reduce the rate of maternal morbidity and mortality, to eliminate racial and ethnic disparities in maternal health outcomes, to reduce pre-term, labor, to examine the impact of pregnancy on the short and long term health of women, to expand knowledge about the safety and dosing of drugs to treat pregnant women with chronic conditions and women who become sick during pregnancy, to expand public health prevention, education and outreach, and to develop improved and more accurate data collection related to maternal morbidity and mortality.

S. 2448

At the request of Mr. HOLLINGS, the names of the Senator from Georgia (Mr. CLELAND) and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 2448, a bill to improve nationwide access to broadband services.

S. 2458

At the request of Mrs. HUTCHISON, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2458, a bill to enhance United States diplomacy, and for other purposes.

S. 2461

At the request of Mr. FEINGOLD, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 2461, a bill to terminate the Crusader artillery system program of the Army, and for other purposes.

S. 2484

At the request of Mr. BAUCUS, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2484, a bill to amend part A of title IV of the Social Security Act to reauthorize and improve the operation of temporary assistance to needy families programs operated by Indian tribes, and for other purposes.

S. RES. 253

At the request of Mr. SMITH of Oregon, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. Res. 253, a resolution reiterating the sense of the Senate regarding Anti-Semitism and religious tolerance in Europe.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BIDEN (for himself, Mr. HELMS, Mr. KENNEDY, and Mr. FRIST):

S. 2487. A bill to provide for global pathogen surveillance and response; to the Committee on Foreign Relations.

Mr. BIDEN. Mr. President, Senator HELMS and I are proud to introduce today the Global Pathogen Surveillance Act of 2002. Senator HELMS is recovering from his heart surgery and is unable to be here today, but let me note our joint efforts in recognizing the importance of disease surveillance and preparing this bill for introduction. In recent years, we have joined forces on a number of sensible foreign policy initiatives and I am proud that we are doing so once again. I am also especially pleased that Senators KENNEDY and FRIST, the chairman and ranking member of the Public Health Subcommittee of the Senate Health, Education, Labor, and Pensions Committee, have also agreed to be original cosponsors of this bill.

This bill authorizes $150 million over the next 2 years to provide assistance to developing nations to improve global disease surveillance to help prevent and contain both biological weapons attacks and naturally occurring infectious disease outbreaks around the world. As the ranking member and chairman of the Foreign Relations Committee, respectively, Senator HELMS and I recognize all too well that biological weapons are a global threat with no respect for borders. A terrorist group could launch a biological weapons attack in Mexico in the expectation that the epidemic would quickly spread to the United States. A rogue state might experiment with new disease strains in another country, intending later to release them here. A biological weapons threat need not begin in the United States to reach our shores.

For that reason, our response to the biological weapons threat cannot be limited to the United States alone. Global disease surveillance, a systematic approach to tracking disease outbreaks as they occur and evolve around the world, is essential to any real international response.

This country is making enormous advances on the domestic front in bioterrorism defense. $3 billion has been appropriated for this purpose in FY 2002, including $1.1 billion to improve State and local public health infrastructure. Delaware's share will include $6.7 million from the Centers for Disease Control and Prevention to improve the public health infrastructure and $548,000 to improve hospital readiness in my State.

The House and Senate are currently in conference to reconcile competing versions of a comprehensive bioterrorism bill drafted last fall following the anthrax attacks via the U.S. postal system. Those attacks, which killed five individuals and infected more than twenty people, highlighted our domestic vulnerabilities to a biological weapons attack. We need to further strengthen our Nation's public health system, improve Federal public health laboratories, and fund the necessary research and procurement for vaccines and treatments to respond better to future bioterrorist attacks. As an original co-sponsor of the Senate bill, I know the final package taking shape in conference will achieve those goals and I look forward to its enactment into law.

Nevertheless, any effective response to the challenge of biological weapons must also have an international component. Limiting our response to U.S. territory would be shortsighted and doomed to failure. A dangerous pathogen released on another continent can quickly spread to the United States in a matter of days, if not hours. This is the dark side of globalization. International trade, travel, and migration patterns offer unlimited opportunities for pathogens to spread across national borders and to move from one continent to another. Moreover, an overseas epidemic could give us our first warning of a new disease strain that was developed by a country or by terrorists for use as a biological weapon, or that could be used by others for that purpose.

We should make no mistake: in today's world, all infectious disease epidemics, wherever they occur and whether they are deliberately engineered or are naturally occurring, are a potential threat to all nations, including the United States.

How does disease surveillance fit into all of this? A biological weapons attack succeeds partly through the element of surprise. As Dr. Alan P. Zelicoff of the Sandia National Laboratory testified before the Foreign Relations Committee in March, early warning of a biological weapons attact can prevent illness and death in all but a small fraction of those infected. A cluster of flu-like symptoms in a city or region may be dismissed by individual physicians as just the flu when in fact it may be anthrax, plague, or another biological weapon. Armed with the knowledge, however, that a biological weapons attack has in fact occurred, doctors and nurses can examine their patients in a different light and, in many cases, effectively treat infected individuals.

Disease surveillance, a comprehensive reporting system to quickly identify and communicate abnormal patterns of symptoms and illnesses, can quickly alert doctors across a region that a suspicious disease outbreak has occurred. Epidemiological specialists can then investigate and combat the outbreak. And if it's a new disease or strain, we can begin to develop treatments that much earlier.

A good surveillance system requires trained epidemiological personnel, adequate laboratory tools for quick diagnosis, and communications equipment to circulate information. Even in the United States today, many States and localities rely on old-fashioned pencil and paper methods of tracking disease patterns. Thankfully, we are addressing those domestic deficiencies through the bioterrorism bill in conference.

For example, in Delaware, we are developing the first, comprehensive, state-wide electronic reporting system for infectious diseases. This system will be used as a prototype for other states, and will enable much earlier detection of infectious disease outbreaks, both natural and bioterrorist. I and my congressional colleagues in the delegation have been working for over two years to get this project up and running, and we were successful in obtaining $2.6 million in funding for this

project over the past 2 years. I and my colleagues have requested $1.4 million for additional funding in FY 2003, and we are extremely optimistic that this funding will be forthcoming.

It is vitally important that we extend these initiatives into the international arena. However, as many developing countries are way behind us in terms of public health resources, laboratories, personnel, and communications, these countries will need help just to get to the starting point we have already reached in this country.

An effective disease surveillance system is beneficial even in the absence of biological weapons attacks. Bubonic plague is bubonic plague, whether it is deliberately engineered or naturally occurring. Just as disease surveillance can help contain a biological weapons attack, it can also help contain a naturally occurring outbreak of infectious disease. According to the World Health Organization, 30 new infectious diseases have emerged over the past thirty years; between 1996 and 2001 alone, more than 800 infectious disease outbreaks occurred around the world, on every continent. With better surveillance, we can do a better job of mitigating the consequences of these disease outbreaks.

In 2000, the World Health Organization established the first truly global disease surveillance system, the Global Alert and Response Network, to monitor and track infectious disease outbreaks in every region of the world. The WHO has done an impressive job so far with this initiative, working on a shoestring budget. But this global network is only as good as its components, individual nations. Unfortunately, developing nations, those nations most likely to experience rapid disease outbreaks, simply do not possess the trained personnel, the laboratory equipment, or the public health infrastructure to track evolving disease patterns and detect emerging pathogens.

According to a report by the National Intelligence Council, developing nations in Africa and Asia have established only rudimentary systems, if any at all, for disease surveillance, response, and prevention. The World Health Organization reports that more than sixty percent of laboratory equipment in developing countries is either outdated or non-functioning.

This lack of preparedness can lead to tragic results. In August 1994 in Surat, a city in western India, a surge of complaints on flea infestation and a growing rat population was followed by a cluster of reports on patients exhibiting the symptoms of pneumonic plague. However, authorities were unable to connect the dots until the plague had spread to seven states across India, ultimately killing 56 people and costing the Indian economy $600 million. Had the Indian authorities employed better surveillance tools, they may well have contained the epidemic, limited the loss of life, and surely avoided the panic that led to economically disastrous embargoes on trade and travel. An outbreak of pneumonic plague in India this February was detected more quickly and contained with only a few deaths, and no costly panic.

Developing nations are the weak links in any comprehensive global disease surveillance network. Unless we take action to shore up their capabilities to detect and contain disease outbreaks, we leave the entire world vulnerable to a deliberate biological weapons attack or a virulent natural epidemic.

It is for these reasons that Senator HELMS and I have worked together in recent months to craft the Global Pathogen Surveillance Act of 2002. This bill will authorize $150 million in FY 2003 and FY 2004 to strengthen the disease surveillance capabilities of developing nations. First, the bill seeks to ensure in developing nations a greater number of personnel trained in basic epidemiological techniques. It offers enhanced in-country training for medical and laboratory personnel and the opportunity for select personnel to come to the United States to receive training in our Centers for Disease Control laboratories and Master of Public Health programs in American universities. Second, the bill provides assistance to developing nations to acquire basic laboratory equipment, including items as mundane as microscopes, to facilitate the quick diagnosis of pathogens. Third, the bill enables developing nations to obtain communications equipment to quickly transmit data on disease patterns and pathogen diagnoses, both inside a nation and to regional organizations and the WHO. Again, we're not talking about fancy high-tech equipment, but basics like fax machines and Internet-equipped computers. Finally, the bill gives preference to countries that agree to let experts from the United States or international organizations investigate any suspicious disease outbreaks.

If passed, the Global Pathogen Surveillance Act of 2002 will go a long way in ensuring that developing nations acquire the basic disease surveillance capabilities to link up effectively with the WHO's global network. This bill offers an inexpensive and common sense solution to a problem of global proportions, the dual threat of biological weapons and naturally occurring infectious diseases. The funding authorized is only a tiny fraction of what we will spend domestically on bioterrorism defenses, but this investment will pay enormous dividends in terms of our national security.

Let me close with an excerpt of testimony from the Foreign Relations Committee hearing last September on bioterrorism. Dr. D.A. Henderson, the man who spearheaded the successful international campaign to eradicate smallpox in the 1970's, recently stepped down from a short-term position as the director of the Office of Emergency Preparedness in the Department of Health and Human Services. In that position, he was vested with the responsibility for helping organize the U.S. government's response to future bioterrorist attacks. Dr. Henderson, who at the time of the hearing was the head of the Johns Hopkins University Center for Civilian Biodefense Strategies, was very clear on the value of global disease surveillance:

> In cooperation with the WHO and other countries, we need to strengthen greatly our intelligence gathering capability. A focus on international surveillance and on scientist-to-scientist communication will be necessary if we are to have an early warning about the possible development and production of biological weapons by rogue nations or groups.

Dr. Henderson is exactly right. We cannot leave the rest of the world to fend for itself in combating biological weapons and infectious diseases if we are to ensure America's security.

I ask unanimous consent that the text of the Global Pathogen Surveillance Act of 2002 be printed in the the RECORD.

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

S. 2487

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 ''Global Pathogen Surveillance Act of 2002''.

SEC. 2. FINDINGS; PURPOSE.

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

(1) Bioterrorism poses a grave national security threat to the United States. The insidious nature of the threat, the likely delayed recognition in the event of an attack, and the underpreparedness of the domestic public health infrastructure may produce catastrophic consequences following a biological weapons attack upon the United States.

(2) A contagious pathogen engineered as a biological weapon and developed, tested, produced, or released in another country can quickly spread to the United States. Given the realities of international travel, trade, and migration patterns, a dangerous pathogen released anywhere in the world can spread to United States territory in a matter of days, before any effective quarantine or isolation measures can be implemented.

(3) To effectively combat bioterrorism and ensure that the United States is fully prepared to prevent, diagnose, and contain a biological weapons attack, measures to strengthen the domestic public health infrastructure and improve domestic surveillance and monitoring, while absolutely essential, are not sufficient.

(4) The United States should enhance cooperation with the World Health Organization, regional health organizations, and individual countries to help detect and quickly contain infectious disease outbreaks or bioterrorism agents before they can spread.

(5) The World Health Organization (WHO) has done an impressive job in monitoring infectious disease outbreaks around the world, particularly with the establishment in April 2000 of the Global Outbreak Alert and Response network.

(6) The capabilities of the World Health Organization are inherently limited in that its

disease surveillance and monitoring is only as good as the data and information the World Health Organization receives from member countries and are further limited by the narrow range of diseases (plague, cholera, and yellow fever) upon which its disease surveillance and monitoring is based, and the consensus process used by the World Health Organization to add new diseases to the list. Developing countries in particular often cannot devote the necessary resources to build and maintain public health infrastructures.

(7) In particular, developing countries could benefit from—

(A) better trained public health professionals and epidemiologists to recognize disease patterns;

(B) appropriate laboratory equipment for diagnosis of pathogens;

(C) disease reporting that is based on symptoms and signs (known as ''syndrome surveillance'') enabling the earliest possible opportunity to conduct an effective response;

(D) a narrowing of the existing technology gap in syndrome surveillance capabilities, based on reported symptoms, and real-time information dissemination to public health officials; and

(E) appropriate communications equipment and information technology to efficiently transmit information and data within national and regional health networks, including inexpensive, Internet-based Geographic Information Systems (GIS) for early recognition and diagnosis of diseases.

(8) An effective international capability to monitor and quickly diagnose infectious disease outbreaks will offer dividends not only in the event of biological weapons development, testing, production, and attack, but also in the more likely cases of naturally occurring infectious disease outbreaks that could threaten the United States. Furthermore, a robust surveillance system will serve to deter terrorist use of biological weapons, as early detection will help mitigate the intended effects of such malevolent uses.

(b) PURPOSE.—The purposes of this Act are as follows:

(1) To enhance the capability of the international community, through the World Health Organization and individual countries, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

(2) To enhance the training of public health professionals and epidemiologists from eligible developing countries in advanced Internet-based syndrome surveillance systems, in addition to traditional epidemiology methods, so that they may better detect, diagnose, and contain infectious disease outbreaks, especially those due to pathogens most likely to be used in a biological weapons attack.

(3) To provide assistance to developing countries to purchase appropriate public health laboratory equipment necessary for infectious disease surveillance and diagnosis.

(4) To provide assistance to developing countries to purchase appropriate communications equipment and information technology, including appropriate computer equipment and Internet connectivity mechanisms, to facilitate the exchange of Geographic Information Systems-based syndrome surveillance information and to effectively gather, analyze, and transmit public health information for infectious disease surveillance and diagnosis.

(5) To make available greater numbers of United States Government public health professionals to international health organizations, regional health networks, and United States diplomatic missions where appropriate.

(6) To establish ''lab-to-lab'' cooperative relationships between United States public health laboratories and established foreign counterparts.

(7) To expand the training and outreach activities of overseas United States laboratories, including Centers for Disease Control and Prevention and Department of Defense entities, to enhance the public health capabilities of developing countries.

(8) To provide appropriate technical assistance to existing regional health networks and, where appropriate, seed money for new regional networks.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELIGIBLE DEVELOPING COUNTRY.—The term ''eligible developing country'' means any developing country that—

(A) has agreed to the objective of fully complying with requirements of the World Health Organization on reporting public health information on outbreaks of infectious diseases;

(B) has not been determined by the Secretary, for purposes of section 40 of the Arms Export Control Act (22 U.S.C. 2780), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405), to have repeatedly provided support for acts of international terrorism, unless the Secretary exercises a waiver certifying that it is in the national interest of the United States to provide assistance under the provisions of this Act; and

(C) is a state party to the Biological Weapons Convention.

(2) ELIGIBLE NATIONAL.—The term ''eligible national'' means any citizen or national of an eligible developing country who does not have a criminal background, who is not on any immigration or other United States watch list, and who is not affiliated with any foreign terrorist organization.

(3) INTERNATIONAL HEALTH ORGANIZATION.—The term ''international health organization'' includes the World Health Organization and the Pan American Health Organization.

(4) LABORATORY.—The term ''laboratory'' means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(5) SECRETARY.—Unless otherwise provided, the term ''Secretary'' means the Secretary of State.

(6) SELECT AGENT.—The term ''select agent'' has the meaning given such term for purposes of section 72.6 of title 42, Code of Federal Regulations.

(7) SYNDROME SURVEILLANCE.—The term ''syndrome surveillance'' means the recording of symptoms (patient complaints) and signs (derived from physical examination) combined with simple geographic locators to track the emergence of a disease in a population.

SEC. 4. PRIORITY FOR CERTAIN COUNTRIES.

Priority in the provision of United States assistance for eligible developing countries under all the provisions of this Act shall be given to those countries that permit personnel from the World Health Organization and the Centers for Disease Control and Prevention to investigate outbreaks of infectious diseases on their territories.

SEC. 5. RESTRICTION.

Notwithstanding any other provision of this Act, no foreign nationals participating in programs authorized under this Act shall have access, during the course of such participation, to select agents that may be used as, or in, a biological weapon, except in a supervised and controlled setting.

SEC. 6. FELLOWSHIP PROGRAM.

(a) ESTABLISHMENT.—There is established a fellowship program (in this section referred to as the ''program'') under which the Secretary, in consultation with the Secretary of Health and Human Services, and, subject to the availability of appropriations, award fellowships to eligible nationals of developing countries to pursue public health education or training, as follows:

(1) MASTER OF PUBLIC HEALTH DEGREE.—Graduate courses of study leading to a master of public health degree with a concentration in epidemiology from an institution of higher education in the United States with a Center for Public Health Preparedness, as determined by the Centers for Disease Control and Prevention.

(2) ADVANCED PUBLIC HEALTH EPIDEMIOLOGY TRAINING.—Advanced public health training in epidemiology for public health professionals from eligible developing countries to be carried out at the Centers for Disease Control and Prevention (or equivalent State facility), or other Federal facility (excluding the Department of Defense or United States National Laboratories), for a period of not less than 6 months or more than 12 months.

(b) SPECIALIZATION IN BIOTERRORISM.—In addition to the education or training specified in subsection (a), each recipient of a fellowship under this section (in this section referred to as a ''fellow'') may take courses of study at the Centers for Disease Control and Prevention or at an equivalent facility on diagnosis and containment of likely bioterrorism agents.

(c) FELLOWSHIP AGREEMENT.—

(1) IN GENERAL.—In awarding a fellowship under the program, the Secretary, in consultation with the Secretary of Health and Human Services, shall require the recipient to enter into an agreement under which, in exchange for such assistance, the recipient—

(A) will maintain satisfactory academic progress (as determined in accordance with regulations issued by the Secretary and confirmed in regularly scheduled updates to the Secretary from the institution providing the education or training on the progress of the recipient's education or training);

(B) will, upon completion of such education or training, return to the recipient's country of nationality or last habitual residence (so long as it is an eligible developing country) and complete at least four years of employment in a public health position in the government or a nongovernmental, not-for-profit entity in that country or, with the approval of the Secretary and the government concerned, in an international health organization; and

(C) agrees that, if the recipient is unable to meet the requirements described in subparagraph (A) or (B), the recipient will reimburse the United States for the value of the assistance provided to the recipient under the fellowship, together with interest at a rate determined in accordance with regulations issued by the Secretary but not higher than the rate generally applied in connection with other Federal loans.

(2) WAIVERS.—The Secretary may waive the application of paragraph (1)(B) and (1)(C) if the Secretary determines that it is in the national interest of the United States to do so.

(d) IMPLEMENTATION.—The Secretary, in consultation with the Secretary of Health and Human Services, is authorized to enter into an agreement with any eligible developing country under which the developing country agrees—

(1) to establish a procedure for the nomination of eligible nationals for fellowships under this section;

(2) to guarantee that a fellow will be offered a professional public health position within the developing country upon completion of his studies; and

(3) to certify to the Secretary when a fellow has concluded the minimum period of employment in a public health position required by the fellowship agreement, with an explanation of how the requirement was met.

(e) PARTICIPATION OF UNITED STATES CITIZENS.—On a case-by-case basis, the Secretary may provide for the participation of United States citizens under the provisions of this section if the Secretary determines that it is in the national interest of the United States to do so. Upon completion of such education or training, a United States recipient shall complete at least five years of employment in a public health position in an eligible developing country or the World Health Organization.

SEC. 7. IN-COUNTRY TRAINING IN LABORATORY TECHNIQUES AND SYNDROME SURVEILLANCE.

(a) IN GENERAL.—In conjunction with the Centers for Disease Control and Prevention and the Department of Defense, the Secretary shall, subject to the availability of appropriations, support short training courses in-country (not in the United States) to laboratory technicians and other public health personnel (who are eligible persons) from developing countries in laboratory techniques relating to the identification, diagnosis, and tracking of pathogens responsible for possible infectious disease outbreaks. Training under this section may be conducted in overseas facilities of the Centers for Disease Control and Prevention or in Overseas Medical Research Units of the Department of Defense, as appropriate. The Secretary shall coordinate such training courses, where appropriate, with the existing programs and activities of the World Health Organization.

(b) TRAINING IN SYNDROME SURVEILLANCE.—In conjunction with the Centers for Disease Control and Prevention and the Department of Defense, the Secretary shall, subject to the availability of appropriations, establish and support short training courses in-country (not in the United States) for health care providers and other public health personnel from eligible developing countries in techniques of syndrome surveillance reporting and rapid analysis of syndrome information using Geographic Information System (GIS) tools. Training under this subsection may be conducted via the Internet or in appropriate facilities as determined by the Secretary. The Secretary shall coordinate such training courses, where appropriate, with the existing programs and activities of the World Health Organization.

SEC. 8. ASSISTANCE FOR THE PURCHASE AND MAINTENANCE OF PUBLIC HEALTH LABORATORY EQUIPMENT.

(a) AUTHORIZATION.—The President is authorized, on such terms and conditions as the President may determine, to furnish assistance to eligible developing countries to purchase and maintain public health laboratory equipment described in subsection (b).

(b) EQUIPMENT COVERED.—Equipment described in this subsection is equipment that is—

(1) appropriate, where possible, for use in the intended geographic area;

(2) necessary to collect, analyze, and identify expeditiously a broad array of pathogens, including mutant strains, which may cause disease outbreaks or may be used as a biological weapon;

(3) compatible with general standards set forth by the World Health Organization and, as appropriate, the Centers for Disease Control and Prevention, to ensure interoperability with regional and international public health networks; and

(4) not defense articles, defense services, or training as defined under the Arms Export Control Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment that, if made in the United States, would be subject to the Arms Export Control Act or likely be barred or subject to special conditions under the Export Administration Act of 1979 (or successor statutes).

(e) PROCUREMENT PREFERENCE.—In the use of grant funds authorized under subsection (a), preference should be given to the purchase of equipment of United States manufacture. The use of amounts appropriated to carry out this section shall be subject to section 604 of the Foreign Assistance Act of 1961.

(f) HOST COUNTRY'S COMMITMENTS.—The assistance provided under this section shall be contingent upon the host country's commitment to provide the resources, infrastructure, and other assets required to house, maintain, support, secure, and maximize use of this equipment and appropriate technical personnel.

SEC. 9. ASSISTANCE FOR IMPROVED COMMUNICATION OF PUBLIC HEALTH INFORMATION.

(a) ASSISTANCE FOR PURCHASE OF COMMUNICATION EQUIPMENT AND INFORMATION TECHNOLOGY.—The President is authorized to provide, on such terms and conditions as the President may determine, assistance to eligible developing countries for the purchase and maintenance of communications equipment and information technology described in subsection (b), and supporting equipment, necessary to effectively collect, analyze, and transmit public health information.

(b) COVERED EQUIPMENT.—Equipment described in this subsection is equipment that—

(1) is suitable for use under the particular conditions of the area of intended use;

(2) meets appropriate World Health Organization standards to ensure interoperability with like equipment of other countries and international organizations; and

(3) is not defense articles, defense services, or training as defined under the Arms Export Control Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment that, if made in the United States, would be subject to the Arms Export Control Act or likely be barred or subject to special conditions under the Export Administration Act of 1979 (or successor statutes).

(e) PROCUREMENT PREFERENCE.—In the use of grant funds under subsection (a), preference should be given to the purchase of communications (and information technology) equipment of United States manufacture. The use of amounts appropriated to carry out this section shall be subject to section 604 of the Foreign Assistance Act of 1961.

(f) ASSISTANCE FOR STANDARDIZATION OF REPORTING.—The President is authorized to provide, on such terms and conditions as the President may determine, technical assistance and grant assistance to international health organizations (including regional international health organizations) to facilitate standardization in the reporting of public health information between and among developing countries and international health organizations.

(g) HOST COUNTRY'S COMMITMENTS.—The assistance provided under this section shall be contingent upon the host country's commitment to provide the resources, infrastructure, and other assets required to house, support, maintain, secure, and maximize use of this equipment and appropriate technical personnel.

SEC. 10. ASSIGNMENT OF PUBLIC HEALTH PERSONNEL TO UNITED STATES MISSIONS AND INTERNATIONAL ORGANIZATIONS.

(a) IN GENERAL.—Upon the request of a United States chief of diplomatic mission or an international health organization, and with the concurrence of the Secretary of State, the head of a Federal agency may assign to the respective United States mission or organization any officer or employee of the agency occupying a public health position within the agency for the purpose of enhancing disease and pathogen surveillance efforts in developing countries.

(b) REIMBURSEMENT.—The costs incurred by a Federal agency by reason of the detail of personnel under subsection (a) may be reimbursed to that agency out of the applicable appropriations account of the Department of State if the Secretary determines that the relevant agency may otherwise be unable to assign such personnel on a non-reimbursable basis.

SEC. 11. LABORATORY-TO-LABORATORY EXCHANGE PROGRAM.

(a) AUTHORITY.—The head of a Federal agency, with the concurrence of the Secretary, is authorized to provide by grant, contract, or otherwise for educational exchanges by financing educational activities—

(1) of United States public health personnel in approved public health and research laboratories in eligible developing countries; and

(2) of public health personnel of eligible developing countries in United States public health and research laboratories.

(b) APPROVED PUBLIC HEALTH LABORATORIES DEFINED.—In this section, the term ''approved public health and research laboratories'' means non-United States Government affiliated public health laboratories that the Secretary determines are well-established and have a demonstrated record of excellence.

SEC. 12. EXPANSION OF CERTAIN UNITED STATES GOVERNMENT LABORATORIES ABROAD.

(a) IN GENERAL.—Subject to the availability of appropriations, the Centers for Disease Control and Prevention and the Department of Defense shall each—

(1) increase the number of personnel assigned to laboratories of the Centers or the Department, as appropriate, located in eligible developing countries that conduct research and other activities with respect to infectious diseases; and

(2) expand the operations of those laboratories, especially with respect to the implementation of on-site training of foreign nationals and activities affecting neighboring countries.

(b) COOPERATION AND COORDINATION BETWEEN LABORATORIES.—Subsection (a) shall be carried out in such a manner as to foster cooperation and avoid duplication between and among laboratories.

(c) RELATION TO CORE MISSIONS AND SECURITY.—The expansion of the operations of overseas laboratories of the Centers or the Department under this section shall not—

(1) detract from the established core missions of the laboratories; or

(2) compromise the security of those laboratories, as well as their research, equipment, expertise, and materials.

SEC. 13. ASSISTANCE FOR REGIONAL HEALTH NETWORKS AND EXPANSION OF FOREIGN EPIDEMIOLOGY TRAINING PROGRAMS.

(a) AUTHORITY.—The President is authorized, on such terms and conditions as the President may determine, to provide assistance for the purposes of—

(1) enhancing the surveillance and reporting capabilities for the World Health Organization and existing regional health networks; and

(2) developing new regional health networks.

(b) EXPANSION OF FOREIGN EPIDEMIOLOGY TRAINING PROGRAMS.—The Secretary of Health and Human Services is authorized to establish new country or regional Foreign Epidemiology Training Programs in eligible developing countries.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Subject to subsection (c), there are authorized to be appropriated $70,000,000 for the fiscal year 2003 and $80,000,000 for fiscal year 2004, to carry out this Act.

(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1)—

(A) $50,000,000 for the fiscal year 2003 and $50,000,000 for the fiscal year 2004 are authorized to be available to carry out sections 6, 7, 8, and 9;

(B) not more than $2,000,000 shall be available for each of the fiscal years 2003 and 2004 for the specific training programs authorized in section 6, of which not more than $500,000 shall be available to carry out subsection (a)(1) of such section and not more than $1,500,000 shall be available to carry out subsection (a)(2) of such section;

(C) $5,000,000 for the fiscal year 2003 and $5,000,000 for the fiscal year 2004 are authorized to be available to carry out section 10;

(D) $2,000,000 for the fiscal year 2003 and $2,000,000 for the fiscal year 2004 are authorized to be available to carry out section 11;

(E) $8,000,000 for the fiscal year 2003 and $18,000,000 for the fiscal year 2004 are authorized to be available to carry out section 12; and

(F) $5,000,000 for the fiscal year 2003 and $5,000,000 for the fiscal year 2004 are authorized to be available to carry out section 13.

(b) AVAILABILITY OF FUNDS.—The amount appropriated pursuant to subsection (a) is authorized to remain available until expended.

(c) REPORTING REQUIREMENT.—

(1) REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit a report, in conjunction with the Secretary of Health and Human Services and the Secretary of Defense, containing—

(A) a description of the implementation of programs under this Act; and

(B) an estimate of the level of funding required to carry out those programs at a sufficient level.

(2) LIMITATION ON OBLIGATION OF FUNDS.—Not more than 10 percent of the amount appropriated pursuant to subsection (a) may be obligated before the date on which a report is submitted, or required to be submitted, whichever first occurs, under paragraph (1).

Mr. FRIST. Mr. President, I rise to join with my colleagues Senators BIDEN, HELMS, and KENNEDY in introducing the Global Pathogen Surveillance Act of 2002. This bipartisan legislation will help ensure that we are better prepared globally to deal with biological threats and attacks.

The Global Pathogen Surveillance Act of 2002 authorizes enhanced bilateral and multilateral activities to improve the capacity of the United States and our partners in the international community to detect and contain infectious diseases and biological weapons. The Global Pathogen Surveillance Act will enhance the training, upgrade equipment and communications systems, and provide additional American expertise and assistance in international surveillance.

To better prepare our nation to meet the growing threat of bioterrorism, we must put in place and maintain a comprehensive framework including prevention, preparedness and consequence management. To accomplish this goal, we not only need to strengthen our local public health infrastructure domestically, but to work with our friends and neighbors in the global community to prevent, detect, and appropriately contain and respond to bioterrorist activities outside our borders. This is truly a global responsibility. Infectious diseases, such as smallpox, do not respect borders. If we can prevent their spread in other countries around the world, we can better protect our citizens here at home.

I applaud Senators HELMS and BIDEN for their leadership in this area. I look forward to working with them, and all of my colleagues to ensure that we provide appropriate authorities and funding to improve our international efforts to detect and contain infectious diseases and offensive biological threats.

By Mrs. CLINTON (for herself, Ms. SNOWE, Ms. MIKULSKI, and Mr. BREAUX):

S. 2489. A bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

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

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

S. 2489

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 ''Lifespan Respite Care Act of 2002''.

SEC. 2. LIFESPAN RESPITE CARE.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

''TITLE XXVIII—LIFESPAN RESPITE CARE

''SEC. 2801. FINDINGS AND PURPOSES.

''(a) FINDINGS.—Congress finds that—

''(1) an estimated 26,000,000 individuals in the United States care each year for 1 or more adult family members or friends who are chronically ill, disabled, or terminally ill;

''(2) an estimated 18,000,000 children in the United States have chronic physical, developmental, behavioral, or emotional conditions that demand caregiver monitoring, management, supervision, or treatment beyond that required of children generally;

''(3) approximately 6,000,000 children in the United States live with a grandparent or other relative because their parents are unable or unwilling to care for them;

''(4) an estimated 165,000 children with disabilities in the United States live with a foster care parent;

''(5) nearly 4,000,000 individuals in the United States of all ages who have mental retardation or another developmental disability live with their families;

''(6) almost 25 percent of the Nation's elders experience multiple chronic disabling conditions that make it necessary to rely on others for help in meeting their daily needs;

''(7) every year, approximately 600,000 Americans die at home and many of these individuals rely on extensive family caregiving before their death;

''(8) of all individuals in the United States needing assistance in daily living, 42 percent are under age 65;

''(9) there are insufficient resources to replace family caregivers with paid workers;

''(10) if services provided by family caregivers had to be replaced with paid services, it would cost approximately $200,000,000,000 annually;

''(11) the family caregiver role is personally rewarding but can result in substantial emotional, physical, and financial hardship;

''(12) approximately 75 percent of family caregivers are women;

''(13) family caregivers often do not know where to find information about available respite care or how to access it;

''(14) available respite care programs are insufficient to meet the need and are directed at primarily lower income populations and family caregivers of the elderly, leaving large numbers of family caregivers without adequate support; and

''(15) the limited number of available respite care programs find it difficult to recruit appropriately trained respite workers.

''(b) PURPOSES.—The purposes of this title are—

''(1) to encourage States to establish State and local lifespan respite care programs;

''(2) to improve and coordinate the dissemination of respite care information and resources to family caregivers;

''(3) to provide, supplement, or improve respite care services to family caregivers;

''(4) to promote innovative, flexible, and comprehensive approaches to—

''(A) the delivery of respite care;

''(B) respite care worker and volunteer recruitment and training programs; and

''(C) training programs for family caregivers to assist such family caregivers in making informed decisions about respite care services;

''(5) to support evaluative research to identify effective respite care services that alleviate, reduce, or minimize any negative consequences of caregiving; and

''(6) to promote the dissemination of results, findings, and information from programs and research projects relating to respite care delivery, family caregiver strain, respite care worker and volunteer recruitment and training, and training programs for family caregivers that assist such family caregivers in making informed decisions about respite care services.

"SEC. 2802. DEFINITIONS.

''In this title:

''(1) ASSOCIATE ADMINISTRATOR.—The term 'Associate Administrator' means the Associate Administrator of the Maternal and Child Health Bureau of the Health Resources and Services Administration.

''(2) CONDITION.—The term 'condition' includes—

''(A) Alzheimer's disease and related disorders;

''(B) developmental disabilities;

''(C) mental retardation;

''(D) physical disabilities;

''(E) chronic illness, including cancer;

''(F) behavioral, mental, and emotional conditions;

''(G) cognitive impairments;

''(H) situations in which there exists a high risk of abuse or neglect or of being placed in the foster care system due to abuse and neglect;

''(I) situations in which a child's parent is unavailable due to the parent's death, incapacitation, or incarceration; or

''(J) any other conditions as the Associate Administrator may establish by regulation.

''(3) ELIGIBLE RECIPIENT.—The term 'eligible recipient' means—

''(A) a State agency;

''(B) any other public entity that is capable of operating on a statewide basis;

''(C) a private, nonprofit organization that is capable of operating on a statewide basis;

''(D) a political subdivision of a State that has a population of not less than 3,000,000 individuals; or

''(E) any recognized State respite coordinating agency that has—

''(i) a demonstrated ability to work with other State and community-based agencies;

''(ii) an understanding of respite care and family caregiver issues; and

''(iii) the capacity to ensure meaningful involvement of family members, family caregivers, and care recipients.

''(4) FAMILY CAREGIVER.—The term 'family caregiver' means an unpaid family member, a foster parent, or another unpaid adult, who provides in-home monitoring, management, supervision, or treatment of a child or adult with a special need.

''(5) LIFESPAN RESPITE CARE.—The term 'lifespan respite care' means a coordinated system of accessible, community-based respite care services for family caregivers of individuals regardless of the individual's age, race, ethnicity, or special need.

''(6) RESPITE CARE.—The term 'respite care' means planned or emergency care provided to an individual with a special need—

''(A) in order to provide temporary relief to the family caregiver of that individual; or

''(B) when the family caregiver of that individual is unable to provide care.

''(7) SPECIAL NEED.—The term 'special need' means the particular needs of an individual of any age who requires care or supervision because of a condition in order to meet the individual's basic needs or to prevent harm to the individual.

"SEC. 2803. LIFESPAN RESPITE CARE GRANTS AND COOPERATIVE AGREEMENTS.

''(a) PURPOSES.—The purposes of this section are—

''(1) to expand and enhance respite care services to family caregivers;

''(2) to improve the statewide dissemination and coordination of respite care; and

''(3) to provide, supplement, or improve access and quality of respite care services to family caregivers, thereby reducing family caregiver strain.

''(b) AUTHORIZATION.—Subject to subsection (f), the Associate Administrator is authorized to award grants or cooperative agreements to eligible recipients who submit an application pursuant to subsection (d).

''(c) FEDERAL LIFESPAN APPROACH.—In carrying out this section, the Associate Administrator shall work in cooperation with the National Family Caregiver Support Program Officer of the Administration on Aging, and respite care program officers in the Administration for Children and Families, the Administration on Developmental Disabilities, and the Substance Abuse and Mental Health Services Administration, to ensure coordination of respite care services for family caregivers of individuals of all ages with special needs.

''(d) APPLICATION.—

''(1) SUBMISSION.—Each eligible recipient desiring to receive a grant or cooperative agreement under this section shall submit an application to the Associate Administrator at such time, in such manner, and containing such information as the Associate Administrator shall require.

''(2) CONTENTS.—Each application submitted under this section shall include—

''(A) a description of the applicant's—

''(i) understanding of respite care and family caregiver issues;

''(ii) capacity to ensure meaningful involvement of family members, family caregivers, and care recipients; and

''(iii) collaboration with other State and community-based public, nonprofit, or private agencies;

''(B) with respect to the population of family caregivers to whom respite care information or services will be provided or for whom respite care workers and volunteers will be recruited and trained, a description of—

''(i) the population;

''(ii) the extent and nature of the respite care needs of the population;

''(iii) existing respite care services for the population, including numbers of family caregivers being served and extent of unmet need;

''(iv) existing methods or systems to coordinate respite care information and services to the population at the State and local level and extent of unmet need;

''(v) how respite care information dissemination and coordination, respite care services, respite care worker and volunteer recruitment and training programs, or training programs for family caregivers that assist such family caregivers in making informed decisions about respite care services will be provided using grant or cooperative agreement funds;

''(vi) a plan for collaboration and coordination of the proposed respite care activities with other related services or programs offered by public or private, nonprofit entities, including area agencies on aging;

''(vii) how the population, including family caregivers, care recipients, and relevant public or private agencies, will participate in the planning and implementation of the proposed respite care activities;

''(viii) how the proposed respite care activities will make use, to the maximum extent feasible, of other Federal, State, and local funds, programs, contributions, other forms of reimbursements, personnel, and facilities;

''(ix) respite care services available to family caregivers in the applicant's State or locality, including unmet needs and how the applicant's plan for use of funds will improve the coordination and distribution of respite care services for family caregivers of individuals of all ages with special needs;

''(x) the criteria used to identify family caregivers eligible for respite care services;

''(xi) how the quality and safety of any respite care services provided will be monitored, including methods to ensure that respite care workers and volunteers are appropriately screened and possess the necessary skills to care for the needs of the care recipient in the absence of the family caregiver; and

''(xii) the results expected from proposed respite care activities and the procedures to be used for evaluating those results; and

''(C) assurances that, where appropriate, the applicant shall have a system for maintaining the confidentiality of care recipient and family caregiver records.

''(e) REVIEW OF APPLICATIONS.—

''(1) ESTABLISHMENT OF REVIEW PANEL.—The Associate Administrator shall establish a panel to review applications submitted under this section.

''(2) MEETINGS.—The panel shall meet as often as may be necessary to facilitate the expeditious review of applications.

''(3) FUNCTION OF PANEL.—The panel shall—

''(A) review and evaluate each application submitted under this section; and

''(B) make recommendations to the Associate Administrator concerning whether the application should be approved.

''(f) AWARDING OF GRANTS OR COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—The Associate Administrator shall award grants or cooperative agreements from among the applications approved by the panel under subsection (e)(3).

''(2) PRIORITY.—When awarding grants or cooperative agreements under this subsection, the Associate Administrator shall give priority to applicants that show the greatest likelihood of implementing or enhancing lifespan respite care statewide.

''(g) USE OF GRANT OR COOPERATIVE AGREEMENT FUNDS.—

''(1) IN GENERAL.—

''(A) MANDATORY USES OF FUNDS.—Each eligible recipient that is awarded a grant or cooperative agreement under this section shall use the funds for, unless such a program is in existence—

''(i) the development of lifespan respite care at the State and local levels; and

''(ii) an evaluation of the effectiveness of such care.

''(B) DISCRETIONARY USES OF FUNDS.—Each eligible recipient that is awarded a grant or cooperative agreement under this section may use the funds for—

''(i) respite care services;

''(ii) respite care worker and volunteer training programs; or

''(iii) training programs for family caregivers to assist such family caregivers in making informed decisions about respite care services.

''(C) EVALUATION.—If an eligible recipient uses funds awarded under this section for an activity described in subparagraph (B), the eligible recipient shall use funds for an evaluation of the effectiveness of the activity.

''(2) SUBCONTRACTS.—Each eligible recipient that is awarded a grant or cooperative agreement under this section may use the funds to subcontract with a public or nonprofit agency to carry out the activities described in paragraph (1).

''(h) TERM OF GRANTS OR COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—The Associate Administrator shall award grants or cooperative agreements under this section for terms that do not exceed 5 years.

''(2) RENEWAL.—The Associate Administrator may renew a grant or cooperative agreement under this section at the end of the term of the grant or cooperative agreement determined under paragraph (1).

''(i) SUPPLEMENT, NOT SUPPLANT.—Funds made available under this section shall be used to supplement and not supplant other Federal, State, and local funds available for respite care services.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

''(1) $90,500,000 for fiscal year 2003;
''(2) $118,000,000 for fiscal year 2004;
''(3) $145,500,000 for fiscal year 2005;
''(4) $173,000,000 for fiscal year 2006; and
''(5) $200,000,000 for fiscal year 2007.

''SEC. 2804. NATIONAL LIFESPAN RESPITE RESOURCE CENTER.

''(a) ESTABLISHMENT.—From funds appropriated under subsection (c), the Associate Administrator shall award a grant or cooperative agreement to a public or private nonprofit entity to establish a National Resource Center on Lifespan Respite Care (referred to in this section as the 'center').

''(b) PURPOSES OF THE CENTER.—The center shall—

''(1) maintain a national database on lifespan respite care;

''(2) provide training and technical assistance to State, community, and nonprofit respite care programs; and

''(3) provide information, referral, and educational programs to the public on lifespan respite care.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $500,000 for each of fiscal years 2003 through 2007.''.

By Mr. TORRICELLI (for himself and Mr. SMITH of Oregon):

S. 2490. A bill to amend title XVIII of the Social Security Act to ensure the quality of, and access to, skilled nursing facility services under the Medicare Program; to the Committee on Finance.

Mr. SMITH of Oregon. Mr. President, I rise today to join my colleague, Senator TORRICELLI, in introducing the Medicare Skilled Nursing Beneficiary Protection Act of 2002, a bill that will bring better care to thousands of Oregon seniors.

Nursing homes across America are in trouble, and it's not just Wall Street analysts who will tell you that. The people who rely on nursing home services the most can share with you their concerns about the future of skilled nursing care. Impending cuts to Medicare benefits for skilled nursing facilities will jeopardize the health and safety of some of our most vulnerable seniors and people with disabilities, and we cannot in good conscience allow these cuts to occur. The Medicare Skilled Nursing Beneficiary Protection Act of 2002 will prevent cuts to Medicare funding for nursing homes and will ensure that Medicare pays for the full cost of care rather than shortchanging nursing facilities.

This bill will be particularly important for Oregon. My State of Oregon is home to an ever growing population of senior citizens, and we are predicted to be the 4th oldest State in the union by the year 2020. As our citizens age, and I am among that aging group, it will be essential that we have the capacity to care for our most needy seniors. Unfortunately, instead of increasing capacity we are seeing skilled nursing facilities close all over the country. This could have disastrous consequences for an already over-taxed health care system.

Without the Medicare Skilled Nursing Beneficiary Protection Act, Oregon's nursing homes will lose $37.58 per patient per day, and it is difficult to offer high quality services under those circumstances. We must work together to pass this important legislation to protect our seniors, and to ensure that skilled nursing facilities will still be there when the rest of us need them in only a few short years.

By Mr. INHOFE:

S. 2491. A bill to authorize the President to award a gold medal on behalf of Congress to the Choctaw and Comanche code talkers in recognition of the contributions provided by those individuals to the United States; to the Committee on Banking, Housing, and Urban Affairs.

Mr. INHOFE. Mr. President, today I rise to introduce a bill to honor a group of men who bravely served this country. I am proud to recognize the Choctaw and Comanche Code Talkers who joined the United States Armed Forces on foreign soil in the fight for freedom in two world wars.

During World War I, the Germans began tapping American lines, creating the need to provide secure communications. Despite the fact that American Indians were not citizens, 18 members of the Choctaw Nation enlisted to become the first American Indian soldiers to use their native language to transmit messages between the Allied forces.

At least one Choctaw man was placed in each field company headquarters. He would translate radio messages into the Choctaw language and then write field orders to be carried by messengers between different companies on the battle line. Fortunately, because Choctaw was an unwritten language only understood by those who spoke it, the Germans were never able to break the code.

The 18 Choctaw Code Talkers who served in the 142nd Infantry Company of the 36th Division were: Albert Billy, Victor Brown, Mitchell Bobb, Ben Carterby, George Davenport, Joe Davenport, James Edwards, Tobias Frazier, Ben Hampton, Noel Johnson, Otis Leader, Soloman Louis, Pete Maytubby, Jeff Nelson, Joseph Oklahombi, Robert Taylor, Walter Veach, and Calvin Wilson.

Similarly, the Comanche Code Talkers played an important role during World War II. Once again, the enemy began tapping American lines. In order to establish the secure transmission of messages, the United States enlisted fourteen Comanche Code Talkers who served overseas in the 4th Signal Company of the 4th Infantry Division. They were: Charles Chibitty, Haddon Codynah, Robert Holder, Forrest Kassanavoid, Wellington Mihecoby, Albert Nahquaddy, Jr., Clifford Ototivo, Simmons Parker, Melvin Permansu, Elgin Red Elk, Roderick Red Elk, Larry Saupitty, Morris Tabbyetchy, and Willis Yackeshi.

The Army chose the Comanches because their language was thought to be the least known to the Germans. Second Lieutenant Hugh Foster worked with them to develop their own unique code for military words. He gave the Indians a list of military words and then worked with them to develop a Comanche word or phrase for those words.

On June 6, 1944, just after landing in Normandy, a Comanche trained by Lt. Foster and serving as a driver and radio operator under Brigadier General Theodore Roosevelt, Jr, sent one of the first messages from Utah Beach. These communications efforts, by the Comanches, helped the Allies win the war in Europe.

It is time Congress officially recognizes these men. My bill directs the Secretary of the Treasury to award the Choctaw and Comanche Code Talkers a gold medal as a result of their great commitment and service on behalf of the United States during World Wars I and II. I welcome my colleagues to join me in saluting this group of heroes for contributing to the fight for freedom for our country and around the world.

By Mr. CLELAND:

S. 2492. A bill to amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, and for other purposes; to the Committee on Governmental Affairs.

Mr. CLELAND. Mr. President, I rise today to introduce legislation, the Federal Agency Protection of Privacy Act, that will require Federal agencies to carefully consider the impact of proposed regulations on individual privacy. In the aftermath of the terrorist attacks of September 11, we are being forced to fight a new kind of war; a war in which we have not only physical battlefields, but battlefields of principle.

Not only must we have troops on the ground protecting our physical well-being, but we must also insure that we protect the American way of life. Ours is a country based on individual rights—rights to pursue life, liberty, and happiness, as Thomas Jefferson mentioned in the manner in which each of us sees fit.

While we are obligated, as a Government, to protect the physical safety of the American people, we also are obligated to remember our history, our struggles, and the principles for which our great Nation stands. While we enhance and strengthen our investigatory tools and physical arsenal, we cannot allow the terrorists to prevail in undermining our civil liberties.

Therefore, today, I am introducing the Federal Agency Protection of Privacy Act in the Senate as companion legislation to H.R. 4561, which was introduced by Representative BOB BARR, a long-time champion of civil liberties in the U.S. Congress. It will impose a mandate that when Federal agencies are required to publish a general notice of proposed rulemaking, they must publish an accompanying ''privacy impact statement.'' This initial privacy

impact statement, written in terms which all of us can understand, would be subject to public notice and comment. After receiving and evaluating any comments, the agency would then be required to include a final privacy impact statement with the regulation.

These initial and final privacy impact statements would include: the type of information to be collected and how it would be used; mechanisms through which individuals could correct inaccuracies in the collected information; assurances that the information would not be used for a purpose other than initially specified; and a description of how the information will be secured by the agency. For example, the Financial Crime Enforcement Network of the Department of the Treasury has proposed a rule implementing provisions of the USA PATRIOT Act of 2001 which would encourage financial institutions and Federal law enforcement agencies to share information in order to identify and deter money laundering and terrorist activity. While I fully support the Patriot Act and recognize the benefits of such a rule, the sensitivity of such information necessitates that we insure that the agency consider the ramifications of such an invasion on an individual's privacy. The American people must know specifically how this financial information would be used and how it would be protected. The purpose, importance, and timeliness of this legislation have brought together a wide variety of supporting organizations, ranging from the American Civil Liberties Union to the National Rifle Association to Public Citizen.

While I have been and continue to be a strong supporter of the war on terrorism, I am also well aware that we face a multi-faceted enemy. My experience has taught me that diverse threats necessitate diverse responses. We have planned for our offensives on the ground and in the air, and we have begun to mount a stronger homeland defense. But our efforts will be incomplete and will indeed run the risk of undermining all else we may accomplish in the fight against terrorism if we neglect to mount a successful defense of the American way. I believe that this legislation is necessary to protect the American people from attacks seen and unseen, and I encourage other Senators to join me in protecting the liberties for which I know we all stand.

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

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

S. 2492

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 ''Federal Agency Protection of Privacy Act''.

SEC. 2. REQUIREMENT THAT AGENCY RULEMAKING TAKE INTO CONSIDERATION IMPACTS ON INDIVIDUAL PRIVACY.

(a) IN GENERAL.—Title 5, United States Code, is amended by adding after section 553 the following:

''§ 553a. Privacy impact analysis in rulemaking

''(a) INITIAL PRIVACY IMPACT ANALYSIS.—

''(1) IN GENERAL.—Whenever an agency is required by section 553 of this title, or any other law, to publish a general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial privacy impact analysis. Such analysis shall describe the impact of the proposed rule on the privacy of individuals. The initial privacy impact analysis or a summary shall be signed by the senior agency official with primary responsibility for privacy policy and be published in the Federal Register at the time of the publication of a general notice of proposed rulemaking for the rule.

''(2) CONTENTS.—Each initial privacy impact analysis required under this subsection shall contain the following:

''(A) A description and assessment of the extent to which the proposed rule will impact the privacy interests of individuals, including the extent to which the proposed rule—

''(i) provides notice of the collection of personally identifiable information, and specifies what personally identifiable information is to be collected and how it is to be collected, maintained, used, and disclosed;

''(ii) allows access to such information by the person to whom the personally identifiable information pertains and provides an opportunity to correct inaccuracies;

''(iii) prevents such information, which is collected for one purpose, from being used for another purpose; and

''(iv) provides security for such information.

''(B) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant privacy impact of the proposed rule on individuals.

''(b) FINAL PRIVACY IMPACT ANALYSIS.—

''(1) IN GENERAL.—Whenever an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States, the agency shall prepare a final privacy impact analysis, signed by the senior agency official with primary responsibility for privacy policy.

''(2) CONTENTS.—Each final privacy impact analysis required under this subsection shall contain the following:

''(A) A description and assessment of the extent to which the final rule will impact the privacy interests of individuals, including the extent to which the proposed rule—

''(i) provides notice of the collection of personally identifiable information, and specifies what personally identifiable information is to be collected and how it is to be collected, maintained, used, and disclosed;

''(ii) allows access to such information by the person to whom the personally identifiable information pertains and provides an opportunity to correct inaccuracies;

''(iii) prevents such information, which is collected for one purpose, from being used for another purpose; and

''(iv) provides security for such information.

''(B) A summary of the significant issues raised by the public comments in response to the initial privacy impact analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such issues.

''(C) A description of the steps the agency has taken to minimize the significant privacy impact on individuals consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the privacy interests of individuals was rejected.

''(3) AVAILABILITY TO PUBLIC.—The agency shall make copies of the final privacy impact analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

''(c) PROCEDURE FOR WAIVER OR DELAY OF COMPLETION.—An agency head may waive or delay the completion of some or all of the requirements of subsections (a) and (b) to the same extent as the agency head may, under section 608, waive or delay the completion of some or all of the requirements of sections 603 and 604, respectively.

''(d) PROCEDURES FOR GATHERING COMMENTS.—When any rule is promulgated which may have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that individuals have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

''(1) the inclusion in an advance notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals;

''(2) the publication of a general notice of proposed rulemaking in publications of national circulation likely to be obtained by individuals;

''(3) the direct notification of interested individuals;

''(4) the conduct of open conferences or public hearings concerning the rule for individuals, including soliciting and receiving comments over computer networks; and

''(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by individuals.

''(e) PERIODIC REVIEW OF RULES.—

''(1) IN GENERAL.—Each agency shall carry out a periodic review of the rules promulgated by the agency that have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals. Under such periodic review, the agency shall determine, for each such rule, whether the rule can be amended or rescinded in a manner that minimizes any such impact while remaining in accordance with applicable statutes. For each such determination, the agency shall consider the following factors:

''(A) The continued need for the rule.

''(B) The nature of complaints or comments received from the public concerning the rule.

''(C) The complexity of the rule.

''(D) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules.

''(E) The length of time since the rule was last reviewed under this subsection.

''(F) The degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since the rule was last reviewed under this subsection.

''(2) PLAN REQUIRED.—Each agency shall carry out the periodic review required by paragraph (1) in accordance with a plan published by such agency in the Federal Register. Each such plan shall provide for the review under this subsection of each rule promulgated by the agency not later than 10 years after the date on which such rule was published as the final rule and, thereafter, not later than 10 years after the date on which such rule was last reviewed under this subsection. The agency may amend such plan at any time by publishing the revision in the Federal Register.

''(3) ANNUAL PUBLICATION.—Each year, each agency shall publish in the Federal Register a list of the rules to be reviewed by such agency under this subsection during the following year. The list shall include a brief description of each such rule and the need for and legal basis of such rule and shall invite public comment upon the determination to be made under this subsection with respect to such rule.

''(f) JUDICIAL REVIEW.—

''(1) IN GENERAL.—For any rule subject to this section, an individual who is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of subsections (b) and (c) in accordance with chapter 7. Agency compliance with subsection (d) shall be judicially reviewable in connection with judicial review of subsection (b).

''(2) JURISDICTION.—Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with subsections (b) and (c) in accordance with chapter 7. Agency compliance with subsection (d) shall be judicially reviewable in connection with judicial review of subsection (b).

''(3) LIMITATIONS.—

''(A) An individual may seek such review during the period beginning on the date of final agency action and ending 1 year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of 1 year, such lesser period shall apply to an action for judicial review under this subsection.

''(B) In the case where an agency delays the issuance of a final privacy impact analysis pursuant to subsection (c), an action for judicial review under this section shall be filed not later than—

''(i) 1 year after the date the analysis is made available to the public; or

''(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

''(4) RELIEF.—In granting any relief in an action under this subsection, the court shall order the agency to take corrective action consistent with this section and chapter 7, including, but not limited to—

''(A) remanding the rule to the agency; and

''(B) deferring the enforcement of the rule against individuals, unless the court finds that continued enforcement of the rule is in the public interest.

''(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this subsection.

''(6) RECORD OF AGENCY ACTION.—In an action for the judicial review of a rule, the privacy impact analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (4), shall constitute part of the entire record of agency action in connection with such review.

''(7) EXCLUSIVITY.—Compliance or noncompliance by an agency with the provisions of this section shall be subject to judicial review only in accordance with this subsection.

''(8) SAVINGS CLAUSE.—Nothing in this subsection bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

''(g) DEFINITION.—In this section, the term 'personally identifiable information'—

''(1) means information that can be used to identify an individual, including such individual's name, address, telephone number, photograph, social security number or other identifying information; and

''(2) includes information about such individual's medical or financial condition.''.

(b) PERIODIC REVIEW TRANSITION PROVISIONS.—

(1) INITIAL PLAN.—For each agency, the plan required by subsection (e) of section 553a of title 5, United States Code (as added by subsection (a)), shall be published not later than 180 days after the date of enactment of this Act.

(2) PRIOR RULES.—In the case of a rule promulgated by an agency before the date of the enactment of this Act, such plan shall provide for the periodic review of such rule before the expiration of the 10-year period beginning on the date of the enactment of this Act. For any such rule, the head of the agency may provide for a 1-year extension of such period if the head of the agency, before the expiration of the period, certifies in a statement published in the Federal Register that reviewing such rule before the expiration of the period is not feasible. The head of the agency may provide for additional 1-year extensions of the period pursuant to the preceding sentence, but in no event may the period exceed 15 years.

(c) CONGRESSIONAL REVIEW.—Section 801(a)(1)(B) of title 5, United States Code, is amended—

(1) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(2) by inserting after clause (ii) the following new clause:

''(iii) the agency's actions relevant to section 553a;''.

(d) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 5 of title 5, United States Code, is amended by adding after the item relating to section 553 the following:

''553a. Privacy impact analysis in rulemaking.''.

By Mr. DASCHLE (for himself, Mr. KENNEDY, and Mr. DODD):

S. 2493. A bill to amend the immigration and Nationality Act to provide a limited extension of the program under section 245(i) of that Act; to the Committee on the Judiciary.

Mr. DASCHLE. Mr. President, yesterday, the House passed the border security legislation, and I expect it will become law very soon. Passage of the border security bill was an important first step in moving forward with comprehensive immigration reform, and it was one of the Democratic Principles that Representative GEPHARDT and I introduced last fall.

Unfortunately, another important provision was not included in the border security legislation, the extension of section 245(i). It would allow families to stay together in this country while waiting to become permanent residents.

As I have said on many occasions, I am strongly committed to a meaningful 245(i) extension. Regrettably, the House waited 6 months to act on 245(i) legislation that the Senate passed last September. This delay meant that key provisions in the bill became unworkable. The House-passed version contained hard deadlines that would have required applicants to have established familial or employment relationships before August 2001. These deadlines would have imposed impractical hurdles for immigrant families to overcome.

Today, I am pleased to announce that I am introducing a new 245(i) extension bill that would remove these hard deadlines. My bill would move the application deadline to April 30, 2003, and maintain current prohibitions against fraudulent marriages and national security protections.

This bill mirrors the version that was introduced by Senators HAGEL and KENNEDY last spring, and it should receive strong bipartisan support. I know both the President and Senator LOTT have repeatedly expressed their desire to pass 245(i) legislation. It is my hope that they will work with me to help get it passed very soon.

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

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

S. 2493

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 ''Uniting Families Act of 2002''.

SEC. 2. LIMITED EXTENSION OF SECTION 245(i) PROGRAM.

(a) EXTENSION OF FILING DEADLINE.—Section 245(i)(1)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1255(i)(1)(B)(i)) is amended by striking ''on or before April 30, 2001'' and inserting ''on or before April 30, 2003''.

(b) EXCLUSION OF CERTAIN INADMISSIBLE AND DEPORTABLE ALIENS.—The amendment made by subsection (a) shall not apply to any alien who is—

(1) inadmissible under section 212(a)(3), or deportable under section 237(a)(4), of the Immigration and Nationality Act (relating to security and related grounds); or

(2) deportable under section 237(a)(1)(G) of such Act (relating to marriage fraud).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to applicants for adjustment of status who are beneficaries of petitions for classification or applications for labor certifications filed before, on, or after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, since September 11, Congress has taken significant steps to strengthen the security of our borders and improve our immigration system. Last month, the Senate passed important legislation to strengthen border security, improve our ability to screen foreign nationals, and enhance our ability to deter potential terrorists. In addition, Senator BROWNBACK and I recently introduced legislation to restructure the Immigration and Naturalization Service so that the agency is better prepared to address security concerns.

As we work to respond to the security issues before us, we can't lose sight of the other immigration issues that are still a priority. I'm pleased to join Senator DASCHLE in moving forward with one of those issues today by introducing the Uniting Families Act of 2002. This legislation extends section 245(i), a vital provision of U.S. immigration law which allows individuals who already legally qualify for permanent residency to process their applications in the United States, without returning to their homes countries.

Without 245(i), immigrants are forced to leave their families here in the U.S. and risk separation from them for up to 10 years. Seventy-five percent of the people who have used 245(i) are the spouses and children of U.S. citizens and permanent residents. Extending this critical provision will help keep families together and help businesses retain critical workers. In addition, the INS will receive millions of dollars in additional revenues, at no cost to taxpayers.

Extending 245(i) does not provide any loopholes for potential terrorists. Instead, it will improve the monitoring of immigrants already residing in this country. Individuals who qualify for permanent residency and process their applications in the U.S. are subject to rigorous background checks and interviews. This process provides the government a good opportunity to investigate individuals who are in this country and determine whether they should be allowed to remain here.

Section 245(i) does not provide amnesty to immigrants or any benefits to anyone suspected of marriage fraud. The provision provides no protection from deportation if someone is here illegally and no right to surpass other immigrants waiting for visas.

The House passed legislation recently to extend section 245(i), but it was too restrictive to provide any meaningful assistance. The Uniting Families Act will extend the filing deadline to April 30, 2003, and provide needed and well-deserved relief to members of our immigrant communities.

I urge my colleagues to join us in supporting this needed extension.

By Mr. MCCAIN:

S. 2494. A bill to revise the boundary of the Petrified Forest National Park in the State of Arizona and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MCCAIN. Mr. President, I rise to introduce legislation to authorize expansion of the Petrified Forest National Park in Arizona.

The Petrified Forest National Park is a national treasure among the Nation's parks, renowned for its large concentration of highly colored petrified wood, fossilized remains, and spectacular landscapes. However, it is much more than a colorful, scenic vista, for the Petrified Forest has been referred to as ''one of the world's greatest storehouses of knowledge about life on earth when the Age of the Dinosaurs was just beginning.''

For anyone who has ever visited this Park, one is quick to recognize the wealth of scenic, scientific, and historical values of this Park. Preserved deposits of petrified wood and related fossils are among the most valuable representations of Triassic-period terrestrial ecosystems in the world. These natural formations were deposited more than 220 million years ago. Scenic vistas, designated wilderness areas, and other historically significant sites of pictographs and Native American ruins are added dimensions to the Park.

The Petrified Forest was originally designated as a National Monument by former President Theodore Roosevelt in 1906 to protect the important natural and cultural resources of the Park, and later re-designated as a National Park in 1962. While several boundary adjustments were made to the Park, a significant portion of unprotected resources remain in outlying areas adjacent to the Park.

A proposal to expand the Park's boundaries was recommended in the Park's General Management Plan in 1992, in response to concerns about the long-term protection needs of globally significant resources and the Park's viewshed in nearby areas. For example, one of the most concentrated deposits of petrified wood is found within the Chinle encarpment, of which only thirty percent is included within the current Park boundaries.

Increasing reports of theft and vandalism around the Park have activated the Park, local communities, and other interested entities to seek additional protections through a proposed boundary expansion. It has been estimated that visitors to the Park steal about 12 tons of petrified wood every year. Other reports of destruction to archaeological sites and gravesites have also been documented. Based on these continuing threats to resources intrinsic to the Park, the National Parks Conservation Association listed the Petrified Forest National Park on its list of Top Ten Most Endangered Parks in 2000.

Support for this proposed boundary expansion is extraordinary, from the local community of Holbrook, scientific and research institutions, state tourism agencies, and environmental groups, such as the National Park Conservation Association, NPCA. I ask unanimous consent that a resolution from the City of Holbrook and a letter of support from NPCA be printed in the RECORD.

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

RESOLUTION NO. 00–15

A RESOLUTION OF THE CITY OF HOLBROOK, ARIZONA ENDORSING THE EXPANSION OF PETRIFIED FOREST NATIONAL PARK

Whereas, Petrified Forest National Park, first established in 1906, is a priceless and irreplaceable part of America's heritage; and

Whereas, Petrified Forest National Park contains a variety of significant natural and cultural resources, including portions of the Painted Desert and some of the most valuable paleontological resources in the world; and

Whereas, Petrified Forest National Park has inspired and educated millions of visitors from all over the world, and is cherished as a national treasure to be protected for the benefit and enjoyment of present and future generations; and

Whereas, the Chinle Formation which creates the spectacularly beautiful landscapes of the Painted Desert, Blue Mesas, and other park features, is probably the best place in the world for studying the Triassic period of the earth's history; and

Whereas, globally and nationally significant paleontological, archaeological, and scenic resources directly related to the resource values of Petrified Forest National Park, including approximately 70 percent of the Chinle Formation, are not included within the current boundary; and

Whereas, the newly approved General Management Plan for the park, prepared by the National Park Service with broad public input, has identified about 97,000 acres of land that, if included as part of the park, would lead to protection of the remainder of this globally significant Chinle Formation, along with highly significant archaeological resources, and would protect the beautiful, expansive vistas seen from the park; and

Whereas, land use patterns in the area of the park are beginning to change, potentially threatening the protection of the park and the broader setting in which it is placed; and

Whereas, implementing the General Management Plan is essential to carry out a vision for Petrified Forest National Park that will better protect park resources, enhance research opportunities, broaden and diversify visitor experiences, improve visitor service, and help contribute to the sustainability of the regional economy into the 21st century; and

Whereas, an excellent opportunity now exists to include adjacent areas of significant resources inside the park boundary because other landowners in the region, including the State of Arizona, and the Bureau of Land Management, and other private landowners recognize the significance of the resources on their lands and have expressed interest in seeing them preserved in perpetuity for the benefit and inspiration of this and future generations: Now, therefore, be it

Resolved, That the City of Holbrook, Arizona, hereby recommends and supports the inclusion within Petrified Forest National Park of all lands identified in the park's General Management Plan as desirable boundary additions, and supports all continuing efforts to enact legislation to accomplish this task and to complete the federal acquisition of this land. Be it further

Resolved, That the Clerk of the City of Holbrook is directed to immediately transmit this Resolution to the Governor of the State of Arizona, Arizona's Congressional delegation, and the Director of the National Park

Service, together with a letter requesting prompt and ongoing support for completing the park expansion.

NATIONAL PARKS
CONSERVATION ASSOCIATION,
Washington, DC, May 9, 2002.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Senate Office Bldg., Washington, DC.

DEAR SENATOR MCCAIN: The National Parks Conservation Association (NPCA) commends you for your leadership and vision in introducing the Petrified Forest National Park Expansion Act of 2002. Ever since NPCA published a Park Boundary Study for various national parks in 1988, we have been advocating the need for this expansion. With private landowners anxious to sell their land, we believe the time is ripe for this expansion.

It is hard to imagine a better example of an outdoor classroom than Petrified Forest National Park. This boundary expansion will ensure long-term protection of globally significant paleontological resources, potentially nationally significant archaeological resources where there is substantial evidence of early habitation, and the park's viewshed. It will also alleviate the threat of encroaching incompatible development and will greatly enhance the National Park Service's capability to protect the resources from vandalism and illegal pothunting.

Just as Theodore Roosevelt recognized the importance of preserving this land when he proclaimed Petrified Forest a national monument in 1906, your legislation would ensure that future generations can learn even more from this amazing landscape that capture's the world's best record of Triassic-period terrestrial ecosystems and prehistoric human occupation through an array of artifacts and ''trees turned to stone.''

NPCA looks forward to working with you and your staff to advance this legislation.

Sincerely,

THOMAS C. KIERNAN.

Mr. MCCAIN. Mr. President, editorials from Arizona State newspapers also encourage a boundary expansion for the Park. I ask unanimous consent that articles from the Arizona Republic and the Holbrook Tribune News regarding the park expansion proposal be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Arizona Republic, May 3, 2002]

EXPANDING PETRIFIED FOREST CAN SAVE TREASURES—POTHUNTERS, LOOTERS RAVAGING PARK AREA

Looters and pothunters are ravaging the land around Petrified Forest National Park.

The property should be inside the park. A decade ago, the Park Service decided Petrified Forest's boundaries should be expanded to include the priceless paleontology, archaeology and other resources in adjoining areas.

But the proposal has rarely gotten off the congressional back burner.

Until now.

Arizona Republicans Rep. J.D. Hayworth and Sen. John McCain are preparing bills to expand Petrified Forest. The plan is to add 140,000 acres, more than doubling the 93,500-acre park.

They can't move too fast.

The assets they're trying to protect are under heavy assault.

A pothunter recently smashed through an 800-year-old prehistoric Indian site while searching for booty. Someone else unearthed a massive petrified tree, nearly 5 feet in diameter, and prepared to hack it into marketable chunks.

Last year, we urged Congress to approve the park expansion. Since then, looters have wrecked about 400 gravesites near the park's eastern boundary.

Congress has been understandably preoccupied with other issues. But a critical window of opportunity is about to close.

Elections are coming up, and Arizona's new, larger delegation could take time to come together on this issue. Landowners around Petrified Forest are tired of waiting to sell to the government and are beginning to subdivide their land. The National Parks Conservation Association, and Albuquerque-based non-profit group, is running out of resources to push for the expansion.

And the destruction, of course, continues unabated.

BOUNDARIES MISJUDGED

When Petrified Forest was protected almost a century ago, originally as a national monument, the goal was simple: Save some pretty fossilized wood. And that's how the boundaries were picked.

Now we realize that area in northeastern Arizona is a treasure chest, with world-class paleontology, pueblo ruins, striking petroglyphs and, of course, the marvelous trees that turned to stone millions of years ago.

But without a park expansion, many of these treasures will remain outside the protection of federal law. Among them:

The Chinle Escarpment, now only partially within the park, has the world's best terrestrial fossils of plants and animals from the late Triassic period, including early dinosaurs. The escarpment has yielded the earliest known sample of amber.

Rainbow Forest Badlands are rich in fossils and include grazing land for the national park's herd of pronghorn antelope

Dead Wash Petroglyphs has panels of rock art and pueblo sites of prehistoric people.

Canyon Butte, a dramatic landmark, includes pueblo ruins with signs of warfare.

Expanding the park's boundaries appears unlikely to stir controversy in Congress. Sen. Jon Kyl, R–Ariz., previously landed $2 million in federal funding for land purchases.

But we all know that the best ideas can get lost in the blizzard of bills in Congress.

We applaud Hayworth and McCain for pressing forward with the park expansion. While there's still something left to save.

[From the Holbrook (AZ) Tribune-News, Oct. 27, 2000]

PARK'S PROPOSED EXPANSION

Now under study is a plan to expand the Petrified Forest National Park's boundaries by about 97,000 acres to afford protection to this priceless natural treasure. It deserves our interest and support.

Thanks to the efforts of President Theodore Roosevelt and others back in 1906, the park has been preserved for us to enjoy nearly a century later. Now it is time to take the necessary steps to protect the park for our posterity.

The land involved surrounds the existing park. Some of it is publicly owned, and some is privately owned.

Presumably the public agencies owning property adjacent to the park understand how important it is to enlarge the park and offer protection to its resources. It is my understanding that most, if not all, of the major private property owners also support this expansion plan.

The problem is that as these privately owned parcels are subdivided, it makes it more and more difficult to acquire the property for the expansion. And each year, the issue will become more difficult, with more owners to deal with.

The addition of this acreage to the Petrified Forest National Park will help preserve these natural and cultural heritage areas, and it is my hope that necessary steps will be taken to accomplish this program.

We have been fortunate to have foresighted people in the past who have maintained this wonderful place for us, and we must be equally diligent now to see that our children and grandchildren will have it to enjoy for years in the future.

Mr. MCCAIN. The legislation I am introducing today is intended to serve as a placeholder bill for further development of a boundary expansion proposal. Several key issues remain that require resolution, including the exact definition of the expanded boundary acreage, and the disposition, and possible acquisition, of private, Federal, and State lands within the proposed expansion area.

It's encouraging to note that the four major landowners within the proposed boundary expansion area have expressed interest in the Park expansion. Other public landowners, primarily the State of Arizona and the Bureau of Land Management, have recognized the significance of the paleontological resources on its lands adjacent to the Park. The Arizona State Trust Land Department closed nearby State trust lands to both surface and subsurface applications. Additionally, the Bureau of Land Management has identified its land-holdings within the proposed expansion area for disposal and possible transfer to the Park.

Other issues involving additional private landholders and State trust lands must still be resolved. In particular, the State of Arizona has specific concerns which must be addressed as the legislation moves through the process, particularly with regard to compensation to the State for any acquisitions of State trust lands by the Secretary of Interior, in keeping with the requirements of State law.

I fully intend to address these issues in consultation with affected entities and resolve any additional questions within a reasonable time-frame. A historic opportunity exists to alleviate major threats to these nationally significant resources and preserve them for our posterity.

I look forward to working with my colleagues on both sides of the aisle to ensure swift consideration and enactment of this proposal. Time is of the essence to ensure the long-term protection of these rare and important resources for the enjoyment and educational value for future generations.

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

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

S. 2494

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 ''Petrified Forest National Park Expansion Act of 2002''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Petrified Forest National Park was established—

(A) to preserve and interpret the globally significant paleontological resources of the Park that are generally regarded as the most important record of the Triassic period in natural history; and

(B) to manage those resources to retain significant cultural, natural, and scenic values;

(2) significant paleontological, archaeological, and scenic resources directly related to the resource values of the Park are located in land areas adjacent to the boundaries of the Park;

(3) those resources not included within the boundaries of the Park—

(A) are vulnerable to theft and desecration; and

(B) are disappearing at an alarming rate;

(4) the general management plan for the Park includes a recommendation to expand the boundaries of the Park and incorporate additional globally significant paleontological deposits in areas adjacent to the Park—

(A) to further protect nationally significant archaeological sites; and

(B) to protect the scenic integrity of the landscape and viewshed of the Park; and

(5) a boundary adjustment at the Park will alleviate major threats to those nationally significant resources.

(b) PURPOSE.—The purpose of this Act is to authorize the Secretary of the Interior to acquire 1 or more parcels of land—

(1) to expand the boundaries of the Park; and

(2) to protect the rare paleontological and archaeological resources of the Park.

SEC. 3. DEFINITIONS.

In this Act:

(1) MAP.—The term ''map'' means the map entitled ''Proposed Boundary Adjustments, Petrified Forest National Park'', numbered ___, and dated _____.

(2) PARK.—The term ''Park'' means the Petrified Forest National Park in the State.

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

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

SEC. 4. BOUNDARY REVISION.

(a) IN GENERAL.—The boundary of the Park is revised to include approximately _____ acres, as generally depicted on the map.

(b) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

SEC. 5. ACQUISITION OF ADDITIONAL LAND.

(a) PRIVATE LAND.—The Secretary may acquire from a willing seller, by purchase, exchange, or by donation, any private land or interests in private land within the revised boundary of the Park.

(b) STATE LAND.—

(1) IN GENERAL.—The Secretary may, with the consent of the State and in accordance with State law, acquire from the State any State land or interests in State land within the revised boundary of the Park by purchase or exchange.

(2) PLAN.—Not later than 2 years after the date of enactment of this Act, the Secretary shall, in coordination with the State, develop a plan for acquisition of State land or interests in State land identified for inclusion within the revised boundary of the Park.

SEC. 6. ADMINISTRATION.

(a) IN GENERAL.—Subject to applicable laws, all land and interests in land acquired under this Act shall be administered by the Secretary as part of the Park.

(b) TRANSFER OF JURISDICTION.—The Secretary shall transfer to the National Park Service administrative jurisdiction over any land under the jurisdiction of the Secretary that—

(1) is depicted on the map as being within the boundaries of the Park; and

(2) is not under the administrative jurisdiction of the National Park Service on the date of enactment of this Act.

(c) GRAZING.—

(1) IN GENERAL.—The Secretary shall permit the continuation of grazing on land transferred to the Secretary under this Act, subject to applicable laws (including regulations) and Executive orders.

(2) TERMINATION OF LEASES OR PERMITS.—Nothing in this subsection prohibits the Secretary from accepting the voluntary termination of a grazing permit or grazing lease within the Park.

(d) AMENDMENT TO GENERAL MANAGEMENT PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary shall amend the general management plan for the Park to address the use and management of any additional land acquired under this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

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

By Mr. DOMENICI (for himself, Mr. BIDEN, Mr. LOTT, Mr. DASCHLE, Mr. SHELBY, Mr. REID, Mr. NICKLES, Mr. TORRICELLI, Mr. BURNS, Mr. SCHUMER, Mr. GREGG, Mrs. CLINTON, Mr. DEWINE, Mr. MCCAIN, Mr. MCCONNELL, Mr. CHAFEE, Mr. ALLARD, Mr. BROWNBACK, Mr. CRAPO, Mr. SANTORUM, Mr. COCHRAN, Mr. BOND, Mrs. HUTCHISON, Mr. THOMPSON, Ms. COLLINS, Mr. CRAIG, Mr. KYL, Mr. ENSIGN, Mr. INHOFE, Mr. ALLEN, Mr. HAGEL, Mr. VOINOVICH, Mr. STEVENS, Mr. WARNER, Mr. SPECTER, Mr. SMITH of Oregon, Mr. BUNNING, Mr. SMITH of New Hampshire, and Mr. INOUYE):

S. 2495. A bill to designate the United States courthouse located at 100 Federal Plaza in Central Islip, New York, as the ''Alfonse M. D'Amato United States Courthouse''; to the Committee on Environment and Public Works.

Mr. DOMENICI. Mr. President, I rise today to introduce a bill in honor of former Senator Alfonse M. D'Amato on behalf of myself and 40 of my colleagues thus far. I am sure there will be more.

It recently came to my attention that the Federal courthouse in Central Islip, Long Island, did not have a name so I thought to myself: What a shame. This beautiful new courthouse does not even have a name, and I concluded that it was time to rectify the oversight. Who better than Alfonse D'Amato, a great Senator from New York, who had more than a little bit to do with providing the people of the Empire State with public buildings to conduct the business of government and justice. Forty of my colleagues concur that we ought to name this U.S. courthouse the ''Alfonse M. D'Amato United States Courthouse.'' I believe that is the right thing to do. I understand the U.S. Representatives from New York are moving similar legislation through their body.

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

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

S. 2495

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

SECTION 1. DESIGNATION.

The United States courthouse located at 100 Federal Plaza in Central Islip, New York, shall be known and designated as the ''Alfonse M. D'Amato United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in section 1 shall be deemed to be a reference to the ''Alfonse M. D'Amato United States Courthouse''.

By Mr. BAUCUS (for himself and Mr. GRASSLEY):

S. 2498. A bill to amend the Internal Revenue Code of 1986 to require adequate disclosure of transactions which have a potential for tax avoidance or evasion, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, Garrison Keillor is quoted as saying, ''I believe in looking reality straight in the eye and denying it.'' That approach is perhaps what some would like us to do with respect to the increasing problem of the use of abusive tax shelters to avoid or evade taxes. But I do not agree.

The Tax Shelter Transparency Act that I introduce today doesn't deny reality, rather, it shines some transparency on reality so that we have a better understanding of what is going on out there. Following Enron's bankruptcy, I think that all Americans have a greater appreciation for the need for greater transparency in complex tax transactions.

The legislation is the product of over 2 years of review and public comment. The Tax Shelter Transparency Act also incorporates tax shelter proposals released by the Department of the Treasury the day before the Senate Finance Committee's March 21, 2002 hearing on the subject.

As I stated at the hearing, ''the Finance Committee is committed to helping combat these carefully engineered transactions. These transactions have little or no economic substance, are designed to achieve unwarranted tax benefits rather than business profit, and place honest corporate competitors at a disadvantage.''

The proliferation of tax shelters has been called ''the most significant compliance problem currently confronting our system of self-assessment.'' Less than 2 years ago, there was a more positive outlook regarding the Government's ability to curb the promotion and use of abusive tax shelters. The Department of the Treasury and the IRS

issued regulations requiring disclosure of certain transactions and requiring developers and promoters of tax-engineered transactions to maintain customer lists. Also, the IRS had prevailed in several court cases against the use of transactions lacking in economic substance.

Unfortunately, the honesty and integrity of our tax system has suffered significant blows over the past 2 years. Court decisions have shifted from decisions tough on tax avoidance and evasion to court defeats for the IRS. Also, there appears to be a lack of compliance with the disclosure legislation passed in 1997 and the subsequent regulations.

The corporate tax returns filed in 2001 are the first returns filed under the new tax shelter disclosure requirements. The administration provided the Finance Committee with the results of their analysis of the disclosure data, including their analysis of what was not disclosed.

Only 272 transactions were disclosed by 99 corporate taxpayers. There are approximately 100,000 corporate taxpayers under the Large and Midsize Business Division at the IRS yet only 99 of them made a disclosure under the current regime. Based on the Finance Committee hearing, it is safe to say that the administration, as did Congress, thought the number of disclosures would be much greater.

Clearly, the past method of reactive, ad-hoc closing down of abusive transactions does little to discourage the creation and exploitation of many shelters.

These transactions may be good for a corporation's bottom line, but they are bad for the economy. Here's why: abusive corporate tax shelters create a tax benefit without any corresponding economic benefit. There's no new product. No technological innovation. Just a tax break.

As with the Senate Finance Committee draft legislation released last August, the Tax Shelter Transparency Act emphasizes disclosure. Disclosure is critical to the Government's ability to identify and address abusive tax avoidance and evasion arrangements. Under the bill, if the taxpayer has entered into a questionable transaction and fails to disclose the transaction, then the taxpayer is subject to tough penalties for not disclosing and higher penalties if an understatement results.

The legislation separates transactions into one of three types of transactions for purposes of disclosure and penalties: Reportable Listed Transactions, Reportable Avoidance Transactions, and a catch-all category for Other Transactions. The legislation also addresses the role of each of the players involved in abusive tax shelters: including the taxpayer who buys, the promoter who markets, and the tax advisor who provides an opinion ''endorsing'' the tax-engineered arrangement. The legislation focuses on each of these participants and contains proposals to discourage their participation in abusive tax transactions.

Reportable Listed Transactions are transactions specifically identified by the Department of the Treasury as ''tax avoidance transactions.'' These are transactions specifically classified by Treasury as bad transactions, essentially the worst of the worst. Failure by the taxpayer to disclose the transaction results in a separate strict liability, nonwaivable flat dollar penalty of $200,000 for large taxpayers and $100,000 for small taxpayers.

Additionally, if the taxpayer is required to file with the Securities and Exchange Commission, the penalty must be reported to the SEC. If the taxpayer discloses the questionable transaction, they are not subject to the flat dollar penalty or the SEC reporting. The SEC reporting requirement is a critical element to improving the disclosure of transactions. The amount of tax penalty is relatively insignificant to the tax benefits generated by abusive tax shelter transactions. Corporations, however, have a strong incentive not to trigger a penalty that must be reported to the SEC.

Failure to disclose a reportable listed transaction that results in a tax understatement will be subject to a higher, 30 percent, strict liability, nonwaivable accuracy-related penalty which must be reported to the SEC.

Reportable Avoidance Transactions are transactions that fall into one of the several objective criteria established by the Department of the Treasury which have a potential for tax avoidance or evasion. Based on current regulations and the proposals put forward by the administration, we anticipate these transactions would include but would not be limited to: significant loss transactions; transactions with brief asset holding periods; transactions marketed under conditions of confidentiality; transactions subject to indemnification agreements; and transactions with a certain amount of book-tax difference.

Failure by the taxpayer to disclose the questionable reportable avoidance transaction results in a separate strict liability, nonwaivable flat dollar penalty of $100,000 for large taxpayers and $50,000 for small taxpayers.

Reportable Avoidance Transactions are then subject to a filter to determine whether there is a significant purpose of tax avoidance. Transactions entered into with a significant purpose of tax avoidance are subject to harsher treatment in the form of higher penalties.

The legislation enhances the Government's ability to enjoin promoters. Most significantly, the legislation increases the penalty imposed on tax shelter promoters who refuse to maintain lists of their tax shelter investors. If a promoter fails to provide the IRS with a list of investors in a reportable transaction within 20 days after receipt of a written request by the IRS to provide such a list, the promoter would be subject to a penalty of $10,000 for each additional business day that the requested information is not provided.

The legislation adds a provision authorizing the Treasury Department to censure tax advisors or impose monetary sanctions against tax advisors and firms that participate in tax shelter activities and practice before the IRS.

I am pleased that this legislation is the product of working closely with my good friend, and the ranking member of the Finance Committee, Senator GRASSLEY. I appreciate Senator GRASSLEY's cosponsorship of the Tax Shelter Transparency Act and his commitment to work as a bipartisan front to shine some light on these abusive tax shelter transactions.

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

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

S. 2498

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Tax Shelter Transparency Act''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

TITLE I—TAXPAYER-RELATED PROVISIONS

SEC. 101. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

"SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include with any return or statement any information required to be included under subchapter A of chapter 61 with respect to a reportable transaction shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts for the taxable year or the preceding taxable year in excess of $10,000,000. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—The term 'high net worth individual' means a natural person whose net worth exceeds $2,000,000.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required under subchapter A of chapter 61 to be included with a taxpayer's return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction—

''(A) which is the same as, or similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011, or

''(B) which is expected to produce a tax result which is the same as, or similar to, the tax result in a transaction which is so specified.

''(d) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty with respect to a listed transaction under this section, or

''(B) is required to pay a penalty under section 6662(a)(2) with respect to any reportable transaction at a rate prescribed under section 6662(i)(3),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(e) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under section 6662.''

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 102. INCREASE IN ACCURACY-RELATED PENALTIES FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A TAX AVOIDANCE PURPOSE.

(a) INCREASE IN PENALTY.—Subsection (a) of section 6662 (relating to imposition of penalty) is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.

''(2) UNDERSTATEMENT OF INCOME TAX ATTRIBUTABLE TO LISTED TRANSACTIONS OR OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.—If a taxpayer has a reportable transaction income tax understatement (as defined in subsection (i)) for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of the understatement. Except as provided in subsection (i)(4)(B), such understatement shall not be taken into account for purposes of paragraph (1).''

(b) REPORTABLE TRANSACTION INCOME TAX UNDERSTATEMENT.—Section 6662 (relating to imposition of accuracy-related penalty) is amended by adding at the end the following new subsection:

''(i) UNDERSTATEMENT OF INCOME TAX ATTRIBUTABLE TO LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.—

''(1) REPORTABLE TRANSACTION INCOME TAX UNDERSTATEMENT.—For purposes of subsection (a)(2), the term 'reportable transaction income tax understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the taxpayer's treatment of items to which this subsection applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such items, and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the credits allowed against the tax imposed by subtitle A which results from a difference between the taxpayer's treatment of items to which this subsection applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such items.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any item which is attributable to—

''(A) any listed transaction, or

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(3) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—In the case of any portion of a reportable transaction income tax understatement attributable to a transaction to which section 6664(c)(1) does not apply by reason of section 6664(c)(2)(A), the rate of tax under subsection (a)(2) shall be increased by 5 percent (10 percent in the case of a listed transaction).

''(4) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(B) COORDINATION WITH DETERMINATIONS OF WHETHER OTHER UNDERSTATEMENTS ARE SUBSTANTIAL.—Reportable transaction income tax understatements shall be taken into account under subsection (d)(1) in determining whether any understatement (which is not a reportable transaction income tax understatement) is a substantial understatement.

''(C) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction income tax understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.''

(c) REASONABLE CAUSE EXCEPTION.—Subsection (c) of section 6664 (relating to reasonable cause exception) is amended by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively, and by inserting after paragraph (1) the following new paragraphs:

''(2) SPECIAL RULES FOR UNDERSTATEMENTS ATTRIBUTABLE TO LISTED AND CERTAIN OTHER TAX AVOIDANCE TRANSACTIONS.—Paragraph (1) shall not apply to the portion of any reportable transaction income tax understatement attributable to an item referred to in section 6662(i)(2) unless—

''(A) the relevant facts affecting the tax treatment of such item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on

audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor is a material advisor (within the meaning of section 6111(b)(1)) who—

''(I) is compensated directly or indirectly by another material advisor with respect to the transaction,

''(II) has a contingent fee arrangement with respect to the transaction,

''(III) has any type of referral agreement or other similar agreement or understanding with another material advisor which relates to the transaction, or

''(IV) has any other characteristic which, as determined under regulations prescribed by the Secretary, is indicative of a potential conflict of interest or compromise of independence.

''(iii) DISQUALIFIED OPINIONS.—An opinion is described in this clause if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

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

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 103. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year, or

''(ii) $10,000,000.''

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(c)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions—

''(A) for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment, and

''(B) which affect a significant number of taxpayers.

Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 104. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

TITLE II—PROMOTER AND PREPARER RELATED PROVISIONS

Subtitle A—Provisions Relating To Reportable Transactions

SEC. 201. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing the advice provided by such advisor, including any potential tax benefits represented to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed on the first business day following the earliest date on which such advisor provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out the transaction (or such later date as the Secretary may prescribe).

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—The term 'material advisor' means any person—

''(A) who provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(B) who directly or indirectly derives gross income from such advice or assistance.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain (in such manner as the Secretary may by regulations prescribe) a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.''

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b)(1)(A), as redesignated by subparagraph (B), is amending by inserting ''written'' before ''request''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''

(3)(A) The heading for section 6708 is amended to read as follows:

''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 202. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

"SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the fees paid to such person with respect to aid, assistance, or advice which is provided with respect to the reportable transaction before the date the return is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring after the date of the enactment of this Act.

SEC. 203. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available to the Secretary in accordance with section 6112(b)(1)(A) within 20 days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to failures occurring after the date of the enactment of this Act.

SEC. 204. MODIFICATION OF ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

"SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS."

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

Subtitle B—Other Provisions

SEC. 211. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 212. REPORT ON EFFECTIVENESS OF PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

The Secretary of the Treasury or his delegate shall report each year to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

(1) the number of civil and criminal penalties imposed on failures to meet the reporting and recordkeeping requirements of section 5314 of title 31, United States Code, with respect to interests held in foreign financial accounts, and

(2) the average amount of monetary penalties so imposed.

The Secretary shall include with such report an analysis of the effectiveness of such reporting and recordkeeping requirements in preventing the avoidance or evasion of Federal income taxes and any recommendations to improve such requirements and the enforcement of such requirements.

SEC. 213. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 7811 (relating to taxpayer assistance orders),

''(II) section 6159 (relating to agreements for payment of tax liability in installments), or

''(III) section 7122 (relating to compromises).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission promptly after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 214. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure.''

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''

SEC. 215. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

Mr. GRASSLEY. Mr. President, I rise today to co-sponsor legislation, the ''Tax Shelter Transparency Act'' which will arrest the proliferation of tax shelters.

We have known for many years that abusive tax shelters, which are structured to exploit unintended consequences of our complicated Federal income tax system, erode the Federal tax base and the public's confidence in the tax system. Such transactions are patently unfair to the vast majority of taxpayers who do their best to comply with the letter and spirit of the tax law. As a result, the Finance Committee has worked exceedingly hard over the past several years to develop three legislative discussion drafts for public review and comment. Thoughtful and well-considered comments on these drafts have been greatly appreciated by the staff and members of the Finance Committee. The collaborative efforts of those involved in the discussion drafts combined with the recent request for legislative assistance from the Treasury Department and IRS produced today's revised approach for dealing with abusive tax avoidance transactions.

Above all, the Tax Shelter Transparency Act encourages taxpayer disclosure of potentially abusive tax avoidance transactions. It is surprising and unfortunate that taxpayers, though required to disclose tax shelter transactions under present law, have refused to comply. The Treasury Department and IRS report that the 2001 tax filing season produced a mere 272 tax shelter return disclosures from only 99 corporate taxpayers, a fraction of transactions requiring such disclosure. The Tax Shelter Transparency Act will curb non-compliance by providing clearer and more objective rules for the reporting of potential tax shelters and by providing strong penalties for anyone who refuses to comply with the revised disclosure requirements.

The legislation has been carefully structured to reward those who are forthcoming with disclosure. I wholeheartedly agree with the remarks offered by the recent Treasury Assistant Secretary for Tax Policy, that ''if a taxpayer is comfortable entering into a transaction, a promoter is comfortable selling it, and an advisor is comfortable blessing it, they all should be comfortable disclosing it to the IRS.'' Transparency is essential to an evaluation by the IRS and ultimately by the Congress of the United States as to whether the tax benefits generated by complex business transactions are appropriate interpretations of existing tax law. To the extent such interpretations were unintended, the bill allows Congress to amend or clarify existing tax law. To the extent such interpretations are appropriate, all taxpayers, from the largest U.S. multinational conglomerate to the smallest local feedstore owner in Iowa, will benefit when transactions are publicly sanctioned in the form of an ''angel list'' of good transactions. This legislation accomplishes both of these objectives.

By Mr. KENNEDY (for himself and Mrs. CLINTON):

S. 2499. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, I am pleased today to join my colleagues Senator CLINTON and Congresswoman NITA LOWEY in introducing legislation to improve the labeling of allergens in food.

American families deserve to feel confident about the safety of the food on their tables. The Food Allergen Consumer Protection Act will allow the seven million Americans with food allergies to identify more easily a product's ingredients, avoid foods that may harm them, and stay healthy. We anticipate that this legislation will reduce the number, currently estimated to be 150 yearly, of Americans who die due to the ingestion of allergenic foods.

The Food Allergen Consumer Production Act will require that food ingredient statements on food packages identify in common language when an ingredient, including a flavoring, coloring, or other additive, is itself, or is derived from, one of the eight main food allergens, or from grains containing gluten. This legislation will also make the ingredient label on foods easier to read, and require it to include a working telephone number, including one for telecommunication devices for deaf persons.

The Food Allergen Consumer Protection Act will require food manufacturers to minimize cross-contamination with food allergens between foods produced in the same facility or on the same production line. It will require the use of ''may contain'' or other advisory language in food labeling when steps to reduce such cross-contamination will not eliminate it. This legislation also preserves the Food and Drug Administration's current authority to regulate the safety of certain products that are bioengineered to contain proteins that cause allergic reactions.

The Food Allergen Consumer Protection Act will also require the Centers for Disease Control and Prevention to track deaths related to food allergies, and it will direct the National Institutes of Health to develop a plan for research activities concerning food allergies.

I urge my colleagues in the Senate to support this legislation that will do so much to improve the lives of those with food allergies. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2499

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 ''Food Allergen Consumer Protection Act''.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Approximately 7,000,000 Americans suffer from food allergies. Every year roughly 30,000 people receive emergency room treatment due to the ingestion of allergenic foods, and an estimated 150 Americans die from anaphylactic shock caused by a food allergy.

(2) Eight major foods—milk, egg, fish, Crustacea, tree nuts, wheat, peanuts, and soybeans—cause 90 percent of allergic reactions. At present, there is no cure for food allergies. A food allergic consumer depends on a product's label to obtain accurate and reliable ingredient information so as to avoid food allergens.

(3) Current Food and Drug Administration regulations exempt spices, flavorings, and certain colorings and additives from ingredient labeling requirements that would allow consumers to avoid those to which they are allergic. Such unlabeled food allergens may pose a serious health threat to those susceptible to food allergies.

(4) A recent Food and Drug Administration study found that 25 percent of bakery products, ice creams, and candies that were inspected failed to list peanuts and eggs, which can cause potentially fatal allergic reactions. The mislabeling of foods puts those with a food allergy at constant risk.

(5) In that study, the Food and Drug Administration found that only slightly more than half of inspected manufacturers checked their products to ensure that all ingredients were accurately reflected on the labels. Furthermore, the number of recalls because of unlabeled allergens rose to 121 in 2000 from about 35 a decade earlier. In part, mislabeling occurs because potentially fatal allergens are introduced into the manufacturing process when production lines and cooking utensils are shared or used to produce multiple products.

(6) Individuals who have food allergies may outgrow their allergy if they strictly avoid consuming the allergen. However, some scientists believe that because low levels of allergens are unintentionally present in foods, those with an allergy are unable to keep from being repeatedly exposed to the very foods they are allergic to. Good manufacturing practices can minimize the unintentional presence of food allergens. In addition, when good manufacturing practices cannot eliminate the potential for cross-contamination, an advisory label on the product can provide additional consumer protection.

(7) The Food and Drug Administration is the Nation's principal consumer protection agency, charged with protecting and promoting public health through premarket and postmarket regulation of food. The agency must have both the necessary authority to ensure that foods are properly labeled and produced using good manufacturing practices and the ability to penalize manufacturers who violate our food safety laws.

(8) Americans deserve to have confidence in the safety and labeling of the food on their tables.

SEC. 3. FOOD LABELING; REQUIREMENT OF INFORMATION REGARDING ALLERGENIC SUBSTANCES.

(a) IN GENERAL.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

''(t)(1) If it is not a raw agricultural commodity and it is, or it intentionally bears or contains, a known food allergen, unless its label bears, in bold face type, the common or usual name of the known food allergen and the common or usual name of the food source described in subparagraph (3)(A) from which the known food allergen is derived, except that the name of the food source is not required when the common or usual name of the known food allergen plainly identifies the food source.

''(2) The information required under this paragraph may appear in labeling other than the label only if the Secretary finds that such other labeling is sufficient to protect the public health. A finding by the Secretary under this subparagraph is effective upon publication in the Federal Register as a notice (including any change in an earlier finding under this subparagraph).

''(3) For purposes of this Act, the term 'known food allergen' means any of the following:

''(A) Milk, egg, fish, Crustacea, tree nuts, wheat, peanuts, and soybeans.

''(B) A proteinaceous substance derived from a food specified in clause (A), unless the Secretary determines that the substance does not cause an allergic response that poses a risk to human health.

''(C) Other grains containing gluten (rye, barley, oats, and triticale).

''(D) In addition, any food that the Secretary by regulation determines causes an allergic or other adverse response that poses a risk to human health.

''(4) Notwithstanding paragraph (g), (i), or (k), or any other law, the labeling requirement under this paragraph applies to spices, flavorings, colorings, or incidental additives that are, or that bear or contain, a known food allergen.

''(u) If it is a raw agricultural commodity that is, or bears or contains, a known food allergen, unless it has a label or other labeling that bears in bold face type the common or usual name of the known food allergen and the Secretary has found that the label or other labeling is sufficient to protect the public health. A finding by the Secretary under this paragraph is effective upon publication in the Federal Register as a notice (including any change in an earlier finding under this paragraph).

''(w) If the labeling required under paragraphs (g), (i), (k), (t), (u), or (v)—

''(1) does not use a single, easy-to-read type style that is black on a white background, using upper and lower case letters and with no letters touching;

''(2) does not use at least 8 point type with at least one point leading (i.e., space between two lines of text), provided the total surface area of the food package available to bear labeling exceeds 12 square inches; or

''(3) does not comply with regulations issued by the Secretary to make it easy for consumers to read and use such labeling by requiring a format that is comparable to the format required for the disclosure of nutrition information in the food label under section 101.9(d)(1) of title 21, Code of Federal Regulations.''.

(b) CIVIL PENALTIES.—Section 303(g)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(g)(2)) is amended—

(1) in subparagraph (A), by striking ''section 402(a)(2)(B) shall be subject'' and inserting the following: ''section 402(a)(2)(B) or regulations under this chapter to minimize the unintended presence of allergens in food, or that is misbranded within the meaning of section 403(t), 403(u), 403(v), or 403(w), shall be subject''; and

(2) in subparagraph (B), by inserting ''or misbranded'' after ''adulterated'' each place such term appears.

(c) CONFORMING AMENDMENT.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(ll) The term 'known food allergen' has the meaning given such term in section 403(t)(3).''.

(d) EFFECTIVE DATE.—The amendments made by this section take effect upon the expiration of the 180-day period beginning on the date of the enactment of this Act.

SEC. 4. UNINTENTIONAL PRESENCE OF KNOWN FOOD ALLERGENS.

(a) FOOD LABELING OF SUCH FOOD ALLERGENS.—Section 403 of the Federal Food, Drug, and Cosmetic Act, as amended by section 3(a) of this Act, is amended by inserting after paragraph (u) the following:

''(v) If the presence of a known food allergen in the food is unintentional and its labeling bears a statement that the food may bear or contain the known food allergen, or any similar statement, unless the statement is made in compliance with regulations issued by the Secretary to provide for advisory labeling of the known food allergen.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect upon the expiration of the four-year period beginning on the date of the enactment of this Act, except with respect to the authority of the Secretary of Health and Human Services to engage in rulemaking in accordance with section 5.

SEC. 5. REGULATIONS.

(a) IN GENERAL.—

(1) REGULATIONS.—Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall issue a proposed rule under sections 402, 403, and 701(a) of the Federal Food, Drug, and Cosmetic Act to implement the amendments made by this Act. Not later than two years after such date of enactment, the Secretary shall promulgate a final rule under such sections.

(2) EFFECTIVE DATE.—The final rule promulgated under paragraph (1) takes effect upon the expiration of the four-year period beginning on the date of the enactment of this Act. If a final rule under such paragraph has not been promulgated as of the expiration of such period, then upon such expiration the proposed rule under such paragraph

takes effect as if the proposed rule were a final rule.

(b) UNINTENTIONAL PRESENCE OF KNOWN FOOD ALLERGENS.—

(1) GOOD MANUFACTURING PRACTICES; RECORDS.—Regulations under subsection (a) shall require the use of good manufacturing practices to minimize, to the extent practicable, the unintentional presence of allergens in food. Such regulations shall include appropriate record keeping and record inspection requirements.

(2) ADVISORY LABELING.—In the regulations under subsection (a), the Secretary shall authorize the use of advisory labeling for a known food allergen when the Secretary has determined that good manufacturing practices required under the regulations will not eliminate the unintentional presence of the known food allergen and its presence in the food poses a risk to human health, and the regulations shall otherwise prohibit the use of such labeling.

(c) INGREDIENT LABELING GENERALLY.—In regulations under subsection (a), the Secretary shall prescribe a format for labeling, as provided for under section 403(w)(3) of the Federal, Food, Drug, and Cosmetic Act.

(d) REVIEW BY OFFICE OF MANAGEMENT AND BUDGET.—If the Office of Management and Budget (in this section referred to as ''OMB'') is to review proposed or final rules under this Act, OMB shall complete its review in 10 working days, after which the rule shall be published immediately in the Federal Register. If OMB fails to complete its review of either the proposed rule or the final rule in 10 working days, the Secretary shall provide the rule to the Office of the Federal Register, which shall publish the rule, and it shall have full effect (subject to applicable effective dates specified in this Act) without review by OMB. If the Secretary does not complete the proposed or final rule so as to provide OMB with 10 working days to review the rule and have it published in the Federal Register within the time frames for publication of the rule specified in this section, the rule shall be published without review by OMB.

SEC. 6. FOOD LABELING; INCLUSION OF TELEPHONE NUMBER.

(a) IN GENERAL.—Section 403(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(e)) is amended—

(1) by striking ''and (2)'' and inserting the following: ''(2) in the case of a manufacturer, packer, or distributor whose annual gross sales made or business done in sales to consumers equals or exceeds $500,000, a toll-free telephone number (staffed during reasonable business hours) for the manufacturer, packer, or distributor (including one to accommodate telecommunications devices for deaf persons, commonly known as TDDs); or in the case of a manufacturer, packer, or distributor whose annual gross sales made or business done in sales are less than $500,000, the mailing address or the address of the Internet site for the manufacturer, packer, or distributor; and (3)''; and

(2) by striking ''clause (2)'' and inserting ''clause (3)''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect upon the expiration of the 180-day period beginning on the date of the enactment of this Act.

SEC. 7. DATA ON FOOD-RELATED ALLERGIC RESPONSES.

(a) IN GENERAL.—Consistent with the findings of the study conducted under subsection (b), the Secretary of Health and Human Services (in this section referred to as the ''Secretary''), acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Commissioner of Foods and Drugs, shall improve the collection of, and (beginning 18 months after the date of the enactment of this Act) annually publish, national data on—

(1) the prevalence of food allergies, and

(2) the incidence of deaths, injuries, including anaphylactic shock, hospitalizations, and physician visits, and the utilization of drugs, associated with allergic responses to foods.

(b) STUDY.—Not later than one year after the date of the enactment of this Act, the Secretary, in consultation with consumers, providers, State governments, and other relevant parties, shall complete a study for the purposes of—

(1) determining whether existing systems for the reporting, collection and analysis of national data accurately capture information on the subjects specified in subsection (a); and

(2) identifying new or alternative systems, or enhancements to existing systems, for the reporting collection and analysis of national data necessary to fulfill the purpose of subsection (a).

(c) PUBLIC AND PROVIDER EDUCATION.—The Secretary shall, directly or through contracts with public or private entities, educate physicians and other health providers to improve the reporting, collection, and analysis of data on the subjects specified in subsection (a).

(d) CHILD FATALITY REVIEW TEAMS.—Insofar as is practicable, activities developed or expanded under this section shall include utilization of child fatality review teams in identifying and assessing child deaths associated with allergic responses to foods.

(e) REPORTS TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on the progress made with respect to subsections (a) through (d).

(f) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $10,000,000 for fiscal year 2003, and such sums as may be necessary for each subsequent fiscal year.

(g) EFFECTIVE DATE.—This section takes effect on the date of the enactment of this Act.

By Mr. ALLARD (for himself, Mr. SESSIONS, and Mrs. HUTCHISON):

S. 2501. A bill to establish requirements arising from the delay or restriction on the shipment of special nuclear materials to the Savannah River Site, Aiken, South Carolina; to the Committee on Armed Services.

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

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

S. 2501

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

SECTION 1. REQUIREMENTS RELATING TO DELAY, RESTRICTION, OR PROHIBITION ON SHIPMENT OF SPECIAL NUCLEAR MATERIALS TO SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA.

(a) REQUIREMENTS.—Subject to subsection (c), if as of the date of the enactment of this Act, or at any time after that date, the State of South Carolina acts to delay or restrict, or seeks or enforces a judgment to prohibit, the shipment of special nuclear materials (SNM) to the Savannah River Site, Aiken, South Carolina, for processing by the proposed mixed oxide (MOX) fuel fabrication facility at the Savannah River Site, the Secretary of Energy shall—

(1) reopen the Record of Decision (ROD) on the mixed oxide fuel fabrication facility for purposes of identifying and evaluating alternative locations for the mixed oxide fuel fabrication facility; and

(2) conduct a study of the costs and implications for the national security of the United States of—

(A) converting the Savannah River site to an environmental management (EM) closure site; and

(B) transferring all current and proposed national security activities at the Savannah River Site from the Savannah River Site to other facilities of the National Nuclear Security Administration or the Department of Energy, as appropriate.

(b) REPORT ON STUDY.—If the Secretary conducts a study under subsection (a)(2), the Secretary shall submit to the congressional defense committees a report on the study not later than six months after the commencement of the study.

(c) CONTINGENT SUSPENSION OF APPLICABILITY OF REQUIREMENTS.—If at any time before the requirements in subsection (a) otherwise go into effect, the Secretary and the State of South Carolina enter into an agreement regarding the shipment of special nuclear materials to the Savannah River Site for processing by the proposed mixed oxide fuel fabrication facility at the Savannah River Site, the requirements in subsection (a) shall not go into effect as long, as determined by the Secretary, as the Secretary and the State of South Carolina comply with the agreement.

(d) SPECIAL NUCLEAR MATERIALS.—In this section, the term ''special nuclear materials'' includes weapons grade plutonium.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 109—COMMEMORATING THE INDEPENDENCE OF EAST TIMOR AND EXPRESSING THE SENSE OF CONGRESS THAT THE PRESIDENT SHOULD ESTABLISH DIPLOMATIC RELATIONS WITH EAST TIMOR, AND FOR OTHER PURPOSES

Mr. CHAFEE (for himself and Mr. FEINGOLD) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 109

Whereas on May 20, 2002, East Timor will become the first new country of the millennium;

Whereas the perseverance and strength of the East Timorese people in the face of daunting challenges has inspired the people of the United States and around the world;

Whereas in 1974 Portugal acknowledged the right of its colonies, including East Timor, to self-determination, including independence;

Whereas East Timor has been under United Nations administration since October, 1999, during which time international peace-keeping forces, supplemented by forces of the United States Group for East Timor (USGET), have worked to stabilize East Timor and provide for its national security;

Whereas the people of East Timor exercised their long-sought right of self-determination on August 30, 1999, when 98.6 percent of the eligible population voted, and 78.5 percent chose independence, in a United Nations-administered popular consultation, despite systematic terror and intimidation;