

appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes; as follows:

On page 67, after line 23, add the following:  
**SEC. 7. SENSE OF THE SENATE CONCERNING APPROPRIATE ACTIONS TO BE TAKEN TO ALLEVIATE THE ECONOMIC EFFECT OF LOW COMMODITY PRICES.**

It is the sense of the Senate that—

(1) Congress should pass and the President should sign S. 1269, which would reauthorize fast-track trading authority for the President;

(2) Congress should pass and the President should sign S. 2078, the Farm and Ranch Risk Management Act, which would allow farmers and ranchers to better prepare for fluctuations in the agricultural economy;

(3) the House of Representatives should follow the Senate and provide full funding for the International Monetary Fund;

(4) Congress should pass and the President should sign sanctions reform legislation so that the agricultural economy of the United States is not harmed by sanctions on foreign trade;

(5) Congress should uphold the presidential waiver of the Jackson-Vanik amendment to the 1974 Trade Act providing normal trade relations status for China and continue to pursue normal trade relations with China;

(6) the House and Senate should continue to pursue a package of capital gains and estate tax reforms;

(7) the President should pursue stronger oversight on all international trade agreements affecting agriculture and commerce dispute settlement procedures when countries are found to be violating such trade agreements;

(8) the President should sign legislation providing full deductibility of health care insurance for self-employed individuals; and

(9) the Congress and the administration should pursue efforts to reduce regulations on farmers. The President should use the administrative tools available to him to use Commodity Credit Corporation and Unused Export Enhancement Program funds for humanitarian assistance.

CONRAD (AND OTHERS)  
AMENDMENT NO. 3173

Mr. CONRAD (for himself, Mr. DORGAN, Mr. CLELAND, Mr. CRAIG, Mr. DASCHLE, Mr. HARKIN, Mr. BAUCUS, Mr. HOLLINGS, Mr. WELLSTONE, Mr. BURNS, Mr. JOHNSON, and Mr. KERREY) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 29, after line 21, add the following:  
RESERVE INVENTORIES

For the reserve established under section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a), \$500,000,000: *Provided*, That the entire amount shall be available only to the extent that the President submits to Congress an official budget request for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement for the purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.): *Provided further*, That the entire amount of funds necessary to carry out this paragraph is designated by Congress as an emergency requirement under section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)).

On page 67, after line 23, add the following:  
**SEC. 7. RESERVE INVENTORIES.**

Section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a) is amended—

(1) in the first sentence of subsection (a), by inserting “of agricultural producers” after “distress”;

(2) in subsection (c), by inserting “the Secretary or” after “President or”; and

(3) in subsection (h)—  
(A) by striking “(h) There is hereby” and inserting the following:

“(h) AUTHORIZATION OF APPROPRIATIONS.—  
“(1) IN GENERAL.—There are”; and  
“(2) USE OF FUNDS FOR CASH PAYMENTS.—

The Secretary may use funds made available under this section to make, in a manner consistent with this section, cash payments that don't go for crop disasters, but for income loss to carry out the purposes of this section.”.

UNITED STATES PATENT AND  
TRADEMARK ORGANIZATION ACT  
OF 1998

LEAHY AMENDMENT NO. 3174

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to the bill (S. 507), to establish the United States Patent and Trademark Organization as a Government corporation, to amend the provisions of title 35, United States code, relating to procedures for patent applications, commercial use of patents, reexamination reform, and for other purposes; as follows:

On page 106, line 1, strike all through line 6 on page 176 and insert the following:

**TITLE I—UNITED STATES PATENT AND  
TRADEMARK ORGANIZATION**

**SEC. 101. SHORT TITLE.**

This title may be cited as the “United States Patent and Trademark Organization Act of 1998”.

**Subtitle A—Establishment of the United  
States Patent and Trademark Organization**

**SEC. 111. ESTABLISHMENT OF THE UNITED  
STATES PATENT AND TRADEMARK  
ORGANIZATION AS A GOVERNMENT  
CORPORATION.**

(a) ESTABLISHMENT.—The United States Patent and Trademark Organization is established as a wholly owned Government corporation subject to chapter 91 of title 31, separate from any department, and shall be an agency of the United States under the policy direction of the Secretary of Commerce.

(b) OFFICES.—The United States Patent and Trademark Organization shall maintain its principal office in the District of Columbia, or the metropolitan area thereof, for the service of process and papers and for the purpose of carrying out its powers, duties, and obligations under this title. The United States Patent and Trademark Organization shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which its principal office is located except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Organization may establish satellite offices in such places within the United States as it considers necessary and appropriate in the conduct of its business.

(c) REFERENCE.—For purposes of this title, a reference to the “Organization” shall be a reference to the United States Patent and

Trademark Organization, unless the context provides otherwise.

**SEC. 112. POWERS AND DUTIES.**

(a) IN GENERAL.—The United States Patent and Trademark Organization, under the policy direction of the Secretary of Commerce, shall be responsible for—

(1) the examination of patents and the trademark applications;

(2) in support of the Under Secretary for Intellectual Property Policy, assisting with studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law, the administration of the Organization, or any other function vested in the Organization by law, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

(3)(A) in support of the Under Secretary for Intellectual Property Policy, assisting with studies and programs cooperatively with foreign patent and trademark offices and international organizations, in connection with the granting and issuing of patents and the registration of trademarks; and

(B) with the concurrence of the Secretary of State, authorizing the transfer of not to exceed \$100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and related matters; and

(4) disseminating to the public information with respect to patents and trademarks.

(b) SPECIAL PAYMENTS.—The special payments under subsection (a)(3)(B) may be in addition to any other payments or contributions to international organizations and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

(c) SPECIFIC POWERS.—The Organization—

(1) shall have perpetual succession;

(2) may indemnify the Director of the United States Patent and Trademark Organization, the Commissioner of Patents, the Commissioner of Trademarks, and other officers, attorneys, agents, and employees (including members of the Management Advisory Boards of the Patent Office and the Trademark Office) of the Organization for liabilities and expenses incurred within the scope of their employment;

(3) may adopt, amend, and repeal bylaws, rules, regulations, and determinations, which—

(A) shall govern the manner in which its business will be conducted and the powers granted to it by law will be exercised; and

(B) shall be made after notice and opportunity for full participation by interested public and private parties;

(4)(A) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions; and

(B) sell, lease, grant, and dispose of such property as it considers necessary to effectuate the purposes of this Act;

(5)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Public Buildings Act (40 U.S.C. 601 et seq.), and the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

(B) may enter into and perform such purchases and contracts for printing services,

including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Organization, without regard to sections 501 through 517 and 1101 through 1123 of title 44, United States Code;

(6) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Organization;

(7) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to other agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

(8) may use, with the consent of the United States and the agency, government, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign government or international organization to perform functions on its behalf;

(9) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Organization, including for research and development and capital investment, subject to the provisions of section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note);

(10) shall have the priority of the United States with respect to the payment of debts from bankrupt, insolvent, and decedents' estates;

(11) may accept monetary gifts or donations of services, or of real, personal, intellectual, or mixed property, in order to enhance libraries and museums operated by the Organization, support the educational programs of the Organization, or otherwise carry out the functions of the Organization;

(12) may execute, in accordance with its bylaws, rules, and regulations, all instruments necessary and appropriate in the exercise of any of its powers; and

(13) may provide for liability insurance and insurance against any loss in connection with its property, other assets, or operations either by contract or by self-insurance.

(d) RESTRICTIONS ON GIFTS.—Any acceptance of a gift or donation under subsection (c)(14) shall be subject to section 201 of title 18, United States Code. The Director shall establish regulations for the acceptance of such gifts and donations including regulations prohibiting gifts or donations to the Organization by foreign entities.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Organization.

#### SEC. 113. ORGANIZATION AND MANAGEMENT.

(a) OFFICES.—The United States Patent and Trademark Organization shall consist of—

- (1) the Office of the Director;
- (2) the United States Patent Office; and
- (3) the United States Trademark Office.

(b) DIRECTOR.—

(1) IN GENERAL.—The management of the United States Patent and Trademark Organization shall be vested in a Director of the United States Patent and Trademark Orga-

nization (hereafter in this title referred to as the "Director"), unless the context provides otherwise), who shall be a citizen of the United States and who shall be appointed by the Secretary of Commerce to a 5-year term and compensated without regard to chapters 33, 51, and 53 of title 5, United States Code. The Secretary shall make the appointment on the basis of demonstrated ability in management and professional experience regarding patents or trademarks, and without regard to political affiliation or activity. The Secretary may reappoint the Director to subsequent terms so long as performance, as set forth in the annual performance agreement, is satisfactory or better.

(2) DUTIES.—(A) The Director shall—

(i) be responsible for the management and direction of the Organization and shall perform this duty in a fair, impartial, and equitable manner; and

(ii) strive to meet the goals set forth in the performance agreement described under paragraph (4); and

(iii) provide such advice to the Under Secretary for Intellectual Property Policy as the Director deems appropriate to assist the Under Secretary in carrying out the Under Secretary's responsibilities.

(B) The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances.

(C) The Director may perform such personnel, procurement, and other functions, with respect to the United States Patent Office and the United States Trademark Office, where a centralized administration of such functions would improve the efficiency of the Offices, by continuous unanimous agreement of the Director, the Commissioner of Patents, and the Commissioner of Trademarks. The agreement shall be in writing and shall indicate the allocation of costs among the Office of the Director, the United States Patent Office, and the United States Trademark Office.

(D) Except as otherwise provided in this title, the Director shall ensure that—

(i) the United States Patent Office and the United States Trademark Office, respectively, shall—

(I) prepare all appropriation requests under section 1108 of title 31, United States Code, for each office for submission by the Director;

(II) adjust fees to provide sufficient revenues to cover the expenses of such office; and

(III) expend funds derived from such fees for only the functions of such office; and

(ii) each such office is not involved in the management of any other office.

(E) The Director shall submit to Congress annually such information as is required under chapter 91 of title 31, United States Code, including—

(i) the total monies received and expended by the Organization;

(ii) the purpose for which the monies were spent;

(iii) the amount of any surplus revenues retained by the Organization;

(iv) the quality and quantity of the work of the Organization; and

(v) other information relating to the Organization.

(3) OATH.—The Director shall, before taking office, take an oath to discharge faithfully the duties of the Organization.

(4) COMPENSATION.—The Director shall be paid an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code, including any applicable locality based comparability payment that may be authorized under section 5304(h)(2) of such title. In addition, the Direc-

tor may receive a bonus in an amount up to, but not in excess of, 50 percent of such annual rate of basic pay, based on the Secretary of Commerce's evaluation of the Director's performance in relation to the performance goals set forth in an annual performance agreement. Payment of a bonus under this paragraph may be made to the Director to the extent that such payment does not cause the Director's total aggregate compensation in a calendar year to equal or exceed the amount of the President's salary under section 102 of title 3, United States Code.

(5) REMOVAL.—The Director shall be removable by the Secretary of Commerce for misconduct or failure to meet performance goals set forth in the annual performance agreement.

(6) DESIGNEE OF DIRECTOR.—The Director shall designate an officer of the Organization who shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director.

(c) OFFICERS AND EMPLOYEES OF THE ORGANIZATION.—

(1) COMMISSIONERS OF PATENTS AND TRADEMARKS.—The Secretary of Commerce shall appoint a Commissioner of Patents and a Commissioner of Trademarks under section 3 of title 35, United States Code and section 53 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946), respectively, as amended by this Act.

(2) OTHER OFFICERS AND EMPLOYEES.—The Director shall—

(A) appoint officers, employees (including attorneys), and agents of the Organization, who shall be citizens of the United States, as the Director considers necessary to carry out its functions;

(B) fix the compensation of such officers and employees, except as provided in subsection (e); and

(C) define the authority and duties of such officers and employees and delegate to them such of the powers vested in the Organization as the Director may determine.

(3) PERSONNEL LIMITATIONS.—The Organization shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Organization shall be taken into account for purposes of applying any such limitation.

(d) LIMITS ON COMPENSATION.—Except as otherwise provided by law, the annual rate of basic pay of an officer or employee of the Organization may not be fixed at a rate that exceeds, and total compensation payable to any such officer or employee for any year may not exceed, the annual rate of basic pay in effect for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Director shall prescribe such regulations as may be necessary to carry out this subsection.

(e) INAPPLICABILITY OF TITLE 5, UNITED STATES CODE, GENERALLY.—Except as otherwise provided in this section, officers and employees of the Organization shall not be subject to the provisions of title 5, United States Code, relating to Federal employees.

(f) CONTINUED APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 5, UNITED STATES CODE.—

(1) IN GENERAL.—The following provisions of title 5, United States Code, shall apply to the Organization and its officers and employees:

(A) Section 3110 (relating to employment of relatives; restrictions).

(B) Subchapter II of chapter 55 (relating to withholding pay).

(C) Subchapters II and III of chapter 73 (relating to employment limitations and political activities, respectively).

(D) Chapter 71 (relating to labor-management relations), subject to paragraph (2) and subsection (g).

(E) Section 3303 (relating to political recommendations).

(F) Subchapter II of chapter 61 (relating to flexible and compressed work schedules).

(G) Section 2302(b)(8) (relating to whistleblower protection) and whistleblower related provisions of chapter 12 (covering the role of the Office of Special Counsel).

(2) COMPENSATION SUBJECT TO COLLECTIVE BARGAINING.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of applying chapter 71 of title 5, United States Code, pursuant to paragraph (1)(D), basic pay and other forms of compensation shall be considered to be among the matters as to which the duty to bargain in good faith extends under such chapter.

(B) EXCEPTIONS.—The duty to bargain in good faith shall not, by reason of subparagraph (A), be considered to extend to any benefit under title 5, United States Code, which is afforded by paragraph (1), (2), (3), or (4) of subsection (g).

(C) LIMITATIONS APPLY.—Nothing in this subsection shall be considered to allow any limitation under subsection (d) to be exceeded.

(g) PROVISIONS OF TITLE 5, UNITED STATES CODE, THAT CONTINUE TO APPLY, SUBJECT TO CERTAIN REQUIREMENTS.—

(1) RETIREMENT.—(A) The provisions of subchapter III of chapter 83 and chapter 84 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).

(B)(i) The amount required of the Organization under the second sentence of section 8334(a)(1) of title 5, United States Code, with respect to any particular individual shall, instead of the amount which would otherwise apply, be equal to the normal-cost percentage (determined with respect to officers and employees of the Organization using dynamic assumptions, as defined by section 8401(9) of such title) of the individual's basic pay, minus the amount required to be withheld from such pay under such section 8334(a)(1).

(ii) The amount required of the Organization under section 8334(k)(1)(B) of title 5, United States Code, with respect to any particular individual shall be equal to an amount computed in a manner similar to that specified in clause (i), as determined in accordance with clause (iii).

(iii) Any regulations necessary to carry out this subparagraph shall be prescribed by the Office of Personnel Management.

(C) The United States Patent and Trademark Organization may supplement the benefits provided under the preceding provisions of this paragraph.

(2) HEALTH BENEFITS.—(A) The provisions of chapter 89 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).

(B)(i) With respect to any individual who becomes an officer or employee of the Organization pursuant to subsection (i), the eligibility of such individual to participate in such program as an annuitant (or of any other person to participate in such program as an annuitant based on the death of such individual) shall be determined disregarding the requirements of section 8905(b) of title 5, United States Code. The preceding sentence shall not apply if the individual ceases to be an officer or employee of the Organization for any period of time after becoming an officer or employee of the Organization pursuant to subsection (i) and before separation.

(ii) The Government contributions authorized by section 8906 of title 5, United States

Code, for health benefits for anyone participating in the health benefits program pursuant to this subparagraph shall be made by the Organization in the same manner as provided under section 8906(g)(2) of such title with respect to the United States Postal Service for individuals associated therewith.

(iii) For purposes of this subparagraph, the term "annuitant" has the meaning given such term by section 8901(3) of title 5, United States Code.

(C) The Organization may supplement the benefits provided under the preceding provisions of this paragraph.

(3) LIFE INSURANCE.—(A) The provisions of chapter 87 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).

(B)(i) Eligibility for life insurance coverage after retirement or while in receipt of compensation under subchapter I of chapter 81 of title 5, United States Code, shall be determined, in the case of any individual who becomes an officer or employee of the Organization pursuant to subsection (i), without regard to the requirements of section 8706(b)(1) or (2) of such title, but subject to the condition specified in the last sentence of paragraph (2)(B)(i) of this subsection.

(ii) Government contributions under section 8708(d) of such title on behalf of any such individual shall be made by the Organization in the same manner as provided under paragraph (3) thereof with respect to the United States Postal Service for individuals associated therewith.

(C) The Organization may supplement the benefits provided under the preceding provisions of this paragraph.

(4) EMPLOYEES' COMPENSATION FUND.—(A) Officers and employees of the Organization shall not become ineligible to participate in the program under chapter 81 of title 5, United States Code, relating to compensation for work injuries, by reason of subsection (e).

(B) The Organization shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the effective date of this title in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(h) LABOR-MANAGEMENT RELATIONS.—

(1) LABOR RELATIONS AND EMPLOYEE RELATIONS PROGRAMS.—The Organization shall develop hiring practices, labor relations and employee relations programs with the objective of improving productivity and efficiency, incorporating the following principles:

(A) Such programs shall be consistent with the merit principles in section 2301(b) of title 5, United States Code.

(B) Such programs shall provide veterans preference protections equivalent to those established by sections 2108, 3308 through 3318, 3320, 3502, and 3504 of title 5, United States Code.

(C)(i) The right to work shall not be subject to undue restraint or coercion. The right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization.

(ii) No person shall be required, as a condition of employment or continuation of employment—

(I) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;

(II) to become or remain a member of a labor organization;

(III) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;

(IV) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or

(V) to be recommended, approved, referred, or cleared by or through a labor organization.

(ii) This subparagraph shall not apply to a person described in section 7103(a)(2)(v) of title 5, United States Code, or a "supervisor", "management official", or "confidential employee" as those terms are defined in 7103(a)(10), (11), and (13) of such title.

(iv) Any labor organization recognized by the Organization as the exclusive representative of a unit of employees of the Organization shall represent the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(2) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Organization shall adopt all labor agreements which are in effect, as of the day before the effective date of this title, with respect to such Organization (as then in effect).

(i) CARRYOVER OF PERSONNEL.—

(1) FROM PTO.—Effective as of the effective date of this title, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers and employees of the Organization, without a break in service.

(2) OTHER PERSONNEL.—(A) Any individual who, on the day before the effective date of this title, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Organization if—

(i) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;

(ii) such individual serves in a position that performed work in support of the Patent and Trademark Office during at least half of the incumbent's work time, as determined by the Secretary of Commerce; or

(iii) such transfer would be in the interest of the Organization, as determined by the Secretary of Commerce in consultation with the Director.

(B) Any transfer under this paragraph shall be effective as of the same effective date as referred to in paragraph (1), and shall be made without a break in service.

(3) ACCUMULATED LEAVE.—The amount of sick and annual leave and compensatory time accumulated under title 5, United States Code, before the effective date described in paragraph (1), by any individual who becomes an officer or employee of the Organization under this subsection, are obligations of the Organization.

(4) TERMINATION RIGHTS.—Any employee referred to in paragraph (1) or (2) of this subsection whose employment with the Organization is terminated during the 1-year period beginning on the effective date of this title shall be entitled to rights and benefits, to be afforded by the Organization, similar to those such employee would have had under Federal law if termination had occurred immediately before such date. An employee who would have been entitled to appeal any such termination to the Merit Systems Protection Board, if such termination had occurred immediately before such effective date, may appeal any such termination occurring within such 1-year period to the Board under such procedures as it may prescribe.

(5) TRANSITION PROVISIONS.—(A)(i) On or after the effective date of this title, the President shall appoint a Director of the United States Patent and Trademark Organization who shall serve until the earlier of—

(I) the date on which a Director qualifies under subsection (b); or

(II) the date occurring 1 year after the effective date of this title.

(ii) The President shall not make more than 1 appointment under this subparagraph.

(B) The individual serving as the Assistant Commissioner of Patents on the day before the effective date of this title shall serve as the Commissioner of Patents until the date on which a Commissioner of Patents is appointed under section 3 of title 35, United States Code, as amended by this Act.

(C) The individual serving as the Assistant Commissioner of Trademarks on the day before the effective date of this title shall serve as the Commissioner of Trademarks until the date on which a Commissioner of Trademarks is appointed under section 53 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946), as amended by this Act.

(j) COMPETITIVE STATUS.—For purposes of appointment to a position in the competitive service for which an officer or employee of the Organization is qualified, such officer or employee shall not forfeit any competitive status, acquired by such officer or employee before the effective date of this title, by reason of becoming an officer or employee of the Organization under subsection (i).

(k) SAVINGS PROVISIONS.—Compensation, benefits, and other terms and conditions of employment in effect immediately before the effective date of this title, whether provided by statute or by rules and regulations of the former Patent and Trademark Office or the executive branch of the Government of the United States, shall continue to apply to officers and employees of the Organization, until changed in accordance with this section (whether by action of the Director or otherwise).

(l) REMOVAL OF QUASI-JUDICIAL EXAMINERS.—The Organization may remove a patent examiner or administrative patent judge, or a trademark examiner or an administrative trademark judge only for such cause as will promote the efficiency of the Organization.

#### SEC. 114. UNITED STATES PATENT OFFICE.

(a) ESTABLISHMENT OF THE PATENT OFFICE AS A SEPARATE ADMINISTRATIVE UNIT.—Section 1 of title 35, United States Code, is amended to read as follows:

##### “§1. Establishment

“(a) ESTABLISHMENT.—The United States Patent Office is established as a separate administrative unit of the United States Patent and Trademark Organization, where records, books, drawings, specifications, and other papers and things pertaining to patents shall be kept and preserved, except as otherwise provided by law.

“(b) REFERENCE.—For purposes of this title, the United States Patent Office shall also be referred to as the ‘Office’ and the ‘Patent Office’.”

(b) POWERS AND DUTIES.—Section 2 of title 35, United States Code, is amended to read as follows:

##### “§2. Powers and duties

“The United States Patent Office, under the policy direction of the Secretary of Commerce through the Director of the United States Patent and Trademark Organization, shall be responsible for—

(1) examination of patent applications;

(2) in support of the Secretary of Commerce and Under Secretary for Intellectual Property Policy, assisting with studies, programs, or exchanges of items or services re-

garding domestic and international patent law, the administration of the Office, or any other function vested in the Office by law, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

“(3) in support of the Secretary of Commerce and Under Secretary for Intellectual Property Policy, assisting with studies and programs cooperatively with foreign patent offices and international organizations, in connection with the granting and issuing of patents; and

“(4) disseminating to the public information with respect to patents.”

(c) ORGANIZATION AND MANAGEMENT.—Section 3 of title 35, United States Code, is amended to read as follows:

##### “§3. Officers and employees

“(a) COMMISSIONER.—

“(1) IN GENERAL.—The management of the United States Patent Office shall be vested in a Commissioner of Patents, who shall be a citizen of the United States and who shall be appointed by the Secretary of Commerce and shall serve at the pleasure of the Secretary of Commerce. The Commissioner of Patents shall be a person who, by reason of professional background and experience in patent law, is especially qualified to manage the Office.

“(2) DUTIES.—

“(A) IN GENERAL.—The Commissioner shall be responsible for all aspects of the management, administration, and operation of the Office, and shall perform these duties in a fair, impartial, and equitable manner.

“(B) ADVISING THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Commissioner of Patents shall advise the Director of the United States Patent and Trademark Organization of all activities of the Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents. The Commissioner of Patents shall advise the Director of the United States Patent and Trademark Organization on matters of patent law and shall recommend to the Director of the United States Patent and Trademark Organization changes in law or policy which may improve the ability of United States citizens to secure and enforce patent rights in the United States or in foreign countries.

“(C) REGULATIONS.—The Commissioner may establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office. The Director of the United States Patent and Trademark Organization shall determine whether such regulations are consistent with the policy direction of the Secretary of Commerce.

“(D) CONSULTATION WITH THE MANAGEMENT ADVISORY BOARD.—(i) The Commissioner shall consult with the Management Advisory Board established in section 5—

“(I) on a regular basis on matters relating to the operation of the Office; and

“(II) before submitting budgetary proposals to the Director of the United States Patent and Trademark Organization for submission to the Office of Management and Budget or changing or proposing to change patent user fees or patent regulations.

“(ii) The Director of the United States Patent and Trademark Organization shall determine whether such fees or regulations are consistent with the policy direction of the Secretary of Commerce.

“(3) OATH.—The Commissioner shall, before taking office, take an oath to discharge faithfully the duties of the Office.

“(4) COMPENSATION.—

“(A) IN GENERAL.—The Commissioner shall receive compensation at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5.

“(B) BONUS.—In addition to compensation under subparagraph (A), the Commissioner may, at the discretion of the Director of the United States Patent and Trademark Organization, receive as a bonus, an amount which would raise total compensation to the equivalent of the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5.

“(b) OFFICERS AND EMPLOYEES.—

“(1) DEPUTY COMMISSIONER OF PATENTS.—The Commissioner shall appoint a Deputy Commissioner of Patents who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner. In the event of a vacancy in the office of Commissioner, the Deputy Commissioner shall fill the office of Commissioner until a new Commissioner is appointed and takes office.

“(2) OMBUDSMAN.—The Commissioner shall appoint an ombudsman to advise the Commissioner on the concerns of independent inventors, nonprofit organizations, and small business concerns.

“(3) OTHER OFFICERS AND EMPLOYEES.—Other officers, attorneys, employees, and agents shall be selected and appointed by the Commissioner, and shall be vested with such powers and duties as the Commissioner may determine.”

(d) MANAGEMENT ADVISORY BOARD.—Chapter 1 of part I of title 35, United States Code, is amended by inserting after section 4 the following:

##### “§5. Patent Office Management Advisory Board

“(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

“(1) APPOINTMENT.—The United States Patent Office shall have a Management Advisory Board (hereafter in this title referred to as the ‘Advisory Board’) of 5 members, who shall be appointed by the President and shall serve at the pleasure of the President. Not more than 3 of the 5 members shall be members of the same political party. At least 1 member shall be an independent inventor, as defined in regulations issued by the Commissioner.

“(2) CHAIR.—The President shall designate a Chair of the Advisory Board, whose term as chair shall be for 3 years.

“(3) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be made within 3 months after the effective date of the United States Patent and Trademark Organization Act of 1998. Vacancies shall be filled in the manner in which the original appointment was made under this subsection within 3 months after they occur.

“(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Patent Office, and shall include individuals with substantial background and achievement in corporate finance and management.

“(c) MEETINGS.—The Advisory Board shall meet at the call of the Chair to consider an agenda set by the Chair.

“(d) DUTIES.—The Advisory Board shall—

(1) review the policies, goals, performance, budget, and user fees of the United States Patent Office, and advise the Commissioner on these matters;

(2) within 60 days after the end of each fiscal year—

(A) prepare an annual report on the matters referred to in paragraph (1);

“(B) transmit the report to the Director of the United States Patent and Trademark Organization, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and

“(C) publish the report in the Patent Office Official Gazette.

“(e) COMPENSATION.—Each member of the Advisory Board shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, and while away from such member's home or regular place of business such member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

“(f) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Patent Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.

“(g) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of the Advisory Board shall be special Government employees within the meaning of section 202 of title 18.”.

(e) CONFORMING AMENDMENTS.—Section 6 of title 35, United States Code, and the item relating to such section in the table of contents for chapter 1 of title 35, United States Code, are repealed.

(f) BOARD OF PATENT APPEALS AND INTERFERENCES.—Section 7 of title 35, United States Code, is amended to read as follows:

**“§ 7. Board of Patent Appeals and Interferences**

“(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the United States Patent Office a Board of Patent Appeals and Interferences. The Commissioner, the Deputy Commissioner, and the administrative patent judges shall constitute the Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability.

“(b) DUTIES.—

“(1) IN GENERAL.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, a patent owner, or a third-party requester in a reexamination proceeding—

“(A) review adverse decisions of examiners—

“(i) upon applications for patents; and

“(ii) in reexamination proceedings; and

“(B) determine priority and patentability of invention in interferences declared under section 135(a).

“(2) HEARINGS.—Each appeal and interference shall be heard by at least 3 members of the Board, who shall be designated by the Commissioner. Only the Board of Patent Appeals and Interferences may grant rehearings.”.

(g) ANNUAL REPORT OF COMMISSIONER.—Section 14 of title 35, United States Code, is amended to read as follows:

**“§ 14. Annual report to Congress**

“The Commissioner shall report to the Director of the United States Patent and Trademark Organization such information as the Director is required to submit to Congress annually under section 157(d) of this title, and under chapter 91 of title 31, including—

“(1) the total of the moneys received and expended by the Office;

“(2) the purposes for which the moneys were spent;

“(3) the quality and quantity of the work of the Office; and

“(4) other information relating to the Office.”.

(h) PRACTICE BEFORE PATENT OFFICE.—

(1) IN GENERAL.—Section 31 of title 35, United States Code, is amended to read as follows:

**“§ 31. Regulations for agents and attorneys**

“The Commissioner may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office. The regulations may require such persons, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.”.

(2) DESIGNATION OF ATTORNEY TO CONDUCT HEARING.—Section 32 of title 35, United States Code, is amended in the first sentence by striking “Patent and Trademark Office” and inserting “Patent Office” and by inserting before the last sentence the following: “The Commissioner shall have the discretion to designate any attorney who is an officer or employee of the United States Patent Office to conduct the hearing required by this section.”.

(i) FUNDING.—

(1) ADJUSTMENT OF FEES.—Section 41(f) of title 35, United States Code, is amended to read as follows:

“(f) The Commissioner, after consulting with the Patent Office Management Advisory Board pursuant to section 3(a)(2)(C) of this title and after notice and opportunity for full participation by interested public and private parties, may, by regulation, adjust the fees established in this section. The Director of the United States Patent and Trademark Organization shall determine whether such fees are consistent with the policy direction of the Secretary of Commerce.”.

(2) PATENT OFFICE FUNDING.—Section 42 of title 35, United States Code, is amended to read as follows:

**“§ 42. Patent Office funding**

“(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Patent Office shall be payable to the Office.

“(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Patent Office to carry out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Commissioner under this title shall be used only for the processing of patent applications and for other services and materials relating to patents, including the agreed upon share of any centralized function, as set forth in section 113(b)(2)(E) of the United States Patent and Trademark Organization Act of 1998.

“(c) CONTRIBUTION TO THE OFFICE OF THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Patent Office shall contribute 50 percent of the annual budget of the Office of the Director of the United States Patent and Trademark Organization.”.

**SEC. 115. UNITED STATES TRADEMARK OFFICE.**

(a) ESTABLISHMENT OF THE UNITED STATES TRADEMARK OFFICE AS A SEPARATE ADMINIS-

TRATIVE UNIT.—The Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946) is amended—

(1) by redesignating titles X and XI as titles XI and XII, respectively;

(2) by redesignating sections 45, 46, 47, 48, 49, 50, and 51 as sections 61, 71, 72, 73, 74, 75, and 76, respectively; and

(3) by inserting after title IX the following new title:

**“TITLE X—UNITED STATES TRADEMARK OFFICE**

**“SEC. 51. ESTABLISHMENT.**

“(a) ESTABLISHMENT.—The United States Trademark Office is established as a separate administrative unit of the United States Patent and Trademark Organization.

“(b) REFERENCE.—For purposes of this chapter, the United States Trademark Office shall also be referred to as the ‘Office’ and the ‘Trademark Office’.

**“SEC. 52. POWERS AND DUTIES.**

“The United States Trademark Office, under the policy direction of the Secretary of Commerce through the Director of the United States Patent and Trademark Organization, shall be responsible for—

“(1) the examination of trademark applications;

“(2) in support of the Secretary of Commerce and the Under Secretary for Intellectual Property Policy, assisting with studies, programs, or exchanges of items or services regarding domestic and international trademark law or the administration of the Office;

“(3) in support of the Secretary of Commerce and the Under Secretary for Intellectual Property Policy, assisting with studies and programs cooperatively with foreign trademark offices and international organizations, in connection with the registration of trademarks; and

“(4) disseminating to the public information with respect to trademarks.

**“SEC. 53. OFFICERS AND EMPLOYEES.**

“(a) COMMISSIONER.—

“(1) IN GENERAL.—The management of the United States Trademark Office shall be vested in a Commissioner of Trademarks, who shall be a citizen of the United States and who shall be appointed by the Secretary of Commerce and shall serve at the pleasure of the Secretary of Commerce. The Commissioner of Trademarks shall be a person who, by reason of professional background and experience in trademark law, is especially qualified to manage the Office.

“(2) DUTIES.—

“(A) IN GENERAL.—The Commissioner shall be responsible for all aspects of the management, administration, and operation of the Office, and shall perform these duties in a fair, impartial, and equitable manner.

“(B) ADVISING THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Commissioner of Trademarks shall advise the Director of the United States Patent and Trademark Organization of all activities of the Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for registering trademarks. The Commissioner of Trademarks shall advise the Director of the United States Patent and Trademark Organization on matters of trademark law and shall recommend to the Director of the United States Patent and Trademark Organization changes in law or policy which may improve the ability of United States citizens to secure and enforce trademark rights in the United States or in foreign countries.

“(C) REGULATIONS.—The Commissioner may establish regulations, not inconsistent with law, for the conduct of proceedings in

the Trademark Office. The Director of the United States Patent and Trademark Organization shall determine whether such regulations are consistent with the policy direction of the Secretary of Commerce.

“(D) CONSULTATION WITH THE MANAGEMENT ADVISORY BOARD.—(i) The Commissioner shall consult with the Trademark Office Management Advisory Board established under section 54—

“(I) on a regular basis on matters relating to the operation of the Office; and

“(II) before submitting budgetary proposals to the Director of the United States Patent and Trademark Organization for submission to the Office of Management and Budget or changing or proposing to change trademark user fees or trademark regulations.

“(ii) The Director of the United States Patent and Trademark Organization shall determine whether such fees or regulations are consistent with the policy direction of the Secretary of Commerce.

“(E) PUBLICATIONS.—(i) The Commissioner may print, or cause to be printed, the following:

“(I) Certificates of trademark registrations, including statements and drawings, together with copies of the same.

“(II) The Official Gazette of the United States Trademark Office.

“(III) Annual indexes of trademarks and registrants.

“(IV) Annual volumes of decisions in trademark cases.

“(V) Pamphlet copies of laws and rules relating to trademarks and circulars or other publications relating to the business of the Office.

“(ii) The Commissioner may exchange any of the publications specified under clause (i) for publications desirable for the use of the Trademark Office.

“(3) OATH.—The Commissioner shall, before taking office, take an oath to discharge faithfully the duties of the Office.

“(4) COMPENSATION.—

“(A) IN GENERAL.—The Commissioner shall receive compensation at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

“(B) BONUS.—In addition to compensation under subparagraph (A), the Commissioner may, at the discretion of the Director of the United States Patent and Trademark Organization, receive as a bonus, an amount which would raise total compensation to the equivalent of the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5.

“(b) OFFICERS AND EMPLOYEES.—The Commissioner shall appoint a Deputy Commissioner of Trademarks who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner. In the event of a vacancy in the office of Commissioner, the Deputy Commissioner shall fill the office of Commissioner until a new Commissioner is appointed and takes office. Other officers, attorneys, employees, and agents shall be selected and appointed by the Commissioner, and shall be vested with such powers and duties as the Commissioner may determine.

**“SEC. 54. TRADEMARK OFFICE MANAGEMENT ADVISORY BOARD.**

“(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

“(I) APPOINTMENT.—The United States Trademark Office shall have a Management Advisory Board (hereafter in this title referred to as the ‘Advisory Board’) of 5 members, who shall be appointed by the President and shall serve at the pleasure of the President. Not more than 3 of the 5 members shall be members of the same political party.

“(2) CHAIR.—The President shall designate a Chair of the Advisory Board, whose term as chair shall be for 3 years.

“(3) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be made within 3 months after the effective date of the United States Patent and Trademark Organization Act of 1998. Vacancies shall be filled in the manner in which the original appointment was made under this section within 3 months after they occur.

“(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Trademark Office, and shall include individuals with substantial background and achievement in corporate finance and management.

“(c) MEETINGS.—The Advisory Board shall meet at the call of the Chair to consider an agenda set by the Chair.

“(d) DUTIES.—The Advisory Board shall—

“(1) review the policies, goals, performance, budget, and user fees of the United States Trademark Office, and advise the Commissioner on these matters; and

“(2) within 60 days after the end of each fiscal year—

“(A) prepare an annual report on the matters referred to under paragraph (1);

“(B) transmit the report to the Director of the United States Patent and Trademark Organization, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and

“(C) publish the report in the Trademark Office Official Gazette.

“(e) COMPENSATION.—Each member of the Advisory Board shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code, and while away from such member’s home or regular place of business such member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

“(f) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Trademark Office, except for personnel or other privileged information.

“(g) APPLICABILITY OF CERTAIN ETHIC LAWS.—Members of the Advisory Board shall be special Government employees within the meaning of section 202 of title 18.

**“SEC. 55. ANNUAL REPORT TO CONGRESS.**

“The Commissioner shall report to the Director of the United States Patent and Trademark Organization such information as the Director is required to report to Congress annually under chapter 91 of title 31, including—

“(1) the moneys received and expended by the Office;

“(2) the purposes for which the moneys were spent;

“(3) the quality and quantity of the work of the Office; and

“(4) other information relating to the Office.

**“SEC. 56. TRADEMARK OFFICE FUNDING.**

“(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Trademark Office shall be payable to the Office.

“(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Trademark Office to carry out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not

otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Commissioner under this chapter shall be used only for the registration of trademarks and for other services and materials relating to trademarks, including the agreed upon share of any centralized function, as set forth in section 113(b)(2)(E) of the United States Patent and Trademark Organization Act of 1998.

“(c) CONTRIBUTION TO THE OFFICE OF THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Trademark Office shall contribute 50 percent of the annual budget of the Office of the Director of the United States Patent and Trademark Organization.”

(b) TRADEMARK TRIAL AND APPEAL BOARD.—Section 17 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946) (15 U.S.C. 1067) is amended to read as follows:

“SEC. 17. (a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

“(b) The Trademark Trial and Appeal Board shall include the Commissioner of Trademarks, the Deputy Commissioner of Trademarks, and administrative trademark judges competent in trademark law who are appointed by the Commissioner. Each case shall be heard by at least 3 members of the Board, the members hearing such case to be designated by the Commissioner.”

(c) DETERMINATION OF FEES.—Section 31(a) of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946) (15 U.S.C. 1113(a)) is amended by striking the second and third sentences and inserting the following: “Fees established under this subsection may be adjusted by the Commissioner, after consulting with the Trademark Office Management Advisory Board in accordance with section 53(a)(2)(C) of this Act and after notice and opportunity for full participation by interested public and private parties. The Director of the United States Patent and Trademark Organization shall determine whether such fees are consistent with the policy direction of the Secretary of Commerce.”

**SEC. 116. SUITS BY AND AGAINST THE ORGANIZATION.**

(a) ACTIONS UNDER UNITED STATES LAW.—Any civil action or proceeding to which the United States Patent and Trademark Organization is a party is deemed to arise under the laws of the United States. The Federal courts shall have exclusive jurisdiction over all civil actions by or against the Organization.

(b) REPRESENTATION BY THE DEPARTMENT OF JUSTICE.—The United States Patent and Trademark Organization shall be deemed an agency of the United States for purposes of section 516 of title 28, United States Code.

(c) PROHIBITION ON ATTACHMENT, LIENS, OR SIMILAR PROCESS.—No attachment, garnishment, lien, or similar process, intermediate or final, in law or equity, may be issued against property of the Organization.

**SEC. 117. FUNDING.**

(a) IN GENERAL.—The activities of the United States Patent and Trademark Organization and each office of the Organization shall be funded entirely through fees payable to the United States Patent Office (under

section 42 of title 35, United States Code) and the United States Trademark Office (under section 56 of the Act of July 5, 1946 (commonly known as the Trademark Act of 1946)), and surcharges appropriated by Congress, to the extent provided in appropriations Acts and subject to the provisions of subsection (b).

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The United States Patent and Trademark Organization is authorized to issue from time to time for purchase by the Secretary of the Treasury its debentures, bonds, notes, and other evidences of indebtedness (hereafter in this subsection referred to as "obligations") to assist in financing the activities of the United States Patent Office and the United States Trademark Office. Borrowing under this section shall be subject to prior approval in appropriations Acts. Such borrowing shall not exceed amounts approved in appropriations Acts.

(2) BORROWING AUTHORITY.—Any borrowing under this subsection shall be repaid only from fees paid to the Office for which such obligations were issued and surcharges appropriated by Congress. Such obligations shall be redeemable at the option of the United States Patent and Trademark Organization before maturity in the manner stipulated in such obligations and shall have such maturity as is determined by the United States Patent and Trademark Organization with the approval of the Secretary of the Treasury. Each such obligation issued to the Treasury shall bear interest at a rate not less than the current yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation as determined by the Secretary of the Treasury.

(3) PURCHASE OF OBLIGATIONS.—The Secretary of the Treasury shall purchase any obligations of the United States Patent and Trademark Organization issued under this subsection and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under that chapter are extended to include such purpose.

(4) TREATMENT.—Payment under this subsection of the purchase price of such obligations of the United States Patent and Trademark Organization shall be treated as public debt transactions of the United States.

#### SEC. 118. TRANSFERS.

(a) TRANSFER OF FUNCTIONS.—Except as relates to intellectual property policy matters as set out in section 151 of this title, there are transferred to, and vested in, the United States Patent and Trademark Organization all functions, powers, and duties vested by law in the Secretary of Commerce or the Department of Commerce or in the officers or components in the Department of Commerce with respect to the authority to examine patent and trademark applications, and in the Patent and Trademark Office, as in effect on the day before the effective date of this title, and in the officers and components of such Office. Except as otherwise provided in this Act, on the effective date of this Act, there are transferred to, and vested in, the Under Secretary of Commerce for Intellectual Property Policy all functions, powers and duties with respect to the authority to grant and issue patents, to register trademarks and to provide advice on patent and trademark policy vested by law in the Patent and Trademark Office, and in the officers and components of such Office.

(b) TRANSFER OF FUNDS AND PROPERTY.—The Secretary of Commerce shall transfer to

the United States Patent and Trademark Organization, on the effective date of this title, so much of the assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of Commerce, including funds set aside for accounts receivable which are related to functions, powers, and duties which are vested in the United States Patent and Trademark Office by this title.

#### SEC. 119. USE OF ORGANIZATION NAME.

The use of the terms "United States Patent and Trademark Organization", "Patent and Trademark Office", "United States Patent Office", "Patent Office", "United States Trademark Office", "Trademark Office", or any combination of such terms, as the name or part thereof under which an individual or entity does business, is prohibited. A violation of this section may be enjoined by any Federal court at the suit of the Organization. In any such suit, the Organization shall be entitled to statutory damages of \$1,000 for each day during which such violation continues or is repeated following notice by the Organization and, in addition, may recover actual damages flowing from such violations.

#### Subtitle B—Effective Date; Technical Amendments

##### SEC. 131. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 4 months after the date of the enactment of this Act.

##### SEC. 132. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TITLE 35.—

(1) TABLE OF PARTS.—The item relating to part I in the table of parts for title 35, United States Code, is amended to read as follows:

"I. United States Patent Office ..... 1."

(2) HEADING.—The heading for part I of title 35, United States Code, is amended to read as follows:

#### "PART I—UNITED STATES PATENT OFFICE".

(3) TABLE OF CHAPTERS.—The table of chapters for part I of title 35, United States Code, is amended by amending the item relating to chapter 1 to read as follows:

"1. Establishment, Officers and Employees, Functions ..... 1".

(4) TABLE OF SECTIONS.—The table of sections for chapter 1 of title 35, United States Code, is amended to read as follows:

#### "CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

"Sec.

"1. Establishment.

"2. Powers and duties.

"3. Officers and employees.

"4. Restrictions on officers and employees as to interest in patents.

"5. Patent Office Management Advisory Board.

"6. Duties of Commissioner.

"7. Board of Patent Appeals and Interferences.

"8. Library.

"9. Classification of patents.

"10. Certified copies of records.

"11. Publications.

"12. Exchange of copies of patents with foreign countries.

"13. Copies of patents for public libraries.

"14. Annual report to Congress."

(5) COMMISSIONER OF PATENTS AND TRADEMARKS.—(A) Section 41(h)(1) of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Commissioner".

(B) Section 155 of title 35, United States Code, is amended by striking "Commissioner

of Patents and Trademarks" and inserting "Commissioner".

(C) Section 155A(c) of title 35, United States Code, is amended by striking "Commissioner of Patents" and inserting "Commissioner".

(6) PATENT AND TRADEMARK OFFICE.—The provisions of title 35, United States Code, are amended by striking "Patent and Trademark Office" each place it appears and inserting "Patent Office".

(7) SECRETARY OF COMMERCE.—Section 157(d) of title 35, United States Code, is amended by striking "Secretary of Commerce" and inserting "Director of the United States Patent and Trademark Organization".

(b) AMENDMENTS TO THE TRADEMARK ACT OF 1946.—

(1) REFERENCES.—All amendments in this subsection refer to the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946).

(2) AMENDMENTS RELATING TO COMMISSIONER.—Section 61 (as redesignated by section 115(a)(2) of this Act) is amended by striking the undesignated paragraph relating to the definition of the term "Commissioner" and inserting the following:

"The term 'Commissioner' means the Commissioner of Trademarks."

(3) AMENDMENTS RELATING TO PATENT AND TRADEMARK OFFICE.—(A) Section 1(a)(1) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(B) Section 1(a)(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(C) Section 1(b)(1) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(D) Section 1(b)(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(E) Section 1(d)(1) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(F) Section 1(e) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(G) Section 2(d) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(H) Section 7(a) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(I) Section 7(d) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(J) Section 7(e) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(K) Section 7(f) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(L) Section 7(g) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(M) Section 8(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(N) Section 8(b) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(O) Section 10 is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(P) Section 12(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(Q) Section 13(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(R) Section 13(b)(1) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(S) Section 15(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(T) Section 17 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(U) Section 21(a)(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(V) Section 21(a)(3) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(W) Section 21(a)(4) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(X) Section 21(b)(3) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(Y) Section 21(b)(4) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(Z) Section 24 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(AA) Section 29 is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(BB) Section 30 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(CC) Section 31(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(DD) Section 34(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(EE) Section 34(d)(1)(B)(i) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(FF) Section 35(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(GG) Section 36 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(HH) Section 37 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(II) Section 38 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(JJ) Section 39(b) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(KK) Section 41 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(LL) Section 61 (as redesignated under section 115(a)(2) of this Act) is amended in the undesignated paragraph relating to the definition of "registered mark"—

(i) by striking "Patent and Trade Mark Office" and inserting "Trademark Office"; and

(ii) by striking "Patent and Trade Office" and inserting "Trademark Office".

(MM) Section 72(a) (as redesignated under section 115(a)(2) of this Act) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(NN) Section 76 (as redesignated under section 115(a)(2) of this Act) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(c) AMENDMENTS TO TITLE 5.—Title 5, United States Code, is amended—

(1) in section 5102(c)(23)—

(A) by striking "examiners-in-chief" in each place it appears and inserting "administrative patent judges"; and

(B) by striking "Office, Department of Commerce" and inserting "Organization"; and

(2) in section 5316—

(A) by striking "Commissioner of Patents, Department of Commerce."; and

(B) by striking: "Deputy Commissioner of Patents and Trademarks.

"Assistant Commissioner for Patents. "Assistant Commissioner for Trademarks."

(d) AMENDMENT TO TITLE 31.—Section 9101(3) of title 31, United States Code, is amended by adding at the end the following:

"(R) the United States Patent and Trademark Organization."

(e) AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1) by striking "or the Commissioner of Social Security, Social Security Administration;" and inserting "the Commissioner of Social Security, Social Security Administration; or the Director of the United States Patent and Trademark Organization, United States Patent and Trademark Organization;"; and

(2) in paragraph (2) by striking "or the Veterans' Administration, or the Social Security Administration;" and inserting "the Veterans' Administration, the Social Security Administration, or the United States Patent and Trademark Organization;".

#### Subtitle C—Miscellaneous Provisions

##### SEC. 141. REFERENCES.

Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department, agency, or office from which a function is transferred by this title—

(1) to the head of such department, agency, or office is deemed to refer to the head of the department, agency, or office to which such function is transferred; or

(2) to such department, agency, or office is deemed to refer to the department, agency, or office to which such function is transferred.

##### SEC. 142. EXERCISE OF AUTHORITIES.

Except as otherwise provided by law, a Federal official to whom a function is transferred by this title may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

##### SEC. 143. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges that—

(1) have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, any officer or employee of any office transferred by this title, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this title, and

(2) are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—This title shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office transferred by this title, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS.—This title shall not affect suits commenced before the effective date of this title, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this title, shall abate by reason of the enactment of this title.

(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this title shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this title.

##### SEC. 144. TRANSFER OF ASSETS.

Except as otherwise provided in this title, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this title shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

##### SEC. 145. DELEGATION AND ASSIGNMENT.

(a) IN GENERAL.—Except as otherwise expressly prohibited by law or otherwise provided in this title, an official to whom functions are transferred under this title (including the head of any office to which functions are transferred under this title) may—

(1) delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate; and

(2) authorize successive redelegations of such functions as may be necessary or appropriate.

(b) RESPONSIBILITY FOR ADMINISTRATION.—No delegation of functions under this section or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

**SEC. 146. AUTHORITY OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET WITH RESPECT TO FUNCTIONS TRANSFERRED.**

(a) DETERMINATIONS.—If necessary, the Director of the Office of Management and Budget shall make any determination of the functions that are transferred under this title.

(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this title, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title.

(c) TERMINATION OF AFFAIRS.—The Director shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

**SEC. 147. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.**

For purposes of this title, the vesting of a function in a department, agency, or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

**SEC. 148. AVAILABILITY OF EXISTING FUNDS.**

Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this title shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities.

**SEC. 149. DEFINITIONS.**

For purposes of this title—

(1) the term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(2) the term "office" includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

**Subtitle D—Establishment of the Under Secretary of Commerce for Intellectual Property Policy**

**SEC. 151. UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY POLICY.**

(a) APPOINTMENT.—There shall be within the Department of Commerce an Under Secretary of Commerce for Intellectual Property Policy, who shall be appointed by the President, by and with the advice and consent of the Senate, at level III of the Executive Schedule. On or after the effective date of this title, the President may designate an individual to serve as the Acting Under Secretary until the date on which an Under Secretary qualifies under this subsection.

(b) DUTIES.—The Under Secretary of Commerce for Intellectual Property Policy, under the direction of the Secretary of Commerce, shall perform the following functions with respect to intellectual property policy:

(1) Grant patents and register trademarks.

(2) In coordination with the Under Secretary of Commerce for International Trade, promote exports of goods and services of the United States industries that rely on intellectual property.

(3) Advise the President, through the Secretary of Commerce, on national and certain international issues relating to intellectual property policy, including issues in the areas of patents, trademarks, and copyrights.

(4) Advise Federal departments and agencies on matters of intellectual property protection in other countries.

(5) Provide guidance, as appropriate, with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection.

(6) Conduct programs and studies related to the effectiveness of intellectual property protection throughout the world.

(7) Advise the Secretary of Commerce on programs and studies relating to intellectual property policy that are conducted, or authorized to be conducted, cooperatively with foreign patent and trademark offices and international intergovernmental organizations.

(8) In coordination with the Department of State, conduct programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations.

(c) DEPUTY UNDER SECRETARIES.—To assist the Under Secretary of Commerce for Intellectual Property Policy, the Secretary of Commerce shall appoint a Deputy Under Secretary for Patent Policy and a Deputy Under Secretary for Trademark Policy, as members of the Senior Executive Service in accordance with the provisions of title 5, United States Code. The Deputy Under Secretaries shall perform such duties and functions as the Under Secretary shall prescribe.

(d) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following: "Under Secretary of Commerce for Intellectual Property Policy."

(e) FUNDING.—Funds available to the United States Patent and Trade Organization shall be made available for all expenses of the Office of the Under Secretary of Commerce for Intellectual Property Policy, subject to prior approval in appropriations Acts. Amounts made available under this subsection shall not exceed 2 percent of the projected annual revenues of the United States Patent and Trademark Organization from fees for services and goods of that Organization. The Secretary of Commerce shall determine the budget requirements of the Office of the Under Secretary for Intellectual Property Policy.

(f) CONSULTATION.—In connection with the performance of his duties under this section, the Under Secretary shall, on appropriate matters, consult with the Register of Copyrights.

**SEC. 152. RELATIONSHIP WITH EXISTING AUTHORITIES.**

(a) NO DEROGATION.—Nothing in section 151 shall derogate from the duties of the United States Trade Representative or from the duties of the Secretary of State. In addition, nothing in this title shall derogate from the duties and functions of the Register of Copyrights or otherwise alter current authorities relating to copyright matters.

(b) CLARIFICATION OF AUTHORITY OF THE COPYRIGHT OFFICE.—Section 701 of title 17, United States Code, is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following:

"(b) In addition to the functions and duties set out elsewhere in this chapter, the Register of Copyrights shall perform the following functions:

"(1) Advise Congress on national and international issues relating to copyright, semiconductor chip protection, and related matters.

"(2) Provide information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright, semiconductor chip protection, and related matters.

"(3) Participate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright, semiconductor chip protection, and related matters, including as a member of United States delegations as authorized by the appropriate Executive Branch authority.

"(4) Conduct studies and programs regarding copyright, semiconductor chip protection, and related matters, the administration of the Copyright Office, or any function vested in the Copyright Office by law, including educational programs conducted cooperatively with foreign intellectual property offices and international intergovernmental organizations.

"(5) Perform such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth in this title."

● Mr. LEAHY. Mr. President, I am here once again to talk about S. 507, the Omnibus Patent Act of 1997. On this date back in 1878, a gentleman named Thaddeus Hyatt was granted a patent for reinforced concrete. Now, 120 years later, the Senate is refusing to reinforce American innovation by failing to take concrete action to reform our nation's patent laws.

We are presented with an opportunity that will not soon repeat itself—an opportunity to pass S. 507 and give U.S. inventors longer patent terms, put more royalties in their pockets, save them money in costly patent litigation, and avoid wasting their development resources on duplicative research. At the same time, we can get our new technology more rapidly into the marketplace and make U.S. companies more competitive globally.

Remaining globally competitive is not an idle concern. The failure of this body to enact the reforms of our patent system contained in S. 507 has given foreign entities applying for and receiving patents in the U.S. unfair advantages over U.S. firms—advantages that U.S. persons filing and doing business abroad do not have. This ability to keep U.S. inventors in the dark about the latest technological developments does not work to our economic advantage. Why are we turning our backs on our businesses, small and large, by not voting on this bill?

I have made recent speeches citing the strong support this legislation has around the country. This legislation has more than just Vermont or any state in mind. It has the entire country in its best interest. Our 200 year old patent system has provided protections to many of our inventions that have led to our global economic leadership position in the world marketplace. However, that leadership position is being threatened. Litigation has increased. Small inventors have been taken advantage of. Inventors and businesses are asking for our help and requesting that we pass S. 507.

The Senate Judiciary Committee reported this bill out over a year ago by an overwhelmingly bipartisan vote of 17-1, 17-1, and this bill has yet to see the light of day on the floor. No longer can we turn the other cheek when

American business lets out such a cry for help. We need to bring this bill to the floor now and to pass it. We must not squander this opportunity to not only update our patent system but to come to America's defense.

I inserted into the RECORD on June 23, letters of support from the White House Conference on Small Businesses, the National Association of Women Business Owners, the Small Business Technology Coalition, National Small Business United, the National Venture Capital Association, and the 21st Century Patent Coalition.

On July 10, I inserted in the RECORD additional letters of support from the Chamber of Commerce of the United States of America; the Pharmaceutical Research and Manufactures of American, PhRMA; the American Automobile Manufacturers Association; the Software Publishers Association; the Semiconductor Industry Association; the Business Software Alliance; the American Electronics Association; and the Institute of Electrical and Electronics Engineers, Inc.

I now ask unanimous consent that additional letters of support for S. 507 be included in the RECORD. These letters are from IBM; the Biotechnology Industry Organization; the International Trademark Association; 3M; Intel Corporation; Caterpillar; AMP Incorporated; and Hewlett-Packard Company.

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

HEWLETT-PACKARD COMPANY,  
Palo Alto, CA, June 22, 1998.

Hon. PATRICK J. LEAHY,  
U.S. Senate, Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR LEAHY: S. 507, the Omnibus Patent Act, has been reported out of the Judiciary Committee, but it appears that Majority Leader Lott needs some encouragement to schedule the bill for floor action. Hewlett-Packard Company strongly supports enactment of S. 507 and would appreciate your support in urging Senator Lott to put the bill on the calendar.

Enactment of S. 507 would assure that inventors can receive a full 17 years—or more—of patent protection if they pursue their patent claims in a timely manner. It would also streamline patent operations to expedite processing and accelerate the dissemination of new technologies for continuing advancement in products and services.

Significantly, S. 507 achieves these important goals without threatening a return to the "submarine patent" system that existed before the 1995 reform. Under the old policy, an inventor could manipulate the patent system to stretch the term even while withholding the new knowledge from society. Prior to 1995, inventors could wait until the technology had ripened, and then essentially extort license fees from another inventor who had independently, in good faith, created the same or a similar invention.

While "submarine patents" are infrequent, when they strike, they are egregious. In an HP case, for example, the company has paid millions of dollars in royalties to a Swedish inventor whose patent has expired in every other country except the United States. This inventor contributed nothing to the technology that is in use, in fact, he did not offer to work with the consortium that was developing the technology in an open-systems environment. A more thorough explanation of that case is attached for your review.

Senator Hatch and other supporters of S. 507 have worked diligently with small business and independent inventors to resolve concerns about the bill. It is a good compromise for a more effective patent system as we head into the 21st century. HP urges your support for S. 507 without weakening amendments that would revive the submarine patent system.

Sincerely,

LEW PLATT.

IBM, INTERNET MEDIA GROUP,  
Essex Junction, VT, June 6, 1998.

Hon. PATRICK LEAHY,  
U.S. Senate, Washington, DC.  
DEAR SENATOR LEAHY: As an inventor I rely on the strength of the U.S. patent system to legally protect my invention(s). I am also the chairman of an ANSI standardization committee (NCITS L3.1) which represents the United States in an International Standardization Forum (ISO/IEC JTC 1/SC 29/WG 11). Our committee has developed the Emmy Award winning standard called MPEG-2, a standard which may have never come to pass had it not been for strong International patent protection. We are currently working on the future of International Multimedia (MPEG-4), a standard which promises to be as popular and widely used as MPEG-2 will be. The strength of the patent laws is essential to promoting participation and the development of International Standards. However, the system which for years has effectively encouraged innovation and protected inventors, is no longer effective. As significant number of ways have been found to abuse it, such as people and/or companies obtaining inappropriate patents and in some cases pilfering others' hard-earned invention. This threatens to undermine America's position as the global leader in technology innovation. I am proud that my work as an inventor has contributed to IBM's patent portfolio.

There is now legislation pending before you that will help restore leadership and integrity to the U.S. patent system. It is responsive to today's fast paced, highly competitive environment, and it will protect inventors like me. I am writing to ask you to urge Majority Leader Lott (R-MS) to bring S. 507, the Omnibus Patent Act of 1997, to the Senate floor as soon as possible and for you to support its final passage.

The bipartisan Omnibus Patent Act of 1997, S. 507, was passed out of the Senate Judiciary Committee 17-1 and has not yet been brought up for a floor vote. The House of Representatives also passed a similar bill in May 1997. Five former Commissioners of the Patent and Trademark Office (PTO) support this bill. A Senate floor vote is the only way to continue the process to enact this legislation that would help protect inventors and companies from patent system abuse.

Please help protect America's intellectual property and urge Majority Leader Lott (R-MS) to bring this bill to the floor for a vote. Thank you for your attention to this matter, and as a concerned constituent, I request your support of this legislation.

Sincerely,

PETER P. SCHIRLING,  
Senior Engineer.

BIOTECHNOLOGY INDUSTRY  
ORGANIZATION,  
June 18, 1998.

U.S. SENATOR,  
Washington, DC.

Re: Scheduling Debate on Patent Reform Legislation, S. 507 (Hatch/Leahy)

DEAR SENATOR: We are writing to urge you to support scheduling of the patent reform legislation, S. 507, on the Senate floor before the August recess. This legislation is supported by an overwhelming majority of the Senators and the few Senators who have

amendments to offer can easily be accommodated in a time agreement.

BIO has been working on this critical legislation for four years, the House passed the bill by a lopsided and bipartisan margin, and it emerged from the Senate Judiciary Committee on a near-unanimous vote. There are very few issues for the Senate debate or conference with the House. It should be easy to complete action on this bill and enact it into law this session. Doing so will be a major victory for biomedical and other research.

The bill answers the concerns raised by the biotechnology industry and other high technology industries regarding the erosion of patents caused by the adoption of the GATT 20 year-from-filing regime. We need to enact this bill to provide vital protection to biotechnology firms conducting research on cures and therapies for cancer, AIDS, Alzheimer's, and other deadly and disabling diseases.

The Biotechnology Industry Organization (BIO) represents almost 800 companies and organizations that use or support biotechnology research. Our companies are finding the next generation of medicines and cures for endemic diseases that diminish the quality of life for all Americans. On a per capita basis, our companies invest more in research and development than any other industry—almost ten times the national average—or about \$100,000 per employee per year. This industries investment (almost 10 billion dollars in 1998) is protected primarily through the patent system.

Patents as an incentive for this critical research. Without patents this research would stop because no investor will fund this research without patents. This is why the patent term protections in this bill are so important. The Hatch-Leahy patent term bill provides complete and unequivocal protections to ensure that diligent patent applicants will not lose patent term under the new GATT 20 year patent law.

There is no industry which has lost more in patent protection under the new GATT 20 year patent term than the biotechnology industry. Our industry has been working for three years to secure protections so that diligent patent applicants cannot, and will not, lose patent protection under this new law. It is imperative that the GATT law be amended to protect diligent patent applicants this year.

Diligent patent applicants cannot lose patent term under the patent term provisions of Hatch-Leahy bill. If there are any delays in the grant of a patent by the Patent and Trademark Office (PTO) which are beyond the applicant's control, the applicant is given extra patent term—day-for-day compensation. This is a similar system which now applies when a patent holder loses patent term due to delays in the approval of a product by the Food and Drug Administration. So, the solution provided by the Hatch-Leahy bill is tried and tested and it works.

In addition to these patent term provisions, the Hatch-Leahy bill also provides for publication of internationally filed patent applications 18 months after filing and BIO supports this provision as well. Our companies file for patents in Europe and Japan where all applications are published after 18 months. Therefore 18 month publication in the United States will place U.S. companies on equal footing to their European and Asian competitors.

We enthusiastically support the patent term and publication provisions of the Hatch-Leahy bill, know that it solves the patent term problem, urge you to support

scheduling of this bill and support final passage. The current GATT/TRIPS law is very problematic for the biotechnology industry and enactment of S. 507 is needed to eliminate the disincentive for biomedical research.

Please contact us with any questions about this critical issue; we would be pleased to meet with you to discuss them. 857-0244.

Sincerely,

CHARLES E. LUDLAM,  
*Vice President for  
Government Relations.*

DAVE SCHMICKEL,  
*Patent and Legal  
Counsel.*

INTERNATIONAL TRADEMARK  
ASSOCIATION,  
*Washington, DC, May 8, 1998.*

Hon. PATRICK J. LEAHY,  
*U.S. Senate, Russell Senate Office Building,  
Washington, DC.*

DEAR SENATOR LEAHY: You already know of our association's strong support for S. 507, the Omnibus Patent Reform Act. Our members are trademark owners located in every state of the union. This bipartisan bill makes important changes to the U.S. Patent and Trademark Office (USPTO) that are necessary to enable the USPTO to respond efficiently and effectively to the tremendous growth in trademark applications generated by our robust economy.

With next week designated as "High Tech Week" in the Senate, where legislation dealing with new technology will be considered, there is no bill that is more deserving of attention and support at this time than S. 507. By converting the USPTO into a government corporation that is 100% user-fee funded, S. 507 will free the agency from constraints which have long hampered efficient operations. Passage of this important legislation will ensure that new products and inventions receive the protection they need both here at home and in global markets.

S. 507 provides great value to intellectual property owners and should be allowed to proceed to the Senate floor. We ask for your help in gaining passage of S. 507.

Sincerely,

DAVID STIMSON,  
*President.*

3M COMPANY, OFFICE OF  
INTELLECTUAL PROPERTY COUNSEL,  
*June 9, 1998.*

Hon. PATRICK LEAHY,  
*U.S. Senate, Washington, DC.*

DEAR SENATOR LEAHY: I am writing to express the strong support of the 3M Company for the reforms contained in S. 507, the Hatch/Leahy Omnibus Patent Reform Act, and to request that you ask Senator Lott to schedule it for a Senate vote as soon as possible. S. 507 is critically important to U.S. industry. Its reforms will strengthen and improve the United States patent system, allowing American industry to compete more effectively with its foreign competition.

S. 507 will give the U.S. Patent and Trademark Office the administrative flexibility to operate at peak efficiency, save inventors money, and accelerate patent processing. It will allow American inventors and companies to see foreign technology contained in U.S. patent applications more than a year earlier than today, while ensuring that domestic inventors who choose not to take advantage of publication before patent grant may continue to do so if they do not file outside of the U.S. The legislation will guarantee diligent applications a patent term of at least 17 years from grant and most will receive an even longer term of exclusivity. S. 507 would also make existing reexamina-

tion procedures more effective by allowing greater third party participation, while adding numerous safeguards to protect against abuse.

One specific reform of S. 507 which 3M most strongly supports is that of creating a prior domestic commercial use defense. This long overdue reform will protect manufacturing jobs in American companies like 3M by ensuring that a late filed patent—nearly one-half of U.S. patents are foreign owned—will not disrupt domestic manufacturing operations. Important technology underlying our successful Post-it® Notes such as those attached to this letter—and the jobs of the American workers who produce them—will be made safer against foreign attack by the passage of S. 507.

The reforms in S. 507 are designed to improve the functioning of the patent system for all users, large and small. In fact, Senators Hatch and Leahy have recently agreed to amend their bill on the Senate floor in response to requests from small businesses. With these changes, key small business constituencies such as the Technology Chairs of the White House Conference on Small Business, the National Association of Women Business Owners, and the Small Business Technology Coalition have expressed their enthusiastic support for S. 507.

U.S. industry needs these patent reforms now. Support S. 507 and urge Senator Lott to bring it to a vote promptly.

Sincerely,

GARY L. GRISWOLD,  
*Staff Vice President and  
Chief Intellectual Property Counsel.*

INTEL CORPORATION,  
*Santa Clara, CA, June 12, 1998.*

Hon. PATRICK J. LEAHY, U.S. SENATE, RUSSELL SENATE OFFICE BUILDING.

DEAR SENATOR LEAHY: For the past four years, Intel has been an active participant in the 21st Century Patent Coalition, which supports the enactment of patent reform legislation (S. 507). S. 507 would accomplish three broad goals of vital importance to our industry: modernizing patent administration, improving and simplifying dispute resolution procedures in the Patent and Trademark Office, and strengthening inventors' rights in a number of ways, most importantly by protecting them from loss of term due to Patent Office delays. Our coalition has the support of over 80 major American industrial companies and 22 industry associations that are composed, primarily, of small businesses.

Now, S. 507—which passed the House on a voice vote last year, and was approved in the Senate Judiciary by a vote of 17-1—is ready for floor action in the Senate. Our coalition has worked hard to address any and all legitimate concerns about the tax of the bill and its impact upon small business entities and independent inventors, and we believe that it would, if enacted, create the most pro-inventor patent system in the world. It has recently received the enthusiastic support of the White House Conference on Small Business Technology Chairs, the National Association of Women Business Owners, and the Small Business Technology Coalition.

The patent system we have today will be ill equipped to serve the needs of inventors in the next century if the improvements provided for in S. 507 are not made. We ask for your help in scheduling S. 507 for a floor vote, and for your support for the Committee bill on final passage.

Your support will help preserve America's role as the world's technology leader.

Sincerely,

CARL SILVERMAN,  
*Director of Intellectual Property.*

CATERPILLAR INC.,  
*Peoria, IL, June 3, 1998.*

Hon. PATRICK J. LEAHY,  
*Russell Senate Office Building,  
Washington, DC.*

DEAR SENATOR LEAHY: I am writing to express Caterpillar's strong support for S. 507 (Hatch/Leahy), The Omnibus Patent Act of 1997. As you know, S. 507 was reported from the Senate Judiciary Committee on a vote of 17-1 and is awaiting Senate floor action. A companion bill passed the House last year.

S. 507 would modernize the U.S. patent system through major improvements in our patent laws that will greatly benefit America's large and small businesses, inventors and entrepreneurs. For Caterpillar, this legislation will mean reduced costs, reduced risk, reduced bureaucracy, fewer lawsuits, more certainty regarding property rights, and generally a faster, more responsive patent system.

Equally significant, key small business groups now agree that S. 507 will streamline the patent process and help America's inventors who currently suffer from delays in the patent office that are not their fault.

It's time for the Senate to vote on this bill to help strengthen the U.S. economy and keep jobs in America.

I urge you to contact Majority Leader Lott in support of early scheduling of S. 507 for floor debate, and support the efforts of its sponsors to adopt a bill without weakening amendments.

Sincerely,

WILLIAM B. HEMING,  
*General Patent Counsel.*

AMP INCORPORATED,  
*Washington, DC, June 3, 1998.*

Hon. PATRICK J. LEAHY,  
*U.S. Senate, Russell Senate Office Building,  
Washington, DC.*

DEAR SENATOR LEAHY: Please ask Senator Lott to bring S. 507, the Hatch-Leahy Omnibus Patent Act, to the floor as soon as possible. This patent reform is important to AMP, our employees, and the hundreds of inventors in our company who think up new ideas to produce better products, to keep our company competitive, and to create new jobs.

It's time to bring this bill up for a vote. The technology chairs of the White House Conference on Small Business have approved S. 507 because, "(it) will lower the litigation costs for small business, make it easier to know what areas of technology are open for innovation, and will go a long way towards giving us a more level playing field vis-a-vis our foreign competitors." AMP and the dozens of other companies and associations in the 21st Century Patent Coalition agree.

This bill has undergone months and months of scrutiny and compromise and is now ready for a vote. I hope you'll encourage the Majority Leader to schedule floor time for this reasonable reform measure.

If you need any more information about S. 507, please let me know.

Sincerely,

JOHN PALAFOUTAS,  
*Director, Federal Relations.*

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

HARKIN (AND OTHERS)  
AMENDMENT NO. 3175

Mr. HARKIN (for himself, Mr. LEAHY, Mr. KENNEDY, Mr. TORRICELLI, Mr.

DURBIN, Mr. WELLSTONE, Ms. MIKULSKI, Mrs. MURRAY, and Mr. KERRY) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 67, after line 23, insert the following:

**SEC. 7. FOOD SAFETY INITIATIVE.**

(a) IN GENERAL.—In addition to the amounts made available under other provisions of this Act, there are appropriated, out of any money in the Treasury not otherwise appropriated, to carry out activities described in the Food Safety Initiative submitted by the President for fiscal year 1999—

(1) \$98,000 to the Chief Economist;

(2) \$906,000 to the Economic Research Service;

(3) \$8,920,000 to the Agricultural Research Service;

(4) \$11,000,000 to the Cooperative State Research, Education, and Extension Service;

(5) \$8,347,000 to the Food Safety and Inspection Service; and

(6) \$37,000,000 to the Food and Drug Administration.

1. *Amendment of the No Net Cost Fund assessments to provide for collection of all administrative costs not previously covered and all crop insurance costs for tobacco.* Section 106A of the Agricultural Act of 1949, as amended, 7 U.S.C. 1445-1(c), is hereby amended by, in (d)(7) changing "the Secretary" to "the Secretary; and" and by adding a new clause, (d)(8) read as follows:

"(8) Notwithstanding any other provision of this subsection or other law, that with respect to the 1999 and subsequent crops of tobacco for which price support is made available and for which a Fund is maintained under this section, an additional assessment shall be remitted over and above that otherwise provided for in this subsection. Such additional assessment shall be equal to: (1) the administrative costs within the Department of Agriculture that not otherwise covered under another assessment under this section or under another provision of law; and (2) any and all net losses in federal crop insurance programs for tobacco, whether those losses be on price-supported tobacco or on other tobaccos. The Secretary shall estimate those administrative and insurance costs in advance. The Secretary may make such adjustments in the assessment under this clause for future crops as are needed to cover shortfalls or over-collections. The assessment shall be applied so that the additional amount to be collected under this clause shall be the same for all price support tobaccos (and imported tobacco of like kind) which are marketed or imported into the United States during the marketing year for the crops covered by this clause. For each domestically produced pound of tobacco the assessment amount to be remitted under this clause shall be paid by the purchaser of the tobacco. On imported tobacco, the assessment shall be paid by the importer. Monies collected pursuant to this section shall be commingled with other monies in the No Net Cost Fund maintained under this section. The administrative and crop insurance costs that are taken into account in fixing the amount of the assessment shall be a claim on the fund and shall be transferred to the appropriate account for the payment of administrative costs and insurance costs at a time determined appropriate by the Secretary. Collections under this clause shall not effect the amount of any other collection established under this section or under another provision of law but shall be enforceable in the same manner as other assessments under this section and shall be subject to the same sanctions for nonpayment."

2. *Amendment of the No Net Cost Account assessments to provide for collection of all admin-*

*istrative cost not previously covered and all crop insurance costs.* Section 106B of the Agricultural Act of 1949, as amended, 7 U.S.C. 1445-2, is amended by renumbering subsections "(i)" and "(j)" as "(j)" and "(k)" respectively, and by adding a new subsection "(i)" to read as follows:

"(i) Notwithstanding any other provision of this section or other law, the Secretary shall require with respect to the 1999 and subsequent crops of tobacco for which price support is made available and for which an account is maintained under this section, that an additional assessment shall be remitted over and above that otherwise provided for in this subsection. Such additional assessment shall be equal to: (1) the administrative costs within the Department of Agriculture that are not otherwise covered under another assessment under this section or under another provision of law; and (2) any and all net losses in federal crop insurance programs for tobacco, whether those losses be on price-supported tobacco or on other tobaccos. The Secretary shall estimate those administrative and insurance costs in advance. The Secretary may make such adjustments in the assessments under this clause for future crops as are needed to cover shortfalls or over-collections. The assessment shall be applied so that the additional amount to be collected under this clause shall be the same for all price support tobaccos (and imported tobacco of like kind) which are marketed or imported into the United States during the marketing year for the crops covered by this clause. For each domestically produced pound of tobacco the assessment amount to be remitted under this clause shall be paid by the purchaser of the tobacco. On imported tobacco, the assessment shall be paid by the importer. Monies collected pursuant to this section shall be commingled with other monies in the No Net Cost Account maintained under this section. The administrative and crop insurance costs that are taken into account in fixing the amount of the assessment shall be a claim on the Account and shall be transferred to the appropriate account for the payment of administrative costs and insurance costs at a time determined appropriate by the Secretary. Collections under this clause shall not effect the amount of any other collection established under this section or under another provision of law but shall be enforceable in the same manner as other assessments under this section and shall be subject to the same sanctions for nonpayment."

3. *Elimination of the Tobacco Budget Assessment.* Notwithstanding any other provision of law, the provisions of Section 106(g) of the Agricultural Act of 1949, as amended, 7 U.S.C. 1445(g) shall not apply or be extended to the 1999 crops of tobacco and shall not, in any case, apply to any tobacco for which additional assessments have been rendered under Sections 1 and 2 of this Act.

Section 4(g) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(g)) is amended in the first sentence by striking "\$193,000,000" and inserting "\$177,000,000."

Amend the figure on page 12 line 20 by reducing the sum by \$13,500,000.

Amend page 12 line 25 by striking "law," and inserting in lieu thereof the following: "law, and an additional \$13,500,000 is provided to be available on October 1, 1999 under the provision of this paragraph."

**DODD AMENDMENT NO. 3176**

Mr. DODD proposed an amendment to the bill, S. 2159, supra; as follows:

At the appropriate place in title VII, insert the following:

**SEC. \_\_\_\_ . NOTIFICATION OF RECALLS OF DRUGS AND DEVICES.**

(a) DRUGS.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended by adding at the end the following:

"(o)(1) If the Secretary withdraws an application for a drug under paragraph (1) or (2) of the first sentence of subsection (e) and a class I recall for the drug results, the Secretary shall take such action as the Secretary may determine to be appropriate to ensure timely notification of the recall to individuals that received the drug, including using the assistance of health professionals that prescribed or dispensed the drug to such individuals.

"(2) In this subsection:

"(A) The term 'Class I' refers to the corresponding designation given recalls in subpart A of part 7 of title 21, Code of Federal Regulations, or a successor regulation.

"(B) The term 'recall' means a recall, as defined in subpart A of part 7 of title 21, Code of Federal Regulations, or a successor regulation, of a drug."

(b) DEVICES.—Section 518(e) of such Act (21 U.S.C. 360h(e)) is amended—

(1) in the last sentence of paragraph (2), by inserting "or if the recall is a class I recall," after "cannot be identified"; and

(2) by adding at the end the following:

"(4) In this subsection, the term 'Class I' refers to the corresponding designation given recalls in subpart A of part 7 of title 21, Code of Federal Regulations, or a successor regulation."

(c) CONFORMING AMENDMENT.—Section 705(b) of such Act (21 U.S.C. 375(b)) is amended—

(1) by striking "or gross" and inserting "gross"; and

(2) by striking the period and inserting ", or a class I recall of a drug or device as described in section 505(o)(1) or 518(e)(2)."

**ROBB (AND OTHERS) AMENDMENT NO. 3177**

Mr. ROBB (for himself, Mr. HOLLINGS, and Ms. MOSELEY-BRAUN) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 13, line 14, strike \$97,200,000 and insert \$92,200,000, and on page 14, line 17, strike \$437,082,000 and insert \$432,082,000. On page 18, line 1 strike \$424,473,000 and insert \$419,473,000. On page 19, line 23, strike \$93,000,000 and insert \$88,000,000, on page 67, after line 23, add the following:

SEC. . Expenses for computer-related activities of the Department of Agriculture funded through the Commodity Credit Corporation pursuant to section 161(b)(1)(A) of P.L. 104-127 in fiscal year 1999 shall not exceed \$50,000,000; provided, that Section 4(g) of the Commodity Credit Corporation Charter Act is amended by striking \$178,000,000 and inserting \$173,000,000.

**SEC. . WAIVER OF STATUTE OF LIMITATIONS FOR CERTAIN DISCRIMINATION CLAIMS.**

(a) DEFINITION OF ELIGIBLE CLAIM.—In this section, the term "eligible claim" means a non-employment-related claim that was filed with the Department of Agriculture on or before July 1, 1997 and alleges discrimination by the Department of Agriculture at any time during the period beginning on January 1, 1981, and ending on December 31, 1996.

(1) in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) in administering—

(A) a farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(B) a housing program established under title V of the Housing Act of 1949; or

(2) in the administration of a commodity program or a disaster assistance program.

(b) WAIVER.—To the extent permitted by the Constitution, an eligible claim, if commenced not later than 2 years after the date of the enactment of this Act, shall not be barred by any statute of limitations.

(c) ADMINISTRATIVE PROCEEDINGS.

(1) IN GENERAL.—In lieu of bringing a civil action, a claimant may seek a written determination on the merits of an eligible claim by the Secretary of Agriculture if such claim is filed with the Secretary within two years of the date of enactment of this Act.

(2) TIME PERIOD FOR RESOLUTION OF ADMINISTRATIVE CLAIMS.—To the maximum extent practicable, the Secretary shall, within 180 days from the date an eligible claim is filed with the Secretary under this subsection, conduct an investigation, issue a written determination, and propose a resolution in accordance with this subsection.

(3) HEARING AND AWARD.—The Secretary shall—

(A) provide the claimant an opportunity for a hearing before making the determination; and

(B) award the claimant such relief as would be afforded under the applicable statute from which the eligible claim arose notwithstanding any statute of limitations.

(d) STANDARD OF REVIEW.—Federal courts reviewing an eligible claim under this section shall apply a de novo standard of review.

(e) LIMITATION ON ADMINISTRATIVE AWARDS AND SETTLEMENT AUTHORITY AND EXTENSION OF TIME.—

(1) LIMITATION ON ADMINISTRATIVE AWARDS AND SETTLEMENT AUTHORITY.—A proposed administrative award or settlement exceeding \$75,000 (other than debt relief) of an eligible claim—

(A) shall not take effect until 90 days after notice of the award or settlement is given to the Attorney General; and

(B) shall not take effect if, during that 90 day period, the Attorney General objects to the award or settlement.

(2) EXTENSION OF TIME.—Notwithstanding subsections (b) and (c), if an eligible claim is denied administratively, the claimant shall have at least 180 days to commence a cause of action in a Federal court of competent jurisdiction seeking a review of such denial.

#### BROWNBACK (AND DORGAN) AMENDMENT NO. 3178

Mr. COCHRAN (for Mr. BROWNBACK for himself and Mr. DORGAN) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 67, after line 23, add the following:

#### SEC. 7 . CENSUS OF AGRICULTURE.

(a) IN GENERAL.—Section 2 of the Census of Agriculture Act of 1997 (7 U.S.C. 2204g) is amended—

(1) in subsection (b) by inserting at the end the following: "In fiscal year 1999 the Secretary of Agriculture is directed to continue to revise the Census of Agriculture to eliminate redundancies in questions asked of farmers by USDA."

(2) in subsection (d) by deleting in paragraph (1) "who willfully gives" and inserting in its place "shall not give", and deleting ", shall be fined not more than \$500".

(3) in subsection (d) by deleting in paragraph (2) "who refuses or willfully neglects" and inserting in its place "shall not refuse or willfully neglect", and deleting ", shall not be fined more than \$100".

#### LEVIN AMENDMENT NO. 3179

Mr. COCHRAN (for Mr. LEVIN) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 67, after line 23, add the following:  
**SEC. . TREE ASSISTANCE PROGRAM.**

(a) IN GENERAL.—The Secretary of Agriculture may use funds for tree assistance made available under Public Law 105-174, to carry out a tree assistance program to owners of trees that were lost or destroyed as a result of a disaster or emergency that was declared by the President or the Secretary of Agriculture during the period beginning May 1, 1998, and ending August 1, 1998, regardless of whether the damage resulted in loss or destruction after August 1, 1998.

(b) ADMINISTRATION.—Subject to subsection (c), the Secretary shall carry out the program, to the maximum extent practicable, in accordance with the terms and conditions of the tree assistance program established under part 783 of title 7, Code of Federal Regulations.

(c) ELIGIBILITY.—A person shall be presumed eligible for assistance under the program if the person demonstrates to the Secretary that trees owned by the person were lost or destroyed by May 31, 1999, as a direct result of fire blight infestation that was caused by a disaster or emergency described in subsection (a).

#### KERRY (AND ROBB) AMENDMENT NO. 3180

Mr. COCHRAN (for Mr. KERRY for himself and Mr. ROBB) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 67, after line 23, add the following:  
**SEC. 7 . STUDY OF FUTURE FEDERAL AGRICULTURAL POLICIES.**

(a) IN GENERAL.—On the request of the Commission on 21st Century Production Agriculture, the Secretary of Agriculture, acting through the Chief Economist of the Department of Agriculture, shall make assistance and information available to the Commission to enable the Commission to conduct a study to guide the development of future Federal agricultural policies.

(b) DUTIES.—In conducting the study, the Commission shall—

(1) examine a range of future Federal agricultural policies that may succeed the policies established under the Agricultural Market Transition Act (7 U.S.C. 7201 et seq.) for the 2003 and subsequent crops, and the impact of such policies on farm income, the structure of agriculture, trade competitiveness, conservation, the environment and other factors;

(2) assess the potential impact of any legislation enacted through the end of the 105th Congress on future Federal agricultural policies; and

(3) review economic agricultural studies that are relevant to future Federal agricultural policies.

(c) REPORT.—Not later than December 31, 1999, the Commission shall submit to the Committee on Agriculture of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Appropriations of the House of Representatives and the Senate the results of the study conducted under this section.

#### GRAHAM AMENDMENT NO. 3181

Mr. COCHRAN (for Mr. GRAHAM) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 67, after line 23, add the following:  
**SEC. . INDICATION OF COUNTRY OF ORIGIN OF IMPORTED PERISHABLE AGRICULTURAL COMMODITIES.**

(a) DEFINITIONS.—In this section:

(1) FOOD SERVICE ESTABLISHMENT.—The term "food service establishment" means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge, or other similar facility, operated as an enterprise engaged in the business of selling foods to the public.

(2) PERISHABLE AGRICULTURAL COMMODITY; RETAILER.—The terms "perishable agricultural commodity" and "retailer" have the meanings given the terms in section 1(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(b)).

(b) NOTICE OF COUNTRY OF ORIGIN REQUIRED.—Except as provided in subsection (c), a retailer of a perishable agricultural commodity imported into the United States shall inform consumers, at the final point of sale of the perishable agricultural commodity to consumers, of the country of origin of the perishable agricultural commodity.

(c) EXEMPTION FOR FOOD SERVICE ESTABLISHMENTS.—Subsection (b) shall not apply to a perishable agricultural commodity imported into the United States to the extent that the perishable agricultural commodity is—

(1) prepared or served in a food service establishment; and

(2) (A) offered for sale or sold at the food service establishment in normal retail quantities; or

(B) served to consumers at the food service establishment.

(d) METHOD OF NOTIFICATION.—

(1) IN GENERAL.—The information required by subsection (b) may be provided to consumers by means of a label, stamp, mark, placard, or other clear and visible sign on the imported perishable agricultural commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers.

(2) LABELED COMMODITIES.—If the imported perishable agricultural commodity is already individually labeled regarding country of origin by the packer, importer, or another person, the retailer shall not be required to provide any additional information to comply with this section.

(e) VIOLATIONS.—If a retailer fails to indicate the country of origin of an imported perishable agricultural commodity as required by subsection (b), the Secretary of Agriculture may assess a civil penalty on the retailer in an amount not to exceed—

(1) \$1,000 for the first day on which the violation occurs; and

(2) \$250 for each day on which the same violation continues.

(f) DEPOSIT OF FUNDS.—Amounts collected under subsection (e) shall be deposited in the Treasury of the United States as miscellaneous receipts.

(g) APPLICATION OF SECTION.—This section shall apply with respect to a perishable agricultural commodity imported into the United States after the end of the 6-month period beginning on the date of the enactment of this Act.

#### BUMPERS (AND OTHERS) AMENDMENT NO. 3182

Mr. COCHRAN (for Mr. BUMPERS for himself, Mr. DASCHLE, Mr. LEAHY, Mrs. BOXER, Mr. DURBIN, and Mr. BYRD) proposed an amendment to the bill, S. 2159, supra; as follows:

FINDINGS.—

The President's budget submission includes unauthorized user fees;

It is unlikely these fees will be authorized in the immediate future;

The assumption of revenue from unauthorized user fees results in a shortfall of funds available for programs under the jurisdiction

of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Subcommittee;

That among the programs for which additional funds can be justified are:

Human Nutrition Research;  
The Food Safety Initiative activities of the USDA and the FDA;  
the Wetlands Reserve Program;  
the Conservation Farm Option Program;  
the Farmland Protection Program;  
the Inspector General's Law Enforcement Initiative;  
FDA pre-notification certification;  
FDA clinical pharmacology;  
FDA Office of Cosmetics and Color;  
the Rural Electric loan programs;  
the Pesticide Data Program;  
the Rural Community Advancement Program;  
civil rights activities; and  
Fund Rural America.

Therefore, it is the sense of the Senate that, in the event an additional allocation becomes available, the above mentioned programs should be considered for funding.

**FEINGOLD (AND JEFFORDS)  
AMENDMENT NO. 3183**

Mr. COCHRAN (for Mr. FEINGOLD for himself and Mr. JEFFORDS) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 67, after line 23, add the following:  
**SEC. —. OFFICE OF THE SMALL FARMS ADVOCATE.**

(a) **DEFINITION OF SMALL FARM.**—In this section, the term "small farm" has the meaning given the term in section 506 of the Rural Development Act of 1972 (7 U.S.C. 2666).

(b) **ESTABLISHMENT.**—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall establish and maintain in the Department of Agriculture an Office of the Small Farms Advocate.

(c) **FUNCTIONS.**—The Office of the Small Farms Advocate shall—

(1) cooperate with, and monitor, agencies and offices of the Department to ensure that the Department is meeting the needs of small farms;

(2) provide input to agencies and offices of the Department on program and policy decisions to ensure that the interests of small farms are represented; and

(3) develop and implement a plan to coordinate the effective delivery of services of the Department to small farms.

(d) **ADMINISTRATOR.**—

(1) **APPOINTMENT.**—The Office of the Small Farms Advocate shall be headed by an Administrator, who shall be appointed by the President, with the advice and consent of the Senate. Nothing in this Act shall be construed to authorize a net increase in the number of political appointments within the Department of Agriculture.

(2) **DUTIES.**—The Administrator shall—

(A) act as an advocate for small farms in connection with policies and programs of the Department; and

(B) carry out the functions of the Office of the Small Farms Advocate under subsection (b).

(3) **EXECUTIVE SCHEDULE.**—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Administrator, Office of the Small Farms Advocate, Department of Agriculture."

(e) **RESOURCES.**—Using funds that are otherwise available to the Department of Agriculture, the Secretary shall provide the Office of the Small Farms Advocate with such human and capital resources as are sufficient

for the Office to carry out its functions in a timely and efficient manner.

(f) **ANNUAL REPORT.**—The Secretary shall annually submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an annual report that describes actions taken by the Office of the Small Farms Advocate to further the interests of small farms.

**DORGAN AMENDMENT NO. 3184**

Mr. COCHRAN (for Mr. DORGAN) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 67, after line 23, add the following:

**SEC. 7. LIMIT ON PENALTY FOR INADVERTENT VIOLATION OF CONTRACT UNDER THE AGRICULTURAL MARKET TRANSITION ACT.**

If an owner or producer, in good faith, inadvertently plants edible beans during the 1998 crop year on acreage covered by a contract under the Agricultural Market Transition Act (7 U.S.C. 7201 et seq.), the Secretary of Agriculture shall minimize penalties imposed for the planting to prevent economic injury to the owner or producer.

**CRAIG (AND OTHERS) AMENDMENT  
NO. 3185**

Mr. COCHRAN (for Mr. CRAIG for himself, Mr. JOHNSON, Mr. GRAMS, and Mr. ROBERTS) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 67 after line 23 add the following section:

**SEC. . 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the "Biodiesel Energy Development Act of 1998".

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Amendments to the Energy Policy and Conservation Act.

Sec. 4. Minimum Federal fleet requirement.

Sec. 5. State and local incentives programs.

Sec. 6. Alternative fuel bus program.

Sec. 7. Alternative fuel use in nonroad vehicles, engines, and marine vessels.

Sec. 8. Mandate for alternative fuel providers.

Sec. 9. Replacement fuel supply and demand program.

Sec. 10. Modification of goals; additional rulemaking authority.

Sec. 11. Fleet requirement program.

Sec. 12. Credits.

Sec. 13. Secretary's recommendation to Congress.

**SEC. 2. DEFINITIONS.**

Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended—

(1) in paragraph (2), by striking "derived from biological materials" and inserting "derived from domestically produced renewable biological materials (including biodiesel) at mixtures not less than 20 percent by volume";

(2) in paragraph (8), by striking subparagraph (b) and inserting the following:

"(B) a motor vehicle (other than an automobile) or marine vessel that is capable of operating on alternative fuel, gasoline, or diesel fuel, or an approved blend of alternative fuel and petroleum-based fuel.";

(3) by redesignating paragraphs (11) through (14) as paragraphs (12), (14), (15), and (16), respectively;

(4) by inserting after paragraph (10) the following:

"(11) the term 'heavy duty motor vehicle' means a motor vehicle or marine vessel that is greater than 8,500 pounds gross vehicle weight rating;"

(5) by inserting after paragraph (12) (as redesignated by paragraph (3)) the following:

"(13) the term 'marine vessel' means a motorized watercraft or other artificial contrivance used as a means of transportation primarily on the navigable waters of the United States;"

(6) in paragraph (15) (as redesignated by paragraph (3)), by striking "biological materials (including biodiesel)".

**SEC. 3. AMENDMENTS TO THE ENERGY POLICY AND CONSERVATION ACT.**

Section 400AA of the Energy Policy and Conservation Act (42 U.S.C. 6374) is amended—

(1) in the second sentence of subsection (a)(3)(B), by striking "vehicles converted to use alternative fuels may be acquired if, after conversion," and inserting "existing fleet vehicles may be converted to use alternative fuels at the time of a major vehicle overhaul or rebuild, or vehicles that have been converted to use alternative fuels may be acquired, if"; and

(2) in subsection (g)—

(A) in paragraph (2), by striking "derived from biological materials" and inserting "derived from domestically produced renewable biological materials (including biodiesel) at mixtures not less than 20 percent by volume";

(B) in paragraph (5), by striking subparagraph (B) and inserting the following:

"(B) a motor vehicle (other than an automobile) or marine vessel that is capable of operating on alternative fuel, gasoline, or diesel fuel, or an approved blend of alternative fuel and petroleum-based fuel; and"; and

(C) in paragraph (6), by inserting "or marine vessel" after "a vehicle".

**SEC. 4. MINIMUM FEDERAL FLEET REQUIREMENT.**

Section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) is amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following:

"(c) **HEAVY DUTY AND DUAL-FUELED VEHICLE COMPLIANCE CREDITS.**—

"(1) **IN GENERAL.**—For purposes of meeting the requirements of this section, the Secretary, in consultation with the Administrator of General Services, if appropriate, shall permit a Federal fleet to acquire 1 heavy duty alternative fueled vehicle in place of 2 light duty alternative fueled vehicles.

"(2) **ADDITIONAL CREDITS.**—For purposes of this section, the Secretary, in consultation with the Administrator of General Services, if appropriate, shall permit a Federal fleet to take an additional credit for the purchase and documented use of alternative fuel used in a dual-fueled vehicle, comparable conventionally-fueled motor vehicle, or marine vessel.

"(3) **ACCOUNTING.**—

"(A) **IN GENERAL.**—In allowing a credit for the purchase of a dual-fueled vehicle or alternative fuel, the Secretary may request a Federal agency to provide an accounting of the purchase.

"(B) **GUIDELINES.**—The Secretary shall include any request made under subparagraph (A) in the guidelines required under section 308.

"(4) **FUEL AND VEHICLE NEUTRALITY.**—The Secretary shall carry out this subsection in a manner that is, to the maximum extent practicable, neutral with respect to the type of fuel and vehicle used."

**SEC. 5. STATE AND LOCAL INCENTIVES PROGRAMS.**

(a) ESTABLISHMENT OF PROGRAM.—Section 409(a) of the Energy Policy Act of 1992 (42 U.S.C. 13235(a)) is amended—

(1) in paragraph (2)(A), by striking “alternative fueled vehicles” and inserting “light and heavy duty alternative fueled vehicles and increasing the use of alternative fuels”; and

(2) in paragraph (3)—

(A) in subparagraph (B), by inserting after “introduction of” the following: “converted or acquired light and heavy duty”;

(B) in subparagraph (E), by inserting after “of sales of” the following: “, incentives toward use of, and reporting requirements relating to”; and

(C) in subparagraph (G)—

(i) by redesignating clauses (i) through (iii) as clauses (ii) through (iv), respectively; and

(ii) by inserting after “cost of—” the following:

“(I) alternative fuels.”;

(b) FEDERAL ASSISTANCE TO STATES.—Section 409(b) of the Energy Policy Act of 1992 (42 U.S.C. 13235(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking “and” at the end;

(B) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(D) grants of Federal financial assistance for the incremental purchase cost of alternative fuels.”;

(2) in paragraph (2)(B), by inserting after “be introduced” the following: “and the volume of alternative fuel likely to be consumed”; and

(3) in paragraph (3)—

(A) by inserting “alternative fuels and” after “in procuring”; and

(B) by inserting “fuels and” after “of such”.

(c) GENERAL PROVISIONS.—Section 409(c)(2)(A) of the Energy Policy Act of 1992 (42 U.S.C. 13235(c)(2)(A)) is amended by inserting after “alternative fueled vehicles in use” the following: “and volume of alternative fuel consumed”.

**SEC. 6. ALTERNATIVE FUEL BUS PROGRAM.**

Section 410(c) of the Energy Policy Act of 1992 (42 U.S.C. 13236(c)) is amended in the second sentence by striking “and the conversion of school buses to dedicated vehicles” and inserting “the incremental cost of alternative fuels used in flexible fueled school buses, and the conversion of school buses to alternative fueled vehicles”.

**SEC. 7. ALTERNATIVE FUEL USE IN NONROAD VEHICLES, ENGINES, AND MARINE VESSELS.**

Section 412 of the Energy Policy Act of 1992 (42 U.S.C. 13238) is amended—

(1) in this section heading, by striking “and engines” and inserting “, engines, and marine vessels”;

(2) by striking “vehicles and engines” each place it appears in subsection (a) and (b) and inserting “vehicles, engines, and marine vessels”;

(3) in subsections (a)—

(A) in the subsection heading, by striking “NONROAD VEHICLES, AND ENGINES” and inserting “IN GENERAL”;

(B) in paragraph (1)—

(i) in the first sentence, by striking “a study” and inserting “studies”; and

(ii) in the second sentence—

(I) by striking “study” and inserting “studies”; and

(II) by striking “2 years” and insert “2, 6, and 10 years”;

(C) in paragraph (2)—

(i) by striking “study” each place it appears and inserting “studies”; and

(ii) in the second sentence, by inserting “or marine vessels” after “such vehicles”; and

(D) in paragraph (3)—

(i) by striking “report” and inserting “reports”; and

(ii) by striking “may” and inserting “shall”; and

(4) in subsection (b)—

(A) in this subsection heading, by striking “AND ENGINES” and inserting “, ENGINES, AND MARINE VESSELS”; and

(B) by striking “rail transportation, vehicles used at airports, vehicles or engines used for marine purposes, and other vehicles or engines” and inserting “rail and waterway transportation, vehicles used at airports and seaports, vehicles or engines used for marine purposes, marine vessels, and other vehicles, engines, or marine vessels”.

**SEC. 8. MANDATE FOR ALTERNATIVE FUEL PROVIDERS.**

Section 501 of the Energy Policy Act of 1992 (42 U.S.C. 13251) is amended—

(1) in subsection (a)(1), by inserting “or heavy” after “new light” and

(2) in subsection (b)—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(3) allow the conversion of an existing fleet vehicle into a dual-fueled alternative fueled vehicle at the time of a major overhaul or rebuild of the vehicle, if the original equipment manufacturer’s warranty continues to apply to the vehicle, pursuant to an agreement between the original equipment manufacturer and the person performing the conversion.”.

**SEC. 9. REPLACEMENT FUEL SUPPLY AND DEMAND PROGRAM.**

Section 502 of the Energy Policy Act of 1992 (42 U.S.C. 13252) is amended—

(1) in the first sentence of subsection (a), by inserting “and heavy” after “in light”; and

(2) in the first sentence of subsection (b), by inserting after “October 1, 1993,” the following: “and every 5 years thereafter through October 1, 2008.”.

**SEC. 10. MODIFICATION OF GOALS; ADDITIONAL RULEMAKING AUTHORITY.**

Section 504 of the Energy Policy Act of 1992 (42 U.S.C. 13254) is amended—

(1) in the first sentence of subsection (a), by striking “and periodically thereafter” and inserting “consistent with the reporting requirements of section 502(b)”;

(2) in subsection (c), by inserting after the first sentence the following: “Any additional regulation issued by the Secretary shall be, to the maximum extent practicable, neutral with respect to the type of fuel and vehicle used.”.

**SEC. 11. FLEET REQUIREMENT PROGRAM.**

(a) FLEET PROGRAM PURCHASE GOALS.—Section 507(a)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13257(a)(1)) is amended by inserting “acquired as, or converted into,” after “shall be”.

(b) FLEET REQUIREMENT PROGRAM.—Section 507(g) of the Energy Policy Act of 1992 (42 U.S.C. 13257(g)) is amended—

(1) in paragraph (1), by inserting, “acquired as, or converted into,” after “shall be”;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

“(4) SUBSTITUTIONS.—The Secretary shall, by rule, permit fleets covered under this section to substitute the acquisition or conversion of 1 heavy duty alternative fueled vehicle for 2 light duty vehicle acquisitions to meet the requirements of this subsection.”.

(c) CONVERSIONS.—Section 507(j) of the Energy Policy Act of 1992 (42 U.S.C. 13257(j)) is amended—

(1) by striking “Nothing in” and inserting the following:

“(1) IN GENERAL.—Subject to paragraph (2) nothing in”; and

(2) by adding at the end the following:

“(2) CONVERSION INTO ALTERNATIVE FUELED VEHICLES.—

“(A) IN GENERAL.—A fleet owner shall be permitted to convert an existing fleet vehicle into an alternative fueled vehicle, and purchase the alternative fuel for the converted vehicle, for the purpose of compliance with this title or an amendment made by this title, if the original equipment manufacturer’s warranty continues to apply to the vehicle, pursuant to an agreement between the original equipment manufacturer and the person performing the conversion.

“(B) CREDITS.—A fleet owner shall be allowed a credit for the conversion of an existing fleet vehicle and the purchase of alternative fuel for the vehicles.”.

(d) MANDATORY STATE FLEET PROGRAMS.—Section 507(o) of the Energy Policy Act of 1992 (42 U.S.C. 13257(o)) is amended—

(1) in paragraph (1)—

(A) by inserting “or heavy” after “new light”; and

(B) by inserting “or converted” after “acquired”; and

(2) in the first sentence of paragraph (2)(A)—

(A) by striking “this Act” and inserting “the Biodiesel Energy Development Act of 1997”; and

(B) by inserting after “of light” the following “or heavy duty alternative fueled”.

**SEC. 12. CREDITS.**

(a) IN GENERAL.—Section 508(a) of the Energy Policy Act of 1992 (42 U.S.C. 13258(a)) is amended—

(1) by striking “The Secretary” and inserting the following:

“(1) ADDITIONAL ALTERNATIVE FUELED VEHICLES.—The Secretary”; and

(2) by adding at the end the following:

“(2) ALTERNATIVE FUEL.—The Secretary shall allocate a credit to a fleet or covered person that acquires a volume of alternative fuel equal to the estimated need for 1 year for any dual-fueled vehicle acquired or converted by the fleet or covered person as required under this title.”.

(b) ALLOCATION.—Section 508(b) of the Energy Policy Act of 1992 (42 U.S.C. 13258(b)) is amended—

(1) by striking “In allocating credits under subsection (a),” and inserting the following:

“(1) ADDITIONAL ALTERNATIVE FUELED VEHICLES.—In allocating credits under subsection (a)(1),”;

(2) by adding at the end the following:

“(2) DUAL-FUELED VEHICLES; ALTERNATIVE FUEL.—In allocating credits under subsection (a)(2), the Secretary shall allocate 2 credits to a fleet or covered person for acquiring or converting a dual-fueled vehicle and acquiring a volume of alternative fuel equal to the estimated need for 1 year for any dual-fueled vehicle if the dual-fueled vehicle acquired is in excess of the number that the fleet or covered person is required to acquire or is acquired before the date that the fleet or covered person is required to acquire the number under this title.”.

(c) SECRETARY’S RECOMMENDATION TO CONGRESS.—

Section 509(a) of the Energy Policy Act of 1992 (42 U.S.C. 13259(a)) is amended—

(1) in paragraph (1), by inserting before the semicolon at the end the following: “and exempting replacement fuels from taxes levied on non-replacement fuels”; and

(2) in paragraph (2)—

(A) by inserting “and converters” after “suppliers”; and

(B) by inserting before the semicolon the following: “, including the conversion and

warranty of motor vehicles into alternative fueled vehicles".

#### BUMPERS AMENDMENT NO. 3186

Mr. COCHRAN (for Mr. BUMPERS) proposed an amendment to the bill, S. 2159, supra; as follows:

At the appropriate place insert the following:

SEC. . The Secretary of Agriculture shall present to Congress by March 1, 1999, a report on whether to recommend lifting the ban on the interstate-distribution of state inspected meat.

#### HATCH AMENDMENT NO. 3187

Mr. COCHRAN (for Mr. HATCH) proposed an amendment to the bill, S. 2159, supra; as follows:

At the appropriate place insert the following:

The Secretary of Agriculture shall present to Congress a report on whether to recommend by March 1, 1999, lifting the ban on the interstate-distribution of state inspected meat.

#### COVERDELLE (AND CLELAND) AMENDMENTS NOS. 3188-3190

Mr. COCHRAN (for Mr. COVERDELLE for himself and Mr. CLELAND) proposed three amendments to the bill, S. 2159, supra; as follows:

##### AMENDMENT NO. 3188

On page 67, after line 23, add the following:

#### SEC. . PROHIBITION ON LOAN GUARANTEES TO BORROWERS THAT HAVE RECEIVED DEBT FORGIVENESS.

Section 373 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008h) is amended by striking subsection (b) and inserting the following:

"(b) PROHIBITION OF LOANS FOR BORROWERS THAT HAVE RECEIVED DEBT FORGIVENESS.—

"(1) PROHIBITIONS.—Except as provided in paragraph (2)—

"(A) the Secretary may not make a loan under this title to a borrower that has received debt forgiveness on a loan made or guaranteed under this title; and

"(B) the Secretary may not guarantee a loan under this title to a borrower that has received—

"(i) debt forgiveness after April 4, 1996, on a loan made or guaranteed under this title; or

"(ii) received debt forgiveness on no more than 3 occasions on or before April 4, 1996.

"(2) EXCEPTIONS.—

"(A) IN GENERAL.—The Secretary may make a direct or guaranteed farm operating loan for paying annual farm or ranch operating expenses of a borrower that was restructured with a write-down under section 353.

"(B) EMERGENCY LOANS.—The Secretary may make an emergency loan under section 321 to a borrower that—

"(i) on or before April 4, 1996, received not more than 1 debt forgiveness on a loan made or guaranteed under this title; and

"(ii) after April 4, 1996, has not received debt forgiveness on a loan made or guaranteed under this title."

##### AMENDMENT NO. 3189

On page 67, after line 23, add the following:

#### SEC. . DEFINITION OF FAMILY FARM.

(a) REAL ESTATE LOANS.—Section 302 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1922) is amended by adding at the end the following:

"(c) DETERMINATION OF QUALIFICATION FOR LOAN.—

"(1) PRIMARY FACTOR.—The primary factor to be considered in determining whether an applicant for a loan under this subtitle is en-

gaged primarily and directly in farming or ranching shall be whether the applicant is participating in routine, ongoing farm activities and in overall decisionmaking with regard to the farm or ranch.

"(2) NO BASIS FOR DENIAL OF LOAN.—The Secretary may not deny a loan under this subtitle solely because 2 or more individuals are employed full-time in the farming operation for which the loan is sought."

(b) OPERATING LOANS.—Section 311 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1941) is amended by adding at the end the following:

"(d) DETERMINATION OF QUALIFICATION FOR LOAN.—

"(1) PRIMARY FACTOR.—The primary factor to be considered in determining whether an applicant for a loan under this subtitle is engaged primarily and directly in farming or ranching shall be whether the applicant is participating in routine, ongoing farm activities and in overall decisionmaking with regard to the farm or ranch.

"(2) NO BASIS FOR DENIAL OF LOAN.—The Secretary may not deny a loan under this subtitle solely because 2 or more individuals are employed full-time in the farming operation for which the loan is sought."

(c) EMERGENCY LOANS.—Section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) is amended by adding at the end the following:

"(e) DETERMINATION OF QUALIFICATION FOR LOAN.—

"(1) PRIMARY FACTOR.—The primary factor to be considered in determining whether an applicant for a loan under this subtitle is engaged primarily and directly in farming or ranching shall be whether the applicant is participating in routine, ongoing farm activities and in overall decisionmaking with regard to the farm or ranch.

"(2) NO BASIS FOR DENIAL OF LOAN.—The Secretary may not deny a loan under this subtitle solely because 2 or more individuals are employed full-time in the farming operation for which the loan is sought."

(d) EFFECTIVE DATE.—This amendment shall be considered to have been in effect as of January 1, 1977.

##### AMENDMENT NO. 3190

On page 67, after line 23, add the following:

#### SEC. . APPLICABILITY OF DISASTER LOAN COLLATERAL REQUIREMENTS UNDER THE SMALL BUSINESS ACT.

Section 324(d) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1964(d)) is amended—

(1) by striking "(d) All loans" and inserting the following:

"(d) REPAYMENT.—

"(1) IN GENERAL.—All loans"; and

(2) by adding at the end the following:

"(2) NO BASIS FOR DENIAL OF LOAN.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall not deny a loan under this subtitle to a borrower by reason of the fact that the borrower lacks a particular amount of collateral for the loan if the Secretary is reasonably certain that the borrower will be able to repay the loan.

"(B) REFUSAL TO PLEDGE AVAILABLE COLLATERAL.—The Secretary may deny or cancel a loan under this subtitle if a borrower refuses to pledge available collateral on request by the Secretary."

#### HARKIN AMENDMENT NO. 3191

Mr. COCHRAN (for Mr. HARKIN) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 46, line 24, before the period, insert the following: "Provided further, That none of the funds under this heading shall be available unless the value of bonus commodities provided under section 32 of the Act of August 24, 1935 (49 Stat. 774, chapter 641; 7

U.S.C. 612c), and section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) is included in meeting the minimum commodity assistance requirement of section 6(g) of the National School Lunch Act (42 U.S.C. 1755(g))".

On page 47, line 6, strike "\$3,924,000,000" and insert "\$3,948,000,000".

#### DODD AMENDMENT NO. 3192

Mr. COCHRAN (for Mr. DODD) proposed an amendment to amendment No. 3176 proposed by him to the bill, S. 2159, supra; as follows:

In the amendment strike all after the first word and insert the following:

#### . NOTIFICATION OF RECALLS OF DRUGS AND DEVICES.

(a) DRUGS.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended by adding at the end the following:

"(o)(1) If the Secretary withdraws an application for a drug under paragraph (1) or (2) of the first sentence of subsection (e) and a class I recall for the drug results, the Secretary shall take such action as the Secretary may determine to be appropriate to ensure timely notification of the recall to individuals that received the drug, including using the assistance of health professionals that prescribed or dispensed the drug to such individuals.

"(2) In this subsection:

"(A) The term 'Class I' refers to the corresponding designation given recalls in subpart A of part 7 of title 21, Code of Federal Regulations, or a successor regulation.

"(B) The term 'recall' means a recall, as defined in subpart A of part 7 of title 21, Code of Federal Regulations, or a successor regulation, of a drug."

(b) DEVICES.—Section 518(e) of such Act (21 U.S.C. 360h(e)) is amended—

(1) in the last sentence of paragraph (2), by inserting "or if the recall is a class I recall," after "cannot be identified"; and

(2) by adding at the end the following:

"(4) In this subsection, the term 'Class I' refers to the corresponding designation given recalls in subpart A of part 7 of title 21, Code of Federal Regulations, or a successor regulation."

(c) CONFORMING AMENDMENT.—Section 705(b) of such Act (21 U.S.C. 375(b)) is amended—

(1) by striking "or gross" and inserting "gross"; and

(2) by striking the period and inserting ", or a class I recall of a drug or device as described in section 505(o)(1) or 518(e)(2)."

This section shall take effect one day after date of this bill's enactment.

#### HARKIN (AND OTHERS) AMENDMENT NO. 3193

Mr. COCHRAN (for Mr. HARKIN for himself, Mr. REED, Mr. LAUTENBERG, Mr. KENNEDY, Mrs. MURRAY, and Mr. JOHNSON) proposed an amendment to the bill, S. 2159, supra; as follows:

At the appropriate place, insert the following:

#### SEC. . TEEN ANTI-TOBACCO ACTIVITIES.

(a) INCREASE IN FUNDS.—The amount described for salaries and expenses of the Food and Drug Administration under title VI shall be increased from \$1,072,640,000 to \$1,172,640,000.

(b) USER FEE.—The Secretary of Health and Human Services (referred to in this section as the "Secretary") shall, not later than

60 days after the date of enactment of this Act, and annually thereafter assess and collect from each manufacturer of tobacco products a user fee for the conduct of teen anti-tobacco activities by the Food and Drug Administration.

(c) AMOUNT.—With respect to each year, the user fee assessed to a manufacturer under subsection (b) shall be equal to an amount that bears the same ratio to \$150,000,000 as the tobacco product market share of the manufacturer bears to the tobacco market share of all tobacco product manufacturers for the year preceding the year in which the determination is being made.

(d) DEPOSITS.—Amount collected under subsection (b) shall be deposited into the general fund of the Treasury.

(e) APPROPRIATION.—There are authorized to be appropriated in each fiscal year, and there are appropriated, an amount equal to the amount deposited into the Treasury under subsection (d) for that fiscal year, to be used by the Food and Drug Administration to carry out teen anti-tobacco activities under the Federal Food, Drug and Cosmetic Act.

(f) NO REQUIREMENT FOR PAYMENT.—The Secretary shall not require that a manufacturer pay a user fee under this section for any tobacco product for any fiscal year if the Secretary determines that the tobacco product involved as manufactured by the manufacturer is used by less than 0.5 percent of the total number of individuals determined to have used any tobacco product as manufactured by all manufacturers for the year involved.

(g) FINAL DETERMINATION.—The determination of the Secretary as to the amount and allocation of an assessment under subsection (b) shall be final and the manufacturer shall pay such assessment within 30 days of the date on which the manufacturer is assessed. Such payment shall be retained by the Secretary pending final judicial review.

(h) JUDICIAL REVIEW.—The amount of any user fee paid under subsection (b) shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provision of law, no court shall have the authority to stay any payment due to the Secretary under subsection (b) pending judicial review.

#### BAUCUS AMENDMENT NO. 3194

Mr. COCHRAN (for Mr. BAUCUS) proposed an amendment to the bill, S. 2159, supra; as follows:

On page 13, line 11, strike "\$50,500,000" and insert "\$51,400,000".

On page 14, line 17, strike "\$432,082,000" and insert "\$432,982,000".

#### DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1999

#### BOND (AND OTHERS) AMENDMENT NO. 3195

Mr. BOND (for himself, Mr. CLELAND, Ms. MIKULSKI, and Mr. COVERDELL) proposed an amendment to the bill (S.

2168) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1999, and for other purposes, as follows:

On page 7, line 18, add the following new provisos prior to the period: "": *Provided further*, That the funds made available under this heading, \$14,000,000 shall be for the homeless grant program and \$6,000,000 shall be for the homeless per diem program: *Provided further*, That such funds may be used for vocational training, rehabilitation, and outreach activities in addition to other authorized homeless assistance activities".

#### MCCAIN AMENDMENT NO. 3196

Mr. BOND (for Mr. MCCAIN) proposed an amendment to the bill, S. 2168, supra; as follows:

On page 93, between lines 18 and 19, insert the following:

SEC. 423. (a) Each entity that receives a grant from the Federal Government for purposes of providing emergency shelter for homeless individuals shall—

(1) ascertain, to the extent practicable, whether or not each adult individual seeking such shelter from such entity is a veteran; and

(2) provide each such individual who is a veteran such counseling relating to the availability of veterans benefits (including employment assistance, health care benefits, and other benefits) as the Secretary of Veterans Affairs considers appropriate.

(b) The Secretary of Veterans Affairs and the Secretary of Housing and Urban Development shall jointly coordinate the activities required by subsection (a).

(c) Entities referred to in subsection (a) shall notify the Secretary of Veterans Affairs of the number and identity of veterans ascertained under paragraph (1) of that subsection. Such entities shall make such notification with such frequency and in such form as the Secretary shall specify.

(d) Notwithstanding any other provision of law, an entity referred to subsection (a) that fails to meet the requirements specified in that subsection shall not be eligible for additional grants or other Federal funds for purposes of carrying out activities relating to emergency shelter for homeless individuals.

#### BOND (AND OTHERS) AMENDMENT NO. 3197

Mr. BOND (for himself, Mr. ROCKEFELLER, and Ms. MIKULSKI) proposed an amendment to the bill, S. 2168, supra; as follows:

On page 7, line 18, add the following new provisos prior to the period: "": *Provided further*, That of the funds made available under this heading, \$10,000,000 shall be for implementation of the Primary Care Providers Incentive Act, contingent upon enactment of authorizing legislation".

#### SARBANES (AND MIKULSKI) AMENDMENT NO. 3198

Mr. BOND (for Mr. SARBANES for himself and Ms. MIKULSKI) proposed an amendment to the bill, S. 2168, supra; as follows:

At the appropriate place, insert the following:

#### SEC. — NATIONAL FALLEN FIREFIGHTERS FOUNDATION.

(a) ESTABLISHMENT AND PURPOSES.—Section 202 of the National Fallen Firefighters Foundation Act (36 U.S.C. 5201) is amended—

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

"(1) primarily—

"(A) to encourage, accept, and administer private gifts of property for the benefit of the National Fallen Firefighters' Memorial and the annual memorial service associated with the memorial; and

"(B) to, in coordination with the Federal Government and fire services (as that term is defined in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203)), plan, direct, and manage the memorial service referred to in subparagraph (A)";

(2) in paragraph (2), by inserting "and Federal" after "non-Federal";

(3) in paragraph (3)—

(A) by striking "State and local" and inserting "Federal, State, and local"; and

(B) by striking "and" at the end;

(4) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(5) by adding at the end the following:

"(5) to provide for a national program to assist families of fallen firefighters and fire departments in dealing with line-of-duty deaths of those firefighters; and

"(6) to promote national, State, and local initiatives to increase public awareness of fire and life safety in coordination with the United States Fire Administration."

(b) BOARD OF DIRECTORS OF FOUNDATION.—Section 203(g)(1) of the National Fallen Firefighters Foundation Act (36 U.S.C. 5202(g)(1)) is amended by striking subparagraph (A) and inserting the following:

"(A) appointing officers or employees;"

(c) ADMINISTRATIVE SERVICES AND SUPPORT.—Section 205 of the National Fallen Firefighters Foundation Act (36 U.S.C. 5204) is amended to read as follows:

#### "SEC. 205. ADMINISTRATIVE SERVICES AND SUPPORT.

"(a) IN GENERAL.—During the 10-year period beginning on the date of enactment of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, the Administrator may—

"(1) provide personnel, facilities, and other required services for the operation of the Foundation; and

"(2) request and accept reimbursement for the assistance provided under paragraph (1).

"(b) REIMBURSEMENT.—Any amounts received under subsection (a)(2) as reimbursement for assistance shall be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing that assistance.

"(c) PROHIBITION.—Notwithstanding any other provision of law, no Federal personnel or stationery may be used to solicit funding for the Foundation."

#### WELLSTONE (AND OTHERS) AMENDMENT NO. 3199

Mr. BOND (for Mr. WELLSTONE for himself, Mrs. MURRAY, Mr. MCCAIN, and Mr. KERRY) proposed an amendment to the bill, S. 2168, supra; as follows:

On page 16, between lines 19 and 20, insert the following:

SEC. 110. (a)(1) Section 1103 of title 38, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 11 of such title is amended by striking the item relating to section 1103.

(b) Upon the enactment of this Act—