

through the military medical system. Nor will it change the health care coverage for active duty family members who retain TRICARE eligibility and receive health care either through the direct care system or TRICARE network.

When reservists and members of the National Guard are called to active duty in time of international crisis, they are asked to put their lives on the line for their country. The least we can do for them is assure that their families can continue to receive quality health care without interruption during their absence.

I urge my colleagues to move promptly to enact this legislation.

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. 647

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

SECTION 1. DEPARTMENT OF DEFENSE PAYMENT FOR CONTINUATION OF NON-TRICARE HEALTH BENEFITS COVERAGE FOR CERTAIN MOBILIZED RESERVES.

(a) PAYMENT OF PREMIUMS.—

(1) REQUIREMENT TO PAY PREMIUMS.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1078a the following new section:

“§ 1078b. Continuation of non-TRICARE health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents

“(a) PAYMENT OF PREMIUMS.—The Secretary concerned shall pay the applicable premium to continue in force any qualified health benefits plan coverage for an eligible reserve component member for the benefits coverage continuation period if timely elected by the member in accordance with regulations prescribed under subsection (h).

“(b) ELIGIBLE MEMBER.—A member of a reserve component who is called or ordered to active duty for a period of more than 30 days under a provision of law referred to in section 101(a)(13)(B) of this title is eligible for payment of the applicable premium for continuation of qualified health benefits plan coverage under subsection (a).

“(c) QUALIFIED HEALTH BENEFITS PLAN COVERAGE.—For the purposes of this section, health benefits plan coverage for a member called or ordered to active duty is qualified health benefits plan coverage if—

“(1) the coverage was in force on the date on which the Secretary notified the member that issuance of the call or order was pending or, if no such notification was provided, the date of the call or order; and

“(2) on that date, the coverage applied to the member and dependents of the member.

“(d) APPLICABLE PREMIUM.—The applicable premium payable under this section for continuation of health benefits plan coverage in the case of a member is the amount of the premium payable by the member for the coverage of the member and dependents.

“(e) BENEFITS COVERAGE CONTINUATION PERIOD.—The benefits coverage continuation period under this section for qualified health benefits plan coverage in the case of a member called or ordered to active duty is the period that—

“(1) begins on the date of the call or order; and

“(2) ends on the earlier of the date on which—

“(A) the member's eligibility for transitional health care under section 1145(a) of this title terminates under paragraph (3) of such section;

“(B) the member or the dependents of the member eligible for benefits under the qualified health benefits plan coverage become covered by another health benefits plan that is not TRICARE; or

“(C) the member elects to terminate the continued qualified health benefits plan coverage of the dependents of the member.

“(f) EXTENSION OF PERIOD OF COBRA COVERAGE.—Notwithstanding any other provision of law—

“(1) any period of coverage under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code of 1986) for a member under this section shall be deemed to be equal to the benefits coverage continuation period for such member under this section; and

“(2) with respect to the election of any period of coverage under a COBRA continuation provision (as so defined), rules similar to the rules under section 4980B(f)(5)(C) of such Code shall apply.

“(g) SPECIAL RULE WITH RESPECT TO INDIVIDUAL HEALTH INSURANCE COVERAGE.—With respect to a member of a reserve component described in subsection (b) who was enrolled in individual health insurance coverage (as such term is defined in section 2791(b)(5) of the Public Health Service Act) on the date on which the member was called or ordered to active duty, the health insurance issuer may not—

“(1) decline to offer such coverage to, or deny re-enrollment of, such individual during the benefits coverage continuation period described in subsection (e);

“(2) impose any preexisting condition exclusion (as defined in section 2701(b)(1)(A) of the Public Health Service Act) with respect to the re-enrollment of such member for such coverage during such period; or

“(3) increase the premium rate for re-enrollment of such member under such coverage during such period above the rate that was paid for the coverage prior to the date of such call or order.

“(h) NONDUPLICATION OF BENEFITS.—A dependent of a member who is eligible for benefits under qualified health benefits plan coverage paid on behalf of a member by the Secretary concerned under this section is not eligible for benefits under TRICARE during a period of the coverage for which so paid.

“(i) REVOCABILITY OF ELECTION.—A member who makes an election under subsection (a) may revoke the election. Upon such a revocation, the member's dependents shall become eligible for TRICARE as provided for under this chapter.

“(j) REGULATIONS.—The Secretary of Defense shall prescribe regulations for carrying out this section. The regulations shall include such requirements for making an election of payment of applicable premiums as the Secretary considers appropriate.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1078a the following new item:

“1078b. Continuation of non-TRICARE health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents.”.

(b) APPLICABILITY.—Section 1078b of title 10, United States Code (as added by subsection (a)), shall apply with respect to calls or orders of members of reserve components of the Armed Forces to active duty as described in subsection (b) of such section, that are issued by the Secretary of a military department on or after the date of the enactment of this Act.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself and Mr. DORGAN).

S. 658. A bill to extend the authority for Energy Savings Performance Contracts and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN, Mr. President, I rise today to introduce legislation that will ensure the continuation of a program that has provided a flexible and cost-effective way to reduce the Federal Government's energy bills.

Since the 1970's Federal Government agencies have been required by law or Executive Order to steadily improve the energy efficiency of Federal buildings. For example, the Energy Policy Act of 1992 set a goal of reducing energy use per square foot by 20 percent in FY 2000 compared to FY 1985. Preliminary data from the Department of Energy indicates that agencies exceeded this goal by 2.7 percent and spent \$2.3 billion less for energy in FY 2000 than in FY 1985.

One of the reasons the Federal Government was successful was the availability of an innovative financing method for energy efficiency improvements. In the 1992 Energy Policy Act, Congress created Energy Savings Performance Contracting ESPC, which offered a way to invest in energy savings improvements at no capital cost to the government by leveraging private sector capital.

Under the ESPC authority, private sector companies enter into contracts with Federal agencies to install energy savings equipment and make operational or maintenance changes to improve building efficiency. The companies pay the up-front costs of the energy efficiency improvements and guarantee the agency a fixed amount of cost savings through the life of the contract. The energy service company recoups its investment over time from the energy cost savings. Since 1992, nearly \$1.1 billion in private sector capital has been invested in Federal energy improvement projects under ESPCs resulting in hundreds of millions of dollars in permanent savings to the US taxpayer.

Unfortunately the authority for this successful program expires at the end of September 2003. Congress must act quickly to continue ESPC authority.

Our legislation would extend the authority for the ESPC program permanently. The bill also makes several changes designed to improve and expand the program. It adds “water cost savings” as an allowable measure for Energy Savings Performance Contracting for civilian agencies, as they have been for Department of Defense facilities for several years.

The legislation also addresses the problem of improving energy efficiency in a building that has long since passed its useful life and is in constant need of maintenance and repair. To prevent this waste of funds, the legislation

would allow Energy Savings Performance Contracting to include the savings anticipated from operation and maintenance efficiencies of a replacement facility. The Department of Energy conducted a feasibility study for replacing a complex of 50 year old army barracks in my State—now used as DOE's Albuquerque operations office. The study demonstrated that the costs savings created by energy, operations and maintenance efficiencies of a new replacement building can pay for the new facility.

These provisions were agreed to last fall by the House and Senate conference committee on the Energy Policy Act of 2002. They are good policy for energy efficiency and for the Federal taxpayer.

In addition, our bill would authorize a pilot program to determine whether the ESPC concept can be applied to non-building projects. About 60 percent of the Federal Government's energy consumption occurs in government vehicles, cars, trucks, ships and air craft. Another 7 percent occurs in energy intensive operations such as irrigation, manufacturing and research activities. Increased efficiency for these activities could yield tremendous savings. This program was discussed favorably at the Energy Committee's March 11 hearing on energy efficiency.

I look forward to working with my cosponsor Senator DORGAN, and other interested Senators to enact this legislation as soon as possible.

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. 658

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Energy Savings Performance Contracts Amendments Act of 2003".

SEC. 2. PERMANENT EXTENSION.

Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

SEC. 3. COST SAVINGS FROM REPLACEMENT FACILITIES.

Section 801(a) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following new paragraph:

"(3)(A) In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced costs of operation and maintenance at such replacement buildings or facilities when compared with costs of operation and maintenance at the buildings or facilities being replaced.

"(B) Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through

the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in subparagraph (A)."

SEC. 4. ENERGY SAVINGS.

Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)(2)) is amended to read as follows:

"(2) The term 'energy savings' means—

"(A) a reduction in the cost of energy or water, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

"(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

"(ii) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

"(iii) the increased efficient use of existing water sources; or

"(B) in the case of a replacement building or facility described in section 801(a)(3), a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, that would otherwise be utilized in one or more existing federally owned buildings or other federally owned buildings by reason of the construction and operation of the replacement building or facility."

SEC. 5. ENERGY SAVINGS CONTRACT.

Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)(3)) is amended to read as follows:

"(3) The terms 'energy savings contract' and 'energy savings performance contract' means a contract which provides for—

"(A) the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations; or

"(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities."

SEC. 6. ENERGY OR WATER CONSERVATION MEASURE.

Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)(4)) is amended to read as follows:

"(4) The term 'energy or water conservation measure' means—

"(A) an energy conservation measure, as defined in section 551(4)(42 U.S.C. 8259(4)); or

"(B) a water conservation measure that improves water efficiency, is life cycle cost effective, and involves water conservation, water recycling or reuse, improvements in operation or maintenance efficiencies, retrofit activities or other related activities, not at a Federal hydroelectric facility."

SEC. 7. REVIEW.

Within 180 days after the date of the enactment of this Act, the secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulation, and administration obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, and energy efficient services covered. The Secretary shall report these findings to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural

Resources of the Senate, and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

SEC. 8. PILOT PROGRAM TO EXPAND ENERGY SAVINGS PERFORMANCE CONTRACTS TO NON-BUILDING PROJECTS.

Title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287–8287c) is amended by adding at the end the following:

"SEC. 805. PILOT PROGRAM FOR ENERGY SAVINGS PERFORMANCE CONTRACT INVESTMENTS IN NON-BUILDING ENERGY SAVINGS PROJECTS.

"(a) AUTHORIZATION.—The Secretary of Defense and the heads of other interested Federal agencies are authorized, on a pilot basis, to enter into up to ten energy savings performance contracts under this Title for the purpose of achieving savings, secondary savings, and benefits incidental to those purpose, in non-building energy efficiency improvement projects.

"(b) SELECTION OF PROJECTS.—The Secretary of Energy, in consultation with the Secretary of Defense and the heads of other interested Federal agencies, shall select up to ten contract projects for this pilot program. The projects shall be selected to demonstrate the applicability and benefit of energy savings performance contracting to a range of non-building energy efficiency improvement projects.

"(c) DEFINITIONS.—For the purposes of this section:

"(1) The term 'non-building' means any vehicle, device, or equipment that is transportable under its own power by land, sea, or air and consumes energy from any fuel source for the purpose of such transportability, or to maintain a controlled environment within such vehicle, device or equipment; or any Federally owned equipment used to generate electricity or transport water.

"(2) The term 'secondary savings', means additional energy or cost savings that are a direct consequence of the energy savings that result from the energy efficiency improvements that were financed and implemented pursuant to the energy savings performance contract. Such 'secondary savings' may include, but are not limited to, energy and cost savings that result from a reduction in the need for fuel delivery and logistical support. In the case of electric generation equipment, secondary savings may include the benefits of increased efficiency in the production of electricity.

"(d) REPORT.—No later than three years after the enactment of this section, the Secretary of Energy shall report to the Congress on the progress and results of this program. Such report shall include: a description of all projects undertaken; the energy and cost savings, secondary savings, other benefits and problems resulting from such projects; and the overall cost-benefit of such projects. The report shall also include recommendations, developed in consultation with those agencies that undertook projects under the program, as to whether the authorization to enter into energy savings performance contract for non-building projects should be extended, expanded, or otherwise modified."

SEC. 9. UTILITY INCENTIVE PROGRAMS.

Section 546(c)(3) of the National Energy Conservation Policy Act (42 U.S.C. 8256(c)(3)) is amended by striking "facilities" and inserting "facilities, equipment and vehicles".

By Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BENNETT, Mr. BOND, Mr. BREAUX,

Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. CAMPBELL, Mr. CHAMBLISS, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mrs. DOLE, Mr. DOMENICI, Mr. DORGAN, Mr. ENSIGN, Mr. ENZI, Mr. FRIST, Mr. GRAHAM of South Carolina, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. JOHNSON, Mr. KYL, Ms. LANDRIEU, Mrs. LINCOLN, Mr. LOTT, Mr. MCCONNELL, Mr. MILLER, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. NICKLES, Mr. REID, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Mr. SPECTER, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, and Mr. THOMAS):

S. 659. A bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; to the Committee on the Judiciary.

Mr. CRAIG. Mr. President, I am pleased to join with Senator BAUCUS in introducing the Protection of Lawful Commerce in Arms Act, on behalf of ourselves and more than half of our colleagues in the United States Senate: Senators ALEXANDER, ALLARD, ALLEN, BENNETT, BOND, BREAUX, BROWNBACK, BUNNING, BURNS, CAMPBELL, CHAMBLISS, COCHRAN, COLEMAN, COLLINS, CORNYN, CRAPO, DOLE, DOMENICI, DORGAN, ENSIGN, ENZI, FRIST, GRAHAM of South Carolina, GRASSLEY, GREGG, HAGEL, HATCH, HUTCHISON, INHOFE, JOHNSON, KYL, LANDRIEU, LINCOLN, LOTT, MCCONNELL, MILLER, MURKOWSKI, NELSON of Nebraska, NICKLES, REID, ROBERTS, SANTORUM, SESSIONS, SHELBY, SMITH, SPECTER, STEVENS, SUNUNU, TALENT, and THOMAS.

This is an extraordinary showing of support for a bill, and I believe it is a testament to the gravity of the threat addressed by the legislation: the abuse of our courts through lawsuits filed to force law-abiding businesses to pay for criminal acts by individuals beyond their control.

The businesses I am talking about are collectively known as the U.S. firearms industry. The lawsuits in question claim that even though these businesses comply with all laws and sell a legitimate product, they should be responsible for the misuse or illegal use of the firearm by a criminal. These actions are pursued with the intent of driving this industry out of business, regardless of the thousands of jobs that would be lost in the process and the impact on citizens across the Nation who would never contemplate committing a crime with a gun.

Let me be clear about this. These lawsuits are not brought by individuals seeking relief for injuries done to them by anyone in the industry. Instead, this is a politically-inspired initiative trying to force social goals through an

end-run around the Congress and state legislatures.

The theory on which these lawsuits are based would be laughable, if it weren't so dangerous: to pin the responsibility for a criminal act on an innocent party who wasn't there and had nothing to do with it. They argue that merely by virtue of the fact that a gun was present, those who were part of the commercial distribution chain should be held responsible for the gun's misuse.

This isn't a legal theory—it's just the latest twist in the gun controllers' notion that it's the gun, and not the criminal, that causes crime.

The truth of the matter is that there are millions of firearms in this country today, yet only a tiny fraction of them have ever been used in the commission of a crime. The truth of the matter is that again and again, law-abiding firearm owners are using their guns, often without even firing a shot, to defend life and property. The truth of the matter is that the intent of the user, not the gun, is what determines whether that gun will be used in a crime. The trend of abusive litigation targeting the firearms industry not only defies common sense and concepts of fundamental fairness, but it would do nothing to curb criminal gun violence. Furthermore, the burdens it seeks to impose would jeopardize Americans' constitutionally-protected access to firearms for self defense and other lawful uses.

The bill that more than half of the United States Senate has already endorsed is a measured response that would put a stop to this abusive trend without endangering legitimate claims for relief. Let me emphasize that it does not insulate the firearms industry from all lawsuits or deprive legitimate victims of their day in court, as some critics have charged. Indeed, it specifically provides that actions based on the wrongful conduct of those involved in the business of manufacturing and selling firearms—breaches of contract, defects in firearms, negligent entrustment, criminal behavior—would not be affected by this legislation. It is solely directed at stopping frivolous, politically-driven litigation against law-abiding individuals for the misbehavior of criminals over whom they had no control.

The courts of our Nation are supposed to be forums for resolving controversies between citizens and providing relief where warranted, not a mechanism for achieving political ends that are rejected by the people's representatives in Congress and the state legislatures. I hope all our colleagues will join us in taking a measured, principled stand against this abusive litigation by supporting the Protection of Lawful Commerce In Arms Act.

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. 659

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 "Protection of Lawful Commerce in Arms Act".

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Citizens have a right, protected by the Second Amendment to the United States Constitution, to keep and bear arms.

(2) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(3) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

(4) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition that has been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(5) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(6) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

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

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products for the harm caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

(a) IN GENERAL.—A qualified civil liability action may not be brought in any Federal or State court.

(b) DISMISSAL OF PENDING ACTIONS.—A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought.

SEC. 4. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ENGAGED IN THE BUSINESS.—The term “engaged in the business” has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes, time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) MANUFACTURER.—The term “manufacturer” means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) PERSON.—The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) QUALIFIED PRODUCT.—The term “qualified product” means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) QUALIFIED CIVIL LIABILITY ACTION.—

(A) IN GENERAL.—The term “qualified civil liability action” means a civil action brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly and willfully violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought;

(iv) an action for breach of contract or warranty in connection with the purchase of the product; or

(v) an action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended.

(B) NEGLIGENT ENTRUSTMENT.—In subparagraph (A)(ii), the term “negligent entrustment” means the supplying of a qualified product by a seller for use by another person when the seller knows, or should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person and others.

(6) SELLER.—The term “seller” means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level, consistent with Federal, State, and local law.

(7) STATE.—The term “State” includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION.—The term “trade association” means any association or business organization (whether or not incorporated under Federal or State law) that is not operated for profit, and 2 or more members of which are manufacturers or sellers of a qualified product.

By Mr. SCHUMER (for himself,
Mr. WARNER, Mr. SARBANES,
Mr. KENNEDY, and Mrs. CLINTON):

S. 661. A bill to amend the Internal Revenue Code of 1986 to equalize the exclusion from gross income of parking and transportation fringe benefits and to provide for a common cost-of-living adjustment, and for other purposes; to the Committee on Finance.

Mr. SCHUMER. 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. 661

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 “Commuter Benefits Equity Act of 2003”.

SEC. 2. UNIFORM DOLLAR LIMITATION FOR ALL TYPES OF TRANSPORTATION FRINGE BENEFITS.

(a) IN GENERAL.—Section 132(f)(2) of the Internal Revenue Code of 1986 (relating to limitation on exclusion) is amended—

(1) by striking “\$100” in subparagraph (A) and inserting “\$190”, and

(2) by striking “\$175” in subparagraph (B) and inserting “\$190”.

(b) INFLATION ADJUSTMENT CONFORMING AMENDMENTS.—Subparagraph (A) of section 132(f)(6) of the Internal Revenue Code of 1986

(relating to inflation adjustment) is amended—

(1) by striking the last sentence,
(2) by striking “1999” and inserting “2003”, and

(3) by striking “1998” and inserting “2002”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 3. CLARIFICATION OF FEDERAL EMPLOYEE BENEFITS.

Section 7905 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(C) by inserting “and” after the semicolon;

(B) in paragraph (3) by striking “; and” and inserting a period; and

(C) by striking paragraph (4); and

(2) in subsection (b)(2)(A) by amending subparagraph (A) to read as follows:

“(A) a qualified transportation fringe as defined in section 132(f)(1) of the Internal Revenue Code of 1986;”.

Mr. SARBANES. Mr. President, I am pleased to join with my colleagues in introducing the Commuter Benefits Equity Act of 2003. This measure is another important step forward in our efforts to make transit services more accessible and improve the quality of life for commuters throughout the Nation.

All across the Nation, congestion and gridlock are taking their toll in terms of economic loss, environmental impacts, and personal frustration. According to the Texas Transportation Institute, in 2000, Americans in 75 urban areas spent 3.6 billion hours stuck in traffic, with an estimated cost to the Nation of \$67.5 billion in lost time and wasted fuel, and the problem is growing. One way in which Federal, State, and local governments are responding to this problem is by promoting greater use of transit as a commuting option. The American Public Transportation Association estimates that last year, Americans took over 9.5 billion trips on transit, the highest level in more than 40 years. But we need to do more to encourage people to get out of their cars and onto public transportation.

The Internal Revenue Code currently allows employers to provide a tax-free transit benefit to their employees. Under this “Commuter Choice” program, employers can set aside up to \$100 per month of an employee’s pre-tax income to pay for the cost of commuting by public transportation or vanpool. Alternatively, an employer can choose to offer the same amount as a tax-free benefit in addition to an employee’s salary. This program is designed to encourage Americans to leave their cars behind when commuting to work.

By all accounts, this program is working. In the Washington area, for example, the Washington Metropolitan Area Transit Authority estimates that over 200,000 commuters take advantage of transit pass programs offered by their employers. That means fewer cars on our congested streets and highways.

Employees of the federal government account for a large percentage of those benefitting from this program in the

Washington area. Under an Executive Order, all Federal agencies in the National Capital Region, which includes Montgomery, Prince George's, and Frederick Counties, Maryland, as well as several counties in Northern Virginia, are required to offer this transit benefit to their employees. The Commuter Choice program is now being used by an estimated 130,000 Washington-area Federal employees who are choosing to take transit to work.

However, despite the success of the Commuter Choice program, our tax laws still reflect a bias toward driving. The Internal Revenue Code allows employers to offer a tax-free parking benefit to their employees of up to \$190 per month. The striking disparity between the amount allowed for parking—\$190 per month—and the amount allowed for transit—\$100 per month—undermines our commitment to supporting public transportation use.

The Commuter Benefits Equity Act would address this discrepancy by raising the maximum monthly transit benefit to \$190, equal to the parking benefit, and providing that the benefits will be adjusted upward together in future years. The Federal Government should not reward those who drive to work more richly than those who take public transportation. Indeed, since the passage of the Intermodal Surface Transportation Efficiency Act of 1991, Federal transportation policy has endeavored to create a level playing field between highways and transit, favoring neither mode above the other. The Commuter Benefits Equity Act would ensure that our tax laws reflect this balanced approach.

In addition, the Commuter Benefits Equity Act would remedy another inconsistency in current law. Private-sector employers can offer their employees the transit benefit in tandem with the parking benefit, to help employees pay for the costs of parking at transit facilities, commuter rail stations, or other locations which serve public transportation or vanpool commuters. However, under current law, Federal agencies cannot offer a parking benefit to their employees who use park-and-ride lots or other remote parking locations. The Commuter Benefits Equity Act would remove this restriction, allowing Federal employees access to the same benefits enjoyed by their private-sector counterparts.

The Washington Metropolitan Region is home to thousands of Federal employees. It is also one of the Nation's most highly congested areas, ranking fourth in per capita congestion. This area has the third longest average commute time in the country. It is clearly in our interest to support programs which encourage Federal employees to make greater use of public transportation for their commuting needs.

The simple change made by the Commuter Benefits Equity Act would provide a significant benefit to those Federal employees whose commute to work includes parking at a transit fa-

cility. For example, a commuter who rides the Metrorail to work and parks at the Rockville park-and-ride lot pays about \$45 monthly for parking, on top of the cost of riding the train. A private-sector employee whose employer provides the parking benefit in addition to salary could receive \$540 a year tax free to help pay these parking costs. Federal government employees should be allowed the same benefit.

I support the Commuter Benefits Equity Act because it creates parity—parity in the tax code between the parking and transit benefits, and parity for Federal employees with their private-sector counterparts. Both of these improvements will aid our efforts to fight congestion and pollution by supporting public transportation. I encourage my colleagues to join me in supporting the Commuter Benefits Equity Act.

By Mrs. FEINSTEIN:

S. 662. A bill to extend to Nepal certain preferential treatment with respect to apparel articles; to the Committee on Finance.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce legislation to grant garment imports from Nepal duty free status in the United States for two years. We have an opportunity the help one of the world's most impoverished countries sustain a vital export industry and promote political and economic stability after years of conflict.

My interest in Nepal goes back over 25 years and I have had the pleasure to travel there and visit with friends on many occasions. The warmth and friendliness of the people and the vitality and richness of the culture are only matched by the beauty of the breathtaking landscape.

Nevertheless, Nepal faces some serious challenges in the years ahead as it attempt to build a prosperous economy and raise the living standards of its people.

It ranks as the 12th poorest country in the world, with a per capita income of \$240. Approximately 42 percent of the 24 million people live in poverty. Unemployment stands at 47 percent.

On top of this, Nepal has had to confront a Maoist insurgency which has claimed the lives of more than 7,200 people since 1996 with two thirds of the deaths occurring since November 2001. Estimated to include between 5,000 and 10,000 armed soldiers, the Maoists control between one-quarter and one-half of the country.

As a result of the political instability, for the first time in twenty years Nepal's economy contracted in 2002 by 0.6 percent and tourism, one of the main sources of income, fell by 27 percent. The situation became so dire last year that one advisor to Nepal's king noted that "Nepal is on the verge of becoming a failed state."

Yet there is reason for hope. On January 29, 2003 the Government of Nepal and the Maoist rebels reached a ceasefire agreement, opening the door for negotiations for a permanent end to

the conflict. I am hopeful they will be successful. We now have the opportunity to build on the hopes of a peaceful solution to conflict and really make a difference in the lives of the Nepalese people.

Humanitarian and development assistance should be an important part of that effort. But we should also help the Nepalese help themselves and open the U.S. market to a critical export industry. In the end, economic growth and prosperity can best be achieved when Nepal is given the chance to compete and grow in a free and open global marketplace.

Success in that marketplace will lead to a lesser dependence on foreign aid and encourage Nepal to develop other viable export industries.

Since the mid-1980s, garments have emerged as a key part of Nepal's manufacturing sector. The garment industry in Nepal is entirely export oriented and accounts for 40 percent of the foreign exchange earnings. It employs over 100,000 workers half of them women and sustains the livelihood of over 350,000 people. The United States is the largest market for Nepalese garments and accounts for 80-90 percent of Nepal's total exports every year.

Yet, despite Nepal's poverty and the importance of the garment industry and the U.S. market, Nepalese garments are subject to U.S. tariffs of 17-35 percent. This is simply not acceptable and does harm to a country that can least afford it.

I might point out that this tariff rate is in contrast to the European Union, Canada, and Australia which allow or will soon allow Nepalese garments into their markets duty free.

The United States can make a real difference now to sustain the garment industry in Nepal and promote economic growth and higher living standards. My bill is simple and straightforward. It grants duty free status to imports of Nepalese garments and textiles for a two year period. This is the same status granted to participating lesser developed countries under the African Growth and Opportunity Act.

For those of my colleagues who are concerned about the impact that duty free status for Nepalese garments and textiles would have on the domestic industry, it is worth noting that Nepalese garments, at their highest level, accounted for 0.1 percent of all garment and textile imports in the United States generating \$29.5 million in revenue.

Nepal is, and will continue to be, a small player in the U.S. garment market, but the importance of the garment industry in Nepal compels us to action.

Let us not miss this chance to help Nepal build a better future for its people and demonstrate to them and the rest of the world the desire of the United States to see developing nations rise from poverty to economic prosperity. I urge my colleagues to support this legislation.

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. 662

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

SECTION 1. TREATMENT OF CERTAIN TEXTILES AND APPAREL.

Notwithstanding any other provision of law, the preferential treatment extended to apparel articles under section 112(b)(3)(B) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(3)(B)) shall also apply to apparel articles that are imported directly into the customs territory of the United States from Nepal in accordance with the provisions set forth in such section as if such articles were articles of a lesser developed beneficiary sub-Saharan African country, if Nepal has satisfied the requirements set forth in section 113 of such Act (19 U.S.C. 3722), except that—

(1) any reference in section 112(b) or section 113 of the African Growth and Opportunity Act to a lesser developed beneficiary sub-Saharan African country or countries) shall be treated as a reference to Nepal; and

(2) such preferential treatment shall apply to apparel articles imported into the customs territory of the United States during the period beginning on October 1, 2003, and ending on September 30, 2005.

By Mr. INOUE:

S. 663. A bill for the relief of the Pottawatomi Nation in Canada for settlement of certain claims against the United States; to the Committee on the Judiciary.

Mr. INOUE. Mr. President, almost eight years ago, I stood before you to introduce a bill “to provide an opportunity for the Pottawatomi Nation in Canada to have the merits of their claims against the United States determined by the United States Court of Federal Claims.”

That bill was introduced as Senate Resolution 223, which referred the Pottawatomi’s claim to the Chief Judge of the U.S. Court of Federal Claims and required the Chief Judge to report back to the Senate and provide sufficient findings of fact and conclusions of law to enable the Congress to determine whether the claim of the Pottawatomi Nation in Canada is legal or equitable in nature, and the amount of damages, if any, which may be legally or equitably due from the United States.

Last year, the Chief Judge of the Court of Federal Claims reported back that the Pottawatomi Nation in Canada has a legitimate and credible legal claim. Thereafter, by settlement stipulation, the United States has taken the position that it would be “fair, just and equitable” to settle the claims of the Pottawatomi Nation in Canada for the sum of \$1,830,000. This settlement amount was reached by the parties after seven years of extensive, fact-intensive litigation. Independently, the court concluded that the settlement amount is “not a gratuity” and that the “settlement was predicated on a

credible legal claim.” Pottawatomi Nation in Canada, et al. v. United States, Cong. Ref. 94-1037X at 28 (Ct. Fed. Cl., September 15, 2000) (Report of Hearing Officer).

The bill I introduce today is to authorize the appropriation of those funds that the United States has concluded would be “fair, just and equitable” to satisfy this legal claim. If enacted, this bill will finally achieve a measure of justice for a tribal nation that has for far too long been denied.

For the information of our colleagues, this is the historical background that informs the underlying legal claim of the Canadian Pottawatomi.

The members of the Pottawatomi Nation in Canada are one of the descendant groups—successors-in-interest—of the historical Pottawatomi Nation and their claim originates in the latter part of the 18th Century. The historical Pottawatomi Nation was aboriginal to the United States. They occupied and possessed a vast expanse in what is now the States of Ohio, Michigan, Indiana, Illinois, and Wisconsin. From 1795 to 1833, the United States annexed most of the traditional land of the Pottawatomi Nation through a series of treaties of cession—many of these cessions were made under extreme duress and the threat of military action. In exchange, the Pottawatomis were repeatedly made promises that the remainder of their lands would be secure and, in addition, that the United States would pay certain annuities to the Pottawatomi.

In 1829, the United States formally adopted a Federal policy of removal—an effort to remove all Indian tribes from their traditional lands east of the Mississippi River to the west. As part of that effort, the government increasingly pressured the Pottawatomis to cede the remainder of their traditional lands—some five million acres in and around the city of Chicago and remove themselves west. For years, the Pottawatomis steadfastly refused to cede the remainder of their tribal territory. Then in 1833, the United States, pressed by settlers seeking more land, sent a Treaty Commission to the Pottawatomi with orders to extract a cession of the remaining lands. The Treaty Commissioners spent two weeks using extraordinarily coercive tactics—including threats of war—in an attempt to get the Pottawatomis to agree to cede their territory. Finally, those Pottawatomis who were present relented and on September 26, 1833, they ceded their remaining tribal estate through what would be known as the Treaty of Chicago. Seventy-seven members of the Pottawatomi Nation signed the Treaty of Chicago. Members of the “Wisconsin Band” were not present and did not assent to the cession.

In exchange for their land, the Treaty of Chicago provided that the United States would give to the Pottawatomis five million acres of comparable land

in what is now Missouri. The Pottawatomi were familiar with the Missouri land, aware that it was similar to their homeland. But the Senate refused to ratify that negotiated agreement and unilaterally switched the land to five million acres in Iowa. The Treaty Commissioners were sent back to acquire Pottawatomi assent to the Iowa land. All but seven of the original 77 signatories refused to accept the change even with promises that if they were dissatisfied “justice would be done.” Treaty of Chicago, as amended, Article 4. Nevertheless, the Treaty of Chicago was ratified as amended by the Senate in 1834. Subsequently, the Pottawatomis sent a delegation to evaluate the land in Iowa. The delegation reported back that the land was “not fit for snakes to live on.”

While some Pottawatomis removed westward, many of the Pottawatomis—particularly the Wisconsin Band, whose leaders never agreed to the Treaty—refused to do so. By 1836, the United States began to forcefully remove Pottawatomis who remained in the east—with devastating consequences. As is true with many other American Indian tribes, the forced removal westward came at great human cost. Many of the Pottawatomi were forcefully removed by mercenaries who were paid on a per capita basis government contract. Over one-half of the Indians removed by these means died en route. Those who reached Iowa were almost immediately removed further to inhospitable parts of Kansas against their will and without their consent.

Knowing of these conditions, many of the Pottawatomis including most of those in the Wisconsin Band vigorously resisted forced removal. To avoid Federal troops and mercenaries, much of the Wisconsin Band ultimately found it necessary to flee to Canada. They were often pursued to the border by government troops, government-paid mercenaries or both. Official files of the Canadian and United States governments disclose that many Pottawatomis were forced to leave their homes without their horses or any of their possessions other than the clothes on their backs.

By the late 1830s, the government refused payment of annuities to any Pottawatomi groups that had not removed west. In the 1860s, members of the Wisconsin Band—those still in their traditional territory and those forced to flee to Canada—petitioned Congress for the payment of their treaty annuities promised under the Treaty of Chicago and all other cession treaties. By the Act of June 25, 1864, 13 Stat. 172, the Congress declared that the Wisconsin Band did not forfeit their annuities by not removing and directed that the share of the Pottawatomi Indians who had refused to relocate to the west should be retained for their use in the United States Treasury. H.R. Rep. No. 470, 64th Cong., p. 5, as quoted on page 3 of

memo dated October 7, 1949. Nevertheless, much of the money was never paid to the Wisconsin Band.

In 1903, the Wisconsin Band—most of whom now resided in three areas, the States of Michigan and Wisconsin and the Province of Ontario—petitioned the Senate once again to pay them their fair portion of annuities as required by the law and treaties. Sen. Doc. No. 185, 57th Cong., 2d Sess. By the Act of June 21, 1906, 34 Stat. 380, the Congress directed the Secretary of the Interior to investigate claims made by the Wisconsin Band and establish a roll of the Wisconsin Band Pottawatomis that still remained in the East. In addition, the Congress ordered the Secretary to determine “the[] [Wisconsin Bands] proportionate shares of the annuities, trust funds, and other moneys paid to or expended for the tribe to which they belong in which the claimant Indians have not shared, [and] the amount of such monies retained in the Treasury of the United States to the credit of the clamant Indians as directed the provisions of the Act of June 25, 1864.”

In order to carry out the 1906 Act, the Secretary of Interior directed Dr. W.M. Wooster to conduct an enumeration of Wisconsin Band Pottawatomis in both the United States and Canada. Dr. Wooster documented 2007 Wisconsin Pottawatomis: 457 in Wisconsin and Michigan and 1550 in Canada. He also concluded that the proportionate share of annuities for the Pottawatomis in Wisconsin and Michigan was \$477,339 and the proportionate share of annuities due the Pottawatomis in Canada was \$1,517,226. The Congress thereafter enacted a series of appropriation Acts from June 30, 1913 to May 29, 1928 to satisfy most of money owed to those Wisconsin Band Pottawatomis residing in the United States. However, the Wisconsin Band Pottawatomis who resided in Canada were never paid their share of the tribal funds.

Since that time, the Pottawatomis Nation in Canada has diligently and continuously sought to enforce their treaty rights, although until this congressional reference, they had never been provided their day in court. In 1910, the United States and Great Britain entered into an agreement for the purpose of dealing with claims between both countries, including claims of Indian tribes within their respective jurisdictions, by creating the Pecuniary Claims Tribunal. From 1910 to 1938, the Pottawatomis Nation in Canada diligently sought to have their claim heard in this international forum. Overlooked for more pressing international matters of the period, including the intervention of World War I, the Pottawatomis then came to the U.S. Congress for redress of their claim.

In 1946, the Congress waived its sovereign immunity and established the Indian Claims Commission for the purpose of granting tribes their long-delayed day in court. The Indian Claims Commission Act (ICCA) granted the

Commission jurisdiction over claims such as the type involved here. In 1948, the Wisconsin Band Pottawatomis from both sides of the border—brought suit together in the Indian Claims Commission for recovery of damages. *Hannahville Indian Community v. U.S.*, No. 28 (Ind. Cl. Comm. Filed May 4, 1948). Unfortunately, the Indian Claims Commission dismissed Pottawatomis Nation in Canada’s part of the claim ruling that the Commission had no jurisdiction to consider claims of Indians living outside territorial limits of the United States. *Hannahville Indian Community v. U.S.*, 115 Ct. Cl. 823 (1950). The claim of the Wisconsin band residing in the United States that was filed in the Indian Claims Commission was finally decided in favor of the Wisconsin Band by the U.S. Claims court in 1983. *Hannahville Indian Community v. United States*, 4 Ct. Cl. 445 (1983). The Court of Claims concluded that the Wisconsin Band was owed a member’s proportionate share of unpaid annuities from 1838 through 1907 due under various treaties, including the Treaty of Chicago and entered judgment for the American Wisconsin band Pottawatomis for any monies not paid. Still the Pottawatomis Nation in Canada was excluded because of the jurisdictional limits of the ICCA.

Undaunted, the Pottawatomis Nation in Canada came to the Senate and after careful consideration, we finally gave them their long-awaited day in court through the congressional reference process. The court has now reported back to us that their claim is meritorious and that the payment that this bill would make constitutes a “fair, just and equitable” resolution to this claim.

The Pottawatomis Nation in Canada has sought justice for over 150 years. They have done all that we asked in order to establish their claim. Now it is time for us to finally live up to the promise our government made so many years ago. It will not correct all the wrongs of the past, but it is a demonstration that this government is willing to admit when it has left unfulfilled an obligation and that the United States is willing to do what we can to see that justice—so long delayed—is not now denied.

Finally, I would just note that the claim of the Pottawatomis Nation in Canada is supported through specific resolutions by the National Congress of American Indians, the oldest, largest and most-representative tribal organization here in the United States, the Assembly of First Nations, which includes all recognized tribal entities in Canada, and each and every one of the Pottawatomis tribal groups that remain in the United States today.

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

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

S. 663

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

SECTION 1. SETTLEMENT OF CERTAIN CLAIMS.

(a) **AUTHORIZATION FOR PAYMENT.**—Notwithstanding any other provision of law, subject to subsection (b), the Secretary of the Treasury shall pay to the Pottawatomis Nation in Canada \$1,830,000 from amounts appropriated under section 1304 of title 31, United States Code.

(b) **PAYMENT IN ACCORDANCE WITH STIPULATION FOR RECOMMENDATION OF SETTLEMENT.**—The payment under subsection (a) shall—

(1) be made in accordance with the terms and conditions of the Stipulation for Recommendation of Settlement dated May 22, 2000, entered into between the Pottawatomis Nation in Canada and the United States (referred to in this Act as the “Stipulation for Recommendation of Settlement”); and

(2) be included in the report of the Chief Judge of the United States Court of Federal Claims regarding Congressional Reference No. 94-1037X submitted to the Senate on January 4, 2001, in accordance with sections 1492 and 2509 of title 28, United States Code.

(c) **FULL SATISFACTION OF CLAIMS.**—The payment under subsection (a) shall be in full satisfaction of all claims of the Pottawatomis Nation in Canada against the United States that are referred to or described in the Stipulation for Recommendation of Settlement.

(d) **NONAPPLICABILITY.**—Notwithstanding any other provision of law, the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) shall not apply to the payment under subsection (a).

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. SMITH, Mr. DASCHLE, Mr. KYL, Mrs. LINCOLN, Mr. THOMAS, Mr. KERRY, Mr. BUNNING, Mrs. FEINSTEIN, Mr. ALLEN, Mrs. BOXER, Mr. COCHRAN, Mr. LIEBERMAN, Mrs. HUTCHISON, Ms. STABENOW, Mr. ENSIGN, Mr. BAYH, Mr. ALLARD, Mr. MILLER, and Ms. CANTWELL):

S. 664. A bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses; to the Committee on Finance.

Mr. HATCH. Mr. President, I am very pleased to join with my friend and colleague Senator BAUCUS and a majority of our Finance Committee colleagues from both sides of the aisle today in introducing legislation that would permanently extend and improve the research tax credit.

The 1990s were a great period in American economic history because American workers became more productive. This increase in productivity allowed the economy to continue to grow faster than almost anyone thought possible. Throughout the 1990s, doomsayers said that we had reached the economy’s speed limit, but we just kept growing. How did this happen?

The Congressional Budget Office, Federal Reserve Chairman Alan Greenspan, and dozens of leading economists have all heralded the increase in our

productivity as a key to those economic good times. A major reason for this increase in productivity, is the flowering of new ideas through research and development. Restoring and increasing that growth is what our bill today is all about.

But why do we need a research tax credit? Are not profitable new ideas their own reward? Is not the promise of future profits from new drug discoveries and new manufacturing techniques its own incentive? Will not companies do large amounts of R&D on their own, without any special tax incentives?

Yes, of course, they will. But they clearly will not do enough. This is because cutting-edge research and development has spillover effects that reach far beyond the company that makes the investment. When companies invent new ideas and new production techniques, those inventions last forever, and help people in the United States and throughout the world. But the company that invests in R&D will only be able to make a sizable profit on its invention for a few years at most. That is because either the patent will expire, or other companies will imitate the new technique and cut the inventor's hoped-for profits.

Now, I am all in favor of vigorous competition—it keeps our companies strong and efficient. But we have to recognize that competition means that innovators will receive only a fraction of the benefits of their innovation. Once the imitators pop up and competition increases, we know that profits will fall, prices will fall, and the benefits of innovation, thankfully, will get passed on to consumers. We need innovation, and fortunately, we have a strong, proven tax incentive that can encourage that innovation. The benefits of innovation reach far beyond the company that invents them. That is why we need to give companies incentives to do more innovation.

I believe the best way to ensure that private-sector investment in research and development continues at the healthy rate needed to fuel productivity gains in the future is to improve and permanently extend the research credit. This tax provision is a proven and a cost-effective incentive to increase private-sector R&D spending.

Studies have shown that the research tax credit significantly increases research and development expenditures. The marginal effect of one dollar of the research credit creates approximately one dollar of additional private research and development spending over the short-run and as much as two dollars of extra R&D spending over the long-run. That, is a good deal for the American taxpayer.

One of the greatest strengths of the research credit has always been that it gave good incentives for more innovation. This year's proposal to extend the credit is no exception. This year, we have added a third way to qualify for the credit, an elective "alternative

simplified credit." We propose to base this new alternative credit on how much a company has increased its R&D spending compared to the last three years. Companies will average their R&D spending over the previous three years, and cut that number in half. For every dollar they spend over that amount, they get a 12 percent tax credit. If they spend less than that amount, they get no credit at all. This is why this credit is so effective—it gives benefits to companies that do more, and gives no benefits to companies that do less. That is good tax policy, and good growth policy.

Once again, I want to ask my colleagues to make this credit permanent. I think we all know that this credit is going to be extended, again and again, every few years. It takes time and energy for my colleagues to revisit this issue every few years. Can we not just, once and for all, make this provision permanent? We know this is good policy, and it is one of the most effective tax incentives in the code. As I stated earlier, even under today's permanently temporary credit, every dollar of tax credit is estimated to increase R&D spending by one dollar in the short run and by up to two dollars in the long run. And if we make this permanent, those incentives will only improve.

As it stands, companies have to take account of the fact that Congress could allow the credit lapse for a few months, as it did a number of years ago. So companies hedge their bets, they spend a little less on R&D, and our economy suffers as a result. By contrast, permanence helps planning. The sooner we make this permanent, the sooner companies can begin to enlarge and expand their research and development units, and the sooner their innovations will strengthen economic growth.

A permanent extension of this credit may seem costly in terms of lost revenue. However, when you consider the value that this investment will create for our economy, it is a bargain. In fact, one study estimates that a permanent research credit would result in our Gross Domestic Product increasing by \$10 billion after five years and by \$31 billion after 20 years.

By making our workers more productive, this credit will also increase wages. That is because study after study shows an iron-clad link between worker productivity and worker wages. Findings from a study conducted by Coopers & Lybrand show that workers in every state will benefit from higher wages if the research tax credit is made permanent. Payroll increases as a result of gains in productivity stemming from the credit have been estimated to exceed \$60 billion over the next 12 years.

My home State of Utah is a good example of how State economies benefit from the research tax credit. Utah is home to a large number of firms that invest a high percentage of their revenue on research and development.

In Utah, five percent of the workers—51,000 people—work in the research-intensive high technology sector. That includes over 10,000 people working just to design computer systems, and over 6,000 producing medical equipment. And there is a lot of R&D taking place outside of Utah's high tech sector.

Just to give one example, more than 7,000 people work in Utah's chemical industry, and workers in that industry benefit from research and development taking place in Utah and throughout the country. Aerospace and the drug and pharmaceutical industries are two more examples of big Utah employer groups that reap the benefits of R&D. And even in the midst of my state's currently weak job market, two industries that increased employment in 2002 were the medical equipment and the scientific research and development services industries.

So, the point I want to make is not that Utah needs to do all of the research in order to reap the benefits of that research. Instead, the point I want to make is that workers in my state will become more productive and earn higher wages both when they invent new ideas, and when they use new ideas, wherever those new ideas come from.

I want Utah companies to be able to buy better manufacturing equipment, more reliable electronics, and have access to more efficient quality control techniques. The workers who use new inventions will get just as many benefits as workers who create those new inventions. And the evidence clearly shows, that the research credit will increase creation.

In short, there are tens of thousands of employees working in Utah's thousands of technology based companies, with tens of thousands more working in other sectors that engage in R&D. Beyond that, practically all of Utah's hundreds of thousands of workers benefit from higher productivity coming from the innovations that researchers both inside and outside of Utah produce. Research and development is clearly the lifeblood of our economy.

During the ten times in the past 20 years that Congress has extended the research credit for a short time, the ostensible reason has been a lack of revenue. The excuse we give to constituents is that we didn't have the money to extend the bill permanently. Ironically, it costs at least as much in terms of lost revenue, in the long run, to enact short-term extensions as it does to extend it permanently.

A permanent research credit has wide support in both the Senate and the House. A few years ago, this body passed by a vote of 98-1 an amendment that would have permanently extended the credit. Unfortunately, all amendments were ultimately stripped from the underlying bill. Moreover, the permanent extension of the credit is a major provision in President Bush's tax plan, and was supported by both former President Clinton and by Al

Gore. Again in 2001, this body voted to include a permanent research credit in the President's tax plan.

In conclusion, making the research tax credit permanent will increase the growth rate of our economy. It will mean more and better jobs for American workers. Making the tax credit permanent will speed economic growth. And new technology resulting from American research and development will continue to improve the standard of living for every person in the U.S. and around the world. I look forward to working with my colleagues on the Finance Committee and in the Senate as a whole to create a permanent, improved research and development tax credit.

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. 664

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 "Investment in America Act of 2003".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Research and development performed in the United States results in quality jobs, better and safer products, increased ownership of technology-based intellectual property, and higher productivity in the United States.

(2) The extent to which companies perform and increase research and development activities in the United States is in part dependent on Federal tax policy.

(3) Congress should make permanent a research and development credit that provides a meaningful incentive to all types of taxpayers.

SEC. 3. PERMANENT EXTENSION OF RESEARCH CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 45C(b) of such Code is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 4. INCREASE IN RATES OF ALTERNATIVE INCREMENTAL CREDIT.

(a) IN GENERAL.—Subparagraph (A) of section 41(c)(4) of the Internal Revenue Code of 1986 (relating to election of alternative incremental credit) is amended—

(1) by striking "2.65 percent" and inserting "3 percent",

(2) by striking "3.2 percent" and inserting "4 percent", and

(3) by striking "3.75 percent" and inserting "5 percent".

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

SEC. 5. ALTERNATIVE SIMPLIFIED CREDIT FOR QUALIFIED RESEARCH EXPENSES.

(a) IN GENERAL.—Subsection (c) of section 41 of the Internal Revenue Code of 1986 (relating to base amount) is amended by redesignating paragraphs (5) and (6) as paragraphs

(6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) ELECTION OF ALTERNATIVE SIMPLIFIED CREDIT.—

"(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 12 percent of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

"(B) SPECIAL RULE IN CASE OF NO QUALIFIED RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAXABLE YEARS.—

"(i) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any 1 of the 3 taxable years preceding the taxable year for which the credit is being determined.

"(ii) CREDIT RATE.—The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

"(C) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies."

(b) COORDINATION WITH ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

(1) IN GENERAL.—Section 41(c)(4)(B) of the Internal Revenue Code of 1986 (relating to election) is amended by adding at the end the following: "An election under this paragraph may not be made for any taxable year to which an election under paragraph (5) applies."

(2) TRANSITION RULE.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes the date of the enactment of this Act, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by subsection (a)) for such year.

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

Mr. BAUCUS. Mr. President, I am pleased to again join with my friend, Senator HATCH, and my other colleagues, in introducing legislation to make a permanent commitment to research-intensive businesses in the United States. This legislation is bipartisan and bicameral. A companion bill was introduced in January in the House of Representatives by Congresswoman NANCY JOHNSON and Congressman ROBERT MATSUI.

Every morning we here news of some new product or discovery that promises to make our jobs easier or our lives better. Many of these innovations started with a business decision to hire needed researchers and finance the expensive and long process of research and experimentation. Since 1981, when the R&D tax credit was first enacted, the federal government was a partner in that business endeavor because of the potential spillover benefits to society overall from additional research spending.

Research has shown that a tax credit is a cost-effective way to promote R&D. The General Accounting Office, the Bureau of Labor Statistics, the National Bureau of Economic Research, and others have all found significant evidence that a tax credit stimulates additional domestic R&D spending by U.S. companies. As reported by the Congressional Research Service, CRS, indicates that economists generally agree that, without government support, firm investment in R&D would fall short of the socially optimal amount and thus CRS advocates government policies to boost private sector R&D.

R&D is linked to broader economic and labor benefits. R&D lays the foundation for technological innovation, which, in turn, is an important driving force in long-term economic growth—mainly through its impact on the productivity of capital and labor. We have many times heard testimony from economists, including Federal Research Board Alan Greenspan, that the reason our economy grew at such breakneck speed during the 1990s stemmed from the productivity growth we realized thanks to technological innovations.

There has been a belief that companies would continue to increase their research spending and that the benefits of these investments on the economy and labor markets would continue without end. Unfortunately, that is not the case. New data compiled by Battelle Memorial Institute and R&D Magazine project that for 2003, U.S. company spending on research will be mostly flat for the second year in a row. According to this report, companies plan a 0.1 percent increase in R&D spending in 2003. Spending in 2002 rose a mere 0.3 percent over 2001 levels. This compares to 2001 when R&D spending grew by 5 percent over the previous year. Those numbers should be a wake up call for all of us. As research spending falls, so too will the level of future economic growth.

It is also important to recognize that many of our foreign competitors are offering permanent and generous incentives to firms that attract research dollars to those countries. A 2001 study by the Organization of Economic Cooperation and Development, OECD, ranked the U.S. ninth behind other nations in terms of its incentives for business R&D spending. Countries that provide more generous R&D incentives include Spain, Canada, Portugal, Austria, Australia, Netherlands, France, and Korea. The United Kingdom was added to this list in 2002 when it further expanded its existing R&D incentives program. The continued absence of a long-term U.S. government R&D policy that encourages U.S.-based R&D will undermine the ability of American companies to remain competitive in U.S. and foreign markets. This disparity could limit U.S. competitiveness relative to its trading partners in the long-run.

Also, U.S. workers who are engaged in R&D activities currently benefit

from some of the most intellectually stimulating, high-paying, high-skilled jobs in the economy. My own State of Montana is an excellent example of this economic activity. During the 1990s, about 400 establishments provided high-technology services, at an average wage of about \$35,000 per year. These jobs paid nearly 80 percent more than the average private sector wage of less than \$20,000 per year during the same year. Many of these jobs would never have been created without the assistance of the R&D credit. While there may not be an immediate rush to move all projects and jobs offshore, there has been movement at the margins on those projects that are most cost-sensitive. Once those projects and jobs are gone, it will be many years before companies will have any incentive to bring them back to the United States.

We continue to grapple with the need to stimulate economic growth and advance policies that represent solid long-term investments that will reap benefits for many years to come. Senator HATCH and I repeatedly have pointed to the R&E tax credit as a measure that gives us a good “bang for our buck.” I hope this year we can enact a permanent tax credit that is effective and more widely available. I encourage my colleagues to join us in this effort.

As we have in years past, our proposal would make the current research and experimentation tax credit permanent and increase the Alternative Incremental Research Credit, AIRC, rates. This year we take one additional but necessary step.

We propose a new alternative simplified credit that will allow taxpayers to elect to calculate the R&D credit under new computational rules that will eliminate the present-law distortions caused by gross receipts.

There is no good policy reason to make research more expensive for some industries than for others. While the regular R&E tax credit works very well for many companies, as the credit's base period recedes and business cycles change, the current credit is out of reach for some other firms that still incur significant research expenditures. To help solve part of this problem Congress enacted the AIRC in 1996 and now we propose a way to address the rest of that problem.

Under current law, both the regular credit and the AIRC are calculated by reference to a taxpayer's gross receipts, a benchmark that can produce inequities and anomalous results. For example, many taxpayers are no longer able to qualify for the regular credit, despite substantial R&D investments, because their R&D spending relative to gross receipts has not kept pace with the ratio set in the 1984-88 base period, which governs calculation of the regular credit. This can happen, for example, simply where a company's sales increase significantly in the intervening years, where a company enters into an

additional line of business that generates additional gross receipts but involves little R&D, or where a company becomes more efficient in its R&D processes.

Our proposal would correct this by allowing taxpayers a straightforward alternative research credit election. Taxpayers could elect, in lieu of the regular credit or the AIRC, a credit that would equal 12 percent of the excess of the taxpayer's current year qualified research expenditures, “QREs”, over 50 percent of the taxpayer's average QREs for the 3 preceding years. Unlike the regular credit and the AIRC, this credit calculation does not involve gross receipts.

The R&D tax credit has proven it can be an effective incentive. We need to act to make it a permanent part of the tax code that U.S. businesses can rely on. The best thing we can do for our long-term economic well-being is to stoke the engine of growth—technology, high-wage jobs and productivity. I look forward to working with Sen. HATCH and all my colleagues on this important issue.

I urge my colleagues to support this important piece of legislation.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. ROBERTS, Mr. BROWNBACK, Mrs. LINCOLN, Mr. BURNS, Mr. CRAIG, Mr. CRAPO, Mr. FITZGERALD, Mr. JOHNSON, Mr. HAGEL, Mr. MILLER, Mr. DORGAN, and Mr. DASCHLE):

S. 665. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers and fishermen, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I rise today to introduce, along with my good friend, Senator BAUCUS, to introduce the Tax Empowerment and Relief for Farmers and Fishermen Act, which I will refer to as the “TERFF Act.” I am pleased that Senators ROBERTS, BROWNBACK, LINCOLN, BURNS, CRAIG, CRAPO, FITZGERALD, HAGEL, and DORGAN are joining Senator BAUCUS and me as cosponsors of this important legislation.

I am a farmer, like my father was before me. I understand farming and how policy decisions from Washington impact hardworking farmers, like my son Robin. Before I ran for elected office and after I leave, God willing, I'll still be farming. There is little that I feel more strongly about than providing the agriculture community with the potential to survive and to thrive. As far as I'm concerned, agriculture is my “turf” and as long as I'm in this town, I'll do all I can to serve my friends and neighbors in the agriculture community.

This legislation has already been adopted by the Senate multiple times. In the midst of a serious downturn in the agriculture economy, it seems to me we ought to be doing everything we can to help farmers, and this would provide significant assistance.

First, this legislation includes Farm, Fish, and Ranch Risk Management Accounts. These farmer saving accounts would allow farmers to contribute up to 20 percent of their income in an account, and deduct it in the same year. Farm accounts would be a very important risk management tool that will help farmers put away money when there's actual income, so that, in the bad times, there will be a safety net. This measure has strong bipartisan support and was actually sent to President Clinton, who vetoed it.

In addition, this legislation would exempt Conservation Reserve Program payments from self-employment tax. Under current law, farmers who participate in the CRP are unnecessarily struggling during tax season because of a case pushed by the IRS. The latest 6th Circuit court's ruling treats CRP payments as farm income subject to the additional self-employment tax rate of 15 percent.

Senator BROWNBACK has taken the lead on fixing this problem. This unfair tax not only ignores the intent of Congress in creating the CRP, it discourages farmers from using environmentally pro-active measures. At a time when farmers are struggling to regain their footing economically and do the right thing environmentally, it's important that Congress support them by upholding its promise on CRP.

In addition, Senator LUGAR has led the effort to expand the current program that allows companies to donate to food banks, so that farmers and restaurants can also donate surplus food directly to needy food banks. This will be a win for the farmers and a big win for people who depend on food bank assistance.

In addition, when we passed income averaging for farmers a few years ago, we neglected to take into account the problem of running into the alternative minimum tax, which many farmers are facing now. My bill will fix this growing problem.

My bill also expands opportunities for beginning farmers who are in need of low interest rate loans for capital purchases of farmland and equipment.

Current law permits State authorities to issue tax exempt bonds and to lend the proceeds from the sale of the bonds to beginning farmers and ranchers to finance the cost of acquiring land, buildings and equipment used in a farm or ranch operation.

Unfortunately, aggie bonds are subject to a volume cap and must compete with big industrial projects for bond allocation. Aggie bonds share few similarities to industrial revenue bonds and should not be subject to the volume cap established for industrial revenue bonds.

Insufficient allocation of funding due to the volume cap limits the effectiveness of this program. We can't stand by and allow the next generation of farmers to lose an opportunity to participate in farming because of competition with industry for reduced interest loan rates.

In addition, the IRS recently determined that some cooperatives should be exposed to a regular corporate tax due to the fact that they are using organic value-added practices rather than manufactured value-added practices. This is unfair, and needs to be fixed.

It is also imperative that we not neglect the difficulties many producers are facing in light of persistent drought conditions. Under current law, a producer who loses livestock, or is forced to sell livestock, or is forced to sell livestock, is required to replace that livestock within two years. However, some parts of the country have already experienced two years of drought with no end in sight.

It goes against common sense for these producers to replace livestock until conditions improve. My legislation would extend the 2-year deadline to 4 years.

And of course my package wouldn't be complete without a provision leveling the playing field for ethanol producers.

The Small Ethanol Producer Credit will allow small cooperative producers of ethanol to be able to receive the same tax benefits as large companies. This provision provides cooperatives the ability to elect to pass through small ethanol producer credits to its patron.

The "TERFF" package will do more to reform taxes for the American farmer than any other measure in recent memory. I urge my colleagues to strongly support this measure.

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. 665

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Tax Empowerment and Relief for Farmers and Fishermen (TERFF) Act".

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

(c) TABLE OF CONTENTS.—

- Sec. 1. Short title; etc.
- Sec. 2. Farm, fishing, and ranch risk management accounts.
- Sec. 3. Exclusion of rental income from self-employment tax.
- Sec. 4. Exclusion of conservation reserve program payments from self-employment tax.
- Sec. 5. Exemption of agricultural bonds from private activity bond volume limits.
- Sec. 6. Modifications to section 512(b)(13).
- Sec. 7. Charitable deduction for contributions of food inventory.
- Sec. 8. Coordinate farmers and fishermen income averaging and the alternative minimum tax.

Sec. 9. Modification to cooperative marketing rules to include value added processing involving animals.

Sec. 10. Extension of declaratory judgment procedures to farmers' cooperative organizations.

Sec. 11. Small ethanol producer credit.

Sec. 12. Payment of dividends on stock of cooperatives without reducing patronage dividends.

Sec. 13. Special rules for livestock sold on account of weather-related conditions.

SEC. 2. FARM, FISHING, AND RANCH RISK MANAGEMENT ACCOUNTS.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by inserting after section 468B the following new section:

"SEC. 468C. FARM, FISHING, AND RANCH RISK MANAGEMENT ACCOUNTS.

"(a) DEDUCTION ALLOWED.—In the case of an individual engaged in an eligible farming business or commercial fishing, there shall be allowed as a deduction for any taxable year the amount paid in cash by the taxpayer during the taxable year to a Farm, Fishing, and Ranch Risk Management Account (hereinafter referred to as the 'FFARRM Account').

"(b) LIMITATION.—

"(1) CONTRIBUTIONS.—The amount which a taxpayer may pay into the FFARRM Account for any taxable year shall not exceed 20 percent of so much of the taxable income of the taxpayer (determined without regard to this section) which is attributable (determined in the manner applicable under section 1301) to any eligible farming business or commercial fishing.

"(2) DISTRIBUTIONS.—Distributions from a FFARRM Account may not be used to purchase, lease, or finance any new fishing vessel, add capacity to any fishery, or otherwise contribute to the overcapitalization of any fishery. The Secretary of Commerce shall implement regulations to enforce this paragraph.

"(c) ELIGIBLE BUSINESSES.—For purposes of this section—

"(1) ELIGIBLE FARMING BUSINESS.—The term 'eligible farming business' means any farming business (as defined in section 263A(e)(4)) which is not a passive activity (within the meaning of section 469(c)) of the taxpayer.

"(2) COMMERCIAL FISHING.—The term 'commercial fishing' has the meaning given such term by section (3) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) but only if such fishing is not a passive activity (within the meaning of section 469(c)) of the taxpayer.

"(d) FFARRM ACCOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'FFARRM Account' means a trust created or organized in the United States for the exclusive benefit of the taxpayer, but only if the written governing instrument creating the trust meets the following requirements:

"(A) No contribution will be accepted for any taxable year in excess of the amount allowed as a deduction under subsection (a) for such year.

"(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

"(C) The assets of the trust consist entirely of cash or of obligations which have adequate stated interest (as defined in section 1274(c)(2)) and which pay such interest not less often than annually.

"(D) All income of the trust is distributed currently to the grantor.

"(E) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(2) ACCOUNT TAXED AS GRANTOR TRUST.—The grantor of a FFARRM Account shall be treated for purposes of this title as the owner of such Account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

"(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

"(1) IN GENERAL.—Except as provided in paragraph (2), there shall be includible in the gross income of the taxpayer for any taxable year—

"(A) any amount distributed from a FFARRM Account of the taxpayer during such taxable year, and

"(B) any deemed distribution under—

"(i) subsection (f)(1) (relating to deposits not distributed within 5 years),

"(ii) subsection (f)(2) (relating to cessation in eligible farming business), and

"(iii) subparagraph (B) or (C) of subsection (f)(3) (relating to prohibited transactions and pledging account as security).

"(2) EXCEPTIONS.—Paragraph (1)(A) shall not apply to—

"(A) any distribution to the extent attributable to income of the Account, and

"(B) the distribution of any contribution paid during a taxable year to a FFARRM Account to the extent that such contribution exceeds the limitation applicable under subsection (b) if requirements similar to the requirements of section 408(d)(4) are met.

For purposes of subparagraph (A), distributions shall be treated as first attributable to income and then to other amounts.

"(f) SPECIAL RULES.—

"(1) TAX ON DEPOSITS IN ACCOUNT WHICH ARE NOT DISTRIBUTED WITHIN 5 YEARS.—

"(A) IN GENERAL.—If, at the close of any taxable year, there is a nonqualified balance in any FFARRM Account—

"(i) there shall be deemed distributed from such Account during such taxable year an amount equal to such balance, and

"(ii) the taxpayer's tax imposed by this chapter for such taxable year shall be increased by 10 percent of such deemed distribution.

The preceding sentence shall not apply if an amount equal to such nonqualified balance is distributed from such Account to the taxpayer before the due date (including extensions) for filing the return of tax imposed by this chapter for such year (or, if earlier, the date the taxpayer files such return for such year).

"(B) NONQUALIFIED BALANCE.—For purposes of subparagraph (A), the term 'nonqualified balance' means any balance in the Account on the last day of the taxable year which is attributable to amounts deposited in such Account before the 4th preceding taxable year.

"(C) ORDERING RULE.—For purposes of this paragraph, distributions from a FFARRM Account (other than distributions of current income) shall be treated as made from deposits in the order in which such deposits were made, beginning with the earliest deposits.

"(2) CESSATION IN ELIGIBLE BUSINESS.—At the close of the first disqualification period after a period for which the taxpayer was engaged in an eligible farming business or commercial fishing, there shall be deemed distributed from the FFARRM Account of the taxpayer an amount equal to the balance in such Account (if any) at the close of such disqualification period. For purposes of the

preceding sentence, the term 'disqualification period' means any period of 2 consecutive taxable years for which the taxpayer is not engaged in an eligible farming business or commercial fishing.

“(3) CERTAIN RULES TO APPLY.—Rules similar to the following rules shall apply for purposes of this section:

“(A) Section 220(f)(8) (relating to treatment after death of account holder).

“(B) Section 408(e)(2) (relating to loss of exemption of account where individual engages in prohibited transaction).

“(C) Section 408(e)(4) (relating to effect of pledging account as security).

“(D) Section 408(g) (relating to community property laws).

“(E) Section 408(h) (relating to custodial accounts).

“(4) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to a FFARRM Account on the last day of a taxable year if such payment is made on account of such taxable year and is made on or before the due date (without regard to extensions) for filing the return of tax for such taxable year.

“(5) INDIVIDUAL.—For purposes of this section, the term 'individual' shall not include an estate or trust.

“(6) DEDUCTION NOT ALLOWED FOR SELF-EMPLOYMENT TAX.—The deduction allowable by reason of subsection (a) shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2.

“(g) REPORTS.—The trustee of a FFARRM Account shall make such reports regarding such Account to the Secretary and to the person for whose benefit the Account is maintained with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such persons at such time and in such manner as may be required by such regulations.”

(b) TAX ON EXCESS CONTRIBUTIONS.—

(1) Subsection (a) of section 4973 (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended by striking “or” at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

“(4) a FFARRM Account (within the meaning of section 468C(d)), or”.

(2) Section 4973 is amended by adding at the end the following new subsection:

“(g) EXCESS CONTRIBUTIONS TO FFARRM ACCOUNTS.—For purposes of this section, in the case of a FFARRM Account (within the meaning of section 468C(d)), the term 'excess contributions' means the amount by which the amount contributed for the taxable year to the Account exceeds the amount which may be contributed to the Account under section 468C(b) for such taxable year. For purposes of this subsection, any contribution which is distributed out of the FFARRM Account in a distribution to which section 468C(e)(2)(B) applies shall be treated as an amount not contributed.”

(3) The section heading for section 4973 is amended to read as follows:

“SEC. 4973. EXCESS CONTRIBUTIONS TO CERTAIN ACCOUNTS, ANNUITIES, ETC.”

(4) The table of sections for chapter 43 is amended by striking the item relating to section 4973 and inserting the following new item:

“Sec. 4973. Excess contributions to certain accounts, annuities, etc.”

(c) TAX ON PROHIBITED TRANSACTIONS.—

(1) Subsection (c) of section 4975 (relating to tax on prohibited transactions) is amended by adding at the end the following new paragraph:

“(6) SPECIAL RULE FOR FFARRM ACCOUNTS.—A person for whose benefit a FFARRM Account (within the meaning of section 468C(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a FFARRM Account by reason of the application of section 468C(f)(3)(A) to such account.”

(2) Paragraph (1) of section 4975(e) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraph:

“(E) a FFARRM Account described in section 468C(d).”

(d) FAILURE TO PROVIDE REPORTS ON FFARRM ACCOUNTS.—Paragraph (2) of section 6693(a) (relating to failure to provide reports on certain tax-favored accounts or annuities) is amended by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph:

“(C) section 468C(g) (relating to FFARRM Accounts).”

(e) CLERICAL AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by inserting after the item relating to section 468B the following new item:

“Sec. 468C. Farm, Fishing and Ranch Risk Management Accounts.”

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

SEC. 3. EXCLUSION OF RENTAL INCOME FROM SELF-EMPLOYMENT TAX.

(a) INTERNAL REVENUE CODE.—Section 1402(a)(1)(A) (relating to net earnings from self-employment) is amended by striking “an arrangement” and inserting “a written lease agreement”.

(b) SOCIAL SECURITY ACT.—Section 211(a)(1)(A) of the Social Security Act is amended by striking “an arrangement” and inserting “a written lease agreement”.

(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. 4. EXCLUSION OF CONSERVATION RESERVE PROGRAM PAYMENTS FROM SELF-EMPLOYMENT TAX.

(a) INTERNAL REVENUE CODE.—Section 1402(a)(1) (relating to net earnings from self-employment) is amended by inserting “and including payments under section 1233(2) of the Food Security Act of 1985 (16 U.S.C. 3833(2))” after “crop shares”.

(b) SOCIAL SECURITY ACT.—Section 211(a)(1) of the Social Security Act is amended by inserting “and including payments under section 1233(2) of the Food Security Act of 1985 (16 U.S.C. 3833(2))” after “crop shares”.

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

SEC. 5. EXEMPTION OF AGRICULTURAL BONDS FROM PRIVATE ACTIVITY BOND VOLUME LIMITS.

(a) IN GENERAL.—Section 146(g) (relating to exception for certain bonds) is amended by striking “and” at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting “, and”, and by inserting after paragraph (4) the following new paragraph:

“(5) any qualified small issue bond described in section 144(a)(12)(B)(ii).”

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

SEC. 6. MODIFICATIONS TO SECTION 512(b)(13).

(a) IN GENERAL.—Paragraph (13) of section 512(b) (relating to special rules for certain amounts received from controlled entities) is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following new subparagraph:

“(E) PARAGRAPH TO APPLY ONLY TO EXCESS PAYMENTS.—

“(i) IN GENERAL.—Subparagraph (A) shall apply only to the portion of a specified payment received or accrued by the controlling organization that exceeds the amount which would have been paid or accrued if such payment met the requirements prescribed under section 482.

“(ii) ADDITION TO TAX FOR VALUATION MISSTATEMENTS.—The tax imposed by this chapter on the controlling organization shall be increased by an amount equal to 20 percent of the larger of—

“(I) such excess determined without regard to any amendment or supplement to a return of tax, or

“(II) such excess determined with regard to all such amendments and supplements.”

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to payments received or accrued after December 31, 2000.

(2) PAYMENTS SUBJECT TO BINDING CONTRACT TRANSITION RULE.—If the amendments made by section 1041 of the Taxpayer Relief Act of 1997 did not apply to any amount received or accrued in the first 2 taxable years beginning on or after the date of the enactment of the Taxpayer Relief Act of 1997 under any contract described in subsection (b)(2) of such section, such amendments also shall not apply to amounts received or accrued under such contract before January 1, 2001.

SEC. 7. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) IN GENERAL.—Subsection (e) of section 170 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following new paragraph:

“(7) APPLICATION OF PARAGRAPH (3) TO CERTAIN CONTRIBUTIONS OF FOOD INVENTORY.—For purposes of this section—

“(A) EXTENSION TO INDIVIDUALS.—In the case of a charitable contribution of apparently wholesome food—

“(i) paragraph (3)(A) shall be applied without regard to whether the contribution is made by a C corporation, and

“(ii) in the case of a taxpayer other than a C corporation, the aggregate amount of such contributions from any trade or business (or interest therein) of the taxpayer for any taxable year which may be taken into account under this section shall not exceed 10 percent of the taxpayer's net income from any such trade or business, computed without regard to this section, for such taxable year.

“(B) LIMITATION ON REDUCTION.—In the case of a charitable contribution of apparently wholesome food, notwithstanding paragraph (3)(B), the amount of the reduction determined under paragraph (1)(A) shall not exceed the amount by which the fair market value of such property exceeds twice the basis of such property.

“(C) DETERMINATION OF BASIS.—If a taxpayer—

“(i) does not account for inventories under section 471, and

“(ii) is not required to capitalize indirect costs under section 263A,

the taxpayer may elect, solely for purposes of paragraph (3)(B), to treat the basis of any apparently wholesome food as being equal to 25 percent of the fair market value of such food.

“(D) DETERMINATION OF FAIR MARKET VALUE.—In the case of a charitable contribution of apparently wholesome food which is a qualified contribution (within the meaning of paragraph (3), as modified by subparagraph (A) of this paragraph) and which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such contribution shall be determined—

“(i) without regard to such internal standards or such lack of market and

“(ii) by taking into account the price at which the same or substantially the same food items (as to both type and quality) are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

“(E) APPARENTLY WHOLESOME FOOD.—For purposes of this paragraph, the term ‘apparently wholesome food’ has the meaning given such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this paragraph.”.

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

SEC. 8. COORDINATE FARMERS AND FISHERMEN INCOME AVERAGING AND THE ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Section 55(c) (defining regular tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

“(2) COORDINATION WITH INCOME AVERAGING FOR FARMERS AND FISHERMEN.—Solely for purposes of this section, section 1301 (relating to averaging of farm and fishing income) shall not apply in computing the regular tax.”.

(b) ALLOWING INCOME AVERAGING FOR FISHERMEN.—

(1) IN GENERAL.—Section 1301(a) is amended by striking “farming business” and inserting “farming business or fishing business”.

(2) DEFINITION OF ELECTED FARM INCOME.—

(A) IN GENERAL.—Clause (i) of section 1301(b)(1)(A) is amended by inserting “or fishing business” before the semicolon.

(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 1301(b)(1) is amended by inserting “or fishing business” after “farming business” both places it occurs.

(3) DEFINITION OF FISHING BUSINESS.—Section 1301(b) is amended by adding at the end the following new paragraph:

“(4) FISHING BUSINESS.—The term ‘fishing business’ means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).”.

(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. 9. MODIFICATION TO COOPERATIVE MARKETING RULES TO INCLUDE VALUE ADDED PROCESSING INVOLVING ANIMALS.

(a) IN GENERAL.—Section 1388 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

“(k) COOPERATIVE MARKETING INCLUDES VALUE-ADDED PROCESSING INVOLVING ANIMALS.—For purposes of section 521 and this subchapter, the term ‘marketing the products of members or other producers’ includes feeding the products of members or other producers to cattle, hogs, fish, chickens, or

other animals and selling the resulting animals or animal products.”.

(b) CONFORMING AMENDMENT.—Section 521(b) is amended by adding at the end the following new paragraph:

“(7) CROSS REFERENCE.—

“**For treatment of value-added processing involving animals, see section 1388(k).**”.

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

SEC. 10. EXTENSION OF DECLARATORY JUDGMENT PROCEDURES TO FARMERS’ COOPERATIVE ORGANIZATIONS.

(a) IN GENERAL.—Section 7428(a)(1) (relating to declaratory judgments of tax exempt organizations) is amended by striking “or” at the end of subparagraph (B) and by adding at the end the following new subparagraph:

“(D) with respect to the initial classification or continuing classification of a cooperative as described in section 521(b) which is exempt from tax under section 521(a), or”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pleadings filed after the date of the enactment of this Act.

SEC. 11. SMALL ETHANOL PRODUCER CREDIT.

(a) ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.—Section 40(g) (relating to alcohol used as fuel) is amended by adding at the end the following new paragraph:

“(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

“(A) ELECTION TO ALLOCATE.—

“(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

“(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

“(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to patrons under subparagraph (A)—

“(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year.

“(ii) shall be included in the amount determined under subsection (a) for the taxable year of each patron for which the patronage dividends for the taxable year described in subparagraph (A) are included in gross income, and

“(iii) shall be included in gross income of such patrons for the taxable year in the manner and to the extent provided in section 87.

“(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a)(3) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

“(i) such reduction, over

“(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.”.

(b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER CREDIT.—

(1) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking “30,000,000” each place it appears and inserting “60,000,000”.

(2) SMALL ETHANOL PRODUCER CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) is amended by striking “subpart D” and inserting “subpart D, other than section 40(a)(3).”.

(3) ALLOWING CREDIT AGAINST ENTIRE REGULAR TAX AND MINIMUM TAX.—

(A) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax), as amended by section 301(b) of the Job Creation and Worker Assistance Act of 2002, is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) SPECIAL RULES FOR SMALL ETHANOL PRODUCER CREDIT.—

“(A) IN GENERAL.—In the case of the small ethanol producer credit—

“(i) this section and section 39 shall be applied separately with respect to the credit, and

“(ii) in applying paragraph (1) to the credit—

“(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

“(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the small ethanol producer credit).

“(B) SMALL ETHANOL PRODUCER CREDIT.—For purposes of this subsection, the term ‘small ethanol producer credit’ means the credit allowable under subsection (a) by reason of section 40(a)(3).”.

(B) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii), as amended by section 301(b)(2) of the Job Creation and Worker Assistance Act of 2002, and subclause (II) of section 38(c)(3)(A)(ii), as added by section 301(b)(1) of such Act, are each amended by inserting “or the small ethanol producer credit” after “employee credit”.

(4) SMALL ETHANOL PRODUCER CREDIT NOT ADDED BACK TO INCOME UNDER SECTION 87.—Section 87 (relating to income inclusion of alcohol fuel credit) is amended to read as follows:

“SEC. 87. ALCOHOL FUEL CREDIT.

“Gross income includes an amount equal to the sum of—

“(1) the amount of the alcohol mixture credit determined with respect to the taxpayer for the taxable year under section 40(a)(1), and

“(2) the alcohol credit determined with respect to the taxpayer for the taxable year under section 40(a)(2).”.

(c) CONFORMING AMENDMENT.—Section 1388 (relating to definitions and special rules for cooperative organizations) is amended by adding at the end the following new subsection:

“(k) CROSS REFERENCE.—For provisions relating to the apportionment of the alcohol fuels credit between cooperative organizations and their patrons, see section 40(g)(6).”.

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

SEC. 12. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) IN GENERAL.—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following new sentence: “For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary

capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act.

SEC. 13. SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) RULES FOR REPLACEMENT OF INVOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e) of section 1033 (relating to involuntary conversions) is amended—

(1) by striking “CONDITIONS.—For purposes” and inserting “CONDITIONS.—

“(1) IN GENERAL.—For purposes”, and

(2) by adding at the end the following new paragraph:

“(2) EXTENSION OF REPLACEMENT PERIOD.—

“(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting ‘4 years’ for ‘2 years’.

“(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.”.

(b) INCOME INCLUSION RULES.—Section 451(e) (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

“(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.”.

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

Mr. BAUCUS. Mr. President, I am pleased to join Chairman GRASSLEY in introducing the Tax Empowerment and Relief for Farmers and Fishermen Act.

Rural America has been experiencing some hard times. Drought, low prices, and an economic downturn have left agricultural producers in dire straits and have left rural economies reeling. Farmers and ranchers are the life blood to rural economies, and when agriculture is hurting, rural America hurts. Small towns are dying, stores on Main Street are closing and farmers are leaving their land.

Congress has worked hard to help our nation’s agricultural producers, but with this bill, we are giving them the tools to help themselves. This package includes Farm, Fish, and Ranch Risk Management Accounts, otherwise known as FFARRM Accounts. These farmer savings accounts would allow farmers to contribute up to 20 percent of their income to a savings account, and deduct it in the same year.

FFARRM accounts would be a very important risk management tool to help farmers put away money when there’s actual income, so that in the really bad times there would be a safety net.

This legislation also reverses unfair IRS decisions on self-employment tax for farmers. Farmers who participate in the Conservation Reserve Program are unnecessarily struggling during tax season because of a case pursued by the IRS. The latest 6th-Circuit Court ruling treats CRP as farm income subject to the additional self-employment tax rate of 15 percent. This unfair tax not only ignores the intent of Congress in creating the CRP, but it also discourages farmers from using environmentally pro-active measures. The bill also includes a provision to reverse an IRS attempt to apply the self-employment tax on farmers’ cash rental income.

Also included in the package is a provision to hold farmers harmless from the Alternative Minimum Tax when they use income averaging. When Congress passed income averaging for farmers a few years ago, it neglected to take into account the problem of running into the alternative minimum tax, which many farmers are facing now. This legislation will fix this growing problem.

It also contains an expansion of first-time farmer loans, or Aggie Bonds. This expands opportunities for beginning farmers who need low-interest rate loans for purchases of farmland and equipment. Current law permits state authorities to issue tax-exempt bonds and to lend the proceeds from the sale of the bonds to beginning farmers and ranchers to finance the cost of acquiring land, buildings and equipment used in a farm or ranch operation. Unfortunately, Aggie Bonds are subjected to a volume cap and must compete with big industrial projects for bond allocation. Aggie Bonds share few similarities to Industrial Revenue Bonds and should not be subjected to the volume cap established for IRBs. Insufficient allocation of funding due to the volume cap limits the effectiveness of this program.

Farmer co-op initiatives are also included. Recently the IRS determined that some cooperatives should be exposed to a regular corporate tax due to the fact that they are using organic value-added practices rather than manufactured value-added practices. The bill also would permit small cooperative producers of ethanol to receive the same tax benefits as large companies.

Another important provision provides tax relief for ranchers that are forced to sell their livestock on account of drought. The bill gives producers the time they need to reinvest proceeds tax-free when drought makes it impossible to feed their herds.

I look forward to working with my colleagues to enact this crucial piece of legislation.

By Mr. LIEBERMAN (for himself and Mr. HATCH):

S. 666. A bill to provide incentives to increase research by private sector entities to develop antivirals, antibiotics and other drugs, vaccines, microbicides, detection, and diagnostic technologies to prevent and treat illnesses associated with a biological, chemical, or radiological weapons attack; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, America has a major flaw in its defenses against bioterrorism. Hearings I chaired in the Government Affairs Committee on bioterrorism demonstrated that America has not made a national commitment to research and development of treatments and cures for those who might be exposed to or infected by a biological agent, chemical toxin, or radiological material. Correcting this critical gap is the purpose of legislation we are introducing today.

This legislation is a refined and upgraded version of legislation I introduced last year, S. 1764, December 4, 2001, and S. 3148, October 17, 2002, and I am delighted that Senator HATCH has joined me as the lead cosponsor of the new bill.

Obviously, our first priority must be to attempt to prevent the use of these agents and toxins by terrorists, quickly assess when an attack has occurred, take appropriate public health steps to contain the exposure, stop the spread of contagion, and then detoxify the site. These are all critical functions, but in the end we must recognize that some individuals may be exposed or infected. Then the critical issue is whether we can treat and cure them and prevent death and disability.

In short, we need a diversified portfolio of medicines. In cases where we have ample advance warning of an attack and specific information about the agent, toxin, or material, we may be able to vaccinate the vulnerable population in advance. In other cases, even if we have a vaccine, we might well prefer to use medicines that would quickly stop the progression of the disease or the toxic effects. We also need a powerful capacity quickly to develop new countermeasures where we face a new agent, toxin, or material.

Unfortunately, we are woefully short of vaccines and medicines to treat individuals who are exposed or infected. We have antibiotics that seem to work for most of those infected in the current anthrax attack, but these have not prevented five deaths. We have no effective vaccines or medicines for most other biological agents and chemical toxins we might confront. We have very limited capacity to respond medically to a radiological attack. In some cases we have vaccines to prevent, but no medicines to treat, an agent. We have limited capacity to speed the development of vaccines and medicines to prevent or treat novel agents and toxins not currently known to us.

We have provided, and should continue to provide, direct Federal funding for research and development of new

medicines, however, this funding is unlikely to be sufficient. Even with ample Federal funding, many private companies will be reluctant to enter into agreements with government agencies to conduct this research. Other companies would be willing to conduct the research with their own capital and at their own risk but are not able to secure the funding from investors.

The legislation we introduce today would provide incentives for private biotechnology companies to form capital to develop countermeasures—medicines—to prevent, treat and cure victims of bioterror, chemical and radiological attacks. This will enable this industry to become a vital part of the national defense infrastructure and do so for business reasons that make sense for their investors on the bottom line.

Enactment of these incentives is necessary because most biotech companies have no approved products or revenue from product sales to fund research. They rely on investors and equity capital markets to fund the research. They must necessarily focus on research that will lead to product sales and revenue and, thus, to an end to their dependence on investor capital. There is no established or predictable market for countermeasures. These concerns are shared by pharmaceutical firms. Investors are justifiably reluctant to fund this research, which will present challenges similar in complexity to AIDS. Investors need assurances that research on countermeasures has the potential to provide a rate of return commensurate with the risk, complexity and cost of the research, a rate of return comparable to that which may arise from a treatment for cancer, MS, Cystic Fibrosis and other major diseases.

It is in our national interest to enlist these companies in the development of countermeasures as biotech companies tend to be innovative and nimble and intently focused on the intractable diseases for which no effective medical treatments are available.

The incentives we have proposed are innovative and some may be controversial. We invite everyone who has an interest and a stake in this research to enter into a dialogue about the issue and about the nature and terms of the appropriate incentives. We have attempted to anticipate the many complicated technical and policy issues that this legislation raises. The key focus of our debate should be how, not whether, we address this critical gap in our public health infrastructure and the role that the private sector should play. Millions of Americans will be at risk if we fail to enact legislation to meet this need.

On November 26 of 2001, the Centers for Disease Control issued its interim working draft plan for responding to an outbreak of smallpox. The plan does not call for mass vaccination in advance of a smallpox outbreak because the risk of side effects from the vaccine

outweighs the risks of someone actually being exposed to the smallpox virus. At the heart of the plan is a strategy sometimes called “search and containment.”

This strategy involves identifying infected individual or individuals with confirmed smallpox, identifying and locating those people who come in contact with that person, and vaccinating those people in outward rings of contact. The goal is to produce a buffer of immune individuals and was shown to prevent smallpox and to ultimately eradicate the outbreak. Priorities would be set on who is vaccinated, perhaps focusing on the outward rings before those at the center of the outbreak. The plan assumes that the smallpox vaccination is effective for persons who have been exposed to the disease as long as the disease has not taken hold.

In practice it may be necessary to set a wide perimeter for these areas because smallpox is highly contagious before it might be diagnosed. There may be many areas subject to search and containment because people in our society travel frequently and widely. Terrorists might trigger attacks in a wide range of locations to multiply the confusion and panic. The most common form of smallpox has a 30 percent mortality rate, but terrorists might be able to obtain supplies of “flat-type” smallpox with a mortality rate of 96 percent and hemorrhagic-type smallpox, which is almost always fatal. For these reasons, the CDC plan accepts the possibility that whole cities or other geographic areas could be cordoned off, letting no one in or out—a quarantine enforced by police or troops.

The plan focuses on enforcement authority through police or National Guard, isolation and quarantine, mandatory medical examinations, and rationing of medicines. It includes a discussion of “population-wide quarantine measures which restrict activities or limit movement of individuals [including] suspension of large public gatherings, closing of public places, restriction on travel [air, rail, water, motor vehicle, and pedestrian], and/or ‘cordon sanitaire’ [literally a ‘sanitary cord’ or line around a quarantined area guarded to prevent spread of disease by restricting passage into or out of the area].” The CDC recommends that States update their laws to provide authority for “enforcing quarantine measures” and it recommends that States in “prevent planning” identify “personnel who can enforce these isolation and quarantine measures, if necessary.” Guide C—Isolation and Quarantine, page 17.

On October 23, 2001, the CDC published a “Model State Emergency Health Powers Act.” It was prepared by the Center for Law and the Public’s Health at Georgetown and Johns Hopkins Universities, in conjunction with the National Governors Association, National Conference of State Legislatures, Association of State and Terri-

torial Health Officials, National Association of City and County Health Officers, and National Association of Attorneys General. A copy of the model law is printed at www.publichealthlaw.net. The law would provide powers to enforce the “compulsory physical separation (including the restriction of movement or confinement) of individuals and/or groups believed to have been exposed to or known to have been infected with a contagious disease from individuals who are believed not to have been exposed or infected, in order to prevent or limit the transmission of the disease to others.” Federal law on this subject is very strong and the Administration can always rely on the President’s Constitution authority as Commander in Chief.

Let us try to imagine, however, what it would be like if a quarantine is imposed. Let us assume that there is not enough smallpox vaccine available for use in a large outbreak, that the priority is to vaccinate those in the outward rings of the containment area first, that the available vaccines cannot be quickly deployed inside the quarantined area, that it is not possible to quickly trace and identify all of the individuals who might have been exposed, and/or that public health workers themselves might be infected. We know that there is no medicine to treat those who do become infected. We know the mortality rates. It is not hard to imagine how much force might be necessary to enforce the quarantine. It would be quite unacceptable to permit individuals to leave the quarantined area no matter how much panic had taken hold.

Think about how different this scenario would be if we had medicines that could effectively treat and cure those who become infected by smallpox. We still might implement the CDC plan but a major element of the strategy would be to persuade people to visit their local clinic or hospital to be dispensed their supply of medicine. We could trust that there would be a very high degree of voluntary compliance. This would give us more time, give us options if the containment is not successful, give us options to treat those in the containment area who are infected, and enable us to quell the public panic.

Because we have no medicine to treat those infected by smallpox, we have to be prepared to implement a plan like the one CDC has proposed. There is the only option because our options are so limited. We need to expand our range of options.

We should not be lulled by the apparent successes with Cipro and the strains of anthrax we have seen in the recent attacks. We have not been able to prevent death in some of the patients with late-stage inhalation anthrax and Robert Stevens, Thomas Morris Jr., Joseph Curseen, Kathy Nguyen, and Otilie Lundgren died. This legislation is named in honor of

them. What we needed for them, and did not have, is a drug or vaccine that would treat late stage inhalation anthrax.

As I have said, we need an effective treatment for those who become infected with smallpox. We have a vaccine that effectively prevents smallpox infection, and administering this vaccine within four days of first exposure has been shown to offer some protections against acquiring infection and significant protection against a fatal outcome. The problem is that administering the vaccine in this time frame to all those who might have been exposed may be exceedingly difficult. And once infection has occurred, we have no effective treatment options.

In the last century 500 million people have died of smallpox—more than have from any other infectious diseases—as compared to 320 million deaths in all the wars of the twentieth century. Smallpox was one of the diseases that nearly wiped out the entire Native American population in this hemisphere. The last naturally acquired case of smallpox occurred in Somalia in 1977 and the last case from laboratory exposure was in 1978.

Smallpox is a nasty pathogen, carried in microscopic airborne droplets inhaled by its victims. The first signs are headache, fever, nausea and backache, sometimes convulsions and delirium. Soon, the skin turns scarlet. When the fever lets up, the telltale rash appears—flat red spots that turn into pimples, then big yellow pustules, then scabs. Smallpox also affects the throat and eyes, and inflames the heart, lungs, liver, intestines and other internal organs. Death often came from internal bleeding, or from the organs simply being overwhelmed by the virus. Survivors were left covered with pockmarks—if they were lucky. The unlucky ones were left blind, their eyes permanently clouded over. Nearly one in four victims died. The infection rate is estimated to be 25–40 percent for those who are unvaccinated and a single case can cause 20 or more additional infections.

During the 16th Century, 3.5 million Aztecs—more than half the population died of smallpox during a two-year span after the Spanish army brought the disease to Mexico. Two centuries later, the virus ravaged George Washington's troops at Valley Forge. And it cut a deadly path through the Crow, Dakota, Sioux, Blackfoot, Apache, Comanche and other American Indian tribes, helping to clear the way for white settlers to lay claim to the western plains. The epidemics began to subside with one of medicine's most famous discoveries: the finding by British physician Edward Jenner in 1796 that English milkmaids who were exposed to cowpox, a mild second cousin to smallpox that afflicts cattle, seemed to be protected against the more deadly disease. Jenner's work led to the development of the first vaccine in Western medicine. While later vaccines used

either a killed or inactivated form of the virus they were intended to combat, the smallpox vaccine worked in a different way. It relied on a separate, albeit related virus: first cowpox and the vaccinia, a virus of mysterious origins that is believed to be a cowpox derivative. The last American was vaccinated back in the 1970s and half of the US population has never been vaccinated. It is not known how long these vaccines provide protection, but it is estimated that the term is 3 to 5 years.

In an elaborate smallpox biowarfare scenario enacted in February 1999 by the Johns Hopkins Center for Civilian Biodefense Studies, it was projected that within two months 15,000 people had died, epidemics were out of control in fourteen countries, all supplies of smallpox vaccine were depleted, the global economy was on the verge of collapse, and military control and quarantines were in place. Within twelve months it was projected that eighty million people worldwide had died.

A single case of smallpox today would become a global public health threat and it has been estimated that a single smallpox bioterror attack on a single American city would necessitate the vaccination of 30 to 40 million people.

The US government is now in the process of purchasing substantial stocks of the smallpox vaccine. We then face a very difficult decision on deploying the vaccine. We know that some individuals will have an adverse reaction to this vaccine. No one in the United States has been vaccinated against smallpox in twenty-five years. Those that were vaccinated back then may not be protected against the disease today. If we had an effective treatment for those who might become infected by smallpox, we would face much less pressure regarding deploying the vaccine. If we face a smallpox epidemic from a bioterrorism attack, we will have no Cipro to reassure the public and we will be facing a highly contagious disease and epidemic. To be blunt, it will make the current anthrax attack look benign by comparison.

Smallpox is not the only threat. We have seen other epidemics in this century. The 1918 influenza epidemic provides a sobering admonition about the need for research to develop medicines. In two years, a fifth of the world's population was infected. In the United States the 1918 epidemic killed more than 650,000 people in a short period of time and left 20 million seriously ill, one fourth of the entire population. The average lifespan in the US was depressed by ten years. In just one year, the epidemic killed 21 million human beings worldwide—well over twice the number of combat deaths in the whole of World War I. The flu was exceptionally virulent to begin with and it then underwent several sudden and dramatic mutations in its structure. Such mutations can turn flu into a killer because its victims' immune systems

have no antibodies to fight off the altered virus. Fatal pneumonia can rapidly develop.

Another deadly toxin, ricin toxin, was of interest to the al-Qaeda terrorist network. At an al-Qaeda safehouse in Saraq Panza, Kabul reporters found instructions for making ricin. The instructions make chilling reading. "A certain amount, equal to a strong dose, will be able to kill an adult, and a dose equal to seven seeds will kill a child," one page reads. Another page says: "Gloves and face mask are essential for the preparation of ricin. Period of death varies from 3 to 5 days minimum, 4 to 14 days maximum." The instructions listed the symptoms of ricin as vomiting, stomach cramps, extreme thirst, bloody diarrhea, throat irritation, respiratory collapse and death.

No specific treatment or vaccine for ricin toxin exists. Ricin is produced easily and inexpensively, highly toxic, and stable in aerosolized form. A large amount of ricin is necessary to infect whole populations—the amount of ricin necessary to cover a 100-km² area and cause 50 percent lethality, assuming aerosol toxicity of 3 mcg/kg and optimum dispersal conditions, is approximately 4 metric tons, whereas only 1 kg of *Bacillus anthracis* is required. But it can be used to terrorize a large population with great effect because it is so lethal.

Use of ricin as a terror weapon is not theoretical. In 1991 in Minnesota, 4 members of the Patriots Council, an extremist group that held antigovernment and antitax ideals and advocated the overthrow of the US government, were arrested for plotting to kill a US marshal with ricin. The ricin was produced in a home laboratory. They planned to mix the ricin with the solvent dimethyl sulfoxide, DMSO, and then smear it on the door handles of the marshal's vehicle. The plan was discovered, and the 4 men were convicted. In 1995, a man entered Canada from Alaska on his way to North Carolina. Canadian custom officials stopped the man and found him in possession of several guns, \$98,000, and a container of white powder, which was identified as ricin. In 1997, a man shot his stepson in the face. Investigators discovered a makeshift laboratory in his basement and found agents such as ricin and nicotine sulfate. And, ricin was used by the Bulgarian secret police when they killed Georgi Markov by stabbing him with a poison umbrella as he crossed Waterloo Bridge in 1978.

Going beyond smallpox, influenza, and ricin, we do not have an effective vaccine or treatment for dozens of other deadly and disabling agents and toxins. Here is a partial list of some of the other biological agents and chemical toxins for which we have no effective treatments: *Clostridium botulinum* toxin, botulism, *Francisella tularensis*, tularemia, Ebola hemorrhagic fever, Marburg hemorrhagic fever, Lassa fever, Julin, Argentine

hemorrhagic fever, *Coxiella burnetii*, Q fever, brucella species, brucellosis, burkholderia mallei, glanders, Venezuelan encephalomyelitis, eastern and western equine encephalomyelitis, epsilon toxin of clostridium perfringens, staphylococcus enterotoxin B, salmonella species, shigella dysenteriae, escherichia coli O157:H7, vibrio cholerae, cryptosporidium parvum, nipah virus, hantaviruses, tickborne hemorrhagic fever viruses, tickborne encephalitis virus, yellow fever, nerve agents, tabun, sarin, soman, GF, and VX, blood agents, hydrogen cyanide and cyanogens chloride, blister agents, lewisite, nitrogenadn sulfur mustards, and phosgene oxime, heavy metals, arsenic, lead, and mercury, and volatile toxins, benzene, chloroform, trihalomethanes, pulmonary agents, Phosgene, chlorine, vinly chloride, and incapacitating agents, BZ.

The naturally occurring forms of these agents and toxins are enough to cause concern, but we also know that during the 1980s and 1990s the Soviet Union conducted bioweapons research at forty-seven laboratories and testing sites, employed nearly fifty thousand scientists in the work, and that they developed genetically modified versions of some of these agents and toxins. The goal was to develop an agent or toxin that was particularly virulent or not vulnerable to available antibiotics.

The United States has publicly stated that five countries are developing biological weapons in violation of the Biological Weapons convention, North Korea, Iraq, Iran, Syria, and Libya, and stated that additional countries not yet named, possibly including Russia, China, Israel, Sudan and Egypt, are also doing so as well.

What is so insidious about biological weapons is that in many cases the symptoms resulting from a biological weapons attack would likely take time to develop, so an act of bioterrorism may go undetected for days or weeks. Affected individuals would seek medical attention not from special emergency response teams but in a variety of civilian settings at scattered locations. This means we will need medicines that can treat a late stage of the disease, long after the infection has taken hold.

We must recognize that the distinctive characteristic of biological weapons is that they are living micro-organisms and are thus the only weapons that can continue to proliferate without further assistance once released in a suitable environment.

The lethality of these agents and toxins, and the panic they can cause, is quite frightening. The capacity for terror is nearly beyond comprehension. We do not believe it is necessary to describe the facts here. Our point is simple: we need more than military intelligence, surveillance, and public health capacity. We also need effective medicines. We also need more powerful research tools that will enable us to

quickly develop treatments for agents and toxins not on this or any other list.

We need to do whatever it takes to be able to reassure the American people that hospitals and doctors have powerful medicines to treat them if they are exposed to biological agents or toxins, that we can contain an outbreak of an infectious agent, and that there is little to fear. To achieve this objective, we need to rely on the entrepreneurship of the biotechnology industry.

In the summer of 2001, the Defense Science Board completed a study of the countermeasures we have available. It focused on countermeasures—diagnostics, vaccines, and drugs—for the top nineteen bioterror threats, and estimated what we have available today, what we might have available in five years and what we might have available in ten years.

If one assumes that we need diagnostics, vaccines, and drugs for all nineteen of these bioterror threats, we need fifty-seven countermeasures (19 times 3). It found that today we have only one of these fifty-seven countermeasures, a drug for Chlamydia psittaci. It found that in five years we might have twenty of the fifty-seven countermeasures and in ten years we might have thirty-four of the fifty-seven. These are optimistic assessments.

It set reasonable criteria for what constitutes an effective countermeasure. For diagnostics, it said that we are unprepared if our diagnostic takes more than 24 hours, requires confirmatory testing and the patient must be symptomatic. If said we are somewhat prepared if the diagnostic takes 12 to 24 hours, requires confirmatory testing, and works in some cases where the patient is asymptomatic. It said we are only truly prepared if the test takes less than 12 hours, requires no confirmatory testing, and detects the disease when the patient is asymptomatic. It found that we have no diagnostics today that meet the top standard and might have diagnostics for seventeen of the nineteen terror threats in five years and eighteen of the nineteen in ten years.

For vaccines it found that we are unprepared if we have no vaccine. We are partially prepared if we have a vaccine but have production or use limitations. And we are fully prepared if we have a vaccine generally available. It found that we have no vaccines today that meet the top standard and might have vaccines for two of the terror threats in five years and nine in ten years.

For therapeutics it found that we are unprepared if we have no approved treatment. We are partially prepared if we have a treatment available but have production or use limitations. And we are fully prepared if we have a treatment available. It found that we have one treatment that meets the top standard and might have treatments for the same agent in five years and seven treatments in ten years.

Obviously, we are woefully unprepared. The Defense Science Board only

focused on the top nineteen threats, and there are many others for which we are also unprepared.

My proposal would supplement direct Federal Government funding of research with incentives that make it possible for private companies to form the capital to conduct this research on their own initiative, utilizing their own capital, and at their own risk—all for good business reasons going to their bottom line.

The U.S. biotechnology industry, approximately 1,300 companies, spent \$13.8 billion on research last year. Only 350 of these companies have managed to go public. The industry employs 124,000, Ernest & Young data, people. The top five companies spent an average of \$89,000 per employee on research, making it the most research-intensive industry in the world. The industry has 350 products in human clinical trials targeting more than 200 diseases. Losses for the industry were \$5.8 billion in 2001, \$5.6 billion in 2000, \$4.4 billion in 1999, \$4.1 billion in 1998, \$4.5 billion in 1997, \$4.6 billion in 1996, and similar amounts before that. In 2000 fully 38 percent of the public biotech companies had less than 2 years of funding for their research. Only one quarter of the biotech companies in the United States are publicly traded and they tend to be the best funded.

There is a broad range of research that could be undertaken under this legislation. Vaccines could be developed to prevent infection or treat an infection from a bioterror attack. Broad-spectrum antibiotics are needed. Also, promising research has been undertaken on antitoxins that could neutralize the toxins that are released, for example, by anthrax. With anthrax it is the toxins, not the bacteria itself, that cause death. An antitoxin could act like a decoy, attaching itself to sites on cells where active anthrax toxin binds and then combining with normal active forms of the toxin and inactivating them. An antitoxin could block the production of the toxin.

We can rely on the innovativeness of the biotech industry, working in collaboration with academic medical centers, to explore a broad range of innovative approaches. This mobilizes the entire biotechnology industry as a vital component of our national defense against bioterror weapons.

The legislation takes a comprehensive approach to the challenges the biotechnology industry faces in forming capital to conduct research on countermeasures. It includes capital formation tax incentives, guaranteed purchase funds, patent protections, and liability protections. We believe we will have to include each of these types of incentives to ensure that we mobilize the biotechnology industry for this urgent national defense research.

Some of the tax incentives in this legislation, and both of the two patent incentives I have proposed, may be controversial. In our view, we can debate tax or patent policy as long as you

want, but let's not lose track of the issue here—development of countermeasures to treat people infected or exposed to lethal and disabling bioterror weapons.

We know that incentives can spur research. In 1983 we enacted the Orphan Drug Act to provide incentives for companies to develop treatments for rare diseases with small potential markets deemed to be unprofitable by the industry. In the decade before this legislation was enacted, fewer than 10 drugs for orphan diseases were developed and these were mostly chance discoveries. Since the Act became law, 218 orphan drugs have been approved and 800 more are in the pipeline. The Act provides 7 years of market exclusivity and a tax credit covering some research costs. The effectiveness of the incentives we have enacted for orphan disease research show us how much we can accomplish when we set a national priority for certain types of research.

The incentives we have proposed differ from those set by the Orphan Drug Act. We need to maintain the effectiveness of the Orphan Drug Act and not undermine it by adding many other disease research targets. In addition, the tax credits for research for orphan drug research have no value for most biotechnology companies because few of them have tax liability with respect to which to claim the credit. This explains why we have not proposed to utilize tax credits to spur countermeasures research. It is also clear that the market for countermeasures is even more speculative than the market for orphan drugs and we need to enact a broader and deeper package of incentives.

The government determines which research is covered by the legislation and which companies qualify for the incentives for this research. No company is entitled to utilize the incentives until the government certifies its eligibility.

These decisions are vested in the Secretary, Department of Homeland Security. In S. 1764, the decisions were vested in the White House Office of Homeland Security, but it is now likely that a Department will be created. I have strongly endorsed that concept and led the effort to enact the legislation forming the new Department.

The legislation confers on the Secretary, in consultation with the Secretary of Defense and Secretary of Health and Human Services, authority to set the list of agents and toxins with respect to which the legislation and incentives applies.

The Secretary determines which agents and toxins present a threat and whether the countermeasures are "more likely" to be developed with the application of the incentives in the legislation. The Secretary may determine that an agent or toxin does not present a threat or that countermeasures are not more likely to be developed with the incentives. It may determine that the government itself should fund the

research and development effort and not rely on private companies. The Department is required to consider the status of existing research, the availability of non-countermeasure markets for the research, and the most effective strategy for ensuring that the research goes forward. The legislation includes an illustrative, non-binding list of fifty-four agents and toxins that might be included on the Secretary's list. The decisions of the Secretary are final and are not subject to judicial review.

The Department then must provide information to potential manufacturers of these countermeasures in sufficient detail to permit them to conduct the research and determine when they have developed the needed countermeasure. It may exempt from publication such information as it deems to be sensitive.

The Department also must specify the government market that will be available when a countermeasure is successfully developed, including the minimum number of dosages that will be purchased, the minimum price per dose, and the timing and number of years projected for such purchases. Authority is provided for the Department to make advance, partial, progress, milestone, or other payments to the manufacturers.

The Department is responsible for determining when a manufacturer has, in fact, successfully developed the needed countermeasure. It must provide information in sufficient detail so that manufacturers and the government may determine when the manufacturer has successfully developed the countermeasure the government needs. If and when the manufacturer has successfully developed the countermeasure, it becomes entitled to the procurement, patent, and liability incentives in the legislation.

Once the list of agents and toxins is set, companies may register with the Department their intent to undertake research and development of a countermeasure to prevent or treat the agent or toxin. This registration is required only for companies that seek to be eligible for the tax, purchase, patent, and liability provisions of the legislation. The registration requirement gives the Department vital information about the research effort and the personnel involved with the research, authorizes inspections and other review of the research effort, and the filing of reports by the company.

The Secretary then may certify that the company is eligible for the tax, purchase, patent, and liability incentives in the legislation. It bases this certification on the qualifications of the company to conduct the countermeasure research. Eligibility for the purchase fund, patent and liability incentives is contingent on successful development of a countermeasure according to the standards set in the legislation, as determined by the Secretary.

The legislation contemplates that a company might well register and seek

certification with respect to more than one research project and become eligible for the tax, purchase, patent, and liability incentives for each. There is no policy rationale for limiting a company to one registration and one certification.

This process is similar to the current registration process for research on orphan, rare, diseases. In that case, companies that are certified by the FDA become eligible for both tax and market exclusivity incentives. This process gives the government complete control on the number of registrations and certifications. This gives the government control over the cost and impact of the legislation on private sector research.

The registration and certification process applies to research to develop diagnostics and research tools, not just drugs and vaccines.

Diagnostics are vital because healthcare professionals need to know which agent or toxin has been used in an attack. This enables them to determine which treatment strategy is likely to be most effective. We need quickly to determine which individuals have been exposed or infected, and to separate them from the "worried well." It is likely in an attack that large numbers of individuals who have not been exposed or infected will flood into healthcare facilities seeking treatment. We need to be able to focus on those individuals who are at risk and reassure those who are not at risk.

In terms of research tools, it is possible that we will face biological agents and chemical agents we have never seen before. As I've mentioned, the Soviet Union bioterror research focused in part on use of genetic modification technology to develop agents and toxins that currently-available antibiotics can not treat. Australian researchers accidentally created a modified mousepox virus, which does not affect humans, but it was 100 percent lethal to the mice. Their research focused on trying to make a mouse contraceptive vaccine for pest control. The surprise was that it totally suppressed the "cell-mediated response"—the arm of the immune system that combats viral infection. To make matters worse, the engineered virus also appears unnaturally resistant to attempts to vaccinate the mice. A vaccine that would normally protect mouse strains that are susceptible to the virus only worked in half the mice exposed to the killer version. If bioterrorists created a human version of the virus, vaccination programs would be of limited use. This highlights the drawback of working on vaccines against bioweapons rather than treatments.

With the advances in gene sequencing—genomics—we will know the exact genetic structure of a biological agent. This information in the wrong hands could easily be manipulated to design and possibly grow a lethal new bacterial and viral strains not found in nature. A scientist might be able to mix

and match traits from different microorganisms—called recombinant technology—to take a gene that makes a deadly toxin from one strain of bacteria and introduce it into other bacterial strains. Dangerous pathogens or infectious agents could be made more deadly, and relatively benign agents could be designed as major public health problems. Bacteria that cause diseases such as anthrax could be altered in such a way that would make current vaccines or antibiotics against them ineffective. It is even possible that a scientist could develop an organism that develops resistance to antibiotics at an accelerated rate.

This means we need to develop technology—research tools—that will enable us to quickly develop a tailor-made, specific countermeasure to a previously unknown organism or agent. These research tools will enable us to develop a tailor-made vaccine or drug to deploy as a countermeasure against a new threat. The legislation authorizes companies to register and receive a certification making them eligible for the incentives in the bill for this vital research.

The legislation includes four tax incentives to enable biotechnology and pharmaceutical companies to form capital to fund research and development of countermeasures. Companies must irrevocably elect only one of the incentives with regard to the countermeasure research.

Four different tax incentives are available so that companies have flexibility in forming capital to fund the research. Each of the options comes with advantages and limitations that may make it appropriate or inappropriate for a given company or research project. We do not now know fully how investors and capital markets will respond to the different options, but we assume that companies will consult with the investor community about which option will work best for a given research project. Capital markets are diverse and investors have different needs and expectations. Over time these markets and investor expectations evolve. If companies register for more than one research project, they may well utilize different tax incentives for the different projects.

Companies are permitted to undertake a series of discrete and separate research projects and make this election with respect to each project. They may only utilize one of the options with respect to each of these research projects.

The first option is for the company to establish an R&D Limited Partnership to conduct the research. The partnership passes through all business deductions and credits to the partners. For example, under this arrangement, the research and development tax credits and depreciation deductions for the company may be passed by the corporation through to its partners to be used to offset their individual tax liability. These deductions and credits

are then lost to the corporation. This alternative is available only to companies with less than \$750,000,000 in paid-in capital.

The second option is for the company to issue a special class of stock for the entity to conduct the research. The investors would be entitled to a zero capital gains tax rate on any gains realized on the stock held for at least three years. This is a modification of the current Section 1202 where only 50 percent of the gains are not taxed. This provision is adapted from legislation I have introduced, S. 1134, and introduced in the House by Representatives DUNN and MATSUI, H.R. 2383. A similar bill has been introduced by Senator COLLINS, S. 455. This option also is available to small companies.

The third and fourth options grant special tax credits to the company for the research. The first credit is for research conducted by the company and the other for research conducted at a teaching hospital or similar institution. Tax credits are available to any company, but they only are useful to a company with tax liability against which to claim the credit. Very few biotechnology companies receive revenue from product sales and therefore have no tax liability. Companies with revenue may be able to fund the research from retained earnings rather than secure funding from investors.

A company that elects to utilize one of these incentives is not eligible to receive benefits of the Orphan Drug Tax Credit. Companies that can utilize tax credits—companies with taxable income and tax liability—might find the Orphan Credit more valuable. The legislation includes an amendment to the Orphan Credit to correct a defect in the current credit. The amendment has been introduced in the Senate as S. 1341 by Senators HATCH, KENNEDY and JEFFORDS. The amendment simply states that the Credit is available starting the day an application for orphan drug status is filed, not the date the FDA finally acts on it. The amendment was one of many initiatives championed by Lisa J. Raines, who died on September 11 in the plane that hit the Pentagon, and the amendment is named in her honor. As we go forward in the legislative process, I hope we will have an opportunity to speak in more detail about the service of Ms. Raines on behalf of medical research, particularly on rare diseases.

The guaranteed purchase fund, and the patent protections, and liability provisions described below provide an additional incentive for investors and companies to fund the research.

The market for countermeasures is speculative and small. This means that if a company successfully develops a countermeasure, it may not receive sufficient revenue on sales to justify the risk and expense of the research. This is why the legislation establishes a countermeasures purchase fund that will define the market for the products with some specificity before the research begins.

The Secretary will set standards for which countermeasures it will purchase and define the financial terms of the purchase commitment. This will enable companies to evaluate the market potential of its research before it launches into the project. The specifications will need to be set with sufficient specificity so that the company—and its investors—can evaluate the market and with enough flexibility so that it does not inhibit the innovativeness of the researchers. This approach is akin to setting a performance standard for a new military aircraft.

The legislation provides that the Secretary will determine whether the government will purchase more than one product per class. It might make sense—as an incentive—for the government to commit to purchasing more than one product so that many more than one company conducts the research. A winner-take-all system may well intimidate some companies and we may end up without a countermeasure to be purchased. It is also possible that we will find that we need more than one countermeasure because different products are useful for different patients. We may also find that the first product developed is not the most effective.

The purchase commitment for countermeasures is available to any company irrespective of its paid-in capital.

Intellectual property protection of research is essential to biotechnology and pharmaceutical companies for one simple reason: they need to know that if they successfully develop a medical product another company cannot appropriate it. It's a simple matter of incentives.

The patent system has its basis in the U.S. Constitution where the federal government is given the mandate to "promote the Progress of Science and the Useful Arts by securing for a limited time to Authors and Inventors the exclusive right to their respective Writings and Discoveries." In exchange for full disclosure of the terms of their inventions, inventors are granted the right to exclude others from making, using, or selling their inventions for a limited period of time. This quid pro quo provides investors with the incentive to invent. In the absence of the patent law, discoverable inventions would be freely available to anyone who wanted to use them and inventors would not be able to capture the value of their inventions or secure a return on their investments.

The patent system strikes a balance. Companies receive limited protection of their inventions if they are willing to publish the terms of their invention for all to see. At the end of the term of the patent, anyone can practice the invention without any threat of an infringement action. During the term of the patent, competitors can learn from the published description of the invention and may well find a new and distinct patentable invention.

The legislation provides two types of intellectual property protection. The

first simply provides that the term of the patent on the countermeasure will be the term of the patent granted by the Patent and Trademark Office without any erosion due to delays in approval of the product by the Food and Drug Administration. The second provides that a company that successfully develops a countermeasure will receive a bonus of two years on the term of any patent held by that company. Companies must elect one of these two protections, but only small biotechnology companies may elect the second protection. Large, profitable pharmaceutical companies may elect only the first of the two options.

The first protection against erosion of the term of the patent is an issue that is partially addressed in current law, the Hatch-Waxman Patent Term Restoration Act. That act provides partial protection against erosion of the term, length, of a patent when there are delays at the FDA in approving a product. The erosion occurs when the PTO issues a patent before the product is approved by the FDA. In these cases, the term of the patent is running but the company cannot market the product. The Hatch-Waxman Act provides some protections against erosion of the term of the patent, but the protections are incomplete. As a result, many companies end up with a patent with a reduced term, sometimes substantially reduced.

The issue of patent term erosion has become more serious due to changes at the PTO in the patent system. The term of a patent used to be fixed at 17 years from the date the patent was granted by the PTO. It made no difference how long it took for the PTO to process the patent application and sometimes the processing took years, even decades. Under this system, there were cases where the patent would issue before final action at the FDA, but there were other cases where the FDA acted to approve a product before the patent was issued. Erosion was an issue, but it did not occur in many cases.

Since 1995 the term of a patent has been set at 20 years from the date of application for the patent. This means that the processing time by the PTO of the application all came while the term of the patent is running. This gives companies a profound incentive to rush the patent through the PTO. Under the old system, companies had the opposite incentive. With patents being issued earlier by the PTO, the issue of erosion of patent term due to delays at the FDA is becoming more serious and more common.

The provision in the legislation simply states that in the case of bioterrorism countermeasures, no erosion in the term of the patent will occur. The term of the patent at the date of FDA approval will be the same as the term of the patent when it was issued by the PTO. There is no extension of the patent, simply protections against erosion. Under the new 20 year term, pat-

ents might be more or less than 17 years depending on the processing time at the PTO, and all this legislation says is that whatever term is set by the PTO will govern irrespective of the delays at the FDA. This option is available to any company that successfully develops a countermeasure eligible to be purchased by the fund.

The second option, the bonus patent term, is only available to small companies with less than \$750,000,000 in paid-in capital. It provides that a company that successfully develops a countermeasure is entitled to a two-year extension of any patent in its portfolio. This does not apply to any patent of another company bought or transferred in to the countermeasure research company.

I am well aware that this bonus patent term provision will be controversial with some. A company would tend to utilize this option if it owned the patent on a product that still had, or might have, market value at the end of the term of the patent. Because this option is only available to small biotechnology companies, most of whom have no product on the market, in most cases they would be speculating about the value of a product at the end of its patent. The company might apply this provision to a patent that otherwise would be eroded due to FDA delays or it might apply it to a patent that was not eroded. The result might be a patent term that is no longer than the patent term issued by the PTO. It all depends on which companies elect this option and which patent they select. In some cases, the effect of this provision might be to delay the entry onto the market of lower priced generics. This would tend to shift some of the cost of the incentive to develop a countermeasure to insurance companies and patients with an unrelated disease.

My rationale for including the patent bonus in the legislation is simple: I want this legislation to say emphatically that we mean business, we are serious, and we want biotechnology companies to reconfigure their research portfolios to focus in part on development of countermeasures. The other provisions in the legislation are powerful, but they may not be sufficient.

This proposal protects companies willing to take the risks of producing anti-terrorism products for the American public from potential losses incurred from lawsuits alleging adverse reactions to these products. It also preserves the right for plaintiffs to seek recourse for alleged adverse reactions in Federal District Court, with procedural and monetary limitations.

Under the plan, the Secretary of HHS is required to indemnify and defend entities engaged in qualified countermeasure research through execution of "indemnification and defense agreements." This protection is only available for countermeasures purchased under the legislation or to use of such countermeasures as recommended by

the Surgeon General in the event of a public health emergency.

The legislation contains a series of provisions designed to enhance countermeasure research.

The legislation provides for accelerated approval by the FDA of countermeasures developed under the legislation. In most cases, the products would clearly qualify for accelerated approval, but the legislation ensures that they will be reviewed under this process.

It provides a statutory basis for the FDA approving countermeasures where human clinical trials are not appropriate or ethical. Rules regarding such products have been promulgated by the FDA.

It grants a limited antitrust exemption for certain cooperative research and development of countermeasures.

It provides incentives for the construction of biologics manufacturing facilities and research to increase the efficiency of current biologics manufacturing facilities.

It enhances the synergy between our for-profit and not for profit biomedical research entities. The Bayh-Dole Act and Stevenson-Wydler Act form the legal framework for mutually beneficially partnerships between academia and industry. My legislation strengthens this synergy and these relationships with two provisions, one to upgrade the basic research infrastructure available to conduct research on countermeasures and the other to increase cooperation between the National Institutes of Health and private companies.

Research on countermeasures necessitates the use of special facilities where biological agents can be handled safely without exposing researchers and the public to danger. Very few academic institutions or private companies can justify or capitalize the construction of these special facilities. The Federal government can facilitate research and development of countermeasures by financing the construction of these facilities for use on a fee-for-service basis. The legislation authorizes appropriations for grants to non-profit and for-profit institutions to construct, maintain, and manage up to ten Biosafety Level 3-4 facilities, or their equivalent, in different regions of the country for use in research to develop countermeasures. BSL 3-4 facilities are ones used for research on indigenous, exotic or dangerous agents with potential for aerosol transmission of disease that may have serious or lethal consequences or where the agents pose high risk of life-threatening disease, aerosol-transmitted lab infections, or related agents with unknown risk of transmission. The Director of the Office and NIH shall issue regulations regarding the qualifications of the researchers who may utilize the facilities. Companies that have registered with and been certified by the Director—to develop countermeasures under Section 5 (d) of the legislation—shall

be given priority in the use of the facilities.

The legislation also reauthorizes a very successful NIH-industry partnership program launched in FY 2000 in Public Law 106-113. The funding is for partnership challenge grants to promote joint ventures between NIH and its grantees and for-profit biotechnology, pharmaceutical and medical device industries with regard to the development of countermeasures, as defined in Section 3 of the bill, and research tools, as defined in Section 4(d)(3) of the bill. Such grants shall be awarded on a one-for-one matching basis. So far the matching grants have focused on development of medicines to treat malaria, tuberculosis, emerging and resistant infections, and therapeutics for emerging threats. My proposal should be matched by reauthorization of the challenge grant program for these deadly diseases.

The legislation also sets incentives for the development of adjuvants to enhance the potency, and efficacy of antigens in responding to a biological agent.

It requires the new Department to issue annual reports on the effectiveness of this legislation and these incentives, and directs it to host an international conference each year on countermeasure research.

This legislation is carefully calibrated to provide incentives only where they are needed. This accounts for the choices in the legislation about which provisions are available to small biotechnology companies and large pharmaceutical companies.

The legislation makes choices. It sets the priorities. It provides a dose of incentives and seeks a response in the private sector. We are attempting here to do something that has not been done before. This is uncharted territory. And it also an urgent mission.

There may be cases where a countermeasure developed to treat a biological toxin or chemical agent will have applications beyond this use. A broad-spectrum antibiotic capable of treating many different biological agents may well have the capacity to treat naturally occurring diseases.

This same issue arises with the Orphan Drug Act, which provides both tax and FDA approval incentives for companies that develop medicines to treat rare diseases. In some cases these treatments can also be used for larger disease populations. There are few who object to this situation. We have come to the judgment that the urgency of this research is worth the possible additional benefits that might accrue to a company.

In the context of research to develop countermeasures, I do not consider it a problem that a company might find a broader commercial market for a countermeasure. Indeed, it may well be the combination of the incentives in this legislation and these broader markets that drives the successful development of a countermeasure. If our intense

focus on developing countermeasures, and research tools, provides benefits for mankind going well beyond terror weapons, we should rejoice. If this research helps us to develop an effective vaccine or treatment for AIDS, we should give the company the Nobel Prize for Medicine. If we do not develop a vaccine or treatment for AIDS, we may see 100 million people die of AIDS. We also have 400 million people infected with malaria and more than a million annual deaths. Millions of children die of diarrhea, cholera and other deadly and disabling diseases. Countermeasures research may deepen our understanding of the immune system and speed development of treatments for cancer and autoimmune diseases. That is not the central purpose of this legislation, but it is an additional rationale for it.

The issue raised by my legislation is very simple: do we want the Federal government to fund and supervise much of the research to develop countermeasures or should we also provide incentives that make it possible for the private sector, at its own expense, and at its own risk, to undertake this research for good business reasons. The Frist-Kennedy law focuses effectively on direct Federal funding and coordination issues, but it does not include sufficient incentives for the private sector to undertake this research on its own initiative. That law and my legislation are perfectly complimentary. We need to enact both to ensure that we are prepared for bioterror attacks.

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

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

BIOLOGICAL, CHEMICAL AND RADIOLOGICAL WEAPONS COUNTERMEASURES RESEARCH ACT OF 2003

SENATORS LIEBERMAN AND HATCH, CONGRESSMEN TOM DAVIS, CAL DOOLEY, CURT WELDON, AND NORM DICKS

The legislation proposes incentives that will enable biotechnology and pharmaceutical companies to take the initiative—for good business reasons—to conduct research to develop countermeasures, including diagnostics, therapeutics, and vaccines, to treat those who might be exposed to or infected by biological, chemical or radiological agents and materials in a terror attack.

The premise of this legislation is that direct government funding of this research is likely to be much more expensive and risky to the government and less likely to produce the countermeasures we need to defend America. Shifting some of the expense and risk of this research to entrepreneurial private sector firms is likely to be less expensive and much more likely to produce the countermeasures we need to protect ourselves in the event of an attack.

For biotechnology companies, incentives for capital formation are needed because most such companies have no approved products or revenue from product sales to fund research. They rely on investors and equity capital markets to fund the research. These companies must focus on research that will lead to product sales and revenue and end their dependence on investor capital. When

they are able to form the capital to fund research, biotech companies tend to be innovative and nimble and focused on the intractable diseases for which no effective medical treatments are available. Special research credits for pharmaceutical companies are also needed.

For both biotech and pharmaceutical companies, there is no established or predictable market for these countermeasures. Investors and companies are justifiably reluctant to fund this research, which will present technical challenges similar in complexity to development of effective treatments for AIDS. Investors and companies need assurances that research on countermeasures has the potential to provide a rate of return commensurate with the risk complexity and cost of the research, a rate of return comparable to that which may arise from a treatment for cancer, MS, Cystic Fibrosis and other major diseases or from other investments.

President Bush's BioShield initiative is designed to establish and predictable market for these countermeasures. This legislation provides a template for implementation of BioShield and supplements it with additional incentives to ensure that the industry is enthusiastically engaged in this vital research.

The legislation provides tax incentives to enable companies to form capital to conduct the research and tax credits usable by larger companies with tax liability with respect to which to claim the credits. It provides a guaranteed and pre-determined market for the countermeasures and special intellectual property protections to serve as a substitute for a market. Finally, it establishes liability protections for the countermeasures that are developed.

Section 3 of the legislation is drafted as an amendment to the Homeland Security Act of 2002 (HSA)(P.L. 107-296). Section 2 sets forth findings and sections 4-9 are drafted as amendments to other statutes.

1. Setting Research Priorities (Section 1811 of HSA): The Department of Homeland Security sets the countermeasure research priorities in advance. It focuses the priorities on threats for which countermeasures are needed, and with regard to which the incentives make it "more likely" that the private sector will conduct the research to develop countermeasures. It is required to consider the status of existing research, the availability of non-countermeasure markets for the research, and the most effective strategy for ensuring that the research goes forward. The Department then provides information to potential manufacturers of these countermeasures in sufficient detail to permit them to conduct the research and determine when they have developed the needed countermeasure. The Department is responsible for determining when a manufacturer has, in fact, successfully developed the needed countermeasure.

2. Registration of Companies (Section 1812 of HSA): Biotechnology and pharmaceutical companies register with the Department to become eligible for the incentives in the legislation. They are obligated to provide reports to the Department as requested and be open to inspections. The Department certifies which companies are eligible for the incentives.

Once a company is certified as eligible for the incentives, it becomes eligible for the tax incentives for capital formation, and if it successfully develops a countermeasure that meets the specifications of the Department, it becomes eligible for the procurement, patent, and liability provisions.

3. Diagnostics (Sections 1813 and 1814 of HSA): The incentives apply to development of detection systems and diagnostics, as well as drugs, vaccines and other needed countermeasures.

4. Research Tools (Section 1815 of HSA): A company is also eligible for certification for the tax and patent provisions if it seeks to develop a research tool that will make it possible to quickly develop a countermeasure to a previously unknown agent or toxin, or an agent or toxin not targeted by the Department for research.

5. Capital Formation for Countermeasures Research (Section 1821 of HSA; also section 4 of the legislation): The legislation provides that a company seeking to fund research is eligible to elect from among four tax incentives. The companies are eligible to:

(a). Establish an R&D Limited Partnership to conduct the research. The partnership passes through all business deductions and credits to the partners.

(b). Issue a special class of stock for the entity to conduct the research. The investors would be entitled to a zero capital gains tax rate on any gains realized on the stock.

(c). Receive a special tax credit to help fund the research.

(d). Receive a special tax credit for research conducted at a non-profit and academic research institution.

A company must elect only one of these incentives and, if it elects one of these incentives, it is then not eligible to receive benefits under the Orphan Drug Act. The legislation includes amendments (Section 9 of this legislation) to the Orphan Drug Act championed by Senators Hatch, Kennedy and Jeffords (S. 1341). The amendments make the Credit available from the date of the application for Orphan Drug status, not the date the application is approved as provided under current law.

6. Countermeasure Purchase Fund (Section 1822 of HSA): The legislation provides that a company that successfully develops a countermeasure—through FDA approval—is eligible to sell the product to the Federal government at a pre-established price and in a predetermined amount. The company is given notice of the terms of the sale before it commences the research.

7. Intellectual Property Incentives (Section 1823 of HSA; also section 5 of this legislation): The legislation provides that a company that successfully develops a countermeasure is eligible to elect one of two patent incentives. The two alternatives are as follows:

(a). The company is eligible to receive a patent for its invention with a term as long as the term of the patent when it was issued by the Patent and Trademark Office, without any erosion due to delays in the FDA approval process. This alternative is available to any company that successfully develops a countermeasure irrespective of its paid-in capital.

(b). The company is eligible to extend the term of any patent owned by the company for two years. The patent may not be one that is acquired by the company from a third party. This is included as a capital formation incentive for small biotechnology companies with less than \$750 million in paid-in capital, or, at the discretion of the Department of Homeland Security, to any firm that successfully develops a countermeasure.

In addition, a company that successfully develops a countermeasure is eligible for a 10-year period of market exclusivity on the countermeasure.

8. Indemnification Protections (Section 1824 of HSA; also Section 10 of the legislation): The legislation provides for indemnifications for liability for the company that successfully develops a countermeasure.

9. Accelerated Approval of Countermeasures (Section 1831 of HSA): The countermeasures are considered for approval by the FDA on a "fast track" basis.

10. Special Approval Standards (Section 6 of this legislation): The countermeasures may

be approved in the absence of human clinical trials if such trials are impractical or unethical.

11. Limited Antitrust Exemption (Section 7 of this legislation): Companies are granted a limited exemption from the antitrust laws as they seek to expedite research on countermeasures.

12. Biologics Manufacturing Capacity and Efficiency (Section 1832 and 1833 of HSA; and section 8 of this legislation): Special incentives are incorporated to ensure that manufacturing capacity is available for countermeasures.

13. Strengthening of Biomedical Research Infrastructure (Section 1834 and 1835 of HSA): Authorizes appropriations for grants to construct specialized biosafety containment facilities where biological agents can be handled safely without exposing researchers and the public to danger (Section 216). Also reauthorizes a successful NIH-industry partnership challenge grants to promote joint ventures between NIH and its grantees and for-profit biotechnology, pharmaceutical and medical device industries with regard to the development of countermeasures and research tools (Section 217).

14. Annual Report (Section 1841 of HSA): The Department is required to prepare for the Congress an annual report on the implementation of these incentives.

15. International Conference (Section 1842 of HSA): The Department is required to organize an annual international conference on countermeasure research.

By Mr. GRASSLEY (for himself,
Mr. HAGEL, Mr. DORGAN, Mr.
JOHNSON, and Mr. DASCHLE):

S. 667. A bill to amend the Food Security Act of 1985 to strengthen payment limitations for commodity payments and benefits; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. GRASSLEY. Mr. President, the American people recognize the importance of the family farmer to our Nation, and the need to provide an adequate safety net for family farmers. In recent years, however, assistance to farmers has come under increasing scrutiny.

Critics of farm payments have argued that the largest corporate farms reap most of the benefits of these payments. The reality is, over 60 percent of the payments have gone to only 10 percent of our Nation's farmers.

What's more, farm payments that were originally designed to benefit small and medium-sized family farmers have contributed to their own demise. Unlimited farm payments have placed upward pressure on land prices and have contributed to overproduction and lower commodity prices, driving many family farmers off the farm.

The Senate agreed, by an overwhelming vote of 66 to 31, to a bipartisan amendment sponsored by Senators DORGAN and myself to target federal assistance to small and medium-sized family farmers. The amendment would have limited direct and counter-cyclical payments to \$75,000. It would have limited gains from marketing loans and LDPs to \$150,000, and generic certificates would have been included in this limit. That would have limited farm payments to a combined total of \$275,000.

That amendment was critical to family farmers in Iowa. I feel strongly the farm bill failed Iowa when it failed to effectively address the issue of payment limitations. This is our chance to remedy the problem.

This bi-partisan legislation provides a limit of \$40,000 for direct payments, \$60,000 for counter-cyclical pavement, and \$175,000 for LDPs and marketing loan gains. The combined limit is \$275,000.

I urge my colleagues to support this bi-partisan legislation and to encourage the development of reasonable, legitimate payment limits.

I ask unanimous consent 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. 667

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

SECTION 1. PAYMENT LIMITATIONS.

Section 1001 of the Food Security of 1985 (7 U.S.C. 1308) is amended—

(1) in subsection (b)(1), by striking "\$40,000" and inserting "\$20,000";

(2) in subsection (c)(1), by striking "\$65,000" and inserting "\$30,000";

(3) by striking "(d)" and all that follows through the end of paragraph (1) and inserting the following:

"(d) LIMITATIONS ON MARKETING LOAN GAINS, LOAN DEFICIENCY PAYMENTS, AND COMMODITY CERTIFICATE TRANSACTIONS.—

"(1) LOAN COMMODITIES.—The total amount of the following gains and payments that a person may receive during any crop year may not exceed \$87,500:

"(A)(i) Any gain realized by a producer from repaying a marketing assistance loan for 1 or more loan commodities under subtitle B of title I of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7931 et seq.) at a lower level than the original loan rate established for the loan commodity under that subtitle.

"(ii) In the case of settlement of a marketing assistance loan for 1 or more loan commodities under that subtitle by forfeiture, the amount by which the loan amount exceeds the repayment amount for the loan if the loan had been settled by repayment instead of forfeiture.

"(B) Any loan deficiency payments received for 1 or more loan commodities under that subtitle.

"(C) Any gain realized from the use of a commodity certificate issued by the Commodity Credit Corporation for 1 or more loan commodities, as determined by the Secretary, including the use of a certificate for the settlement of a marketing assistance loan made under that subtitle."; and

(4) by adding at the end the following:

"(h) SINGLE FARMING OPERATION.—

"(1) IN GENERAL.—Notwithstanding subsections (b) through (d), subject to paragraph (2), if a person participates only in a single farming operation and receives, directly or indirectly, any payment or gain covered by this section through the operation, the total amount of payments or gains (as applicable) covered by this section that the person may receive during any crop year may not exceed twice the applicable dollar amounts specified in subsections (b), (c), and (d).

"(2) INDIVIDUALS.—The total amount of payments or gains (as applicable) covered by this section that an individual person may receive during any crop year may not exceed \$275,000.

“(i) SPOUSE EQUITY.—Notwithstanding subsections (b) through (d), except as provided in subsection (e)(2)(C)(i), if an individual and spouse are covered by subsection (e)(2)(C) and receive, directly or indirectly, any payment or gain covered by this section, the total amount of payments or gains (as applicable) covered by this section that the individual and spouse may jointly receive during any crop year may not exceed twice the applicable dollar amounts specified in subsections (b), (c), and (d).

“(j) REGULATIONS.—

“(1) IN GENERAL.—Not later than July 1, 2003, the Secretary shall promulgate regulations—

“(A) to ensure that total payments and gains described in this section made to or through joint operations or multiple entities under the primary control of a person, in combination with the payments and gains received directly by the person, shall not exceed twice the applicable dollar amounts specified in subsections (b), (c), and (d);

“(B) in the case of a person that in the aggregate owns, conducts farming operations, or provides custom farming services on land with respect to which the aggregate payments received by the person exceed the applicable dollar amounts specified in subsections (b), (c), and (d), to attribute all payments and gains made to the person on crops produced on the land to—

“(i) a person that rents land for a share of the crop that is less than the usual and customary rate, as determined by the Secretary;

“(ii) a person that provides custom farming services through arrangements under which—

“(I) all or part of the compensation for the services is at risk;

“(II) farm management services are provided by—

“(aa) the same person;

“(bb) an immediate family member; or

“(cc) an entity or individual that has a business relationship that is not an arm's length relationship, as determined by the Secretary; or

“(III) more than ⅔ of all payments received for custom farming services are received by—

“(aa) the same person;

“(bb) an immediate family member; or

“(cc) an entity or individual that has a business relationship that is not an arm's length relationship, as determined by the Secretary; or

“(iii) a person under such other arrangements as the Secretary determines are established to transfer payments from persons that would otherwise exceed the applicable dollar amounts specified in subsections (b), (c), and (d); and

“(C) to ensure that payments attributed under this section to a person other than the direct recipient shall also count toward the limit of the direct recipient.

“(2) PRIMARY CONTROL.—The regulations under paragraph (1) shall define ‘primary control’ to include a joint operation or multiple entity in which a person owns an interest that is greater than the total interests held by other persons that materially participate on a regular, substantial, and continuous basis in the management of the operation or entity.”

SEC. 2. REGULATIONS.

(a) IN GENERAL.—The Secretary of Agriculture may promulgate such regulations as are necessary to implement this Act and the amendments made by this Act.

(b) PROCEDURE.—The promulgation of the regulations and administration of this Act and the amendments made by this Act shall be made without regard to—

(1) the notice and comment provisions of section 553 of title 5, United States Code;

(2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(3) chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’).

(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

Mr. DORGAN. Mr. President, I rise today to co-sponsor a bill that imposes meaningful farm payment limitations.

A gentleman from Arkansas is the principal landlord of a 61,000-acre farm. Although he serves as president of a tractor dealership with sales over \$30 million, this ‘farmer’ received \$38 million in farm subsidies over 5 years. Stories like these about corporate farmers who received millions of dollars in Federal agriculture payments undermine support for the real purpose of our farm program: to help family farmers.

What do I mean by family farmers? I am talking about people out there living in a rural community, trying to raise a family and trying to operate a family farm and trying to raise enough food to support themselves. They go to town and buy their supplies, keeping small town life not only viable, but also vibrant. I am talking about a network of food producers scattered across this country that represents, in my judgment, food security for our country.

And this goal of helping family farmers with a safety net in the form of farm program payments during tough times is something that has become much different over a long period of time. It is not the case that we are fighting over farm program payments for family farmers.

But regrettably, millions of dollars of farm payments are not going to small towns and family farms. They are going to big cities and corporate America. They are going to that millionaire farmer in Arkansas, to Ted Turner, and city dwellers who visit their farm twice a year. The biggest operations keep getting the bulk of the farm benefits while the small farmers are getting squeezed out of the rural areas. When this happens, the family farm operation can't compete with the larger enterprises because of the financial disadvantages.

My fear is that if we do not do something about this problem, the American people are going to push back on this issue and say, ‘This is not why we are paying taxes. We really support family farms. We believe family farms are important for America. But we don't believe we are paying taxes so you can transfer money to the tune of millions, even hundreds of millions, to those who need it least and ought not be getting farm payments.’

So I am co-sponsoring this legislation. This bill would impose modest

limits on the amount of farm payments that any farm operation can receive in one year. These limits would have virtually no impact on family farms and would strengthen our agriculture program by targeting the payments to these smaller operations.

Here are the limitations that my bill would impose: the bill would limit direct payments to producers to \$40,000. Limits on counter-cyclical payments would be \$60,000. The bill limits Marketing Loan Gains and Loan Deficiency Payments to \$175,000. The overall limit for a farm is \$275,000. The limits would save the Federal Government more than \$1 billion over 10 years.

In times of budget deficits, government expenditures need to be targeted to those who need it most. Fortune 500 companies aren't the intended targets of farm legislation, family farmers are. Limiting farm payments to those who provide the food security of this country ought to be the farm policy of this country and this legislation is a step in that direction.

By Mr. REED (for himself, Mr. DODD, Mr. KENNEDY, and Mrs. MURRAY):

S. 668. A bill to amend the Child Care and Development Block Grant Act of 1990 to provide incentive grants to improve the quality of child care; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. Mr. President, I rise today to introduce the Child Care Quality Incentive Act of 2003.

This legislation seeks to address low child care payment or reimbursement rates. Payment rates determine the level at which States will reimburse child care providers who care for those low-income children who receive a subsidy.

Low payment rates directly affect the kind of care children get and whether families can find quality child care in their communities. Low payment rates mean limited parental access to quality child care.

Child care providers are also affected when rates are set below the market rate. Low payment rates force child care providers serving low-income children to cut corners in ways that lower the quality of child care such as reducing staff or decreasing salaries and benefits, eliminating professional development opportunities, and forgoing books and other literacy materials. Providers who avoid this route may simply not accept low-income children with subsidies or may even go out of business.

These dilemmas can be avoided if we help states set payment rates that keep pace with the marketplace.

Currently, the Child Care and Development Block Grant, CCDBG, requires States to ensure that their rates are sufficient to ‘ensure equal access’ for eligible families to child care services comparable to those available to non-eligible families in the private market. CCDBG regulations require states to conduct market rate surveys every

other year, but there is no requirement for states to actually use the market rate surveys to set payment rates.

Unfortunately, more than half of the States do not make payment rates based on the 75th percentile, by which families could access care from 75 out of 100 local providers, of a current market survey.

The need for quality child care has never been greater, as our welfare reform policy directs more of our low-income families to find work and our educational policy demands more of our students and schools. Yet, States, due to severe budget crunches, are cutting back on rates and other quality initiatives and restricting eligibility for subsidies.

I am pleased to be joined by Senators DODD, KENNEDY, and MURRAY in once again introducing the Child Care Quality Incentive Act, which seeks to redouble our child care efforts and renew the child care partnership with the States by providing incentive funding to increase payment rates.

Our legislation establishes a new, mandatory pool of funding under the Child Care and Development Block Grant, CCDBG. This new funding, coupled with mandatory, current market rate surveys, will form the foundation for significant increases in state payment rates for the provision of quality child care.

We have received overwhelming support for this bill from the child care community, including endorsements from USA Child Care, Children's Defense Fund, Catholic Charities of USA, YMCA of USA, the National Child Care Association, and a host of organizations and agencies across the country.

Children are the hope of America, and they need the best of America. We cannot ask working families to choose between paying the rent, buying food, and being able to afford the quality care their children need. We've made a lot of progress in improving the health, safety, and well-being of children in this country. If we are serious about putting parents to work and protecting children, we must invest more in child care help for families.

This year, Congress is slated to reauthorize the Child Care and Development Block Grant. The time for action on rates is now. I urge my colleagues to join Senators DODD, KENNEDY, MURRAY, and me in this endeavor to improve the quality of child care by cosponsoring the Child Care Quality Incentive Act and working to include its provisions in the CCDBG reauthorization.

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

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

S. 668

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 "Child Care Quality Incentive Act of 2003".

SEC. 2. FINDINGS AND PURPOSES.

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

(1) Recent research on early brain development reveals that much of a child's growth is determined by early learning and nurturing care. Research also shows that quality early care and education leads to increased cognitive abilities, positive classroom learning behavior, increased likelihood of long-term school success, and greater likelihood of long-term economic and social self-sufficiency.

(2) Each day an estimated 13,000,000 children, including 6,000,000 infants and toddlers, spend some part of their day in child care. However, a study in 4 States found that only 1 in 7 child care centers provide care that promotes healthy development, while 1 in 8 child care centers provide care that threatens the safety and health of children.

(3) Full-day child care can cost \$4,000 to \$12,000 per year.

(4) Although Federal assistance is available for child care, funding is severely limited. Even with Federal subsidies, many families cannot afford child care. For families with young children and a monthly income under \$1,200, the cost of child care typically consumes 25 percent of their income.

(5) Payment (or reimbursement) rates, which determine the maximum the State will reimburse a child care provider for the care of a child who receives a subsidy, are too low to ensure that quality care is accessible to all families.

(6) Low payment rates directly affect the kind of care children get and whether families can find quality child care in their communities. In many instances, low payment rates force child care providers serving low-income children to cut corners in ways that impact the quality of care for the children, including reducing the number of staff, eliminating professional development opportunities, and cutting enriching educational activities and services.

(7) Children in low-quality child care are more likely to have delayed reading and language skills, and display more aggression toward other children and adults.

(8) Increased payment rates lead to higher quality child care as child care providers are able to attract and retain qualified staff, provide salary increases and professional training, maintain a safe and healthy environment, and purchase basic supplies, children's literature, and developmentally appropriate educational materials.

(b) PURPOSE.—The purpose of this Act is to improve the quality of, and access to, child care by increasing child care payment rates.

SEC. 3. PAYMENT RATES.

Section 658E(c)(4) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(c)(4)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (C);

(2) in subparagraph (A), by striking "to comparable child care services" and inserting "to child care services that are comparable (in terms of quality and types of services provided) to child care services"; and

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

“(B) PAYMENT RATES.—

“(i) SURVEYS.—In order to provide the certification described in subparagraph (A), the State shall conduct statistically valid and reliable market rate surveys (that reflect variations in the cost of child care services by locality), in accordance with such methodology standards as the Secretary shall issue. The State shall conduct the surveys not less often than at 2-year intervals, and use the results of such surveys to implement,

not later than 1 year after conducting each survey, payment rates described in subparagraph (A) that ensure equal access to comparable services as required by subparagraph (A).

“(ii) COST OF LIVING ADJUSTMENTS.—The State shall adjust the payment rates at intervals between such surveys to reflect increases in the cost of living, in such manner as the Secretary may specify.

“(iii) RATES FOR DIFFERENT AGES AND TYPES OF CARE.—The State shall ensure that the payment rates reflect variations in the cost of providing child care services for children of different ages and providing different types of care.

“(iv) PUBLIC DISSEMINATION.—The State shall, not later than 30 days after the completion of each survey described in clause (i), make the results of the survey widely available through public means, including posting the results on the Internet.”.

SEC. 4. INCENTIVE GRANTS TO IMPROVE THE QUALITY OF CHILD CARE.

(a) FUNDING.—Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended—

(1) by striking "There" and inserting the following:

“(a) AUTHORIZATION OF APPROPRIATIONS.—There”;

(2) in subsection (a), by inserting "(other than section 658H)" after "this subchapter"; and

(3) by adding at the end the following:

“(b) APPROPRIATION OF FUNDS FOR GRANTS TO IMPROVE THE QUALITY OF CHILD CARE.—Out of any funds in the Treasury that are not otherwise appropriated, there is authorized to be appropriated and there is appropriated \$500,000,000 for each of fiscal years 2004 through 2008, for the purpose of making grants under section 658H.”.

(b) USE OF BLOCK GRANT FUNDS.—Section 658E(c)(3) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(c)(3)) is amended—

(1) in subparagraph (B), by striking "under this subchapter" and inserting "under this subchapter (other than section 658B(b))"; and

(2) in subparagraph (D), by inserting "(other than section 658H)" after "under this subchapter”.

(c) ESTABLISHMENT OF PROGRAM.—Section 658G of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858e) is amended by inserting "(other than section 658H)" after "this subchapter”.

(d) GRANTS TO IMPROVE THE QUALITY OF CHILD CARE.—The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) is amended by inserting after section 658G the following:

“SEC. 658H. GRANTS TO IMPROVE THE QUALITY OF CHILD CARE.

“(a) AUTHORITY.—

“(1) IN GENERAL.—The Secretary shall use the amount appropriated under section 658B(b) for a fiscal year to make grants to eligible States, and Indian tribes and tribal organizations, in accordance with this section.

“(2) ANNUAL PAYMENTS.—The Secretary shall make an annual payment for such a grant to each eligible State, and for Indian tribes and tribal organizations, out of the corresponding payment or allotment made under subsections (a), (b), and (e) of section 6580 from the amount appropriated under section 658B(b).

“(b) ELIGIBLE STATES.—

“(1) IN GENERAL.—In this section, the term 'eligible State' means a State that—

“(A) has conducted a statistically valid survey of the market rates for child care services in the State within the 2 years preceding the date of the submission of an application under paragraph (2); and

“(B) submits an application in accordance with paragraph (2).

“(2) APPLICATION.—

“(A) IN GENERAL.—To be eligible to receive a grant under this section, a State shall submit an application to the Secretary at such time, in such manner, and accompanied by such information, in addition to the information required under subparagraph (B), as the Secretary may require.

“(B) INFORMATION REQUIRED.—Each application submitted for a grant under this section shall—

“(i) detail the methodology and results of the State market rates survey conducted pursuant to paragraph (1)(A);

“(ii) describe the State’s plan to increase payment rates from the initial baseline determined under clause (i);

“(iii) describe how the State will increase payment rates in accordance with the market survey results, for all types of child care providers who provide services for which assistance is made available under this subchapter;

“(iv) describe how payment rates will be set to reflect the variations in the cost of providing care for children of different ages and different types of care;

“(v) describe how the State will prioritize increasing payment rates for—

“(I) care of higher-than-average quality, such as care by accredited providers or care that includes the provision of comprehensive services;

“(II) care for children with disabilities and children served by child protective services; or

“(III) care for children in communities served by local educational agencies that have been identified for improvement under section 1116(c)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(c)(3));

“(vi) describe the State’s plan to assure that the State will make the payments on a timely basis and follow the usual and customary market practices with regard to payment for child absentee days; and

“(vii) describe the State’s plans for making the results of the survey widely available through public means.

“(3) CONTINUING ELIGIBILITY REQUIREMENT.—

“(A) SECOND AND SUBSEQUENT PAYMENTS.—A State shall be eligible to receive a second or subsequent annual payment under this section only if the Secretary determines that the State has made progress, through the activities assisted under this subchapter, in maintaining increased payment rates.

“(B) THIRD AND SUBSEQUENT PAYMENTS.—A State shall be eligible to receive a third or subsequent annual payment under this section only if the State has conducted, at least once every 2 years, an update of the survey described in paragraph (1)(A).

“(4) REQUIREMENT OF MATCHING FUNDS.—

“(A) IN GENERAL.—To be eligible to receive a grant under this section, the State shall agree to make available State contributions from State sources toward the costs of the activities to be carried out by the State pursuant to subsection (c) in an amount that is not less than 20 percent of such costs.

“(B) DETERMINATION OF STATE CONTRIBUTIONS.—Such State contributions shall be in cash. Amounts provided by the Federal Government may not be included in determining the amount of such State contributions.

“(c) USE OF FUNDS.—

“(1) PRIORITY USE.—An eligible State that receives a grant under this section shall use the funds received to significantly increase the payment rate for the provision of child care assistance in accordance with this subchapter up to the 100th percentile of the

market rate determined under the market rate survey described in subsection (b)(1)(A).

“(2) ADDITIONAL USES.—An eligible State that demonstrates to the Secretary that the State has achieved a payment rate of the 100th percentile of the market rate determined under the market rate survey described in subsection (b)(1)(A) may use funds received under a grant made under this section for any other activity that the State demonstrates to the Secretary will enhance the quality of child care services provided in the State.

“(3) SUPPLEMENT NOT SUPPLANT.—Amounts paid to a State under this section shall be used to supplement and not supplant other Federal, State, or local funds provided to the State under this subchapter or any other provision of law.

“(d) EVALUATIONS AND REPORTS.—

“(1) STATE EVALUATIONS.—Each eligible State shall submit to the Secretary, at such time and in such form and manner as the Secretary may require, information regarding the State’s efforts to increase payment rates and the impact increased payment rates are having on the quality of child care in the State and the access of parents to high-quality child care in the State.

“(2) REPORTS TO CONGRESS.—The Secretary shall submit biennial reports to Congress on the information described in paragraph (1). Such reports shall include data from the applications submitted under subsection (b)(2) as a baseline for determining the progress of each eligible State in maintaining increased payment rates.

“(e) INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—The Secretary shall determine the manner in which and the extent to which the provisions of this section apply to Indian tribes and tribal organizations.

“(f) PAYMENT RATE.—In this section, the term ‘payment rate’ means the rate of reimbursement to providers for subsidized child care.”

(e) PAYMENTS.—Section 658J(a) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858h(a)) is amended by inserting “from funds appropriated under section 658B(a)” after “section 6580”.

(f) ALLOTMENT.—Section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m) is amended—

(1) in subsection (b)(1), in the matter preceding subparagraph (A)—

(A) by striking “section 658B” and inserting “section 658B(a)”; and

(B) by inserting “and from the amounts appropriated under section 658B(b) for each fiscal year remaining after reservations under subsection (a),” before “the Secretary shall allot”; and

(2) in subsection (e)—

(A) in paragraph (1), by striking “the allotment under subsection (b)” and inserting “an allotment made under subsection (b)”; and

(B) in paragraph (3), by inserting “corresponding” before “allotment”.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 24—CONCERNING A JOINT MEETING OF CONGRESS AND THE CULMINATING YEAR OF THE COMMEMORATION OF THE 50TH ANNIVERSARY OF THE KOREAN WAR

Mr. CAMPBELL submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

Whereas, 50 years ago, nearly 1,800,000 Americans answered the call to defend freedom in South Korea and fought the common foe of communism with 21 allied countries under the banner of the United Nations;

Whereas the United States suffered casualties of 36,577 killed, 103,284 wounded, and 8,166 still missing in action during the Korean War in some of the most horrific conditions in the history of warfare;

Whereas 2003 marks the final year of the United States’ 50th Anniversary of the Korean War Commemoration;

Whereas our Korean War veterans did not receive the proper welcome home, thanks, or recognition for selfless service and sacrifice that had been given to veterans of previous wars;

Whereas the bravery and sacrifices of our Korean War veterans and their families and next of kin should be properly honored and recognized, and the American people wish to join in thanking and honoring Korean War veterans and their families;

Whereas it is important to include the history of the Korean War in the curricula of our schools so that future generations will learn about and appreciate the sacrifices of our Korean War heroes; and

Whereas the final year of the 50th Anniversary of the Korean War Commemoration should be recognized by a national effort of programs and activities to officially thank, honor, and welcome home our Korean War veterans, and to officially thank and honor their families and next of kin: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) shall assemble in the Chamber of the House of Representatives on [] for the purpose of declaring to the Nation and the world that the American people will never forget our veterans or those who served our Nation on the home front during the Korean War;

(2) designates 2003 as the Year of the Korean War Veteran;

(3) requests the President to issue a proclamation calling on the people of the United States to observe 2003 with appropriate ceremonies and activities to thank, honor, and welcome home our Korean War veterans; and

(4) urges the chief executives of the States, and the chief executives of the political subdivisions of the States, to issue a proclamation calling upon the citizens of such State or political subdivision to “Pause to Remember” our Korean War veterans and their families and next of kin with appropriate ceremonies and activities.

Mr. CAMPBELL. Mr. President, today I rise to call attention to an important milestone in our national history. Fifty-three years ago, armed forces from communist North Korea stormed across the 38th Parallel and brutally invaded South Korea. For the first time in history, a coalition of 21 nations’ forces—most of them Americans—rallied under the aegis of the United Nations to join the South Korean Forces in staving off the communist challenge.

In the end, these heroes, fighting courageously under some of the most horrific conditions in the history of warfare, prevailed against the invading forces.

An Armistice ending the hostilities in Korea and forever halting the spread of international communism was signed fifty years ago on 27 July 1953.

During the Korean War approximately 1.8 million Americans fought in