

from the United States; to the Committee on the Judiciary.

By Mr. NICKLES (for himself, Mr. DOLE, Mr. BOND, Mrs. HUTCHISON, Mr. MCCONNELL, and Mr. LOTT):

S. 348. A bill to provide for a review by the Congress of rules promulgated by agencies, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MCCAIN (for himself and Mr. KYL):

S. 349. A bill to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program; to the Committee on Indian Affairs.

By Mr. BOND:

S. 350. A bill to amend chapter 6 of title 5, United States Code, to modify the judiciary review of regulatory flexibility analyses, and for other purposes; to the Committee on the Judiciary.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CONRAD:

S. 332. A bill to provide means of limiting the exposure of children to violent programming on television, and for other purposes; to the Committee on Commerce, Science, and Transportation.

##### THE CHILDREN'S MEDIA PROTECTION ACT OF 1995

Mr. CONRAD. Mr. President, today I rise to introduce the Children's Media Protection Act of 1995.

Mr. President, last Tuesday, the President in his State of the Union Address, asked Americans to take responsibility for their lives, to keep families together, and to keep communities from falling apart. As part of that challenge, the President expressed his continuing concern over media violence and challenged the media industry by saying,

You do have a responsibility to assess the impact of your work and to understand the damage that comes from the incessant, repetitive, mindless violence and irresponsible conduct that permeates our media.

Mr. President, I agree, and so do the experts. Let me quote the Guggenheim Foundation from the study of "Violence in Society." They said, "The scientific debate is over. A recent summary of 200 studies published through 1990 offers convincing evidence that the observation of violence as seen in standard, every day television entertainment, does affect the aggressive behavior of the viewer."

Mr. President, while the scientific debate is over, the public policy debate continues into its fifth decade.

Let me just turn to a chart which shows that violence in our society is far above that of any other industrialized nation. This chart is titled "Crime Across the Globe, Murders Per 100,000 in 1990." The United States, 9.4; Canada, 5.5; Denmark, 5.2; France, 4.6; Australia, 4.5; Germany, 4.2; Belgium, 2.8, and on it goes down to Japan at 1.2.

Mr. President, we have a problem in this country. No one is suggesting that violence in the media is the sole cause; certainly, it is not. But to deny that it plays a part is to deny what all of us instinctively understand. We learn by watching what others do, and many

children in our society are spending 6 hours a day watching television. What do they see? One thing they see is endless acts of mindless, gratuitous violence. Mr. President, it has an affect and it is a bad affect. It teaches children that one way to deal with problems is to engage in acts of violence. And in many cases it teaches them that there are no consequences, there is no pain. People are blown away and it does not make a difference.

We know better. We know it does make a difference, and we know this is not what we should be teaching our children. Because of a lack of action on this issue, I formed the Citizens Task Force on TV Violence, comprised of 28 national organizations representing medical professions, parents, educators, law enforcement, and churches. We formed that group in June 1993.

In December of that year, the Attorney General, Janet Reno, asked us for a set of recommendations. We submitted seven recommendations to the Attorney General. Those recommendations called for the adoption of a tough entertainment-media violence code, support for technology that would permit parents to more effectively monitor children's viewing of television. We recommended strengthening the Children's Television Act of 1990, scheduling hearings by the FCC on television violence, convening a White House Conference on Violence, curbing viewing of violent television programming in prisons, and the continuation of television industry discussions as authorized under the Television Program Improvement Act of 1990.

Shortly after these recommendations were submitted, the American Medical Association's house of delegates called for the adoption of a television violence code. They had a rating system for films, video, and audio entertainment. Following the outcry last year over the violent content of television and cable programming, the major TV networks and cable initiated voluntary assessments of violent content in their program. These assessments began with the 1994-95 television viewing season. Additionally, the major television networks agreed to display viewer warnings on some television programming containing violent content. They deserve credit for these steps.

There is progress on other fronts, as well. Even the leaders of the entertainment industry have come to believe that violence in the media is a problem. In a survey of entertainment industry leaders in U.S. News & World Report on May 9, 1994, nearly 9 out of 10 media entertainment industry leaders said that violence in entertainment contributes to the level of violence plaguing the Nation.

Mr. President, even though there has been a recognition, even though there has been a public discussion about media violence and the contribution it makes to violence in our society, nothing is happening. The media mayhem continues.

I cite the alarming report of the Center for Media and Public Affairs that was done in August of last year. The center, working with the Guggenheim Foundation, reported that television is considerably more violent in 1994 than it was 2 years previous.

Mr. President, I direct your attention to the chart that we have prepared that shows what has happened to the daily violence on television, a comparison between 1992 and 1994. This shows the incidents of violence per hour that are going out over the media.

Networks in 1992 had 25 violent acts per hour on average. In 1994, that had increased to 43 acts of violence per hour. Cable was even more egregious. Cable had 55 acts of violence per hour in 1992. That escalated to 75 acts of violence per hour on average in 1994. Only Public Broadcasting had modest levels of violence and was stable in the acts of violence portrayed between the years of 1992 and 1994.

Mr. President, although there has been a lot of talk about doing something about violence in the media, there has been precious little action.

I believe the American people do not want their children and families exposed to the extraordinary violence that is occurring in the entertainment media on a daily basis.

Now, we here in the Senate do not watch a lot of television because we wind up being here most of our time or in our States going from town to town. And so opportunities for watching television are somewhat limited. I would just ask my colleagues to turn on the television, watch what is happening, and ask yourselves: Can it possibly be the case that we can have children watching 6 hours of television a day and seeing endless repetitive mindless acts of violence and it has no effect on them? It cannot be. It has to be having an effect on them. And virtually every study that has been done says it is having an effect on them.

Mr. President, I recognize that the violence in our society is not just because of media violence. Certainly, that is not the case. There are many contributors. But the time has come for us to reduce the violence in the entertainment media. The trend to glamorize violence must stop.

I am pleased by the voluntary efforts the media has undertaken. But let us face it. The job is not getting done. I do not believe that voluntary initiatives are sufficient to reduce media violence. For that reason, I am introducing legislation today that incorporates the principal recommendations of the Citizens Task Force. The legislation includes means to empower parents to help them make choices. It provides for new television sets being required to contain a V-chip that would permit parents to block television programming with violent content. The cost of the V-chip is now down to about \$5 per television set—\$5—to give the parents an ability, to empower parents to help

make choices for their children. That makes sense.

Second, the legislation contains a violent programming rating provision. This provision requires the FCC to prescribe, in consultation with the broadcasters and cable operators, private interest groups and concerned citizens rules for rating the level of violence in television programming. These ratings would apply to the V-chip technology.

Third, the legislation contains a children's safe harbor provision which requires the FCC to initiate a rule that prohibits commercial television, cable operators, and public telecommunications entities from broadcasting television programs that contain gratuitous violence between the hours of 6 a.m. and 10 p.m. at night.

Mr. President, if there is one thing we have heard all across this country it is that there ought to be a safe harbor, there ought to be a period within which kids are watching television that parents can have some assurance they are not being exposed to this mindless gratuitous violence.

Finally, the bill contains the Children's TV Act compliance provision which requires the FCC, when granting or renewing TV licenses, to assure the applicant is in compliance with the Children's Television Act of 1990.

These provisions are consistent with the FCC's current examination of television violence in children's television programs and the implementation of the Children's Television Act of 1990.

Mr. President I have supported voluntary efforts in the past and I continue to support and commend these efforts. But it is absolutely clear—absolutely clear—that those efforts are not sufficient to achieve the result that I think the vast majority of Americans would like to see achieved.

The President challenged us last Tuesday to understand the impact that this constant stream of mindless violence is having on our families and children. I applaud the President, and I hope he will continue to draw public attention to the corrosive effect that violence in the entertainment media is having on our families and on our children.

Mr. President, I welcome cosponsors to my legislation. I urge my colleagues to carefully examine the issue of media violence as it relates to violence in our society.

I ask unanimous consent that the text of my bill, the recommendations submitted to Attorney General Janet Reno by the Citizens Task Force on TV Violence, the names of the national organizations in the task force that endorse the recommendations, and the press release announcing the action by the American Medical Association's house of delegates, its article, entitled "A Kinder, Gentler Hollywood," in the May 1994 issue of the U.S. News & World Report, the findings of the study by the Center for Media and Public Affairs, along with the press release announcing the study, and the report of

the study of the findings of 200 studies of violence, along with the endorsements of task force members that supported this initiative, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CONRAD. Mr. President, I want to specifically draw the attention of my colleagues to the letter of support for this legislation from the American Medical Association—I was pleased to have the president of the American Medical Association at the press conference this morning announcing this legislation—the support from the National Association of Secondary School Principals; the support of the National Coalition on Television Violence; the support of school principals who recognize that the epidemic of violence on the streets of America is spilling over into the schools of America and their belief that media violence is contributing to that violence; the support from the National Association for the Education of Young Children; the strong statement of support from the National PTA; the support of The Future Wave, which is made up of producers and writers themselves who recognize that television violence, media violence, is contributing to violence in our society; and the support of the National Alliance for Nonviolent Programming. All of these groups have specifically endorsed, now, the legislation that I am introducing today.

[EXHIBIT 1]

S. 332

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Children's Media Protection Act of 1995".

#### SEC. 2. FINDINGS.

Congress makes the following findings:

(1) On average, a child in the United States is exposed to 27 hours of television each week, and some children are exposed to as much as 11 hours of television each day.

(2) The average American child watches 8,000 murders and 100,000 acts of other violence on television by the time the child completes elementary school.

(3) By the age of 18 years, the average American teenager has watched 200,000 acts of violence on television, including 40,000 murders.

(4) The Times Mirror Center reports that a recent poll of Americans indicates that 72 percent of the American people believe that there is too much violence on television, and, according to a survey by *U.S. News and World Report* dated May 1994, 91 percent of American voters believe that mayhem in the media contributes to violence in real life.

(5) On several occasions since 1975, *The Journal of the American Medical Association* has alerted the medical community to the adverse effects of televised violence on child development, including an increase in the level of aggressive behavior and violent behavior among children who view it.

(6) The National Commission on Children recommended in 1991 that producers of television programs exercise greater restraint in the content of programming for children.

(7) A report of the Harry Frank Guggenheim Foundation, dated May 1993, indicates that there is an irrefutable connection between the amount of violence depicted in the television programs watched by children and increased aggressive behavior among children.

(8) It is in the National interest that parents be empowered with the technology to block the viewing of television programs whose content is overly violent or objectionable for other reasons.

(9) Technology currently exists to permit the manufacture of television receivers that are capable of permitting parents to block television programs having violent or otherwise objectionable content.

#### SEC. 3. ESTABLISHMENT OF TELEVISION VIOLENCE RATING CODE.

Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end the following:

"(v) Prescribe, in consultation with television broadcasters, cable operators, appropriate public interest groups, and interested individuals from the private sector, rules for rating the level of violence in television programming, including rules for the transmission by television broadcast systems and cable systems of signals containing specifications for blocking violent programming."

#### SEC. 4. REQUIREMENT FOR MANUFACTURE OF TELEVISIONS THAT BLOCK PROGRAMS.

Section 303 of the Communications Act of 1934 (47 U.S.C. 303), as amended by section 3, is further amended by adding at the end the following:

"(w) Require, in the case of apparatus designed to receive television signals that are manufactured in the United States or imported for use in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus—

"(1) be equipped with circuitry designed to enable viewers to block the display of channels, programs, and time slots; and

"(2) enable viewers to block display of all programs with a common rating."

#### SEC. 5. SHIPPING OR IMPORTING OF TELEVISIONS THAT BLOCK PROGRAMS.

(a) REGULATIONS.—Section 330 of the Communications Act of 1934 (47 U.S.C. 330) is amended—

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

(2) by adding after subsection (b) the following new subsection (c):

"(c)(1) Except as provided in paragraph (2), no person shall ship in interstate commerce, manufacture, assemble, or import from any foreign country into the United States any apparatus described in section 303(w) of this Act except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section.

"(2) This subsection shall not apply to carriers transporting apparatus referred to in paragraph (1) without trading it.

"(3) The rules prescribed by the Commission under this subsection shall provide performance standards for blocking technology. Such rules shall require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and blocking specifications established by the Commission.

"(4) As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers."

(b) CONFORMING AMENDMENT.—Section 330(d) of such Act, as redesignated by subsection (a)(1), is amended by striking “section 303(s), and section 303(u)” and inserting in lieu thereof “and sections 303(s), 303(u), and 303(w)”.

**SEC. 6. ELIMINATION OF VIOLENT PROGRAMMING ON TELEVISION DURING CERTAIN HOURS.**

Title I of the Children’s Television Act of 1990 (47 U.S.C. 303a et seq.) is amended by adding at the end the following:

“PROHIBITION ON VIOLENT PROGRAMMING

“SEC. 105. (a) The Commission shall, within 30 days of the date of the enactment of this Act, initiate a rule-making proceeding to prescribe a prohibition on the broadcast on commercial television and by public telecommunications entities, including the broadcast by cable operators, from the hours of 6 a.m. to 10 p.m., inclusive, of programming that contains gratuitous violence.

“(b) As used in this section:

“(1) The term ‘cable operator’ has the meaning given such term in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

“(2) The term ‘programming’ includes advertisements but does not include bona fide newscasts, bona fide news interviews, bona fide news documentaries, and on-the-spot coverage of bona fide news events.

“(3) The term ‘public telecommunications entity’ has the meaning given such term in section 397(12) of the Communications Act of 1934 (47 U.S.C. 397(12)).”

**SEC. 7. BROADCAST ON TELEVISION AND CABLE OF EDUCATIONAL AND INFORMATIONAL PROGRAMMING FOR CHILDREN.**

(a) BROADCAST TELEVISION.—Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is amended by adding at the end the following:

“(k) EDUCATIONAL AND INFORMATION PROGRAMMING FOR CHILDREN.—In granting an application for a license for a television broadcasting station (including an application for renewal of such a license), the Commission shall impose such conditions upon the applicant as the Commission requires in order to ensure that the applicant complies under the license with the standards for children’s television programming established under section 102 of the Children’s Television Act of 1990 (47 U.S.C. 303a) and otherwise serves the educational and informational needs of children through its overall programming.”.

(b) CABLE SERVICE.—Part III of title VI of the Communications Act of 1934 (47 U.S.C. 541 et seq.) is amended by adding at the end the following:

“EDUCATIONAL AND INFORMATION PROGRAMMING FOR CHILDREN

“SEC. 629. A franchise, including the renewal of a franchise, may not be awarded under this part unless the cable operator to be awarded the franchise agrees to comply with the standards for children’s television programming established under section 102 of the Children’s Television Act of 1990 (47 U.S.C. 303a) and to otherwise serve the educational and informational needs of children in the provision of cable service under the franchise.”.

CITIZENS TASK FORCE ON TV VIOLENCE

Americans For Responsible Television, Post Office Box 627, Bloomfield Hills, Michigan 48303.

American Psychological Association, 750 First Street, NE, Washington, D.C. 20002.

National Association For The Education of Young Children, 1509 16th Street, NW, Washington, D.C. 20036.

Future Wave, 105 Camino Teresa, Santa Fe, New Mexico 87501.

National Sheriffs Association, 1450 Duke Street, Alexandria, Virginia 22314.

American Medical Association, 1101 Vermont Avenue, NW, Washington, D.C. 20005.

American Medical Association Alliance, Inc., 515 North State Street, Chicago, Illinois 60610.

International Association of Chiefs of Police, 1110 North Glebe Road, Suite 200, Arlington, Virginia 22201.

National Association of Elementary School Principals, 1615 Duke Street, Alexandria, Virginia 22314.

National School Boards Association, 1680 Duke Street, Alexandria, Virginia 22314.

American Psychiatric Association, 1400 K Street, NW, Washington, D.C. 20005.

National Council of Churches, 475 Riverside Drive, Suite 852, New York, New York 10015.

National PTA, 2000 L Street, NW, Suite 600, Washington, D.C. 20036.

Parent Action, 2 North Charles Street, Baltimore, Maryland 21201.

National Foundation To Improve Television, 60 State Street, Suite 3400, Boston, Massachusetts 02109.

National Association of Secondary School Principals, 1904 Association Drive, Reston, Virginia 22091.

American Academy of Child and Adolescent Psychiatry, 3615 Wisconsin Avenue, NW, Washington, D.C. 20016.

National Coalition on Television Violence, 33290 West Fourteen Mile Road, Suite 489, West Bloomfield, Michigan 48322.

American Academy of Pediatrics, 1331 Pennsylvania Avenue, NW, Washington, D.C. 20004.

National Association For Family & Community Education, P.O. Box 6, 127 North Pepperell Road, Hollis, New Hampshire 03049-0006.

National Child Care Association, 1029 Railroad Street, Conyers, Georgia 30207.

National Association of Social Workers, 750 First Street, NE, Washington, D.C. 20002.

Alliance Against Violence In Entertainment For Children, 17 Greenwood Street, Marlboro, Massachusetts 01752.

American Nurses Association/American Academy of Nursing, 600 Maryland Avenue, SW, Suite 100, Washington, D.C. 20024.

American Association of School Administrators, 1801 North Moore Street, Rosslyn, Virginia 22209.

National Council For Children’s TV And Media, 32900 Heatherbrook, Farmington Hills, Michigan 48331-2908.

National Alliance for Non-violent Programming, 1846 Banking Street, Greensboro, North Carolina 27408.

National Association of School Psychologists, 8455 Colesville Road, Suite 1000, Silver Spring, Maryland 20910.

[From the Center for Media and Public Affairs, Washington, DC, Aug. 8, 1994]

TV VIOLENCE—1992 VERSUS 1994

Television violence increased by 41% over the last two years, according to a new study by the Center for Media and Public Affairs. The study counted 2,605 violent scenes in a single day across 10 broadcast and cable channels in 1994, up from 1,846 violent scenes in 1992. But violence shown in toy commercials dropped by 85% from 1992 to 1994.

These results come from a unique study of “a day-in-the-life of television.” Researchers tabulated all scenes of violence during 18 continuous hours of programming on each of 10 broadcast and cable channels during the first Thursday in April of both 1992 and 1994. The researchers monitored the following channels from 6 a.m. to midnight: the ABC, CBS, NBC, and FOX broadcast networks, PBS, and Paramount-owned independent sta-

tion WDCA; and cable channels HBO, MTV, WTBS, and USA.

MAJOR FINDINGS

The number of violent scenes increased from 1,846 in 1992 to 2,605 in 1994, a rise of 41%. The average hourly rate increased from 10 to almost 15 scenes of violence per channel.

Life threatening violence (such as assaults with deadly weapons) increased even more rapidly than overall violence, rising 67% from 751 to 1,252 scenes. Incidents involving gun play rose 45%, from 362 to 526.

The greatest sources of violence on television is not any one type of programming, but the “promos” for upcoming shows and movies—695 violent scenes, up 69% from 1992.

Unlike TV programs and promos, violence in toy commercials dropped sharply. In about the same amount of children’s programming, toy ads showed only 28 violent scenes in 1994, down from 188 in 1992—a drop of 85%.

Because the study covers a single day, the results cannot necessarily be generalized across the entire television season. But the increase in violence is too pervasive to attribute it to any unusual aspect of this particular day’s programming. Violence was up on the broadcast and cable channels alike in fiction and non-fiction formats, adult and children’s fare, and in promos as well as programs.

[From the Harry Frank Guggenheim Foundation, New York, NY, May 3, 1993]

H.F. GUGGENHEIM FOUNDATION URGES VIGILANCE AGAINST MEDIA VIOLENCE

CALLS FOR MONITORING OF TV NETWORKS’ COMPLIANCE WITH GUIDELINES TO LIMIT VIOLENT CONTENT OF PROGRAMS

NEW YORK.—The nation’s only private foundation devoted exclusively to the study of violence and aggression called today for new vigilance against violence in television programs and motion pictures. In issuing a report entitled “The Problem of Media Violence and Children’s Behavior,” the Harry Frank Guggenheim Foundation urged parents, children’s advocates, Congress, and the entertainment industry itself to monitor the industry’s compliance with new self-imposed guidelines designed to limit violent content in television programs.

“A substantial body of scientific research now documents the damaging effects of exposure to violent media content. Many leading scientists are convinced that media violence promotes real violence,” said foundation president James M. Hester. “The entertainment industry plays an important role in the epidemic of youth violence sweeping the nation. Parents, children’s advocacy groups, and Congress should hold the networks to their promise to curb violence on television.”

The foundation called on the entertainment industry to adhere to a 15-point set of standards issued by the three major television networks in December 1992. ABC, CBS, and NBC developed the guidelines in response to a law passed by Congress that protected the networks from prosecution on antitrust grounds if they coordinated efforts to regulate the amount of violence in their programming. The exemption expires at the end of this year.

“The public is anxious about the problem of media violence, but they don’t know what’s being done to address it,” Hester said. “This report supplies up-to-date information, including an important statement by Professor Leonard Eron of the University of Michigan. We hope it will encourage vigilance in monitoring how well the TV networks live up to their own guidelines. They have made a social contract with the public, and they should be held accountable to it.”

The foundation report also points out that the motion-picture industry and cable television networks have yet to issue similar standards limiting violence.

"The initiative of the television networks is a step in the right direction, but the remainder of the industry has yet to respond to the warnings of scientists and the protests of concerned citizens," Hester said. "Media violence obviously remains a very serious national problem."

The Harry Frank Guggenheim Foundation supports research in a broad range of disciplines in order to illuminate the causes and consequences of human violence. The foundation's goal is to reduce violence and improve relations among people by increasing society's understanding of violence and aggression.

THE NATIONAL ALLIANCE FOR  
NON-VIOLENT PROGRAMMING,  
Greensboro, NC, February 1, 1995.

To: Senator Kent Conrad, Hart Senate Office Building.

From: Whitney Vanderwerff, Executive Director, The National Alliance for Non-violent Programming.

Thank you very much for your endeavors with regards to the incidence and effects of media violence.

The National Alliance for Non-violent Programming, a network of national and international women's organizations created to address the issue of media violence non-censorially, endorses the intent of two of the provisions of the Children's Media Protection Act of 1995, to be introduced by Senator Kent Conrad in the United States Senate on February 2, 1995:

Implementation of blocking technologies can empower parents and caregivers to analyze violent content and the ratings thereof and to take action to reduce the incidence and effects of media violence.

Television broadcasting stations applying for licenses and license renewals should comply fully with the standards of the Children's Television Act of 1990.

Senator Conrad's bill must be implemented in conjunction with community education and involvement. These provisions of the bill can educate and involve citizens at the grassroots, and therefore the National Alliance for Non-violent Programming lends its endorsement of the intent of these two provisions. Thank you.

WORKING FOR ALTERNATIVES TO  
VIOLENCE IN ENTERTAINMENT,  
Santa Fe, NM, January 30, 1995.

Senator KENT CONRAD,  
Hart Senate Office Building, Washington, DC.

Attn: Robert Foust, Task Force On TV Violence

DEAR SENATOR CONRAD: We were pleased to read your new bill, and to join in your press release with the following statement.

As writers and producers, we realize that this bill is not Congress censoring us. This is Congress doing our market research for us. We join with other forward thinking people in the Hollywood creative community in welcoming this challenge to generate more creative product, freed from marketplace demands for violence.

Future WAVE is an organization of writers and producers Working for Alternatives to Violence through Entertainment. With Board members such as Edward James Olmos, Martin Sheen, Dennis Weaver, and with producer Robert Watts (*Indiana Jones* movies, *Alive*, etc.) we are working within the Hollywood creative community to answer MPA Chairman Jack Valenti's call: "How can we in the film/TV industry . . . be so creatively resourceful that we are able to attract and ex-

cite audiences and at the same time try to pacify those scenes which lay claim to gratuitous violence?"

We are pleased to see that Congress is going beyond giving a standing ovation to reducing TV violence and actually beginning to do something about it—without censorship.

We believe it is very important that the rules for rating the level of violence not be simply a bean count of violent acts. For under such standards a movie like *Gandhi* or a drama on the life of Martin Luther King might be listed as very violent. [Similarly, each of the films in the attached RAVE award proposal contain acts of violence but have a powerful nonviolent message].

What parents need is the power to control programming which glamorizes or trivializes violence. We need more shows which depict nonviolent heroes facing down violence with more creative means than counter-violence.

Sincerely,

ARTHUR KANEGIS,  
President.

[From the National PTA, Feb. 2, 1995]

NATIONAL PTA SUPPORTS PASSAGE OF THE  
CHILDREN'S MEDIA PROTECTION ACT OF 1995  
(By Catherine A. Belter, National PTA Vice-President for Legislative Activity)

WASHINGTON, DC.—The National PTA joins the many other education, civic, health, child development and child advocacy organizations to speak in favor of the passage of the Children's Media Protection Act of 1995. I am here today as one of a procession of many National PTA representatives who as far back as the 1970's have petitioned Congress and the regulatory agencies about the need to provide more quality television programming for children and youth.

I am also here today, not as a legal expert, medical practitioner or law enforcement officer, but as a parent and a long standing child advocate who shares with other parents and citizens the frustration of years of attempting to influence children's television programming while not wishing to cross the fine lines of our First Amendment freedoms.

The National PTA has testified in the past that this kind of TV violence legislation would be a last resort if voluntary self-regulation and the TV Violence Act produced little results. We know that Senator Conrad and many in the Congress have taken the same stance. In my comments before the FCC last June, I reported an abysmally low compliance rate of the broadcasters with the Children's Television Act, and an almost total failure by the industry to take advantage of the anti-trust exemption provided by the Children's Television Violence Act to produce industry-wide standards and guidelines in an effort to reduce violent TV programming.

At the same time that the industry is ignoring the Children's Television Act, many parents do make an effort to monitor their children's television viewing. The National PTA certainly recognizes that responsibility for children's viewing also falls on the shoulders of the adult family members. To that end, the National PTA has recently launched the Family and Community Critical Viewing Project in association with the National Cable Television Association (NCTA) and Cable in the Classroom. This cooperative effort is designed to provide parents and teachers throughout the country with information and skills to help families make better choices in the television programs they watch, and to improve the way they watch these programs. The workshops are based on a model created in association with the Harvard media expert Dr. Renee Hobbs. The National PTA is offering media literacy work-

shops to PTAs around the country. In addition, the National PTA has also been in the forefront in supporting such non-commercial and educational programs as Arts and Entertainment, Cable in the Classroom, Discovery and CNN Classroom News.

But for some children TV acts as the remote babysitter and as a surrogate parent, and these children may not be fortunate enough to have parents who closely monitor their TV watching. With television in 96 percent of all American households, this medium does affect the attitudes, the informal education and the behavior of our children. The networks and many other cable producers have resisted voluntary self-regulation to improve programs for children and have not gotten the message that parents are concerned and want a reduction in violent television and an increase in quality, educational and entertaining family programs.

According to a 1993 UCLA study by its Department of Communications, TV stations provided an average of 3.4 hours per week (less than one-half hour per day) of regularly scheduled standard length programming for children. That figure is little more than what was broadcast for children in the late 70's. In addition, an assessment by one of our local units, the South Florida Preschool PTA, revealed that less than 1 percent of the broadcast hours on the four local network stations were devoted to educational and informational children's programming. Yet, in a 1990 study, the Annenberg School of Communication found that non-educational programming targeted at children increased. Programming such as the current fare of Saturday morning cartoons, X-Men, the Simpsons and Beavis and Butthead is far from educational and contains some form of violence.

The statistics related to a child's exposure to TV violence are indeed alarming. For instance, a November 1991 study by the Annenberg School of Communication showed that the average number of violent acts in one hour of children's television broadcasting was more than 30. This is even more than on prime-time TV which had only 4 acts of violence per hour. A 1993 American Psychological Association study showed that the typical child will watch 8,000 murders and more than 100,000 acts of violence before finishing elementary school. By the age of 18, the same teenager will have witnessed 200,000 acts of violence, including 40,000 murders.

After 20 years of asking the broadcasters and the industry to respond to parents and children through self-regulation and reduce violence, we believe that it is time for the next step: the passage of the Children's Media Protection Act of 1995 which contains many of the provisions advocated by the National PTA in testimony before the Senate Commerce Committee on October 28, 1993. The bill provides a multi-faceted and comprehensive approach to curbing television violence including the following:

1. The requirement that television sets are equipped so that parents have the opportunity to block programming with violent content;
2. In the future, the opportunity for parents to block any television program that they find objectionable for any reason;
3. The development of violence rating standards which reflect the input of a broad based group of citizens, including parents;
4. Creation of a "safe harbor" during the course of each day that prohibits programming containing gratuitous violence during the times that children are most likely to watch television. This is a provision that Attorney General Janet Reno has opined as constitutional;

5. Assurance that the FCC will carry out its responsibilities pursuant to the Children's Television Act. Parents want safe schools and safe communities. In fact, working toward violence-free schools and communities is a major program priority for the national PTA. The National PTA certainly recognizes that there are a number of causes related to violence in our society besides violent TV programming. However, the fact still remains that television is more violent than ever before and offers fewer opportunities for education and family viewing. The television industry must assume its share of the responsibility for the violent behavior of children. The Children's Media Protection Act is a health issue, an educational issue and a family values issue. Reduction of TV violence is one of the issues that received a strong bipartisan reaction from both U.S. Senators and U.S. Representatives during President Clinton's State of the Union Address. The National PTA applauds Senator Kent Conrad for introducing this legislation, and requests the immediate passage of this legislation.

[From the NAEYC News, Washington, DC, Feb. 6, 1995]

**CHILDREN'S MEDIA PROTECTION ACT: A RESPONSIBLE STEP TO SUPPORT FAMILIES AND DECREASE CHILDREN'S EXPOSURE TO MEDIA VIOLENCE**

The National Association for the Education of Young Children (NAEYC) strongly supports Senator Kent Conrad's introduction to the Children's Media Protection Act of 1995. This measure takes several critical steps to reduce children's exposure to media violence and its negative impact on children's development and aggressive behavior. The measure also empowers parents to take advantage of technology that gives them greater control over the television programming available to their children.

Of all of the sources and manifestations of violence in children's lives, media violence is perhaps the most easily corrected. This legislation takes steps—long overdue—to decrease the amount and severity of violent acts observed by children through television and to give parents additional control in selecting the programs available to their children.

NAEYC believes that each component of the legislation is equally important. The requirement that television sets be equipped with technology that allows parents to block objectionable programming, along with the violence rating code, will provide valuable tools that allow parents greater power in controlling the nature of television programs to which their children are exposed. The children's hour provision to prohibit gratuitous violence on commercial and public television between the hours of 6:00 a.m. and 10:00 p.m. also takes an important step in decreasing children's viewing of media violence. Finally, stronger enforcement of the Children's Television Act should promote additional choices of television viewing appropriate to children's development and interests.

The National Association for the Education of Young Children (NAEYC) is the nation's oldest and largest organization of early childhood professionals and others working to improve the quality of early childhood education services available to young children, birth through age 8, and their families. Based in Washington, D.C., NAEYC has a membership exceeding 90,000 and a network of more than 450 local, state, and regional affiliated early childhood organizations.

**SCHOOL PRINCIPALS SUPPORT CHILDREN'S MEDIA PROTECTION ACT OF 1995**

ALEXANDRIA, VA., February 2, 1995—The National Association of Elementary School Principals pledged full support for the Children's Media Protection Act of 1995 introduced today by North Dakota's Senator Kent Conrad.

"The effect of television on children is of great concern to school principals," said Samuel G. Sava, NAEPS's executive director. "The family room television is a more persuasive and pervasive educator than all the teachers in America's classrooms. There's no question that the overdose of media violence American children receive is linked to their increasingly violent behavior," he said. "But more troubling for parents and educators is the fact that the violence children see, hear, and are entertained by makes them insensitive to real violence."

NAESP, which represents 26,000 elementary and middle school principals nationwide, has long been on record in support of strengthening and enforcing guidelines for the Children's Television Act that would improve programming for children and give parents peace of mind. NAESP has repeatedly asked the FCC and Congress to employ a clearer definition of educational programming and require that stations air at least one hour of 30-minute educational shows every day between 7:00 a.m., and 10:00 p.m., when children are watching.

NAESP further urges Congress to protect children from media violence by:

Developing a violence code, which gives rules for rating the level of violence in television programming;

Allowing violent programs to air only between 10:00 and 6:00 a.m.; and

Requiring manufacturers to install devices on TVs that can be used to block programming.

"Educators want families to have better control over their children's TV viewing. We need a family-friendly media industry that is responsible to its youngest audience," Sava said.

Attached is NAESP's "Report to Parents," produced in the fall of 1993, which its members reproduce to send home to the families to their students.

Established in 1921, the National Association of Elementary School Principals serves 26,000 elementary and middle school principals in the United States, Canada, and overseas.

[From the NCTV-News, Washington, DC, Feb. 2, 1995]

**NCTV SUPPORTS SEN. CONRAD'S CHILDREN'S TELEVISION BILL**

WASHINGTON DC.—The National Coalition on Television Violence (NCTV) supports of Senator Kent Conrad's bill to control the amount of television violence witnessed by children. The Children's Media Protection Act of 1995, introduced by Sen. Conrad (D. ND.) provides a combination of real tools that parents can use to effectively supervise their children's viewing habits and enforcement mechanisms to hold broadcasters accountable for their compliance (or lack of compliance) to existing rules.

The industry has consistently used a defensive strategy of tossing the problem back into the laps of parents by claiming a conflict with First Amendment Rights and criticizing parental responsibility. Parents have long been frustrated by their inability to cope with the overwhelming, ever present nature of television.

This bill requires broadcasters to provide the public with the information they need to identify objectionable programming, along with the technological tools they need to ef-

fectively block it from coming into their homes.

The provisions of bill state that:

A rating system will be developed to identify programming detrimental to children;

Computer technology (which is currently available) that can be used to selectively screen out unwanted programming will be required to be built into new televisions sets; and

Broadcaster's license renewal will be contingent on their compliance with the provisions set forth in the Children's Television Act of 1990.

Implementation of the Children Television Act of 1990 provides for "truth in packaging" for television programs and a "safe harbor" of television air time free from gratuitous violence. As any parent knows, even when exercising extreme vigilance over children's viewing, a child appropriate program is often subject to the insertion of promotional messages for just the sort of programs or movies that the parent is trying to avoid. These one minute (or less) interruptions also frequently use the most violent clips from the programs as their promotional message!

More than 40 years of research has demonstrated the negative effects of television on children, particularly the links between media violence and aggressive behavior. NCTV commends Sen. Conrad for his willingness to counter the trend of "feel good legislation with no teeth" to propose legislation that calls for true accountability from the broadcast media in a genuine move to improve the lives of America's children.

**NASSP, THE NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS**

*Reston, VA, February 2, 1995.*

Hon KENT CONRAD,

*U.S. Senate, Washington DC.*

DEAR SENATOR CONRAD: The National Association of Secondary School Principals (NASSP) and its 42,000 members commend you for your efforts to protect our children and youth from exposure to violence in television and the media. We join you in seeking passage of the Children's Media Protection Act of 1995.

Our nation is experiencing an unrivaled period of juvenile violent crime perpetrated by youths from all races, social classes, and lifestyles. Without question, the entertainment industry plays a role in fostering this anti-social behavior by promoting instant gratification, glorifying casual sex, and encouraging the use of profanity, nudity, violence, killing, and racial and sexual stereotyping.

A national effort to monitor and ultimately decrease violence in television and the entertainment media is vitally important to the well-being and subsequent development of youngsters. Therefore, NASSP joins you in recommending that:

Manufacturers, both domestic and foreign, install technology on all television sets to permit parents to block television programming with violent or objectionable program content;

The Federal Communication Commission (FCC), in consultation with television broadcasters, cable operators, private interest groups, and concerned citizens, prescribe rules for rating the level of violence in television programming;

The FCC grant and renew television operating licenses only after ensuring the applicant is in compliance with the standards for children's programming established under the Children's Television Act of 1990; and

Programming containing gratuitous violence be prohibited between the hours of 6 a.m. to 10 p.m.

NASSP strongly urges Congress to halt the increasingly senseless portrayals of violence

in the entertainment media by supporting this crucial movement.

Sincerely,

DR. TIMOTHY J. DYER,  
*Executive Director.*

VIOLENCE IN THE MEDIA AND ENTERTAINMENT  
INDUSTRY

Whereas, in 1979, the National Association of Secondary School Principals urged the broadcasting and motion picture industries to work with educators and parents in moving toward a significant reduction of violent acts in television film programming;

Whereas, the nation is experiencing an unrivaled period of juvenile violent crime perpetrated by youths from all races, social classes, and lifestyles;

Whereas, the average American child views 8,000 murders and 100,000 acts of violence on TV before finishing elementary school, and by the age of 18, that same teenager will have witnessed 200,000 acts of violence on TV, including 40,000 murders; and,

Whereas, the entertainment industry (movies, records, music videos, radio, and television) plays an important role in fostering anti-social behavior by promoting instant gratification, glorifying casual sex, encouraging the use of profanity, nudity, violence, killing, and racial and sexual stereotyping; be it therefore known, that the National Association of Secondary School Principals:

Appreciates the efforts of the U.S. Attorney General to focus on the problem of increasing violence in the media;

Stands in opposition to violence and insensitive behavior and dialogue in the entertainment industry;

Commends television broadcasters who have begun self-regulation by labeling each program it deems potentially offensive with the following warning: DUE TO VIOLENT CONTENT, PARENTAL DISCRETION IS ADVISED, and producers of music videos and records who use similar labeling systems;

Encourages parents to responsibly monitor and control the viewing and listening habits of their children with popular media products (records, videos, TV programs, etc.);

Calls upon advertisers to take responsible steps to screen the programs they support on the basis of their violent and profane content;

Supports federal legislation designed to decrease and monitor TV violence; and

Calls upon the Federal Communications Commission to initiate hearings on violence in the media, and to consider as part of those hearings the establishment of guidelines for broadcasters to follow during prime time and children's viewing hours; furthermore, the FCC should use its licensing powers to ensure broadcasters' compliance with guidelines on violence and establish a strict procedure to levy fines against those licensees who fail to comply.

Adopted by the Membership of the National Association of Secondary School Principals, February 1994.

[From the American Medical Association,  
Washington, DC, Feb. 2, 1995]

AMA SUPPORTS THE CHILDREN'S MEDIA  
PROTECTION ACT OF 1995

(By Robert E. McAfee, MD, President, AMA)

"As President of the American Medical Association, and on behalf of our 300,000 physician and medical student members, and the members of our Alliance, I am pleased to support the Children's Media Protection Act of 1995, which Senator Kent Conrad will introduce today.

"Violence is a major medical and public health epidemic in America. Each year, an estimated 50,000 deaths are attributable to

violence in the form of homicide and suicide. The United States ranks first among industrialized nations in silent death rates.

"We are a people living in fear. Which of us has not been haunted by dark thoughts we try to ignore: Will my 9-year-old be safe today in her classroom? Could my father be the victim of a drive-by shooting as he walks the dog? Will I be the next car-jacking victim? My sister a victim of domestic violence? No one can disagree: violence in America is out of control.

"Certainly, the root causes of violence are varied and debatable. But over the past two decades, a growing body of scientific evidence has documented the relationship between the mass media and violent behavior. Report after report brings us to the same conclusion: programming shown by the mass media contributes significantly to the aggressive behavior and to the aggression-related attitudes of children, adolescents, and adults.

"It is estimated that by the time children leave elementary school, they have viewed 8,000 killings and more than 100,000 other violent acts. Children learn behavior by example. They have an instinctive desire to imitate actions they observe, without always possessing the intellect or maturity to determine if the actions are appropriate. This principle certainly applies to TV violence. Children's exposure to violence in the mass media can have lifelong consequences.

"We must take strong action now to curb TV violence if we are to have any chance of halting the violent behavior our children learn through watching television. If we fail to do so, it is a virtual certainty the situation will continue to worsen. The time for action is now."

CITIZENS TASK FORCE ON TV VIOLENCE RECOMMENDATIONS FOR ATTORNEY GENERAL  
JANET RENO

Adoption of Entertainment Media Violence Code;

Parental Involvement;  
FCC Hearings;  
Children's Television Act;  
Viewing Violent Television Programming in Prisons;

White House Conference on Violence; and  
Continuation of Television Industry Discussions.

UNITED STATES SENATE,  
Washington, DC, December 15, 1993.

Hon. JANET RENO,  
*Attorney General of the United States, Department of Justice, Washington, DC.*

DEAR MADAM ATTORNEY GENERAL: Pursuant to your discussions on November 22, 1993 with members of the Citizens Task Force on TV Violence, I am very pleased to enclose specific recommendations that members of the coalition believe you and other members of the Interagency Working Group on Violence should carefully examine as you consider the Federal response to the horrible violence in society, including violence in the entertainment media.

These recommendations are endorsed by the following organizations, all members of the Citizens Task Force on TV Violence—

National Association of Elementary School Principals.

National Association of Secondary School Principals.

American Medical Association.

American Medical Association Alliance.

National Child Care Association.

Parent Action.

American Academy of Child and Adolescent Psychiatry.

National Foundation To Improve Television.

National School Boards Association.  
National Association For Family and Community Education.  
American Psychiatric Association.  
Americans For Responsible Television.  
National Association For The Education Of Young Children.  
National Association of Social Workers.  
Future Wave.  
National Council of Churches.  
Alliance Against Violence in Entertainment For Children.  
National Coalition On Television Violence.  
National Council for Children's TV and Media.  
National Parent Teacher Association (PTA).

Letters and more detailed comments in support of the recommendations from Future Wave, the National Sheriffs Association, the National PTA, the International Association of Chiefs of Police, and the Center For Media Education are also attached for your consideration.

We are most grateful for your support on this issue.

Sincerely,

KENT CONRAD,  
*U.S. Senator.*

RECOMMENDATIONS FOR ATTORNEY GENERAL  
JANET RENO/INTERAGENCY WORKING GROUP  
ON VIOLENCE FROM CITIZENS TASK FORCE ON  
TV VIOLENCE

1. ADOPTION OF ENTERTAINMENT MEDIA  
VIOLENCE CODE

We support the adoption of a Code, similar to the Code recently announced by the Canadian Radio and Telecommunications Commission and the Canadian Association of Broadcasters, understanding that such a Code would be best developed through a collaborative effort between Government and the television, cable and motion picture industries.

We suggest the formation of an Action Task Group, comprised of Government, television, cable, motion picture industry and public interest representatives, and television advertisers to develop the Code.

Certain features of the Code would be a matter of the broadcasters, cable programmers and motion picture industry representatives exercising voluntary judgements to program in the public interest, such as a general agreement not to program gratuitous violence and to exercise severe restraints on violence with respect to children's programming.

However, we feel that the Code should contain a "safe-harbor" rule to the effect that gratuitous dramatized violence, including violent commercials for movies or upcoming shows, would not be programmed on broadcast or cable television between the hours of 6:00 a.m. and 10:00 p.m., and that such a rule would be fully enforceable by the Federal Communications Commission (FCC) as a regulation that is narrowly drawn to further a compelling state interest, i.e., the protection of children under the age of 12. Compliance with such a rule would be a factor taken into account when the FCC considers renewal of licenses in the case of broadcast TV, and would be enforced by fines in the case of cable TV.

Finally, in the event that the television industry refuses to cooperate in the development of such a Code, then we believe that the FCC (in collaboration with Congress) should design and implement appropriate regulations that will withstand judicial scrutiny to protect children under the age of 12 from the demonstrated harm of TV violence.

2. PARENTAL INVOLVEMENT

We support steps which would work to empower parents to more effectively monitor

and control what their young children view on television. These recommendations include—

Mechanical/electronic devices installed in television sets or cable boxes that would enable parents to block out television programming (cable or broadcast) that contains "V" rating. We believe such a device would be more effective than present lockout devices (devices that can lock out a particular channel or program) which presupposes parental participation in the selection of programming, which is not the case in so many of our nation's homes.

Viewer warnings. Audio and visual warnings of programming containing gratuitous dramatized violence between 6:00 a.m. and 10 p.m. would be telecast before the program and at each commercial break until 10:00 p.m. Superimposed warnings would be displayed continuously during programming containing gratuitous violence.

Violence Rating System. We support the development (by The Action Task Group referred to above) and implementation of a rating system that would classify programs on the basis of their violent content and that such ratings be made available to parents through TV guides, listings, etc. We suggest that such ratings would, in the first instance, be assigned by the programmers themselves, and that only in the event of a breach of their good faith responsibility to assign proper ratings, would the FCC become involved.

### 3. FCC HEARINGS

We support and urge that the FCC hold hearings on the issue of television violence, most particularly on proposed voluntary and regulatory solutions to some, in several forums around the country. From these hearings the FCC would hone a definition of "television violence" as well as gather the necessary data to support the Code and the basis of any regulations that become part of the Code.

### 4. CHILDREN'S TELEVISION ACT

We support and urge that the FCC continue with the initiative to strengthen and enforce the FCC's rules promulgated in implementing the Children's Television Act, in order that beneficial programming for children be increased to provide a real alternative to television violence. We also urge that such programming include materials to educate and inform children about the effects of violence and media violence in particular. In addition, we recommend public service announcements to educate viewers about the effects of violence generally, and media violence in particular.

### 5. VIEWING VIOLENT TELEVISION PROGRAMMING IN PRISONS

We suggest that one step that could be taken immediately on the issue of television violence and its adverse effect on our society would be to end the availability of violent TV programs in prisons.

### 6. WHITE HOUSE CONFERENCE ON VIOLENCE

We strongly support the initiative of convening a White House Conference on Violence that would focus on the causes of our epidemic of violence, including media violence. At the session on media violence, there would be included, in addition to the representatives of the television, cable and motion picture industries, the approximately 100 major advertisers on television. We believe that a well-designed initiative of consciousness-raising specifically aimed at these advertisers would be effective in reducing gratuitous violence on television.

### 7. CONTINUATION OF TELEVISION INDUSTRY DISCUSSION

Since many of the above recommendations and initiatives require the joint cooperation

and collaboration of the TV industry, we support the extension of the current anti-trust exemption as provided under the Television Program Improvement Act—Public Law 101-650, to permit the continuation of television industry discussions.

By Mr. MURKOWSKI (for himself,  
Mr. JOHNSTON, and Mr. LOTT):

S. 333. A bill to direct the Secretary of Energy to institute certain procedures in the performance of risk assessments in connection with environmental restoration activities, and for other purposes; to the Committee on Energy and Natural Resources.

### THE DEPARTMENT OF ENERGY RISK MANAGEMENT ACT OF 1995

Mr. MURKOWSKI. Mr. President, let me acknowledge my colleague, Senator LOTT, who has spoken on the necessity of the legislation which we are introducing today, the Department of Energy Risk Management Act of 1995.

I am very pleased to rise today to introduce the Department of Energy Risk Management Act of 1995 for myself, Senator JOHNSTON, and Senator LOTT. Congress needs to require agencies to use sound science, risk assessment, and cost-benefit analysis in the regulatory decision-making process.

So often, as you know, Mr. President, decisions are made on the basis of emotion. The group that speaks the loudest, has the most numbers, or makes the most outlandish statements influences the decision, instead of decisions being made on sound science. If we cannot depend on scientists who spend a portion of their lives becoming experts on a particular subject, we certainly cannot depend on the short span of attention that we have as politicians as we attempt to evaluate the merits of some very difficult and sophisticated subjects.

One of the difficulties, of course, is to get the scientific community to step forward and put their reputation on the line behind, if you will, their recommendations. So often, we find a situation where the scientists say, "Well, if I had another appropriation, I could study that a little bit more and probably give you a little more definitive answer." Decisions have to be made every day. You and I, Mr. President, have to vote up and down. We cannot vote maybe. We have to make some decisions. With the regulatory process that has run amuck in this country today these decisions are not being made competently and are not being made on the basis of the best information available. We cannot seem to get the scientific community to bear the responsibility for their advice to those of us who have to vote yes or no.

What are we really talking about? This is not a complicated concept. This is risk analysis, cost benefit, and every time you pick up a can of soup or you go buy some crackers it tells you if you have fat soup, skinny soup, or crackers with sodium in them. But with risk assessment and cost-benefit analysis in the application of a permit by the En-

vironmental Protection Agency and various other agencies, you do not know what the cost is. You do not know what the benefit is. You do not know what the risk is.

So this legislation would simply mandate that the public have awareness when the administrative agencies come down with their evaluation of the permitting process as to what the risk is and what the cost is. It is perfectly reasonable. Yet there is a tremendous concern out there among America's environmental community that somehow this will dismantle our environmental laws. What an outlandish generalization.

So I think, Mr. President, we need to require the agencies to use sound science, risk assessment, and cost-benefit analysis in the regulatory decision-making process. This legislation applies to environmental restoration activities conducted by the Department of Energy [DOE]. Although the scope of this bill applies to DOE cleanups, we hope to have the risk assessment and cost-benefit analysis debate cover all agencies' activities. We are coordinating our legislative effort with other legislative efforts.

In the last Congress Senator JOHNSTON offered an amendment to the EPA Cabinet level bill in the spring of 1993. At the same time the Johnston amendment was adopted, I offered an amendment requiring cost-benefit analysis that was agreed to by the Senate. I have continued to look for ways to improve and refine our regulatory decisionmaking process. Senator LOTT also introduced legislation last Congress that is incorporated into our bill. Since the last Congress, the momentum for risk assessment/cost-benefit analysis has only intensified and the November elections have brought about renewed interest in advancing risk assessment/cost-benefit analysis legislation.

I hope the agencies out there got the message of what the last election suggested, that the process was out of balance, and it needed correcting.

On January 17, I hosted, along with Senator LOTT, Representative CRAPO, and Representative KAREN THURMOND, the first meeting of a bipartisan, bicameral Regulatory Reform Caucus now made up of 35 Representatives and some 12 Senators. The caucus wants a proactive strategy to require agencies to use sound science, risk assessment, and cost-benefit analysis in the regulatory decisionmaking process.

At that meeting we heard from two excellent speakers. John Stossel of ABC News spoke persuasively about how the public's perception of environmental and health risks affects our overregulation of those risks. Mr. Stossel showed a chart that broke down how much given risks shorten the average life. It is interesting to note that we spend billions of dollars regulating toxic waste sites and there are lots of news stories about places, like Love Canal. But, even based on the most extreme estimates provided by

environmental organizations toxic wastes are calculated to shorten the average life by just 4 days. Other risks shorten the average life span by years, yet we do not regulate them.

Dr. John Graham, Director of the Harvard Center for Risk Analysis, gave an objective view of how government overregulates our lives and businesses. I was particularly impressed with Dr. Graham's point that over 80 percent of Americans favor better risk analysis in environmental policy. And, as Dr. Graham has indicated, risk and cost-benefit analysis is the key to sound environmental policy of the future. In fact, I think it is fair to say that incorporation of sound science, detailed and well communicated assessments, cost-benefit analysis, and the prioritizing of our limited resources is the environmental policy of the future. It is a commonsense policy that is here to stay.

American businesses spend more than \$150 billion annually just to comply with environmental laws—costs that increasingly strain U.S. competitiveness. Risk-based regulations rely on worst-case scenarios and ignore the best science, producing elaborate, expensive regulation of unimportant problems.

Imagine, Mr. President, if we relied on a worst-case scenario. We would not walk outside. We would not be in this building. Worst case means the worst possible case, whether it be flood, earthquake, you name it.

So risk-based scenarios really are scenarios that ignore best science contrary to the real world. As a result, the Federal Government is forcing the expenditure of billions of dollars by local government and industry on these excessively hypothetical and exaggerated perceptions of risks.

The intent of the policy of incorporating risk assessment and cost-benefit analysis into the decisionmaking process is to ensure better, more cost-effective regulations and decisions over the long term. Again, it is the smart way to make sure we get the most value for our limited Government resources, especially in a time where the American public is unequivocally demanding a smaller Federal bureaucracy and less Government control of their lives.

A couple of examples, Mr. President, to liven up the morning. I am told that a Kansas City bank was ordered by Federal regulators to put a braille keypad on drive-through ATM, automatic teller machines.

A little food for thought. The U.S. Department of Agriculture, in another case, required California farmers to dispose of millions of pounds of otherwise good peaches and nectarines simply because they were smaller than Federal standards permitted. Fruit that could have been given away to the needy had to be left to rot.

In Boise, ID, a plumbing contractor was penalized by OSHA because proper safety precautions were not taken by

the employees, who successfully rescued a suffocating construction worker from a collapsed trench. The \$7,785 fine was rescinded due to public outrage. Can you imagine that?

A self-employed truck mechanic in Morrisville, PA, was fined \$2,200 and sentenced to 3 years in jail for hauling away 7,000 old tires and rusting cars and placing clean fill on his own occasionally wet property without a Federal permit, because it was classified as a "wetlands." The EPA argued the property was wetlands because of a stream—dry for most of the year—was partially trapped by the discarded junk and created several pools of water.

I could go on and on with those horror stories, Mr. President, but I know you are familiar with them as well.

Finally, the legislation Senator LOTT, Senator JOHNSTON, and I have put together on risk assessment/cost-benefit would accomplish several important goals.

First, the legislation establishes clear principles to be followed by the Department of Energy. It does not set up a new bureaucracy, but it requires specifics when it performs risk assessments, and they include the consideration and discussion of data that may or may not specifically point to a health risk; precise guidelines for the use of assumptions to bridge some of the data gaps; and most importantly, assessments that are objective and unbiased.

Second, the bill establishes principles for risk characterization that will allow for better understanding and communication, so the public can read what the risk is, like they can read the risk if they want fat soup or skinny crackers, because it is on there. DOE must issue a final regulation implementing the risk assessment and risk characterization principles. DOE must develop a plan to review and revise early risk assessments, which shall include a process by which members of the public may petition the DOE for review of particular risk assessments.

In addition to establishing a risk assessment procedural framework, the bill would also require the Department to apply the results of those assessments in significant ways that will ensure safer, more efficient and more cost-effective cleanup. Any plan, assessment, or record of decision to conduct an environmental restoration activity must go through a cost-benefit analysis. The Secretary is going to have to certify that the analysis is based upon the best reasonable information; the analysis is objective and unbiased; the environmental restoration activity significantly reduces the targeted risk; no alternative environmental restoration activity is more cost-effective; and the environmental restoration activity is likely to reduce benefits that justify its cost. The Department must prioritize resources to address the most serious and most cost-effective risks first.

We intend to expand the scope of this legislation to apply to regulations and

all agencies, to provide for an independent and external peer review process.

I do not want to complicate this with a lot of words. We are simply asking for a process that the public can understand and it is almost like truth-in-lending, which has never been applicable to the regulatory process. That is what we propose in this legislation.

I ask unanimous consent at this time to have printed in the RECORD some of the risk comparisons that help to illustrate the importance of having comparative risks available to the public, and an article entitled "Unloading Excess Regulations," by Murray Weidenbaum, which appeared in the Journal of Commerce on January 27, 1995.

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

WHY WE HAVE TO CHOOSE WHICH RISKS ARE WORTH REDUCING

Activity	Cost per death averted
THIRD WORLD COUNTRIES	
Diphtheria immunization (Gambia) .....	\$87
Malaria prevention (Africa) .....	440
Measles immunization (Ivory Coast) .....	850
Improved health care .....	1,930
Improved water sanitation .....	4,030
Dietary supplements .....	5,300
UNITED STATES, NON-ENVIRONMENTAL	
Improved traffic signs .....	31,000
Cervical cancer screening .....	50,000
Improved lighting .....	80,000
Upgrade guard rails .....	101,000
Mobile intensive care units .....	120,000
Breakaway sign supports .....	125,000
Lung cancer screening .....	140,000
Breast cancer screening .....	160,000
UNITED STATES, ENVIRONMENTAL REGULATIONS	
Asbestos ban .....	110,700,000
Benzene NESHAP (revised waste operations) .....	168,200,000
1,2 dichloropropane drinking water standard .....	653,000,000
Hazardous waste land disposal ban (1st 3rd) .....	4,190,400,000
Municipal landfill standards (1988 proposed) .....	19,107,000,000
Formaldehyde occupational exposure limit #2 .....	86,201,800,000
Atrazine/alachlor drinking water standard .....	92,069,700,000
Hazardous waste listing for wood-preserving chemicals .....	5,700,000,000,000

Sources: Bernard L. Cohen, "Perspectives on the Cost Effectiveness of Life Saving," in Jay H. Lehr, Rational Readings on Environmental Concerns, pp. 462-465. (Author acknowledges that many of these numbers are only estimates and depend on other factors) John F. Morrall III, "A Review of the Record," Regulation 10 (2) (1986), p. 30. Updated by Morrall, et al. (1990) and printed in U.S. Chemical Industry Statistical Handbook 1992, p. 141.

RANKING POSSIBLE CANCER HAZARDS

Low levels of exposure to man-made chemicals means the risk they pose is very small compared to that of nationally occurring chemicals. The figures below assume that experiments on laboratory animals are reliable indicators of human carcinogenic hazards.

Source and daily exposure	Risk factor
Wine (one glass) .....	4,700.0
Beer (12 ounces) .....	2,800.0
Cola (one) .....	2,700.0
Bread (two slices) .....	400.0
Mushroom (one, raw) .....	100.0
Basil (1 gram of dried leaf) .....	100.0
Shrimp (100 grams) .....	90.0
Brown mustard (5 grams) .....	70.0
Saccharin (in 12 oz of diet soda) .....	60.0
Peanut butter (one sandwich) .....	30.0
Cooked bacon (100 grams) .....	9.0
Tap water (one liter) .....	1.0
Additives and pesticides in other food .....	0.5
Additives and pesticides in bread and grain products .....	0.4
Coffee (one cup) .....	0.3

Source: Human Exposure Rodent Potency (HERP) index, multiplied by 1000, based on Bruce Ames et al., "Ranking Possible Carcinogenic Hazards," Science 236 (April 17, 1987), page 271. See article for explanation of methodology and interpretation of results.

ODDS OF DYING FROM VARIOUS CAUSES

[Risk per 1 million population, U.S.]

Causes	Risk per million
Real risk of death this year caused by:	
Being murdered in Washington, DC (residents) .....	760.0
Chronically abusing alcohol .....	600.0
Being in a car accident .....	200.0
Being in a home accident .....	110.0
Being murdered .....	92.0
Giving birth to a child (women) .....	66.0
Being electrocuted .....	3.0
Being struck by lightning .....	1.6
Drowning in a bathtub .....	1.5
Hypothetical risk of death from cancer caused by:	
Drinking one can of light beer per day for one year .....	20.0
Eating one peanut butter sandwich per day for one year ....	10.0
Living next door to a nuclear power plant for 70 years (NCI) .....	10.0
Lifetime exposure to pesticide residues (EPA) .....	3.0
Lifetime exposure to pesticide residues (Doll and Peto) .....	<1.0
Lifetime exposure to landfill emissions (EPA) .....	<1.0
Lifetime exposure to emissions from incinerators (EPA) .....	<1.0

Sources: John and Sean Paling, *Up to Your Armpits in Alligators?* (Gainesville, FL: The Environmental Institute) 1993; Statistical Abstract of the United States, 1992, Table 123; National Cancer Institute, "Highlights of NCI's Carcinogenesis Studies," *Cancer Facts*, June 23, 1993, p. 7; Sir Richard Doll and Richard Peto, *Journal of the National Cancer Institute* 66 (6) (June 1981); Jennifer Chilton and Kenneth Chilton, "A Critique of Risk Modeling and Risk Assessment of Municipal Landfills Based on U.S. EPA Techniques," *Waste Management & Research* 10 (1992), pp. 505-516.

[From the Journal of Commerce, Jan. 27, 1995]

UNLOADING EXCESS REGULATIONS  
(By Murray Weidenbaum)

ST. LOUIS.—The time is ripe for a new round of reform in government regulation of business.

The limited reductions of transportation regulation carried out in the late 1970s and early 1980s are ancient history, and the 1990s to date have been dominated by a new round of expensive and burdensome regulation of the private sector.

The Occupational Safety and Health Administration is moving forward with one of the most ambitious regulatory agendas in its history, including an indoor-air-quality proposal the agency estimates would cost \$8 billion a year.

The Antitrust Division of the Justice Department is hiring 25 new lawyers, after adding 34 attorneys and 60 paralegals since mid-1992.

All this pales in comparison with the escalation of environmental and workplace regulation taking place in the United States.

It costs about \$150 billion a year to meet the directives of the Environmental Protection Agency. And the impact on the economy of employment regulation, such as civil rights enforcement and affirmative action requirements, is estimated at up to \$200 billion a year.

What really hurts is that many of the costs associated with regulatory programs are extremely frivolous from the viewpoint of achieving any serious public policy objective.

Here are just a few examples of the many absurd requirements imposed on U.S. businesses:

A Kansas City bank was ordered by regulators to put a Braille keypad on a drive-through ATM, or automatic teller machine.

The U.S. Department of Agriculture required California farmers to dispose of millions of pounds of otherwise good peaches and nectarines simply because they were smaller than federal standards permitted. Fruit that could have been sold or given away to the needy had to be left to rot.

In Boise, Idaho, a plumbing company was penalized by OSHA because "proper" safety precautions were not taken by the employees who successfully rescued a suffocating construction worker from a collapsed trench. The \$7,875 fine was eventually rescinded due to public outrage.

A self-employed truck mechanism in Morrisville, Pa., was fined \$202,000 and sentenced

to three years in jail for hauling away 7,000 old tires and rusting car pans and placing clean fill on his own, occasionally wet, property without a federal permit. The EPA argued the property was a wetland because a stream—dry for most of the year—was partly trapped by the discarded junk and created several pools of water.

To respond to the critics, over the years many efforts have been made to improve the process of government regulation. However, virtually all the changes have focused on executive branch rule-making.

But truly reforming government regulation means far more than just improving the way regulatory agencies carry out the tasks assigned to them by Congress. In order to reduce the very large and often avoidable economic burdens imposed by regulation, policymakers need to focus on the birth stage of the rulemaking process.

The crucial action occurs, for example, when the legislature enacts an 800-page Clean Air Act with unrealistic timetables and an almost endless array of requirements.

No amount of executive branch analysis performed afterward can adequately deal with the problem.

It is up to Congress itself to weigh carefully the results of benefit-cost analysis before it enacts a regulatory statute and also to ascertain that, if a new law is required, its provisions are as cost-effective as feasible.

Congress also should examine the cumulative effects of government regulation on the performance of the economic system. But rather than tackling piecemeal the hundreds of regulatory statutes on the books, Congress should write several new laws that will reform regulation across the board.

Five key changes would be especially helpful.

Congress should require benefit-cost analysis in each key stage of the regulatory process, from writing the laws to issuing regulations and reviewing the operation of programs.

When a law requires citizens or organizations to obtain a permit, agencies should be forced to act in a timely fashion. If an agency cannot process an application by the dead-line, the permit should be granted automatically.

Congress should emphasize objectives sought rather than precise methods to be used for each regulatory program.

Detailed laws that place "legislative handcuffs" on agencies hamper more cost-effective solutions. However, legislators should avoid writing laws so vague that they know in advance the courts will have to wrestle with the details.

The federal government should use risk assessment to set priorities for achieving greater protection of health, safety and the environment in the most cost-effective manner.

All risks are not equally serious. Government should focus on the most serious hazards. Sound science and comparative risk analysis should be drawn upon during the legislative drafting process.

Congress should promote regulatory justice. Legislators and regulators should avoid imposing costs on innocent parties. Where regulation substantially reduces property rights, compensation should be paid.

Now is an especially good time for Congress to embark on significant reform of government regulation. Such action would respond to widespread dissatisfaction with the high cost and limited benefits of many governmental activities.

Mr. MURKOWSKI. I urge my colleagues to consider the merits of this legislation. I assure you that the public supports it almost unanimously, be-

cause the system is simply out of balance. We need to address correctly the forms, cost benefits and risk analyses, which is one way to do it.

Mr. JOHNSTON. Mr. President, I am pleased to cosponsor, along with Chairman MURKOWSKI and Senator LOTT, the Department of Energy risk Management Act of 1995.

This bill builds upon work that I began in April of 1993, when I offered an amendment to the EPA Cabinet bill that would have required risk assessment and cost/benefit analysis with respect to EPA regulations. That amendment passed the Senate by a vote of 95-3. However, it did not become law because of the opposition of environmental advocacy groups and several House committee and subcommittee chairmen.

I then spent nearly a year working with those who had concerns about the amendment. The result was a revised amendment, supported by Senators BAUCUS and MOYNIHAN, that met every legitimate concern. In May of last year, I offered the revised amendment to the safe drinking water bill, and it passed by a vote of 90-8.

That simple amendment would have required EPA to do a risk assessment and cost-benefit analysis when preparing regulations that have an impact on the economy of \$100 million or more. As part of the process, the amendment provided that the Administrator must certify that the best reasonably obtainable science was used, that the regulation would actually reduce the risk addressed, that the regulation was the most cost-effective alternative, and that the benefits of the regulation justified the costs. It changed no environmental laws, and created no new causes of action. It was simply a truth-in-regulating provision.

Unfortunately, environmental advocacy groups and certain members of the house continued to oppose the revised provision, and refused to pass the safe drinking water bill with my amendment. As a result, the safe drinking water bill died along with the amendment. This, in my opinion, was one of the sorriest chapters of the 103d Congress.

The Republicans then picked up the risk assessment and cost-benefit issue and included it in their Contract with America. As a result, it has become a high Republican priority, and is due to be acted upon during the first 100 days of this Congress.

Although I am very pleased by the attention that the risk issue is now receiving, and fully agree that legislation should be enacted promptly, I urge my Republican colleagues to not get carried away. If we do this right, we will inject much-needed discipline into the process of setting environmental priorities. But if we go too far, we will bring the regulatory process to a grinding halt, a result that is not in the best interest of the public or the regulated industries.

The bill we are introducing today is narrowly drawn to apply only to the cleanup activities of the Department of Energy, such as those at Hanford, WA, and Rocky Flats, CO. We drafted the bill in this manner because the cleanup of DOE weapons sites is one of the toughest issues facing the Energy and Natural Resources Committee, and Chairman MURKOWSKI and I want to focus the Energy Committee's attention on the need for risk assessment and cost-benefit analysis in prioritizing that cleanup effort.

We feel that the cleanup problem at Department of Energy facilities is a perfect example of our inability to set rational priorities when it comes to environmental protection. Currently, we are spending \$6 billion a year of our constituents' money and accomplishing virtually nothing in terms of actual cleanup. If we can set risk-based priorities for the cleanup of those facilities, and then implement those priorities in a cost-effective fashion, that would be a major accomplishment.

This is not to say that Chairman MURKOWSKI, Senator LOTT, and I feel that risk assessment and cost-benefit analysis should be applied only to the cleanup of Department of Energy facilities. Chairman MURKOWSKI and Senator LOTT will soon introduce an amendment to the bill, which will follow the bill to the Energy Committee. The amendment will apply the requirements of the bill to all Federal agencies, including EPA. The bill and the amendment will then be the subject of hearings in our committee.

Although I agree with the thrust of the amendment, I chose not to be a cosponsor for two reasons. First, I want to reserve judgment on whether risk assessment and cost-benefit analysis should be required of all Federal agencies. I am confident that they should apply to EPA and the Department of Energy, but I think we need to carefully examine the issue of applying those principles to all other Federal agencies.

Second, and perhaps more important, I am concerned about the judicial review provision that Chairman MURKOWSKI and Senator LOTT are expected to include in their amendment. That provision states, in part, that,

Any decision, regulatory analysis, risk assessment, hazard identification, risk characterization, or certification provided for under this act is subject to judicial review in the same manner and at the same time as the underlying final action to which it pertains. \* \* \*

My concern is that this provision may lead to a substantial increase in litigation. As my colleagues may recall, the judicial review provision that I included in last year's amendment was quite narrow, and I remain convinced that more litigation hurts rather than helps our efforts to set rational environmental priorities. Therefore, Chairman MURKOWSKI, Senator LOTT, and I agreed that we would not include a judicial review provision in our bill,

and that I would not cosponsor the amendment containing their judicial review provision. Instead, we will continue to study this crucial issue, with the expectation that we can resolve it before reporting a bill.

I also want to briefly explain why the bill has no dollar threshold. Last year, my amendment applied only to EPA regulations that have an effect on the economy of \$100 million a year or more. The bill we are introducing today, however, does not contain a dollar threshold because the cleanup activities of DOE are so easily divided into small increments. In other words, there was concern that even a relatively low threshold could be evaded by dividing a cleanup plan into units that fit under the dollar threshold. The issue of the appropriate threshold, both as to DOE cleanups and as to regulations issued by other agencies, is one that will need careful examination when we hold hearings on this legislation.

Mr. President, it often takes more than one Congress to enact important legislation, and this matter has proven to be no exception. In a recent article entitled "Congress Discovers Risk Analysis," Terry Davies of Resources for the Future begins by stating that:

The 103d Congress, which concluded in November 1994 in a blaze of partisan bickering, will be forgotten for many reasons by those interested in environmental policy. With the exception of creating a new national park in the California desert, Congress failed to take action on a long list of environmental issues. However, the 103d Congress will be memorable on at least one environmental count: it was the Congress that discovered risk analysis.

Now that we have discovered risk assessment, I urge that it is the task of the 104th Congress to legislate on the subject with all deliberate speed. Given that we spend almost \$150 billion a year on environmental protection, we cannot afford to delay in setting priorities based on the extent of risk posed to the public and the environment.

I ask unanimous consent that Mr. Davies' article be included in the RECORD.

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

[From Resources for the Future, Winter 1995]

#### CONGRESS DISCOVERS RISK ANALYSIS

(By Terry Davies)

The 103d Congress, which concluded in November 1994 in a blaze of partisan bickering, will be forgotten for many reasons by those interested in environmental policy. With the exception of creating a new national park in the California desert, Congress failed to take action on a long list of environmental issues. However, the 103d Congress will be memorable on at least one environmental count: it was the Congress that discovered risk analysis.

Congress has regulated risk for decades. For example, the national ambient air quality standards called for in the Clean Air Act of 1970 are required to protect against health risks to sensitive populations. The Toxic Substances Control Act, enacted in 1976, was probably the first law to explicitly use "unreasonable risk" as the criterion for govern-

ment to take regulatory action. But Congress has never concerned itself with how risks were calculated or with comparing different risks. Risk as a general concept was of concern but, with a few notable exceptions, risk analysis was not. In 1993-1994, this situation changed dramatically.

Below I review some of the efforts in the 103d Congress to deal with risk analysis; I then identify the major factors underlying lawmakers' interest in such analysis. I also outline what risk legislation can (and cannot) accomplish and distinguish among the uses of risk assessment, two issues about which Congress seems to be confused.

#### LEGISLATIVE RISK PROPOSALS

More than a dozen bills dealing with risk analysis were introduced in the 103d Congress. Notable among these were bills introduced by Senator Daniel Patrick Moynihan (D-New York) and Representative Herbert C. Klein (D-New Jersey). Even more notable was an amendment to S.R. 171, a bill proposed by Senator John Glenn (D-Ohio) to make the U.S. Environmental Protection Agency (EPA) a cabinet department.

Senator Bennett Johnston (D-Louisiana) introduced the amendment, which would have required that EPA conduct a risk analysis for each of its regulations and compare the risk reduction to be achieved by the regulation with the cost of the legislation and with other types of risks. The Senate overwhelmingly passed it by a 95-3 vote, but later the content of the Johnston amendment was modified several times. (The original version required risk analysis of all final regulations; later versions made the requirement applicable only to major regulations and to proposed rather than final regulations.)

Legislators proposed adding this amendment to almost every pending environmental bill. The lack of action on environmental legislation during the 103d Congress was due, to a great extent, to an inability to reach an acceptable compromise on the amendments's language. Junior members of the House surprised the leadership by defeating the rule under which the EPA cabinet bill would go to the House floor for a vote, in part because the rule would have precluded consideration of the Johnston amendment.

The basic requirements of the Johnston amendment were similar to the cost-benefit requirements already called for by a Clinton administration executive order (E.O. 12866). The Johnston amendment's one novel requirement was that the risks to be regulated be compared with other risks—a challenging requirement but not one that would bring to a halt all environmental regulatory efforts.

Senator Moynihan's bill (S.R. 110), the "Environmental Risk Reduction Act of 1993," would have required the EPA administrator to establish a Committee on Relative Risks to "identify and rank the greatest environmental risks to human health, welfare, and ecological resources," as well as a Committee on Environmental Benefits to provide expert advice on estimating the quantitative benefits of reducing risks. In addition, the bill would have required EPA to develop "guidelines to ensure consistency and technical quality in risk assessments." Finally, the bill would have required EPA to establish a research program on environmental risk assessment and to create an Interagency Panel on Risk Assessment and Reduction to coordinate federal efforts.

Moynihan's bill, which was aimed at improving the quality and visibility of risk assessment, emphasized comparative risk analysis of the problems addressed by different EPA programs, rather than risk analysis of the problems addressed by individual regulations. A bill introduced by Representative

Klein contained some of the same provisions as the Moynihan bill but focused on improving the quality of risk assessments done to support individual regulations. Klein's bill (H.R. 4306) would have established a Risk Assessment Program within EPA to develop, review, and update risk assessment guidelines. Other elements of the Klein bill included research and training in risk assessment and a pilot project on comparative risk analysis.

The Klein bill originally was supported by the Clinton administration. Environmentalists, who have generally opposed any efforts to promote risk analysis, stated that they would not oppose the bill. However, the House Committee on Science, Space, and Technology made a series of changes in the bill that caused both the administration and the environmentalists to oppose its passage.

The offending changes were put forward by congressional members and staff who believe that EPA risk assessments are generally biased in favor of regulation and exaggerate the degree of risk. The changes would have done two things. First, they would have made both risk assessment guidelines and EPA's risk assessments potentially subject to judicial review. In withdrawing support for the bill, EPA stated that the changes could make risk assessment "more a construct of the courts than of sound science." Second, the changes would have directed EPA to use "the most plausible" and "unbiased" assumptions to calculate "central estimates of risk" and to employ the "best information." Although these changes sound innocuous, they could have changed EPA's risk assessment methodology in fundamental ways, especially when combined with the threat of litigation.

In the closing days of the session, Congress enacted a U.S. Department of Agriculture reorganization bill with a version of the Johnston amendment attached to it. However, the amendment applies only to environmental and health regulations promulgated by the Department of Agriculture. No other risk legislation passed, but the issues raised in the debate over the Klein bill will be high on the agenda of the 104th Congress, many of whose Republican members have promised reform of federal regulations as part of the "Contract with America." The reasons for interest in risk have become, if anything, more pressing, and the Republicans have generally been more supportive of risk legislation than the Democrats.

#### FACTORS UNDERLYING CONGRESS'S INTEREST IN RISK

Why the sudden passion for risk analysis and comparative risk assessment? Several interrelated factors account for Congress's newfound interest.

The first factor is a shift in the public's view of environmental problems. Whether because of the increasing costs of environmental remedies, the rightward shift of the nation's politics, growing cynicism toward all groups and institutions, or other reasons, many people no longer believe that all environmental problems are urgently pressing. The notion of priorities—of some problems being more important than others—has entered the environmental debate.

The second factor is the squeeze being put on some state and local governments by unfunded environmental mandates. These governments have seized upon comparative risk assessment as a potent weapon for fighting expensive and often unwanted federal requirements. In many cases, states and localities believe they can show that they are being required to expend funds on problems that either pose smaller risks than those arising from other problems on which the money could be spent or that pose trivial or

nonexistent risks. This "grass roots" dimension of the push for comparative risk analysis is politically of great significance.

In Congress, risk analysis also has been linked with the issue of takings, uncompensated restrictions on private land use. Environmentalists have dubbed risk analysis, unfunded mandates, and takings as "the unholy trinity," although risk and takings do not have the direct, substantive connection that risk and unfunded mandates often do. The three have become linked because each potentially could slow or halt federal environmental regulation.

A third factor contributing to the interest in comparative risk is the shortage of public funds at all governmental levels. The shortage emphasizes the need to set priorities and to make hard choices. Not coincidentally, the congressional committees responsible for appropriating money to EPA have been strong supporters of applying comparative risk analysis to different EPA programs (as opposed to different proposed regulations). For these committees, risk analysis holds the promise of providing a rationale and a defense for difficult budgetary choices. At the same time, the results of risk analysis are sufficiently broad and uncertain that the committees do not have to worry about losing control over budgetary decisions.

#### WHAT RISK LEGISLATION CAN ACCOMPLISH

No other congressional issue is marked more by confusion and misinformation than the current debate over risk assessment. One reason is that legislators seem confused (perhaps in some cases deliberately) about what risk assessment legislation can accomplish.

Members of Congress have an understandable tendency to blame EPA for problems that local constituents have with pollution-control requirements. Since risk assessment supposedly guides EPA decisions, they believe that changing the way risk assessment is done can alleviate the problem of unwanted or unreasonable requirements imposed on local governments and corporations. However, for Congress, in many cases both Shakespeare and the comic strip character Pogo are apt. The fault is not in the stars—Congress has met the enemy and it is them.

The unfunded mandates that have caused the most problems for local governments are those related to drinking water. Communities complain that EPA is requiring them to monitor for chemicals that pose no risk and that the agency is demanding expensive capital investments to deal with nonexistent threats. But most of these difficulties arise from the 1986 amendments to the Safe Drinking Water Act—amendments that required EPA to set standards for forty water contaminants within two years of the act's passage and to keep issuing standards for additional contaminants at an equally rapid pace. Congress directed that the standards be set "as close to the maximum contaminant level goal as is feasible." In turn, the maximum contaminant goal is to be set "at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety."

To put it bluntly, Congress should not pass laws that require absolute protection for the public and then complain when EPA promulgates standards that provide such protection. It should not pass laws that require EPA to move rapidly to promulgate numerous regulations and then complain when the agency moves rapidly to promulgate numerous regulations. Implementing the law should not be considered a political crime.

Another "confusion" in Congress is that risk drives all environmental decisions. In fact, many environmental regulatory re-

quirements are statutorily determined by technology and thus relatively unaffected by risk findings. For example, the initial standards for controlling hazardous air pollutants under the clean Air Act amendments of 1990 are to be based on the best technologies employed by each type of polluting facility, not on risk. Similarly, many of the regulatory requirements under the Clean Water Act are based on "best available technology," a determination of which is unrelated to risk. EPA actions under these provisions will not be influenced by any changes in risk assessment methods.

#### USES OF RISK ASSESSMENT

A more general source of confusion in the current debate over risk assessment arises from a failure to distinguish among different uses of risk assessment. At least four different policy uses of risk assessment exist. Each involves different methodologies and raises different problems.

The most common use of risk assessment in policymaking is in regulatory decision-making. For all significant regulations, E.O. 12866 requires the agency proposing the regulation to conduct a cost-benefit analysis. From the perspective of EPA and the other health and safety regulatory agencies, the benefit side of the cost-benefit equation generally is the amount of risk reduced by the regulation as calculated by some type of risk assessment. Within EPA, risk assessment is often used to gauge where to set a standard (although, as noted above, statutory requirements frequently preclude risk considerations), because it is the only way to determine how much (if any) danger a given substance, product, or activity poses.

A second use of risk assessment occurs in Congress' statutory definition of "acceptable risk." Probably the best example of this use is the Clean Air Act, which requires the EPA administrator to promulgate more stringent standards for emissions of hazardous pollutants when the technology-based standards for the emissions "do not reduce life-time excess cancer risks to the individual most exposed \* \* \* to less than one in one million.

These bright line provisions have been based on quantitative assessment of cancer risk, but cancer may not be the risk that is of most concern. Ecological threats, birth defects, liver damage, hormonal or immune deficiencies, or any of a thousand other problems may be the reason for regulating risk. Because the cancer risk may be irrelevant, gearing the risk standard to cancer may set the standard too high or too low. Risk assessment takes many different forms. Quantitative cancer risk assessment is only one of them and often not the most appropriate one to use.

Another problem is that the bright line, acceptable risk approach assumes a precision that most risk assessments cannot achieve. Risk assessment is still a relatively crude science and depending on which methodological assumptions are used, its results may vary a hundredfold or more. Thus, placing great legal weight on one point estimate of risk is an open invitation to shade the assumptions in a certain direction in order to achieve the desired outcome.

A third use of risk assessment is priority setting for individual risks or regulations, which involves comparing one specific risk to another. Such comparisons can be useful in putting any particular risk into perspective; but two caveats, neither of which has received much attention in Congress, are important to note. The first concerns the crudeness of risk estimates. If the uncertainty range around any point estimate of risk is several orders of magnitude, it frequently will be impossible to establish clearly that one risk is greater than another. The

second caveat relates to the many dimensions of risk other than the amount of damage to health and the environment. These dimensions include whether the risk is undertaken voluntarily, whether the victims can be identified, and whether the nature of the risk is catastrophic—that is, whether great damage occurs at one time, as in a plane crash, or whether less damage occurs and is spread over time, as in car accidents. These dimensions of risk are important politically, psychologically, and even ethically. They need to be taken into account when comparing risks.

The fourth use of risk assessment is priority setting for government programs and budgets. This use was pioneered by EPA in 1987 when it published its report *Unfinished Business*. Senator Moynihan has introduced legislation requiring this type of priority setting to be instituted within EPA. Both the House and Senate appropriations committees for EPA have expressed interest in this approach in the belief that it might provide a "scientific" way of making (or justifying) difficult budget choices.

Comparisons of risks regulated by different programs are a useful way to consider priorities, and they hold long-term promise of bringing greater rationality to government budgeting and goal setting. However, we do not have (and may never have) good methods for comparing different types of risks. Comparing health risks with ecological risks, for example, is clearly a value-laden process. Moreover, acting on the results of broad risk comparisons is almost always impeded by individual statutory mandates. Each environmental program has its statutory support, which is designed (in part) to give each program high priority and prevent its being compared to other programs.

#### THE ROAD AHEAD

Risk assessment can be a powerful tool for improving environmental policy and decisionmaking. Like all powerful tools, however, it can be abused and employed for nefarious purposes.

Most of the risk legislation that has been proposed would have little short-term effect on environmental policy. However, I believe some of the proposals could do major harm to the quality of the science behind regulatory initiatives by making risk guidelines judicially enforceable. Doing so would transform risk analysis from a scientific undertaking to a legal one, would preclude the exercise of scientific judgment on how to conduct risk assessments of individual chemicals, and would be a major obstacle to incorporating scientific advances into risk assessment. In addition, some proposals would make risk assessment information useless to decisionmakers by dictating which risk assessment methodologies are used. Some of these proposals can be interpreted to mean that risk assessments should determine risk to the average person rather than to the most vulnerable people.

However, the discovery of risk analysis by the 103d Congress means that the new Republican Congress has an opportunity to forge legislation that will improve the long-term quality of regulatory decisions and environmental policy. If the varied interests with a stake in environmental policy can reduce the ideological and partisan coloration that has characterized the risk debate so far, and if they can accept both the uses and limitations of risk assessment, the risk debate could lead to a new era of more effective, efficient, and equitable environmental programs.

Mr. LOTT. Mr. President, I rise today to announce that with my colleagues, Senators MURKOWSKI and JOHNSTON, we are introducing the Department of Energy Risk Management Act of 1995.

I believe that most Americans would be shocked and dismayed to discover that Federal agencies every day release and enforce rules that have not been validated with solid, sound, scientific data.

It does not make sense, but unfortunately it is true.

That is why legislation is needed to mandate a commonsense approach.

We have crafted a bill which simply demands that the Department of Energy act in a scientifically responsible manner.

This year's legislation builds on the bill I introduced in the last Congress and the two successful amendments offered by Senator JOHNSTON of Louisiana.

Senator JOHNSTON's amendments were overwhelmingly adopted, and this clearly illustrates the congressional frustration and bipartisan support for stopping Federal agencies which avoid sound science and fiscal responsibility in rulemaking.

Senator MURKOWSKI, as the new chairman of the Energy and Natural Resources Committee, has played a critical role in focusing this legislation. And his committee is an appropriate forum to examine the issue and its consequences.

This year similar legislation was introduced in the House of Representatives and is already receiving scrutiny through hearings.

There is also comparable and more comprehensive legislation being drafted by Senator DOLE, the majority leader.

There are also bills introduced by Senators BAUCUS, MOYNIHAN, and ROTH which touch on the same subject.

Clearly, there is a groundswell of legislative activity to stop Federal agency abuse in the name of science which, more often than not, turns out to be false, questionable, or even misleading.

This deceptive and dishonest regulatory zeal reminds me of the title of an ABC news program by John Stossel—"Are We Scaring Ourselves to Death."

This program made its point in a compelling manner—Federal rulemaking is seriously flawed.

Our legislation will not add to the confusion. It will not stall scientific advances, and it will not prescribe how to conduct scientific research.

On the contrary, in a nutshell, it will just force transparency and accountability in the rulemaking process and nothing more.

No Federal agency should be afraid of honestly displaying to the American people they are protecting the science, logic, assumptions, and inferences used to establish the rules and standards it imposes.

This is not irresponsible and not burdensome.

Our legislation does permit Americans to: First, challenge existing risk assessments; second, insist on an independent peer review of the risk and its corresponding rule; and third, request

the ultimate American right of a trial when there is an honest disagreement.

The existing regulatory system is upside down. Agencies which have a vested interest in promulgating rules cannot be challenged in any public forum on the very foundation and basis for its rules.

Our legislation is not questioning the necessity for the rule or rulemaking. We are just talking about the underlying risk assessments.

Our legislation merely levels the playing field between the benevolent protector and the protected American public. I cannot imagine why this is so threatening, unless there are many rules that cannot pass the red-face test as my coauthor and friend, Senator JOHNSTON, is fond of saying.

Tell me what is so threatening by the words "scientifically objective and unbiased."

Maybe the status quo can be characterized, as I believe, as cavalier and arbitrary.

I see peer review as a useful certification function which ends the Federal Government's stifling monopoly over risk assessment methodology and practices. By extending power to scientists from academia, who have no vested interest in the agency, makes good Mississippi sense. Who feels safe when the fox watches the hen house? And that is what is happening now.

All we want to do is restore the public confidence in the rulemaking process and the risk assessment methods.

And, I am confident that this is the same goal of each Senator who is involved in examining this issue.

It serves no useful purpose for regulators to hide their value judgments behind complicated mathematical probabilities which just do not make sense. In the end the American citizen is unable to either comprehend or distinguish the authentic risk.

Our legislation will not bog down the process as opponents will assert. But, like many of the risks subjected to rules, this too is a false argument because only major rules will be subjected to this process.

Our legislation will not gut existing environmental laws as opponents will also claim. Wrong. There is a specific section in the bill which expressly states that no existing statutes will be removed. Although there are a lot that I would like to see removed as we go forward, that is not what this bill does.

Why would opponents advance such shrill and untrue assertions? Perhaps there are regulations which will fail the Johnston red-face test or serve as another illustration for John Stossel to humiliate an agency.

Public policy should not be maintained just to avoid agency embarrassment.

This only perpetuates the harm done to Americans who have lost economic opportunities through misplaced priorities for unfounded risks.

And, even more serious, public dollars have been wasted chasing an agenda rather than valid risks. This has exposed Americans to real risks which could have been corrected long ago.

Risk based decisionmaking is obvious, especially since our Government, and the private sector, spends billions through the regulatory process to protect the environment and human health.

Our country needs a way to choose regulatory priorities, just like families prioritize its spending. This can be done with the cost/benefit provision in this legislation without greater exposure to risks.

Asserting an unfounded risk is not a substitute for informed and thoughtful consideration by accountable officials who work with the public to make balanced decisions.

The Murkowski-Johnston bill gives you accountability and public access.

I am proud of the bipartisan and collaborative effort this legislation represents.

It is a solid commitment to sound rulemaking which will not jeopardize our environment or the health of our citizens.

Our legislation will remove misinformation and public confusion.

I believe the Department of Energy Risk Management Act deserves your serious consideration and support.

So I urge my colleagues to look at this legislation. It has been carefully crafted over a number of months. It is long overdue in my opinion.

I would like to say now that I certainly commend the distinguished Senator from Alaska for the good work he has done. He has already had some preliminary hearings on this. I hope we can move this legislation early in this session.

By Mr. McCONNELL (for himself and Mr. BIDEN):

S. 334. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a law enforcement officers' bill of rights, to provide standards and protection for the conduct of internal police investigations, and for other purposes; to the Committee on the Judiciary.

THE LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS ACT OF 1995

● Mr. McCONNELL. Mr. President, I am pleased to introduce a bill to establish a law enforcement officer's bill of rights. In every city and town, we rely on law enforcement officers to protect our safety. They put their lives on the line for us every single day.

And, often their jobs can be very difficult. The Constitution requires they conduct themselves appropriately, and they are subject to the laws and regulations set out by Congress as well as State and local regulatory bodies. They have to make snap decisions in high pressure situations. If they make the wrong decision, they can be subject to a lawsuit—for violation of the civil rights of a citizen.

While citizens have protection when a law enforcement officer engages in improper conduct, the police officer is often left without any legal rights when subject to disciplinary action. This bill aims to correct that unfairness.

The bill guarantees basic due process rights to law enforcement officers who are subject to investigation or interrogation for noncriminal disciplinary matters. And, let me emphasize that these rights do not apply in an emergency situation where the police officer is suspected of committing a crime or where that officer would be a threat to the safety or property of others. The bill reserves in the chief of police or other local officials the right to immediately suspend an officer who is suspected of committing a serious offense.

But, where there is no criminal conduct and no emergency situation, a police officer should have a right to be informed of his or her misconduct, to answer the charges, and to be represented by a lawyer or other appropriate person. These are basic due process rights that should be guaranteed to those on whom we rely to protect our safety.

Mr. President, there are some 475,000 State and local law enforcement officers who put their lives on the line for the rest of us. Let us give them their basic and fundamental rights.

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

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

S. 334

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Law Enforcement Officers' Bill of Rights Act of 1995".

**SEC. 2. RIGHTS OF LAW ENFORCEMENT OFFICERS.**

(a) IN GENERAL.—Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is amended by adding at the end the following new section:

"RIGHTS OF LAW ENFORCEMENT OFFICERS

"SEC. 819. (a) DEFINITIONS.—In this section—

" 'disciplinary action' means the suspension, demotion, reduction in pay or other employment benefit, dismissal, transfer, or similar action taken against a law enforcement officer as punishment for misconduct.

" 'disciplinary hearing' means an administrative hearing initiated by a law enforcement agency against a law enforcement officer, based on probable cause to believe that the officer has violated or is violating a rule, regulation, or procedure related to service as an officer and is subject to disciplinary action.

" 'emergency suspension' means temporary action imposed by the head of the law enforcement agency when that official determines that there is probable cause to believe that a law enforcement officer—

"(A) has committed a felony; or

"(B) poses an immediate threat to the safety of the officer or others or the property of others.

" 'investigation'—

"(A) means the action of a law enforcement agency, acting alone or in cooperation with another agency, or a division or unit within an agency, or the action of an individual law enforcement officer, taken with regard to another enforcement officer, if such action is based on reasonable suspicion that the law enforcement officer has violated, is violating, or will in the future violate a statute or ordinance, or administrative rule, regulation, or procedure relating to service as a law enforcement officer; and

"(B) includes—

"(i) asking questions of other law enforcement officers or nonlaw enforcement officers;

"(ii) conducting observations;

"(iii) evaluating reports, records, or other documents; and

"(iv) examining physical evidence.

" 'law enforcement agency' means a State or local public agency charged by law with the duty to prevent or investigate crimes or apprehend or hold in custody persons charged with or convicted of crimes.

" 'law enforcement officer' and 'officer'—

"(A) mean a member of a law enforcement agency serving in a law enforcement position, which is usually indicated by formal training (regardless of whether the officer has completed or been assigned to such training) and usually accompanied by the power to make arrests; and

"(B) include—

"(i) a member who serves full time, whether probationary or nonprobationary, commissioned or noncommissioned, career or noncareer, tenured or nontenured, and merit or nonmerit; and

"(ii) the chief law enforcement officer of a law enforcement agency.

" 'summary punishment' means punishment imposed for a minor violation of a law enforcement agency's rules and regulations that does not result in suspension, demotion, reduction in pay or other employment benefit, dismissal, or transfer.

"(b) APPLICATION OF SECTION.—

"(1) IN GENERAL.—This section sets forth rights that shall be afforded a law enforcement officer who is the subject of an investigation.

"(2) NONAPPLICABILITY.—This section does not apply in the case of—

"(A) a criminal investigation of a law enforcement officer's conduct; or

"(B) a nondisciplinary action taken in good faith on the basis of a law enforcement officer's employment related performance.

"(c) POLITICAL ACTIVITY.—Except when on duty or acting in an official capacity, no law enforcement officer shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity.

"(d) RIGHTS OF LAW ENFORCEMENT OFFICERS WHILE UNDER INVESTIGATION.—When a law enforcement officer is under investigation that could lead to disciplinary action, the following minimum standards shall apply:

"(1) NOTICE OF INVESTIGATION.—A law enforcement officer shall be notified of the investigation prior to being interviewed. Notice shall include the general nature and scope of the investigation and all departmental violations for which reasonable suspicion exists. No investigation based on a complaint from outside the law enforcement agency may commence unless the complainant provides a signed detailed statement. An investigation based on a complaint from outside the agency shall commence within 15

days after receipt of the complaint by the agency.

“(2) NOTICE OF PROPOSED FINDINGS AND RECOMMENDATION.—At the conclusion of the investigation, the person in charge of the investigation shall inform the law enforcement officer under investigation, in writing, of the investigative findings and any recommendation for disciplinary action that the person intends to make.

“(e) RIGHTS OF LAW ENFORCEMENT OFFICERS PRIOR TO AND DURING QUESTIONING.—When a law enforcement officer is subjected to questioning that could lead to disciplinary action, the following minimum standards shall apply:

“(1) REASONABLE HOURS.—Questioning of a law enforcement officer shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty, unless exigent circumstances otherwise require.

“(2) PLACE OF QUESTIONING.—Questioning of the law enforcement officer shall take place at the offices of the persons who are conducting the investigation or the place where the law enforcement officer reports for duty, unless the officer consents in writing to being questioned elsewhere.

“(3) IDENTIFICATION OF QUESTIONER.—The law enforcement officer under investigation shall be informed, at the commencement of any questioning, of the name, rank, and command of the officer conducting the questioning.

“(4) SINGLE QUESTIONER.—During any single period of questioning of the law enforcement officer, all questions shall be asked by or through a single investigator.

“(5) NOTICE OF NATURE OF INVESTIGATION.—The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any questioning.

“(6) REASONABLE TIME PERIOD.—Any questioning of a law enforcement officer in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods for the rest and personal necessities of the law enforcement officer.

“(7) NO THREATS OR PROMISES.—Threats against, harassment of, or promise of reward shall not be made in connection with an investigation to induce the answering of any question. No statement given by the officer may be used in a subsequent criminal proceeding unless the officer has received a written grant of use and derivative use immunity or transactional immunity.

“(8) RECORDATION.—All questioning of any law enforcement officer in connection with the investigation shall be recorded in full, in writing or by electronic device, and a copy of the transcript shall be made available to the officer under investigation.

“(9) COUNSEL.—The law enforcement officer under investigation shall be entitled to counsel (or any other one person of the officer's choice) at any questioning of the officer, unless the officer consents in writing to being questioned outside the presence of counsel.

“(f) DISCIPLINARY HEARING.—

“(1) NOTICE OF OPPORTUNITY FOR HEARING.—Except in a case of summary punishment or emergency suspension described in subsection (h), if an investigation of a law enforcement officer results in a recommendation of disciplinary action, the law enforcement agency shall notify the law enforcement officer that the law enforcement officer is entitled to a hearing on the issues by a hearing officer or board prior to the imposition of any disciplinary action.

“(2) REQUIREMENT OF DETERMINATION OF VIOLATION.—No disciplinary action may be taken unless a hearing officer or board determines, pursuant to a fairly conducted disciplinary hearing, that the law enforcement

officer violated a statute, ordinance, or published administrative rule, regulation, or procedure.

“(3) TIME LIMIT.—No disciplinary charges may be brought against a law enforcement officer unless filed within 90 days after the commencement of an investigation, except for good cause shown.

“(4) NOTICE OF FILING OF CHARGES.—The law enforcement agency shall provide written, actual notification to the law enforcement officer, not later than 30 days after the filing of disciplinary charges, of the following:

“(A) The date, time, and location of the disciplinary hearing, which shall take place not sooner than 30 days and not later than 60 days after notification to the law enforcement officer under investigation unless waived in writing by the officer.

“(B) The name and mailing address of the hearing officer.

“(C) The name, rank, and command of the prosecutor, if a law enforcement officer, or the name, position, and mailing address of the prosecutor, if not a law enforcement officer.

“(5) REPRESENTATION.—During a disciplinary hearing an officer shall be entitled to be represented by counsel or nonattorney representative.

“(6) HEARING BOARD AND PROCEDURE.—(A) A State shall determine the composition of a disciplinary hearing board and the procedures for a disciplinary hearing.

“(B) A disciplinary hearing board that includes employees of the law enforcement agency of which the officer who is the subject of the hearing is a member shall include at least 1 law enforcement officer of equal or lesser rank to the officer who is the subject of the hearing.

“(7) ACCESS TO EVIDENCE.—A law enforcement officer who is brought before a disciplinary hearing board shall be provided access to all transcripts, records, written statements, written reports, analyses, and electronically recorded information pertinent to the case that—

“(A) contain exculpatory information;

“(B) are intended to support any disciplinary action; or

“(C) are to be introduced in the disciplinary hearing.

“(8) IDENTIFICATION OF WITNESSES.—The disciplinary advocate for the law enforcement agency of which the officer who is the subject of the hearing is a member shall notify the law enforcement officer, or his attorney if he is represented by counsel, not later than 15 days prior to the hearing, of the name and addresses of all witnesses for the law enforcement agency.

“(9) COPY OF INVESTIGATIVE FILE.—The disciplinary advocate for the law enforcement agency of which the officer who is the subject of the hearing is a member shall provide to the law enforcement officer, at the law enforcement officer's request, not later than 15 days prior to the hearing, a copy of the investigative file, including all exculpatory and inculpatory information but excluding confidential sources.

“(10) EXAMINATION OF PHYSICAL EVIDENCE.—The disciplinary advocate for the law enforcement agency of which the officer who is the subject of the hearing is a member shall notify the law enforcement officer, at the officer's request, not later than 15 days prior to the hearing, of all physical, nondocumentary evidence, and provide reasonable date, time, place, and manner for the officer to examine such evidence at least 10 days prior to the hearing.

“(11) SUMMONSES.—The hearing board shall have the power to issue summonses to compel testimony of witnesses and production of documentary evidence. If confronted with a

failure to comply with a summons, the hearing officer or board may petition a court to issue an order, with failure to comply being subject to contempt of court.

“(12) CLOSED HEARING.—A disciplinary hearing shall be closed to the public unless the law enforcement officer who is the subject of the hearing requests, in writing, that the hearing be open to specified individuals or the general public.

“(13) RECORDATION.—All aspects of a disciplinary hearing, including prehearing motions, shall be recorded by audio tape, video tape, or transcription.

“(14) SEQUESTRATION OF WITNESSES.—Either side in a disciplinary hearing may move for and be entitled to sequestration of witnesses.

“(15) TESTIMONY UNDER OATH.—The hearing officer or board shall administer an oath or affirmation to each witness, who shall testify subject to the applicable laws of perjury.

“(16) VERDICT ON EACH CHARGE.—At the conclusion of all the evidence, and after oral argument from both sides, the hearing officer or board shall deliberate and render a verdict on each charge.

“(17) BURDEN OF PERSUASION.—The prosecutor's burden of persuasion shall be by clear and convincing evidence as to each charge involving false representation, fraud, dishonesty, deceit, or criminal behavior and by a preponderance of the evidence as to all other charges.

“(18) FINDING OF NOT GUILTY.—If the law enforcement officer is found not guilty of the disciplinary violations, the matter is concluded and no disciplinary action may be taken.

“(19) FINDING OF GUILTY.—If the law enforcement officer is found guilty, the hearing officer or board shall make a written recommendation of a penalty. The sentencing authority may not impose greater than the penalty recommended by the hearing officer or board.

“(20) APPEAL.—A law enforcement officer may appeal from a final decision of a law enforcement agency to a court to the extent available in any other administrative proceeding, in accordance with the applicable State law.

“(g) WAIVER OF RIGHTS.—A law enforcement officer may waive any of the rights guaranteed by this section subsequent to the time that the officer has been notified that the officer is under investigation. Such a waiver shall be in writing and signed by the officer.

“(h) SUMMARY PUNISHMENT AND EMERGENCY SUSPENSION.—

“(1) IN GENERAL.—This section does not preclude a State from providing for summary punishment or emergency suspension.

“(2) HEALTH BENEFITS.—An emergency suspension shall not affect or infringe on the health benefits of a law enforcement officer or the officer's dependents.

“(i) RETALIATION FOR EXERCISING RIGHTS.—There shall be no penalty or threat of penalty against a law enforcement officer for the exercise of the officer's rights under this section.

“(j) OTHER REMEDIES NOT IMPAIRED.—Nothing in this section shall be construed to impair any other legal right or remedy that a law enforcement officer may have as a result of a constitution, statute, ordinance, regulation, collective bargaining agreement or other sources of rights.

“(k) DECLARATORY OR INJUNCTIVE RELIEF.—A law enforcement officer who is being denied any right afforded by this section may petition a State court for declaratory or injunctive relief to prohibit the law enforcement agency from violating such right.

“(l) PROHIBITION OF ADVERSE MATERIAL IN OFFICER'S FILE.—A law enforcement agency shall not insert any adverse material into

the file of any law enforcement officer, or possess or maintain control over any adverse material in any form within the law enforcement agency, unless the officer has had an opportunity to review and comment in writing on the adverse material.

“(m) DISCLOSURE OF PERSONAL ASSETS.—A law enforcement officer shall not be required or requested to disclose any item of the officer’s personal property, income, assets, sources of income, debts, personal or domestic expenditures (including those of any member of the officer’s household), unless—

“(1) the information is necessary to the investigation of a violation of any Federal, State or local law, rule, or regulation with respect to the performance of official duties; and

“(2) such disclosure is required by Federal, State, or local law.

“(n) STATES’ RIGHTS.—This section does not preempt State laws in effect on the date of enactment of this Act that confer rights that equal or exceed the rights and coverage afforded by this section. This section shall not be a bar to the enactment of a police officer’s bill of rights, or similar legislation, by any State. A State law which confers fewer rights or provides less protection than this section shall be preempted by this section.

“(o) MUTUALLY AGREED UPON COLLECTIVE BARGAINING AGREEMENTS.—This section does not preempt existing mutually agreed upon collective bargaining agreements in effect on the date of enactment of this Act that are substantially similar to the rights and coverage afforded under this section.”

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. preceding 3701) is amended by inserting after the item relating to section 818 the following new item:

“Sec. 819. Rights of law enforcement officers.”

• Mr. BIDEN. Mr. President; today I and Senator MCCONNELL are introducing the Law Enforcement Officers’ Bill of Rights Act of 1995, a bill aimed at protecting the rights of law enforcement officers on the front line of this Nation’s fight against violent crime and drug trafficking.

Police work is an incredibly difficult job, demanding split-second decisions that have life-or-death consequences. My colleagues may be surprised to find that despite the critical role that front-line law enforcement officers play to enforce the Constitution’s rights and guarantees, and the related need to guarantee the highest standards of police conduct, internal disciplinary procedures in law enforcement agencies continue to vary widely across the nation.

The often ad hoc procedures that many departments use to guide internal investigations frequently allows police executives to take arbitrary and unfair actions against innocent police officers, while allowing culpable officers to avoid any punishment at all.

The law enforcement officers’ bill of rights is designed to replace the ad hoc nature of many internal police investigations by encouraging States to provide minimum procedural standards to guide such investigations. The standards and protections offered by this bill are modeled on the Standards for Law Enforcement Agencies developed by

the National Commission on Accreditation for Law Enforcement.

As the preface to the Commission’s standards on internal affairs notes:

“The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the agency depends on the personal integrity and discipline of each employee. To a large degree, the public image of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct by the agency or its employees.

The specific standards and rights guaranteed by the law enforcement officers’ bill of rights introduced today include:

The right to engage or not engage in political activities independent of an officer’s official capacity;

The right to be informed by a written statement of the charges brought against an officer;

The right to be free from undue coercion or harassment during an investigation; and

The right to counsel during an investigation.

The provisions of this bill will take effect at the end of the second full legislative term of each State. After such time, a law enforcement officer whose rights have been abridged may sue in State court for pecuniary and other damages, including full reinstatement.

Although the bill provides certain procedural rights, it gives States considerable discretion in implementing these safeguards, including the flexibility to provide for summary punishment and emergency suspensions of law enforcement officers.

It is also important to note what the bill does not do. The bill explicitly provides that the standards and protections governing internal investigations shall not apply to investigations of criminal misconduct by law enforcement officers. As a result, criminal investigations of law enforcement officers would not be affected by this bill.

Moreover, the protections in this bill do not apply to minor violations of departmental rules or regulations, not to actions taken on the basis of an officers’ employment-related performance.

I would also like to acknowledge the hard work of several of the Nation’s leading law enforcement organizations on this important bill. The real leaders behind this effort—and they have been the leaders since the police officers’ bill of rights won passage in the Senate in 1991—are the Fraternal Order of Police, the National Association of Police Organizations, and the International Brotherhood of Police Officers. No one should be confused about where the force behind the law enforcement officers’ bill of rights lies—it lies with these organizations.

Finally, let me say to the entire law enforcement community—you enjoy one of the most amicable and productive relationships between the rank and file and management. Many have observed that the reason for these relations is the fact that today’s chief was yesterday’s patrol officer—just as to-

day’s patrol officer will be tomorrow’s sheriff. That is why I look forward to working with all members of the law enforcement community to pass legislation protecting the rights of all law enforcement officers.

Mr. President, I have heard many Members of the Senate reflect on the commitment of those brave individuals who risk their lives as front-line law enforcement officers. Mr. President, the bill we introduce today gives every Member of the Senate the chance to provide at least some of the protections these police heroes deserve.●

By Mr. D’AMATO:

S. 337. A bill to enhance competition in the financial services sector, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE DEPOSITORY INSTITUTION AFFILIATION ACT OF 1995

• Mr. D’AMATO. Mr. President, I today introduce the Depository Institution Affiliation Act of 1995 to modernize the antiquated laws governing the financial services industry. I am pleased that Representative RICHARD BAKER, chairman of the House Banking Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises, will today introduce similar legislation. This comprehensive legislation seeks:

To promote competition among bank and nonbank providers of financial services;

To encourage innovation in the design and delivery of financial services and products to individuals, large and small businesses, nonprofit institutions, and municipalities;

To ensure the adequate regulation of financial intermediaries in order to protect depositors and investors;

To preserve the safety and soundness of the banking system and the overall financial system; and

To protect the Nation’s taxpayers by requiring that nonbanking activities are conducted in separately capitalized and functionally regulated affiliates.

Mr. President, now is the time to ready the Nation’s financial services industry for the 21st century. Congress has allowed regulation of the financial services industry, a goliath with 5 million employees and \$16 trillion in assets, to fall far behind market forces. Since the late 1970’s, market forces have fueled massive changes in the financial services industry. But the United States still relies on a regulatory system, born in the wake of the Great Depression, which stifles competition among providers of financial services. Without comprehensive reform, the Nation risks losing its leadership in the global market for financial services to Europe and Japan.

Mr. President, this bill is virtually identical to legislation that I have previously sponsored or cosponsored. I first introduced this bill in 1987 as S. 1905, and I reintroduced it in 1989 as S. 530. The actual text of the 1995 bill, and

its significant principles and provisions, are identical to the earlier versions. The 1995 version, however, contains technical and conforming changes to reflect the enactment of banking laws since its original introduction, such as the Financial Institutions Reform and Recovery and Enforcement Act of 1989, Public Law 101-73, the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, and the interstate banking and community development bills of the last Congress.

Mr. President, I remain committed to comprehensive, fair, and innovative financial services reform. Congress must assert its authority and meet its responsibility to increase the availability of innovative financial products and services for consumers, businesses and Government at the lowest possible cost.

Mr. President, let me summarize the key provisions of the Depository Institution Affiliation Act [DIAA]. I will submit a more detailed section-by-section explanation of the bill at the end of my remarks.

In general, the DIAA retains and reinforces the basic principles reflected in the present framework for regulation of federally insured banks and thrifts, while permitting banks and nonbanks to affiliate in a holding company framework. The DIAA thus preserves all the safety-and-soundness and conflict-of-interest protections of the present system, while providing legal flexibility for a company to meet the financial needs of consumers, businesses and others by removing limitations on affiliations.

Mr. President, the DIAA would establish a new charter alternative for all companies interested in entering or diversifying in the financial services field—a financial services holding company [FSHC]. The bill would permit the merging of banking and commerce under carefully regulated circumstances by allowing a FSHC to own both a depository institution and companies engaged in both financial and nonfinancial activities.

Mr. President, by authorizing an alternative regulatory framework, the legislation would essentially exempt a FSHC's subsidiaries and affiliates from those sections of the Glass-Steagall and Bank Holding Company Acts that restrict mixing commercial banking with other financial—securities, investment banking, and so forth—and nonfinancial activities—retailing, technology, manufacturing. A FSHC would be able to diversify into any activity through affiliates of the holding company with such affiliates subject to enhanced regulation.

Mr. President, the regulation of the bank and nonbank affiliates of financial services holding companies would be along functional lines. The insured-bank affiliate would be regulated by Federal and State bank regulators, the securities affiliate by the Securities and Exchange Commission, and so on.

Thus, for each affiliate, existing regulatory expertise will be applied to protect consumers, investors and taxpayers. Functional regulation will also assure that competition in discrete products and services is fair by eliminating current loopholes and regulatory gaps.

Mr. President, I want to underscore that the DIAA would not require existing firms to alter their regulatory structure. By permitting financial services providers to become FSHC's, such providers will have the options to phase gradually into, or expand within, the financial services industry.

Mr. President, our country still relies on a system of financial regulation that was established in the aftermath of the economic collapse of the 1930's and the Great Depression. By restricting competition among the various sectors of the financial services industry, the Glass-Steagall Act of 1933, the Federal securities law of that era, and the Bank Holding Company Act of 1956 sought to enhance the safety of financial instruments and intermediaries.

Mr. President, the past 20 years have seen a growing competition among providers of financial services. Banks seek more freedom to sell securities, mutual funds and insurance. Nonbank lenders, such as brokerage and insurance firms, offer commercial loans and other financing arrangements to business. And, finance companies and their commercial owners now play an increased role in the Nation's financial system. Many financial intermediaries provide functionally equivalent products and services.

Mr. President, the United States must adopt a regulatory regime that recognizes market realities and assesses and controls risk. Our present patchwork of financial laws protects particular industries, restrains competition, prevents diversification that would limit risks, restricts potential sources of capital, and undermines the efficient delivery of services and the competitive position of our financial institutions in world markets.

Mr. President, the Banking Committee and other committees of Congress have already held exhaustive hearings on the issues raised by the DIAA and reviewed bookshelves full of studies and blueprints for financial reform. Rather than enact comprehensive reform, Congress has thus far ceded the playing field to piecemeal deregulation by bank regulators and the courts. We must now end this debate and enact a legal framework that prepares our financial institutions for the new century and the challenges of a rapidly changing global economy.

Mr. President, the DIAA represents a good starting point and a sound approach to modernizing our financial structure. I recognize that this bill can be improved from the 1987 version, and I am specifically requesting constructive and helpful comments to improve and to refine the major principles underlying the bill.

Mr. President, congressional studies, Federal regulators, and industry leaders have supported comprehensive reform of the Nation's financial system. The Treasury Department's study, "Modernizing the Financial System: Recommendations for Safer, More Competitive Banks" (1991), essentially endorsed the legislation I am introducing today. In the recently enacted Riegle-Neal Interstate Banking and Efficiency Act of 1994 Congress directed Treasury to conduct another study of the Nation's financial services system. In a letter sent to Secretary Rubin today, I have strongly urged the Treasury Department to endorse and to reaffirm the basic conclusions of its 1991 study and to make further recommendations to promote competitiveness and efficiency, and to protect the taxpayer.

Mr. President, given the broad support for comprehensive reform, why has Congress not overhauled the antiquated laws governing financial services? Why has Congress, by default, permitted the bank regulatory agencies and the courts to rewrite, in an ad hoc fashion, these laws?

Mr. President, the answer is clear. Congress, Federal regulators, and the affected industries have lacked the vision to support the comprehensive reform reflected in this bill. We have debated bank deregulation and expanded bank powers. This polarizing debate has pitted the banks against securities firms, big banks against small banks, and banks against insurance agents and real estate brokers.

Mr. President, history must not repeat itself. Today, as the Fed, the FDIC and the Comptroller of the Currency consider modifying their rules to permit banks, nonbank affiliates of holding companies and operating subsidiaries of national banks to engage in a de novo or additional securities and insurance activities, I have a sense of *deja vu*. In 1987, the Competitive Equality Banking Act was passed to preserve Congress' ability to conduct a comprehensive review of banking and financial laws, and to make decisions on the need for financial restructuring legislation. Congress imposed a statutory moratorium on the authority of bank regulators to approve certain securities, insurance and real estate activities, 100-86. This moratorium ended on March 1, 1988.

Mr. President, the Banking Committee closely monitors activities and rulemaking of Federal bank regulators. With all the talk around Washington of regulatory moratoriums, I strongly urge bank regulators to support our efforts to rewrite the laws they administer rather than to stretch current laws beyond their statutory terms or the intent of Congress.

Mr. President, our outdated regulatory regime has hurt the global competitiveness of U.S. financial institutions. Over the past 20 years, in part because financial markets in Japan and Europe are less regulated than in the

United States, the number of American banks among the top 25 in the world has dropped from eight to none. In an era of increased globalization and free trade, as illustrated by NAFTA and GATT, we must not shackle U.S. financial institutions with a statutory framework that responds to the policy concerns of the 1930's.

Mr. President, the 104th Congress must address and resolve the important questions relating to the health and future of the banking industry in the broader context of a financial system that is increasingly composed of nonbank financial service providers. We must focus on the needs of our economy for credit and growth in the future and the next century. We must focus on financial stability, safety and soundness, fair competition, and functional regulation of all financial service providers—whether they are banks, investment banks, insurance companies, finance companies or even telecommunications or computer companies.

Mr. President, we must live up to the challenge. In recent years, Congress has responded quickly and effectively to correct deficiencies or excesses in the financial system. In the face of problems created by stock market breaks, depleted deposit insurance funds, or credit crunches, we have addressed serious financial crises. In the process, Congress has prudently learned that statutory provisions adopted in the 1930's can aggravate and actually create problems for depository institution and other financial providers in the 1980's and 1990's—for example, interest rate controls, restrictions on interstate banking, portfolio concentrations, and statutory impediments to diversification. Congress has eliminated or modified many of these provisions of law in the past decade for banks and thrifts. The homogenization of financial service and globalization of markets has also necessitated the close coordination by discrete regulators, nationally and internationally, through informal mechanisms, such as the Treasury Department's Working Group and the so-called Basle Committee. In recent years, in FIRREA and FIDICA, Congress has also employed market-oriented substitutes for direct government regulation, such as industry developed codes of conduct, capital strength, internal controls, management information systems and management experience.

Mr. President, Congress must modernize the restrictions on affiliations found in the Glass-Steagall and Bank Holding Company Acts. I introduce this bill today, and make these extensive remarks, to underscore the critical national importance of modernizing our financial system. Last year, Congress was finally able to eliminate barriers to interstate banking, to facilitate the securitization of small business loans, and to prune outdated and burdensome regulatory requirements. Those bills were the result of a success-

ful collaboration among the administration, Federal and State regulators, and providers and consumers of financial services. I seek to sustain this process and pass comprehensive financial services reform during this Congress.

Mr. President, history demonstrates that financial services reform that is not comprehensive will not be enacted. I have previously opposed piecemeal reform because such reform is not pro-competitive, is inconsistent with the objective of "competitive equality" articulated by Congress in 1987 and the Treasury's 1991 study, and will not advance the long-term interests of the banking industry or the United States.

Mr. President, the DIAA will make the financial system as a whole safer and more stable. Rather than debate the important but narrow issue of the future of the banking franchise and the role of banks in the economy and attempt to gerrymander markets through piecemeal legislation to protect any single component, Congress must enact comprehensive legislation. Only comprehensive legislation will produce beneficial changes for all financial intermediaries by:

Permitting financial intermediaries—commercial banks, investment banks, thrifts, et cetera—to attract capital by eliminating existing restrictions on ownership by and affiliations among depository and nondepository firms;

Facilitating diversification and assuring fair competition by creating a new category of financial service holding companies authorized to engage in any financial activity through separately regulated subsidiaries;

Insulating insured subsidiaries from the more risky business activities of other affiliates as well as the parent holding company;

Enhancing substantially the quality and effectiveness of regulation through functional regulation;

Improving coordination and supervision of the overall financial system by permitting more effective analysis and monitoring of aggregate stability and vulnerability to severe disruptions and breakdown; and

Removing unnecessary barriers to competition between providers of financial service in the United States in order to maintain the preeminence of the U.S. capital markets and U.S. financial intermediaries and to respond to growing competition from foreign companies.

Mr. President, this legislation, as introduced, is not intended to force major changes in the insurance industry. Nevertheless, it will affect issues important to the insurance agents, insurance companies, and financial institutions engaged in insurance activities. The exact impact of the legislation on the relationship between banking and insurance will continue to be examined—especially the issues raised by traditional State regulation of the business of insurance.

Immediately following the bill's introduction, the Banking Committee will begin to examine issues relating to bank involvement in insurance activities. In the end, I expect the bill to balance appropriately fair competition, functional regulation and respect for the traditional leadership of the States in insurance regulation. As the committee proceeds to hearings and further consideration of the bill, I intend to make changes and adjustments in order to ensure fairness, safety and soundness, consumer protection, and effective and efficient regulation, particularly as it relates to insurance and other financial products.

Mr. President, I introduce the Depository Institution Affiliation Act as a prelude to a vigorous debate about the future of our financial system. I strongly believe that this Congress can achieve the passage of a comprehensive financial services reform bill. By working together, the Congress and the administration can overcome the complaints of vested interests and reform our antiquated financial services laws. We should not miss this opportunity for constructive bipartisanship.

Mr. President, I ask unanimous consent that more detailed section-by-section summary of the bill and a copy of my letter to Secretary Rubin be reprinted in the RECORD.

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

DEPOSITORY INSTITUTION AFFILIATION ACT—  
SECTION-BY-SECTION ANALYSIS

Section 1: Short Title and table of contents.

Section 1 provides that this Act be cited as the "Depository Institution Affiliation Act".

Section 2: Findings and Purpose.

The purpose of this Act is to promote the safety and soundness of the nation's financial system, to increase the availability of financial products and services to consumers, businesses, charitable institutions and government in an efficient and cost effective manner. In addition, this Act aims to promote a legal structure governing providers of financial services that permits open and fair competition and affords all financial services companies equal opportunity to serve the full range of credit and financial needs in the marketplace. This Act also aims to ensure that domestic financial institutions and companies are able to compete effectively in international financial markets. Finally, this Act aims to regulate financial activities and companies along functional lines without regard to ownership, control, or affiliation.

TITLE I—CREATION AND CONTROL OF FINANCIAL  
SERVICES HOLDING COMPANIES

Section 101. This section creates a new type of financial company, a Financial Services Holding Company, and sets out the terms and conditions under which such a company can be established and must be operated.

Subsection (a) Definitions. This subsection defines terms used in this section.

Paragraph (a)(1) Financial Services Holding Company (FSHC)—defines a FSHC to be any company that files a notice with the National Financial Services Committee (see Title II of this Act) that it intends to comply with the provisions of this section, and controls an insured depository institution, or,

either (i) has, within the preceding 12 months filed a notice under subsection (b) of this section to establish or acquire control of a federally insured depository institution or a company owning such a federally insured depository institution, or (ii) controls a company which, within the preceding 12 months, has filed an application for federal deposit insurance, provided that such notice or application has not been disapproved by the appropriate Federal banking agency or withdrawn. Any bank holding company which elects to become a FSHC will lose its status as a bank holding company immediately upon filing the notice of its election to become a FSHC. Similarly, a savings and loan holding company that elects to become a FSHC will lose that status upon filing the notice of its election to become a FSHC.

Paragraph (a)(2) Bank Holding Company—gives the term “bank holding company” the meaning given to it in section 2(a) of the Bank Holding Company Act of 1956, as amended.

Paragraph (a)(3) Savings and Loan Holding Company—gives the term “savings and loan holding company” the meaning given to it in section 10(a) of the Home Owners’ Loan Act.

Paragraph (a)(4) Affiliate—defines for this section, except paragraph (5) of subsection (f), the term “affiliate” of a company as any company which controls, is controlled by, or is under common control with such a company.

Paragraph (a)(5) Appropriate Federal Banking Agency (AFBA)—gives the term “appropriate Federal banking agency” the meaning given to it in section 3 of the Federal Deposit Insurance Act.

Paragraph (a)(6) Depository Institution and Insured Depository Institution—gives the term “depository institution” and “insured depository institution” the meaning given to them in section 3 of the Federal Deposit Insurance Act.

Paragraph (a)(7) State—gives the term “State” the meaning given to it in section 3 of the Federal Deposit Insurance Act.

Paragraph (a)(8) Company—defines the term “company” to mean any corporation, partnership, business trust, association or similar organization. However, corporations that are majority owned by the United States or any State are excluded from the definition of company.

Paragraph (a)(9) Control—defines control by one company over another. For purposes of this section, the term “control” means the power, directly or indirectly, to direct the management or policies of a company, or to vote 25% or more of any class of voting securities of a company.

There are three exceptions from the definition of control: These pertain to ownership of voting securities acquired or held:

1. as agent, trustee or in some other fiduciary capacity;

2. as underwriter for such a period of time as will permit the sale of these securities on a reasonable basis; or in connection with or incidental to market making, dealing, trading, brokerage or other securities-related activities, provided that such shares are not acquired with a view toward acquiring, exercising or transferring control of the management or policies of the company;

3. for the purpose of securing or collection of a prior debt until two years after the date of the acquisition; and

In addition, no company formed for the sole purpose of proxy solicitation shall be deemed to be in control of another company by virtue of its acquisition of the voting rights of the other company’s securities.

Paragraph (a)(10) Adequately Capitalized—the term “adequately capitalized” with respect to an insured depository institution has the meaning given to it in section 38(b)(1) of the Federal Deposit Insurance Act.

Paragraph (a)(11) Well Capitalized—the term “well capitalized” with respect to an insured depository institution has the meaning given to it in section 38(b)(1) of the Federal Deposit Insurance Act.

Paragraph (a)(12) Minimum Required Capital—defines the term “minimum required capital” with respect to an insured depository institution as the amount of capital that is required to be adequately capitalized.

Paragraph (a)(13) Domestic Branch—gives the term “domestic branch” the same meaning as in section 3(o) of the Federal Deposit Insurance Act.

Subsection (b): Changes in Control of Insured Depository Institutions. This subsection provides that any FSHC wishing to acquire control of an insured depository institution or company owning such insured depository institution must comply with the requirements of the Change in Bank Control Act. Failure to comply with these requirements will subject the relevant FSHC to the penalties and procedures provided in subsections (i) through (m) of this section, in addition to otherwise applicable penalties.

Subsection (c): Affiliate Transactions. This subsection empowers each AFBA to impose restrictions on affiliate transactions to prohibit unsafe or unsound practices. These regulations would be in addition to the restrictions on interaffiliate transactions provided for under sections 23A or 23B of the Federal Reserve Act. This subsection gives each AFBA some flexibility to promulgate and adapt rules and regulations in response to changing market conditions so that the AFBA has at all times the capability to prevent insured depository institutions under its supervision that are controlled by FSHCs from engaging in transactions that would compromise the safety and soundness of such insured depository institutions or that would jeopardize the deposit insurance funds.

Moreover, other provisions of this Act assure that the AFBA will have the capability to enforce these regulations vigorously (subsection (i) of this section) and that any violations of these regulations will be more severely punished than violations of regulations applicable to insured depository institutions that are not controlled by FSHCs (subsections (i), (j), (k) and (l) of this section).

Paragraph (c)(2) Regulatory Activity—provides that any rules adopted under subparagraph (c)(1)(A) shall be issued in accordance with normal rulemaking procedures and shall afford interested parties the opportunity to comment in writing and orally on any proposed rule.

Paragraph (c)(3) Application to Prior Approved Transactions—grandfathers interaffiliate transactions specifically approved by a AFBA prior to the enactment of this Act.

Paragraph (c)(4) Federal Reserve Act Treatment—makes it clear that sections 23A and 23B of the Federal Reserve Act will apply to every insured depository institution controlled by a financial services holding company.

Paragraphs (c) (5) and (6) Limitations and Exception—prohibits any insured depository institution controlled by a FSHC from extending credit to or purchasing the assets of a securities affiliate and providing other types of financial support to that FSHC’s securities affiliate except for daylight overdrafts that relate to U.S. Government securities transactions if the daylight overdrafts are fully collateralized by U.S. Government securities as to principal and interest.

Paragraph (c)(7) Limitation on Certain Marketability Activities—prohibits insured depository institutions controlled by a FSHC from providing any type of guarantee for the purpose of enhancing the marketability of a

securities issue underwritten or distributed by a securities affiliate of that FSHC.

Paragraph (c)(8) Activities During Securities Distribution—prohibits insured depository institutions controlled by a FSHC from extending credit secured by or for the purposes of purchasing any security during an underwriting period or for 30 days thereafter where a securities affiliate or such institution participates as an underwriter or member of a selling group.

Paragraph (c)(9) Extensions of Credit for Payment of Dividends—prohibits insured depository institutions controlled by a FSHC from extending credit to an issuer of securities underwritten by a securities affiliate for the purpose of paying the principal of those securities or interest for dividends on those securities.

Paragraph (c)(10) Securities Affiliate Defined—defines “securities affiliate” for the purposes of paragraphs (c)(5) through (c)(9) as a company that engages in underwriting, distributing or dealing in securities, except insurance products.

Subsection (d): Capitalization. This subsection regulates the capitalization of insured depository institutions that are controlled by a FSHC.

Paragraph (d)(1) In General—requires that insured depository institutions controlled by a FSHC be well capitalized.

Paragraph (d)(2) Actions by Federal Regulators—Provides that if the AFBA finds that an insured depository institution subsidiary of a FSHC is not well capitalized, the FSHC shall have thirty days to reach an agreement without the AFBA concerning how and according to what schedule the insured depository institution will bring its minimum capital back into conformance with requirements. During that time the insured depository institution shall operate under the close supervision of the AFBA.

In the event that the FSHC does not reach an agreement within thirty days with the AFBA on how and according to what schedule the capital of the insured depository institution will be replenished, the FSHC will be required to divest the insured depository institution in an orderly manner within a period of six months, or such additional period of time as the AFBA may determine is reasonably required in order to effect such divestiture.

Paragraph (d)(3) Capital of Holding Company—Prohibits a AFBA from imposing any capital requirement on a FSHC.

Subsection (e): Interstate Acquisitions and Activities of Insured Depository Institutions. This subsection subjects interstate acquisitions of an insured depository institution by a FSHC to the same restrictions as those applicable to bank holding companies under section 3(d) of the Bank Holding Company Act of 1956, as amended, and it subjects interstate acquisitions of savings associations by a FSHC to the same restrictions as those applicable to savings and loan holding companies. It also treats a FSHC as a BHC for purposes of Section 18(r) of the Federal Deposit Insurance Act regarding affiliate depository institution agency activities.

Subsection (f): Differential Treatment Prohibition; Laws Inconsistent with this Act. This subsection does two things. First, it prohibits adversely differential treatment of FSHCs and their affiliates, including their insured depository institution affiliates, except as this Act specifically provides. Second, this subsection ensures that state and federal initiatives do not undermine achievement of the purposes of this Act. Whether couched as affiliation, licensing or agency restrictions or as constraints on access to

state courts, such laws effectively perpetuate market barriers and deny consumers the opportunity to choose between different financial products and services.

Paragraph (f)(1) this paragraph specifically prohibits states from enacting laws that discriminate against FSHCs or against their affiliates, including their insured depository institution affiliates. This paragraph also prohibits, notwithstanding any other federal law, federal and state regulatory agencies from discriminating by rule, regulation, order or any other means against FSHCs or against their affiliates, including their insured depository institution affiliates, except as this Act specifically provides. This is intended to assure that the primary purpose of this Act—the enhancement of competition in the depository institution sector—will be fulfilled.

Paragraph (f)(2) Application of State Laws—this subsection recognizes that certain State affiliation and licensing laws restrain legitimate competition in interstate commerce, deny consumers freedom of choice in selecting an insured depository institution and threaten the long-term safety and soundness of insured depository institutions by limiting their access to capital.

Accordingly, with the exception of certain laws related to insurance and real estate brokerage which are treated in Subsection (g), this paragraph preempts any provision of federal or state law, rule, regulation or order that is expressly or impliedly inconsistent with the provisions of this section. The preempted statutes include state banking, savings and loan, securities, finance company, retail or other laws which restrict the affiliation of insured depository institutions or their owners, agents, principals, brokers, directors, officers, employees or other representatives with other firms. Similarly, laws prohibiting cross marketing of products and services are preempted insofar as such cross marketing activities are conducted by FSHCs, their affiliates, or by any agent, principal, broker, director, officer, employee or other representative. By contrast, non-discriminatory state approval, examination, supervisory, regulatory, reporting, licensing, and similar requirements are not affected.

Paragraph (f)(3) Laws Affecting Court Actions—removes a common uncertainty under state licensing and qualification to do business statutes, which leaves an out-of-state insured depository institution's access to another state's courts unresolved. Under this provision, so long as such an insured depository institution limits its activities to those which do not constitute the establishment or operation of a "domestic branch" of an insured depository institution in that other state, it can qualify to maintain or defend in that state's court any action which could be maintained or defended by a company which is not an insured depository institution and is not located in that state, subject to the same filing, fee and other conditions as may be imposed on such a company. This paragraph is not intended to grant states any power that they do not currently have to regulate the activities of out-of-state insured depository institutions.

Paragraph (f)(4) Other Restrictions—makes clear that a state, except subject to the provisions of this Act, may not impede or prevent any insured depository institution affiliated with a FSHC or any FSHC or affiliate thereof from marketing products and services in that state by utilizing and compensating its agents, solicitors, brokers, employees and other persons located in that state and representing such an insured depository institution, company, or affiliate. However, to the extent such persons are performing loan origination, deposit solicitation or other activities in which an insured

depository institution may engage, those activities cannot constitute the establishment or operation of a "domestic branch" at any location other than the main or branch offices of the depository institution.

Paragraph (f)(5) Definitions—contains a special definition of "affiliate" and "control" for purposes of paragraph (2) through (4) this subsection only. Control is deemed to occur where a person or entity owns or has the power to vote 10% of the voting securities of another entity or where a person or entity directly or indirectly determines the management or policies of another entity or person. Unlike the definition of affiliate set forth in paragraph (4) of subsection (a), this definition encompasses not only corporate affiliations but affiliations between corporations and individuals.

Subsection (g): Securities, Insurance and Real Estate Activities of Insured Depository Institutions. In order to facilitate functional regulation of the activities of FSHCs this section prohibits insured depository institutions controlled by FSHCs from conducting certain securities, insurance and real estate activities currently permissible for some insured depository institutions.

Subparagraph (g)(1)(A) Securities Activities—provides that no insured depository institution controlled by a FSHC shall directly engage in dealing in or underwriting securities, or purchasing or selling securities as agent, except to the extent such activities are performed with regard to obligations of the United States or are the type of activities that could be performed by a national bank's trust department.

Subparagraph (g)(1)(B) Insurance Activities—provides that no insured depository institution controlled by a FSHC shall directly engage in insurance underwriting.

Subparagraph (g)(1)(C) Real Estate Activities—provides that no insured depository institution controlled by a FSHC shall directly engage in real estate investment or development except insofar as these activities are incidental to the insured depository institution's investment in or operation of its own premises, result from foreclosure on collateral securing a loan, or are the type of activities that could be performed by a national bank's trust department.

Paragraph (g)(2) Construction—clarifies that nothing in this subsection shall be construed to prohibit or impede a FSHC or any of its affiliates (other than an insured depository institution) from engaging in any of the activities set forth in paragraph (1) or to prohibit an employee of an insured depository institution that is an affiliate of a FSHC from offering or marketing products or services of an affiliate of such an insured depository institution as set forth in paragraph (1).

Paragraph (g)(3) De Novo Securities and Real Estate Activities—except for activities permitted under Section 4(c)(8) of the Bank Holding Company Act no FSHC can engage in insurance or real estate activities de novo. Rather, they would have to purchase either an insurance agency or real estate brokerage business which had been in business for at least two years prior to passage of the Act.

Paragraph (g)(4) Existing Contracts—provides that nothing in this subsection will require the breach of a contract entered into prior to enactment of this Act.

Subsection (h): Tying and Insider Lender Provisions. This section subjects FSHCs to the tying provisions of section 106 of the Bank Holding Company Act Amendments of 1970 and to the insider lending prohibitions of section 22(h) of the Federal Reserve Act. These sections prohibit tying between products and services offered by insured depository institutions and products and services offered by the FSHC itself or by any of its

other affiliates. Note, however, that these tying provisions do not apply to products and services that do not involve an insured depository institution. The insider lending provisions severely limit loans by an insured depository institution to officers and directors of the insured depository institution. For purposes of both provisions, the AFBA will exercise the rulemaking authority vested in the Federal Reserve with regard to these limitations.

Subsection (i): Examination and Enforcement. This subsection provides that the AFBA shall use its examination and supervision authority to enforce the provisions of this section, including any rules and regulations promulgated under subsection (c). In particular, it is intended that each AFBA should structure its examination process so as to uncover possible violations of the provisions of this section and that the agency should not hesitate to make full use of its cease-and-desist powers or to impose as warranted the special penalties discussed below, if it believes that an insured depository institution under its supervision that is controlled by a FSHC is in violation of any of the provisions of this section.

This subsection also grants the AFBA authority to examine any other affiliate of the FSHC as well as the FSHC itself in order to ensure compliance with the limitations of this section or other provisions of law made applicable by this section such as sections 23A and 23B of the Federal Reserve Act.

In addition, this subsection grants each AFBA the right to apply to the appropriate district court of the United States for a temporary or permanent injunction or a restraining order to enjoin any person or company from violation of the provisions of this section or any regulation prescribed under this section. The AFBA may seek such an injunction or restraining order whenever it considers that an insured depository institution under its supervision or any FSHC controlling such an insured depository institution is violating, has violated or is about to violate any provision of this section or any regulation prescribed under this section. In seeking such an injunction or restraining order the AFBA may also request such equitable relief as may be necessary to prevent the violation in question. This relief may include a requirement that the FSHC divest itself of control of the insured depository institution, if this is the only way in which the violation can be prevented.

This injunctive power will enable the AFBA to move speedily to stop practices that it believes endanger the safety and soundness of an insured depository institution under its supervision that is controlled by a FSHC. If necessary to protect the depositors and safeguard the deposit insurance funds, the AFBA may request that the injunction proceedings be held in camera, so as not to provoke a run on the insured depository institution.

Subsection (j): Divestiture. This subsection states that an AFBA may require a FSHC to divest itself of an insured depository institution, if the agency finds that the insured depository institution is engaging in a continuing course of action involving the FSHC or any of its affiliates that would endanger the safety and soundness of that insured depository institution. Although the FSHC would have the right to a hearing and to judicial review and have one year in which to divest the insured depository institution, it should be emphasized that the insured depository institution would operate under the close supervision of the AFBA from the date of the initial order until the date the divestiture is completed. This is intended to safeguard the insured depository institution in question.

its depositors and the deposit insurance funds.

Subsection (k): Criminal Penalties. This subsection provides for criminal penalties for knowing and willful violations of the provisions of this section, even if these violations do not result in an initial or final order requiring divestiture of the insured depository institution. For companies found to be in violation of the provisions of this section the maximum penalty shall be the greater of (a) \$250,000 per day for each day that the violation continues or (b) one percent of the minimum required capital of the insured depository institution per day for each day that the violation continues, up to a maximum of 10% of the minimum capital of the insured depository institution—a fine that could amount to tens of millions of dollars for a large insured depository institution. Such a fine is designed to be large enough to deter even larger insured depository institutions from violating the provisions of this section.

For individuals found to be in violation of the provisions of this section the penalty shall be a fine and/or a prison term. The maximum fine shall be the greater of (a) \$250,000 or (b) twice the individual's annual rate of total compensation at the time the violation occurred. The maximum prison sentence shall be one year. In addition, individuals violating the provisions of this section will also be subject to the penalties provided for in Section 1005 of Title 18 for false entries in any book, report or statement to the extent that the violation included such false entries.

A FSHC and its affiliates shall also be subject to the Criminal penalties provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 to the same extent as a registered bank holding company, savings and loan holding company or any affiliate of such companies.

Subsection (l): Civil Enforcement, Cease-and-Desist Orders, Civil Money Penalties. This subsection provides for civil enforcement, cease-and-desist orders and civil money penalties consistent with subsections (b) and (s) and subsection (u) of Section 8 of the Federal Deposit Insurance Act for FSHCs that violates the provisions of this section in the same manner as they apply to an insured depository institution.

Subsection (m): Civil money Penalties. This subsection grants the AFBA the power to impose and collect civil money penalties after providing the company or person accused of such violation notice and the opportunity to object in writing to its finding.

Subsection (n): Judicial Review. This subsection provides for judicial review of decisions reached by an AFBA under the provisions of this section. This right to review includes a right of judicial review of statutes, rules, regulations, orders and other actions that would discriminate against FSHCs or affiliates controlled by such companies.

Section 102: Amendment to the Bank Holding Company Act of 1956. This section contains a conforming amendment to the definition of the term "bank" in the Bank Holding Company Act to ensure that a FSHC owning an insured depository institution will be regulated under this Act rather than the Bank Holding Company Act.

Section 103: Amendments to the Federal Reserve Act. This section clarifies the application of Section 23A of the Federal Reserve Act to certain loans and extensions of credit to persons who are not affiliated with a member bank. Section 23A contains a provision that was intended to prevent the use of "straw man" intermediaries to evade section 23A's limitations on loans and extensions of

credit to affiliates. Contrary to its original purpose, the provision may also be literally read to restrict a bona fide loan or extension of credit to a third party who happens to use the proceeds to purchase goods or services from an affiliate of the insured depository institution; such a loan could occur, for example, if a customer happens to use a credit card issued by an insured depository institution to buy an item sold by the insured depository institution's affiliates. This section clarifies that such loans and extensions of credit are not covered by section 23A as long as (i) the insured depository institution approves them in accordance with substantially the same standards and procedures and on substantially the same terms that it applies to similar loans or extensions of credit that do not involve the payment of the proceeds to an affiliate, and (ii) the loans or extensions of credit are not made for the purpose of evading any requirement of section 23A.

Section 104: Amendments to the Banking Act of 1933.

Subsection (a) Section 20—amends section 20 of the Glass-Steagall Act so that it does not apply to member banks that are controlled by FSHCs.

Subsection (b) Section 32—amends section 32 of the Glass-Steagall Act so that it does not apply to officers, directors and employees of affiliates of a single financial services holding company.

Section 105: Amendment to the Federal Deposit Insurance Act. This section amends the Change in Bank Control Act to provide that an acquisition of a FSHC controlling an insured depository institution may only be accomplished after complying with that Act's procedures. It also modifies the definition of "control" to conform it to the definition in section 101(a)(9) of this Act.

Section 106: Amendment to the Securities Exchange Act of 1934. This section amends the Securities Exchange Act of 1934 to provide for the registration and regulation of Broker Dealers affiliated with a FSHC.

Section 107: Amendment to the Home Owners' Loan Act. This section amends section 11 of the Home Owners' Loan Act in order to apply Section 101(c)(1)(B) of this section to savings associations.

Section 108: Amendment to the Community Reinvestment Act. This section amends the Community Reinvestment Act to make it applicable to acquisitions of insured depository institutions by FSHCs.

Section 106: Amendment to the Securities Exchange Act of 1934. This section amends the Securities Exchange Act of 1934 to provide for the registration and regulation of Broker Dealers.

Section 107: Amendment to the Home Owners' Loan Act. This section amends section 11 of the Home Owners' Loan Act in order to apply Section 101(c)(1)(B) of this section to savings associations.

Section 108: Amendment to the Community Reinvestment Act. This section amends the Community Reinvestment Act to make it applicable to acquisitions of insured depository institutions by FSHCs.

#### TITLE II—SUPERVISORY IMPROVEMENTS

Section 201: National Financial Services Committee. This section establishes a standing committee, the National Financial Services Oversight Committee (Committee), in order to provide a forum in which federal and state regulators can reach a consensus regarding how the regulation of insured depository institutions should evolve in response to changing market conditions. In addition, the Committee also provides a mechanism through which various federal regulatory agencies could coordinate their responses to a financial crisis, if such a crisis were to

occur. The Committee comprises all federal agencies responsible for regulating financial institutions or financial activities, and it is structured to allow state regulators to participate in its deliberations.

The Committee consists of the Chairman of the Secretary of the Treasury, who is also the Chairman of the Committee, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the FDIC, the Director of the Office of Thrift Supervision, the Comptroller of the Currency, the Secretary of Commerce, the Attorney General, the Chairman of the SEC, and the Chairman of the CFTC.

The Committee is directed to report to Congress within one year of enactment of this Act on proposed legislative or regulatory actions that will improve the examination process to permit better oversight of all insured depository institutions. It is also directed to establish uniform principles and standards for examinations.

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,

Washington, DC, February 2, 1995.

Hon. ROBERT RUBIN,

Secretary, Department of Treasury, Washington, DC.

DEAR MR. SECRETARY: The Treasury Department in conducting a study of the financial services system required by the Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328). The Department must submit recommendations to Congress for "changes in statutes, regulations, and policies to improve the operation of the financial service system" by the end of 1995.

I introduced today the "Depository Institution Affiliation Act of 1995" ("DIAA") and urge you to consider it carefully as the Treasury Department conducts its study. The bill and a summary of its major provisions are enclosed.

The DIAA would allow any company—financial or commercial—to become a financial services holding company and be affiliated with an insured depository institution. A company that opts into the alternative regulatory format could engage in an expanded range of activities with and through its depository institution and other affiliates. Non-depository financial and/or commercial activities would be conducted through separately capitalized subsidiaries and regulated along functional lines. This separation of the non-depository institution properly insulates the depository institution from self-dealing and other inappropriate practices and serves to protect the deposit insurance system.

The legislation is a rational legislative response to the need for comprehensive financial services reform. Moreover, the Treasury Department's 1991 study, *Modernizing the Financial System: Recommendations for Safer More Competitive Banks*, essentially endorsed the principles contained in the DIAA.

In formulating Treasury's proposal for financial services restructuring, I urge you to consider and support the DIAA and the creation of financial services holding companies.

Sincerely,

ALFONSE M. D'AMATO,  
Chairman.●

By Mr. DASCHLE (for himself,  
Mr. ROCKEFELLER, Mr. AKAKA,  
Mr. KERREY, Mr. DORGAN, and  
Mr. CAMPBELL):

S. 338. A bill to amend title 38, United States Code, to extend the period of

eligibility for inpatient care for veterans exposed to toxic substances, radiation, or environmental hazards, to extend the period of eligibility for outpatient care for veterans exposed to such substances or hazards during service in the Persian Gulf, and to expand the eligibility of veterans exposed to toxic substances or radiation for outpatient care; to the Committee on Veterans' Affairs.

THE VETERANS' OUTPATIENT CARE ACT OF 1995

Mr. DASCHLE. Mr. President, today I am introducing legislation that will provide much needed medical care to veterans exposed to agent orange or ionizing radiation, as well as to veterans exposed to toxic substances or environmental hazards during the Persian Gulf war. I am joined in this effort by Senators ROCKEFELLER, AKAKA, KERREY, DORGAN, and CAMPBELL.

Most Americans have heard about the mysterious illnesses afflicting thousands of gulf war veterans. Even though it has been almost 4 years since most of our troops returned home, we are still unable to pinpoint the cause or causes of these illnesses.

Are these illnesses service-connected? I believe so, though we will not be able to answer that question fully until further scientific research is done. Indeed, it is possible that scientists may never be able to discover the true cause(s) of these illnesses.

Does that mean gulf war veterans should wait for medical care until we know for sure that their ailments are service-connected? Certainly not. These men and women put their lives on the line for this Nation, and they deserve quality care from the Department of Veterans Affairs.

Likewise, we must not forget that other veterans continue to suffer from illnesses potentially caused by toxic exposures during their military service. Specifically, I am referring to veterans exposed to the defoliant agent orange during the Vietnam war and to veterans exposed to ionizing radiation either as a result of participation in the military's nuclear testing program or during the occupation of Hiroshima and Nagasaki during World War II.

Title 38 of the United States Code currently authorizes the Department of Veterans Affairs to provide hospital and nursing home care to veterans suffering from agent orange, radiation or gulf war exposures. For veterans of the gulf war, outpatient services are also available.

However, this authority is scheduled to expire this year. Without prompt action by Congress, these veterans will become ineligible to receive care at VA facilities for all conditions potentially related to these exposures.

My bill will ensure that these veterans are eligible for VA medical care through December 31, 2003. Although some may argue for a shorter extension, I believe the period must be long enough to ensure that these veterans get the care they deserve.

Let me elaborate. In the 97th Congress, we granted VA the authority to

provide care to veterans exposed to agent orange or ionizing radiation. Since that time, Congress has approved short extensions of this authority on four different occasions. For veterans, this has meant great uncertainty about whether they will receive much-needed health care. A longer extension will help alleviate this uncertainty.

Moreover, scientists cannot provide us with quick answers as to why gulf war veterans are sick. And in the meantime, these men and women will continue to suffer. They need to know that a grateful nation will help them through this difficult time.

I should stress that this authority to provide care only applies to medical conditions that are related or may be related to agent orange, ionizing radiation, or gulf war exposures. It does not extend to conditions for which VA doctors have affirmatively identified other causes.

My bill does go one step further than a simple extension of current law. It also ensures that veterans exposed to agent orange and ionizing radiation are eligible for the same range of medical services currently available to gulf war veterans. Specifically, the bill authorizes the VA to provide outpatient care for these veterans—care that could very well save money in the long run by avoiding the need for more costly inpatient care.

Veterans who are ill because of toxic exposures during military service are as deserving of VA medical care as their comrades injured by bullets or landmines. I hope that my colleagues will join me in preserving their access to such care.

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

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

S. 338

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

**SECTION 1. EXTENSION OF PERIOD OF ELIGIBILITY FOR INPATIENT CARE.**

(a) CARE FOR EXPOSURE TO TOXIC SUBSTANCES AND IONIZING RADIATION.—Section 1710(e)(3) of title 38, United States Code, is amended by striking out “June 30, 1995,” and inserting in lieu thereof “December 31, 2003.”

(b) CARE FOR EXPOSURE DURING PERSIAN GULF SERVICE.—Such section is further amended by striking out “December 31, 1995” and inserting in lieu thereof “December 31, 2003.”

**SEC. 2. EXTENSION AND EXPANSION OF ELIGIBILITY FOR OUTPATIENT CARE.**

(a) EXTENSION OF ELIGIBILITY FOR EXPOSURE DURING PERSIAN GULF SERVICE.—Paragraph (1)(D) of section 1712(a) of title 38, United States Code, is amended by striking out “December 31, 1995,” and inserting in lieu thereof “December 31, 2003.”

(b) EXPANSION OF ELIGIBILITY TO COVER TOXIC SUBSTANCES AND IONIZING RADIATION.—Such section is further amended—

(1) in paragraph (1)—  
(A) by striking out “and” at the end of subparagraph (C);

(B) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following new subparagraphs:

“(E) during the period before December 31, 2003, for any disability in the case of a veteran who served on active duty in the Republic of Vietnam during the Vietnam era and who the Secretary finds may have been exposed during such service to dioxin or was exposed during such service to a toxic substance found in a herbicide or defoliant used in connection with military purposes during such era, notwithstanding that there is insufficient medical evidence to conclude that the disability may be associated with such exposure; and

“(F) during the period before December 31, 2003, for any disability in the case of a veteran who the Secretary finds was exposed while serving on active duty to ionizing radiation from the detonation of a nuclear device in connection with such veteran's participation in the test of such a device or with the American occupation of Hiroshima and Nagasaki, Japan, during the period beginning on September 11, 1945, and ending on July 1, 1946, notwithstanding that there is insufficient medical evidence to conclude that the disability may be associated with such exposure.”; and

(2) in paragraph (7)—

(A) by striking out “under paragraph (1)(D)” and inserting in lieu thereof “under subparagraph (D), (E), or (F) of paragraph (1) of this subsection”; and

(B) by striking out “in that paragraph” and inserting in lieu thereof “in the applicable subparagraph”.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 339. A bill to ensure the provision of appropriate compensation for the real and mining claims taken by the United States as a result of the establishment of the White Sands Missile Range, New Mexico; to the Committee on Armed Services.

THE WHITE SANDS FAIR COMPENSATION ACT OF 1995

• Mr. DOMENICI. Mr. President, on behalf of Senator BINGAMAN and myself, I am offering legislation that will compensate a very special group of Americans: a group of patriots who heard the call to arms in 1941, answered that call, and entered into a good faith effort with our Government. Unfortunately, it was a good faith effort that turned sour. This bill, the White Sands Fair Compensation Act of 1995, is offered in an effort to right some wrong that began over 50 years ago.

On September 1, 1939, a chain of events began to unfold that would affect Americans from coast to coast. I am speaking, of course, of the outbreak of World War II. Americans made concessions to support the war effort and they willingly made extreme sacrifices—sacrifices of time, loved ones, and—for some—their homes and their way of life.

In 1942, President Roosevelt signed an executive order that would temporarily withdraw all public lands and acquire all surrounding private lands in an area of New Mexico that had great potential as a testing area for the

army. The land was abundant, sparsely populated, and in the middle of nowhere. For the sake of national security and for the benefit of the Nation, ranchers and miners in this area entered into a temporary agreement to leave their homes and their livelihood. The White Sands Missile Range [WSMR] had gained its first foothold in the State of New Mexico. The ranchers and miners had taken their first step out of their former lives.

At the end of World War II, the Government determined the Nation's security was still at risk and the use of the WSMR area was necessary. Nevertheless, the army relented to allow WSMR ranchers to return to their homes on a shared use basis. Until 1950, the ranchers and the military attempted to work together in sharing the WSMR area. Sharing simply did not work. In 1952, the Government began to formally withdraw all the public lands with the understanding that at some time in the future the lands were to revert back to the Department of the Interior for public use. During this time, the WSMR ranchers were still allowed the use of their private lands, but they could no longer use the surrounding Federal lands that had been integral components of their land holdings. For many, this was the difference between raising cattle and sheep as pets or as food. Furthermore, the military maintained evacuation contracts with the ranchers, directing the ranchers to vacate their private lands during weapons testing.

All these factors added up to financial disaster for the ranchers who, in 1942, believed they were contributing to the war effort. WSMR ranchers couldn't ranch, nor could they sell their land. The WSMR ranches had changed in 10 years from thriving companies producing food and fiber, to crippled businesses waiting to be unloaded on the first prospective buyer.

That prospective buyer came 20 years later. The Government offered to buy the lands from the WSMR ranchers. Those ranchers who agreed received a devalued price for their homes; those who disagreed had their lands condemned and received the same low price.

Mr. President, I would like to put this issue into some historical context. The Congress during the years of Jefferson and Hamilton, was embroiled in a debate surrounding the country's Federal lands and a troublesome national debt. The debt prompted leaders to consider clearing the Nation's debt through the sale of its Federal lands to bring in much needed revenue as well as to encourage the expansion of the western territories. After much deliberation and many successive Congresses, several measures were signed into law that would entice Americans to move west and homestead the land.

Between 1895 and 1920, many of the ranchers began to settle in what would become WSMR. Each rancher paid the Government for the land. These lands

had water, grass, and good soil. The Federal Government retained the title to those lands they could not sell. Holding that land, however, did not generate revenue. Therefore, the Government believed it important to enter into a new agreement with the ranchers. This new agreement encouraged the settlers to invest money, time, and effort into the less fertile Federal lands in exchange for increasing the settler holdings. Another good faith agreement was entered into between the ranchers and the Government.

Through the years this agreement resulted into a valuable arrangement for both the ranchers and the Government. The ranchers use the expanded holdings as collateral, and the Internal Revenue Service taxes these holdings as net worth. The WSMR ranchers' land, both privately and publicly held, had value. The ranchers had invested substantially in both.

Senator BINGAMAN and I are introducing a bill today which will compensate these individuals for their investments. The Whites Sands Fair Compensation Act of 1995 establishes a Commission in the Department of Defense to provide compensation to the individuals who lost their ranches or mining claims to the Government. This Commission will evaluate the history surrounding this issue, evaluate claims submitted by owners who relinquished their property, and will terminate its work after completing action on all claims filed under this act. I ask that a copy of my bill be included in the RECORD at the conclusion of my remarks.

In closing, Mr. President, I would like to urge this Congress to work quickly on this measure. Many WSMR ranchers and miners have died, and many more are elderly. My colleagues in the House of Representatives, Congressman JOE SKEEN, Congressman STEVE SCHIFF, and Congressman BILL RICHARDSON will introduce a companion measure. It is my hope that this Congress will acknowledge what this special group of Americans contributed to winning a war fought so very long ago. ●

By Mr. DOLE (for himself, Mr. NICKLES, Mr. BOND, Mrs. HUTCHISON, Mr. MURKOWSKI, Mr. LOTT, Mr. COCHRAN, Mr. HATCH, Mr. DOMENICI, Mrs. KASSEBAUM, Mr. COATS, Mr. ABRAHAM, Mr. INHOFE, Mr. SMITH, Mr. SANTORUM, Mr. THOMPSON, Mr. WARNER, and Mr. KYL):

S. 343. A bill to reform the regulatory process, and for other purposes; to the Committee on the Judiciary.

THE COMPREHENSIVE REGULATORY REFORM ACT  
OF 1995

Mr. DOLE. Mr. President, I rise to introduce legislation that begins the process of getting the regulatory state under control. This legislation represents a comprehensive effort to inject common sense into a Federal regulatory process that is often too costly, too arcane, and too inflexible.

Last November, the American people sent us a message: Rein in big Government. Stop wasting taxpayers' moneys. Stop passing the buck to State and local governments. Stop micromanaging our lives through burdensome and costly regulations.

We are responding to that message. Our agenda reduces Government—in size and scope—and increases individual freedom. Our agenda will restore the true balance between Government and individual reflected in the 10th amendment, which leaves all powers not given to the Federal Government to the States or to the people.

Our agenda is a package of reforms—and make no mistake about it, we need them all. The first set of reforms focus on making Congress accountable and responsible—cutting spending; stopping unfunded mandates; balancing the budget; and a line-item veto. But, as important, we need to make the agencies that have come to regulate almost every aspect of our lives just as accountable and responsible—we need regulatory reform.

Mr. President, the true scope of regulations in America is staggering: OMB estimates that the private sector spends more than 6.6 billion hours in 1 year complying with regulations; and the costs of regulation on our economy are conservatively estimated at \$500 billion.

And it is not merely a matter of too many regulations or whether they make sense. They are often inflexible and unfair. It is very difficult for one person or one business to take on the Government—even if they are right. Sometimes they must, just to survive, and the costs of enforcement are often a dead weight loss to society in terms of lost productivity and innovation.

I know of one small business in Paola, KS, that spent 5 years in a lawsuit with OSHA and finally settled for \$6,000. This company typically spends between \$7,500 and \$10,000 annually for legal and management costs just dealing with OSHA. The regulatory state is out of control.

Mr. President, this legislation will accomplish six major objectives:

First, responsibility. Major regulations—those with \$50 million impact on the economy—will go through an analysis that ensures that the benefits outweigh the costs;

Second, sound science. Risk assessments will be based on realistic data and sound science and will be part of the agency decisionmaking process;

Third, accountability. We will put a stop to the practice of expanding Federal power and jurisdiction beyond what a statute provides. We will insist that the public be informed of the true costs and benefits of regulation, and that those affected by regulations be able to enforce these requirements in a court of law;

Fourth, congressional oversight. We ensure Congress' overall responsibility

by providing for a 45-day period in which Congress may review major regulations before they take effect;

Fifth, remedying past mistakes. There are undoubtedly many regulations that impose costs that wildly exceed the benefits. We allow for review of existing regulations in order to weed out past mistakes; and

Sixth, small business relief. The costs of regulations often fall disproportionately on those least able to cope—small businesses. We reform the Regulatory Flexibility Act that is already law, by allowing small businesses the ability to enforce its provisions in court.

Mr. President, there are a lot of good ideas out there about regulatory reform. We want to hear them. But we will insist that fundamental reform be enacted this year. The American people deserve nothing less.

I ask unanimous consent that the legislation I introduce today be printed in the RECORD.

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

S. 343

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Regulatory Reform Act of 1995".

#### SEC. 2. ANALYSIS OF AGENCY PROPOSALS.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

##### "SUBCHAPTER II—ANALYSIS OF AGENCY PROPOSALS

##### "§ 621. Definitions

"For purposes of this subchapter and subchapter III of this chapter—

"(1) the term 'agency' has the same meaning as in section 551(1) of this title;

"(2) the term 'person' has the same meaning as in section 551(2) of this title;

"(3) the term 'rule' has the same meaning as in section 551(4) of this title;

"(4)(A) the term 'major rule' means—

"(i) a rule or a group of closely related rules that the agency proposing the rule or the President reasonably determines is likely to have a gross annual effect on the economy of \$50,000,000 or more in reasonably quantifiable increased direct and indirect costs, or has a significant impact on a sector of the economy; or

"(ii) a rule or a group of closely related rules that is otherwise designated a major rule by the agency proposing the rule, or by the President on the ground that the rule is likely to result in—

"(I) a substantial increase in costs or prices for wage earners, consumers, individual industries, nonprofit organizations, Federal, State, or local government agencies, or geographic regions; or

"(II) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, public health or safety, or the ability of enterprises whose principal places of business are in the United States to compete in domestic or export markets;

"(B) the term 'major rule' does not include—

"(i) a rule that involves the internal revenue laws of the United States; or

"(ii) a rule that authorizes the introduction into commerce, or recognizes the marketable status, of a product;

"(5) the term 'benefit' means the reasonably identifiable significant benefits, including social and economic benefits, that are expected to result directly or indirectly from implementation of a rule or an alternative to a rule;

"(6) the term 'cost' means the reasonably identifiable significant costs and adverse effects, including social and economic costs, reduced consumer choice, substitution effects, and impeded technological advancement, that are expected to result directly or indirectly from implementation of, or compliance with, a rule or an alternative to a rule; and

"(7) the term 'market-based mechanism' means a regulatory program that—

"(A) imposes legal accountability for the achievement of an explicit regulatory objective on each regulated person;

"(B) affords maximum flexibility to each regulated person in complying with mandatory regulatory objectives, which flexibility shall, where feasible and appropriate, include, but not be limited to, the opportunity to transfer to, or receive from, other persons, including for cash or other legal consideration, increments of compliance responsibility established by the program; and

"(C) permits regulated persons to respond automatically to changes in general economic conditions and in economic circumstances directly pertinent to the regulatory program without affecting the achievement of the program's explicit regulatory mandates.

##### "§ 622. Rulemaking cost-benefit analysis

"(a)(1) Prior to publishing notice of a proposed rulemaking for any rule (or, in the case of a notice of a proposed rulemaking that has been published on or before the date of enactment of this subchapter, not later than 30 days after such date of enactment), each agency shall determine whether the rule is or is not a major rule within the meaning of section 621(4)(A)(i) and, if it is not, whether it should be designated a major rule under section 621(4)(A)(ii). For the purpose of any such determination or designation, a group of closely related rules shall be considered as one rule.

"(2) Each notice of proposed rulemaking shall include a succinct statement and explanation of the agency's determination under paragraph (1).

"(b)(1) If an agency has determined that a rule is not a major rule within the meaning of section 621(4)(A)(i) and has not designated the rule a major rule within the meaning of section 621(4)(A)(ii), the President may, as appropriate, determine that the rule is a major rule or designate the rule a major rule not later than 30 days after the publication of the notice of proposed rulemaking for the rule (or, in the case of a notice of proposed rulemaking that has been published on or before the date of enactment of this subchapter, not later than 60 days after such date of enactment).

"(2) Such determination or designation shall be published in the Federal Register, together with a succinct statement of the basis for the determination or designation.

"(c)(1)(A) When the agency publishes a notice of proposed rulemaking for a major rule, the agency shall issue and place in the rulemaking record a draft cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

"(B)(i) When the President has published a determination or designation that a rule is a major rule after the publication of the notice of proposed rulemaking for the rule, the agency shall promptly issue and place in the rulemaking file a draft cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

"(ii) Following the issuance of a draft cost-benefit analysis under clause (i), the agency shall give interested persons an opportunity to comment pursuant to section 553 of this title in the same manner as if the draft cost-benefit analysis had been issued with the notice of proposed rulemaking.

"(2) Each draft cost-benefit analysis shall contain—

"(A) an analysis of the benefit of the proposed rule, and an explanation of how the agency anticipates each benefit will be achieved by the proposed rule;

"(B) an analysis of the costs of the proposed rule, and an explanation of how the agency anticipates each such cost will result from the proposed rule;

"(C) an identification (including an analysis of the costs and benefits) of reasonable alternatives for achieving the identified benefits of the proposed rule, including alternatives that—

"(i) require no Government action;

"(ii) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply; and

"(iii) employ performance or other market-based standards that permit the greatest flexibility in achieving the identified benefits of the proposed rule and that comply with the requirements of subparagraph (D);

"(D) an assessment of the feasibility of establishing a regulatory program that operates through the application of market-based mechanisms;

"(E) in any case in which the proposed rule is based on one or more scientific evaluations or information or is subject to the risk assessment requirements of subchapter III, a description of actions undertaken by the agency to verify the quality, reliability, and relevance of such scientific evaluations or scientific information in accordance with the risk assessment requirements of subchapter III;

"(F) an assessment of the aggregate effect of the rule on small businesses with fewer than 100 employees, including an assessment of the net employment effect of the rule; and

"(G) an analysis of whether the identified benefits of the proposed rule are likely to exceed the identified costs of the proposed rule, and an analysis of whether the proposed rule will provide greater net benefits to society than any of the alternatives to the proposed rule, including alternatives identified in accordance with subparagraph (C).

"(d)(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking record a final cost-benefit analysis, and shall include a summary of the analysis in the statement of basis and purpose.

"(2) Each final cost-benefit analysis shall contain—

"(A) a description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule described in the rulemaking, including the market-based mechanisms identified pursuant to subsection (c)(2)(D); and

"(B) an analysis, based upon the rulemaking record considered as a whole, of—

"(i) whether the benefits of the rule outweigh the costs of the rule; and

"(ii) whether the rule will provide greater net benefits to society than any of the alternatives described in the rulemaking, including the market-based incentives identified pursuant to subsection (c)(2)(D).

"(e)(1)(A) The description of the benefits and costs of a proposed and a final rule required under this section shall include, to

the extent feasible, a quantification or numerical estimate of the quantifiable benefits and costs. Such quantification or numerical estimate shall be made in the most appropriate unit of measurement, using comparable assumptions, including time periods, and shall specify the ranges of predictions and shall explain the margins of error involved in the quantification methods and in the estimates used. An agency shall describe the nature and extent of the nonquantifiable benefits and costs of a final rule pursuant to this section in as precise and succinct a manner as possible.

“(B) Where practicable, the description of the benefits and costs of a proposed and final rule required under this section shall describe such benefits and costs on an industry by industry basis.

“(2)(A) In evaluating and comparing costs and benefits and in evaluating the risk assessment information developed pursuant to subchapter III, the agency shall not rely on cost, benefit, or risk assessment information that is not accompanied by data, analysis, or other supporting materials that would enable the agency and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to such information.

“(B) The agency evaluations of the relationships of the benefits of a proposed and final rule to its costs shall be clearly articulated in accordance with this section.

#### “§ 623. Decisional criteria

“(a) No final rule subject to this subchapter shall be promulgated unless the agency finds that—

“(1) the potential benefits to society from the rule outweigh the potential costs of the rule to society, as determined by the analysis required by section 622(d)(2)(B); and

“(2) the rule will provide greater net benefits to society than any of the reasonable alternatives identified pursuant to section 622(c)(2)(C), including the market-based mechanisms identified pursuant to section 622(c)(2)(D).

“(b) The requirements of this section shall supplement the decisional criteria for rulemaking otherwise applicable under the statute granting the rulemaking authority, except when such statute contains explicit textual language prohibiting the consideration of the criteria set forth in this section. Where the agency finds that consideration of the criteria set forth in this section is prohibited by explicit statutory language, the agency shall transmit its finding to Congress, along with the final cost-benefit analysis required by section 622(d)(2)(B).

#### “§ 624. Judicial review

“(a) Compliance or noncompliance by an agency with the provisions of this subchapter shall be subject to judicial review in accordance with this section.

“(b)(1) Each of the following shall be subject to judicial review:

“(A) A determination by an agency or by the President that a rule is or is not a major rule within the meaning of section 621(4).

“(B) A designation by an agency or by the President of a rule as a major rule.

“(C) A decision by an agency or by the President not to designate a rule a major rule.

“(2) A determination by an agency or by the President that a rule is not a major rule within the meaning of section 621(4), or the decision by an agency or by the President not to designate a rule a major rule, shall be set aside by a reviewing court only upon a showing of clear and convincing evidence that the determination or decision not to designate is erroneous in light of the information available to the agency at the time the determination or decision not to designate was made.

“(3) An action to review a determination that a rule is not a major rule or to review a decision not to designate shall be filed not later than 30 days after the date of publication of such determination or failure to designate.

“(c) If a court of the United States finds that a rule should have been reviewed pursuant to this subchapter, such rule shall have no force or effect until such time as the requirements of this subchapter are met.

“(d) Each court with jurisdiction to review final agency action under the statute granting the agency authority to conduct the rulemaking shall have jurisdiction to review findings by any agency under this subchapter and shall set aside agency action that fails to satisfy the decisional criteria of section 623. The court shall apply the same standards of judicial review that apply to the review of agency findings under the statute granting the agency authority to conduct the rulemaking.

#### “§ 625. Petition for cost-benefit analysis

“(a)(1) Any person subject to a major rule may petition the relevant agency or the President to perform a cost-benefit analysis under this subchapter for the major rule, including a major rule in effect on the date of enactment of this subchapter for which a cost-benefit analysis pursuant to such subchapter has not been performed, regardless of whether a cost-benefit analysis was previously performed to meet requirements imposed before the date of enactment of this subchapter.

“(2) The petition shall identify with reasonable specificity the major rule to be reviewed.

“(3) The agency or the President shall grant the petition if the petition shows that there is a reasonable likelihood that the costs of the major rule outweigh the benefits, or that reasonable questions exist as to whether the rule provides greater net benefits to society than any reasonable alternative to the rule that may be more clearly resolved through examination pursuant to this subchapter and subchapter III.

“(4) A decision to grant or deny a petition under this subsection shall be made not later than 180 days after submittal. A decision to deny a petition shall be subject to judicial review immediately upon denial as final agency action under the statute granting the agency authority to conduct the rulemaking.

“(b) For each major rule for which a petition has been granted under subsection (a), the agency shall conduct a cost-benefit analysis in accordance with this subchapter, and shall determine whether the rule satisfies the decisional criteria set forth in section 623. If the rule does not satisfy the decisional criteria, then the agency shall take immediate action to either revoke or amend the rule to conform to the requirements of this subchapter and the decisional criteria under section 623.

“(c) For purposes of this section, the term ‘major rule’ means any major rule or portion thereof.

“(d)(1) Any person may petition the relevant agency to withdraw, as contrary to this subchapter, any agency guidance or general statement of policy that would be a major rule if the guidance or general statement of policy had been adopted as a rule.

“(2) The petition shall identify with reasonable specificity why the guidance or general statement of policy would be major if adopted as a rule.

“(3) The agency shall grant the petition if the petition shows that there is a reasonable likelihood that the guidance or general statement of policy would be major if adopted as a rule.

“(4) A decision to grant or deny a petition under this subsection shall be made not later

than 180 days after the petition is submitted. If the agency fails to act by such date, the petition shall be deemed to have been granted. A decision to deny a petition shall be subject to judicial review immediately upon denial as final agency action under the statute under which the agency has issued the guidance or general statement of policy.

“(e) For each petition granted under subsection (d), the agency shall be prohibited from enforcing against any person the regulatory standards or criteria contained in such guidance or policy unless included in a rule proposed and promulgated in accordance with this subchapter.

#### “§ 626. Effective date of final regulations

“(a)(1) Beginning on the date of enactment of this section, all deadlines in statutes that require agencies to propose or promulgate any rule subject to this subchapter are suspended until such time as the requirements of this subchapter are satisfied.

“(2) Beginning on the date of enactment of this section, the jurisdiction of any court of the United States to enforce any deadline that would require an agency to propose or promulgate a rule subject to subchapter II of chapter 5 of title 5, United States Code (as added by this section), is suspended until such time as the requirements of this subchapter are satisfied.

“(3) In any case in which the failure to promulgate a rule by a deadline would create an obligation to regulate through individual adjudications, the obligation to conduct individual adjudications shall be suspended to allow the requirements of this subchapter to be satisfied.

“(b)(1) Before a major rule takes effect as a final rule, the agency promulgating such rule shall submit to the Congress a copy of such rule and a report containing a concise general statement relating to the rule, including a complete copy of the cost-benefit analysis, and the proposed effective date of the rule.

“(2) A major rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

“(A) the later of the date occurring 45 days after the date on which—

“(i) the Congress receives the report submitted under paragraph (1); or

“(ii) the rule is published in the Federal Register;

“(B) if the Congress passes a joint resolution of disapproval described under subsection (h) relating to the rule, and the President signs a veto of such resolution, the earlier date—

“(i) on which either House of Congress votes and fails to override the veto of the President; or

“(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

“(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under subsection (h) is enacted).

“(c) A rule shall not take effect as a final rule if the Congress passes a joint resolution of disapproval described under subsection (h).

“(d)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this section may take effect if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

“(2) Paragraph (1) applies to a determination made by the President by Executive

order that the rule should take effect because such rule is—

“(A) necessary because of an imminent threat to health or safety or other emergency;

“(B) necessary for the enforcement of criminal laws; or

“(C) necessary for national security.

“(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under subsection (h) or the effect of a joint resolution of disapproval under this section.

“(4) This subsection and an Executive order issued by the President under this subsection shall not be subject to judicial review by a court of the United States.

“(e)(1) Subsection (h) shall apply to any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes.

“(2) For purposes of subsection (h), a rule described under paragraph (1) shall be treated as though such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date the succeeding Congress first convenes.

“(3) During the period between the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, a rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law.

“(f) Any rule that takes effect and later is made of no force or effect by the enactment of a joint resolution under subsection (h) shall be treated as though such rule had never taken effect.

“(g) If the Congress does not enact a joint resolution of disapproval under subsection (h), no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

“(h)(1) For purposes of this subsection, the term ‘joint resolution’ means only a joint resolution introduced after the date on which the report referred to in subsection (b) is received by Congress the matter after the resolving clause of which is as follows: ‘That Congress disapproves the rule submitted by the \_\_\_\_\_ relating to \_\_\_\_\_, and such rule shall have no force or effect. (The blank spaces being appropriately filled in.)’

“(2)(A) A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution shall not be reported before the eighth day after its submission or publication date.

“(B) For purposes of this subsection the term ‘submission or publication date’ means the later of the date on which—

“(i) the Congress receives the report submitted under subsection (b)(1); or

“(ii) the rule is published in the Federal Register.

“(3) If the committee to which a resolution described in paragraph (1) is referred has not reported such resolution (or an identical resolution) at the end of 20 calendar days after its submission or publication date, such committee may be discharged by the Majority Leader of the Senate or the Majority Leader of the House of Representatives, as the case may be, from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

“(4)(A) When the committee to which a resolution is referred has reported, or when a committee is discharged (under paragraph (3)) from further consideration of, a resolu-

tion described in paragraph (1), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) shall be waived. The motion shall be highly privileged in the House of Representatives and shall be privileged in the Senate and shall not be debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

“(B) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall be in order and shall not be debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution shall not be in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order.

“(C) Immediately following the conclusion of the debate on a resolution described in paragraph (1), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

“(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

“(5) If, before the passage by one House of a resolution of that House described in paragraph (1), that House receives from the other House a resolution described in paragraph (1), then the following procedures shall apply:

“(A) The resolution of the other House shall not be referred to a committee.

“(B) With respect to a resolution described in paragraph (1) of the House receiving the resolution—

“(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

“(ii) the vote on final passage shall be on the resolution of the other House.

“(6) This subsection is enacted by Congress—

“(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed to be a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in paragraph (1), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

#### “§ 627. Unauthorized rulemakings

“(a) Notwithstanding any other provision of law, beginning on July 1, 1995, any rule that expands Federal power or jurisdiction beyond the level of regulatory action needed

to satisfy statutory requirements shall be prohibited.

“(b) Nothing in this section shall be construed to prevent any agency from promulgating a rule that repeals, narrows, or streamlines a rule, regulation, or administrative process, or from issuing or promulgating a rule providing for tax relief or clarification or reducing regulatory burdens.

#### “§ 628. Standard for review of agency interpretations of an enabling statute

“(a) In reviewing a final agency action under section 706 of this title, or under a statute that provides for review of a final agency action, the reviewing court shall affirm the agency’s interpretation of the statute granting authority to promulgate the rule if, applying traditional principles of statutory construction, the reviewing court finds that the interpretation is clearly the interpretation of the statute intended by Congress.

“(b) If the reviewing court, applying traditional principles of statutory construction, finds that an interpretation other than the interpretation applied by the agency is clearly the interpretation of the statute intended by Congress, the reviewing court shall find that the agency’s interpretation is erroneous and contrary to law.

“(c)(1) If the reviewing court, applying established principles of statutory construction, finds that the statute gives the agency discretion to choose from among a range of permissible statutory constructions, the reviewing court shall affirm the agency’s interpretation where the record on review establishes that—

“(A) the agency has correctly identified the range of permissible statutory constructions;

“(B) the interpretation chosen is one that is within that range; and

“(C) the agency has engaged in reasoned decisionmaking in determining that the interpretation, rather than other permissible constructions of the statute, is the one that maximizes net benefits to society.

“(2) If an agency’s interpretation of a statute cannot be affirmed under paragraph (1), the reviewing court shall find that the agency’s interpretation is arbitrary and capricious.

#### “SUBCHAPTER IV—EXECUTIVE OVERSIGHT

##### “§ 651. Procedures

“The President shall—

“(1) establish procedures for agency compliance with subchapters II and III; and

“(2) monitor, review, and ensure agency implementation of such procedures.

##### “§ 652. Promulgation and adoption

“(a) Procedures established pursuant to section 651 shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

“(b)(1) If procedures established pursuant to section 651 include review of preliminary or final regulatory analyses to ensure that they comply with subchapters II and III, the time for any such review of a preliminary regulatory analysis shall not exceed 30 days following the receipt of the analysis by the President or by an officer to whom the authority granted under section 651 has been delegated pursuant to section 653.

“(2) The time for review of a final regulatory analysis shall not exceed 30 days following the receipt of the analysis by the President or such officer.

“(3)(A) The times for each such review may be extended for good cause by the President or such officer for an additional 30 days.

“(B) Notice of any such extension, together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

#### “§ 653. Delegation of authority

“(a) The President may delegate the authority granted by this subchapter to the Vice President or to an officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate.

“(b)(1) Notice of any delegation, or any revocation or modification thereof, shall be published in the Federal Register.

“(2) Any notice with respect to a delegation to the Vice President shall contain a statement by the Vice President that the Vice President will make every reasonable effort to respond to congressional inquiries concerning the exercise of the authority delegated under this section.

#### “§ 654. Applicability

“The authority granted under this subchapter shall not apply to rules issued by the Nuclear Regulatory Commission.

#### “§ 655. Judicial review

“The exercise of the authority granted under this subchapter by the President or by an officer to whom such authority has been delegated under section 653 shall not be subject to judicial review in any manner under this chapter.”

(b) JUDICIAL REVIEW OF REGULATORY FLEXIBILITY ANALYSIS.—

(1) AMENDMENT.—Section 611 of title 5, United States Code, is amended to read as follows:

#### “§ 611. Judicial review

“(a)(1) Except as provided in paragraph (2), not later than 1 year after the effective date of a final rule with respect to which an agency—

“(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities; or

“(B) prepared final regulatory flexibility analysis pursuant to section 604, an affected small entity may petition for the judicial review of such certification or analysis in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 of this title or under any other provision of law shall have jurisdiction to review such certification or analysis.

“(2)(A) Except as provided in subparagraph (B), in the case of a provision of law that requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period provided in paragraph (1), such lesser period shall apply to a petition for the judicial review under this subsection.

“(B) In a case in which an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection shall be filed not later than—

“(i) 1 year; or

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

“(3) For purposes of this subsection, the term ‘affected small entity’ means a small entity that is or will be adversely affected by the final rule.

“(4) Nothing in this subsection shall be construed to affect the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

“(5)(A) In a case in which an agency certifies that such rule would not have a significant economic impact on a substantial number of small entities, the court may order the agency to prepare a final regulatory flexibility analysis pursuant to section 604 if the court determines, on the basis of the rulemaking record, that the certification was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

“(B) In a case in which the agency prepared a final regulatory flexibility analysis, the court may order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the rulemaking record, that the final regulatory flexibility analysis was prepared by the agency without complying with section 604.

“(6) If, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5) (or such longer period as the court may provide), the agency fails, as appropriate—

“(A) to prepare the analysis required by section 604; or

“(B) to take corrective action consistent with section 604 of this title, the court may stay the rule or grant such other relief as it deems appropriate.

“(7) In making any determination or granting any relief authorized by this subsection, the court shall take due account of the rule of prejudicial error.

“(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

“(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.”

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act, except that the judicial review authorized by section 611(a) of title 5, United States Code (as added by subsection (a)), shall apply only to final agency rules issued after the date of enactment of this Act.

(c) PRESIDENTIAL AUTHORITY.—Nothing in this Act shall limit the exercise by the President of the authority and responsibility that the President otherwise possesses under the Constitution and other laws of the United States with respect to regulatory policies, procedures, and programs of departments, agencies, and offices.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Part I of title 5, United States Code, is amended by striking out the chapter heading and table of sections for chapter 6 and inserting in lieu thereof the following:

### “CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

#### “SUBCHAPTER I—REGULATORY ANALYSIS

“Sec.

“601. Definitions.

“602. Regulatory agenda.

“603. Initial regulatory flexibility analysis.

“604. Final regulatory flexibility analysis.

“605. Avoidance of duplicative or unnecessary analyses.

“606. Effect on other law.

“607. Preparation of analyses.

“608. Procedure for waiver or delay of completion.

“609. Procedures for gathering comments.

“610. Periodic review of rules.

“611. Judicial review.

“612. Reports and intervention rights.

#### “SUBCHAPTER II—ANALYSIS OF AGENCY PROPOSALS

“621. Definitions.

“622. Rulemaking cost-benefit analysis.

“623. Decisional criteria.

“624. Judicial review.

“625. Petition for cost-benefit analysis.

“626. Effective date of final regulations.

“627. Unauthorized rulemakings.

“628. Standard for review of agency interpretations of an enabling statute.

#### “SUBCHAPTER III—RISK ASSESSMENTS

“631. Definitions.

“632. Applicability.

“633. Rule of construction.

“634. Requirement to prepare risk assessments.

“635. Principles for risk assessment.

“636. Principles for risk characterization and communication.

“637. Regulations; plan for assessing new information.

“638. Decisional criteria.

“639. Regulatory priorities.

“640. Establishment of program.

#### “SUBCHAPTER IV—EXECUTIVE OVERSIGHT

“651. Procedures.

“652. Promulgation and adoption.

“653. Delegation of authority.

“654. Applicability.

“655. Judicial review.”

(2) Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

#### “SUBCHAPTER I—REGULATORY ANALYSIS”

By Mr. DOMENICI (for himself and Mr. INOUE):

S. 346. A bill to establish in the Department of the Interior the Office of Indian Women and Families, and for other purposes; to the Committee on Indian Affairs.

THE OFFICE OF WOMEN AND FAMILIES IN THE BUREAU OF INDIAN AFFAIRS ACT OF 1995

● Mr. DOMENICI. Mr. President, today I am pleased to be joined by the vice chairman of the Senate Committee on Indian Affairs, Senator DANIEL K. INOUE, in introducing a bill to create the Office of Women and Families in the Bureau of Indian Affairs [BIA], U.S. Department of Interior. I am grateful for Senator INOUE’s support of this legislation. We hope to improve Federal Government attention and services for Indian women and their families, with a special emphasis on the economic well-being of Indian women and families including employment and business opportunities. This new office will be responsible for addressing the special needs of Indian women and families within the cultural context of each tribe or village. Existing and new Federal policies for the benefit of Indian people will be better focused on Indian women who are too often ignored by policy makers and agency programs.

I am also pleased to report that this legislation has now been endorsed by the Eight Northern Indian Pueblos of New Mexico and the Judiciary Committee of the Navajo Nation Council.

The Office of Women and Families in the BIA will be responsible for integrating the needed policy and program

changes in the BIA programs and coordinating with other Federal agencies and tribal governments to improve the living conditions of Indian women and their families.

I would like to quote from a letter I received in support of this concept from Dr. Carolyn M. Elgin, president of the Southwestern Indian Polytechnic Institute and Federal Women's Program Manager for the BIA's Albuquerque Area. Dr. Elgin says,

Throughout the National Indian Community, the diverse and specialized needs of Indian women and Indian families need to be comprehensively addressed (congressional attention, budget appropriations, program development and policy consideration within the Bureau). Again, I applaud your sensitivity and fully support your legislative efforts on behalf of Indian women and families.

Mr. President, the Federal Government spends over hundreds of millions of dollars per year for Indian programs in several key departments including Interior, Health and Human Services, Labor, Education, Housing and Urban Development, Transportation, Commerce, and other agencies like the Small Business Administration.

While the BIA is the theoretical center of our country's efforts to improve the daily lives of 2,000,000 American Indians—about half of whom reside on federally recognized Indian reservations, many other Federal departments or agencies have some involvement with Indians. There is, however, very little coordination among these Federal agencies who serve the same target population.

While this bill will establish the new office in the BIA, its thrust will include all major programs affecting Indian women and families. Before I explain more about these programs, I would like to focus on the need to pay special attention to Indian women and families.

In brief, Indians are the poorest of the poor. Elsie Zion of the Women Studies Program at the University of New Mexico describes it this way: "Indian women are the poorest of the poorest group. While American women come up against a 'glass ceiling,' Indian women have problems getting off the floor." In this case, she means that too many Indian women have a "hard time getting jobs outside the fields of cleaning, cooking, or clerking."

Regarding Indian family members, some of the highest youth suicide rates in America occur on Indian reservations. I know this is true for the Jicarilla Apache Tribe and the Navajo Nation. Many Pueblo Indians also have disproportionately high suicide rates. Substance abuse is a severe problem among young Indians.

By examining program and policy failures, it is our hope that new methods can be tried to inspire, educate, and employ more young Indian people. We want to keep them away from the dangers of drugs, alcohol, and other

self-destructive behaviors. An Office of Women and Families can certainly go far in helping to identify weaknesses in the fabric of Federal programs intended to improve the quality of life on Indian reservations.

The Office of Women and Families is not simply another BIA program. It is built in, permanent policy mechanism to shape programs and enhance the potential for direct benefits to Indian women and families within existing and new programs of the BIA and the Federal Government as a whole.

This new policy program should focus on Federal Government policies relating to such concerns as job opportunities for Indian women and Indian youth suicide. The Office could also focus on such related employment issues as trade between Indian reservations and Japan or Europe. The idea is to identify those problem areas that require new policy attention, better programmatic effort, or enhanced coordination with other Federal programs like the Minority Business Development Administration of the Department of Commerce and small business development programs of the Small Business Administration.

We are also very concerned that basic BIA programs be better targeted to reach Indian women. Indian women-owned businesses, for example, can be encouraged more often through start-up grants and guaranteed loans. BIA social service, drug and alcohol abuse prevention, and child protection programs can be enhanced and improved.

#### INVISIBLE WOMEN

Due mainly to their strong cultural traditions, it is often difficult to determine the impact of these Federal efforts on the living standards of Indian women and their families. Indian women remain an enigma to most of us. In Santa Fe, NM, we can see the famous scenes of Indian women at the Palace of the Governor selling their famous pots and jewelry. At pueblo feast days and public dances we are impressed by their elaborate dress and serene dancing styles. These women clearly have a strong presence and influence in the daily lives of New Mexico Pueblo, Navajo, and Apache tribes of New Mexico.

Yet, there remains the fact that we have a difficult time identifying many of the indicators of social well-being for Indian women precisely because the contributions of Indian women remain undervalued and overlooked in the policies and programs of the Bureau of Indian Affairs and other Federal agencies with programs designed to help all Indian people.

As the National Advisory Council on Women's Educational Program once observed:

To date there has been no specific Federal recognition of the special educational and training needs of Indian women and girls. As a result, Indian women are often relegated to position which do not reflect their capacity

and potential contribution not only to tribal governments but to the general society.

Elsie Zion of the Women Studies Program at the University of New Mexico, who I quoted above, has searched for statistics to back her observations. Indians, she concludes, "fall at the very bottom of indicators of status and well-being."

Elsie is skeptical that the "Great White Father"—in the form of the BIA—will actually help Indian women. That is one reason this office is designed to reach out into the reservations themselves to encourage female participation in the forming and implementation of BIA policy and programs.

Wherever key Federal policies exist that directly impact on the social conditions of Indian women, the BIA Office of Women and Families can have a policy impact, and hence a direct impact on the lives of Indian women and families who could be or should be participating.

#### INDIAN CHILDREN AND YOUTH IN DISTRESS

The Indian Child Welfare Act (P.L. 95-608) and the Indian Child Protection Act (P.L. 101-630) are two good recent examples of Congressional attempts to improve conditions for young Indians. The Child Welfare Act creates a grant system to tribes for child and family service programs to prevent the break-up of Indian families and provide for the protection of Indian children. The Child Protection Act is designed to protect Indian children from family violence or abuse by bureau or tribal contract employees. Background checks, a reporting system and other child protective services are mandated by the act.

The Director and the Policy Task Force of the proposed Office of Women and Families could help refine the reporting systems to assure solid measurement of progress made to minimize abuse or violence to Indian children and youth. If the proposed system is found to be adequate, the results will certainly help in the annual reports to the Congress on the well-being of Indian families as measured by the increased safety factors required by these acts.

Other problems of young Indians can also be identified and reported. Substance abuse, alcoholism, school dropout rates or teenage pregnancy are examples of additional indicators to be monitored by the new Office of Women and Families. Summer youth employment and vocational education potential are examples of other Department of Labor and BIA programs available to young Indians to enhance their potential and minimize problems like substance abuse and school drop-outs.

#### BACKGROUND ON FEDERAL PROGRAMS FOR AMERICAN INDIANS

Mr. President, the Federal Government has wide-ranging policies and programs intended to improve the living conditions on some 250 Indian reservations and about 300 Native Alaskan

villages. These programs include education, health care, business development, housing, job training, tribal government, transportation, law enforcement, and social services. Several Federal departments and agencies are primarily involved in the delivery of services to Native Americans—Interior, Health and Human Services, Housing and Urban Development, Labor, and Education.

The two major providers of services to Native Americans are the Indian Health Service of the Public Health Service in the Department of Health and Human Services [HHS] and the Bureau of Indian Affairs [BIA] in the Department of Interior. The IHS had a budget of \$2.0 billion in fiscal year 1993; the BIA's budget was \$1.5 billion for the same fiscal year.

Public housing for Indians in the HUD budget was about \$257 million in fiscal year 1993; Labor committed \$84.6 million for job training and summer jobs; HUD's Community Development Program for Indians totalled \$65.4 million; and construction of Indian reservation roads was about \$190 million.

Clearly, there are many Federal Government programs that have direct impact on the daily lives of about 1.959 million Indian people in America—up from 1.42 million in 1980. About half of them live on Indian reservations.

There is also no doubt that Indians lag seriously behind other ethnic groups in several key areas. Overall, they have lower household incomes, higher unemployment and less schooling than the rest of the United States.

Indian birth rates—28.8 per 1,000 population—are almost twice that of the country as a whole—15.9 per 1,000. Prenatal care accompanying live births are lower than the United States as a whole—56.5 percent to 74.2 percent. More Indians die from accidents, alcoholism, diabetes, homicide, and tuberculosis than others in the country as a whole.

Fortunately, the Congress passed and the President signed a bill, the Indian Health Care Improvements Act of 1992, to improve the health programs and policies of the Indian Health Service [IHS], Public Health Service, U.S. Department of Health and Human Services. This act includes my amendment establishing an Office of Indian Women's Health in the IHS.

This new IHS office will certainly enhance and focus the good efforts of the IHS to identify and collect data about the health status of American Indian Women. While there is clearly room for improvement, the IHS is at least aware of the gaps in health care between Indian women and American women as a whole.

Obviously, Mr. President, the policies and programs of the U.S. Government have a greater impact on American Indians than most people realize. Hundreds of treaties and a large body of law define our special government-to-government relationship with Indian tribes. Their special trust status with

our Government also plays a critical role in defining the responsibility of the U.S. Government to American Indians and Alaska Natives.

#### EDUCATION AND EMPLOYMENT

Educational attainment is a key indicator of well-being in America. For American Indian women there is a large lag in high school graduates compared to the population in general. The high school graduation rate for Indian females is about 65.3 percent compared to 74.8 percent for all American women. For college graduates the gap widens considerably. Only 8.6 percent of Indian women graduate from college compared to 17.6 percent for all American women.

Unfortunately employment statistics are hard to get for Indians, and the figures vary greatly. The BIA has often affirmed unemployment rates of 30 percent to 60 percent on many reservations. New Mexico Pueblos often have unemployment rates in the 40 percent to 50 percent range. This data is not readily available by sex. As a key indicator of general well-being, I hope the Office of Women and Families will be able to influence the collection of data regarding employment and unemployment among Indian women and teenagers.

From the 1990 Census we have some encouraging data about Indian-owned businesses in New Mexico. The latest information from the 1990 Census reflects 1987 data. These data show that almost 800 Indian men and almost 500 Indian women own their own businesses. I would like to see this new office encourage more direct assistance to Indian women who are eligible for many BIA and Small Business Administration programs.

#### OFFICE OF INDIAN WOMEN AND CHILDREN

It seems to me, Mr. President, that the Indian women of this country are in a particularly valuable position to offer good advice to our Government about ways to conduct policies and programs that are intended to improve conditions that affect these women and their families. This new office clearly fits within the electorate's demand that our Government carry out its responsibilities with greater efficiency and with clearer purposes.

No one has yet called our national Indian policies a success. It is time to expand our efforts to reach out, in culturally appropriate ways, to solicit their thoughts about improving Federal programs so that a real difference is made in daily reservation life.

In similar ways, young Indians can be included in designing and improving current programs to increase their effectiveness. The American Indian family is a vital structure to strengthen and preserve and we seek to enhance our national policies for their well-being.

Initially, a temporary policy task force would be established to develop a policy paper to articulate a clear set of goals, objectives, management strategies, and monitoring systems for the

improvement of key quality of life indicators for Indian women and families like the ones I have mentioned. There are, of course, many other areas of concern to be identified by the new Office and its related policy task force.

Once articulated, these indicators could tell us about the degree to which Indian women and their families are participating in economic development and benefiting from new job opportunities on Indian reservations. Policymakers and program managers would have better data on educational achievement and needs of Indian children and youth. Health statistics—from the Office of Women's Health at the Indian Health Service—could, for example, tell us how serious alcoholism is among Indian women and what program improvements are needed to enhance treatment.

A Director of the Office of Women and Families would be responsible for integrating the needed changes in the BIA programs and coordinating with other Federal agencies to meet the policy goals and objectives established by the policy task force.

This new office and its related policy mechanisms will have the flexibility to look into such areas as education, health, employment, economic development, housing, social, and other services of the BIA and other relevant Federal programs serving Indian women and families. By focusing on Indian women and families, the work of the BIA and other relevant Federal programs will be enhanced by their participation in the design and improvement of ongoing programs for Indian beneficiaries.

As we prepare to strengthen our democracy and our economy for the 21st century, we must not overlook any potential for a greater America. There is a growing awareness of the need to pay close attention to the inter-relationships between our national strength and the well-being of all women. Key factors are health, education, employment, housing, child care, business potential, and culture.

There is no doubt that Indian women have long been essential to the well-being of Indian people and their families. As we strive to attain new levels of education, health, business involvement, employment, and housing quality for American Indians, we clearly need the ongoing participation and direct involvement of Indian women.

I believe the strong family ties and responsibilities of Indian women can be enhanced by more attention to specific policies and programs now designed generally for American Indians without any special regard for the differing cultural roles and responsibilities of Indian women.

I ask unanimous consent that the Office of Indian Women and Families Act of 1995, be printed in the RECORD.

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

S. 346

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Office of Indian Women and Families Act of 1995".

**SEC. 2. FINDINGS.**

Congress finds that:

(1) The primary responsibilities of the Bureau of Indian Affairs are to encourage and assist Indian people to manage their own affairs under the trust relationship between Indians and the Federal Government, and to facilitate, with maximum involvement of Indian people, full development of their human and natural resource potential.

(2) The Bureau of Indian Affairs coordinates its activities with Indian tribal governments, Federal agencies and departments, and other organizations and groups who share similar interests and programs related to Indians.

(3) Bureau of Indian Affairs policies, programs and projects impact directly and significantly on the lives of America's Indian people.

(4) The unique roles and responsibilities of Indian women contribute culturally, socially, and economically to the well-being of Indian people, but these contributions are often not fully realized and are undervalued and overlooked within the policies, program, and projects of the Bureau of Indian Affairs.

(5) Indian children have special educational and social service needs to prepare them for traditional tribal responsibilities and nontribal social and employment opportunities.

(6) The particular responsibilities, contributions, and needs of Indian women and families can and should be taken into account to improve Bureau of Indian Affairs policy formulation and program operations for the direct benefit of Indian women and families and Indian people as a whole.

(7) Bureau of Indian Affairs policies, programs and projects, including its coordination and liaison with other Federal, State, and local entities, can be more responsive and enhanced when Indian women and families are considered an integral element of the process as well as contributors to the success of these policies, programs, and projects.

(8) There is a need for an Office of Indian Women and Families in the Bureau of Indian Affairs for the purpose of encouraging and promoting the participation and integration of Indian women and families into Bureau of Indian Affairs policies, programs, projects, and activities, thereby improving the effectiveness of its mandate and the status and lives of Indian women and families.

**SEC. 3. PURPOSES.**

The purposes of this Act are:

(1) To identify and integrate the issues related to Indian women and families into all Bureau of Indian Affairs policies, programs, projects, and activities. There will be a special emphasis on the economic well-being of Indian women and families including employment and business opportunities.

(2) To establish an office to serve as a focal point for all Federal Government policy issues affecting Indian women and families for purposes of both economic and social development.

(3) To collect data related to the specific roles, concerns, and needs of Indian women, and Indian families, and use such data to support policy, program, and project implementation throughout all offices of the Bureau of Indian Affairs and other Federal agencies, and to monitor the impacts of these policies, programs and projects.

(4) To enhance the economic and social participation of Indian women and families

in all levels of planning, decisionmaking, and policy development within the Bureau of Indian Affairs, its area offices, and tribal governments and reservations.

(5) To conduct research and collect relevant studies relating to special needs of Indian women and families.

(6) To develop pilot programs and projects to strengthen activities of the Bureau of Indian Affairs involving Indian women and families, and serve as models for future endeavors and planning.

(7) To ensure a liaison with other Federal departments and agencies, State and local governments, tribally controlled community colleges, other academic institutions, any public or private organizations, and tribal governments that serve Indian peoples.

(8) To ensure training endeavors for Bureau of Indian Affairs offices and agencies at the national, area, and local levels to ensure Bureau personnel and any other beneficiaries of Bureau and other governmental programs understand the purposes and policies of the office established by this Act.

(9) To develop policy-level programs, with the assistance of the Assistant Secretary and other senior-level personnel of the Bureau of Indian Affairs, to ensure that systems, directives, management strategies and other related methodologies are implemented to meet the purposes of this Act.

(10) To strengthen the role of Indian women and families by developing and ensuring culturally appropriate policies and programs.

(11) To encourage other actions that serve to more fully integrate Indian women and families as participants in and agents for change in the Federal policy and program activities of the Bureau of Indian Affairs.

**SEC. 4. DEFINITIONS.**

As used in this Act:

(1) The term "Indian woman" means a woman who is a member of an Indian tribe.

(2) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

**SEC. 5. ESTABLISHMENT OF OFFICE OF INDIAN WOMEN AND INDIAN FAMILIES.**

(A) ESTABLISHMENT.—There is established in the Department of the Interior the "Office of Indian Women and Families" (hereinafter referred to as the "Office").

(b) DIRECTOR.—The Office shall be under the management of a director (hereinafter referred to as the "Director"), who shall be appointed by the Assistant Secretary of Indian Affairs. The Director shall report directly to the Assistant Secretary of Indian Affairs.

(c) COMPENSATION.—The Director shall be compensated at the rate prescribed for level IV of the Executive Schedule under section 5313 of title 5, United States Code.

(d) TENURE.—The Director shall serve at the discretion of the Assistant Secretary of Indian Affairs.

(e) VACANCY.—A vacancy in the position of Director shall be filled in the same manner as the original appointment was made.

(f) DUTIES.—The Director shall administer the Office and carry out the purposes and functions of this Act. The Director shall take such action as may be necessary in order to integrate Indian women and family issues into the Bureau of Indian Affairs policies, programs, projects and activities.

**SEC. 6. FUNCTIONS OF OFFICE.**

It shall be the function of the Office to develop a Policy Paper for Indian women and

families to articulate the objectives of the Office, to serve as a guideline for systematically integrating Indian women and families issues into the Bureau of Indian Affairs policies, programs, projects, and activities, and to establish and detail indicators and benchmarks for measuring the success of the Office.

**SEC. 7. POLICY TASK FORCE.**

(a) ESTABLISHMENT OF A POLICY TASK FORCE.—The Director, in consultation with the Assistant Secretary of Indian Affairs, shall establish a temporary policy task force on Indian women and families.

(b) MEMBERSHIP.—Members of the task force shall be appointed by the Director. The task force shall include representatives from Federal agencies and departments, relevant Indian organizations, State agencies and organizations, Indian tribal governments, institutions of higher education, and non-governmental and private sector organizations and institutions.

(c) FUNCTIONS.—The policy task force shall:

(1) Ensure that the Policy Paper for Indian women and families prepared by the Bureau of Indian Affairs articulates a set of goals, objectives, management strategies, and monitoring systems for the improvement of all Federal programs, including programs of the Bureau of Indian Affairs, designed to improve the quality of life of Indian women and families.

(2) Recommend a permanent policy mechanism to be established in the Bureau of Indian Affairs for the continuous monitoring and refinement of policy and programs designed to improve the quality of life of Indian women and families.

(3) Recommend a permanent policy mechanism to be established in the Bureau of Indian Affairs for the purpose of collecting and disseminating to Congress and the public information and other data relevant to the progress of the policy and programs designed to improve the quality of life of Indian women and families.

(d) TERMINATION.—The task force shall terminate upon the expiration of 14 months following the date of the enactment of this Act.

**SEC. 8. ASSISTANT SECRETARY OF INDIAN AFFAIRS.**

The Assistant Secretary of Indian Affairs shall:

(1) Ensure that the Office receives adequate resources to carry out the purposes of this Act.

(2) Ensure that senior-level staff members and other employees of the Bureau of Indian Affairs are participants in and responsible for assisting in carrying out the purposes of this Act relating to the improvement of policies and programs of the Bureau of Indian Affairs.

**SEC. 9. REPORTING.**

The Secretary of the Interior, acting through the Bureau of Indian Affairs, shall, on or before March 15 of each of the 2 calendar years next following the calendar year in which this Act is enacted, and biennially thereafter, report to Congress on the progress of achieving the purposes of this Act. Such report shall include, but not be limited to, information relative to the current status of progress of the Bureau of Indian Affairs' policy on Indian women and Indian families in fulfilling its objectives, programs and projects, including how well the Bureau of Indian Affairs has operationally integrated the issue of Indian women and families into its overall policies, programs, projects and activities. Such report shall include a review of data gathered to assess and improve the quality of life of Indian women

and families, including specific recommendations to improve the education, health, employment, economic, housing, social, and other services within the Bureau of Indian Affairs relating to Indian women and families.

#### SEC. 10. AUTHORIZATIONS.

Commencing with fiscal year 1994, and each fiscal year thereafter, there are authorized to be appropriated for carrying out the provisions of this Act, \$2,000,000.●

By Ms. SNOWE (for herself and Mr. BROWN):

S. 347. A bill to amend the Immigration and Nationality Act to make membership in a terrorist organization a basis of exclusion from the United States; to the Committee on the Judiciary.

#### THE TERRORIST EXCLUSION ACT OF 1995

● Ms. SNOWE. Mr. President, today I am reintroducing legislation I originally drafted and introduced in the last Congress as a Member of the other body. This legislation would deny U.S. visas to known members of terrorist organizations.

Under current law, a visa can be denied to a known member of a terrorist organization only if the United States has compelling evidence that the individual was personally involved in a past terrorist act or if it is known that the person is coming to the United States to conduct such an act. Current law requires extraordinary steps to override the presumption that mere membership in a terrorist group is not grounds for denying a visa. High-level determination is required by the Secretary of State that permitting entry of the individual will be damaging to American foreign policy interests. My legislation will reverse that presumption. Under this bill, a known member of a group that conducts acts of terrorism will be excluded from the United States unless the Secretary of State determines on an individual basis that granting the visa would advance U.S. foreign policy interests.

I discovered this dangerous loophole in our immigration laws last Congress during my investigation of the State Department failures that allowed the radical Egyptian cleric, Sheikh Omar Abdel Rahman, to travel to and reside in the United States since 1990. Sheikh Rahman is the spiritual leader of Egypt's terrorist organization, the Islamic Group. His followers have been convicted for the 1993 bombing of the World Trade Center in New York, and the Sheikh himself is now on trial for his alleged role in planning and approving a second wave of terrorist acts in the New York City area.

Last year, I also found out through the investigation of the senior Senator from Colorado [Mr. BROWN] that the State Department has in the past used this legal loophole to grant a visa to Tunisia's Sheikh Rashid el-Ghanoushi, the convicted leader of the Islamic fundamentalist terrorist organization Ennadha. At this very moment, the State Department is still considering a visa request by Sheikh Ghanoushi. A

letter I received from the State Department on this matter confirmed that they interpret current law to require them to issue a visa to Ghanoushi—an acknowledged member of a terrorist organization—unless they can prove that he personally was involved in a terrorist act. Apparently his conviction in Tunisia for his part in an assassination plot against Tunisia's pro-Western President Ben Ali is not enough. Nor is the fact that he fled his country after his underground Islamic fundamentalist terrorist group launched violent attacks against the Government. Nor, apparently, do his virulently anti-Western and anti-Israeli statements have any relevance to the visa decisions, as far as the State Department is concerned.

Mr. President, after the recent rash of terrorist bombings in Israel, Argentina, Panama, and Britain, many countries are waking up to their vulnerability to terrorists. As reported in the July 28, 1994 Christian Science Monitor, the British Parliament is considering enacting legislation similar to this bill. Furthermore, this fall, the Anti-Defamation League—an organization whose very purpose is to protect the civil and religious liberties of all Americans—also included my bill in their proposed legislative package on terrorism.

It is well known that many foreign terrorist organizations depend on money raised in the United States for a major portion of their funding. There are also disturbing indications that many of these organizations are working to develop networks of members and supporters in our own country. Last week, the administration took the useful step of freezing the U.S. assets of certain terrorist organizations working against the peace process in the Middle East. But this action needs to be strengthened by also slamming the door on members of terrorist organizations who continue to travel freely to and within our country unfettered by our visa laws.

Mr. President, I am confident that in the Senate this matter will receive the kind of fair treatment here that it deserves. I also note and welcome recent statements by the administration claiming that it too is now taking the terrorism issue seriously. After finding no need for my legislation last Congress, on January 20, 1995, the Secretary of State gave a speech at Harvard University in which he announced that the administration was going to strengthen its efforts against international terrorism. He specifically stated, "we will toughen standards for obtaining visas for international criminals to gain entry to this country." I hope this means that the administration is finally willing to support legislation needed to accomplish this goal.

The urgency of passing the Terrorist Exclusion Act comes from the sad truth that every day American lives continue to be put at risk out of deference to some imagined first amend-

ment rights of foreign terrorists. This is an extreme misinterpretation of our cherished Bill of Rights, which the founders of our great nation intended to protect the liberties of all Americans. In my reading of the U.S. Constitution I see much about the protection of the safety and welfare of Americans, but nothing about protecting the rights of foreign terrorists to travel freely to the United States whenever they choose.

Mr. President, I hope that this issue will be addressed swiftly by the 104th Congress. I hope that we do not put off its consideration yet again, only to have the issue suddenly reappear in reaction to what might have been an avoidable loss of American lives.●

By Mr. NICKLES (for himself, Mr. DOLE, Mr. BOND, Mrs. HUTCHINSON, Mr. MCCONNELL, and Mr. LOTT):

S. 348. A bill to provide for a review by the Congress of rules promulgated by agencies, and for other purposes; to the Committee on Governmental Affairs.

#### THE REGULATORY OVERSIGHT ACT

● Mr. NICKLES. Mr. President, I am introducing legislation to provide for a 45-day layover of Federal regulations to permit Congress to review and, potentially, reject regulations before they become final.

The Regulatory Oversight Act will improve the opportunity for Congress to ensure Federal agencies are properly carrying out congressional intent. All too often agencies issue regulations which go beyond the sense of reason.

This act provides a 45-day period following publication of a final rule before that rule may become effective. This 45-day period will provide Congress with an opportunity to review the rule and enact, if it so chooses, a joint resolution of disapproval on a fast-track basis.

Significant final rules, which the act defines as final rules that increase compliance costs on State, local, and tribal governments and the private sector of at least \$100 million in any year may not take effect until at least 45 days after the rule is published. This is the same threshold in the unfunded mandates bill. Under current law, most rules already are delayed by 30 days pending the filing of an appeal. The delay of 45 days is provided in this act to avoid economic uncertainties and harm from these very large and burdensome rules during the congressional review period.

Final regulations addressing threats to imminent health or safety, or other emergencies, criminal law enforcement, or matters of national security, could be exempted by Executive order from the postponement of the effective date provided in the bill. However, a joint resolution of disapproval would still be eligible for fast-track consideration.

Although a joint resolution may be introduced by any Member of Congress,

the fast-track process for floor consideration of the joint resolution of disapproval is only available under two conditions: First, if the authorizing committee reports out the resolution; or second, if the majority leader of either House of Congress discharges the committee. The joint resolution, if passed by both Houses, would be subject to a Presidential veto and, in turn, a possible veto override.

In reality, perhaps only a few regulations will be rejected by this process. But by providing a mechanism to hold Federal agencies accountable before it is too late, the Regulatory Oversight Act makes an important contribution to the critical regulatory reform effort.

At this time I would like to ask unanimous consent that a detailed summary and the text of the Regulatory Oversight Act to be printed in the RECORD.

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

S. 348

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

#### SECTION 1. CONGRESSIONAL REVIEW OF RULES.

(a) **SHORT TITLE.**—This Act may be cited as the “Regulatory Oversight Act of 1995”.

(b) **IN GENERAL.**—Chapter 5 of title 5, United States Code, is amended by inserting after section 553 the following new section:

##### “§ 553a. Congressional review of rules

“(a) For purposes of this section the term ‘significant rule’ means any rule that may have an annual effect on the economy of \$100,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

“(b)(1) Before a rule takes effect as a final rule, the agency promulgating such rule shall submit to the Congress a report containing—

“(A) a copy of the rule;

“(B) a concise general statement relating to the rule;

“(C) the proposed effective date of the rule; and

“(D) a complete copy of the cost benefit analysis of the rule, if any.

“(2) A significant rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

“(A) the later of the date occurring 45 days after the date on which—

“(i) the Congress receives the report submitted under paragraph (1); or

“(ii) the rule is published in the Federal Register;

“(B) if the Congress passes a joint resolution of disapproval described under subsection (h) relating to the rule, and the President signs a veto of such resolution, the earlier date—

“(i) on which either House of Congress votes and fails to override the veto of the President; or

“(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

“(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under subsection (h) is enacted).

“(3) Except for a significant rule, a rule shall take effect as otherwise provided by

law after submission to Congress under paragraph (1).

“(c) A rule shall not take effect as a final rule, if the Congress passes a joint resolution of disapproval described under subsection (h).

“(d)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this section may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

“(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

“(A) necessary because of an imminent threat to health or safety or other emergency;

“(B) necessary for the enforcement of criminal laws; or

“(C) necessary for national security.

“(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under subsection (h) or the effect of a joint resolution of disapproval under this section.

“(4) This subsection and an Executive order issued by the President under this subsection shall not be subject to judicial review by a court of the United States.

“(e)(1) The provisions of subsection (h) shall apply to any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes.

“(2) For purposes of subsection (h), a rule described under paragraph (1) shall be treated as though such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date the succeeding Congress first convenes.

“(3) During the period beginning on the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, a rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law.

“(f) Any rule that takes effect and later is made of no force or effect by the enactment of a joint resolution under subsection (h) shall be treated as though such rule had never taken effect.

“(g) If the Congress does not enact a joint resolution of disapproval under subsection (h), no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

“(h)(1) For purposes of this subsection, the term ‘joint resolution’ means only a joint resolution introduced after the date on which the report referred to in subsection (b) is received by Congress the matter after the resolving clause of which is as follows: ‘That Congress disapproves the rule submitted by the \_\_\_\_\_ relating to \_\_\_\_\_, and such rule shall have no force or effect. (The blank spaces being appropriately filled in.)’

“(2)(A) A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

“(B) For purposes of this subsection the term ‘submission or publication date’ means the later of the date on which—

“(i) the Congress receives the report submitted under subsection (b)(1); or

“(ii) the rule is published in the Federal Register.

“(3) If the committee to which is referred a resolution described in paragraph (1) has

not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under paragraph (2)(B), such committee may be discharged by the Majority Leader of the Senate or the Majority Leader of the House of Representatives, as the case may be, from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

“(4)(A) When the committee to which a resolution is referred has reported, or when a committee is discharged (under paragraph (3)) from further consideration of, a resolution described in paragraph (1), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

“(B) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

“(C) Immediately following the conclusion of the debate on a resolution described in paragraph (1), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

“(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

“(5) If, before the passage by one House of a resolution of that House described in paragraph (1), that House receives from the other House a resolution described in paragraph (1), then the following procedures shall apply:

“(A) The resolution of the other House shall not be referred to a committee.

“(B) With respect to a resolution described in paragraph (1) of the House receiving the resolution—

“(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

“(ii) the vote on final passage shall be on the resolution of the other House.

“(6) This subsection is enacted by Congress—

“(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in

the case of a resolution described in paragraph (1), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.”.

(C) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by inserting after the item relating to section 553 the following:

“553a. Congressional review of rules.”.

(d) EFFECTIVE DATE.—This Act shall take effect on the date of the enactment of this Act and shall apply to any significant rule that takes effect as a final rule on or after such effective date.

#### THE REGULATORY OVERSIGHT ACT OF 1995

A bill to amend the Administrative Procedures Act to provide for a 45-day period during which the Congress may enact a joint resolution of disapproval under a “fact track” procedure.

Provides a 45-day period after publication of any final rule by a federal agency, during which the Congress has an opportunity to review the rule and, if it chooses, enact a joint resolution of disapproval on a fast-track basis. The joint resolution of disapproval would declare that the rule has no force or effect.

The joint resolution of disapproval may be vetoed by the President, and Congress has the opportunity to override the veto.

Upon issuing a final rule, a federal agency must send to Congress a report containing a copy of the rule and the complete cost/benefit analysis, if any, prepared for the rule. The 45-day period for congressional review would begin on the date the Congress receives the agency’s report on the rule, or on the date the final rule is published in the *Federal Register*, whichever is later. Any Senator or Representative may introduce a resolution of disapproval, which will be referred to the committees of jurisdiction.

Congress will have 45 days to review final rules and consider a resolution of disapproval, under the expedited procedures established in this Act. All final rules that are published less than 60 days before a Congress adjourns sine die, or that are published during sine die adjournment, shall be eligible for review and “fast track” disapproval procedures for 45 days beginning on the date the new Congress convenes.

If the committee of jurisdiction has not reported the resolution of disapproval within 20 calendar days from the date the rule is published in the *Federal Register*, the Majority Leader of the Senate and the Majority Leader of the House of Representatives, respectively, may discharge the committee(s) and place the resolution of disapproval directly on the Calendar.

Once the resolution of disapproval is placed on the Calendar by the appropriate committee or by the Majority Leader, any senator may make a motion to proceed to the resolution. The motion to proceed is privileged and is not debatable. Once the Senate has voted to proceed to the resolution of disapproval, debate on the resolution of disapproval is limited to ten hours, equally divided, with no motions (other than motion to further limit debate) or amendments in order. If the resolution passes one body, it is eligible for immediate consideration on the Floor of the other body.

“Significant” final rules, which the Act defines as final rules that have an economic ef-

fect on State, local, and tribal governments and the private sector of at least \$100 million in any year, may not take effect until at least 45 days after the rule is published. However, “significant” final regulations addressing imminent threats to health and safety, or other emergencies, criminal law enforcement, or matters of national security, may be exempted by Executive Order from the 45-day minimum delay in the effective date. The decision by the President to exempt any significant final rule from the delay is not subject to judicial review. Under current law, most rules already are delayed by 30 days pending the filing of an appeal. The delay of 45 days is provided in this Act to avoid economic uncertainties and harm from these very large and burdensome rules during the congressional review period.

The effective date of the “significant” final rule would not go into effect after the 45-day period if the resolution of disapproval has passed both Houses within that time. If the joint resolution of disapproval is vetoed, the effective date of the final rule will continue to be postponed until 30 legislative days have passed after the veto, or the date on which either House fails to override the veto, whichever is earlier.

Generally, judicially-ordered deadlines would still apply to the dates agencies must issue the final rule, but would not apply to the 45-day postponement of the effective date for “significant” rules.●

By Mr. MCCAIN (for himself and Mr. KYL):

S. 349. A bill to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program; to the Committee on Indian Affairs.

#### THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM REAUTHORIZATION ACT

● Mr. MCCAIN. Mr. President, today I am introducing a bill to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program. I am pleased that Senator KYL has joined me on this bill as an original cosponsor.

I believe that most of my colleagues have at least some familiarity with the tragic land disputes which have divided the Navajo and Hopi Tribes for more than a century. In 1974 the Congress acted to try to bring about a resolution of those disputes through a partition of the disputed lands and the relocation of the members of each tribe from the lands partitioned to the other tribe. This has proven to be a difficult and contentious process and the original Settlement Act has been amended twice to try to resolve problems which arose in its implementation.

Since the enactment of the Settlement Act, 4,432 Navajo and Hopi families have applied for relocation benefits. Of those, 3,255 have been certified eligible and 11,177 have been denied benefits. Of those who were denied benefits, 223 are engaged in active appeals. A total of 2,434 families had been relocated as of the end of 1994 and 544 eligible families were awaiting their benefits.

Most of the 544 families still awaiting benefits long ago complied with the law and voluntarily left their homes which are located on lands partitioned to the other tribe. Unfortunately, the pace of the relocation housing program

has been such that on average fewer than 200 eligible families are served in each calendar year.

The bill we are introducing today will provide 2 more years of authority for appropriations for the relocation housing program. It is my understanding that Office of Navajo and Hopi Indian Relocation is in the process of preparing a report for the appropriations committees which will provide information on the amount of funding necessary to complete the relocation program and an estimate of the time this will take. I look forward to reviewing that report. I also look forward to the hearing on this bill because it will provide an opportunity for the Committee on Indian Affairs to evaluate the relocation housing program to ensure that it is being operated as fairly and efficiently as possible.

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

There being no objection, the bill was ordered to be printed in the RECORD.

S. 349

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

#### SECTION 1. REAUTHORIZATION OF APPROPRIATIONS FOR THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM.

Section 25(a)(8) of Public Law 93-531 (25 U.S.C. 640d-24(a)(8)) is amended by striking “1989,” and all that follows through “and 1995.” and inserting “1995, 1996, and 1997.”●

By Mr. BOND:

S. 350. A bill to amend chapter 6 of title 5, United States Code, to modify the judiciary review of regulatory flexibility analyses, and for other purposes; to the Committee on the Judiciary.

#### REGULATORY FLEXIBILITY AMENDMENTS ACT

● Mr. BOND. Mr. President, today I am introducing the Regulatory Flexibility Amendments Act of 1995. The Regulatory Flexibility Act is of paramount importance to the 21 million U.S. small businesses. Small businesses employ 54 percent of the U.S. work force, account for 44 percent of all sales, and generate 39 percent of our gross domestic product.

Government regulations place extraordinary burdens on small businesses, and the result is to hinder their ability to compete at home and in the global marketplace. However, the Regulatory Flexibility Act, Reg Flex Act, if properly implemented and appropriately strengthened, can help ease the regulatory burdens on small businesses. I am very pleased the small business community endorses my bill. Furthermore, President Clinton has expressed his strong support for judicial review to permit small businesses to challenge Federal agencies under the Reg Flex Act.

#### THE REGULATORY FLEXIBILITY ACT

The Reg Flex Act is based on two premises. First, Federal departments and agencies often do not recognize the impact of rules on small businesses.

Second, small businesses are disproportionately affected by Federal regulations compared to their larger counterparts.

The Reg Flex Act was enacted to reduce, where appropriate, the impact of Federal regulations on small business. The Reg Flex Act requires Federal agencies to assess the impact of their proposals on small businesses. Agencies have two options under the statute—performing a regulatory flexibility analysis or issuing a certification.

An agency certifies a rule if it determines the rule will not have a significant economic impact on a substantial number of small businesses. The certification must be announced in the Federal Register and must be accompanied by "a succinct statement explaining the reasons for such certification." Boilerplate statements that the rule will not have such an effect are inadequate under the Reg Flex Act.

An agency assessment that reveals the rule will have a significant economic impact on a substantial number of small businesses requires the agency to prepare a regulatory flexibility analysis. The analysis must contain: a description of the reasons why the action is being considered; a succinct statement of the objectives of and legal basis for the action; a description and estimate of the number of small businesses affected by the agency action; a detailed description of the reporting, recordkeeping, and other compliance requirements with special attention to the affected small businesses; and any duplicative Federal regulations.

Additionally, the analysis must describe and examine significant alternatives to the proposed rule which can accomplish the objectives of the agency, but which minimize the economic impact on small businesses. Significant alternatives may include but are not limited to: First establishment of differing compliance or reporting requirements that take into account the resources available to small businesses; second, the use of performance rather than design standards; and third, exemptions of small businesses from all or part of the rule. When an agency promulgates a final rule under section 553 of the Reg Flex Act, it must explain why it did not adopt other alternatives to minimize the effects on small businesses which were presented to the agency during the rulemaking process.

#### WHY AMEND THE REG FLEX ACT?

Unfortunately, too many Federal regulators fail to exercise their responsibilities under the Reg Flex Act. When government agencies fail to comply with the act, they impose significant and burdensome requirements on small businesses and thereby threaten their viability. All too often, these agencies view the act as nothing more than another procedural impediment to the adoption of a particular rule. As a result, agencies issue boilerplate certifications without performing the underlying assessment of impacts on small businesses required by the Reg Flex

Act. As long as Federal departments and agencies continue to act in this manner, small businesses will be the big losers.

#### MEANS TO STRENGTHEN AGENCY COMPLIANCE WITH THE REG FLEX ACT

My Regulatory Flexibility Act Amendment has one critical element: repeal the prohibition against judicial review.

The Reg Flex Act requires Federal departments and agencies to consider the impact of their actions on small businesses. However, in 1980, the authors of the act were concerned a litigation explosion might result under this law. The rationale being that businesses would attempt to delay the implementation of regulations through court action. To prevent this problem, the sponsors included a provision excluding separate judicial challenges to agency compliance with the Reg Flex Act.

Today, we realize it is highly unlikely there would be a flood of litigation if judicial review is permitted under the Reg Flex Act. The fact is, most small businesses do not have the financial resources to bring frivolous, unfounded lawsuits. However, my bill will insure that small business have the opportunity to challenge regulators who attempt to avoid the Reg Flex Act. As a consequence, my colleagues should not be fooled by the "red herring" of a threat of litigation explosion.

The ability of agencies to ignore their responsibilities under the Reg Flex Act is enhanced by the conspicuous absence of judicial review under the act. Without judicial review, compliance rests upon each agency's voluntary commitment to utilize the Reg Flex Act in its quest for rational rulemaking mandated by the Administrative Procedure Act [APA].

Small businesses do not need voluntary commitments, they need concrete action. The primary means to accomplish mandatory compliance will be to authorize small businesses hurt by an agency's failure to comply with the Reg Flex Act to challenge that agency in federal court. That is what my bill does.

#### CONCLUSION

Mr. President, the Regulatory Flexibility Amendments Act of 1995 will help curtail excessive regulation by Government bureaucrats. Furthermore, it will add teeth to the Reg Flex Act and give small businesses a legal means for countering continued violations of the act. The Reg Flex Act, if properly implemented and appropriately strengthened, can help ease the regulatory burdens on small businesses. Regulatory relief will create greater opportunities for small businesses, more jobs for American workers, and will expand the U.S. economy.

I urge my colleagues to support this reform of the Reg Flex Act. ●

#### ADDITIONAL COSPONSORS

S. 47

At the request of Mr. SARBANES, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 47, a bill to amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, and for other purposes.

S. 50

At the request of Mr. LOTT, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 50, a bill to repeal the increase in tax on social security benefits.

S. 205

At the request of Mrs. BOXER, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 205, a bill to amend title 37, United States Code, to revise and expand the prohibition on accrual of pay and allowances by members of the Armed Forces who are confined pending dishonorable discharge.

S. 219

At the request of Mr. NICKLES, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 219, a bill to ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes.

S. 233

At the request of Mr. MCCAIN, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 233, a bill to provide for the termination of reporting requirements of certain executive reports submitted to the Congress, and for other purposes.

S. 241

At the request of Mr. D'AMATO, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 241, a bill to increase the penalties for sexual exploitation of children, and for other purposes.

S. 256

At the request of Mr. DOLE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 326

At the request of Mr. HATFIELD, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 326, a bill to prohibit U.S. military assistance and arms transfers to foreign governments that are undemocratic, do not adequately protect human rights, are engaged in acts of armed aggression, or are not fully participating in the United Nations Register of Conventional Arms.