance Agents of America [IIAA]. The closure of Mr. Shaffer's term as the elected leader of the Nation's largest insurance trade association will be the crowning accomplishment of a career filled with many years of distinguished service to IIAA, and to its 300,000 members across the country.

George has enjoyed an outstanding career as an independent insurance agent. After holding several elective offices in the New Mexico State association of IIAA, George became New Mexico's representative to IIAA's national board of State directors in 1982,

and continued to serve in that position until 1990.

George served on IIAA's government affairs committee for 6 years, including 3 years as chairman. In 1990, IIAA presented him with its prestigious Sidney O. Smith Award, presented to an individual for excellence in government affairs activities. George was elected to IIAA's executive committee in Chicago in 1990, and was selected by his peers to become IIAA's 90th president last September in Las Vegas.

George's commitment to public service extends to his involvement in State and local community activities. He has served as a New Mexico State senator and as chairman of New Mexico's Better Business Bureau. In addition, George served a 4-year term as the lay member of the New Mexico Real Estate Commission, and for the past 16 years has served as a trustee of the Albuquerque Academy, a 6th-12th grade privately endowed school.

I congratulate my fellow New Mexican, public-spirited citizen, and friend for a job extremely well done. I am confident that George's admirable service to IIAA, his colleagues, and his fellow citizens of Albuquerque will continue well into the future.●

ORDER OF PROCEDURE

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

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar en bloc, Calendar Nos. 721 through 744, and all nominations placed on the Secretary's desk in the Air Force, Army, Marine Corps, and Navy.

I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid on the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

AIR FORCE

The following-named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under Title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. John A. Gordon, 000–00–0000, United States Air Force.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Air Force while assigned to a position of importance and responsibility under title 10, United States Code, section 8036:

SURGEON GENERAL OF THE AIR FORCE

To be lieutenant general

Maj. Gen. Charles H. Roadman, II, 000–00–0000.

The following-named officer for appointment in the Reserve of the Air Force, to the grade indicated, under the provisions of title 10, United States Code, sections 8374, 12201, 12204, and 12212:

To be brigadier general

Brig. Gen. Dwight M. Kealoha, USAF (Retired), 000–00–0000, Air National Guard.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Air Force while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

To be lieutenant general

Maj. Gen. William J. Donahue, 000–00–0000.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Air Force while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

To be lieutenant general

Maj. Gen. Normand G. Lezy, 000–00–0000.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Air Force while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. William P. Hallin, 000–00–0000.

The following-named officer for reappointment to the grade of lieutenant general in the U.S. Air Force while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. George T. Babbitt, Jr., 000–00–0000.

The following-named officer for appointment in the Reserve of the Air Force to the grade indicated under title 10, United States Code, sections 8374, 12201, and 12212:

To be brigadier general

Col. Gerald W. Wright, 000–00–0000, Air National Guard of the United States.

ARMY

The following-named officer for appointment to the grade of lieutenant general in the U.S. Army while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a) and 3036:

CHIEF OF ENGINEERS

To be lieutenant general

Maj. Gen. Joe N. Ballard, 000–00–0000.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Army while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

To be lieutenant general

Maj. Gen. Frederick E. Vollrath, 000–00–0000.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Army while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

To be lieutenant general

Maj. Gen. Edward G. Anderson III, 000–00–0000, U.S. Army.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Army while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

To be lieutenant general

Maj. Gen. George A. Crocker, 000–00–0000.

The following U.S. Army National Guard officers for promotion in the Reserve of the Army to the grades indicated under title 10, United States Code, sections 3385, 3392 and 12203(a):

To be major general

Brig. Gen. Frank A. Catalano, Jr., 000–00–0000

To be brigadier general

Col. Clarence E. Bayless, Jr., 000–00–0000.
Col. John C. Bradberry, 000–00–0000.
Col. Roger B. Burrows, 000–00–0000.
Col. William G. Butts, Jr., 000–00–0000.
Col. Dalton E. Diamond, 000–00–0000.
Col. George T. Garrett, 000–00–0000.
Col. Larry E. Gilman, 000–00–0000.
Col. John R. Groves, Jr., 000–00–0000.
Col. Hugh J. Hall, 000–00–0000.
Col. Elmo C. Head, Jr., 000–00–0000.
Col. Willie R. Johnson, 000–00–0000.
Col. Stephen D. Korenek, 000–00–0000.
Col. Bruce M. Lawlor, 000–00–0000.
Col. Paul M. Majerick, 000–00–0000.
Col. Timothy E. Neel, 000–00–0000.
Col. Jeff L. Neff, 000–00–0000.
Col. Anthony L. Oien, 000–00–0000.
Col. Terry L. Reed, 000–00–0000.
Col. Michael H. Taylor, 000–00–0000.
Col. Edwin H. Wright, 000–00–0000.

The following-named Judge Advocate General's Corps Competitive Category officers for promotion in the Regular Army of the United States to the grade of brigadier general under the provisions of title 10, United States Code, sections 611(a) and 624(c):

To be brigadier general

Col. Joseph R. Barnes, 000–00–0000.
Col. Michael J. Marchand, 000–00–0000.

The following U.S. Army National Guard officers for promotion in the Reserve of the Army to the grades indicated under title 10, United States Code, sections 3385, 3392 and 12203(a):

To be major general

Brig. Gen. Carroll D. Childers, 000–00–0000.
Brig. Gen. Cecil L. Dorten, 000–00–0000.
Brig. Gen. Clyde A. Hennies, 000–00–0000.
Brig. Gen. Warren L. Freeman, 000–00–0000.

To be brigadier general

Col. John E. Barnette, 000–00–0000.
Col. Roberto Benavides, Jr., 000–00–0000.
Col. Ernest D. Brockman, Jr., 000–00–0000.
Col. Danny B. Callahan, 000–00–0000.
Col. Reginald A. Centracchio, 000–00–0000.
Col. Terry J. Dorenbush, 000–00–0000.
Col. Thomas W. Eres, 000–00–0000.
Col. Edward A. Ferguson, Jr., 000–00–0000.
Col. Gary L. Franch, 000–00–0000.
Col. Peter J. Gravett, 000–00–0000.
Col. Robert L. Halverson, 000–00–0000.
Col. Joseph G. Labrie, 000–00–0000.
Col. Bennett C. Landreneau, 000–00–0000.
Col. John W. Libby, 000–00–0000.
Col. Marianne Mathewson-Chapman, 000–00–0000.
Col. Edmond B. Nolley, Jr., 000–00–0000.
Col. James F. Reed III, 000–00–0000.
Col. Darwin H. Simpson, 000–00–0000.
Col. Allen E. Tackett, 000–00–0000.
Col. Michael R. Van Patten, 000–00–0000.

The following-named officer for appointment to the grade of lieutenant general in the U.S. Army while assigned to a position of importance and responsibility under title 10, United States Code, section 3036:

SURGEON GENERAL, U.S. ARMY

To be lieutenant general

Maj. Gen. Ronald R. Blanck, 000–00–0000.

MARINE CORPS

The following-named officer for reappointment to the grade of lieutenant general in the U.S. Marine Corps while assigned to a position of importance and responsibility under the provisions of section 601, title 10, United States Code:

To be lieutenant general

Lt. Gen. Anthony C. Zinni, 000–00–0000.

NAVY

The following-named officers for promotion in the line in the Navy of the United States to the grade indicated under title 10, United States Code, section 624:

UNRESTRICTED LINE OFFICER

To be rear admiral (lower half)

Capt. Daniel R. Bowler, 000–00–0000, U.S. Navy.
Capt. John E. Boyington, Jr., 000–00–0000, U.S. Navy.
Capt. John T. Byrd, 000–00–0000, U.S. Navy.
Capt. John V. Chenevey, 000–00–0000, U.S. Navy.
Capt. Ronald L. Christenson, 000–00–0000, U.S. Navy.
Capt. Albert T. Church III, 000–00–0000, U.S. Navy.
Capt. John P. Davis, 000–00–0000, U.S. Navy.
Capt. Thomas J. Elliott, Jr., 000–00–0000, U.S. Navy.
Capt. John B. Foley III, 000–00–0000, U.S. Navy.
Capt. Kevin P. Green, 000–00–0000, U.S. Navy.
Capt. Alfred G. Harms, Jr., 000–00–0000, U.S. Navy.
Capt. John M. Johnson, 000–00–0000, U.S. Navy.
Capt. Herbert C. Kaler, 000–00–0000, U.S. Navy.
Capt. Timothy J. Keating, 000–00–0000, U.S. Navy.
Capt. Gene R. Kendall, 000–00–0000.
Capt. Timothy W. LaFleur, 000–00–0000.
Capt. Arthur N. Langston III, 000–00–0000.
Capt. James W. Metzger, 000–00–0000.
Capt. David P. Polatty III, 000–00–0000.
Capt. Ronald A. Route, 000–00–0000.
Capt. Steven G. Smith, 000–00–0000.
Capt. Thomas W. Steffens, 000–00–0000.
Capt. Ralph E. Suggs, 000–00–0000.
Capt. Paul F. Sullivan, 000–00–0000.

ENGINEERING DUTY OFFICER

To be rear admiral (lower half)

Capt. Roland B. Knapp, 000–00–0000, U.S. Navy.
Capt. Kathleen K. Paige, 000–00–0000, U.S. Navy.

SPECIAL DUTY OFFICER (INTELLIGENCE)

To be rear admiral (lower half)

Capt. Perry M. Ratiff, 000–00–0000, U.S. Navy.

SPECIAL DUTY OFFICER (FLEET SUPPORT)

To be rear admiral (lower half)

Capt. Jacqueline O. Allison, 000–00–0000, U.S. Navy.

The following-named officers for promotion in the line in the Navy of the United States to the grade indicated under title 10, United States Code, section 624:

UNRESTRICTED LINE OFFICER

To be rear admiral (lower half)

Capt. Harry M. Highfill, 000–00–0000, U.S. Navy.
Capt. Richard J. Naughton, 000–00–0000, U.S. Navy.
Capt. William G. Sutton, 000–00–0000, U.S. Navy.

The following-named officer for appointment to the grade of vice admiral in the U.S. Navy while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be vice admiral

Rear Adm. William J. Hancock, 000–00–0000.

The following-named officer for appointment to the grade of vice admiral in the U.S. Navy while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be vice admiral

Rear Adm. William J. Fallon, 000–00–0000.

The following-named officer for reappointment to the grade of vice admiral in the U.S. Navy while assigned to a position of importance and responsibility under title 10 United States Code, section 601:

To be vice admiral

Vice Adm. Conrad C. Lautenbacher, Jr., 000–00–0000.

The following-named officer for promotion in the Naval Reserve of the United States to the grade indicated under title 10, United States Code, section 5912:

CIVIL ENGINEER CORPS OFFICER

To be rear admiral

Rear Adm. (lh) Thomas Joseph Gross, 000–00–0000, U.S. Naval Reserve.

The following-named officer for promotion in the Navy of the United States to the grade indicated under title 10, United States Code, section 624:

MEDICAL CORPS

To be rear admiral (Lower Half)

Capt. Bonnie B. Potter, 000–00–0000, U.S. Navy.

NOMINATIONS PLACED ON THE SECRETARY'S DESK

IN THE AIR FORCE, ARMY, MARINE CORPS, NAVY

Air Force nominations beginning Jeffrey I. Roller, and ending David B. Porter, which nominations were received by the Senate and appeared in the Congressional Record of July 17, 1996.

Air Force nominations beginning Michael P. Allison, and ending John P. Smail, which nominations were received by the Senate and appeared in the Congressional Record of July 29, 1996.

Air Force nominations beginning John W. Baker, and ending Laurie L. Yankosky, which nominations were received by the Senate and appeared in the Congressional Record of July 29, 1996.

Air Force nomination of Edgar W. Hatcher, which was received by the Senate and appeared in the Congressional Record of September 3, 1996.

Air Force nominations beginning Malcolm N. Joseph III, and ending Etienne I. Tormos, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Air Force nominations beginning John W. Amshoff, Jr., and ending Salvatore J. Lombardi, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Air Force nominations beginning Johnny R. Almond, and ending Herbert R. Zucker, which nominations were received by the Senate and appeared in the Congressional Record of September 9, 1996.

Army nominations beginning *Anthony J. Abati, and ending 2425x, which nominations were received by the Senate and appeared in the Congressional Record of July 11, 1996.

Army nomination of Donald G. Higgins, which was received by the Senate and appeared in the Congressional Record of July 17, 1996.

Army nominations beginning Robert M. Carrothers, and ending Jeffrey T. Weller, which nominations were received by the Senate and appeared in the Congressional Record of July 19, 1996.

Army nominations beginning James R. Barr, and ending Michael D. Moser, which nominations were received by the Senate and appeared in the Congressional Record of July 19, 1996.

Army nominations of Col. George B. Forsythe, which was received by the Senate and appeared in the Congressional Record of September 3, 1996.

Marine Corps nominations of George W. Simmons, which was received by the Senate and appeared in the Congressional Record of May 22, 1996.

Marine Corps nominations beginning Robert E. Carney, and ending William P. Schulz, Jr., which nominations were received by the Senate and appeared in the Congressional Record of July 29, 1996.

Marine Corps nominations beginning Craig T. Boddington, and ending Frederick B. Witesman II, which nominations were received by the Senate and appeared in the Congressional Record of July 29, 1996.

Marine Corps nominations beginning Gary J. Couch, and ending Joel G. Ogren, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Marine Corps nominations beginning Ralph P. Dorn, and ending Michael F. Kenny, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Marine Corps nomination of John C. Sumner, which was received by the Senate and appeared in the Congressional Record of September 3, 1996.

Marine Corps nominations beginning Michael G. Alexander, and ending Joyce V. Woods, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Marine Corps nominations beginning James R. Adams, and ending John H. Williams, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Marine Corps nominations beginning Timothy Foley, and ending Micheal J. Colburn, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Navy nominations beginning Aaron C. Flannery, and ending James M. Ingalls, which nominations were received by the Senate and appeared in the Congressional Record of December 11, 1995.

Navy nomination of John L. Wilson, which was received by the Senate and appeared in the Congressional Record of September 3, 1996.

Navy nomination of Eric L. Pagenkopf, which was received by the Senate and appeared in the Congressional Record of September 3, 1996.

Navy nominations beginning Daniel C. Alder, and ending Terrance L. Nicholls, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Navy nominations beginning James C. Ackley, and ending Albert F. Vandervoort, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Navy nominations beginning Gregorio A. Abad, and ending Robert E. Zulick, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Navy nominations beginning Robert E. Aguirre, and ending Kurt D. Sisson, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

Navy nominations beginning David W. Anderson, and ending Jerome J. Squatrito, which nominations were received by the Senate and appeared in the Congressional Record of September 3, 1996.

NOMINATION OF COLONEL ALLEN E. TACKETT

Mr. BYRD. Mr. President, I am pleased that the President has nominated Colonel Allen E. Tackett for the rank of Brigadier General. Colonel Tackett, a resident of Miami, WVA, graduated from East Bank High School and earned a Bachelor of Arts from the University of Charleston, Charleston, WVA.

Colonel Tackett currently serves as the Adjutant General, West Virginia National Guard, headquartered in Charleston. Prior to this, he held many demanding and key positions, before assuming his prestigious command of nearly six thousand men and women serving in the West Virginia National Guard.

At present, Colonel Tackett has over 32 years of dedicated service in the National Guard, to our country and the State of West Virginia. He earned a commission in June, 1967, from Infantry Officer Candidate School, at Fort Benning, Georgia. Colonel Tackett is a military graduate of the Special Warfare Center, Jumpmaster Course, Infantry Officer Basic and Advanced Courses, Command and General Staff College, and the Special Warfare Center, Techniques of Special Operations.

Colonel Tackett's major decorations include the Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal, National Defense Medal, Humanitarian Medal and the Armed Forces Reserve Medal. He was awarded, through rigorous training and proven proficiency, the coveted Special Forces Tab and Master Parachutist Badge.

Mr. President, I am pleased to cast my vote for the confirmation of Colonel Allen E. Tackett as Brigadier General, and I urge my colleagues to support this nomination.

NOMINATION OF COLONEL JOHN E. BARNETTE

Mr. BYRD. Mr. President, I am pleased that the President has nominated Colonel John E. Barnette for the rank of Brigadier General. Colonel Barnette, a native of Princeton, West Virginia, earned an undergraduate degree from West Virginia State College, a master's degree from West Virginia College of Graduate Studies, and a Doctoral degree from West Virginia University.

Colonel Barnette has held many responsible positions within the West Virginia Army National Guard since he was commissioned in July, 1969, from Officer Candidate School, West Virginia Military Academy. Most recently, he has been assigned as the Assistant Adjutant General (Army) of the West Virginia National Guard, headquartered in Charleston.

Prior to his current assignment, Colonel Barnette served as the West Virginia Deputy State Area Commander, West Virginia Army National Guard.

Colonel Barnette has over 28 years of dedicated service in the National Guard. He is a graduate of the Armored Officer's Basic and Advanced Courses and the Command and General Staff College. Colonel Barnette's major decorations include the Meritorious Service Medal, Army Commendation Medal, National Defense Service Medal, Army Reserve Component Achievement Medal and the Humanitarian Service Medal.

Mr. President, I am pleased to cast my vote for the confirmation of Colonel John E. Barnette as Brigadier General, and I urge my colleagues to support this nomination.

LEGISLATIVE SESSION

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

CROW CREEK SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND ACT OF 1996

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 587, H.R. 2512.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2512) to provide for certain benefits of the Pick-Sloan Missouri River basin program to the Crow Creek Sioux Tribe, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

H.R. 2512

Mr. MCCAIN. Mr. President, I am pleased to rise in support of H.R. 2512, the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996. This bill provides for the long-delayed fulfillment of promises made by Congress to the Crow Creek Sioux Tribe of South Dakota. These promises were for compensation for the impacts on the Tribe that resulted from the inundation of more than 15,000 acres of the best land on the Crow Creek reservation, including the relocation of Fort Thompson, the principal community on the reservation. The inundation was caused by the construction of Fort Randall and Big Bend dams on the Missouri River pursuant to the Flood Control Act of 1944, otherwise known as the Missouri River Basin Pick-Sloan Project.

H.R. 2512 provides for creation of a trust fund in the United States Treasury for the benefit of the Crow Creek Sioux Tribe that would be funded with $27,500,000 from receipts of deposits from the Pick-Sloan power program of the Western Area Power Administration. Only the interest on the fund would be made available to the Tribe, without fiscal year limitations, to spend on implementing a plan for socioeconomic recovery and cultural preservation. This plan will include a variety of infrastruture and related projects that Congress in 1962 directed the Interior Department and the United States Corps of Engineers to provide to the Tribe, but which were either inadequately provided or not provided at all. Among these projects is a high school, a water system, and a community center with a gymnasium and auditorium.

The Committee on Indian Affairs and the House Resources Committee conducted a joint hearing on H.R. 2512 and on a Senate companion bill, S. 1264. The record of that hearing includes extensive historical information on the Big Bend and Fort Randall dam projects, the commitments made by the United States to the Crow Creek Tribe for compensation with respect to these projects, and the extent to which those commitments were not fulfilled. The record is clear that the additional compensation that would be provided by H.R. 2512 is not only well-justified but also long overdue.

It should be noted that the Crow Creek trust fund that would be provided by this legislation is proportionate to trust funds established by Congress in 1992 for the Standing Rock Sioux and Fort Berthold Tribes. The 1992 Standing Rock and Fort Berthold legislation was enacted based on the findings and recommendations of a congressionally mandated joint tribal-Federal task force. This task force studied the impacts of the construction of Oahe and Garrison dams on the Standing Rock and Fort Berthold Reservations, including the inundation of a combined total of more than 200,000 acres of the best lands on those reservations.

Mr. President, the construction of huge, multipurpose dam projects by the Corps of Engineers and the Bureau of Reclamation earlier in this century brought major economic and other benefits to large numbers of people and interests in various parts of the United States. However, these benefits often came at a very high price to others. In the case of the dam projects authorized under the Pick-Sloan Project, the greatest price was paid by Indian tribes whose reservations lie along the Missouri River in North and South Dakota. These tribes saw much of their best farm land flooded, long-established communities relocated, families disrupted, and a way of life changed forever. The human price they paid is beyond calculation.

Regrettably, the conduct of the agencies of the United States government, including the Congress, with respect to the Indian tribes affected by Pick-Sloan Project construction often did not live up to the fair and honorable dealings standard that the tribes had a right and reason to expect from the United States as their trustee. In light of the well-documented history of this conduct with respect to the Crow Creek Sioux Tribe, I believe that enacting H.R. 2512 is a fair and honorable course for this Congress to take.

Mr. President, this legislation is supported by the State of South Dakota, its congressional delegation, and the Administration, in addition to the Crow Creek Sioux Tribe. The House recently passed H.R. 2512 by voice vote, and the Committee on Indian Affairs has favorably reported companion legislation to the Senate. Accordingly, I strongly urge the Senate to pass H.R.

2512 and send it to the President for signature.

Mr. DASCHLE. Mr. President, I am very pleased that the Senate is considering the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1995. This measure, which is sponsored by Congressman TIM JOHNSON, is very important to South Dakota and the Crow Creek Tribe. I commend the Senate Indian Affairs Committee for its leadership in promoting the bill's companion measure, S. 1264, which I introduced. I also want to publicly thank the members of the Crow Creek Tribe for their many years of hard work. The tribe has worked closely with Congressman JOHNSON and I to shape this legislation that will help realize, at long last, the goals outlined in the Big Bend Act over 30 years ago.

This bill will provide for the development of certain tribal infrastructure projects funded by a trust fund set up for the Crow Creek Tribe within the Department of the Treasury. The trust fund would be capitalized within 1 to 2 years from a percentage of hydropower revenues and would be capped at $27.5 million. The tribe would then receive the interest from the fund and use it for economic development purposes according to a plan prepared in conjunction with the Bureau of Indian Affairs and the Indian Health Service.

It is instructive to review the long historic journey that has brought us to this point. The Flood Control Act of 1944 created five massive earthen dams on the Missouri River. This public works project, known as the Pick-Sloan Plan, provides the region with flood control, irrigation and hydropower. Four of the Pick-Sloan dams are located in South Dakota.

The impact of the Pick-Sloan plan on the Crow Creek Sioux Tribe has been devastating. The Big Bend and Fort Randall dams created losses to the Crow Creek Tribe for which they have not been adequately compensated. Over 15,000 acres of the tribe's most fertile and productive land, the Missouri River wooded bottomlands, were inundated as a result of the Fort Randall and Big Bend components of the Pick-Sloan project.

By and through the Big Bend Act of 1962, Congress directed the U.S. Army Corps of Engineers and the Department of the Interior to take certain actions to alleviate the problems caused by the dislocation of communities and inundation of tribal resources. These directives were either carried out inadequately or not carried out at all.

Congress established precedent for H.R. 2512 in 1992 with the passage of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, which I cosponsored. At that time, Congress determined that the U.S. Army Corps of Engineers had failed to provide adequate compensation to the tribes when their land was acquired for the Pick-Sloan projects. There is little question that the tribes bore an inordinate share of the cost of implementing the Pick-Sloan program. The Secretary of the Interior established the Joint Tribal Advisory Committee to resolve the inequities and find ways to finance the compensation of tribal claims. As a result, the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act set up a recovery fund financed entirely from a percentage of Pick-Sloan power revenues.

The Crow Creek Sioux Tribe Infrastructure Development Fund Act of 1995 is the next step in honoring commitments made when the Pick-Sloan dams were constructed in a fiscally sound manner while giving local entites the latitude to determine their own development priorities. This legislation not only benefits the tribe, but the entire State of South Dakota, since a sound infrastructure is essential to regional economic development.

This legislation has broad support in South Dakota. Gov. Bill Janklow strongly endorses this proposal to develop the infrastructure at the Crow Creek Indian reservation.

Mr. President, the impact of the Pick-Sloan projects have been devastating to other Missouri River tribes as well. I look forward to working with the Lower Brule Sioux Tribe and the Cheyenne River Sioux Tribe to address their claims.

Mr. STEVENS. Mr. President, I ask unanimous consent the bill be deemed read a third time and passed, the motion to reconsider be laid on the table, and any statements relating to the bill appear at the appropriate place in the RECORD.

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

The bill (H.R. 2512) was deemed read a third time and passed.

UTAH SCHOOLS AND LANDS IMPROVEMENT ACT AMENDMENTS

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 558, H.R. 2464.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2464) to amend Public Law 103–93 to provide additional land within the State of Utah for the Indian reservation and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. McCAIN. Mr. President, I am pleased to rise in support of H.R. 2464, a bill to amend Public Law 103–93 to add certain State and Federal lands to the Goshute Indian Reservation in Utah.

Public Law 103–93 authorizes the Secretary of the Interior to acquire about 200,000 acres of Utah school trust land located within the boundaries of national parks, forests, and Indian reservations in Utah. In exchange, the school trust will receive other Federal land and mineral rights of equal value.

H.R. 2464 amends the 1993 act to make an additional 7,000 acres of State land eligible for exchange for Federal lands or interests of equal value and their addition in trust to the Goshute Reservation. The bill also provides for about 1,280 acres of Federal land and mineral interests to be added to the reservation.

The addition of these lands to the Goshute Reservation will provide a more clearly defined and manageable reservation boundary. This will greatly improve the tribe's ability to deal with poaching, trespassing, and other problems along the reservation boundary.

Enactment of the legislation will also further assist the State of Utah and the Federal Government in consolidating their respective landholdings and thus contribute to more effective, environmentally responsible land management.

The Committee on Indian Affairs held a hearing on H.R. 2464 in July of this year. Hearing testimony established that the bill is without controversy and clearly in the beneficial interest of the Goshute Tribe, the State of Utah, and the United States. The Congressional Budget Office subsequently reported that enactment of the bill would have no significant impact on the Federal budget, nor would it affect direct spending or receipts.

I commend Utah's Senators ORRIN HATCH and ROBERT BENNETT for their cooperative efforts with the tribe, the State, and the administration that led to development of H.R. 2464 and its Senate counterpart, S. 1766.

Mr. President, H.R. 2464 is meritorious legislation, and I urge its passage by the Senate.

Mr. HATCH. Mr. President, I am delighted the Senate has scheduled consideration of H.R. 2464.

This legislation amends the Utah Schools and Lands Improvement Act of 1993 (Public Law 103–93) which provides a vehicle by which school trust lands located within Federal reservations in Utah—such as national parks, national forests, wilderness, and Indian reservations—could be exchanged for lands located elsewhere in Utah.

The act helps to ensure that Utah's schools receive the full and intended benefit of the trust lands by resolving Federal and State land management problems resulting from interspersed land ownership within Utah.

H.R. 2464 would amend the 1993 act to provide for the exchange of approximately 8,000 acres of additional State land, located within the Goshute Reservation boundaries, for Federal lands, or interests, of equal value.

The Goshute Tribe's reservation is located in a remote valley southwest of the Great Salt Lake and astride the border between Utah and Nevada with approximately half of the reservation within each State.

This bill will resolve a long standing problem associated with the southern

boundary of the tribe's reservation. When Congress initially considered Public Law 103–93, the Goshute Tribe requested a resolution of the irregular configuration on the reservation's southern boundary. The irregular configuration and remote location of about 8,000 acres of land along that boundary make proper land management virtually impossible. In fact, the State of Utah, the Bureau of Land Management and the tribe have been unable to prevent trespassing and poaching in this area.

This measure will improve the tribe's ability to manage and preserve that land.

H.R. 2464 was introduced in the House by my good friend Congressman JIM HANSEN of Utah, and has wide support from many diverse groups including the Bureau of Land Management, the State of Utah, the Goshute Tribe, Juab County, and the Utah Wilderness Coalition.

This legislation is very important to the people of Utah—to our school system—and to the tribal members of the Goshute Tribe.

I urge my colleagues in the Senate to support its passage.

Mr. MURKOWSKI. I would like to ask my friend, the Senator from Arizona [Mr. MCCAIN], the Chairman of the Committee on Indian Affairs, if he would engage in a colloquy with me and the Senator from Idaho [Mr. CRAIG], the chairman of the Subcommittee on Forests and Public Land Management, on the bill H.R. 2464?

Mr. MCCAIN. I will be pleased to have a colloquy with the Senator from Alaska and the Senator from Idaho.

Mr. MURKOWSKI. I thank the Senator. As he knows, H.R. 2464 amends the Utah Schools and Lands Improvement Act of 1993, an Act which, in the 103rd Congress, was considered exclusively by the Committee on Energy and Natural Resources.

I was therefore surprised to learn that on May 15th of this year the Parliamentarian referred H.R. 2464 to the Committee on Indian Affairs. I was further surprised to learn that on the very next day, May 16th, the Parliamentarian referred an identical Senate bill, S. 1766, introduced by our colleague, Senator BENNETT, to the Committee on Energy and Natural Resources, which then referred it to Senator CRAIG's Subcommittee.

So I ask my friend, the Chairman of the Committee on Indian Affairs, whether he would agree with me and Senator CRAIG that it would have been appropriate for the Parliamentarian to refer H.R. 2464 to the Committee on Energy and Natural Resources?

Mr. MCCAIN. I agree with the Senators from Alaska and Idaho that referral of H.R. 2464 to the Committee on Energy and Natural Resources would have been appropriate. The rules of the Senate are clear that issues pertaining to the management of the public lands are within the jurisdiction of the Committee on Energy and Natural Resources.

I note, however, that both the 1993 Act and H.R. 2464 include provisions that deal with the issue of adding land in trust to Indian reservations in Utah. Would the Chairman of the Energy Committee agree with me that, with respect to this issue, referral of the legislation to the Committee on Indian Affairs is appropriate?

Mr. MURKOWSKI. I agree with the Senator from Arizona.

Mr. MCCAIN. I thank the Senator. As he knows, the Committee on Indian Affairs held a hearing on H.R. 2464. The Committee found that the authority the bill would provide for addressing reservation boundary-related problems is appropriate and necessary and very important to the Goshute Indian Tribe. The Committee supports this meritorious and noncontroversial legislation.

Mr. MURKOWSKI. I thank the Senator from Arizona for his statement.

Mr. CRAIG. I am pleased to add that we have looked at the hearing record and the report of the Committee on Indian Affairs on H.R. 2464. The Subcommittee has reviewed the bill, and I am confident that had we had more time this session, we would have reported it favorably. We have no problems with the bill as reported by the Committee on Indian Affairs.

I see no reason for further consideration of the legislation by the Subcommittee on Forests and Public Lands or the Full Committee on Energy and Natural Resources.

Mr. MURKOWSKI. I concur with the Senator from Idaho, and I thank the Senator from Arizona for his Committee's expeditious work on this legislation. I am pleased to join with him in urging that it be passed.

Mr. STEVENS. Mr. President, I ask unanimous consent the bill be deemed read for a third time, passed, the motion to reconsider be laid on the table, and any statements relating to the bill be placed at the appropriate place in the RECORD.

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

The bill (H.R. 2464) was deemed read a third time and passed.

INDIAN HEALTH CARE IMPROVEMENT TECHNICAL CORRECTIONS ACT OF 1996

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate turn now to the immediate consideration of Calendar No. 577, H.R. 3378.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3378) to amend the Indian Health Care Improvement Act to extend the demonstration program for direct billing of Medicare, Medicaid, and other third-party payors.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 5392

(Purpose: To provide a substitute)

Mr. STEVENS. Mr. President, Senator MCCAIN has a substitute amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. MCCAIN, proposes an amendment numbered 5392.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Indian Health Care Improvement Technical Corrections Act of 1996''.

(b) REFERENCES.—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 Indian Health Care Improvement Act.

SEC. 2. TECHNICAL CORRECTIONS IN THE INDIAN HEALTH CARE IMPROVEMENT ACT.

(a) DEFINITION OF HEALTH PROFESSION.—Section 4(n) (25 U.S.C. 1603(n)) is amended—

(1) by inserting ''allopathic medicine,'' before ''family medicine''; and

(2) by striking ''and allied health professions'' and inserting ''an allied health profession, or any other health profession''.

(b) INDIAN HEALTH PROFESSIONS SCHOLARSHIPS.—Section 104(b) of the Indian Health Care Improvement Act (25 U.S.C. 1613a(b)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking the matter preceding clause (i) and inserting the following:

''(3)(A) The active duty service obligation under a written contract with the Secretary under section 338A of the Public Health Service Act (42 U.S.C. 2541) that an individual has entered into under that section shall, if that individual is a recipient of an Indian Health Scholarship, be met in full-time practice, by service—'';

(ii) by striking ''or'' at the end of clause (iii);

(iii) by striking the period at the end of clause (iv) and inserting ''; or''; and

(iv) by adding at the end the following new clause:

''(v) in an academic setting (including a program that receives funding under section 102, 112, or 114, or any other academic setting that the Secretary, acting through the Service, determines to be appropriate for the purposes of this clause) in which the major duties and responsibilities of the recipient are the recruitment and training of Indian health professionals in the discipline of that recipient in a manner consistent with the purpose of this title, as specified in section 101.'';

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(C) by inserting after subparagraph (A) the following new subparagraph:

''(B) At the request of any individual who has entered into a contract referred to in subparagraph (A) and who receives a degree in medicine (including osteopathic or allopathic medicine), dentistry, optometry, podiatry, or pharmacy, the Secretary shall defer the active duty service obligation of that individual under that contract, in order that such individual may complete any internship, residency, or other advanced clinical training that is required for the practice

of that health profession, for an appropriate period (in years, as determined by the Secretary), subject to the following conditions:

''(i) No period of internship, residency, or other advanced clinical training shall be counted as satisfying any period of obligated service that is required under this section.

''(ii) The active duty service obligation of that individual shall commence not later than 90 days after the completion of that advanced clinical training (or by a date specified by the Secretary).

''(iii) The active duty service obligation will be served in the health profession of that individual, in a manner consistent with clauses (i) through (v) of subparagraph (A).'';

(D) in subparagraph (C), as so redesignated, by striking ''prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) by service in a program specified in subparagraph (A)'' and inserting ''described in subparagraph (A) by service in a program specified in that subparagraph''; and

(E) in subparagraph (D), as so redesignated—

(i) by striking ''Subject to subparagraph (B),'' and inserting ''Subject to subparagraph (C),''; and

(ii) by striking ''prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m)'' and inserting ''described in subparagraph (A)'';

(2) in paragraph (4)—

(A) in subparagraph (B), by striking the matter preceding clause (i) and inserting the following:

''(B) the period of obligated service described in paragraph (3)(A) shall be equal to the greater of—''; and

(B) in subparagraph (C), by striking ''(42 U.S.C. 254m(g)(1)(B))'' and inserting ''(42 U.S.C. 254l(g)(1)(B))''; and

(3) in paragraph (5), by adding at the end the following new subparagraphs:

''(C) Upon the death of an individual who receives an Indian Health Scholarship, any obligation of that individual for service or payment that relates to that scholarship shall be canceled.

''(D) The Secretary shall provide for the partial or total waiver or suspension of any obligation of service or payment of a recipient of an Indian Health Scholarship if the Secretary determines that—

''(i) it is not possible for the recipient to meet that obligation or make that payment;

''(ii) requiring that recipient to meet that obligation or make that payment would result in extreme hardship to the recipient; or

''(iii) the enforcement of the requirement to meet the obligation or make the payment would be unconscionable.

''(E) Notwithstanding any other provision of law, in any case of extreme hardship or for other good cause shown, the Secretary may waive, in whole or in part, the right of the United States to recover funds made available under this section.

''(F) Notwithstanding any other provision of law, with respect to a recipient of an Indian Health Scholarship, no obligation for payment may be released by a discharge in bankruptcy under title 11, United States Code, unless that discharge is granted after the expiration of the 5-year period beginning on the initial date on which that payment is due, and only if the bankruptcy court finds that the nondischarge of the obligation would be unconscionable.''.

(c) CALIFORNIA CONTRACT HEALTH SERVICES DEMONSTRATION PROGRAM.—Section 211(g) (25 U.S.C. 1621j(g)) is amended by striking ''1993, 1994, 1995, 1996, and 1997'' and inserting ''1996 through 2000''.

(d) EXTENSION OF CERTAIN DEMONSTRATION PROGRAM.—Section 405(c)(2) (25 U.S.C. 1645(c)(2)) is amended by striking ''September 30, 1996'' and inserting ''September 30, 1998''.

(e) GALLUP ALCOHOL AND SUBSTANCE ABUSE TREATMENT CENTER.—Section 706(d) (25 U.S.C. 1665e(d)) is amended to read as follows:

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, for each of fiscal years 1996 through 2000, such sums as may be necessary to carry out subsection (b).''.

(f) SUBSTANCE ABUSE COUNSELOR EDUCATION DEMONSTRATION PROGRAM.—Section 711(h) (25 U.S.C. 1665j(h)) is amended by striking ''1993, 1994, 1995, 1996, and 1997'' and inserting ''1996 through 2000''.

(g) HOME AND COMMUNITY-BASED CARE DEMONSTRATION PROGRAM.—Section 821(i) (25 U.S.C. 1680k(i)) is amended by striking ''1993, 1994, 1995, 1996, and 1997'' and inserting ''1996 through 2000''.

Mr. McCAIN. Mr. President, I rise today in support of H.R. 3378, a bill to amend the Indian Health Care Improvement Act to extend the authorization of the Indian health demonstration program for direct billing of Medicare, Medicaid and other third party payors. I am pleased to support the House-passed provisions of H.R. 3378 and to offer a substitute amendment that will make additional technical corrections to the Indian Health Care Improvement Act and reauthorize additional Indian health demonstration programs.

Mr. President, approximately 20 years ago, the Congress enacted the Indian Health Care Improvement Act to meet the fundamental trust obligation of the United States to ensure that comprehensive health care would be provided to American Indians and Alaska Natives. Despite advances achieved through the implementation of the act, the health status of Indian people remains far below that of the national population.

The Indian Health Service, as the lead agency responsible for administering programs under the act, has identified several areas where the act requires modification to fulfill its intended purpose. The substitute amendment I have proposed incorporates those amendments to the act to allow maximum flexibility in the delivery of health services to American Indians and Alaska Natives.

First, the substitute amendment clarifies certain provisions in order to allow greater flexibility to the IHS in administering IHS scholarships and programs. The amendment modifies the definition of Health Profession in section 4(n) to include ''allopathic medicine'' in order to provide more flexibility to the IHS in awarding scholarship assistance to individuals enrolled in health degree professions. Prior to the 1992 amendments, individuals studying disciplines such as allopathic medicine were eligible to receive IHS assistance. Because the 1992 amendments omitted this reference, many individuals were denied eligibility for scholarship assistance. This amendment restores their eligibility for scholarship funds and fulfills the Act's intent.

Next, the amendment also clarifies certain provisions under section 104(b), the Indian Health Professions Scholarship, to clarify the authority of the Secretary of the Department of Health and Human Services to waive or defer service or payment obligations of Indian health professionals under specified circumstances. Many requirements for a degree in the health professions include an internship, residency, or other advanced clinical program. The substitute amendment would clarify the authority of the Secretary to defer a scholarship recipient's service or repayment obligation until the recipient has completed his or her education program.

The Indian Health Care Improvement Act also authorizes several innovative demonstration projects to increase and improve services to Indian communities and to serve as models to be replicated on other reservations. The substitute amendment includes the extension for the Indian Health Medicare/Medicaid Program, as provided for in H.R. 3378, and reauthorizes several additional programs through the year 2000. Several of these demonstration projects, including the California Contract Health Services Demonstration Program, the Gallup Alcohol and Substance Abuse Demonstration Program, the Substance Abuse Counselor Education Demonstration Program and the Home and Community Based Care Demonstration Program, are due to sunset in this fiscal year.

The California Contract Health Services Demonstration Program authorizes the California Rural Indian Health Board to act as a contract care intermediary to improve the accessibility of health services to California Indians. The program has successfully enabled tribal programs to provide in-patient services and prevent high-cost cases from devastating many small tribal health programs in California. It is estimated that 41 percent of the California tribes participate in this program.

The Home and Community Based Care Demonstration Program authorizes Indian tribes to enter into contracts to establish demonstration projects for the delivery of home and community based services to functionally-disabled Indians. The Substance Abuse Counselor Education Demonstration Project authorizes the IHS to enter into contracts with, or make grants to, colleges, universities and tribally-controlled community colleges to develop educational curricula for substance abuse counseling.

The Gallup Alcohol and Substance Abuse Treatment Program has funded residential treatment for alcohol and substance abuse at the Navajo Adult Rehabilitation Demonstration Project. The grant program has also funded a protective custody program for alcohol abuse offenders at the Gallup Crisis Center. These programs are unique to the Navajo Nation area and provide valuable services as a community-based outpatient program.

Finally, the substitute amendment includes the House-passed language to

extend the authorization for the Medicare/Medicaid Demonstration Program. This program allows four tribal health contract operators to directly bill and collect Medicare/Medicaid payments rather than operate through the current system of channeling payments through the IHS. The four participating Indian tribes include Mississippi Band of Choctaw Indians, Bristol Bay Area Health Corporation of Alaska, Choctaw Tribe of Oklahoma and South East Alaska Regional Health Consortium. The Medicare/Medicaid Demonstration Program has been a highly successful program for the participating tribes and the IHS, who have reported significantly increased collections for Medicare/Medicaid services and greater efficiency in the billing/payments process.

In an interim report on this program, Secretary Shalala of the Department of Health and Human Services describes the remarkable increase in Medicare and Medicaid collections by tribal health providers achieved through this program. For example, through the demonstration program, the Mississippi Band of Choctaw Indians has doubled its Medicare and Medicaid collections, which has led to further improvements to the overall quality of health care provided to its members. The Bristol Bay Area Health Corporation of Alaska has been able to expand its health care, disease prevention and health education services to an additional 32 villages in Alaska. The Southeast Alaska Regional Health Corporation reported a 600 percent increase in Medicaid collections during the first 2 years of the pilot project. This funding increase has allowed the Southeast Alaska Regional Health Corporation to upgrade its health care facilities and achieve ''Accreditation with Commendation'' from the Joint Commission on Accreditation of Healthcare Organizations. Unless this program is reauthorized, these tribal health facilities will be forced to return to the IHS-managed collection system and forego much of the progress that has been achieved. Based on the record of success of this program, I am pleased that my colleagues support the extension of this program for 2 years.

Mr. President, the changes I am proposing in this substitute amendment will bring us closer to meeting the goals of the Indian Health Care Improvement Act to raise the health status of Indian people and to ensure the continuation of several important Indian health care programs. The changes I have proposed in the substitute amendment have been cleared by the respective Committees of jurisdiction in the House of Representatives. I thank my colleagues for their support in passing this important legislation.

Mr. STEVENS. I ask unanimous consent that the amendment be agreed to, the bill be deemed read for a third time, passed, the motion to reconsider be laid on the table, and any statements relating to the bill be placed at the appropriate place in the RECORD.

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

The amendment (No. 5392) was agreed to.

The bill (H.R. 3378), as amended, was agreed to.

INDIAN REORGANIZATION ACT AMENDMENTS

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate turn to immediate consideration of Calendar No. 573, H.R. 3068.

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

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3068) to accept the request of the Prairie Island Indian Community to revoke their charter of incorporation issued under the Indian Reorganization Act.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. REVOCATION OF CHARTER OF INCORPORATION OF THE PRAIRIE ISLAND INDIAN COMMUNITY UNDER THE INDIAN REORGANIZATION ACT.

(a) ACCEPTANCE OF REQUEST TO REVOKE CHARTER.—The request of the Prairie Island Indian Community to surrender the charter of incorporation issued to that community on July 23, 1937, pursuant to section 17 of the Act of June 18, 1934, commonly known as the ''Indian Reorganization Act'' (48 Stat. 988, chapter 576; 25 U.S.C. 477) is hereby accepted.

(b) REVOCATION OF CHARTER.—The charter of incorporation referred to in subsection (a) is hereby revoked.

SEC. 2. AMENDMENT TO THE JICARILLA APACHE TRIBE WATER RIGHTS SETTLEMENT ACT.

Section 8(e)(3) The Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2241) is amended by striking ''December 31, 1996'' and inserting ''December 31, 1998''.

SEC. 3. AMENDMENT TO THE SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT ACT OF 1992.

Section 3711(b)(1) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4752) is amended by striking ''December 31, 1996'' and inserting ''June 30, 1997''.

Mr. McCAIN. Mr.President, I am pleased to rise in support of H.R. 3068 and to urge its passage by the Senate.

The primary purpose of this legislation is to accept the request of the Prairie Island Indian Community of Minnesota to revoke the Federal charter of incorporation issued to the Community pursuant to the Indian Reorganization Act of 1934.

The Prairie Island Indian Community is organized under a Constitution and Bylaws adopted by the Community in 1936 pursuant to section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. 476). Article V of the Prairie Island Constitution, which enumerates the powers of the Community's Council, includes a provision that allows the Council to manage economic affairs and enterprises in accordance with the terms of a charter which may be issued to the Community by the Secretary of the Interior pursuant to section 17 of the Indian Reorganization Act. In 1937, the Secretary issued such a Federal charter to the Community.

For 60 years, the Prairie Island Community has relied upon the authorities of its Constitution and Bylaws for the operation of its government and for the operation of its business enterprises. Article V of the Constitution specifically provides authority for the Community to regulate the conduct of trade and the use and disposal of property on the reservation, as well as to charter subordinate organizations for economic purposes and to regulate the activities of such organizations.

The Community has come to view the 1937 charter, which hasn't been amended since it was issued, as outdated, cumbersome, and unnecessary to their efforts to operate successful business enterprises and become economically self-sufficient. Some charter provisions, such as one that precludes the Community from contracting for amounts in excess of $100 without approval by the Secretary of the Interior, are seen as particularly paternalistic and inappropriate for effective management of tribal resources. Accordingly, the Community has requested that the charter be revoked.

H.R. 3068 accepts the request of the Prairie Island Indian Community that its Federal charter of incorporation be revoked and declares the charter to be revoked. Legislation is needed because Amendment 10 of the charter states that the charter can be revoked only by an Act of Congress.

The Committee on Indian Affairs adopted an amendment in the nature of a substitute to H.R. 3068 that retains the unamended text of H.R. 3068, as passed by the House of Representatives, and adds two new sections that extend the deadlines for completion of two Indian water rights settlements enacted by the Congress in 1992.

The first new section extends until December 31, 1998, the deadline for completion of all requirements necessary to effect the Jicarilla Apache Tribe Water Rights Settlement Act of 1992. The availability to the Tribe of settlement funds and water from two Federal water projects in New Mexico is contingent upon dismissal of actions by the Tribe against the United States in Federal courts and a waiver of the Tribe's reserved water rights claims in general stream adjudications in state courts involving claims to the waters of the San Juan River and its tributaries and the Rio Chama and its tributaries. The 1992 Act requires partial final decrees agreed to by the United States, the Tribe, and the State of New Mexico to be entered into by December 31, 1996. However, this deadline cannot be met, due primarily to unforseen delays in the necessary state court proceedings to consider the settlement.

Accordingly, the Tribe, the State of New Mexico, and the Administration support an extension of the 1992 Act's deadline in order to preserve the benefits of the settlement to all parties.

The second new section extends until June 30, 1997, the deadline for completion of all requirements necessary to effect the San Carlos Apache Tribe Water Rights Settlement Act of 1992. This extension is intended to provide the Tribe and the Phelps Dodge Corporation, and the Tribe and the city of Globe, Arizona, additional time to reach bilateral agreements that would be included as part of the overall Settlement Agreement that the Congress ratified in the 1992 Act. The relatively short time period is intended to ensure that the parties remain diligent in pursuing a final resolution of the issues between them. The Tribe, Phelps Dodge, Globe, and all other parties to the settlement, including the Administration, support this extension. The Committee recognizes that, in the event agreements are reached within the time provided by the amendment, an additional extension of time will be needed for the Arizona courts to consider the settlement in the context of the ongoing general stream adjudication of the waters of the Gila River basin.

Mr. President, by accepting the request of the Prairie Island Indian Community regarding its charter, H.R. 3068 demonstrates the Congress' respect for tribal self-government and tribal sovereignty. The amendments to the bill that provide extensions of time for completing two complex water settlements already approved and funded by Congress must be enacted if we are to preserve the benefits of those settlements for all parties involved, including the United States.

Mr. President, H.R. 3068 is extremely important legislation that is without controversy or opposition. The Congressional Budget Office reports that enactment of the bill will not effect direct spending nor create any pay-as-you-go problems. Accordingly, I strongly urge the Senate to pass H.R. 3068 and send it to the President.

Mr. STEVENS. Mr. President, I ask unanimous consent the committee amendment be agreed to, the bill be deemed read for a third time, passed, the motion to reconsider be laid on the table and any statements relating to the bill be placed at an appropriate place in the RECORD.

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

The committee amendment was agreed to.

The bill (H.R. 3068), as amended, was deemed read for a third time and passed.

WITNESS RETALIATION, WITNESS TAMPERING AND JURY TAMPERING AMENDMENTS

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of Calendar 430, H.R. 3120.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3120) to amend title 18, United States Code, with respect to witness retaliation, witness tampering and jury tampering.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, I ask unanimous consent the bill be deemed read for a third time and passed, the motion to reconsider be laid on the table, and any statements relating to the bill appear at this point in the RECORD.

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

The bill (H.R. 3120) was deemed read for a third time and passed.

CRAWFORD NATIONAL FISH HATCHERY CONVEYANCE ACT

Mr. STEVENS. Mr. President, I ask unanimous consent the Environment and Public Works Committee be discharged of H.R. 3287, and further that the Senate proceed now to its immediate consideration.

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

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3287) to direct the Secretary of the Interior to convey the Crawford National Fish Hatchery to the city of Crawford, Nebraska.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, I ask unanimous consent the bill be deemed read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed at this point in the RECORD.

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

The bill (H.R. 3287) was deemed read for a third time and passed.

CARBON HILL NATIONAL FISH HATCHERY CONVEYANCE ACT

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar 462, H.R. 2982.

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

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2982) to direct the Secretary of the Interior to convey the Carbon Hill National Fish Hatchery to the State of Alabama.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. I ask unanimous consent the bill be deemed read for a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill appear at this point in the RECORD.

The bill (H.R. 2982) was deemed read for a third time and passed.

APPOINTMENT OF CONFEREES—H.R. 3539

The PRESIDING OFFICER. Pursuant to the order of the Senate on September 18, 1996, the Chair appoints the following conferees to H.R. 3539.

The Presiding Officer appointed Mr. PRESSLER, Mr. STEVENS, Mr. MCCAIN, Mr. HOLLINGS, and Mr. FORD conferees on the part of the Senate.

ORDERS FOR FRIDAY, SEPTEMBER 20, 1996

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:30 a.m. on Friday, September 20; further, that immediately following the prayer, the Journal of proceedings be deemed approved to date, the morning hour be deemed to have expired and the time for the two leaders be reserved for their use later in the day and the Senate immediately resume consideration of H.R. 1350, the pending legislation, the maritime bill.

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

Mr. STEVENS. Mr. President, I further ask unanimous consent that the time between 9:30 a.m. and 10 a.m. be equally divided in the usual form prior to a vote on the motion to table the Grassley amendment to occur at 10 a.m.

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

PROGRAM

Mr. STEVENS. Mr. President, tomorrow morning at 10 a.m., the Senate will vote on or in relation to the Grassley amendment to the maritime bill. Other rollcall votes are possible on the remaining amendments to the maritime bill. It is hoped that a unanimous-consent agreement regarding the maritime bill can be reached tomorrow morning which would allow Members to know the voting schedule for the remainder of Friday's session. The Senate may also be asked to turn to consideration of any other items cleared for action.

ORDER FOR ADJOURNMENT

Mr. STEVENS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment, in accordance with the previous order, following the remarks of Senator GRASSLEY.

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

The Senator from Iowa.

THE NEED FOR COHERENT DRUG POLICY

Mr. GRASSLEY. Mr. President, for my colleagues who may have missed the information during the August break, or the news since, the latest household survey numbers on drug use are out. For anyone concerned about drug use in this country, those numbers tell a depressing story. The story is quite simply this: more kids are using more drugs. Put what gloss you want on the numbers, the depressing fact is, we are in the midst of a new drug crisis.

There are five major surveys of drug use in this country. These include the Drug Abuse Warning Network, or DAWN, which surveys hospital emergency room admission rates. The high school survey, which studies use among seniors and others in high school. The Parents' Resource Institute for Drug Education, or PRIDE survey of high school substance abuse. The Drug Use Forecasting, or DUF, survey that tests for substance abuse among arrestees.

And the household survey, which samples over 17,000 households to look at drug use trends in the population age 12 and older. These surveys are our early warning network. And the alarm bells are ringing. The emergency lights are flashing. We need to heed the warning.

To understand the warning in its fullness, we need a little perspective. Today's growing problem does not occur in isolation. It is not the result of ignorance of the dangers of drug use.

The 1960's and 1970's taught us a bitter lesson about that. They taught us about the risks individuals and communities run in dealing, or failing to deal, with the drug problem. Since 1981, when we began to fight back seriously, we have spent $128 billion at the Federal level to combat illegal drug use. We have spent a like amount at the State and local levels. In addition, we have spent in the neighborhood of $1 trillion on the indirect costs of drug use and an additional $1 trillion, out of individual pockets, to buy illegal drugs.

This is only the fiscal summary. It does not begin to tote up the human toll. These numbers do not account for the tens of thousands of deaths or the millions of addicts. They do not make plain the toll of drug-addicted babies. Mere numbers do not convey the suffering, the loss of life, the damaged lives, the ruined prospects and shattered dreams that are all part of the legacy of this country's flirtation with dangerous drugs. In a generation, we went from a nation with no drug problem to a country in which one-fifth of the population has tried drugs and over 6 million people who are addicts.

There is not a single, major social pathology today that is not in some way linked to drugs. From family violence to drive-by shootings, from drug-addicted babies to devastated inner-city neighborhoods, the legacy of drugs is written in bold print across the face of this country.

We got ourselves into this mess because we allowed our cultural elite and others to persuade us, against our understanding, that drugs were really OK. That using drugs was merely a form of personal expression that did not hurt anyone, not even the user.

We bought into that idea and lived it through the 1960's and 1970's. We came dangerously close to legalizing drug use. And we delegitimized the notion of enforcing our laws against drug use. We are living with the consequences. Today's billions spent on the war on drugs are a direct result of the choices that we made yesterday. Our drug problem was no accident. Movies and music glorified drugs. Politicians publicly questioned the usefulness of preventing individual drug use.

Our cultural elite talked of legalization. In virtually all our means for communicating what we think is proper and appropriate, we sent the signal that drugs were OK. And who were we talking to? Who was listening? who got the message? It was our kids. And it was our kids who ended up as the principal casualties of this so-called enlightened policy. What were we thinking?

In the 1980's, however, we realized our mistake. We began to fight back. It was not that we just spent money on the problem. Parents and communities, schools and businesses, civic and political leaders came together to stop the nonsense. They formed coalitions, lobbied their public officials, and organized public and private efforts to fight back, to save the kids. And it was working. Between 1985 and 1992 drug use in this country went down. More important, attitudes among kids about drugs improved.

More and more kids came to see drugs as dangerous. More kids stayed away from using. That was no accident. Everywhere they looked the message they got was the drugs were bad. The message was, just say no. And they listened.

That did not mean that our difficulties were past. We still had a large addict population that was using more and more. We had enriched powerful drug organizations that had extensive networks for drug smuggling and money laundering.

We still had to deal with a lingering notion that somehow, despite the evidence before our eyes, drugs were OK. Nevertheless, we were on the right track. In recent years, however, we have gone off the rails. In some areas, we have been pulling up the tracks and shooting the engineers and conductors.

This is what the most recent household survey makes clear. It shows that marijuana use among young people is up over 100 percent since 1992.

It went up 37 percent last year alone. Overall drug use has risen 78 percent since 1992, 33 percent last year. Fully 10.9 percent of young people aged 12 to 17 reported using marijuana monthly last year. That is up from 8.2 percent the year before. At this rate, we will have lost all the ground that we won in the late 1980's and early 1990's. And the people who are at risk, once again, are kids and teenagers and young adults. If this trend continues, and it is showing no signs of changing under present policies, in the next few years we will have wiped out all the gains made in the 1980's.

Now, if you do not believe that legalization is a rational policy, then you cannot welcome the recent news. And if you do not think 10, 11, and 12 year olds ought to be making their own decisions about using heroin or cocaine, then you have to conclude that the present trend is a disaster in the making. As I suggested earlier, the warning lights are flashing.

When the oil light goes on in your car, it is time to check the engine. If you decide to ignore the light you risk making an expensive mistake.

Well, the Nation's warning light is on. And what do you find when you open the hood and check on the reasons? As it turns out, we've been trying to run our programs without the right stuff.

Despite what some of my colleagues have argued on this floor, this administration simply has not taken the drug issue seriously. Not from day one, and not, so far as I can see, yet. In fact, its policy, where one can be disconcerned, has downplayed the issue and distanced the President from any involvement.

Now, having said this, I know that one of my colleagues is likely to be down here any minute accusing me of playing politics. That seems to be the administration's line any time someone criticizes them. Indeed, Secretary Shalala and the Attorney General have been going around saying this. They have blamed Congress for lack of funding. They have pointed to increases of drug use in Europe. They have also taken to blaming the Bush administration for the present problem. When they do that, reaching back 4 years to try to blame someone else, that is not playing politics, of course.

That is not dodging. That's not blowing smoke. That is what passes for policy in this administration. But serious policy is more than artful dodging.

Let me remind you, that this administration came into office saying that the Bush administration had not fought a real drug war—that claim was made despite the fact of steady declines in teen use. The present occupant of the White House promised to do better. At the least, then, we should expect to see the trend of teen use continuing to decline.

We should expect that teenage attitudes about drug use would remain negative. But that is not the case. In fact, it is exactly the reverse. And it was not the Bush administration that presided over these recent increases. It

was not past policies that created the present crisis. The administration's own numbers make this clear. All you have to do is look at those numbers. But, in keeping with this administration's whole program, the response is deny, deny, deny.

I am sure most parents have had the experience in dealing with their kids that when the crockery gets broken, it was some mysterious villain that did the deed. Just ask the child. ''I didn't do it.'' Or, ''George did it.'' Or, ''I don't know how it happened.'' These excuses are what one expects. From children. As adults, however, we are supposed to know better. But, even as the numbers grow worse, the administration is still hoping to pin the blame on someone, anyone else. But, in the end, it is their policies, it is their programs, it is their attitudes that have shaped how we have dealt with the drug issue in the past 4 years.

And, the fact remains, after years of decline, drug use among kids is getting worse by the minute, and this administration cannot think of anything more constructive to do than pass the blame.

All of this is a matter of record. I and others here and across the country have documented this story. Even the President's drug czar now acknowledges that we are in the midst of a crisis of new drug use. In one of his most recent press releases outlining the problem, however, he wants us to develop amnesia about how we got into this mess.

He wants us to look only at what we must do about it. I understand why he may want us to overlook the recent past. But no serious effort to get our programs back on track can hope to succeed if we do not grasp why it is we are having the problem. This is not playing politics, this is talking about policy. It is talking seriously about responsibility.

We are in this mess because of choices that were made about what to do. We are talking about conscious decisions deliberately made.

But it is now clear, that those decisions were, are a mistake. Our present policies are simply not up to the task. Benign neglect, indifference, and just say maybe are not good policy choices. We have the evidence of what happens when they are, however, our policy

Clearly, by all the warning systems that we have developed to give us feed back, those choices have failed. The extent of that failure is shocking. If we are to change this, we must start doing something different, we must do it better, and we must do it now. To repeat the mistakes of the 1960's and 1970's would be a shameful retreat from responsibility.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER (Mr. STEVENS). Under the previous order, the Senate stands in adjournment until 9:30 a.m., Friday, September 20, 1996.

Thereupon, the Senate, at 10:04 p.m., adjourned until Friday, September 20, 1996, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 19, 1996:

U.S. INSTITUTE OF PEACE

JOSEPH LANE KIRKLAND, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1997, VICE ALLEN WEINSTEIN, TERM EXPIRED.

JOSEPH LANE KIRKLAND, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 2001. (REAPPOINTMENT)

FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS ONE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF STATE

LARRY CORBETT, OF NEVADA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS TWO, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

HANS J. AMRHEIN, OF VIRGINIA

DEPARTMENT OF STATE

PHYLLIS MARIE POWERS, OF TEXAS
MICHAEL S. TULLEY, OF CALIFORNIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

KIMBERLY J. DELANEY, OF VIRGINIA
EDITH FAYSSOUX JONES HUMPHREYS, OF NORTH CAROLINA

DEPARTMENT OF STATE

JEMILE L. BERTOT, OF CONNECTICUT

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS FOUR, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF STATE

ALFRED B. ANZALDUA, OF CALIFORNIA
DAVID A. BEAM, OF PENNSYLVANIA
DONALD ARMIN BLOME, OF ILLINOIS
P.P. DECLAN BYRNE, OF WASHINGTON
LAUREN W. CATIPON, OF NEW JERSEY
JAMES PATRICK DEHART, OF MICHIGAN
JOSEPH DEMARIA, OF NEW JERSEY
MICHAEL RALPH DETAR, OF NEW YORK
RODGER JAN DEUERLEIN, OF CALIFORNIA
STEPHEN A. DRUZAK, OF WASHINGTON
MARY EILEEN EARL, OF VIRGINIA
LINDA LAURENTS EICHBLATT, OF TEXAS
JESSICA ELLIS, OF WASHINGTON
STEPHANIE JANE FOSSAN, OF VIRGINIA
CHRISTOPHER SCOTT HEGADORN, OF THE DISTRICT OF COLUMBIA
HARRY R. KAMIAN, OF CALIFORNIA
MARC E. KNAPPER, OF CALIFORNIA
BLAIR L. LABARGE, OF UTAH
WILLIAM SCOTT LAIDLAW, OF WASHINGTON
KAYE-ANNE LEE, OF WASHINGTON
BRIAN LIEKE, OF TEXAS
BERNARD EDWARD LINK, OF DELAWARE
LEE MACTAGGART, OF WASHINGTON
RICHARD T. REITER, OF CALIFORNIA
KAI RYSSDAL, OF VIRGINIA
NORMAN THATHCER SCHARPF, OF THE DISTRICT OF COLUMBIA
JENNIFER LEIGH SCHOOLS, OF TEXAS
JUSTIN H. SIBERELL, OF CALIFORNIA
ANTHONY SYRETT, OF WASHINGTON
HERBERT S. TRAUB III, OF FLORIDA
ARNOLDO VELA, OF TEXAS
J. RICHARD WALSH, OF ALABAMA
DAVID K. YOUNG, OF FLORIDA
DARCY FYOCK ZOTTER, OF VERMONT

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF STATE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEREK A. BOWER, OF VIRGINIA
STEVEN P. CHISHOLM, OF VIRGINIA
HENRY J. HEIM JR., OF VIRGINIA
HOLLY ANN HERMAN, OF VIRGINIA
E. KEITH KIRKHAM, OF MAINE
MARY PAT MOYNIHAN, OF VIRGINIA
JOHN W. RATKIEWICZ, OF NEW JERSEY

SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

WILLIAM B. CLATANOFF, JR., OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED, EFFECTIVE OCTOBER 18, 1992:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

ELIZABETH B. BOLLMANN, OF MISSOURI
MARSHA D. VON DUERCKHEIM, OF CALIFORNIA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON OCTOBER 18, 1992, NOW TO BE EFFECTIVE APRIL 7, 1991:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

JOAN ELLEN CORBETT, OF VIRGINIA
JUDITH RODES JOHNSON, OF TEXAS
MARY ELIZABETH SWOPE, OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON OCTOBER 18, 1992, NOW TO BE EFFECTIVE OCTOBER 6, 1991:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

SYLVIA G. STANFIELD, OF TEXAS

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON NOVEMBER 6, 1988, NOW EFFECTIVE OCTOBER 12, 1986:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

JOAN ELLEN CORBETT, OF VIRGINIA
JUDITH RODES JOHNSON, OF TEXAS
MARY ELIZABETH SWOPE, OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON NOVEMBER 6, 1988, NOW EFFECTIVE JANUARY 3, 1988:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

SYLVIA G. STANFIELD, OF TEXAS

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON APRIL 7, 1991, NOW EFFECTIVE NOVEMBER 19, 1989:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

VIRGINIA CARSON YOUNG, OF THE DISTRICT OF COLUMBIA

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON OCTOBER 6, 1991, NOW EFFECTIVE APRIL 7, 1991:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

JUDITH M. HEIMANN, OF CONNECTICUT

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON OCTOBER 18, 1992, NOW EFFECTIVE APRIL 7, 1991:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

JUDYT LANDSTEIN MANDEL, OF THE DISTRICT OF COLUMBIA
MARY C. PENDLETON, OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON OCTOBER 18, 1992, NOW EFFECTIVE OCTOBER 6, 1991:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELORS:

JEAN ANNE LOUIS, OF VIRGINIA
SHARON K. MERCURIO, OF CALIFORNIA
RUTH H. VAN HEUVEN, OF CONNECTICUT
ROBIN LANE WHITE, OF MASSACHUSETTS

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR PROMOTION TO THE GRADE INDICATED IN THE UNITED STATES AIR

FORCE IN ACCORDANCE WITH SECTION 1552 OF TITLE 10, UNITED STATES CODE. THE DATE OF PROMOTION IS TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE:

LINE

To be colonel

WENDELL R. KELLER, 000–00–0000

THE FOLLOWING OFFICERS, WHO WERE DISTINGUISHED GRADUATES FROM THE UNITED STATES AIR FORCE OFFICER TRAINING SCHOOL, FOR APPOINTMENT AS SECOND LIEUTENANTS IN THE REGULAR AIR FORCE, UNDER THE PROVISIONS OF SECTION 531 OF TITLE 10, UNITED STATES CODE., WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

LINE

To be second lieutenant

SEAN P. ABELL, 000–00–0000
DANIEL G. AMEGIN, 000–00–0000
LANE H. BOYD, 000–00–0000
MICHAEL T. CLANCY, 000–00–0000
JOHN C. DAVIDSON, 000–00–0000
RUSSELL O. DAVIS, 000–00–0000
KEVIN S. DOWLING, 000–00–0000
MICHAEL K. EMBREE, 000–00–0000
KENNETH C. GRACE, 000–00–0000
VINCENT M. KREPPS, 000–00–0000
ROBERT C. LANDIS, JR., 000–00–0000
DIONNE L. PAYNE, 000–00–0000
JEFFREY D. ROBINSON, 000–00–0000
TIMOTHY D. SCARBOROUGH, 000–00–0000
JEFFREY S. SUTTON, 000–00–0000
BRIAN G. THOMAS, 000–00–0000
JOHNNIE A. VANCE, 000–00–0000
TIMOTHY T. WILDAY, 000–00–0000

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE AIR FORCE UNDER THE PROVISIONS OF SECTIONS 12203 AND 8379, TITLE 10 OF THE UNITED STATES CODE. PROMOTIONS MADE UNDER SECTION 8379 AND CONFIRMED BY THE SENATE UNDER SECTION 12203 SHALL BEAR AN EFFECTIVE DATE ESTABLISHED IN ACCORDANCE WITH SECTION 8374, TITLE 10 OF THE UNITED STATES CODE.

LINE

To be lieutenant colonel

RANDALL R. BALL, 000–00–0000
JOSEPH G. BALSKUS, 000–00–0000
FRANKLIN E. CHALK, SR., 000–00–0000
JOHN C. DIEFFENDERFER, 000–00–0000
ROBERT C. EDWARDS, JR., 000–00–0000
LARRY R. KAUFFMAN, 000–00–0000
DANNY U. LEWIS, 000–00–0000
THADDEUS J. MARTIN, 000–00–0000
DONALD V. PADDOCK, 000–00–0000
WILLIAM M. PARSEL, 000–00–0000
JOHN J. SAMUHEL, 000–00–0000
DAVID B. SJOSTROM, 000–00–0000
MICHAEL A. ZINNO, 000–00–0000

MEDICAL CORPS

To be lieutenant colonel

STEPHEN J. GRAHAM, 000–00–0000

DENTAL CORPS

To be lieutenant colonel

LEFTER J. BAKLAS, 000–00–0000
DANIEL P. BARTLETT, 000–00–0000
DAVID B. GRUBLER, 000–00–0000

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE AIR FORCE UNDER THE PROVISIONS OF SECTIONS 12203 AND 8379, TITLE 10 OF THE UNITED STATES CODE. PROMOTIONS MADE UNDER SECTION 8379 AND CONFIRMED BY THE SENATE UNDER SECTION 12203 SHALL BEAR AN EFFECTIVE DATE ESTABLISHED IN ACCORDANCE WITH SECTION 8374, TITLE 10 OF THE UNITED STATES CODE.

LINE

To be lieutenant colonel

JAMES E. BALL, 000–00–0000
RONALD D. BARTON, 000–00–0000
DANIEL L. BOONE, 000–00–0000
WILLIAM B. BURNEY, 000–00–0000
DANIEL G. COSHATT, 000–00–0000
MATTHEW J. DZIALO, 000–00–0000
DEONE G. GIEG, 000–00–0000
BRIAN D. GOMULA, 000–00–0000
MICHAEL J. GRIFFIN, 000–00–0000
WILLIAM S. HADAWAY, 000–00–0000
TIMOTHY B. HECK, 000–00–0000
ROGER L. HENRY, 000–00–0000
ROBERT A. HICKEY, 000–00–0000
MARK A. LYNN, 000–00–0000
JEFF A. MANOR, 000–00–0000
GREGORY L. MARSTON, 000–00–0000
NORMAN W. MILLER, 000–00–0000
HARRY D. MONTGOMERY, 000–00–0000
COLIS NEWBLE, JR., 000–00–0000
NICHOLAOS G. PEROULAKIS, 000–00–0000
HOWARD X. PLOUFFEE, 000–00–0000
RUSSELL A. RUSHE, 000–00–0000
KENNETH L. SMITH, 000–00–0000
WILLIAM A. SOBRERO, 000–00–0000
CLARK F. SPEICHER, 000–00–0000
DENNIS R. TAYLOR, 000–00–0000
SCOTT H. TURNER, 000–00–0000
CURTIS M. WHITAKER, 000–00–0000
JAMES H. YEAGLEY, 000–00–0000

JUDGE ADVOCATE GENERALS DEPARTMENT

To be lieutenant colonel

DONALD L. SCHENSE, 000–00–0000
CHARLES A. WALDEN, 000–00–0000

BIO-MEDICAL SCIENCE CORPS

To be lieutenant colonel

AHMED E. HOSSAM, 000–00–0000
THOMAS B. SPRATT II, 000–00–0000

MEDICAL CORPS

To be lieutenant colonel

WILLIAM W. DODSON, 000–00–0000

NURSE CORPS

To be lieutenant colonel

PHYLLIS M. CAMPBELL, 000–00–0000

IN THE ARMY

THE FOLLOWING-NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE SECTIONS 12203 AND 3385:

ARMY PROMOTION LIST

To be colonel

ERNEST R. ADKINS, 000–00–0000
JOHN G. ASAY, 000–00–0000
BARBARANETTE T. BOLDEN, 000–00–0000
RONALD I. BOTZ, 000–00–0000
MYRON K. BRUMAGHIM, 000–00–0000
CHARLES E. FLEMING, 000–00–0000
MICHAEL D. GILPIN, 000–00–0000
WALTER Y. KINOSHITA, 000–00–0000
GARY E. MATHEWSON, 000–00–0000
MARVING. METCALF, 000–00–0000
NORBERT L. MOHNEN, 000–00–0000
FRANCIS NELSON, 000–00–0000
DAVID G. POPHAM, 000–00–0000
LARRY B. SHELTON, 000–00–0000
ROGER R. TURCOTTE, 000–00–0000
WILLAIM H. WEIR, 000–00–0000
GARY W. WIDNER, 000–00–0000
SAMUEL A. WILKS, 000–00–0000

ARMY NURSE CORPS

To be colonel

HERMA J. TAYLOR, 000–00–0000

CHAPLAIN CORPS

To be colonel

LEROY J. DYER, 000–00–0000

MEDICAL CORPS

To be colonel

JAMES S. GREENE, 000–00–0000
CASEY ROGERS, 000–00–0000
JOHN C. STONER, 000–00–0000
ROBERT J. ZAHN, 000–00–0000

MEDICAL SERVICE CORPS

To be colonel

RAYMOND F. ROOT, 000–00–0000

THE FOLLOWING-NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, U.S.C. SECTIONS 12203 AND 3385:

ARMY PROMOTION LIST

To be lieutenant colonel

WILLIAM A. AYERS, JR., 000–00–0000
THOMAS D. CROWLEY, 000–00–0000
DENNIE L. DENSON, 000–00–0000
THADDEUS A. DMUCHOWSKI, 000–00–0000
WILLIAM F. ELROD, 000–00–0000
BRUCE W. FALCONE, 000–00–0000
ROBERT T. FORD III, 000–00–0000
JAMES D. HOGAN, 000–00–0000
GREGORY L. HOLLEY, 000–00–0000
GARY A. HUFF, 000–00–0000
JOHN R. JACKSON, 000–00–0000
MARK N. JONES, 000–00–0000
JOHN T. KOEHLER, 000–00–0000
WILLIAM R. MAY, 000–00–0000
GERALD D. MEANEY, 000–00–0000
ROBERT W. MITCHELL, 000–00–0000
RONALD O. MORROW, 000–00–0000
PATRICK A. MURPHY, 000–00–0000
JOSE A. ORTIZ, 000–00–0000
CLYDE L. OVERTON, JR., 000–00–0000
CARROLL ROHRICH, 000–00–0000
DELORAS J. RUSSO, 000–00–0000
TERRY W. SALTSMAN, 000–00–0000
LESLIE R. SHEETZ, 000–00–0000
CLIFTON A. SLADE, 000–00–0000
NATHAN D. SMITH, 000–00–0000
KEITH P. SULLIVAN, 000–00–0000
STANLEY M. STRICKLEN, 000–00–0000
DONALD P. WALKER, 000–00–0000
BRUCE A. WILHELM, 000–00–0000
THOMAS K. ZABASKY, 000–00–0000

ARMY NURSE CORPS

To be lieutenant colonel

HALLAN L. KELLY, JR., 000–00–0000
EILEEN G. MCGONAGLE, 000–00–0000
MARJORIE C.L. PENEBACKER, 000–00–0000

DENTAL CORPS

To be lieutenant colonel

JERRY P. BROMAN, 000–00–0000

THE JUDGE ADVOCATE GENERAL'S CORPS

To be lieutenant colonel

WILLIAM L. ENYART, JR., 000–00–0000
KEVIN M. HOWARD, 000–00–0000
RICHARD A. MORTON, 000–00–0000

MEDICAL CORPS

To be lieutentant colonel

MICHARL D. DRISCOLL, 000–00–0000
WENIFREDO A. LISONDRA, 000–00–0000
MICHAEL B. RATH, 000–00–0000
JAMES W. SMITH, 000–00–0000
CHRISTOPHER A. WHITE, 000–00–0000

MEDICAL SERVICE CORPS

To be lieutentant colonel

JEFFREY HART, 000–00–0000

CONFIRMATIONS

Executive nominations confirmed by the Senate September 19, 1996:

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. JOHN A. GORDON, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. AIR FORCE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C. SECTION 8036:

SURGEON GENERAL OF THE AIR FORCE

To be lieutenant general

MAJ. GEN. CHARLES H. ROADMAN, II, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE, TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 8374, 12201, 12204, AND 12212:

To be brigadier general

BRIG. GEN. DWIGHT M. KEALOHA, USAF (RETIRED), 000–00–0000, AIR NATIONAL GUARD.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. AIR FORCE WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. WILLIAM J. DONAHUE, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. AIR FORCE WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. NORMAND G. LEZY, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. AIR FORCE WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. WILLIAM P. HALLIN, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. AIR FORCE WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. GEORGE T. BABBITT, JR., 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTIONS 8374, 12201, AND 12212:

To be brigadier general

COL. GERALD W. WRIGHT, 000–00–0000, AIR NATIONAL GUARD OF THE UNITED STATES.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S.

ARMY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A) AND 3036.

CHIEF OF ENGINEERS

To be lieutenant general

MAJ. GEN. JOE N. BALLARD, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. ARMY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A).

To be lieutenant general

MAJ. GEN. FREDERICK E. VOLLRATH, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. ARMY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. EDWARD G. ANDERSON, III, 000–00–0000, U.S. ARMY.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. ARMY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. GEORGE A. CROCKER, 000–00–0000.

THE FOLLOWING U.S. ARMY NATIONAL GUARD OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTIONS 3385, 3392, AND 12203(A):

To be major general

BRIG. GEN. FRANK A. CATALANO, JR., 000–00–0000.

To be brigadier general

COL. CLARENCE E. BAYLESS, JR., 000–00–0000.
COL. JOHN D. BRADBERRY, 000–00–0000.
COL. ROGER B. BURROWS, 000–00–0000.
COL. WILLIAM G. BUTTS, JR., 000–00–0000.
COL. DALTON E. DIAMOND, 000–00–0000.
COL. GEORGE T. GARRETT, 000–00–0000.
COL. LARRY E. GILMAN, 000–00–0000.
COL. JOHN R. GROVES, JR., 000–00–0000.
COL. HUGH J. HALL, 000–00–0000.
COL. ELMO C. HEAD, JR., 000–00–0000.
COL. WILLIE R. JOHNSON, 000–00–0000.
COL. STEPHEN D. KORENEK, 000–00–0000.
COL. BRUCE M. LAWLOR, 000–00–0000.
COL. PAUL M. MAJERICK, 000–00–0000.
COL. TIMOTHY E. NEEL, 000–00–0000.
COL. JEFF L. NEFF, 000–00–0000.
COL. ANTHONY L. OIEN, 000–00–0000.
COL. TERRY L. REED, 000–00–0000.
COL. MICHAEL H. TAYLOR, 000–00–0000.
COL. EDWIN H. WRIGHT, 000–00–0000.

THE FOLLOWING-NAMED JUDGE ADVOCATE GENERAL'S CORPS COMPETITIVE CATEGORY OFFICERS FOR PROMOTION IN THE REGULAR ARMY OF THE UNITED STATES TO THE GRADE OF BRIGADIER GENERAL UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 611(A) AND 624(C):

To be brigadier general

COL. JOSEPH R. BARNES, 000–00–0000.
COL. MICHAEL J. MARCHAND, 000–00–0000.

THE FOLLOWING U.S. ARMY NATIONAL GUARD OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTIONS 3385, 3392, AND 12203(A):

To be major general

BRIG. GEN. CARROLL D. CHILDERS, 000–00–0000.
BRIG. GEN. CECIL L. DORTEN, 000–00–0000.
BRIG. GEN. CLYDE A. HENNIES, 000–00–0000.
BRIG. GEN. WARREN L. FREEMAN, 000–00–0000.

To be brigadier general

COL. JOHN E. BARNETTE, 000–00–0000.
COL. ROBERTO BENAVIDES, JR., 000–00–0000.
COL. ERNEST D. BROCKMAN, JR., 000–00–0000.
COL. DANNY B. CALLAHAN, 000–00–0000.
COL. REGINALD A. CENTRACCHIO, 000–00–0000.
COL. TERRY J. DORENBUSH, 000–00–0000.
COL. THOMAS W. ERES, 000–00–0000.
COL. EDWARD A. FERGUSON, JR., 000–00–0000.
COL. GARY L. FRANCH, 000–00–0000.
COL. PETER J. GRAVETT, 000–00–0000.
COL. ROBERT L. HALVERSON, 000–00–0000.
COL. JOSEPH G. LABRIE, 000–00–0000.
COL. BENNETT C. LANDRENEAU, 000–00–0000.
COL. JOHN W. LIBBY, 000–00–0000.
COL. MARIANNE MATHEWSON-CHAPMAN, 000–00–0000.
COL. EDMOND B. NOLLEY, JR., 000–00–0000.
COL. JAMES F. REED, III, 000–00–0000.
COL. DARWIN H. SIMPSON, 000–00–0000.
COL. ALLEN E. TACKETT, 000–00–0000.
COL. MICHAEL R. VAN PATTEN, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. ARMY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 3036:

SURGEON GENERAL, U.S. ARMY

To be lieutenant general

MAJ. GEN. RONALD R. BLANCK, 000–00–0000.

IN THE MARINE CORPS

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE U.S. MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER THE PROVISIONS OF SECTION 601, TITLE 10, UNITED STATES CODE:

To be lieutenant general

LT. GEN. ANTHONY C. ZINNI, 000–00–0000.

IN THE NAVY

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE LINE IN THE NAVY OF THE UNITED STATES TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

UNRESTRICTED LINE OFFICER

To be rear admiral (lower half)

CAPT. DANIEL R. BOWLER, 000–00–0000.
CAPT. JOHN E. BOYINGTON, JR., 000–00–0000.
CAPT. JOHN T. BYRD, 000–00–0000.
CAPT. JOHN V. CHENEVEY, 000–00–0000.
CAPT. RONALD L. CHRISTENSON, 000–00–0000.
CAPT. ALBERT T. CHURCH, III, 000–00–0000.
CAPT. JOHN P. DAVIS, 000–00–0000.
CAPT. THOMAS J. ELLIOTT, JR., 000–00–0000.
CAPT. JOHN B. FOLEY, III, 000–00–0000.
CAPT. KEVIN P. GREEN, 000–00–0000.
CAPT. ALFRED G. HARMS, JR., 000–00–0000.
CAPT. JOHN M. JOHNSON, 000–00–0000.
CAPT. HERBERT C. KALER, 000–00–0000.
CAPT. TIMOTHY J. KEATING, 000–00–0000.
CAPT. GENE R. KENDALL, 000–00–0000.
CAPT. TIMOTHY W. LA FLEUR, 000–00–0000.
CAPT. ARTHUR N. LANGSTON, III, 000–00–0000.
CAPT. JAMES W. METZGER, 000–00–0000.
CAPT. DAVID P. POLATTY, III, 000–00–0000.
CAPT. RONALD A. ROUTE, 000–00–0000.
CAPT. STEVEN G. SMITH, 000–00–0000.
CAPT. THOMAS W. STEFFENS, 000–00–0000.
CAPT. RALPH E. SUGGS, 000–00–0000.
CAPT. PAUL F. SULLIVAN, 000–00–0000.

ENGINEERING DUTY OFFICER

To be rear admiral (lower half)

CAPT. ROLAND B. KNAPP, 000–00–0000.
CAPT. KATHLEEN K. PAIGE, 000–00–0000.

SPECIAL DUTY OFFICER (INTELLIGENCE)

To be rear admiral (lower half)

CAPT. PERRY M. RATLIFF, 000–00–0000.

SPECIAL DUTY OFFICER (FLEET SUPPORT)

To be rear admiral (lower half)

CAPT. JACQUELINE O. ALLISON, 000–00–0000.

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE LINE IN THE NAVY OF THE UNITED STATES TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

UNRESTRICTED LINE OFFICER

To be rear admiral (lower half)

CAPT. HARRY M. HIGHFILL, 000–00–0000.
CAPT. RICHARD J. NAUGHTON, 000–00–0000.
CAPT. WILLIAM G. SUTTON, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL IN THE U.S. NAVY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10 U.S.C., SECTION 601:

To be vice admiral

REAR ADM. WILLIAM J. HANCOCK, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL IN THE U.S. NAVY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10 U.S.C., SECTION 601:

To be vice admiral

REAR ADM. WILLIAM J. FALLON, 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF VICE ADMIRAL IN THE UNITED STATES NAVY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10 UNITED STATES CODE, SECTION 601:

To be vice admiral

VICE ADM. CONRAD C. LAUTENBACHER, JR., 000–00–0000.

THE FOLLOWING-NAMED OFFICER FOR PROMOTION IN THE NAVAL RESERVE OF THE UNITED STATES TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 5912:

CIVIL ENGINEER CORPS OFFICER

To be rear admiral

REAR ADM. (LH) THOMAS JOSEPH GROSS, 000–00–0000, U.S. NAVAL RESERVE.

THE FOLLOWING-NAMED OFFICER FOR PROMOTION IN THE NAVY OF THE UNITED STATES TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

MEDICAL CORPS

To be rear admiral (lower half)

CAPT. BONNIE B. POTTER, 000–00–0000, U.S. NAVY.

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING JEFFREY I. ROLLER, AND ENDING DAVID B. PORTER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 17, 1996.

AIR FORCE NOMINATIONS BEGINNING MICHAEL P. ALLISON, AND ENDING JOHN P. SMAIL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 29, 1996.

AIR FORCE NOMINATIONS BEGINNING JOHN W. BAKER, AND ENDING LAURIE L. YANKOSKY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 29, 1996.

AIR FORCE NOMINATION OF EDGAR W. HATCHER, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 3, 1996.

AIR FORCE NOMINATIONS BEGINNING MALCOLM N. JOSEPH, III, AND ENDING ETIENNE I. TORMOS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

AIR FORCE NOMINATIONS BEGINNING JOHN W. AMSHOFF, JR., AND ENDING SALVATORE J. LOMBARDI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

AIR FORCE NOMINATIONS BEGINNING JOHNNY R. ALMOND, AND ENDING HERBERT R. ZUCKER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 9, 1996.

IN THE ARMY

ARMY NOMINATIONS BEGINNING *ANTHONY J. ABATI, AND ENDING 2425X, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 11, 1996.

ARMY NOMINATION OF DONALD G. HIGGINS, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JULY 17, 1996.

ARMY NOMINATIONS BEGINNING ROBERT M. CARROTHERS, AND ENDING JEFFREY T. WELLER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 19, 1996.

ARMY NOMINATIONS BEGINNING JAMES R. BARR, AND ENDING MICHAEL D. MOSER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 19, 1996.

ARMY NOMINATION OF COL. GEORGE B. FORSYTHE, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 3, 1996.

IN THE MARINE CORPS

MARINE CORPS NOMINATION OF GEORGE W. SIMMONS, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF MAY 22, 1996.

MARINE CORPS NOMINATIONS BEGINNING ROBERT E. CARNEY, AND ENDING WILLIAM P. SCHULZ, JR, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 29, 1996.

MARINE CORPS NOMINATIONS BEGINNING CRAIG T. BODDINGTON, AND ENDING FREDERICK B. WITESMAN, II, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 29, 1996.

MARINE CORPS NOMINATIONS BEGINNING GARY J. COUCH, AND ENDING JOEL G. OGREN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

MARINE CORPS NOMINATIONS BEGINNING RALPH P. DORN, AND ENDING MICHAEL F. KENNY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

MARINE CORPS NOMINATION OF JOHN C. SUMNER, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 3, 1996.

MARINE CORPS NOMINATIONS BEGINNING MICHAEL G. ALEXANDER, AND ENDING JOYCE V. WOODS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

MARINE CORPS NOMINATIONS BEGINNING JAMES R. ADAMS, AND ENDING JOHN H. WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

MARINE CORPS NOMINATIONS BEGINNING TIMOTHY FOLEY, AND ENDING MICHAEL J. COLBURN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

IN THE NAVY

NAVY NOMINATIONS BEGINNING AARON C. FLANNERY, AND ENDING JAMES M. INGALLS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 11, 1995.

NAVY NOMINATION OF JOHN L. WILSON, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 3, 1996.

NAVY NOMINATION OF ERIC L. PAGENKOPH, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 3, 1996.

NAVY NOMINATIONS BEGINNING DANIEL C. ALDER, AND ENDING TERRANCE L. NICHOLLS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

NAVY NOMINATIONS BEGINNING JAMES C. ACKLEY, AND ENDING ALBERT F. VANDERVOORT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

NAVY NOMINATIONS BEGINNING GREGORIO A. ABAD, AND ENDING ROBERT E. ZULICK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

NAVY NOMINATIONS BEGINNING ROBERT E. AGUIRRE, AND ENDING KURT D. SISSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.

NAVY NOMINATIONS BEGINNING DAVID W. ANDERSON, AND ENDING JEROME J. SQUATRITO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 3, 1996.