maybe even Sarajevo. Mr. President, it is time they got out, and it is time we helped them out, and it is time we help the Bosnian Muslims defend themselves.

Mr. BIDEN. Will the Senator yield for an observation?

Mr. MCCAIN. Yes.

Mr. BIDEN. Mr. President, I am glad to hear the Senator on the floor speaking to this. Would the Senator acknowledge what everybody forgets? I know the Senator is angry about it, as well. I want to remind everybody that the reason why the U.N. observers are there is that the United Nations went in and disarmed—disarmed—not only did we fail to allow the Bosnian Government to get arms, the arms that existed, we went into Srebrenica—the United Nations did, with our support—and disarmed the Bosnian Government, disarmed the Muslims, disarmed the Croats, in return for a promise that we would protect them. And when, in fact, it was clear and the Dutch were called in for air strikes by NATO, Mr. Akashi said no.

I want everybody to remember what the Senator from Arizona is saying here. Not only did we not protect, we affirmatively—the United Nations and the West—disarmed those safe areas, took their weapons and said, ''We promise you in return that we will keep the Serbs from the door.'' But they knocked on the door, knocked it down, and there was nothing there for them to defend themselves with.

Now, as the Senator from Arizona said, they stand by and watch. And it is not the fault of those Dutch blue helmets. It is the fault of the contact group. It is the fault of the West for failing to intervene, at a minimum with air power, significant air power. But I think the Senator is absolutely correct. This is an atrocity. We should lift the embargo immediately and we should make available what, under the law, the President is allowed to do.

Two years ago, this Senate and Congress passed a piece of legislation authorizing the President, in his discretion, to make available up to 50 million dollars worth of weapons off the shelf now for those people.

I stood in Tuzla the last time this happened and watched trucks come into Tuzla loaded with women and children, and I thought they were celebrating when I first saw them because they were holding up children in these dump trucks above their heads. As they unloaded the dump trucks, I understood why the children were being held above their heads and held outside of the dump truck. Do you know why, Mr. President? Because when they opened the gate and got out, there were three children smothered to death in the bottom of those 1995 versions of cattle cars being dragged into Auschwitz. If these were not Moslems, the world would be reacting, just like if it were not Jews in the thirties, the world would react. Shame on the West.

Mr. MCCAIN. Mr. President, I ask unanimous consent that I be granted an additional 5 minutes.

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I appreciate the emotion of my friend from Delaware. I appreciate his compassion. I think the challenge before us now is to try to devise, working with the administration, a way to end this tragedy as quickly as possible for a minimum loss of human life, recognizing at this point that there are no good options. There are no good options in Bosnia today. What we need to do is choose the least bad option if we expect to stop this ongoing tragedy.

The reason I pointed out this picture again—this is the first time, I think, in history we have ever seen a picture of people who are in uniform, designated as peacekeepers, standing by and watching people being ethnically cleansed, mass rape, and, of course, the arrest and probable torture of young men. That is what the U.N. Protection Force has been reduced to. That is why, in my view, this was ill-conceived and flawed from the beginning—because it was an attempt to keep peace where there was no peace.

I wanted to give some facts as to how bad the situation is. Let me point out that I believe the United States should be prepared to assist in the effort to help remove the United Nations protection force and remove U.N. and allied forces from Bosnia. I want to just lay out the criteria. I hope at some time we can have a significant debate and discussion of this issue, possibly as early as next week. But I want to lay out the following criteria, because we have to be clear.

The operation must be conducted under U.S. or NATO command. It must have a clear mission objective, precluding any danger of mission creep, and the operational rules of engagement must be established and approved by NATO. Under no circumstances should the United Nations be permitted to participate in any way in the planning or implementation of a withdrawal operation. To allow any U.N. influence would be to risk the same failed policies from which UNPROFOR so clearly suffers. To allow U.N. participation in command decisions would be to risk repeating the gutless refusal to destroy Serb air defenses, a U.N. decision which led to the shootdown of an American F–16 last month.

Mr. President, the administration has committed 25,000 U.S. forces as part of an evacuation force. Once again, we must recognize that we must be willing to devote whatever forces in support that are necessary to successfully complete the mission—an overwhelming force to guarantee the safety of our men and women in uniform and those of our allies.

Finally, Mr. President, clear warnings must be issued to all parties involved in the Bosnian conflict. Should one American be injured or killed while participating in a withdrawal operation, the United States will not hesitate to use its military might to punish such aggression.

I would like to be specific. If the Bosnian Serbs harm Americans while this rescue operation is going on, I suggest the most punishing air strikes imaginable, and going as far away as Belgrade, if necessary.

Mr. President, it is our obligation morally to rescue the U.N. Protection Forces. It is also our moral obligation to do everything necessary to protect the lives of our young men and women who are involved in that operation, and make the cost so extremely high that we can guarantee to a significant degree the safety of those men and women.

Every day UNPROFOR stays, every hostage that is taken, every attack on the safe areas, every strategically ineffectual air strike and every sortie that has no mission but returns safely to base, creates the perception of a feeble Western alliance.

Every day UNPROFOR is in place is another day that the Bosnian Government forces are precluded from protecting themselves against Serb aggression. Remove UNPROFOR, lift the arms embargo and allow the people of Bosnia to fight for their future.

Unfortunately, harsh, cold, military facts will resolve this conflict. One side will prevail. I hope it is the lawful government of Bosnia. I find it very troubling that we have interfered with these realities to the benefit of the aggressor, by imposing an arms embargo on the victim. If we are unwilling to commit American forces to defend Bosnians, we cannot in good faith prevent the Bosnians from defending themselves.

I want to thank Senator DOLE for his proposal on this issue. I hope that next week we will take up this issue as soon as possible. Every hour that we delay, more innocent people will die. Every hour that we delay, will mean more humiliation and degradation of the United Nations and NATO. The repercussions of this kind of dishonor will reverberate around the world. We must bring it to a halt.

I appreciate the indulgence of my colleagues.

Mr. DOLE. Mr. President, first let me commend my colleague from Arizona for his eloquent statement and my colleague from Delaware, Senator BIDEN. I certainly share the views they both expressed this evening.

This is a tragedy I do not believe we will be able to measure for a long, long time. It will have an impact on the West for decades. I hope we can take up the Bosnia resolution as early as next Wednesday or Tuesday.

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, we are trying to get some order so Members will know precisely what will happen.

As I understand, Senator DOMENICI is prepared to offer an amendment, and he is prepared to enter into a time agreement. That cannot be done until Senator GLENN has an opportunity to look at the amendment. We are not certain whether or not there will be a second-degree amendment.

I am advised that we can now deal with the Lautenberg amendment without a second-degree amendment, and it will be 1 hour equally divided.

I ask unanimous consent when Senator LAUTENBERG offers his amendment, No. 1535, that no amendments be in order, that there be 1 hour for debate to be equally divided in the usual form, and when the Senate votes, the vote occur on or in relation to the Lautenberg amendment.

Mr. WARNER. Reserving the right to object, I shall not object. Is it possible we could set a precise time on the Lautenberg vote?

Mr. DOLE. That is what we are trying to work out. We will not take up the Lautenberg amendment, I assume, for another 20 minutes, so the vote will not come until the end of that hour.

We hope we get an agreement on the Domenici amendment, also on the Feingold amendment, and also on an amendment by Senator PRYOR.

We are looking at the Feingold amendment. We did not have a copy of Senator PRYOR's amendment.

If we can start getting these agreements, I can advise my colleagues when we will have the vote.

Mr. DASCHLE. Mr. President, reserving the right to object, I guess I am not clear.

The majority leader, then, would not be prepared to set a time for the vote on the Lautenberg amendment until we know whether we can sequence more amendments and determine from that whether we might be able to sequence, then, the votes following consideration of all the amendments.

Mr. DOLE. That is correct. There have been a couple of suggestions made. One, that we can sequence four or five amendments and have all the votes tomorrow morning.

We would be here this evening debating the amendments, and those who had other plans or just wanted to frankly do something else, that they would be free to do that this evening. We would have votes tomorrow morning.

I think that is what we are trying to put together. There are four amendments we are aware of. I think the Senator from Texas, Senator HUTCHISON, has an amendment. We are trying to contact her.

I think fairly soon we will have the Glenn amendment, the big amendment, the substitute amendment, which I assume will probably take some time to debate on that.

Mr. KENNEDY. Mr. Leader, I have one on the OSHA provisions, and I would be glad to enter into a time limit tomorrow if we are sequencing. I would be glad to be in touch with the floor manager staff. We will make a copy available.

Mr. LEVIN. Will the leader yield?

Mr. DOLE. I am happy to yield to the Senator.

Mr. LEVIN. There are many amendments that are outstanding. I just am wondering whether or not the majority leader was suggesting that there was just that limited few amendments that were still outstanding, because there are many, many.

Mr. DOLE. I hope the number is not too large. I know there are a number of amendments.

Mr. PRYOR. If the distinguished majority leader would yield, I have an amendment. I think it could possibly even be accepted by both sides. I am not certain.

Even if it has to be debated and voted on, I would agree to 30 minutes time, 15 minutes equally divided, sometime tomorrow, and no second-degree amendments to be offered.

Mr. DOLE. As I understand, we have a copy of that amendment, and I will have Senator HATCH and Senator ROTH look at it.

I would hope that even if we reach some agreements that Members with amendments would stay tonight and try to dispose of those amendments. They may be acceptable or reaching some agreement, where we could have the vote, if not tonight, sometime tomorrow morning.

I think there is good-faith effort on the part of the leaders to keep this bill moving. I think we have gone over a couple of large hurdles this afternoon. If we can make some progress this evening, even though there might not be any votes after a certain point, we could still stay here. The managers are anxious to be here late tonight, to deal with amendments.

Mr. DASCHLE. If the majority leader would yield, would it not be in the interest, for the benefit of those who are waiting to offer amendments, to at least provide a sequence? We have Senator DOMENICI prepared to go now, and then Senator LAUTENBERG immediately after that. If it would be appropriate then for Senator FEINGOLD and Senator PRYOR to follow Senator LAUTENBERG —if we know the sequence perhaps we could then——

Mr. DOLE. I make that request.

Mr. DOMENICI. Reserving the right to object, what we intend to do is to speak for 20 minutes on our side on this Domenici amendment, giving your side a chance to look at it.

We will yield the floor and then permit going to Senator LAUTENBERG. That hour will elapse and then by that time your staff can have looked at ours, we will come back to it and finish it—whether it is 10 minutes, 20 minutes—and then of course you can go to the next one.

So that is understood as the sequencing for the conclusion of the Domenici amendment.

Mr. DASCHLE. That was my understanding, that we were going to set aside the Domenici amendment in order to accommodate the other amendments, and come back to the Domenici amendment after we had a chance to look at it.

Mr. DOLE. Following the Pryor amendment, the amendment by Senator HUTCHISON, an amendment on reasonable reliance.

If I could renew that request, that following the debate by Senator DOMENICI, 20 minutes, we then move to the Lautenberg amendment, and after completion of debate on the Lautenberg amendment, be followed by debate on the Feingold amendment, to be followed by debate on the Pryor amendment, to be followed by debate on the Hutchison amendment.

Mr. DASCHLE. If the majority leader would yield, I am informed Senator FEINGOLD has a second amendment very similar in nature to the Pryor amendment that he would be willing to accept a short time agreement on, so if we could put that on the list as well, I think that could accommodate Senator FEINGOLD.

Mr. DOLE. And that he would follow the Hutchison amendment; is that all right?

Mr. DASCHLE. That is correct.

Mr. JOHNSTON. Mr. President, reserving the right to object, were there any—did this ask for no second degrees on any of those amendments?

Mr. DOLE. Not at this point. We are trying to get the sequence. If we cannot agree on second degrees, that will present a problem. We are at least trying to sequence amendments so Senators will know when they may be expected to be here to offer their amendments, and obviously we would like to have additional amendments if anybody has an amendment. The Senator from Massachusetts will do his, I understand, tomorrow?

Mr. KENNEDY. I would prefer that.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Reserving the right to object, technically you did not say upon completion of Lautenberg we would return to Domenici before we go to the next amendment, and that should be there.

Mr. DOLE. I thought I did.

Mr. DOMENICI. You did not.

Mr. DOLE. Did not. All right. I guess I could not remember your name.

Mr. DOMENICI. It is pretty hard.

Mr. BYRD. Reserving the right to object—I have no intention of objecting—may I ask, is it the intention to vote on all these amendments this evening? As I understand it, we are only sequencing the amendments now. Some of them may be played out on tomorrow?

Mr. DOLE. That is correct. Some may be accepted, as I understand it. Some may need rollcall votes.

Mr. BYRD. And some might go over to tomorrow.

Mr. DOLE. Some might go over. I am not quite ready to announce that, but I

agree with the Senator from West Virginia, we are going to take them up. We can either vote as they come up or we can stack the votes, if that is satisfactory.

Mr. BYRD. Mr. President, I can understand the necessity for stacking a few votes, but I would object to stacking a great number of votes.

What do we mean by a great number?

Mr. DOLE. Right. I would say two or three—that is a small number.

Mr. BYRD. Yes. I have no problem with two or three. But I think we ought not to stack a great number of amendments.

Mr. DOLE. If we did, we would check with the Senator from West Virginia and provide for a little debate between each.

Mr. BYRD. That is all right up to, say, three.

Mr. DOLE. But if we decided to do three this evening and the balance tomorrow morning, would that be satisfactory?

Mr. BYRD. I have no problem with three votes. I hope we will stay here and do them. But there are many of us that sacrifice a great deal in order that one or two Senators, on this side of the aisle and on that side of the aisle, keep an engagement off the Hill. The rest of us are pinned down here waiting on action. We sit here for an hour or 2 hours before we get a vote.

I am not attempting to get in the majority leader's way or the minority leader's way. I am not attempting to force my will on the Senate. But I am one Senator who sits here and waits on action that does not accommodate me at this hour of the evening, to stack votes, hold off votes, or to have a window. There are a lot of other Senators here who would rather be home with their spouses than to be sitting around waiting on a window to expire so we can get down to business to accommodate one or two Senators.

Mr. DOLE. I understand. I hope this will work to everyone's satisfaction. We will keep that in mind.

Mr. BYRD. I thank the majority leader.

Mr. NICKLES. Will the majority leader yield?

Mr. DOLE. I will be happy to yield.

Mr. NICKLES. For the information of my colleagues, I was the one who requested that we stack the vote and maybe several votes for tomorrow morning. The reason I was doing that is because a lot of us do have families and would like to have dinner with their families. I cannot do that tonight because I am involved with some of these amendments, so I am not speaking for myself, but I know a lot of colleagues—some of our colleagues do not live real close to the Hill, either. They might live 20 miles away, so they cannot really wait for 2 hours.

So it is my suggestion that we do as many amendments as possible. Maybe some of these amendments—we now have an order for five amendments. It may well be that we can accept two or three of these amendments without rollcall votes. In all likelihood, the Lautenberg amendment will require a vote. I am not sure about the Feingold amendment or the Pryor amendment. Maybe we can accept the Pryor amendment.

I would like to see us make as much progress as possible. We have a lot of work to do. I also hope the majority leader will say that this is not the end of the work tonight.

I hope we plow ahead, because I know people said they have amendments and I know we are running out of days. So I hope the leaders and the managers of the bill will be willing to stay in and work through as many amendments as possible and stack whatever rollcalls are necessary until possibly 9 o'clock tomorrow morning.

Mr. JOHNSTON. Will the Senator yield?

Mr. NICKLES. I will be happy to yield.

Mr. DOLE. Let me respond. I do not disagree with the Senator from Oklahoma or anybody else. I think we all have the same objective and that is to try to finish the bill. As long as we are moving. What we do not want to do is sit around and wait for somebody to come back from somewhere, so 80 of us wait for 5 to come back. I have done that before, as the Senator from West Virginia has. But I think we have a sequence now and we have the people here who will be here and be debating these amendments. I think for the next hour and a half, we are going to have total debate without, probably, a single quorum call. I think that should satisfy everyone.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. DOLE. This is the late night, I might add. Thursday is normally the late night. We are going to continue.

Mr. JOHNSTON. I think we have a good chance of being able to work out some of these without a record vote. We have some changes I think we can work out with Senator DOMENICI and then, at least from my standpoint, that would probably not require a record vote.

Senator PRYOR's amendment does not sound as though it would require a record vote. At least, speaking for myself, it sounds reasonably noncontroversial.

Mr. PRYOR. Fine.

Mr. JOHNSTON. So you have—that is five. If two of them do not require record votes, that is a maximum of three, and we could let our colleagues go home and see their dog Billys.

Mr. DOLE. I think the best thing we can do now is start the debate.

Mr. GLENN. Will the majority leader yield for a question? As I understood this, and so we straighten it out—I checked with the Parliamentarian a moment ago. I think there was a little doubt as to the order here. As I understood it, it was this: Domenici, 20 minutes; Lautenberg; back to Domenici, then at the end of that; then Feingold, Pryor, Hutchison, back to Feingold again, and Kennedy tomorrow probably; is that correct?

Mr. DASCHLE. That is correct.

Mr. DOLE. Unless we can finish this evening. I think we will probably be on it tomorrow.

The PRESIDING OFFICER. Is there objection to the majority leader's request? Hearing none, it is so ordered.

Under the previous order, the Senator from New Mexico is recognized.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, it is my understanding I have 20 minutes to be used as I see fit; is that correct?

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 1533

Mr. DOMENICI. Mr. President, this amendment is made up of two parts. The second part is an amendment proposed by the chairman of the Small Business Committee, who is present on the floor, Senator BOND. So I will try to divide the time rather equally, using 10 minutes and yielding 10 to him—maybe a little more on my end, in proportion. There are more words in my amendment than his, which probably means I should talk a little longer.

I am glad the Senator finished. I yielded 40 minutes ago, I thought, and we would have already been finished with me, but we got a lot of work done so I am pleased to have yielded.

Mr. President, I sent this amendment to the desk in behalf of Senator BINGAMAN, Senator BOND, and myself. I think all of us have had experience in our home States, in one way or another, talking to a lot of small business people, men and women, sometimes couples, and a lot of minority businesses and a lot of women-owned businesses that are small and startup.

Frankly, when it comes to regulations, the most consistent complaint is that the regulatory process never involves small business until it is all finished and it is too late. They are not around to make practical suggestions to seek just some ordinary, common sense in this process. Many regulations take a long time from beginning to end. As a matter of fact, some take 2 years, Mr. President, 2½ years.

What we seek in the first part of this amendment is precisely what the small business people have told us, and told this administration, that they desperately want. Last year, five agencies, including the Small Business Administration, EPA, and OSHA, held a forum on regulatory reform. Let me quote what they said:

> . . . the inability of small business owners to comprehend overly complex regulations, and those that are overlapping, inconsistent and redundant.

They have indicated that:

> The need for agency regulatory officials to understand the nuances of the regulated industry [small businesses, women-owned businesses, minority businesses] and the compliance constraints of small business.
>
> The perceived existence of an adversarial relationship between small business owners and Federal agencies.

All of these were statements made at that forum that this administration held with small business for small business.

So let me read one more time:

The need for more small business involvement in the regulatory development process, particularly during the analytic, risk assessment and preliminary drafting stages.

That is what they said was the paramount problem. It is in their own report.

Mr. President, this amendment has a lot of pages to it because, whenever you start mentioning Federal agencies and bureaucracies, you have to make all kinds of references. Essentially this would create a partnership, not an adversarial, not a take-it-to-court, not a mandatory situation, but would create panels wherein small business would become partners with the agency officials that are doing this work. So that before the regulations are finalized, they would have some input into what the regulations have to say, whether they are consistent, whether they are too confounding, too complicated, where they do not make sense. All of that, in my opinion, should be part of a well-run executive branch with reference to regulations that OSHA and the EPA put out right now.

I just tried to construct a way to set these panels into existence so that they will be ongoing and each State will have small business input within their States through this process to get small business input. It will be a small number of businesses—just three. There will be a group of bureaucrats or agency people who move this along and make sure that the input is given and passed on where it should be. If it works right, in our sovereign States a few small business people become part of an ongoing dialog regarding regulations that, I think, be it utterly simple, could have a profound effect on what currently is a very bad situation.

Who has not heard a small business say that, ''Government regulators treat us like enemies''? If you have not heard it, you have not been among them. If you have not heard them say, ''They do not care what we think,'' you have not been among small business people.

We are trying in a simple way to see if in time we can get those kinds of things wiped away from the scene as far as the regulations, and that there be more partnership-type exchange between those that create the jobs in America, that pay the bills, and those that attempt to regulate them and their lives and their businesses sometimes in very wasteful and unreasonable ways.

So, Mr. President, there may be room to change some of the words to make it very clear what we intended. We will work with Senator JOHNSTON's staff and Senator GLENN's staff. We have already talked at length with the chairman of Governmental Affairs, Senator ROTH, and his staff. They tend to think this is a good amendment and should be adopted.

Mr. President, almost all of the small business owners I talked to—who are the people who create almost all of the jobs in my State—told me just how smothering this explosion in regulations has become.

Further, almost without exception, these small business owners identified the Occupational Safety and Health Administration [OSHA] and the Environmental Protection Agency [EPA] as the two Federal agencies which promulgate the most unreasonable and burdensome regulations.

Further, Mr. President, because a great number of new businesses are being started by women, some of the most vocal critics of EPA's and OSHA's unreasonable regulations are women-owned businesses.

I believe one of the biggest reasons for these attitudes among America's small businessmen and women is that they are just not adequately consulted when regulations affecting them are being proposed and promulgated.

I am not alone in this belief.

Last year five agencies—including the Small Business Administration, EPA, and OSHA—held a Small Business Forum on Regulatory Reform.

Let me quote from the Administration's own report summarizing the principal concerns identified at the forum:

The inability of small business owners to comprehend overly complex regulations and those that are overlapping, inconsistent and redundant.

These panels will be responsible for providing technical guidance for issues impacting small businesses, such as applicability, compliance, consistency, redundancy, readability, and any other related concerns that may affect them.

These panels will then provide recommendations to the appropriate agency personnel responsible for developing and drafting the relevant regulations.

The panels will be chaired by a senior official of the agency and will include staff responsible for development and drafting of the regulation, a representative from OIRA, a member of the SBA Advocate office, and up to three representatives from small businesses especially affected.

The panel will have a total of 45 days each to meet and develop recommendations before a rule is promulgated or before a final rule is issued. Forty-five days, in the context of rules that are years in development, is not a delay.

In fact, these agencies know months in advance that they will be preparing these regulations. Sometime during this period, the agencies can seek these panels' advice.

This will allow the actual small business owners, or their representative associations, to have a voice in the massive regulatory process that affects them so much.

Finally, this amendment will also provide for a survey to be conducted on regulations. This idea is analogous to what the private sector routinely practices.

A customer survey, contracted and conducted with a private sector firm, will sample a cross-section of the affected small business community responsible for complying with the sampled regulation.

I believe that this panel, working together so all viewpoints are represented, will be the crux of reasonable, consistent and understandable rulemaking.

Further, my amendment enjoys the support of the National Federation of Independent Business.

Also, I previously spoke of the Small Business Advocacy Council which I set up in my State.

Mr. President, I believe this amendment will help reduce counterproductive, unreasonable Federal regulations at the same time it is helping to foster the non-adversarial, cooperative relationships that most agree is long overdue between small businesses and Federal agencies.

CONCLUSION

Mr. President, a second part of this amendment would greatly aid small businesses as they deal with these seemingly endless Federal regulations.

For a further explanation of these provisions, I would like to yield to my good friend and chairman of the Small Business Committee, Senator BOND.

Let me conclude that the National Federation of Independent Businesses wholeheartedly supports this amendment as a bona fide effort to get small business involved in a non-advocacy manner but regular and ordinary involvement in the preparation of regulations that affect them.

I ask unanimous consent that the letter from the National Federation of Independent Businesses be printed in the RECORD.

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

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, July 12, 1995.

Hon. PETE DOMENICI,
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: On behalf of the more than 600,000 members of the National Federation of Independent Business (NFIB), I am writing to express NFIB's support for your legislation, the Small Business Advocacy Act, as an amendment to S. 343, along with Senator Bond.

Small businesses have long been at a disadvantage in accessing the regulatory process. They simply do not have the time or resources to closely follow the Federal Register and work with agencies to ensure that regulations are not unnecessarily burdensome. This issue is of such importance that it was voted the number three recommendation in the recent White House Conference on Small Business.

Your legislation provides a mechanism, through its establishment of small business review panels, to ensure that the small business voice is heard as regulations are being developed. As a result, regulators are more likely to achieve their implementation goals at a lower cost and with less burden on small businesses.

Further, your legislation establishes a small business and agriculture ombudsman

in federal agencies where small business owners can confidentially report on compliance and enforcement proceedings. The ombudsman can then issue findings and recommendations to improve enforcement activities and ensure that regulations are understandable and reasonable for small businesses.

NFIB supports your efforts and will work with you to enact your amendment.

Sincerely,

DONALD A. DANNER,
Vice President.

Mr. DOMENICI. I yield to my friend, the chairman of the Small Business Committee, Senator BOND.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I am pleased to join with my very distinguished colleague from New Mexico and the other Senator from New Mexico, Senator BINGAMAN, in offering this amendment. I commend Senator DOMENICI for all of the work that he has been doing on the very difficult budget process, and for the great work he has put in this early on this year.

He asked if I would join him to listen to the small business people who had come to him in New Mexico and who wanted to share with us in Washington the concerns they had about how the Federal Government was making it far more difficult for small businesses to thrive and even to survive.

We had an excellent field hearing in Albuquerque, NM, where we learned a great deal about the concerns of small businesses about excessive regulations and excessive and abusive enforcement tactics by Government agencies.

Here in Washington those might seem like overused phrases. But outside the beltway, in the real world, where the men and women of small business are trying to earn a living for themselves and their families, to create jobs and to improve their communities, they are suffering real harm from precisely those excessive regulations and excessive and arbitrary enforcement.

We heard from Ms. Angela Atterbury, owner of a small business in Albuquerque, NM. She told us of a small businessman who was a first-time offender of an OSHA regulation and was fined $8,000; no education or explanation, just a fine, which almost put the man out of business. She told us of a small pest-control company transporting one to two pints of pesticide who must comply with the same regulations as a large shipper of chemicals. And a candymaker who cannot legibly print all the information required by the FDA on the candy bar wrapper.

You have to have a separate sheet of paper attached to each candy bar to get all the information on it.

We also heard from Mr. Gregg Anesi, a small businessman from Farmington, NM, who testified that too often there is no practical recourse for a bad regulation or a bad regulator.

This is something that we have heard time and time again. Many, many small businessmen and women have asked us, ''What do you do if you are small business and you cannot afford to hire a hoard of lawyers, and you cannot afford to carry on a battle with an agency? You have somebody who seems to be overstepping their authority or misinterpreting regulations. How do you get out of it?''

This is really a crushing problem for many small businesses who run head on into the Federal Government and feel like they have been hit by a truck. And many, many more small businessmen who were literally drowning in the flood of government regulations.

The Small Business Committee has held field hearings in several other States since that time, and the message from small business owners at each of these hearings is strikingly similar. In my own State of Missouri, I heard from Mr. Leon Hubbard, the owner of a small homebuilding company in Blue Springs, MO. Mr. Hubbard persuasively describes the disproportionately burdensome impact on a company like his of regulatory paperwork obligations. OSHA requires companies like his to have files of Material Safety Data Sheets for all hazardous products on a home construction site, in spite of the fact that most products carry their own warning labels and despite a 1992 OSHA study that indicated less than 1 percent of all construction fatalities resulted from chemical exposure.

We know from other instances where people have been hit by OSHA because they did not have a safety material data sheet on a bottle of Dove soap, the kind that any of us may use in household cleaning activities. This is the length to which some of them have gone.

He also pointed out the unfairness of OSHA's multiemployer work site policy. Arbitrary enforcement of this rule makes builders like himself legally responsible for the safety practices of employees of independent subcontractors working on the same job site even though he might not have any direct authority over the employees. This means that one employer could be cited for safety violations of another employer.

Another piece of very compelling and interesting testimony came from Mr. James M. White, senior program director for the Local Initiative Support Corp. in Kansas City describe his frustrations with the problems created for central city redevelopment by the unpredictable enforcement of environmental regulations. Mr. White is a senior program director for a national non-profit organization funded by the private sector to provide support to community development corporations. He testified about his personal involvement in six proposed development projects in central Kansas City where the projected development costs were escalated to excessive levels by uncertainty over cleanup requirements under environmental laws. The defensive and over cautious approach taken by lenders and others as a result of inconsistencies and uncertainties about potential environmental liabilities dramatically increase project costs and reduce redevelopment opportunities. Factories and jobs often are driven to locate in distant suburbs rather than in the central city where they would be welcomed by thousands of job seekers.

As a result of our hearings, Senator DOMENICI introduced S. 917, the Small Business Advocacy Act—to give small business a greater voice in development of regulations of EPA and OSHA—and I introduced S. 942—to give small business a greater voice in dealing with the enforcement of regulations, to give small businesses who feel they are being oppressed either by excessive regulations or by the enforcement of them some place they can go, some voice where they can be heard.

The amendment that Senator DOMENICI, Senator BINGAMAN, and I have proposed draws on both bills to produce what we think is a strong amendment for small business.

The part of the amendment drawn from S. 942 is designed to give small businesses a place to voice complaints about excessive, unfair or incompetent enforcement of regulations, with the knowledge that their voices for once will be heard. The amendment sets up regional small business and agricultural ombudsmen through the Small Business Administration's offices around the country to give small businesses assurance that their confidential complaints and comments will be recorded and heard.

I cannot tell you how many times a small businessperson has come up to me and said, ''Man, this inspector from OSHA was really tough on me, but I am scared to death because if I complain to his supervisor, I am going to get it doubly bad the next time.''

Well, there ought to be some kind of check, some kind of confidential process in which he can place that complaint. And if there are others like him who are also being abused by that particular inspector, perhaps the ombudsman can do something about it.

The ombudsman also would coordinate the activities of the volunteer Small Business Regulatory Fairness Boards, made up of small business people from each region. The board would be able to investigate and make recommendations about troublesome patterns of enforcement activities. Any small business subject to an inspection or enforcement action would have the chance to rate and critique the inspectors or lawyers with whom they deal.

Now, they may not like them all, but you can sure find out, when you listen to the people who are subjected to the inspections and the regulations, who are the responsible officials and who are the overly aggressive and excessively burdensome and overbearing regulators.

In dealing with small businesses today, too many times an agency seems to assume that everyone is a violator of the rules, trying to get away

with something. Many agencies do a good job of fulfilling their legal mandate while assisting small business, but there are some that seem stuck in an enforcement mentality where everyone is presumed guilty until proven innocent. That is not our system. That is not the American way.

From your experience and mine, we know that most people want to comply with the law if they know what it is. We still need sanctions. We still need enforcement for those who willfully refuse to do so. But let us not assume that everyone wants to violate the law and wants to overlook the requirements for safety, for health and other legitimate regulatory purposes.

I think we ought to let small businesses compare their dealings with one agency to dealings with another so that the abusive agencies or agents can be weeded out and exposed. Agencies should be vying to see which can fulfill their statutory mandate in ways that help and empower small business to accomplish their purposes, whether it be safety in the workplace or cleanliness of the environment. The agencies ought to be helping first the people involved to do the job that they want done and to do it properly.

We need direct feedback, and I think the agencies need direct feedback from small business women and men around the country on how well regulators are doing their job.

In my view, the Domenici amendment will for the first time take the fight outside the beltway and attack the regulations and the agencies where they impact people in their day-to-day lives.

Now, most of my colleagues in this body have received complaints. If you have not heard thousands of those complaints, you must not be listening because every day they come to Washington to tell the Members of Congress how bad they are being treated. Let us give them a chance to get a hearing out in the area where they live to identify at the location where it is happening those agencies or representatives of agencies who are overstepping their boundaries.

Mr. President, last month the President told the White House conference that he wants Government regulators to stop treating small business men and women as criminals and start treating them as partners or customers. I commend him for that, and I believe this amendment will help to make that goal a reality and bring much needed relief to small businesses across the country. I really hope the President will follow through on his speech to small business and join with the National Federation of Independent Businesses in supporting this amendment.

I point out, since I am talking about the conference, that this White House Conference on Small Business which just completed brought a lot of good ideas and a lot of information to Washington, and the No. 3 priority which the small business delegates put on the agenda was dealing with regulation and paperwork. They had a vote of 1,398 who said the third priority should be amending the Regulatory Flexibility Act, making it applicable to all Federal agencies including IRS and DOD, and including the following—and this I note parenthetically, that the Dole substitute, this measure under consideration, does just that. It strengthens the Regulatory Flexibility Act. It also does the other following things set forth in that priority listing:

A. Require cost-benefit analysis, scientific benefit analysis and risk assessment on all new regulations.

B. Grant judicial review of regulations, providing courts the ability to stay harmful and costly regulations and requiring agencies to rewrite them.

C. Require small business representation on policymaking commissions, Federal advisory and other Federal commissions or boards whose recommendations impact small businesses. Input from small business representatives should be required on future legislation, policy development and regulationmaking affecting small business.

The regulations go on, but I think any of us who travel in our States and listen to the small businesspeople will agree that even if you were not fortunate enough to attend the conference, these are the concerns of small business.

I believe the Domenici amendment helps this excellent substitute that is before us to address those needs.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from New Mexico has 2 minutes.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Senator COHEN of Maine and Senator ABRAHAM of Michigan be added as original cosponsors.

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

Mr. DOMENICI. I ask unanimous consent there be printed in the RECORD a letter from Angela Atterbury, of Atterbury & Associates, who is the chairperson of my Small Business Advocacy Council, expressing our entire New Mexico Advocacy Council support of this amendment.

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

ATTERBURY & ASSOCIATES, INC.,

For the past two years, the Small Business Advocacy Council has worked to identify solutions to regulatory issues which create unreasonable burdens for small business. Our members, comprised of women and men small business owners, currently are underrepresented in the regulatory process. By providing a presence to small business people on a regulatory review panel, Congress would level the playing field toward small business, which often can not absorb the costs or the time required to understand the language of existing regulations.

This is what small business wants—an opportunity to act in an advisory capacity and work together with agencies. This would help refute what is seen by small business as the agencies' adversarial position toward them. It would provide a much-needed dose of reality by those of us who live our day-to-day lives outside the Beltway to those who live within its confines, in terms of application, readability, costs and other germane issues. The review panel will also give each side a means to communicate and soften the stance many in the small business community hold of the agencies, that is, that their existence is justified only by levying fines to small business.

Sincerely,

ANGELA ATTERBURY,
President, Chair,
Small Business Advocacy Council.

Mr. DOMENICI. I was very pleased that my friend from Missouri mentioned some of the people in our State who testified before his small business hearing, and I might just in my remaining minute for the record thank him for mentioning them and refresh his recollection about the farmer who brought to the hearing room all of the attire, from boots to an orange jacket, to a headpiece where he had to cover his face. And it was because of the newest regulatory schemes that we have under the protection of Agricultural Workers Act. That may not be its formal name.

What he said was very interesting. I wanted to say this when Senator NICKLES, the great golfer, was in the Chamber. He said, I believe we can prove that every golfer who plays 18 holes of golf on a modern grass course gets exposed to more of that which you are trying to protect farm workers from than in 1 year on the farm, but farmers' aides will be wearing this attire like they were from outer space. He said, how would the golfers feel with all of that on them to protect their legs which are exposed as they wear shorts out on the golf course.

I think those are some of the things that somehow or another, sooner or later we are hopeful the point will get across about common sense, and we believe our amendment will add a little bit of potential and possibility for that happening.

Mr. President, I understand Senator GLENN and the staff of Governmental Affairs wants more time to look at my amendment. So, I ask unanimous consent that whatever the previous order was, that the Domenici amendment be set aside and that it follow in sequence for tomorrow morning for the first amendment that would come up tomorrow morning, whatever that might be.

Is that satisfactory with Senator GLENN?

Mr. GLENN. It is satisfactory to me. All we want to do is have a chance to look at it. There is some irritation expressed that we were even questioning this.

Mr. DOMENICI. Let me ask that it be set aside temporarily.

The PRESIDING OFFICER. The amendment has been set aside for the consideration of the amendment by the Senator from New Jersey.

Mr. DOMENICI. I am supposed to be back here to present the rest of my amendment. I am not going to do that if it is to no avail.

Mr. GLENN. We would be happy to comply with all these things. We have a number of questions on these. They are legitimate. We will have the administration, the Justice Department, look into this tonight to be able to give an answer in the morning. We would not be able to give approval or accept this this evening. I think it is a good idea to put it off until tomorrow. Then the Senator from New Mexico would not have to come back tonight.

The PRESIDING OFFICER. It is the Chair's understanding that the Senator from New Mexico controls when his amendment will be called up. He can have it set aside in order to hear the presentation by the Senator from New Jersey.

Mr. DOMENICI. Thank you.

The PRESIDING OFFICER. It will come up when he calls it.

Mr. GLENN. It is subject to being called up either tonight or tomorrow; is that correct?

The PRESIDING OFFICER. That is correct. We would proceed following the Senator from New Jersey.

The Senator from New Jersey is recognized to proceed.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey is recognized.

Will the Senator from New Jersey yield?

Mr. ROTH. For the purposes of unanimous consent.

Mr. LAUTENBERG. I would be pleased to yield without losing my right to the floor to the distinguished Senator from Delaware.

Mr. ROTH. We will withhold. I understand there will be one more unanimous consent.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I thank the Chair.

AMENDMENT NO. 1535 TO AMENDMENT NO. 1487

(Purpose: To strike the provisions relating to the toxic release inventory review)

Mr. LAUTENBERG. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending Domenici amendment is set aside. The clerk will report the Lautenberg amendment.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself, Mr. BAUCUS, Mr. LIEBERMAN, Mr. KERRY, Mr. BRADLEY, Mrs. BOXER, Mr. SIMON, Mr. KENNEDY, and Mr. MOYNIHAN, proposes an amendment numbered 1535 to amendment No. 1487.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 72, strike lines 1 through 15.

Mr. LAUTENBERG. Mr. President, this amendment would delete a provision currently in the bill that is unrelated to regulatory reform and would greatly weaken a critical environmental law generally known as the community right-to-know law, or the Toxics Release Inventory, commonly called TRI.

Mr. President, I was the original sponsor of the right-to-know law. I am proud that it has proved to be one of the most effective environmental laws on the books. The right-to-know law has no prescriptive requirements. It does not force anyone to do anything except release information. It is a simple sunshine statute.

Mr. President, I would strongly oppose the emasculation of the right-to-know law no matter what the vehicle. But this clearly is not the proper way to consider such a huge change in the major environmental law. The right-to-know provision in this bill has been subject to hearings or scrutiny in the Environment and Public Works Committee. And the substance of the proposal goes well beyond the changes proposed for other types of regulations.

Mr. President, as I said, my amendment proposes to delete a section of the proposed legislation that reduces the effectiveness of the right-to-know law, commonly called TRI, Toxics Release Inventory. Most of us who have been here for a while have worked on legislation that sometimes turns out to be less effective than we had hoped. The right-to-know law, on the other hand, has proven to be even more effective than we expected. It has also proved to be less obtrusive to business than other environmental laws that are on the books.

Now, most environmental regulations operate by command and control. They require companies to take specific actions, such as lowering emissions, sometimes by a specific date, sometimes by a specific technology. Some environmental laws require industry to develop technology that does not yet exist. And these types of prescriptive regulations are probably the major reason that industry has been pushing for this so-called reform legislation.

But the right-to-know legislation is quite different. The Toxics Release Inventory imposes no regulatory control. It requires no permitting. It sets no standards. It requires no registration, labeling or reduction in emissions. It does not even require monitoring by a Federal agency. All it requires are estimates of the amount of toxic chemicals that facilities release into our environment. And this information is very helpful to local officials, to fire and emergency personnel and to those who live near the plants. Despite the lack of specific requirements, the right-to-know law has probably led to more voluntary pollution prevention efforts and more environmental cleanup than any other law. The right-to-know law requires companies to list the amount of certain chemicals that leave their facilities through air, through water, or shipment to land disposal facilities.

Currently, 652 chemicals are required to be disclosed. Each has well-established adverse health effects or is carcinogenic or toxic.

Now, under the law, in deciding which chemicals to include on this list, EPA is not required to do a full risk assessment. On the other hand, the law does not restrict companies from releasing these chemicals. All that is required—and I make this point over and over again—is disclosure. The right-to-know law has proven effective primarily because it has influenced the voluntary behavior of corporations. First, many companies have voluntarily reduced the emissions of harmful chemicals in order to avoid negative publicity. By requiring companies to tell the public the truth about the chemicals they are emitting, the law has created a strong incentive for industry to reduce emissions even though, again, they are not required to do so by law.

Beyond creating the possibility of adverse publicity, the right-to-know law has worked by encouraging businesses to reduce waste for the sake of their own bottom line. Company after company has discovered the material they were putting out through the stacks or pouring into the water could be recovered and reused. One company in New Jersey cut its emissions by 90 percent once they looked at the value of the materials they were simply throwing away. And when we look at what some of the companies say, it is rather illuminating. This quote from Ciba-Geigy, a very important pharmaceutical manufacturer, in 1993 in the environmental report that said:

> The initial demand for environmental reporting came from the public. But in responding, we have discovered that the information is extremely useful to our own management. We have learned about our successes, our inadequacies and the gaps in our knowledge. It's a good example of the way in which external pressures ultimately prove of benefit to the environment and to industry.

Mr. President, lots of these materials are very expensive. And when they are wasted, they have a negative effect on the company's bottom line. Yet before the right-to-know law was enacted, perhaps surprisingly many companies simply did not appreciate the extent to which chemicals were being wasted by emitting them into the environment rather than using them in their product manufacturing. The right-to-know law has given many corporations the information they need to reduce this waste. As a result, many have redesigned their manufacturing processes, begun recycling chemicals, and taken other steps to reduce waste.

This chart helps to demonstrate the impact of the Toxics Release Inventory. In 1988, 4.8 billion pounds of toxic material were sent into the waste—air, land, or water. In 1992, 4 years later, we had a dramatic reduction, down to 3.2 billion pounds, and in 1993, 2.8 billion pounds, a reduction of 2 billion pounds of toxic material being emitted into the waste stream in a period of only 5 years.

Now, what is going to happen if the present bill goes into effect as is, turns into law? Then the right to know—nothing will be the predominant rule. Mr. President, not only is it unfair, costly, wasteful, but it will give the companies a chance to relax rules that proved beneficial for them and nonbeneficial for the health and well-being of the residents or those who work in the area.

Let me repeat, emissions have been reduced by 42 percent or, as I said earlier, 2 billion pounds in dangerous chemical emissions. Yet, all of this is at risk if the provision included in the bill is enacted into law.

Do we really want to change the right to know into knowing nothing? I hope not. Should not our citizens be aware of the risks that they and their families undergo?

The chemical industry has acknowledged the value of the right-to-know law. We can look at the testimony by the Association of Chemical manufacturers. They say:

> The chemical industry can work within the requirements of title III to achieve two important objectives: Improving local emergency planning and informing the public about chemical operations.
>
> These objectives are vital to the long-term success and competitiveness of the chemical industry. Facility managers must take the initiative and work directly with local government and communities to make this law work.

Or someone representing DuPont, Mr. Vernon Rice, said:

> The beauty in the TRI is that a company can decide for itself how it will achieve reductions and can deploy the most cost-effective methods to do so. The law and the regulations that follow provide the incentive that industry then is provided with discretion on how to make the reductions.

I might add, Mr. President, industry also can decide not to make any reductions at all.

The bill before us would undermine the right-to-know law by changing the rules for designating those chemicals that must be disclosed. It makes it easier to take chemicals off the list and harder to put them on.

Under the new test, EPA would have to know about emissions and exposure levels at plants throughout the country to determine their likely impact. But because the TRI information on that chemical would not exist, EPA would not have enough information to meet the new test. This new standard puts the cart before the horse. This would completely defeat the purpose, intent, and the positive successes of the TRI program.

The TRI list is not perfect and perhaps some chemicals should be removed. Yet, present law has a proven system to consider petitions to remove chemicals from the list. Seventeen chemicals have been taken off the list through the petition process.

I urge my colleagues in the strongest possible terms to reject this special interest legislation. It is a paternalistic proposal that would have the Congress tell the American communities that they do not have the right to know about chemicals that could have a fundamental negative impact on their lives. It is a proposal that says to community officials that you need not have a right to know about chemicals that can cause serious harm to your constituents. It is a proposal that says to parents, you may be concerned about how toxic chemicals will affect your children, but it is more important that industry should have the right to withhold that information about chemicals that they are emitting into the atmosphere, into the water, and into the land.

This is bad special interest legislation, Mr. President. The section on the right to know is an exception from the $100 million threshold in the rest of the bill. It has no place in this legislation, and I urge my colleagues to support my amendment to delete it.

Mr. President, I believe that we have an hour equally divided, according to the unanimous consent agreement; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. LAUTENBERG. How much time does my side have?

The PRESIDING OFFICER. The Senator has 16 minutes 40 seconds remaining.

Mr. BRADLEY, Mr. President, I rise in support of the amendment to remove the Toxic Release Inventory provisions from the regulatory reform bill. On June 28, 1995, I wrote to the majority leader suggesting that this section and the provisions affecting Superfund be removed from S. 343. I said at that time that I was troubled by the bill's inclusion of special provisions affecting the effectiveness of the toxic release inventory, TRI, also known as the Community Right-To-Know Act.

The Community Right-To-Know Act, which builds on programs pioneered by my home State of New Jersey, is considered a complete success by almost all those who have analyzed its performance. In fact, it is precisely the kind of alternative to conventional command-and-control regulation which the drafters of S. 343 say they endorse. It requires full community disclosure for a list of chemicals which may prove hazardous to human health or the environment, especially in case of accidents.

In response to required TRI disclosures, and without the need for restrictive regulations, companies have voluntarily reduced their use and emissions of chemicals on the TRI list. This form of pollution prevention has actually saved companies money, caused them to retool their operations for greater efficiency and gained them good will in their communities.

And using TRI information, nearby communities have taken the precautions they need to protect themselves in the event of an emergency.

Unfortunately, the bill would require EPA to replace its current hazard-based listing process for the addition of new chemicals under TRI with an unworkable, risk-based process which would result in the addition of few, if any new chemicals to the TRI list. The bill would also require EPA to remove chemicals from the TRI list if the Agency could not make a showing that a particular chemical was acutely toxic to areas beyond a facility's boundaries. Obviously, this kind of restriction on TRI's effectiveness would result in serious emergency response problems. Even worse, the blll's restrictive language would eliminate coverage for chemicals which cause chronic health hazards, reproductive effects or environmental damage. The result—elimination of about 90 percent of the chemicals on the TRI list.

The bill would also require the Agency to prove that listed TRI chemicals cause harm when they are released to the environment before requiring companies to report their pollution under TRI. But since TRI is a full-disclosure statute and not a regulatory one, this standard is irrelevant. The purpose of TRI is to let a plant's workers and nearby community know what is going on at facilities which are their employers and neighbors.

Even with TRI, there are still problems with insuring that a community receives the information it needs for coping with chemical emergencies and discovering bad actor companies. A recent accident in Lodi, NJ points out the need for an expansion of TRI which puts chemical information into a user-friendly form. At the time of the accident the community found it lacked the data it felt it needed.

I will soon introduce legislation to require centralized information collection and distribution of all the information available on a plant or group of plants, including state data, violation and accident history. While all this information is available now, you have to be Sherlock Holmes to ferret it out.

Mr. President, restricting and usefulness of TRI makes no sense. It is a low-cost, nonregulatory way of improving the environment that other programs should be copying. And it is exactly the kind of protection that communities like Lodi need.

Mr. LAUTENBERG. Mr. President, I ask if the people in opposition have comments that they would like to make at this juncture, or if there are any of those people who are cosponsors of my amendment who are here who would like to add their thoughts. We have cosponsors who are indicated on the legislation, a significant number of them. If they would like to make any comments, this is the time they are going to have to do it, because the clock is ticking and I hate to see the time wasted.

Unless anyone wants to speak, Mr. President, I will suggest the absence of a quorum.

Mr. JOHNSTON. Will the Senator withhold?

Mr. LAUTENBERG. I will.

Mr. JOHNSTON. Mr. President, will the Senator yield me 10 minutes?

Mr. ROTH. I will be happy to yield 10 minutes. But first, I want to make three unanimous-consent requests.

The PRESIDING OFFICER. The Senator from Delaware.

UNANIMOUS-CONSENT AGREEMENTS

Mr. ROTH. Mr. President, I ask unanimous consent that when Senator FEINGOLD offers his amendment regarding equal access, that no amendments be in order, or in order to the language proposed to be stricken; that there be 30 minutes for debate to be equally divided in the usual form; and that when the Senate votes, the vote occur on or in relation to the Feingold amendment.

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

Mr. ROTH. Mr. President, I ask unanimous consent that when Senator FEINGOLD offers his amendment regarding peer review, that no amendments be in order, or in order to the language proposed to be stricken; that there be 15 minutes for debate to be equally divided in the usual form; and that when the Senate votes, the vote occur on or in relation to the Feingold amendment.

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

Mr. ROTH. Finally, Mr. President, I ask unanimous consent that when Senator PRYOR offers his amendment regarding private contractors, that no amendments be in order, or in order to the language proposed to be stricken; that there be 30 minutes for debate to be equally divided in the usual form; and that when the Senate votes, the vote occur on or in relation to the Pryor amendment.

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

Mr. ROTH. Mr. President, I yield 10 minutes to my distinguished colleague, the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I rise in opposition to the amendment of the Senator from New Jersey. The language now in the Dole-Johnston substitute, I believe, is well tailored, calculated to achieve that result which all of us want, which is notice to the public of a toxic chemical which, under any reasonable scenario, can be expected to do some harm.

The problem is under the present statute, a chemical can be or, indeed, must be listed by the Administrator of EPA if it is known to cause serious chronic health effects. There are a lot of other provisions, but let me reread that: If it is known to cause serious or chronic health effects.

That phrase is so broad and so all encompassing as to encompass ordinary table salt, ordinary table salt which, if taken in sufficient quantities or, indeed, if ingested regularly in slightly too much degree can and does cause high blood pressure, and it can kill you if you take too much salt. Indeed, people out on boats in the ocean have ingested too much sea water and have died because of that.

I am not suggesting here that the Administrator of EPA is getting ready to list ordinary table salt as one of the chemicals. That is not the point. The point is that the phrase, as used in the present law, is so broad that it does not just look at the reasonable possibility of harm to an individual.

Rather, it looks at the chemical in an absolute way, without requiring that you consider whether there is any possible danger to the public from the way the chemical is used.

So what we have done, Mr. President, is added a few words to this so that when the Administrator makes a determination under this paragraph, it shall be based on generally accepted scientific principles, or laboratory tests, or appropriately designed and conducted epidemiological or other population studies.

That is in the present law. We have added this: ''And on the rule of reason, including a consideration of the applicability of such evidence to levels of the chemical in the environment that may result from reasonably anticipated releases available to the Administrator.''

So, in effect, we are saying do not just look at whether ordinary table salt can cause you to be sick, or can cause high blood pressure, or can poison you if you take too much of it; rather, look at ordinary table salt, or whatever these other chemicals are, and determine whether using, as we say, the rule of reason, including a consideration of the applicability of such evidence, to the levels of the chemical in the environment that may result from reasonably anticipated releases.

All we are asking, Mr. President, is that you use common sense, and that you do not just say because a chemical may be potentially harmful if ingested in ways that are unlikely—not only unlikely, virtually impossible—but rather use, Mr. Administrator, the rule of reason. I cannot think of a more reasonable amendment than to tell the Administrator to use the rule of reason. Does this gut the toxics release inventory? Of course not. It simply brings a little common sense.

Now, the amendment goes further. It says that ''any person may petition the Administrator to add or delete a chemical, and that the Administrator shall grant any petition that establishes substantial evidence that the criteria in subparagraph (a) either are or are not met.''

That is the language we added. In other words, you can get a chemical put on. If you are, say, an environmentalist and you want to add a chemical, you can petition to get it added if you meet that standard, or you can get the chemical deleted if you meet that standard. That is all the language does, Mr. President.

Now, you say, well, why would anybody want it to be off the list? Well, first of all, Mr. President, it is not just a question of having these chemicals listed, it is a burdensome and expensive system of having to report. A chemical manufacturer sells these chemicals across the country, and it might be a very benign chemical in the way that it is used. But each one of his vendees would have to report, and on down the line—I forget the amount that you have to have—it is 10,000 pounds, which for an industry is not very much. You would have to report that, even though there is no real possibility that the chemical is ever going to get out.

Now, Mr. President, I do not think that we have to worry about language that asks the Administrator to use the rule of reason in determining whether to put a toxic chemical on the list. I honestly think that any Administrator knows how to interpret those words.

Now, why was it necessary to put these on? Well, because in one day this last year the Administrator listed another 280 chemicals on the toxics release inventory, and the EPA felt that it had no authority, it had no discretion to determine whether there was any danger posed to the public by these chemicals, whether there was any possibility of harm. They felt that under this language, they had to list all 280 chemicals. Maybe the neighbors are upset and they say, oh, my gosh, you have all these terrible chemicals there that can cause all these terrible things—perhaps most of them or perhaps almost all. I do not know about the individual chemicals, Mr. President. But I am told by some people in the EPA—who will not be quoted, I can tell you that—that some of these chemicals are really no problem, should never have been on the list, but there was not the discretion in the Administrator to apply the rule of common sense and reasonableness.

Mr. President, this is not some big industry grab to force these chemicals on people across the country without warning, this is an attempt to apply the rule of reason to a very complicated thing.

Look, if the Administrator goes back, and somebody complains about this, the Administrator could say it is a toxic chemical, I think it is possible that it might get out, and believe me that ought to be on the list if it is possible the chemical will get out and cause harm. The Administrator has all the authority under this language that he or she would ever need to put that chemical on the list.

But, on the other hand, if it is no conceivable danger whatsoever, if you have a table salt kind of chemical, it should not be on the list and the Administrator ought to have the discretion to use the rule of reason and relieve people of these reporting requirements and relieve the community of the unnecessary fear in which a benign chemical might present.

That is all the language does, Mr. President. It is not gutting the toxics release inventory. It is not, in any way, harming the health of people.

Why should it be on this bill? Because it is a question of risk, and this

gives to the Administrator the judgment to apply real risk analysis in order to put chemicals on the list or take them off.

I yield the floor.

Mr. ROTH. Mr. President, I yield the distinguished Senator from Oklahoma 5 minutes.

Mr. NICKLES. Mr. President, I wish to compliment my colleague, Senator JOHNSTON from Louisiana, for his statement. I hope my colleagues heard his statement, and I hope they will vote against the amendment of my friend and colleague, Senator LAUTENBERG.

I think the language we have in the bill is good language. I understand the amendment of the Senator from New Jersey would strike that language. I want to make it perfectly clear that the language in the bill dealing with toxics release inventory review does not gut the statute of toxics release inventory—the TRI, as we have heard. What it does is introduce an element of common sense.

The Senator from Louisiana said, yes, if you have any type of chemical listed, it can be listed no matter how minimal that release might be. Even if there is no threat whatsoever under existing interpretation by EPA and others, they can list that chemical and set about a couple things. One, there is an enormous amount of paperwork and an enormous expense that consumers will pay for. Consumers are farmers, in many cases, or they might be somebody that may be making drugs for pharmaceutical companies, which, of course, increases the medical costs and so on. Every day people have to pay the cost.

Senator JOHNSTON also mentioned something else. He said these notices of release, if there is no real threat to public harm or public health and safety, people have a lot of unnecessary fears because of unnecessary notifications.

What this language does, and I will read it from the bill, ''including consideration of the applicability of such evidence to levels of the chemical in the environment that may result from reasonably anticipated releases.'' Reasonably anticipated releases.

In other words, not through the environment that we talked about sometime last year during the clean air debate. If somebody was outside the plant gate for 70 years, 24 hours a day, in the prevailing wind, maybe they might one out of a million chance have obtained a disease.

This says use common sense. That is what this language is about.

Also, it mentioned that if somebody wants to either be put on the list or taken off the list, they must have substantial evidence to do so. It is a higher threshold. They have to have substantial evidence to be able to get a chemical off the list, or substantial evidence to put the chemical on the list. Again, common sense.

I think that the language we have in the bill is well crafted. It is not radical. It is not extreme. It says we should use common sense. We can save a lot of paperwork, a lot of red tape, and we can eliminate unnecessary fears that some people have as a result of overzealous interpretation of the TRI statute.

I compliment my colleague from Louisiana and also the Senator from Utah, Senator HATCH, and Senator ROTH for this section.

I urge my colleagues to vote no on the Lautenberg amendment. I yield the floor.

Mr. LAUTENBERG. Mr. President, I listened with interest to my colleague's review of what this amendment is about within the bill as it is structured.

The one thing I have not heard is anyone deny this success ratio. From 1988 until the present day we have reduced toxics being emitted into the air, the water, and on the land by 42 percent—2 billion pounds in a period of 5 years, 2 billion pounds less of toxic material hanging around our kids, hanging around our families, hanging around our school yards. Gone.

And it does not mean diddly, as we say, in terms of the company's responsibility. We are not arresting anybody. We are not fining anybody. What we are saying is that they simply have to report. It is sunshine. Let the public know what it is that they ought to be concerned about, in the event of a particular emission.

It is great for fire departments. In one city in New Jersey, we had a fireman's protective gear melt off his body because of the chemical mixture. At least if they know this information, emergency response people can prepare the materials necessary to fight a particular release, explosion, or fire. What we are doing now is we are saying, Okay, the public really does not have a right to know this kind of thing.

All of these materials that are released are toxic, Mr. President. They do not get out there willy-nilly. This is not an administrator's dream of torture.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. LAUTENBERG. Very briefly for a question.

Mr. JOHNSTON. Just on the point that the Senator said that EPA is not arresting anybody.

According to ''Inside EPA,'' the weekly report for June 30, 1995, they do say that 3 priority sectors for determining enforcement actions were chosen because of noncompliance histories, toxics release inventory releases, and trans-regional impacts.

In other words, TRI releases are one of the bases on which they bring enforcement actions. Would the Senator agree with that?

Mr. LAUTENBERG. Say it again, please.

Mr. JOHNSTON. That one of the bases on which EPA brings enforcement actions is TRI releases.

Mr. LAUTENBERG. Yes.

Mr. JOHNSTON. So that it does have something to do with enforcement?

Mr. LAUTENBERG. There is a requirement that they have to file this information.

Mr. JOHNSTON. I mean on enforcement, where they send the investigators out. In other words, if you have TRI releases, they enforce the rules.

Mr. LAUTENBERG. If there is an accident that endangers the public health, yes, someone will look at it.

I would love to respond to my friend from Louisiana, but we are using my time and he is in opposition, so I do not want to give him my time to oppose this brilliant amendment.

The Senator from Massachusetts has asked for some time. He has worked very hard on these issues and I would be delighted to yield as much time as he needs, not to exceed 10 minutes.

Mr. KERRY. Mr. President, I think I will not need 10 minutes.

I would like to respond, if I can, to the comments of the Senator from Louisiana and to the whole concept of what is really at stake in revamping the Right-to-Know law and its Toxics Release Inventory (TRI).

First of all, we should remember that TRI is the Emergency Planning and Community Right-to-Know Act of Title III of Superfund. This program does not have the same breadth of regulatory reform we are reaching for in the bill before us. The fact is that this is a nonregulatory sunshine law and should be considered separately by the Senate Environment and Public Works Committee.

In fact, Senator SMITH on the Republican side has been doing a very good job of leading the effort to revamp the Superfund program and as Title III of that act this issue could be appropriately considered at that time. To date, however, there have been no hearings on this whole question of exactly what the impact of revamping the right-to-know law would be. In fact, there has not been a hearing on TRI in the Senate since 1991.

Yesterday, I attended a press conference outside this chamber where members of the firefighter unions of the United States, representing several hundred thousand firefighters, said, ''Don't do this. Do not change the TRI structure today and thereby put firemen at risk.''

What the TRI structure does today is allows fire departments all across this country to be able to plan for what kind of fire they may be going into. Because of the TRI, communities have computerized knowledge of precisely what chemicals exist in certain companies, in certain buildings. When the fire department gets an alarm, they simply punch the computer and the data comes up on the computer screen immediately so that firemen have the ability to be able to don masks, maybe don protective gear, call in additional help, take special measures to secure the area, evacuate personnel. All of that knowledge comes about because of a simple concept called Right-to-Know.

The TRI is not a regulation that does away with chemicals. It does not require companies to spend a whole lot of money to comply with regulations. It simply makes information available to businesses, to communities, and to citizens. That information allows citizens to then decide whether they think they are at risk and gives companies the information they need to help them reduce their wastes before they are created. It is the best tool to promote pollution prevention that we have in effect today.

What is interesting about this, Mr. President, is that just by requiring companies to tell Americans what they are emitting into the air or land or water—solely by the requirement to let people know—companies themselves have made important decisions about reducing wastes. So they have voluntarily removed 42 percent since its reception in 1988—two billion pounds—of the chemical emissions of this Nation.

That is a remarkable success story, Mr. President. It does not come about because we in the Congress have created a whole convoluted regulatory structure where companies are required to reduced their use of chemicals. All that is required is companies that use large volumes of toxic chemicals tell Americans what they are putting into the environment.

More than 2 billion pounds of emissions have been prevented as a consequence of that. That is a success story.

It is really interesting to see the chart from the Senator from New Jersey over there that shows the comments of individual sectors of the industry. The chemical industry itself has found it useful.

In point of fact, the former chairman of the Environment Committee, Senator BAUCUS, has yet to have one chemical company coming to them and saying, ''Get rid of TRI.'' It was not an issue in early regulatory reform bills or in the past two Congresses Superfund debates. It has just been snatched out of the air because clearly a few people decided they thought this got in their way.

Mr. President, turning to the standard that the Senator from Oklahoma talked about, what the language in this bill currently does is, in effect, it applies a 180-day requirement for this risk assessment to take place. If it does not take place, the chemicals come off. So you already have a sword of Damocles hanging over the process. Because if the Administrator does not want to do it, or if they do not have the resources to do it, you may wind up taking out of here an automatic capacity to have a decision. But more important, the language says, ''on the rule of reason, including a consideration of the applicability of such evidence to levels of the chemical in the environment that may result from reasonably anticipated releases.''

''Reasonably anticipated releases'' is the information we get from the TRI. So what they are doing is creating a standard that makes a judgment as to whether or not you are going to be able to put something on the TRI list using information that you have to have from the TRI list in the first place. And since you do not have it from the TRI list, you cannot make the judgment that is required here. That is called the proverbial Catch-22. It is a way of tying everybody up in a process that, in effect, kills the TRI concept.

They can stand here and say, ''Oh, no, no, no, no; all we are going to do is have a little risk assessment,'' but the language of the risk assessment itself depends on reasonably anticipated releases being able to be determined. And unless you know what the company is emitting, there is no way to know what the reasonably anticipated release is going to be.

So I respectfully submit this is one of those places where, again, the words are so important, and where an awful lot hangs in the balance.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. KERRY. I will be happy—I do not want to yield on my time, but I will yield on my colleague's time for a question.

Mr. JOHNSTON. Will the Senator from Delaware yield me 1 minute to ask a question?

Mr. ROTH. I yield 1 minute.

Mr. JOHNSTON. The Senator read, appropriately, the language which was added, which was, ''on the rule of reason,'' et cetera.

But the first paragraph in the present law is still there. That is, ''A determination under this paragraph shall be based on generally accepted scientific principles, or laboratory tests, or appropriately designed and conducted epidemiological''——

Mr. KERRY. Epidemiological.

Mr. JOHNSTON. ''Or other population studies, and/or the rule of reason, including consideration of the applicability of said evidence that may result from reasonably anticipated releases.''

So all we are giving him is that additionally he may consider additional evidence, including the amount that may be released.

Will the Senator agree that is a correct statement?

Mr. KERRY. Let me say to my friend, I understand his reading of it, but it still begs the question here. Because the standard of ''including,'' which is the most important way to prove what may be the harm to a community, is still not available.

Second, and this is far more important, let me say to my friend from Louisiana, what is critical here is why go through all of these incredible hoops when in fact nothing negative is required of the company unless it uses more than 10,000 pounds and produces more than 25,000 pounds? You are talking about big producers and big users here.

All that is required of these big, 10,000-pound users, 25,000-pound producers, is that they tell people in the community what it is they put into the air or water or land. It is irrelevant whether there is a risk or not in terms of the concept of sunshine and right-to-know.

What, in effect, the Senator from Louisiana and others are setting up here—whether it is wittingly, purposefully, or not—is a new series of hoops which, under the cumulative impact of this bill will allow a series of legal steps to be taken that will prevent people in a community from even knowing what one of these big producer companies is putting into the air.

Mr. JOHNSTON. Mr. President, is the Senator saying——

Mr. KERRY. Again, I do not want to yield on my time. I reserve my time.

Mr. JOHNSTON. Do I still have any of that minute?

The PRESIDING OFFICER. The Senator has used his minute. Will the Senator from Delaware yield him an additional minute?

Mr. ROTH. I will yield 1 minute.

The PRESIDING OFFICER. The Senator yields an additional minute.

Mr. JOHNSTON. I will not use that at this point.

Mr. KERRY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 4 minutes.

Mr. KERRY. I will just use a moment.

Mr. President, the real issue here is very, very simple. The Senator from Louisiana is trying to explain how the test that they have set up is reasonable. The issue is whether or not there ought to be a test set up for a company that uses 10,000 pounds or more of a chemical or a company that produces 25,000 pounds or more. The issue is, should that company automatically tell people in the community what it puts into the air? It is very simple. And, by coming along with this notion we are going to go through all of this regulatory process with risk assessments and so forth, we are actually applying a series of standards and hoops to jump through that have no relevancy to the purpose of letting people know.

They are creating a risk-based standard for something that does not have to be risk-based but is simply informational. And, on the basis of that, there are certain chemicals that may be, actually, under their standard, taken off the Toxics Release Inventory which, in fact, have a negative effect on people, but they do not fall under their standard because of the level of toxicity.

So I say again, this is a very simple issue. This is a question of when Americans are living in a community where a company uses 10,000 pounds of a specific chemical or produces 25,000 pounds, whether that company ought to tell the fellow citizens who live in that community and who work in the plant, what it is that is being emitted. And by virtue of the law, we have taken 2 billion pounds of that kind of chemical out of the environment, away from people, and made life safer.

If they turn this clock back, we will make life more hazardous. And there is no rationale for saying Americans should not know what chemicals are going into the local environment.

I yield the time to the Senator from New Jersey.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from New Jersey.

Mr. ROTH. Will the Senator yield so I can make a further unanimous-consent request?

Mr. LAUTENBERG. Yes. I do not want to continue to use my time.

Mr. ROTH. Without using the time of the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, I ask unanimous consent that the 13 minutes that remain in opposition to the Lautenberg amendment be reserved for Senator LOTT and 5 minutes reserved for Senator LAUTENBERG.

Mr. LAUTENBERG. If I might ask, Mr. President, how much time do I have left on my side?

The PRESIDING OFFICER. The Senator from New Jersey has 1 minute 3 seconds.

Is there objection to the unanimous-consent request? Without objection, it is so ordered.

Mr. ROTH. Mr. President, I further ask unanimous consent that following the conclusion of the debate on the time agreements already entered for this evening, the Senate proceed to vote in sequence, with the first vote being the standard 15-minute vote and any remaining stacked votes be 10 minutes in length.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROTH. Finally, for the information of all Senators, there could be as many as four rollcall votes beginning as early as 8:30 this evening. Therefore, Senators should be on notice of these upcoming votes.

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is now recognized.

AMENDMENT NO. 1536 TO AMENDMENT NO. 1487

(Purpose: To amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, hourly rates for attorney fees, administrative settlement offers, and for other purposes)

Mr. FEINGOLD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 1536 to amendment No. 1487.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in the substituting amendment, add the following new section:

SEC. . EQUAL ACCESS TO JUSTICE REFORM.

(a) SHORT TITLE.—This section may be cited as the ''Equal Access to Justice Reform Amendments of 1995''.

(b) AWARD OF COSTS AND FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a)(2) of title 5, United States Code, is amended by inserting after ''(2)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the adjudicative officer may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1)(B) of title 28, United States Code, is amended by inserting after ''(B)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the court may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''.

(c) HOURLY RATE FOR ATTORNEY FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(A)(ii) of title 5, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the agency determines by regulation that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(2)(A)(ii) of title 28, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the court determines that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(d) PAYMENT FROM AGENCY APPROPRIATIONS.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(d) of title 5, United States Code, is amended by adding at the end thereof the following: ''Fees and expenses awarded under this subsection may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(4) of title 28, United States Code, is amended by adding at the end thereof the following: ''Fees and expenses awarded under this subsection may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.''.

(e) OFFERS OF SETTLEMENT.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency of the United States from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(f) ELIMINATION OF SUBSTANTIAL JUSTIFICATION STANDARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) in subsection (a)(1) by striking out all beginning with '', unless the adjudicative officer'' through ''expenses are sought''; and

(B) in subsection (a)(2) by striking out ''The party shall also allege that the position of the agency was not substantially justified.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412 (d) of title 28, United States Code, is amended—

(A) in paragraph (1)(A) by striking out '', unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust'';

(B) in paragraph (1)(B) by striking out ''The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.''; and

(C) in paragraph (3) by striking out '', unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust''.

(g) REPORTS TO CONGRESS.—

(1) ADMINISTRATIVE PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Administrative Conference of the United States shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal agencies under the provisions of section 504 of title 5, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal agencies and administrative proceedings.

(2) JUDICIAL PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Department of Justice shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal districts under the provisions of

section 2412 of title 28, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal judicial proceedings.

(h) EFFECTIVE DATE.—The provisions of this section and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act and shall apply only to an administrative complaint filed with a Federal agency or a civil action filed in a United States court on or after such date.

Mr. FEINGOLD. Mr. President, I rise today to offer an amendment to the regulatory reform bill legislation that will improve equal access to justice under what is known as the Equal Access to Justice Act.

I think the thrust of this bill, the thrust of regulatory reform, is to rethink the relationship between Government and business and to make our system of regulation both more effective and less burdensome, and, in some cases, I think we have to stay the hand of Government when we believe it reaches too deeply into the daily affairs of the American people.

As many of us have said on this floor, I think these are goals that everyone supports, even though sometimes we may differ on the way to actually achieve them.

The Equal Access to Justice Act is one effective means for achieving a measure of reform and should be part of our plans to reduce the level of unnecessary Government intrusion in our lives. The Equal Access to Justice Act as it now exists was enacted in 1980, with the idea that small businesses and individuals who have to get into the ring with the Federal Government over enforcement of regulations should be able to recover their legal fees and certain other expenses if they end up winning the case.

They are tied in this litigation with Government and one party has to win and one party has to lose. And if it is the Government that loses, especially after they have brought the case, I think the Government should bear the burden of the attorney's fees and not the small business and not the individual. It is one of a number of fee-shifting statutes in Federal law.

I am as proud to say that much of the work on the original equal access law was done by the former Congressman from my home district, the Second Congressional District of Wisconsin, Representative Robert Kastenmeier when he served on the House Judiciary Committee. I offered the same kind of bill, and got it passed in the State Legislature in Wisconsin. That is now the law, and has been since 1985, and it is the State Equal Access to Justice Act which has been very helpful to businesses and individuals who have been sued by the State government or some of its agencies.

The Equal Access to Justice Act gives prevailing parties in certain kinds of litigation against the Federal Government the right to seek reimbursement of attorney's fees and other costs of litigation from the Government. The intent of the law has always been to make taking on the Federal Government in court somewhat less intimidating although it is always going to be somewhat intimidating.

To that end, the act is specifically targeted at assisting individuals and businesses who do not have ready access to the kinds of resources available to the Federal Government when it goes to court. Under the current law, the law gives this kind of option—or protection—to a person whose net worth does not exceed $2 million or a business that does not have net worth greater than $7 million, or which does not employ more than 500 people. And there are a couple of other minor exceptions.

There was another motive for the bill, and that was to help restrain the regulatory hand of the Federal Government when it was going to trial. The authors of the bill believe that if the agency faced the prospect of not only having decisions nullified but also having to actually pay the attorney's fees of the entity or individual they went after, maybe the agency would think twice before it started the lawsuit or the administrative action in the first place.

I cannot say for sure in the past 10 or 15 years that this second goal has been reached. However, the Equal Access to Justice law has proved to be a bargain based upon the estimates that we have seen. Originally the estimates were that the Equal Access to Justice law would cost about $68 million a year. But according to the Administrative Office of U.S. Courts, annual fee reimbursements have totaled from the Federal Government only about $5 to $7 million between 1988 and 1992. This is despite the fact that litigants are actually more successful in terms of the active percentage of wins than was originally anticipated.

A study done on this examined 629 Federal District and Appellate Court decisions involving EAJA fee award claims during the 1980's. The professors who did the study pointed out that the Congressional Budget Office in making its estimates had assumed that parties seeking fee reimbursement under the act would actually be successful in about 25 percent of the claims filed against the Federal Government.

However, the professors found that they even had a higher level of success, 36 percent and were able to win fees in those cases.

Yes. Mr. President, some may well claim that EAJA has had a scant effect on controlling overreaching regulation. But I believe it is clear that it is another arrow in the quiver of the individual citizen or a small business owner when they have to tangle with the Federal Government in court or in an administrative proceedings.

The EAJA generally has served its function well. The purpose of my amendment this evening is that the act over the course of several years has come to the point where it needs some updating to speed up the process of awarding attorney's fees to prevailing parties and thereby lower the cost of litigation to taxpayers.

Mr. President, briefly, this amendment has three major elements.

First, my bill raises the current cap on attorney's fees in these kinds of situations under the act from the current limitation of $75 to $125 per hour. That would bring the rate somewhat in line with the real world.

My bill retains the cost-of-living increase as a possible element in determining an attorney's fee award but it strikes the current language that permits further increasing an award on the basis of a special factor defined by example in the statute as ''the limited availability of qualified attorneys or agents for the proceedings involved.''

Mr. President, I believe these improvements will actually make suits against the Government more attractive to attorneys and appropriate cases, which in turn should create a larger pool of attorneys available to private litigants to try to handle these cases. Therefore, we should see less need for this special factor language, and I think it will help simplify the process.

In addition, my bill makes the method of computing cost-of-living increases to fee awards more specific. And I could detail on that, if anybody wishes.

But I will move on to say that the second major change my amendment makes in the current law is to eliminate the language that allows the Government to escape paying attorney's fees, even if the Government has lost in court, if the Government can successfully argue that it had a substantial justification for its action.

Mr. President, I am not generally a supporter of the loser pays concept. But I believe that if a small business owner or an individual American wins in court—not against another private litigant but against the Federal Government—and, if the law provides for the Government to reimburse you for your expenses, then the Government should ante up. I think we should have in effect a loser pays provision when the Federal Government sues a private party and the private party ends up winning the case.

I realize some people are concerned that eliminating this provision will open the floodgates of our Treasury. But let me refer to a study that by Professor Krent which indicates that this is not the case. He indicates that fee awards in the cases we have had during this act were denied in only a small number of cases on the basis of successful substantial justification argument. Apparently that is because this technique of the Government to try to avoid paying fees in these cases in court is routinely raised by Government attorneys as a way to sort of block the private litigant from getting their attorney's fees even though they

have prevailed in the underlying case against the Government.

So this extra way out for the Government really allows the creation of another issue at least to more litigation over whether or not there was a substantial justification for the lawsuit to be brought in the first place, even though the Government lost.

The professor suggests that there may even be some cost savings offset any increase in awards due to the elimination of the substantial justification defense. He admits it is impossible to make an exact determination of the expense of litigating this issue in case after case. But he believes, based on the evidence of 1 year—between 1989 and 1990—that whatever is saved by raising the substantial justification defense is not enough to justify the cost of litigating the issue. That is one reason why Professor Krent believes that this extra way out for the Government, in his words, ''probably creates a perverse incentive to litigate'' on the part of Government attorneys.

My amendment specifically addresses the issue of cost by making it plain that there is to be no new direct spending to cover these fee awards. The amendment also makes it clear that agencies who are required to pay fee awards have to look to their own budgets. They cannot go to the Federal Claims and Judgment Accounts to find the necessary sums. That is in keeping with the original intent of the bill. That intent again is to make an agency think twice before it creates regulations and before initiating certain enforcement actions pursuant to them. I cannot think of anything more consistent with the overall purposes of legislation before us than that.

The third major change in any amendment sets up a settlement process to give the parties a method of resolving the fee issue without resorting to further litigation. It creates an opportunity for the Government, similar to the process in Rule 68 of the Federal Rules of Civil Procedure, to make an offer of settlement up to 10 days prior to the hearing on the fee claim. If that offer is rejected and the party applying for fees later wins a smaller award, there is a negative consequence to the party that did not accept the offer of settlement. That party is not entitled to receive fees or other expenses that are incurred after date of the offer.

My amendment does not specifically expand the reach of the EAJA. But it does require the review of the act and looks ahead to possible future expansion.

We asked both the Justice Department and the Administrative Conference to review various aspects of where the law could be expanded.

My amendment also requires the Administrative Office of the U.S. Courts to submit a report within 180 days as it does for the Justice Department.

The U.S. Supreme Court in a 1991 decision, Ardestani versus INS, held that EAJA fees are available only in cases where hearings are required by law to conform to the procedural provisions of section 554 of the Administrative Procedures Act.

However, Congress had already created a statutory exception. In 1986, Congress extended the coverage of the EAJA to include the Program Fraud Civil Remedies Act.

I think it is reasonable to investigate whether certain agency proceedings such as deportation cases that are nearly identical to proceedings covered by 554 should also be covered by the EAJA.

Mr. President, let me just conclude my comments at this point by indicating that recently a friend of mine I had not seen since high school just came to visit me in my office here and did not come, apparently, for any reason other than to visit.

But during the course of our visit, he told me a story about what had happened to him recently that made him quite down about pursuing the business he is in. He told me that his agency declined to fight a case against the Department of Education, a case their attorneys believed was winnable, because the board of directors of his group did not believe it was worth paying large litigation costs over a claim worth about $32,000 even if the agency had a good case.

The Department of Education, he told me, had reviewed his rehabilitation center, which provided job training and placement services for mentally and physically handicapped people, in 1992. The Department's reviewer found 10 problem areas, which were later actually whittled down, Mr. President, to just one item. All the Government had left in their case, after they went through this process, was saying that my friend's group had inadequate time sheets.

For this and this alone, the Department wanted the center to pay a reimbursement of about $115,000. That was later negotiated down to $32,000. My friend told me that had he known about the EAJA law, he would have pressed the directors to fight, and because he did not know about it, he just gave up.

A few weeks ago, the White House Conference on Small Business discussed this issue. Mr. Carl Schmieder, a Phoenix, AZ, businessman and deputy chairman of the Arizona delegation to the small business conference, helped spearhead a resolution endorsing the type of changes I am talking about for the EAJA. He said the array of resources available to the Government in litigation can be overwhelming to a small business owner, and he called the amendment that we are offering here tonight a tremendous step forward.

Mr. Schmieder's resolution attracted a lot of support among the delegates to the conference. Although it did not appear on the shortest list of recommendations that came out of the conference, when the delegates drew up a list of priorities, these kinds of changes were ranked in the top 20 percent of all issues considered.

I think individuals and small business owners deserve all the help we can give them, and before I close, let me acknowledge the work of the Administrative Conference of the United States which has been very helpful by conducting research into this issue, making many of these recommendations and providing valuable assistance in preparing the amendment.

We all know unnecessary or overburdening Government regulations can be an obstacle to doing business. The Equal Access to Justice Act was conceived to overcome that obstacle, and we in this update that this amendment provides allow the act to work better than it has in the past.

I thank the Chair and reserve the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Delaware oppose the amendment?

Mr. ROTH. We have no request at this time for anyone to speak in opposition.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin has 1 minute remaining.

The Senator from Montana.

AMENDMENT NO. 1535

Mr. BAUCUS. Mr. President, I would like to speak in favor of the TRI amendment offered by Senator LAUTENBERG. I might inquire of the Chair how much time is remaining on that amendment, and I might inquire of the Senator from Delaware, if he is not going to use his time, perhaps I could use some of his time on the TRI amendment.

Mr. ROTH. We are actually checking to see whether there is anyone who wants to speak in opposition.

Mr. BAUCUS. Mr. President, how much time is remaining for those speakers who wish to speak in favor of the Lautenberg amendment?

The PRESIDING OFFICER. The Senator from New Jersey, based on the unanimous consent agreement, controls 5 minutes.

Mr. BAUCUS. And how much time has he utilized?

The PRESIDING OFFICER. There is still 5 minutes remaining.

Mr. ROTH. I will yield 3 minutes to the Senator.

Mr. BAUCUS. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from Delaware has yielded 3 minutes from the time he controls?

Mr. ROTH. That is correct.

Mr. BAUCUS. Mr. President, I might also consume, say, 1 minute of the time controlled by Senator LAUTENBERG, a total of 4.

The PRESIDING OFFICER. Is there objection to that request? Without objection, it is so ordered. The Senator from Montana is recognized.

Mr. BAUCUS. I thank the Chair.

Mr. President, I am rising to strongly support the amendment offered by the Senator from New Jersey [Mr. LAUTENBERG] who wants to strike the so-called TRI provisions from the bill. Under the TRI provisions, the toxics release inventory reporting provisions, currently today in the law, when a major chemical company emits toxic chemicals into the air or water which could cause acute, chronic, adverse health effects to the environment, that company just has to state to the public the amount of toxic chemicals that is released up into the environment.

It does not say to the company you have to put on a scrubber; it does not say to the company you have to clean it up; it does not say to the company you have to do anything to stop what you are emitting, just that you have to disclose to Americans, disclose to the public the amount that is being emitted. That is all it is.

I might say, Mr. President, that the consequences of this provision in the law enacted not too many years ago have been very beneficial. First, to the public so the public knows what is being emitted, and they can take whatever action they may want to take.

It has also been beneficial to the companies. The Chemical Manufacturers Association has said, as a consequence of this act alone, there has been a 50 percent reduction in chemicals emitted by their members. Some major chemical manufacturing companies have said it has helped them because they did not know how much they were emitting in the past. This law requires them to disclose what they are emitting. Now they know and they are able to change their manufacturing process to emit less and to also make their processes much more efficient. It has helped them.

It makes no sense, Mr. President, in this bill before us today, a regulatory reform bill designed to reform regulations and just make sure that regulations are considered more easily and more efficiently, to enact a substantive provision to delete the toxics release inventory law. That is a substantive provision. This is a regulatory reform bill.

I might add there have been no hearings on this provision, none. In fact, this provision was not even in any bill. It was just suddenly jammed in in the Chamber. It has had no consideration. Just as we deleted, a couple of hours ago, another substantive provision regarding the Superfund, it makes eminent sense that we should also here tonight delete this substantive provision, the toxics release inventory provision, a provision which is very beneficial to Americans.

Essentially, this provision that is now before us, I must say, disrupts the basic concept of right to know which simply says, OK, folks, you have a right to know what is emitted. That's all. It does not in any way tell companies to control what is being emitted.

Mr. President, for those reasons we should adopt the Lautenberg amendment to delete this substantive provision.

It is also very ironic; here we are today considering the regulatory reform bill to make the regulatory process more efficient with more information, with risk assessment and cost-benefit analysis. If the Lautenberg amendment does not pass, we are saying less information is better. We are saying that the public does not have a right to know what toxic chemicals are being released. It makes no sense.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAUCUS. Mr. President, if the Senator will yield 1 more minute. I have used 1 minute of the Senator's time.

Mr. LAUTENBERG. Certainly. I will be happy to yield another minute to my friend from Montana.

Mr. BAUCUS. Mr. President, again, just to say what this amendment does, currently a chemical is listed if it has acute, or chronic health or environmental effects. The bill before us says, in addition to knowing the toxic effects of the chemical, you have to show how much of the chemical is actually being released and if that release will result in harmful effects. And you have to show this before it is listed on the TRI. It is a catch-22. It cannot be done.

Second, Mr. President, the standard by which a chemical would be listed, that is required to be listed or not, is so vague no one can explain what the standard is. I have read this standard many, many times, over and over again. I do not know what it says. It is a lawyer's paradise. This provision is going to be tremendously litigated. And I just again urge Senators to pass the Lautenberg amendment, which deletes a substantive provision which the public very much desires as the right to know which chemicals are being emitted into the atmosphere.

And I thank the Senator.

The PRESIDING OFFICER. The Senator's time is expired.

Mr. LAUTENBERG. Mr. President, it is my understanding that the Senator from Mississippi was going to be here at—was that 8?

The PRESIDING OFFICER. In response to the Senator from New Jersey, no time had been set. We do have 1 minute remaining under the control of the Senator from Wisconsin.

Mr. LAUTENBERG. I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware——

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. I wonder if we could go into a quorum call, if we are waiting for Senator LOTT. Is that it?

Mr. ROTH. And Senator HATCH.

Mr. DOLE. Maybe the Senator from Wisconsin could use some of his time while we are waiting on that.

Mr. FEINGOLD. It is my understanding this side still has 10 minutes.

The PRESIDING OFFICER. The Senator from Delaware has 11 minutes, 35 seconds.

Mr. FEINGOLD. I only have 1 minute remaining. If there is going to be any opposition, I would like to reserve that for a response.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, in order to move things along here, I am going to make this suggestion that we lay the pending amendment aside. And I assume that is the amendment just offered by the Senator from Wisconsin, and that I be allowed to, in the sequencing order, present my amendment; and upon completion of my amendment, we will return to the amendment offered by the Senator from Wisconsin and proceed from there. I think that might expedite our time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 1537 TO AMENDMENT NO. 1487

(Purpose: To prevent conflicts of interest of persons entering into contracts relating to cost-benefit analyses and risk assessments, and for other purposes)

Mr. PRYOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. PRYOR] for himself and Mr. FEINGOLD, proposes an amendment numbered 1537 to amendment No. 1487.

Mr. PRYOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in the substitute amendment, insert the following new section:

SEC. . CONFLICT OF INTEREST RELATING TO COST-BENEFIT ANALYSES AND RISK ASSESSMENTS.

(a) INFORMATION BEARING ON POSSIBLE CONFLICT OF INTEREST.—

(1) DEFINITION.—For purposes of this section, the term ''contract'' means any contract, agreement, or other arrangement, whether by competitive bid or negotiation, entered into with a Federal Agency for any cost-benefit analysis or risk assessment under subchapter II or III of chapter 6 of title 5, United States Code (as added by section 4(a) of this Act).

(2) IN GENERAL.—This section shall not apply to the provision of section 633(g), when an agency proposes to enter into a contract with a person or entity, such person shall provide to the agency before entering into such contract all relevant information, as

determined by the agency, bearing on whether that person has a possible conflict of interest with respect to being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons.

(3) SUBCONTRACTOR INFORMATION.—A person entering into a contract shall ensure, in accordance with regulations prescribed by the head of the agency, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract of more than $10,000.

(b) REQUIRED FINDING THAT NO CONFLICT OF INTEREST EXISTS OR THAT CONFLICTS HAVE BEEN AVOIDED; MITIGATION OF CONFLICT WHEN CONFLICT IS UNAVOIDABLE.—

(1) IN GENERAL.—Subject to paragraph (2), the head of an agency shall not enter into any contract unless the agency head finds, after evaluating all information provided under subsection (a) and any other information otherwise made available that—

(A) it is unlikely that a conflict of interest would exist; or

(B) such conflict has been avoided after appropriate conditions have been included in such contract.

(2) EXCEPTION.—If the head of an agency determines that a conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions in the contract, the agency head may enter into such contract if the agency head—

(A) determines that it is in the best interests of the United States to enter into the contract; and

(B) includes appropriate conditions in such contract to mitigate such conflict.

(c) RULES AND REGULATIONS.—No later than 240 days after the date of the enactment of this Act, the Federal Acquisition Review Council shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code, without regard to subsection (a) of such section.

Mr. PRYOR. Mr. President, I have only a very few moments. This is a very simple amendment that I am offering tonight. This basically is an amendment concerning Federal agencies which use private contractors to perform cost-benefit analyses and risk assessments.

Mr. President, one of my main concerns about the bill that we are considering is that it is going to place additional burdens upon the Federal agencies during a period of downsizing of the number of Federal employees. Should S. 343 become law, the respective agencies throughout the Federal Government are going to have to reorder their priorities to allow them to devote a large portion of their resources to cost-benefit analysis, risk assessment, and regulation review. As the Government continues to downsize in the future, Mr. President, the Federal agencies are going to increasingly turn to private contractors to carry out the tasks of government.

As my colleagues know, I have long been concerned with the use of private contractors in the Federal Government. During my years in the Senate, I have sought to shed light on the increasing role of private contractors and the possible conflict of interest involved with their use.

This is no new issue. In 1980, for example, the General Accounting Office examined 156 contracts for regulatory analysis alone and found that 101 of these 156 contracts had a conflict of interest situation. Because S. 343 will likely increase the use of private contractors to conduct regulatory analysis for the Federal Government, I believe that this conflict of interest problem cannot and should not be ignored.

Mr. President, to illustrate the potential for conflict of interest, one need only look at the promotional materials published by a few of the private contractors who have contracts with the Federal Government. For example, Mr. President, one of these contractors is a firm known as P.R.C. In 1990 the P.R.C. company, a consulting company, had four contracts worth $220 million with the Environmental Protection Agency.

Here is their promotional material. This material proclaims to the possible user of their services, and I quote, ''Under contract to the United States EPA, P.R.C. has conducted hundreds of regulatory compliance inspections giving us indepth experience with what regulators are looking for.''

How then, Mr. President, can this particular company be a company that states that they have no bias and that they have no conflict of interest?

Here is another company, Mr. President. This particular company is another major contractor with the Environmental Protection Agency. In 1990–1991, they had 13 contracts worth over $100 million with the Environmental Protection Agency. They boast to potential users of their services, in their very beautiful brochure—this is called The Weston Managers Design Consulting Company—I quote, ''In daily practice, the Weston philosophy has encouraged us to develop and maintain an objective, professional posture relative to public issues so that we can represent either''—and I quote—''the regulated or the regulator.'' So that we can represent either the regulated or the regulator.

How fair, how objective and how free from conflicts of interest, Mr. President, can a firm be when it is working both sides of the street?

Here is another firm, Mr. President, who has millions of dollars of contracts with the Federal Government today, the ICF Co. Their brochure is entitled: ''Environment and Energy.''

They list their clients. For example, some of ICF's clients are: Ashland Chemical; Cedar Chemical; Chemical Waste Management; Chevron; Dow Chemical, SCA Chemical Services; Union Carbide; and Vertec.

Now they also list the Government agencies that they work for: the Department of Commerce; the Department of Defense; the Department of Energy; and, yes, Mr. President, the Environmental Protection Agency.

My amendment says that if granting one of these contracts to a company doing business with the Government creates a conflict of interest, then the agency head has the opportunity to publish notice of the conflict in the Federal Register. This can make us aware that the contract has the potential of a conflict, could be printed in the Federal Register and give us fair and just warning of the potential that might exist for a contract.

It would require agencies to gather certain information from its contractors that will allow agencies to determine if a conflict of interest actually exists. It would not, Mr. President, prohibit the agency, under certain circumstances, from hiring a contractor, even if a conflict of interest was found.

My amendment simply sheds sunlight on the process by ensuring that the agency has considered possible conflicts so that the public is assured that potential conflicts of interest are not subverting public policy due to hidden bias in the regulatory analyses process.

Mr. President, I want to thank the distinguished Senator from Wisconsin for being an original cosponsor of this amendment that is now before the Senate.

I reserve the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Delaware has 15 minutes.

Mr. ROTH. Mr. President, I yield 1 minute to my distinguished colleague.

Mr. GLENN. I thank my friend from Delaware. I just want to speak in behalf of Senator PRYOR. I just want to say, there is no one on the Governmental Affairs Committee who has done more work and stuck with the idea of looking into outside contracting, making sure it was not excessive, cutting down the number of contracts where we go out and pay for very expensive contracts that we should be doing in Government itself. He has been following this subject for a number of years and bird-dogging that. He deserves a lot of credit for it, and I think the amendment he is bringing up this evening is an example of making sure that when we do contract out, that it is done legitimately and without conflict of interest and without any taint. It is that kind of thing that happens too often in Government which gives Government a bad name.

He has been determined for many years to root this out. I want to compliment him for it, and I am glad to be supporting his amendment.

I thank my friend from Delaware.

Mr. ROTH. Mr. President, I have to say to my distinguished friend from Ohio, he stole the words out of my mouth. I was going to also comment on the excellence and the persistence with which the distinguished Senator from Arkansas has pursued the problem of conflict of interest.

I would like to ask my distinguished friend one question. In S. 343, in connection with peer review, it is provided that in peer review, that

shall not exclude any person with substantial and relevant expertise as a participant on the basis that such a person has a potential interest in the outcome if such interest

is fully disclosed to the agency and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person.

It is my understanding that your amendment has no effect or impact on that section; is that correct?

Mr. PRYOR. Mr. President, let me respond to my friend from Delaware by stating, in the original draft of the amendment, we did not specifically exclude peer review. However, in the latest draft, which is pending before the Senate, we now have a sentence that states:

This section shall not apply to provisions of section 633(g) . . .

And I believe that is the peer review section. So peer review is not in any way involved in this proposal that I am submitting. I thank the Senator for asking that clarifying question.

Mr. ROTH. That was my understanding, and I appreciate the answer.

I am prepared to accept the amendment, and I yield back the remainder of my time.

Mr. GLENN. I will be happy to accept on our side also.

Mr. PRYOR. Mr. President, if I may say just a word in thanks to the Senator from Ohio and the Senator from Delaware, two extremely capable Senators that I have had the privilege of working with in the Senate, more specifically in the Governmental Affairs Committee, for a lot of years. I want to thank them for their endorsement, their kind words, patience and perseverance and for them accepting this amendment, endorsing it. I will always be grateful.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is all time yielded back?

Mr. ROTH. I yield back the remainder of my time.

Mr. PRYOR. I yield back all time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment No. 1537.

So the amendment (No. 1537) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas was to offer the next amendment. The Senator from Texas is apparently not here. Therefore, under the previous order, the Senator from Wisconsin is now recognized to offer his second amendment. The Senator from Wisconsin.

AMENDMENT NO. 1538 TO AMENDMENT NO. 1487

(Purpose: To provide that an agency may include any person with substantial and relevant expertise to participate on a peer review panel)

Mr. FEINGOLD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] for himself and Mr. PRYOR, proposes an amendment numbered 1538 to amendment No. 1487.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 57, strike out line 18 through line 25 and insert in lieu thereof the following:

''(B) may exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential financial interest in the outcome, or may include such person if such interest is fully disclosed to the agency, and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person:

Mr. FEINGOLD. Mr. President, there are many principles I can support in the Dole-Johnston legislation, but I do have a serious concern about part of the peer review proposal. It is not one of the larger issues at work here, but it is one I feel could have a great deal of impact on the integrity and credibility of the Federal regulatory process.

Section 633 of the Dole-Johnston legislation includes a provision that requires the Federal agencies to develop a systematic program for balanced, independent and external peer review that is to be utilized to review the scientific risk assessments performed under the requirements of the legislation.

I understand that several Senators have serious concerns about the larger issue of peer review and how it is treated in this legislation. There may be a broader amendment offered on that later, though. But the concern of this particular amendment has to do with the few lines contained in the peer review section of the bill that will put new guidelines and requirements on Federal agencies as they go about determining who will serve and who will not serve on these peer review panels.

It is my understanding that, periodically, a Federal agency is faced with a situation where an individual has been selected as a possible peer reviewer and later it is learned that the individual may stand to benefit financially, depending on the outcome of that particular peer review.

For example, the person might be a scientist under the employment of a company or industry that has a considerable financial interest that is dependent on the outcome of the review. That is a conflict of interest, and the type that I understand is not all that uncommon of an occurrence in our regulatory process. It is kind of important to understand how current law operates with respect to these kinds of situations.

Mr. President, under current law, the agencies have the discretion to determine if someone with a direct conflict of interest should be able to serve on a peer review. As I said, this is permitted sometimes because there are instances where it may be appropriate and necessary to allow individuals with conflicts of interest to serve on a particular peer review panel.

However, the Dole-Johnston legislation would go further. It would actually usurp the discretion currently enjoyed by the agencies and expressly state that an agency cannot actually disqualify someone merely because they may stand to benefit financially from the outcome of the review. This language is on page 57 of the bill.

There are three effects of this section. The first effect—the one I am trying to amend—is that an agency will no longer have the discretion to determine on their own whether an individual with a conflict of interest should or should not be permitted to serve on the panel. The second effect is that should an individual have a conflict of interest, the individual must be permitted to serve on the peer review panel so long as the conflict of interest is disclosed and is made part of the record. The result of this is, I believe, at least an improvement that you are going to have the disclosure.

I credit the folks that put this together in that regard. But there is an area where I think the agencies should have discretion. The bottom line is that if someone has a conflict of interest and is serving on a panel, that should be part of the record.

But there is a further effect. The third effect of the Dole-Johnston language is that the only instance where an agency could exclude an individual with a conflict of interest is in the very narrow situation where the result of the review would have a direct and predictable effect on a substantial financial interest of such person.

Now, what is a direct and predictable effect? That is a good question. Under current law, agency officials would be permitted to take a close look at this case and determine if there was enough cause placed on the ties of the individual and the industry being regulated to perhaps exclude the individual from the peer review panel. But under this legislation, as it now stands, the only instance in which an agency could exclude such an individual is to establish that the individual would predictably and directly benefit from the outcome of the peer review panel.

The fact is that not all financial benefits are predictable and/or direct. The amendment I am now offering will change the Dole-Johnston language on this issue so that agencies will be allowed to continue to employ peer reviewers with a conflict of interest, at their own discretion, provided that the conflict of interest is disclosed and made part of the record.

So the agencies would continue to be allowed to determine on their own when it is appropriate or not to allow someone with a conflict of interest to serve on a review panel. However,

should the agency decide to allow such an individual to serve on a review panel, my amendment would make it mandatory for the conflict of interest to be disclosed and be made a part of the record.

Finally, my amendment makes clear that there is just one circumstance in which the agencies will have no discretion as to who can be included or excluded from serving, and that in the situation I mentioned before, where a potential peer reviewer will directly and predictably benefit from the outcome of the review. In that case, the agency has to exclude the person. I am afraid that the Dole-Johnston bill, as currently written, will undermine the part of the regulatory process that is responsible for ensuring that risk assessments are performed in an objective and impartial manner.

My amendment is strongly supported by the Clinton administration.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 1 minute 53 seconds.

Mr. FEINGOLD. In short, let me say that my amendment preserves what works in current law and combines it with the progressive disclosure requirements of the Dole-Johnston bill. This will ensure that we have a review process that is fair, equitable and free from any unnecessary influence from the industries and entities that are the subject of the regulation.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Under the previous order, the Senator from Delaware has 7½ minutes.

Mr. ROTH. We have just received the language of the distinguished Senator's amendment. I would like to address some questions to the Senator from Wisconsin. As I understand, you are striking out the words, ''shall not exclude'' and inserting in lieu thereof, ''shall permit the agency to include.''

Now, it is my understanding that your amendment would allow an agency to include an individual on a peer review panel that may have an interest in the outcome of the review, is that correct?

Mr. FEINGOLD. Mr. President, if I may respond, the version that we have submitted is different than the one the Senator has before him. The language we have submitted indicates the following:

> The agency may exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential financial interest in the outcome, or may include. . .

So the agency is allowed the option of either including or excluding a person who has a conflict of interest in the version we sent up to the desk.

Mr. ROTH. We apparently do not have a copy of that version of the amendment.

Mr. President, I regret to say that we just received this modified language, and we have not had an opportunity to study this matter to determine exactly what its implications may be. So if it is all right with the leader, I think maybe we ought to set this aside for a moment so that we will have the opportunity to review the language and then proceed.

Instead of that, Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be counted against either side.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. JOHNSTON. Mr. President, while we are waiting, I have two amendments here that have been cleared. One is proposed by Mr. BAUCUS and myself.

It would change ''shall'' to ''may'' in that provision of the bill that states that the authorizing committee may submit to the Appropriations Committee changes in the schedule, and that the Appropriations Committee then—now it reads ''shall propose those amendments to the Senate.'' And we want to change that ''shall'' to ''may.''

Mr. ROTH. Mr. President, parliamentary inquiry. Can the distinguished Senator from Louisiana say what he is proposing at this time?

Mr. JOHNSTON. I have not proposed it yet. I am proposing an amendment that I thought had been cleared on all sides. It changes—

Mr. ROTH. I have not seen it, and we are looking at another amendment at this time.

Mr. JOHNSTON. I thought it had been cleared.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROTH. Mr. President, let me point out that there is absolutely no intention in S. 343 to undermine the integrity of the peer review process.

While I think the concerns of Senator FEINGOLD are unwarranted, I believe that we are willing to accept the amendment.

As I understand the amendment, the Senator is first saying that we may exclude any person with substantial and relevant expertise as a participant, on the basis that such a person has a potential financial interest in the outcome. But the Senator is also providing that such person may be included if his interest is fully disclosed to the agency and the agency includes such disclosure as part of the record.

So, as I understand it, the Senator is trying to be more evenhanded on the matter. Is that correct?

Mr. FEINGOLD. Mr. President, that is correct.

I want to be fair and make it clear, there is only one exception to that. That would require that the agency not be allowed to let the person stay on in the case where the result would have a direct, predictable effect. So a more extreme case, there is no discretion, but we restore the discretion in the more common conflict-of-interest case. That provision is in the Dole-Johnston provision.

Mr. GLENN. Mr. President, as I understand it, this would add some judgment to it. This would let the agency have leeway in determining a balance, and keep the expertise.

I believe that is the intent. I am happy to accept it on our side.

Mr. FEINGOLD. I thank the Senator.

Mr. ROTH. Mr. President, I am willing to accept the amendment and yield back the remainder of my time.

Mr. FEINGOLD. I thank the Senator from Delaware, and I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1538.

The amendment (No. 1538) was agreed to.

Mr. GLENN. I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to table the motion.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1536

The PRESIDING OFFICER. There are 8 minutes remaining on the debate on Amendment 1536.

The PRESIDING OFFICER. The Senator from Wisconsin has 1 minute remaining.

Mr. FEINGOLD. Mr. President, I yield back my remaining time.

Mr. HATCH. Mr. President, I would like to be clear that we have accepted Senator FEINGOLD's amendment on the Equal Access to Justice Act with reluctance. This is a controversial matter and I still have many concerns. However, as a show of good faith and willingness to work with the distinguished Senator from Wisconsin in the future, we have allowed his amendment to pass without comment at this time.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1536.

The amendment (No. 1536) was agreed to.

Mr. ROTH. I move to reconsider the vote by which the amendment was agreed to.

Mr. GLENN. Mr. President, I move to table the motion.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1535

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1535. Sixteen minutes remain on the debate.

Mr. DOLE. Mr. President, as I understand it, we had four amendments. We have accepted the two Feingold amendments and the Pryor amendment,

which leaves the Lautenberg amendment.

Mr. President, I understand the Senator from Mississippi, Senator LOTT, will be here momentarily. He has 13 minutes. The Senator from New Jersey has 3 minutes. If he is not here momentarily, we will yield back his time. Then I will move to table the Lautenberg amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Mississippi has 7 minutes remaining. The Senator from New Jersey has 3 minutes remaining.

Mr. FORD. Mr. President, may we have order, please?

The PRESIDING OFFICER. The Senator will suspend.

The Senator from Mississippi.

Mr. LOTT. Mr. President, after that 10 minutes, then we would be prepared to go to a vote on the pending Lautenberg amendment; is that correct?

The PRESIDING OFFICER. After all time is expired.

If the Senator will suspend, Members who are conversing in the aisle will take their conversations to the cloakroom.

The Senator from Mississippi.

Mr. LOTT. Mr. President, I will be heard tonight in this brief time we have remaining against the Lautenberg amendment. I understand, after the remarks have been made in the next 8 minutes, there will be a motion to table this amendment.

The Lautenberg amendment would strike the provision in the legislation to reform the current petition process regarding adding or deleting chemicals on the Toxic Release Inventory referred to as TRI. The TRI is a list of chemicals emitted by industrial facilities.

Mr. LAUTENBERG. Mr. President, can we have order, please? It is hard to hear the Senator from Mississippi.

The PRESIDING OFFICER. The Senator will suspend.

The Senator from Mississippi.

Mr. LOTT. The TRI is a list of chemicals emitted by industrial facilities as required by the Emergency Planning and Community Right to Know Act of 1986. The current TRI language in S. 343, which was worked out with the distinguished Senator from Louisiana, does not add a new petition process.

The language merely strengthens the current TRI language to require that the Administrator of the EPA ''shall grant any petition that establishes substantial evidence that the criteria already in the TRI law either are or are not met.''

As we have gone through this process in the last few days, we have continued, in my opinion, to make changes that are not strengthening the bill. I am not questioning anybody's motives or characterizing the amendments. There has continued to be a process that I think is not strengthening this legislation.

I want to urge my colleagues here tonight to defeat this amendment. What we are talking about here is sound science. That is all we are trying to do with their TRI provision. To make this process to involve reasonable, sound science, a responsible threshold should be used as the standard upon which TRI informs and protects the public.

Having said that, what will this toxics release inventory provision in the bill not do? I want to emphasize that.

The language in the bill has several important, positive features. But it will not automatically remove any chemical currently listed. It will not remove any of the existing criteria for listing. It will not prevent further listings of chemicals. It will not repeal the Community Right-to-Know Act. It will not require a new and costly risk assessment. It will not require a lengthy elaborate cost-benefit analysis.

There is a long list of things that this will not do. It will not undermine this law.

It will require that EPA prove the chemical is a genuine risk before it is listed. The provision will not affect the basic integrity of this program.

In fact, I would assert that it enhances the credibility of the TRI listing by only identifying carcinogens that based on reasonable and expected exposure scenarios will present genuine risk to Americans.

I, along with my colleagues who have worked on this, feel that TRI is an important and useful statute and should be preserved.

The change though is focused and directed at only one aspect of the statute. There are three types of listings within this TRI.

The first deals with really nasty chemicals; the second concerns carcinogens; and a third deals with chemicals causing environmental problems.

Nothing is proposed to change listing or delisting standards for the really nasty chemicals, the bad chemicals, we all agree should be identified and listed.

However, a new criteria is combined with the existing standard for listing in the two remaining categories.

A factor which concerns possible exposure by the public in dosages which are hazardous will be added to existing criteria.

This improves a TRI listing by providing the public with accurate and more complete information while avoiding unnecessarily alarming the public.

If a chemical is not toxic in any scientific sense, why grossly mislead the public and divert resources to this nonrisk?

This, in my opinion, is a regulatory abuse, the kind of thing we have been talking about and debating back and forth all week.

I believe the American public has a right to complete and accurate information. They should not be given incomplete or politicized misinformation.

Those who want to remove this provision, in my opinion, are not enhancing the protection offered. In fact, while it is not their intent, it may actually lead to misleading information.

When Congress passed the Right-to-Know Act in 1986, it did not envision that EPA would only consider wild scenarios. But after nearly a decade of considering just these type of scenarios, it has come time I think for Congress to deal with some of the actions that EPA has been taking. And there is one area where we really need it. Let me read what EPA itself has said in its own words. It says there is—

> . . . some confusion about roles and the relationship of emissions inventory, hazard assessment, exposure assessment and risk assessment in the development of the TRI listings and subsequent uses of the TRI data . . . sometimes misinterpreted to imply that they are direct measurements of exposure and risk.

This came from EPA's own Science Advisory Board in a letter to Carol Browner just 5 months ago.

I believe Americans will benefit by a more accurate and valid TRI listing. However, there are those who want to perpetuate a process which misleads as to the risks that are involved and ignoring scientific common sense.

I firmly believe that the additional standard will make TRI more accountable, and I urge that the amendment to delete this language in the bill be defeated.

I yield the floor, Mr. President.

Mr. JOHNSTON. Will the Senator yield?

Mr. LOTT. I yield whatever time I might have for a question.

Mr. JOHNSTON. Mr. President, I was going to say under the present law the EPA interprets its statute, or feels it must interpret their statute, in such a way as to have no discretion if there is a chemical which is known to cause chronic health effects. Ordinary table solvent, mentioned earlier, can cause chronic health effects, hypertension, poison, et cetera. They have not listed that chemical solvent. But they feel that they have no discretion if it causes that, and they have to list those kind of chemicals.

All we want to do is put ''the rule of reason'' in interpreting those rules. Is that is correct?

Mr. LOTT. That is correct. I thank the Senator.

Mr. LAUTENBERG. Mr. President, I want to point out one thing before we respond directly.

The PRESIDING OFFICER. Will Members standing and talking carry their conversations to the cloakroom?

Mr. LAUTENBERG. I thank you, Mr. President. It is the end of a long day. People are restless. But we have an important matter to settle here.

The fact of the matter is that this has been a very successful program. We have reduced in 5 years 40 percent of the toxic materials emitted. We have go from 4.8 billion pounds a year down to 2.8 billion pounds a year, a reduction of 2 billion pounds being released into the atmosphere, the water, the land, whatever waste stream the company chooses.

Why is it necessary to change it? Mr. President, it is obvious to me. It is necessary to change it to accommodate someone who does not like the chemical that is listed there. We are not talking about chewing gum here. We are talking about chemicals that now are listed as chronic. These chemicals can cause cancer, teratogenic defects, serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, and other chronic health effects.

What the Senator from Mississippi wants to do is say unless two-thirds of this list—that is the reality—meet the acute test that none of those conditions that I just mentioned should permit those materials to be listed.

These are toxics that are listed here. I would submit to you that it would be a pity to say to the American public that we are taking away the sunshine. We ask you now to accept the ''right to know''—not go from the ''right to know'' to the ''right to know nothing.'' It is a law that has very little demand. All they have to do—the manufacturer, the transports—is list the chemicals that you emit into the air, list the chemicals that you emit into the water; list the toxics that you store in wasteland fills.

Mr. President, there is very little here that has a negative effect. We have reduced the amount of exposure that our people have to suffer. The thing works well. To leave it there now when this is not a matter of regulation—this is a matter of governance. I think it would be a mistake honestly to continue to leave the language in there that would eliminate a program that has been very, very successful. If we are going to eliminate it, it ought to be through the process of hearings and committees and the legislative process instead of sweeping it all under the pretense that we are making regulation and making life easier for our citizens.

As a matter of fact, it makes life considerably more hazardous.

I yield the floor, Mr. President, and hope that my colleagues will not agree to tabling this amendment.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. All time has expired.

The majority leader.

Mr. DOLE. I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, let me indicate to my colleagues this will be the only vote tonight because we were able to take three of the amendments, the PRYOR amendment, and two Feingold amendments we were able to work out and accept. So there will just be this one vote.

As I understand, Senator HUTCHISON may be prepared to offer her amendment, at least the debate tonight on her amendment. Is that correct?

Mrs. HUTCHISON. We are almost there. Maybe after the vote.

Mr. DOLE. That is a possibility. So we would like, if we could do that tonight, to finish the debate on the Hutchison amendment, and then we would have a vote on that tomorrow morning. But we would have that vote at the same time we have a vote on the Glenn amendment, which will be around 11 a.m.

Mr. JOHNSTON. At 11:15.

Mr. DOLE. Whatever. If all time is used. I do not think we need 2 hours for sunshine.

In any event, I just advise Members this is the last vote tonight.

There will be votes tomorrow throughout the day, and I would tell my colleagues the first vote will probably be around 10:45, 11:00, 11:15 in the morning.

The PRESIDING OFFICER. The question is on agreeing to table the Amendment No. 1535. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 50, nays 48, as follows:

[Rollcall Vote No. 306 Leg.]

YEAS—50

Abraham	Frist	McCain
Ashcroft	Gorton	McConnell
Bennett	Gramm	Murkowski
Bond	Grams	Nickles
Breaux	Grassley	Packwood
Brown	Gregg	Pressler
Burns	Hatch	Santorum
Campbell	Hatfield	Shelby
Coats	Heflin	Simpson
Cochran	Helms	Smith
Coverdell	Hutchison	Specter
Craig	Inhofe	Stevens
D'Amato	Johnston	Thomas
DeWine	Kempthorne	Thompson
Dole	Kyl	Thurmond
Domenici	Lott	Warner
Faircloth	Mack	

NAYS—48

Akaka	Feinstein	Lugar
Baucus	Ford	Mikulski
Biden	Glenn	Moseley-Braun
Boxer	Graham	Moynihan
Bradley	Harkin	Murray
Bryan	Hollings	Nunn
Bumpers	Inouye	Pell
Byrd	Jeffords	Pryor
Chafee	Kassebaum	Reid
Cohen	Kennedy	Robb
Conrad	Kerry	Rockefeller
Daschle	Kohl	Roth
Dodd	Lautenberg	Sarbanes
Dorgan	Leahy	Simon
Exon	Levin	Snowe
Feingold	Lieberman	Wellstone

NOT VOTING—2

Bingaman	Kerrey

So the motion to table the amendment (No. 1535) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I ask unanimous consent that the distinguished Senator from Texas be permitted to offer her amendment, lay it down, and it will become the pending business when we come back in tomorrow. Tonight we will set it aside for the Glenn amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 1539 TO AMENDMENT NO. 1487

(Purpose: To protect against the unfair imposition of civil or criminal penalties for the alleged violation of rules)

Mrs. HUTCHISON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself, Mr. HEFLIN, Mr. HATCH, Mr. NICKLES, Mr. CRAIG, and Mr. LOTT, proposes an amendment numbered 1539 to amendment No. 1487.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Insert at the appropriate place:

''SEC. 709. AGENCY INTERPRETATIONS IN CIVIL AND CRIMINAL ACTIONS.

''(a) No civil or criminal penalty shall be imposed by a court, and no civil administrative penalty shall be imposed by an agency, for the violation of a rule—

''(1) if the court or agency, as appropriate, finds that the rule failed to give the defendant fair warning of the conduct that the rule prohibits or requires; or

''(A) reasonably in good faith determined, based upon the language of the rule published in the Federal Register, that the defendant was in compliance with, exempt from, or otherwise not subject to, the requirements of the rule; or

''(B) engaged in the conduct alleged to violate the rule in reliance upon a written statement issued by an appropriate agency official, or by an appropriate official of a State authority to which had been delegated responsibility for implementing or ensuring compliance with the rule, stating that the action complied with, or that the defendant was exempt from, or otherwise not subject to, the requirements of the rule.

''(b) In an action brought to impose a civil or criminal penalty for the violation of a rule, the court, or an agency, as appropriate, shall not give deference to any interpretation of such rule relied on by an agency in the action that had not been timely published in the Federal Register or communicated to the defendant by the method described in paragraph (a)(2)(B) in a timely manner by the agency, or by a state official described in paragraph (a)(2)(B), prior to the commencement of the alleged violation.

''(c) Except as provided in subsection (d), no agency shall bring any judicial or administrative action to impose a civil or criminal penalty based upon—

''(1) an interpretation of a statute, rule, guidance, agency statement of policy, or license requirement or condition, or

''(2) a written determination of fact made by an appropriate agency official, or state official as described in paragraph (a)(2)(B), after disclosure of the material facts at the time and appropriate review,

if such interpretation or determination is materially different from a prior interpretation or determination made by the agency or the state official described in (a)(2)(B), and if such person, having taken into account all information that was reasonably available at the time of the original interpretation or determination, reasonably relied in good faith upon the prior interpretation or determination.

''(d) Nothing in this section shall be construed to preclude an agency:

''(1) from revising a rule or changing its interpretation of a rule in accordance with sections 552 and 553 of this title, and, subject to the provisions of this section, prospectively enforcing the requirements of such rule as revised or reinterpreted and imposing or seeking a civil or criminal penalty for any subsequent violation of such rule as revised or reinterpreted.

''(2) from making a new determination of fact, and based upon such determination, prospectively applying a particular legal requirement;

''(e) This section shall apply to any action for which a final unappealable judicial order has not been issued prior to the effective date.

Mrs. HUTCHISON. Mr. President, I offer this amendment on behalf of Senators HEFLIN, HATCH, NICKLES, CRAIG, and LOTT, as well as myself. It is the Hutchison-Heflin amendment.

Mr. President, this is an amendment that we will debate tomorrow. It is an amendment that is going to try to put into the Administrative Procedure Act parameters that would not allow an agency to retroactively penalize a business that does not have reasonable notice of a regulation. So I think it is going to be an important amendment. I think we will have good bipartisan support for it.

I ask unanimous consent that we lay it aside.

Mr. GLENN. Reserving the right to object, and I will not object. In the original version of this that we asked the Department of Justice to check out they had objections, and the only reason we cannot debate it tonight is there have been substantial changes made to the original, as I understand it. We are asking Justice to give us an overnight read on those so we can bring it up tomorrow and see if the changes made were adequate, or whether we have to try and debate some change in that. That is the reason it will be put over until tomorrow. We are glad to accommodate the Senator from Texas on this.

Mrs. HUTCHISON. Yes. Mr. President, the Senator from Ohio is correct that there were objections. I think a number of those have been taken care of. I hope that by tomorrow, perhaps, we can have a short debate or even have an acceptance of the amendment. I feel that we have addressed many of the concerns in that letter. So we can take it up tomorrow and go from there.

Mr. HATCH. Mr. President, I ask unanimous consent that the amendment be temporarily set aside so we can address the Glenn amendment.

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

Mr. HATCH. Mr. President, I want to announce to all Members of our body that we are going to dispose of the Glenn amendment tonight.

Therefore, we could have votes before 11 tomorrow, I have been informed by the leader.

All Members should be aware we could have a vote or more.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. HATCH. I am happy to yield to the Senator.

Mr. JOHNSTON. Repeat that please.

Mr. HATCH. Because we are going to accept the Glenn amendment tonight, and the Hutchison amendment is laid down, Members should become aware that we could have votes before 11 tomorrow.

Mr. JOHNSTON. Mr. President, I have a longstanding doctor's appointment at 9 o'clock, and could be here by 10:30. Could the Senator help me on this? I can be here around 10:30. My guess is it would be hard to have a vote before 11, anyway.

Mr. JOHNSTON. The only amendment I know that might be ripe for a vote is possibly Hutchison.

Senator GLENN has 45 minutes in morning business.

Mr. HATCH. We will certainly try and accommodate the Senator. I cannot make that promise. We will do our best.

AMENDMENT NO. 1540 TO AMENDMENT NO. 1487

(Purpose: To ensure public accountability in the regulatory process by establishing ''sunshine'' procedures for regulatory review)

Mr. GLENN. On behalf of myself and Senator LEVIN, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. GLENN] for himself and Mr. LEVIN, proposes an amendment numbered 1540 to amendment No. 1487.

Mr. GLENN. I ask unanimous consent further reading be dispensed.

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

The amendment is as follows:

On page 66, after line 15, insert—

§ 643. Public disclosure of information

''(a) OMB RESPONSIBILITY.—The Director or other designated officer to whom authority is delegated under section 642, in carrying out the provisions of section 641, shall establish procedures (covering all employees of the Director or other designated officer) to provide public and agency access to information concerning regulatory review actions, including—

''(1) disclosure to the public on an ongoing basis of information regarding the status of regulatory actions undergoing review;

''(2) disclosure to the public, no later than publication of, or other substantive notice to the public concerning a regulatory action, of—

''(A) all written communications, regardless of form or format, including drafts of all proposals and associated analyses, between the Director or other designated officer and the regulatory agency;

''(B) all written communications, regardless of form or format, between the Director or other designated officer and any person not employed by the executive branch of the Federal Government relating to the substance of a regulatory action;

''(C) a record of all oral communications relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

''(D) a written explanation of any review action and the date of such action; and

''(3) disclosure to the regulatory agency, on a timely basis, of—

''(A) all written communications between the Director or other designated officer and any person who is not employed by the executive branch of the Federal Government;

''(B) a record of all oral communications, and an invitation to participate in meetings, relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

''(C) a written explanation of any review action taken concerning an agency regulatory action.

''(b) AGENCY RESPONSIBILITY.—The head of each agency shall—

''(1) disclose to the public the identification of any regulatory action undergoing review under this section and the date upon which such action was submitted for such review; and

''(2) describe in any applicable rulemaking notice the results of any review under this section, including an explanation of any significant changes made to the regulatory action as a consequence of the review.''.

On page 66, line 16, strike ''643'' and insert in lieu thereof ''644''.

On page 67, line 1, strike ''644'' and insert in lieu thereof ''645''.

Mr. GLENN. Mr. President, we have supported regulatory review in terms of cost-benefit analysis and OMB review of agency rules. During the 1980's, we had a lot of controversy about OMB interference with agency decisions, special access by lobbyists, and finally about secrecy in the Council on Competitiveness.

We, throughout all of this on the Governmental Affairs Committee, stood for open sunshine, nothing that was going to stop OMB review, and we wanted to introduce fairness.

The sunshine language in the GLENN-CHAFEE bill is consistent with the Clinton administration Executive order,

consistent with recommendations of the administrative conference of the U.S., also very similar to the OMB public disclosure procedures that Carl LEVIN, one of the cosponsors of this, negotiated with the Bush administration back in 1986.

We have a long history on this. We introduced sunshine legislation in several Congresses.

This year's language is a streamlined version of those bills, less strict, avoids criticism—like detailed logging requirements and early pre-rulemaking release of internal documents. Those requirements are not in this language.

But the provisions have two basic parts. First, OMB responsibilities, they must disclose to the public information about the status of rules under review. We need this to enforce the review time limits.

Two, OMB must release regulatory review documents and comments to agencies as they come in, and to the public; once a rule is proposed, agency and OMB analysis and other regular review documents are included and documents of people outside of government, records of conversations, meetings, review decisions.

The second part involves the responsibilities of the rulemaking agency. Each agency must keep a publication of rules under review at OMB. This matches the OMB lists and is needed to enforce the review time limits.

These requirements work. The Clinton administration abides by almost identical procedures now, and given past problems and requirements, the new regulatory reform bill, we should start with an open process.

I urge adoption of the amendment. It is my understanding that the other side has agreed to accept this amendment.

I am certain that Senator LEVIN, my cosponsor on this, who has done as much work in this area through the years as anybody in the Congress, and I am sure he has some remarks to make.

I am glad to yield the floor.

Mr. LEVIN. Mr. President, first let me thank my friend, the Senator from Ohio, for his tremendous leadership on this issue. He has kept at the forefront, and as a result we will adopt this very important amendment on openness tonight.

This issue began back in 1981 when President Reagan issued Executive order 12291, requiring review by the OMB, of all significant rules—proposed and final.

I favored Presidential oversight because I like accountability in the rulemaking process. But that process was being done behind closed doors. We could not even tell the public or find out if or when a rule was being reviewed by OMB. Only insiders with the right phone numbers on their rolodex knew what was going on.

We had hearing after hearing, document requests, battles in the press and on the Senate floor, over the critical issue of making the OMB review process subject to the same public disclosure requirements that we impose on rulemaking agencies.

It finally took a threat to shut down the dollars for OIRA, the Office of Information and Regulatory Affairs, the office in the OMB which conducts the review.

Now what we finally got was a policy from OIRA in 1986 from this administrator Wendy GRAMM in the form of the so-called GRAMM memo. That opened the door a bit, an important bit, and put written comments in a record of meetings in a public rulemaking file.

We still did not get the public's right-to-know if and when a rule was at OMB for review. But it was at that time, a big step forward.

The Clinton administration has issued a new Executive order in 1993 that provided an excellent process for making the OMB review process open to the public.

This bill, the bill now that is before the Senate for consideration, provides statutory authority for the President to review rules. It does not, however, provide for any of the openness requirements that we now have in the Executive order and for which we have worked so hard.

This amendment offered by the Senator from Ohio puts those disclosure requirements in law. It is an important amendment. There are also, these requirements in the Glenn-Chafee substitute, as there were in the ROTH bill as reported unanimously by the Governmental Affairs Committee.

Again, I want to thank the Senator from Ohio for his stalwart leadership on this openness issue.

Mr. JOHNSTON. Mr. President, I wonder if the Senator from Ohio would answer a couple of questions.

On page 2 of his amendment, on subsection (C) it states that there must be a record of all oral communications relating to the substance of a regulatory action between the director or other designated officer and any person not employed by the executive branch of the Federal Government, and then it also in subparagraph 3 on the same page talks about disclosure to the regulatory agency on a timely basis of a record of all communications, et cetera.

Now, my question is, does a record of all oral communications mean like a log of calls with a subject matter; or does that mean like a transcript or a summary of the substance of everything that is said?

Mr. GLENN. No, not a transcript. This would be rather, who called, and the general subject of the conversation.

Mr. JOHNSTON. Like I called you about this amendment. To satisfy that record, you would say the date; call from JOHNSTON; subject is sunshine amendment. Would that satisfy?

Mr. GLENN. Yes.

Mr. JOHNSTON. So, the Senator does not mean by a ''record,'' either a transcript or a summary, but name, date, time, subject matter.

Mr. GLENN. General subject, that is correct.

Mr. JOHNSTON. I thank the Senator.

Mr. GLENN. Mr. President, the amendment I am offering is required to provide sunshine during regulatory review. This amendment is needed to maintain public accountability and trust in government.

While not a central part of the regulatory reform legislation, the bill's Executive oversight provisions ensure that compliance with the many requirements of the bill will be monitored and enforced through OMB regulatory review. This power must be exercised in the light of day.

We have had a lot of experience with OMB regulatory review over the last 15 years. While I think that that review is needed to ensure good cost-benefit analysis by the agencies, it should not be used for undisclosed lobbying, pressure, and delay. Unfortunately, it has been used for those things. We need to put sunshine procedures into law so that it will not happen again.

Let me review how we got to this point.

A key component of the regulatory process under the Administrative Procedure Act [APA] is the requirement that agencies must work to involve interested parties in the development of rulemaking decisions.

Agencies must give the public notice of its proposals, solicit comments on them, and consider those comments in making final rulemaking decisions. This public participation has always been key to protecting the integrity of government agency decisions. It has also been key to creating the agency record that is reviewed by a court upon a challenge to an agency's final rule decision.

These APA public participation principles were largely sufficient for many years. Over the last 20 years, however, the development of centralized regulatory review has created a new layer of decisionmaking, whereby agency regulatory proposals could be reviewed and changed before being published for public notice and comment.

This regulatory review process, which was created by Presidential Executive order, has been the driving force for cost-benefit analysis in agency rulemaking. I have always supported that purpose. In fact, it is the potential good that OMB has shown can be provided by cost-benefit analysis and risk assessment that brings us to debate the present legislation. We are building on OMB's regulatory review experience in an effort to place these requirements in law for all agencies. I support that purpose. And I am glad that OMB has been here over the years helping to develop the principles of cost-benefit analysis and risk assessment.

Unfortunately, the OMB regulatory review experience has not been without its problems. In addition to regulatory analysis, the OMB process is useful for simply coordinating policies among the

various agencies and ensuring consistency with Presidential priorities. While this, too, is a valid purpose, it proved a useful avenue for secret lobbying, political pressure on agencies, and delays of agency decisions. This is not what regulatory review should be about.

Congressional hearings over the last 10 years or more have highlighted complaints about OMB's role in regulations relating to infant formula, lead, ethylene oxide, drinking water, underground storage of toxic chemicals, grain dust, and more. Several court decisions have also focused on some of these cases.

The former OMB Director, Richard Darman, even testified before the Governmental Affairs Committee in 1989 that ''OMB had abused the process by using delay as a substantive tool'' to control agency decisions.

In 1991, our committee had many of the same complaints with regard to the Council on Competitiveness, which was chaired by Vice President Quayle, and was supervising the OMB regulatory review process. There were a lot of charges about secret lobbying a lot of refusals to disclose who was meeting with Council representatives on current regulatory proposals.

I do not believe the solution to these closed processes is to outlaw them. Regulatory review is useful and should not be curtailed. But it should be more open. With openness the process can go forward and the American people can be confident in knowing that no secret dealings are going on behind closed doors.

Through the years of our oversight in the Governmental Affairs Committee, there has been considerable disagreement in the committee about how much sunshine is needed and at what stages in the process. The committee has, however, always agreed on the need for sunshine and public confidence in the regulatory process. In the consideration of S. 291, Senator ROTH's regulatory reform bill that was supported unanimously by Democrats and Republican in our committee, we arrived at a set of requirements that were acceptable to all. They were reduced in scope from earlier proposals I have made. They are consistent with recommendations of the Administrative Conference of the United States and provisions in current regulatory review order (E.O. 12866). These provisions include openness procedures instituted by OMB in 1986.

In other words, while some past proposals have been criticized as too intrusive into the prerogatives of the Chief Executive, the sunshine provisions in S. 291 work without raising past concerns. There were no complaints in committee about intrusion into executive privilege. Past criticisms about forcing early disclosure of information during regulatory review was resolved by putting off disclosure until after the completion of regulatory review. Earlier complaints about undue administrative burden, such as detailed logging requirements, were also addressed by matching requirements to those currently employed by OMB.

The Glenn/Chafee bill, S. 1001, contains the exact sunshine provisions of S. 291. The amendment I offer today is almost identical to that language—it is only modified in order to fit into the structure of S. 343. Without this amendment, S. 343 has no public protections during regulatory review. I believe that is a fundamental flaw that needs to be addressed. I believe that our bipartisan Governmental Affairs sunshine provisions provide the needed solution.

The amendment has two sets of requirements—one for OMB, and one set for the rulemaking agencies.

First, OMB must disclose to the public information about the status of rules undergoing review. This means that the public should be able to learn from OMB what agency regulatory actions are under review. As a practical matter, this would entail the production of a single monthly listing of proposed rules under review—as OMB currently prepares pursuant to E.O. 12866. In this way, the legislation would merely create a statutory right to information now provided under Presidential Executive order.

Second, the public must have access, no later than the date of publication of the proposed or final rule, to: (A) Written communications exchanged between OMB and the rulemaking agency. These would include draft rules and related analyses; (B) Written communications between OMB and non-governmental parties relating to the substance of a rule; (C) A record of oral communications between OMB and non-governmental parties relating to the substance of a rule—as in, who called, when, and on what subject; and (D) A written explanation of any review action and the date of such action.

Each one of these requirements is currently the practice of OMB. Again, we expect that these requirements will entail the continuation of the current OMB practice of maintaining regulatory review files in a public reading room.

Third, as a counterpart to public disclosure, OMB is required to send relevant information to the rulemaking agency to ensure the compilation of a full and accurate rulemaking record. OMB must send to the agency: (A) Written communications between OMB and non-governmental parties; (B) A description of oral communications, and an invitation to participate in meetings, relating to the substance of a regulatory action between the reviewer and any person not employed by the executive branch of the Federal Government; and (C) A written explanation of any review action.

The second part of the amendment requires agencies to: First, give public notice about rules undergoing regulatory review; and second, describe regulatory review decisions in the relevant rulemaking notices.

With these procedures, we should be able to put behind us much of the rancor and criticism that dogged OMB regulatory review during the past 15 years. The Clinton administration has taken an important step in applying these procedures in its Executive order. The time is now for Congress also to close the book on this issue. We are taking a significant step forward in moving regulatory reform legislation and in order to be successful, it must be accompanied by sunshine.

Mr. HATCH. Mr. President, we do have some concerns about this amendment on this side. We have some constitutional concerns and some others.

We are willing to accept this amendment tonight on the basis that we continue to work with our distinguished colleague and friend from Ohio and others, and we are trying to accommodate over here. So we are prepared to accept the amendment if the Senator will urge it.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I urge adoption of the amendment.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1540) was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I wonder if the Senator will yield? May I ask my colleague if we have cleared the Heflin amendment yet? Senator HEFLIN wanted to make Section 706 of the APA applicable to appeals from the court of claims.

Mr. HATCH. It is my understanding it has not been cleared yet but it is being worked on.

MORNING BUSINESS

DETENTION OF HARRY WU

Mr. DOLE. Mr. President, by now most of America knows of the unjust detention of Harry Wu by the People's Republic of China. Harry Wu is an American citizen and human rights crusader. Since June 19, 1995, he has been detained in China. Consular access to detained American citizens is required to be granted within 48 hours under the terms of a 1982 agreement with China. But China did not grant access to Mr. Wu until July 10—21 days later. On July 9, Harry Wu was charged with offenses which could carry the death sentence.

Harry Wu was traveling on a valid American passport, with a valid Chinese visa. There seems little doubt that he was targeted by the Chinese Government for his outspoken and brave efforts to describe Chinese human rights