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Senate

(Legislative day of Monday, June 19, 1995)

The Senate met at 8:40 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Let us pray:

Gracious Lord, we begin the work of this day with awe and wonder. You have chosen and called us to know, love, and serve You. Through the years You have honed the intellect, talent, and ability You have entrusted to each of us. With providential care You have opened doors of opportunity, education, culture, and experience. Most important of all, You have shown us that daily You are ready and willing to equip us with supernatural power through the anointing of our minds with the gifts of Your Spirit: wisdom, knowledge, discernment, and vision of Your priorities.

When we ask You, You reveal Your truth and give us insight on how to apply it to specific decisions before us. We say with the Psalmist, ''In the day when I cried out, You answered me, and made me bold with strength in my soul.''—Psalm 138:3.

We thank You that in a time of restless relativism and easy equivocation, You make us leaders who are intrepidly bold in the fecklessness of our time. Now, as the Senators press on to the votes and responsibilities of this day continue to give them the boldness of Your strength in their souls, manifested in conviction and courage. In Your holy name. Amen.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

PRIVATE SECURITIES LITIGATION REFORM ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 240, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 240) to amend the Securities and Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the act.

The Senate resumed consideration of the bill.

Pending:

Boxer amendment No. 1480, to exclude insider traders who benefit from false or misleading forward looking statements from safe harbor protection.

Specter amendment No. 1483, to provide for sanctions for abuse litigation.

Specter amendment No. 1484, to provide for a stay of discovery in certain circumstances.

Specter amendment No. 1485, to clarify the standard plaintiffs must meet in specifying the defendant's state of mind in private securities litigation.

Mr. D'AMATO. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Without objection, it is so ordered.

VOTE ON AMENDMENT NO. 1483

Mr. D'AMATO. Mr. President, I move to table the Specter amendment, numbered 1483, and I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDENT pro tempore. The question is on agreeing to the motion to table the amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

Mr. LOTT. I announce that the Senator from Mississippi [Mr. COCHRAN] and the Senator from Kansas [Mrs. KASSEBAUM] are necessarily absent.

Mr. FORD. I announce that the Senator from Louisiana [Mr. JOHNSTON] and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

The result was announced—yeas 57, nays 38, as follows:

[Rollcall Vote No. 291 Leg.]

YEAS—57

Abraham	Feinstein	McCain
Ashcroft	Ford	McConnell
Bennett	Frist	Mikulski
Breaux	Gorton	Murkowski
Brown	Gramm	Murray
Burns	Grams	Nickles
Campbell	Grassley	Nunn
Chafee	Gregg	Pressler
Coats	Hatfield	Reid
Cohen	Helms	Robb
Conrad	Hollings	Rockefeller
Coverdell	Hutchison	Santorum
Craig	Inhofe	Shelby
D'Amato	Kempthorne	Simpson
Daschle	Kyl	Smith
Dodd	Lieberman	Thomas
Domenici	Lott	Thompson
Exon	Lugar	Thurmond
Faircloth	Mack	Warner

NAYS—38

Akaka	Glenn	Levin
Baucus	Graham	Moseley-Braun
Biden	Harkin	Moynihan
Bingaman	Hatch	Packwood
Boxer	Heflin	Pell
Bradley	Inouye	Roth
Bryan	Jeffords	Sarbanes
Bumpers	Kennedy	Simon
Byrd	Kerrey	Snowe
DeWine	Kerry	Specter
Dole	Kohl	Stevens
Dorgan	Lautenberg	Wellstone
Feingold	Leahy	

ANSWERED ''PRESENT''—1

Bond

NOT VOTING—4

Cochran	Kassebaum
Johnston	Pryor

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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So the motion to table the amendment (No. 1483) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1484

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes for debate equally divided on the second Specter amendment, 1484, to be followed by a vote on the amendment. Who yields time?

Mr. SPECTER. Mr. President, before my 2 minutes commence, may we have order in the Chamber.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, this amendment would leave it to the discretion of the trial judge, as the Federal judges have discretion in all other cases, to decide whether there ought to be discovery after the defense files a motion to dismiss. The judges currently have the full authority to stop discovery if it is inappropriate.

What is happening here, as with many of the other rules changes in the bill, is a wholesale revolution in the way securities cases are handled without having followed any of the usual procedures prescribed by law under which the Supreme Court of the United States establishes the rules after hearings and consideration by advisory committees and recommendation from the Judicial Conference, and without ever having had the Committee on the Judiciary consider these issues.

It is true that there are some frivolous lawsuits which are filed in America today, but we are dealing here with an industry which in 1993 had transactions on the stock exchanges of $3.663 trillion, new issues of $54 billion, and the savings of many small investors and the proverbial widows and orphans at risk.

The Securities and Exchange Commission does not have the resources to handle all the potential violations as enforcement matters. That is why there are private actions. When you take a look at the lawyers' fees, they are a pittance compared to the over $3.6 trillion involved. What is happening here, Mr. President, is we are not throwing the baby out with the bath water. We are throwing out the entire family with the bath water.

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

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, if we are going to talk about the securities industry we should talk about its role in capital formation, in fact the securities industry is an integral part of the American system—and that system is now being ripped off. As a matter of fact, one law firm does handle about 30 percent of all this litigation. They go out and hire plaintiffs, they have lists of plaintiffs to chose from, and then they race to the courthouse.

Let me tell you, once they bring the suit, firms feel they have to surrender. In 93 percent of the cases brought, people give up. Do you know why? Because the average case costs you $6 million to defend; so even if you win you lose.

So the defendants are forced to settle before costs get too high. The people, the small investors get nothing back. The law firm rakes in the settlement. No wonder the lawyers want to keep the system the same.

Now, let me tell you something what this legislation says on staying discovery. When a person makes a motion to dismiss, ''discovery and other proceedings shall be stayed unless the Court finds, upon the motion of any other party, that particularized discovery is necessary to preserve evidence.''

So you can stay discovery unless the court rules against that motion. If you cannot stay discover, however, then they are in there fishing, fishing, fishing, until they find any piece of evidence to force corporate America to give up, to surrender. The little guy is not protected by this process. The interest of a group of entrepreneurial lawyers is advanced. This amendment would continue that system and let those lawyers continue to go out fishing and keep corporate America held hostage. It is about time we freed them.

Mr. President, if all time has been yielded back, I move to table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment No. 1484, offered by the Senator from Pennsylvania, [Mr. SPECTER]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BOND (when his name was called). Present

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 292 Leg.]

YEAS—52

Abraham	Frist	Mack
Ashcroft	Gorton	McConnell
Bennett	Gramm	Mikulski
Breaux	Grams	Moseley-Braun
Brown	Grassley	Murkowski
Burns	Gregg	Murray
Chafee	Harkin	Nickles
Coats	Hatch	Pressler
Coverdell	Hatfield	Pryor
Craig	Helms	Reid
D'Amato	Hutchison	Simpson
Daschle	Inhofe	Smith
Dodd	Johnston	Stevens
Dole	Kempthorne	Thomas
Domenici	Kyl	Thurmond
Faircloth	Lieberman	Warner
Feinstein	Lott	
Ford	Lugar	

NAYS—47

Akaka	Feingold	Moynihan
Baucus	Glenn	Nunn
Biden	Graham	Packwood
Bingaman	Heflin	Pell
Boxer	Hollings	Robb
Bradley	Inouye	Rockefeller
Bryan	Jeffords	Roth
Bumpers	Kassebaum	Santorum
Byrd	Kennedy	Sarbanes
Campbell	Kerrey	Shelby
Cochran	Kerry	Simon
Cohen	Kohl	Snowe
Conrad	Lautenberg	Specter
DeWine	Leahy	Thompson
Dorgan	Levin	Wellstone
Exon	McCain	

ANSWERED ''PRESENT''—1

Bond

So the motion to table the amendment (No. 1484) was agreed to.

Mr. BENNETT. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1485

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes for debate equally divided for the third Specter amendment No. 1485, to be followed by a vote on or in relation to the amendment.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have asked my colleagues to listen to this amendment. In the well of the Senate, I won several votes, finally having received a hearing on the last amendment.

What this amendment does is to accept the very stringent standard of the second circuit on pleading to show state of mind, and then it adds to the legislation the way the second circuit says you can allege the necessary state of mind.

The bill, quite properly, tightens up the pleading standards by establishing the most stringent rule of any circuit. The committee report takes pride and says that the committee does not adopt a new and untested pleading standard but takes the second circuit standard. But then in four lengthy, well-reasoned opinions, the second circuit has said this is how you can allege the required state of mind. They set two ways down to prove it, which I would like to read to you but I do not have time.

All this amendment does is says that when you take the second circuit standard, admittedly stringent, this is how you get it done—not the exclusive way—but the way you get it done. In asking the managers and the proponents of the bill, I have yet to hear any reason advanced why this is not sound, even after they conferred with their staffs.

This is just basic fundamental fairness that if you take the second circuit standard, you ought to take the entire standard, which is very tough on plaintiffs to establish state of mind, which is hard to prove. How do you get into somebody else's head? But at least

when the second circuit says this is the way it ought to be done and the bill says let us make it really tough, at least let the plaintiff know how they are going to be able to plead it by the way the second circuit itself permits.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from New York.

Mr. D'AMATO. Mr. President, I know that the proponents of this legislation are attempting to stop the kind of litigation that has made securities cases a sham. This amendment goes too far, however, because it actually tells the court how to interpret S. 240's pleading standards. S. 240 codifies the second circuit pleading standard, but this amendment goes further, to say precisely what evidence a party may present to show a strong inference of fraudulent intent. I think this straitjackets the court.

Having said that, I could accept referring to the courts interpretation, but I think we are going too far if we adopt the language that the court referred to because it would tie the courts hand by forcing it to ask that plaintiffs prove exactly the delineated facts; alleging facts to show the defendant had both the motive and opportunity to commit fraud and by alleging facts that constitute strong circumstantial evidence.

To be quite candid with you, I think it places too great a burden on the plaintiffs, and I have a difficult time understanding how the Senator from Pennsylvania feels that this would add fairness to this process. We tried to be balanced in setting this standard, that is why we did not straitjacket the court with the language in this amendment.

Mr. President, I am not going to move to table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1485, offered by the Senator from Pennsylvania [Mr. SPECTER]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

The result was announced—yeas 57, nays 42, as follows:

[Rollcall Vote No. 293 Leg.]

YEAS—57

Abraham	Dodd	Kennedy
Akaka	Dorgan	Kerrey
Baucus	Exon	Kerry
Biden	Feingold	Kohl
Boxer	Feinstein	Lautenberg
Bradley	Ford	Leahy
Breaux	Glenn	Levin
Bryan	Graham	Lieberman
Byrd	Heflin	Lugar
Chafee	Hollings	Mack
Cochran	Inouye	McCain
Cohen	Jeffords	Mikulski
Conrad	Johnston	Moseley-Braun
Daschle	Kassebaum	Moynihan
Murray	Robb	Shelby
Nunn	Rockefeller	Simon
Packwood	Roth	Snowe
Pell	Santorum	Specter
Pryor	Sarbanes	Wellstone

NAYS—42

Ashcroft	Faircloth	Kyl
Bennett	Frist	Lott
Bingaman	Gorton	McConnell
Brown	Gramm	Murkowski
Bumpers	Grams	Nickles
Burns	Grassley	Pressler
Campbell	Gregg	Reid
Coats	Harkin	Simpson
Coverdell	Hatch	Smith
Craig	Hatfield	Stevens
D'Amato	Helms	Thomas
DeWine	Hutchison	Thompson
Dole	Inhofe	Thurmond
Domenici	Kempthorne	Warner

ANSWERED ''PRESENT''—1

Bond

So the amendment (No. 1485) was agreed to.

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

Mr. D'AMATO. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1480

The PRESIDING OFFICER. Under the previous order, there will be 7 minutes of debate on the Boxer amendment, with 5 minutes under the control of Senator BOXER and 2 minutes under the control of the Senator from New York, to be followed by a vote on or in relation to the amendment.

Mrs. BOXER. Thank you, Mr. President. My colleagues, I will make this very brief and, I hope, interesting, because I think it is an interesting issue that is raised by the Boxer amendment. This is the last Boxer amendment on this bill, I am happy to say.

I think we have shown in this Chamber we can be very tough on crime. Today I am giving Members a chance to show we can be tough on white-collar crime. I am afraid if we do not adopt this amendment, we are opening the door to insider trading, which could really hurt a lot of small investors.

My amendment simply says that you do not get the benefit of the safe harbor in S. 240 if you are an insider trader who personally profits in connection with the issuance of a false and misleading statement.

Let me show a couple of real examples. Here is the company called Crazy Eddie. Some may remember. What happened here? The insiders bought a lot of the stock, it went up, and at the peak, they started selling it after they made a false and misleading statement: ''We are confident that our market penetration can grow appreciably. Growing evidence of consumer acceptance of the Crazy Eddie name augurs well for continuing growth.'' They get out, and the top officer flees the country with millions of dollars. The CEO is convicted of fraud. Under this bill, the safe harbor would apply to these people.

I will show another quick example. Here is another company, T2 Medical. They said: ''T2 plans to lead the way through the 1990's. We expect steady revenue in earnings growth.'' Then there is a bad report about the company, which they obviously knew because they get out of the stock. It goes down and all the stockholders are left holding the bag.

What we are basically saying is, if you are an insider and you benefit, you should not have the benefit of the safe harbor under this bill.

I want to tell Members what the opponents of my amendment have said. First, they said my definition of insiders is too broad. Nothing could be farther from the truth. It is a boilerplate. It is the corporation, it is the officers, and the board of directors. That is what insiders are.

Then they say, ''But, Senator, you include purchases as well as sales.'' Anyone who follows the stock market knows that insiders often purchase the stock of a company before the false and misleading statement so they can get in at a cheap price.

The last thing they have said is that, ''Gee, this is covered by another statute.'' That is not true. Only if you happen to buy the specific shares that the insider sells you, are you covered in another statute. If you are an ordinary shareholder, a small investor, you get hit, because these guys run away with all the money, the stock, plus you are left holding the bag.

I want to show one article here. If Members are wondering whether insider trading is common now—because we heard about it in the 1980's—let me tell Members about it. Saturday, in the Los Angeles Times, ''Insider-Trading Probes Make a Comeback.'' '''We have more insider-trading investigations now than at any time since the takeover boom in the 1980's,' says Thomas Newkirk, Associate Director of Enforcement for the Securities and Exchange Commission.''

Then I thought this statement by Gary Lynch, who, as chief of enforcement at the SEC in the 1980's, brought about the investigations of Boesky and Milken: ''What's happening now is exactly what everyone predicted back in the '80's: That with the number of high profile cases brought, the incidence of insider trading would decline for a while, but as memories dulled, insider trading would pick up again,'' said Lynch. ''The temptation is too great for people to resist.''

So, insider trading is back. We should not have a safe harbor for these people. Forty-eight Members voted for one of the Sarbanes amendments, which would have taken another look at this safe harbor. It did not pass.

I say to my friends who voted against that, the least those Members can do is narrow the safe harbor for people who profit, who make false and misleading statements. I want to say that again: The only people who would not get the safe harbor in S. 240 under the Boxer amendment are those insiders who personally profit in connection with the issuance of a false and misleading statement.

I urge my colleagues, please stand up against white-collar crime. I think this is a very good amendment Members could be proud to support. I yield the floor.

Mr. D'AMATO. Mr. President, I yield 1½ minutes to the Senator from Utah.

Mr. BENNETT. Mr. President, I hesitate to challenge my friend from California. She has a background as a stockbroker. This is an area where she has great expertise.

I must share with Members my own experience in trying to recruit directors for a company that would become a public company. They said, ''The grief that goes with being a director under the present law is so overwhelming that I simply do not need it. I will not accept appointment as a director.'' The only way we could change their minds was to assure them that we had 20 million dollars' worth of officer and director insurance.

I know from my own experience as a director of a public company that the present law is very stringent and, in my opinion, adequate. I am forbidden, as a director, to buy or sell any securities 30 days prior to a public announcement of our earnings, and, after the announcement has been made, for another 48 hours after that announcement, I cannot enter the market to either buy or sell under the present law.

In my opinion, the present law is sufficient. The kind of people that are being talked about in the article that she offers from the Wall Street Journal are breaking the law now and we do not need the redundancy of the Boxer amendment.

Mr. D'AMATO. Let me say, first of all, insider trading is prohibited by section 10(B) and rule 10b-5 of the Federal securities laws. What this amendment does is destroy the safe harbor, absolutely destroys it. Any small company that pays a director with stock options will be effectively excluded from the safe harbor. All the plaintiff would have to do is allege wrongdoing to bring a suit, which will open up this whole area to continued litigation. This is a carefully crafted amendment which would destroy what we are attempting to do, which is to free corporate America from a group of bandits.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

Mr. FORD. I announce that the Senator from Nevada [Mr. REID] is necessarily absent.

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

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 294 Leg.]

YEAS—56

Abraham	Frist	Lugar
Ashcroft	Gorton	Mack
Baucus	Gramm	McConnell
Bennett	Grams	Murkowski
Bingaman	Grassley	Nickles
Brown	Gregg	Packwood
Burns	Harkin	Pell
Campbell	Hatch	Pressler
Chafee	Hatfield	Roth
Coats	Helms	Santorum
Cochran	Hutchison	Shelby
Coverdell	Inhofe	Simpson
Craig	Jeffords	Smith
D'Amato	Johnston	Stevens
DeWine	Kassebaum	Thomas
Dodd	Kempthorne	Thompson
Dole	Kyl	Thurmond
Domenici	Lieberman	Warner
Faircloth	Lott	

NAYS—42

Akaka	Feinstein	McCain
Biden	Ford	Mikulski
Boxer	Glenn	Moseley-Braun
Bradley	Graham	Moynihan
Breaux	Heflin	Murray
Bryan	Hollings	Nunn
Bumpers	Inouye	Pryor
Byrd	Kennedy	Robb
Cohen	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Simon
Dorgan	Lautenberg	Snowe
Exon	Leahy	Specter
Feingold	Levin	Wellstone

ANSWERED ''PRESENT''—1

Bond

NOT VOTING—1

Reid

So the motion to table the amendment (No. 1480) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

Mr. COHEN. Mr. President, I rise today to express some concerns I have regarding S. 240, the Securities Litigation Reform Act of 1995, as reported by the Banking Committee.

The laudable goal of this legislation has been to reform the Securities Litigation System to curb frivolous lawsuits. I strongly support the goal of deterring meritless securities class action lawsuits and believe that there is room for constructive improvement in the current Federal securities litigation process. In some instances, meritless class action cases can be costly to defend against and may impose large and unnecessary costs on issuers and other participants in the market. In other cases, small investors themselves are taken advantage of by overzealous attorneys.

Nevertheless, in our quest for reform, it is crucial that we do not undermine the right of investors, particularly small investors, to protect themselves against unscrupulous swindlers who use grossly exaggerated claims to lure investors. Private litigation under Federal securities laws is an important complement to the SEC's Enforcement Program. We must not curtail legitimate rights of the investor to litigate.

Over the past several weeks, an intense battle has been waged over the airwaves on the merits and motives of this legislation. At times, these assaults have been aimed not only at the bill's provisions, but at its sponsors as well, with insinuations that supporters of S. 240 are intentionally protecting securities fraud and are against senior citizens. Unfortunately, once again mass media lobbying campaigns have distilled a complex, and I believe earnest, reform effort into a white hat or black hat screenplay, casting any one who supports this branded bill an enemy of senior citizens. Somewhere in this heated debate, I believe that a balance must be achieved that protects the rights of defrauded investors while also providing relief to above board companies who might find themselves the target of meritless or frivolous lawsuits.

Mr. President, as chairman of the Senate Special Committee on Aging, and as a strong advocate of consumer protections against the elderly, I suggest that there can and should be some middle ground. I am extremely concerned about issues that affect the welfare of our senior citizens and, in particular, about fraudulent and abusive practices that are directed against them. The Aging Committee has held a series of hearings on the special needs and issues facing the small, and often unsophisticated, investor. As interest rates declined over the last decade, the quest for higher yields has intensified, particularly among senior citizens who often rely on their investments as a principal means of support. Many of them are low- and middle-income retirees who have worked hard for their pensions, and who must now make these pensions stretch over two or even three decades.

Retirees and others know they can invest in CD's with long periods of maturity, but they are reluctant to tie up their money fearing that they may have to tap into their savings for a major operation, expensive drugs, or some other emergency. As a result, the lucrative securities market became a popular choice for the small, but often financially unsophisticated and inexperienced, investor.

For the first time in American history, investment company assets have surpassed commercial bank deposits. The percentage of U.S. households that own mutual funds has more than quadrupled since 1980, with over 38 million Americans investing in those funds. One out of three American families now have investments in mutual funds or the stock market. While this mass movement into the securities market has provided new opportunities for investors, it has also increased risk, led to a great deal of confusion, and, unfortunately, created opportunities ripe for fraud by securities dealers who misrepresent risks to unsuspecting investors.

Our Aging Committee hearings showed that low interest rates create an environment in which small investors are susceptible to outright investment fraud and abusive sales practices. Senior citizens are not the exclusive prey of these market manipulators, but one factor makes scamming the senior citizen small investor particularly odious: Younger Americans can restore some or all of their losses through new earnings, while seniors' savings are not a renewable resource. Accordingly, scammed seniors living on fixed incomes cannot write their losses off as a lesson learned for the future. Instead, their financial losses may be the loss of their entire future.

Our Aging Committee investigation and hearings revealed a wide range of small investor frauds, from penny stock scams to large mutual fund companies deceptively peddling junk bonds. Our hearings also examined the questionable marketing practices of some banks that sell uninsured investments, such as mutual funds, annuities and stocks. While we should not close the door to banks wanting to sell securities, the hearing pointed out the special dangers and problems that this trend in banking presents, namely that there is tremendous potential for confusion by bank customers about the safety and nature of the investments they are buying. As bank customers are swayed more toward uninsured investments, we must ensure that they are fully informed of the risks inherent in some of these investments and have adequate opportunity to seek redress remedies if they are intentionally misled into these investments.

I cosponsored S. 240 as introduced to indicate my support for securities litigation reform efforts. Frivolous lawsuits have become all too common. I have concerns, however, that the bill reported by the Banking Committee does not strike the appropriate balance between securities litigation reform and investor protection.

First, I question whether the safe harbor provisions of the revised S. 240 may make it very difficult to sue when intentionally misleading information clauses investors to suffer losses. The original S. 240 directed the SEC to develop regulatory safe harbor rules for forward-looking statements. The new version of S. 240, however, establishes statutory safe harbor rules. I am concerned that these rules would unwisely protect even some fraudulent statements that were made knowingly.

I have concerns that the revised version of S. 240 would leave defrauded investors with the nearly insurmountable task of establishing a corporate executive's actual intent, and that a few carefully placed disclaimers could provide a legal protection for misleading statements that were made knowingly.

I believe that the SEC should be given an opportunity to fashion a safe harbor that strikes the proper balance.

Finally, S. 240 as reported dropped the extension of the statute of limitations for private securities fraud actions contained in the original bill. I believe that the extension should have been retained in order to tip the balance of reform more toward investor protections.

I believe that the Banking Committee deserves much credit for addressing some of the major concerns with the original S. 240. The bill before us, for instance, contains no loser-pays provision, a provision of the original bill which caused me concern.

Mr. President, the challenge before us today is to identify ways to make the legal system more balanced and efficient. We must sift through the dueling advertisements and challenges of ''pro-Keating'' and ''antisenior'' on one side and challenges of ''antibusiness'' and ''antireform'' on the other. An appropriate balance between the rights of investors to hold companies responsible for wrongdoing and the need of the companies to be protected from costly, meritless litigation must be achieved.

I believe that the safe harbor rules should be implemented by regulation rather than statute. The regulatory process allows for full and fair comment by all sides to determine appropriate safe harbor rules. Also, once established, regulatory safe harbor rules offer greater flexibility than would statutory ones. In the fast-changing world of investment finance, this flexibility is important.

I wish that S. 240 retained the original safe harbor provision; because it does not, however, I regret that I can no longer support this bill.

Mr. FEINGOLD. Mr. President, the legislation currently before this body, S. 240, the Private Securities Litigation Reform Act of 1995, is very important for two reasons. First, what it seeks to achieve and second, what in actuality it will achieve if passed in its current form.

One of the stated purposes of this legislation is to curb abusive lawsuits—so-called strike suits where lawyers seek to get rich quick by preying on a company which suffers a loss in value. That is what this legislation seeks to do and no one can quarrel with this goal. The interests of the American people and the integrity of the American legal system are not served by meritless lawsuits which drain precious resources from our national economy. This is true not just in the context of securities fraud, but also in the areas of product liability, of medical malpractice, in short, in every field of American jurisprudence. Frivolous lawsuits should be discouraged.

However, what this bill will actually do is limit the rights of investors to recover money they lose due to fraud. Unfortunately, as many of colleagues have already pointed out, this legislation fails to properly balance the goal of stopping frivolous lawsuits with the need to preserve the rights of legitimate investors to recover in cases of securities fraud.

It is important to note that the laws this legislation amends, the Securities Act of 1933 and the Securities Exchange Act of 1934, were the direct result of the Great Depression. As the report to S. 240 points out—the goal of these laws was to promote investor confidence in the securities markets. Unfortunately, the legislation we are now considering will erode, not enhance, investor confidence.

I want to touch briefly upon a few areas that I find particularly problematic.

SAFE HARBORS FOR FORWARD LOOKING STATEMENTS

The pending legislation contains a so-called safe harbor provision for forward looking statements. I support the notion that full and candid disclosure regarding the potential of a given company is beneficial, not only to the potential investors but also to the companies involved. Candor, however, should not be confused with fraud. The standard established by S. 240 makes only the most blatantly fraudulent statements subject to liability. The standard of proof is so high that the private plaintiff who actually prevails will be rare indeed.

I might add that the Chairman of the Securities and Exchange Commission, Arthur Levitt, in a letter dated May 25 said in regard to this provision:

> . . . I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection. The scienter standard in the amendment is so high as to preclude all but the most obvious fraud.

It is one thing to protect statements that are made in good faith, without intent to defraud, it is another issue altogether to protect people based upon the standard contained in this legislation.

The appropriate approach, ironically the approach contained in the original bill, is to allow the SEC to complete the rulemaking process—to review comments and testimony—and determine the proper scope of the safe harbor. Unfortunately, this commonsense approach has given way to an expansive exemption for all but the most egregious statements. This is unfortunate. While we clearly want to protect companies from being dragged into court over every comment or remark they make, we do not and should not protect those who engage in fraud at the expense of innocent investors.

This is not an either-or proposition. The language of S. 240 seems to suggest that the only way to truly protect the company is to also limit the rights of investors.

I suggest this is far from the truth. The original S. 240 contained the proper approach. We should return this function to the SEC, let them do their work and adopt guidelines for a safe harbor which protects companies and investors, but not those who deal in fraud. The purpose of this legislation is to eliminate fraudulent behavior, not to protect it.

STATUTE OF LIMITATIONS

Another area of this legislation which does a disservice to the millions of Americans who invest in securities is the failure to extend the statute of limitations from bringing an action based upon securities fraud.

Under existing law, as a result of a U.S. Supreme Court ruling in Lempf versus Gilbertson, the prevailing statute of limitations is 1 year from discovery of the violation or no more than 3 years from the date of the violation. This period is far too short. The complexity of these cases necessitates an extension of this limitation.

Once again, S. 240 had the proper solution when it was introduced, yet as reported, the bill sustains the woefully inadequate status quo. The original bill extended the statute of limitations to 2 years from the date of discovery and 5 years from the date of violation. The amendment of the Senator from Nevada, Senator BRYAN, would have adopted this equitable standard.

With the exception of criminal offenses, all causes of action in the American legal system are subject to a statute of limitations. The theory being that while we want to give plaintiffs an adequate opportunity to recover, people should not live forever under the threat of litigation. The Bryan amendment recognized this and would have achieved that important balance.

The current statute of limitations goes beyond being fair to potential defendants. In fact, as Chairman Levitt pointed out in testimony, the current statute of limitations rewards those perpetrators who conceal their fraud for only 3 years.

I might also note, that in regard to those handful of attorneys who thrive on frivolous litigation, the statute of limitations is of little concern.

If, as we have heard during this debate, attorneys simply scan the newspapers looking for companies reporting bad news, then fill in the blanks on their boiler plate complaints and rush to the courthouse within days of the news reports, what difference does the statute of limitations make?

But for the innocent investor, who is saving for retirement, or to put children through college, or maybe just trying to live a little better life, it may mean the loss of a lifetime of hard work and savings. The failure to extend the statute of limitations will result in legitimate plaintiffs, through no fault of their own, being foreclosed from any recovery. The statute of limitations does matter to the average American investor—it matters a great deal.

AIDING AND ABETTING

One final area that I want to touch upon is the liability of aiders and abetters, those lawyers, accountants and other professionals who assist primary wrongdoers in committing securities fraud. The private cause of action against aider and abettors, is a necessary tool in deterring securities fraud.

Until last year, this private cause of action was available in every circuit in America, provided that the assistance was substantial and had some element of deception or recklessness. However, the Supreme Court eliminated this private right.

Why should aiders and abettors, those people who profit from the fraud, why should they escape culpability? The answer to this question, and it should be obvious to all, is that they should not escape responsibility.

Critics argue that these other professionals work behind the scenes and do not communicate directly with investors—in essence critics argue they are simply doing their jobs on someone elses behalf. Well, in my view there is a vast distinction between vigorously representing your client and perpetuating that client's fraudulent actions.

And that is what we are talking about here—instances where aiders and abettors act recklessly or knowingly in perpetrating fraud. The SEC has been very clear on this issue. Chairman Levitt came to the Senate and indicated that the conduct in question, aiding and abetting, should be deterred and that in light of the Supreme Court's holding, the only effective way to do this is for Congress to act.

I have yet to hear a salient argument as to why a professional—and these are professionals, lawyers, accountants, bankers—who recklessly or knowingly perpetrates a fraud on any investor should escape liability simply because they are not the primary defendant.

CONCLUSION

Mr. President, we have heard from all sides of this debate a constant refrain that we must reign in frivolous lawsuits. I agree with that objective, but the legislation before us is not a balanced approach. It hurts the average American investor, by limiting access to the courts, and limiting the ability to recover money that others have fraudulently taken from them.

I want to commend my colleagues from Maryland, Nevada, and California, as well as my colleague from Alabama for their efforts in improving this legislation. They have offered a number of amendments that could have improved this legislation. The amendments were uniformly rejected—that is regrettable.

This bill is important, and I had hoped that we could end up with legislation which we could all support. However, unless the protection of the average American investor is given greater consideration, I cannot support this legislation.

Mr. KERRY. Mr. President, the legislation the Senate has been considering these past few days has been the subject of intense debate. While the legislation would appear to be rather dry and technical, its effect extends to a wide range of interests. Fraudulent actions by management can destroy an individual investor's retirement nest egg; likewise, a frivolous suit filed against a start-up high-technology company can stop that business dead in its tracks.

Most of us would agree that our goal here is to strike a balance. I have been mindful that there are investors on both sides of the equation, and I have listened carefully to their concerns. I have also spoken with SEC Chairman Arthur Levitt about his agency's concerns and recommendations about enforcing our securities laws.

Me and my staff have met regularly with the high-technology community in Massachusetts on this issue. This sector, which has been the most frequent target of strike suits, is critical to our economic growth and the creation of highly skilled, family-wage jobs. I want this sector to continue to grow and prosper, but frivolous strike suits have a truly chilling effect on start-up high-technology, bio-technology, and other growth businesses. The committee report states: ''small, high-growth businesses—because of the volatility of their stock prices—are particularly vulnerable to securities fraud lawsuits when projections do not materialize.'' Companies in Massachusetts and elsewhere have been hurt, but more importantly the people in those companies—from the CEO's on down—have been hurt by such strike suits.

I can also cite cases where companies in Massachusetts repeatedly misrepresented sales, senior executives had to resign, and some of the companies went bankrupt. In one case a company paid an analyst for a leading national business magazine to publish a favorable report about its projected sales and earnings. Cases remain pending against some of the auditors, so I will not mention names. These fraudulent actions resulted in hundreds if not thousands of investors losing significant amounts, if not all, of their investments. The point is: It is not difficult to find instances of abuse on both sides of the issue.

There is no doubt that this is an extremely complex area of the law, where minor word changes can produce major consequences. For example, directing plaintiffs to plead particular facts demonstrating the state of mind of each defendant at the time the alleged violation occurred seems reasonable to defendants. But for plaintiffs, this standard is more like having to clear a pole vault bar than a high hurdle. I am pleased the committee adopted my amendment regarding the pleadings standard, and believe this example demonstrates the need for careful consideration of the effect of seemingly minor word changes in this area. That is why I believe it is of the utmost importance that we proceed cautiously in amending our Nation's securities laws.

As the committee report notes: ''S. 240 is intended to encourage plaintiffs' lawyers to pursue valid claims for securities fraud and to encourage defendants to fight abusive claims.'' According to some securities litigators, the legislation as presently construed will make it more difficult to pursue

frivolous cases, but not impossible to pursue valid ones, as some have argued during this debate. This legislation should also strengthen the hand of businesses in responding to suits they view as abusive by reducing the incentive they claim the present system imposes upon them for early settlement. If the committee's expectations prove true in practice, then I believe we will have achieved the balance we sought with regard to the initiation of so-called strike suits.

My outstanding concerns with this legislation lie at the conclusion of the process, where it is unclear whether we have achieved a balance comparable to that established at the outset. In light of the limitations on joint and several liability and in aiding and abetting in private actions, I question whether the legislation assures that investors who are victims of fraudulent securities actions will be able to recover all of their losses. Certainly, some of the provisions in the bill will help investors recover a greater share of their losses vis-a-vis the attorneys; however, it is uncertain whether they will be able to recover all their losses, as proponents of the bill claim. Here, it would appear the legislation leans toward protecting proportionately liable defendants rather than toward assuring victims of fraud will recover fully their losses. Unfortunately, the amendments offered on the floor to provide such balance did not prevail.

A title of the legislation that will directly serve investors' interests by requiring early detection and disclosure of fraud is ''Title III—Auditor Disclosure of Corporate Fraud.'' I am proud to have coauthored this title with Representative WYDEN originally as free-standing legislation, S. 630, the Financial Fraud Detection and Disclosure Act of 1993. It places on accountants and company auditors a clear responsibility for early detection and disclosure of illegal actions by management. The provision requires that if an accountant learns of an illegal act that may have a material effect on the company's financial statements, the accountant must inform management, and, if management fails take corrective action, the accountant must inform the board of directors. If the board fails to notify the SEC within 1 day of its notification, and accountant must notify the SEC the following day. Failure to provide this notification will subject the accountant to stiff civil penalties. I believe these clear procedures for early detection and disclosure of fraud by the accountants will serve the interests of both investors and business, and am pleased the committee incorporated this title into the legislation.

The securities litigation reform bill we are about to vote upon is likely to make it more difficult to bring frivolous strike suits, but my preference also would have been to include stronger investor recovery provisions in the sections relating to joint and several liability and aiding and abetting. I was disappointed that amendments on these subjects did not prevail.

On balance, however, this legislation should lead to the creation of a more favorable climate for investors and businesses. Investors should gain better information about the marketplace, more control over securities litigation should they choose to pursue class action suits, and, with the safeguards intended to weed out frivolous suits, investors should also find a climate more conducive to the fullest prosecution of securities fraud cases. A diminished threat of abusive strike suits should strengthen the ability of businesses to raise capital and to provide investors more information. Taken as a whole, therefore, I will support S. 240.

Mr. BIDEN. Mr. President, our securities laws have served this country well for more than 60 years. Remember, the 1933 and 1934 securities acts were borne out of the 1929 stock market crash. Yet, the bill we are debating would topple our well-founded securities laws.

I oppose the so-called Securities Litigation Reform Act—not because I do not think we need some reforms—but, because by supposedly discouraging frivolous lawsuits, this legislation would discourage legitimate suits too.

Let us be honest. Most corporate executives and plaintiff lawyers are responsible. What we should do is target and penalize those who abuse the system. But, we should not close the courthouse door to the many, in an attempt to reform the abuses of the few.

In an effort to fix abuses, this legislation strips safeguards that protect millions of average Americans whose pensions are invested in security plans. The result of which will be to let white collar criminals go free.

I fought for 7 long years in this Chamber to pass a tough, smart, balanced crime bill. And I stood on this floor with my colleagues on both sides of the aisle as we debated who could be tougher on crime.

Yet, here we stand today, debating a bill to give white collar crooks in three-piece suits a free ride. This so-called Private Securities Litigation Reform Act is about white collar crime.

This is about law and order. The financial losses victims suffer can wipe them out.

I realize that securities laws are complex, but the devastating impact of this legislation is simple:

It impacts our senior citizens—with 3 out of 4 seniors relying on investment income to meet some of their day-to-day living expenses.

It impacts police, firefighters, teachers, and labor and automobile union members whose pensions are invested in securities.

Whether you live in a small town or a big city, if you are a small or large investor, this legislation affects you.

I have several major concerns with this legislation. First, investors would have to prove that a corporation made a falsehood with a clear intent to deceive. That's incredibly tough to prove. Under current law, investors must show that unreasonable or reckless predictions of a corporation's performance misled investors. If this bill becomes law, however, companies could get away with making misleading, even fraudulent, statements about their earnings.

Second, accountants, auditors, lawyers, and underwriters are given a free ride—they can escape liability even if they go along with a fraudulent scheme. Some have compared that to giving the driver of a getaway car immunity from prosecution for an armed robbery.

Third, the bill fails to modestly extend the statute of limitations for investment fraud suits, which currently is too short. Instead of a 1- to 3-year statute of limitation, we should give defrauded investors 2 to 5 years. That's reasonable—and it would give victims more time to file suit so that a guilty party does not dodge liability.

Finally, this bill wipes out joint and several liability—leaving crime victims holding an empty bag and unable to get their money back.

We hear a lot of rhetoric about the attack of the vulture lawyers—preying on corporations, stockbrokers, and accountants. But what about vulnerable investors?

Some unfounded lawsuits are filed. Some lawyers do make too much from a suit—leaving defrauded investors too little. But, this massive bill—pushed through with such little examination, without a proper hearing before the Senate Judiciary Committee to assess its impact on our judicial system—is not the answer.

Let us protect the small investor—not let white collar criminals go unpunished. If we pass this bill, mark my words, we will be back here in 2, 3, 4 years undoing it. There will be another Orange County—another huge insider trading scandal—millions of defrauded Americans, parents, hard-working men and women—who will have no recourse and no hope for reimbursement if we let this bill become law.

There is a way to deal with the abuses in securities litigation. I am a cosponsor of a bill introduced by Senators BRYAN and SHELBY, S. 667, the Private Securities Enforcement and Improvements Act of 1995.

In response to the criticism that securities litigation suits are initiated by professional plaintiffs, the Bryan-Shelby bill would require plaintiff class representatives to certify their complaints, outline their interest in the pending litigation, and list any securities suits they might have filed in the prior 12 months.

The Bryan-Shelby bill also would require that multiple securities class actions brought against the same defendant be consolidated and that a lead counsel be agreed upon by the various

plaintiffs, or appointed by the court if no such agreement can be reached.

I believe these new requirements for certification of complaints and the new case management procedures would improve the securities litigation process, without resorting to the extreme measures in the Dodd-Domenici bill, which will shut the courthouse door to millions of valid claims.

The Bryan-Shelby bill also includes a reasonable extension of the statute of limitations for securities liability actions and would restore liability for aiding and abetting if an accountant or lawyer knowingly or recklessly provided substantial assistance to another person in violation of the securities laws.

Mr. President, I commend my colleagues, Senators SARBANES, BRYAN, and BOXER, for leading the effort to improve the Dodd-Domenici bill. Unfortunately, however, we were only able to get a couple amendments approved.

I appreciate my colleagues support—on both sides of the aisle—for my amendment that will maintain a civil RICO action against anyone who has been criminally convicted of securities fraud, thereby tolling the statute of limitations for such a RICO action until the final disposition of the criminal case.

I urge my colleagues to vote against S. 240. To supporters of this bill, I say, OK, you have the Nation's attention now. Let's go back to the drawing board and draft a more reasonable approach based upon the Bryan-Shelby bill to curb the relatively small number of frivolous securities lawsuits without dismantling the entire existing securities litigation process.

Mr. MOYNIHAN. Mr. President, S. 240, the Securities Litigation Reform Act, is intended to deter frivolous securities litigation while protecting the rights of investors to bring legitimate lawsuits. The sponsors of this legislation, arguing that opportunistic attorneys often file these lawsuits after precipitous reductions in stock prices, attempted to strike a delicate balance between these two competing interests.

Unfortunately, the bill fails to strike that balance. The bill would make it too difficult—if not impossible—for small investors to recover losses resulting from securities fraud. S. 240 would establish cumbersome case-filing procedures designed to discourage litigation; shield from liability those who knowingly aid or abet fraudulent schemes; and limit too strictly the liability of those who make misleading or false forward-looking projections of company performance.

While these provisions will deter frivolous lawsuits, they will also discourage meritorious ones. If the amendments offered by Senators SARBANES, BRYAN, and BOXER had been accepted by the Senate, I perhaps could have supported this bill. As it stands, however, this legislation goes too far in protecting corporations and stockbrokers at the expense of small investors. I cannot support it.

Mr. CONRAD. Mr. President, I have reluctantly decided that I cannot vote in support of the version of S. 240 that is in front of us today. As a cosponsor of S. 240, this was a difficult decision. But the changes that have been made in this legislation make this a completely different bill from the version I cosponsored. In my view, this version of S. 240 goes too far and will make it too difficult for innocent investors to recover in legitimate cases of securities fraud.

Mr. President, there is no question that we need to reform the current securities litigation system. Too often when a stock drops suddenly for reasons completely beyond the control of a corporation, the corporation finds itself the subject of a so-called strike suit. These strike suits border on legal extortion: The cost of defending the suit and the risk of huge damages create a strong incentive to settle the case even when the corporation has done nothing wrong. Moreover, these suits have targeted not just the corporation whose stock has dropped, but also the accountants, lawyers and others who participated in the preparation of documents for the Securities and Exchange Commission and the public. These businesses, which often played only a marginal role in the alleged fraud, can nonetheless be held fully liable. Finally, the current system does not serve investors well. In too many cases, lawyers walk away with millions of dollars in legal fees while the plaintiffs whose interests the lawyers are supposed to be serving recover only a small portion of their losses.

In short, the current system does not work. It imposes a burden on entrepreneurial activity and impedes the efficient functioning of our capital markets. As a result, all investors—and the economy as a whole—suffer. That is why I cosponsored S. 240. I wanted to send a strong signal that we need to reform the current system and put an end to frivolous, speculative lawsuits that serve little purpose but to enrich the lawyers who bring them.

At the same time, however, I fully recognize that there are legitimate instances of securities fraud, and we must ensure that we preserve the rights of investors to seek redress in cases of true fraud. We should not protect Charles Keating, Ivan Boesky, or Michael Milken from the investors who lost their life savings as a result of sophisticated swindles. I believed, when I cosponsored S. 240, that it achieved this balance. And I was given assurances that—in a few areas where I thought the bill might go too far in curtailing the rights of investors—modifications would be made to ensure that legitimate suits were fully protected.

Unfortunately, during the Banking Committee markup, S. 240 was significantly changed to the detriment of investors. As reported from the committee, the delicate balance in the original bill was destroyed. Instead of a relatively narrow set of changes targeted directly at frivolous strike suits, the bill that came to the Senate floor contained radical changes that will make it far more difficult to bring any suit, including a legitimate suit where real fraud has occurred.

First, the new version of S. 240 contains a huge expansion of the safe harbor for forward looking statements. S. 240 as introduced directed the SEC to develop an expanded safe harbor to encourage companies to provide more information to the market on their expected future performance. Most observers expected this to result in a relatively modest expansion of the safe harbor. In committee, this provision was amended to provide a statutory safe harbor for forward looking statements unless they are ''knowingly made with the purpose and actual intent of misleading investors.'' SEC Chairman Levitt has expressed the view that this safe harbor will protect knowingly made false, misleading, and fraudulent statements. This will reduce confidence in information and impede the efficiency of capital markets. This is a significant, and potentially dangerous, change from the version of S. 240 I cosponsored. It would make it extremely difficult to prosecute even the most outrageous of statements about expected future performance.

Second, the new version of S. 240 does not contain a necessary, modest expansion of the statute of limitations in securities fraud cases. Pursuant to the Supreme Court's Lampf decision, the statute of limitations in fraud cases is now 1 year from when the fraud was discovered but in no case longer than 3 years from the date the fraud occurred. S. 240 originally proposed to extend the statute of limitations to 2 and 5 years because in sophisticated swindles it may take longer than 1 and 3 years for a fraud to be sufficiently understood to bring suit. This was the most important unambiguously pro-investor provision in the bill. However, during markup this provision was deleted. This is a significant change; it will leave many plaintiffs with strong, legitimate complaints unable to bring suit if a fraud is uncovered too later for them to sue.

Third, the new version of the bill gives control of fraud suits to the biggest investors, virtually excluding small investors from consideration. Under the original bill, the court was required to appoint a plaintiff steering committee that held in aggregate at least 5 percent of the securities involved or securities with a market value of $10 million, whichever is smaller, unless the judge decided a lower threshold was appropriate. This formulation would have allowed a group of small investors to join together to control the lawsuit. But in committee this provision was dropped. In the new version, the court is required to appoint a single lead plaintiff, and there is a presumption that the most adequate plaintiff will be the

class member with the largest financial interest in the case, unless he cannot adequately represent the interests of the class. Unfortunately, in many cases the member with the biggest financial interest will be an institutional investor with interests, for example, holdings of stock in the corporation that are not subject to the suit or strong ties to the board of directors, that may not mirror the interests of most other class members. This provision could lead to significant litigation on whether the presumed most adequate plaintiffs other interests disqualify him and/or to settlements that do not always best serve the interests of the majority of the class members.

Fourth, the new version of the bill for the first time imposes a cap on the damages that an investor can recover. The provision limits damages to no more than the difference between the purchase price of the stock and the value of the security during the 90-day period after information correcting the fraudulent misstatement or omission is made public. Although this may appear reasonable, it creates a strong incentive for the issuer to use the safe harbor for forward-looking statements to puff the stock during this 90-day period and otherwise abuse the system by waiting to correct the misinformation until a stream of positive news can be released simultaneously.

Finally, the new version of S. 240 does not contain a provision restoring liability for aiding and abetting a fraud. In 1994, the Supreme Court ruled that the securities statute does not cover private actions for aiding and abetting. The Chairman of the SEC has testified that aiding and abetting liability should be restored. Although the original version of S. 240 similarly failed to address this issue, when I cosponsored S. 240 it was my understanding that this issue would be addressed before the bill came to the floor. However, the new version of S. 240 restores aiding and abetting liability only for individuals who act knowingly. It does not fully restore liability for other participants in a fraud.

During floor debate, a series of amendments was offered to restore the balance in the original bill. I voted for these amendments. Unfortunately, not one of these important changes was reversed. Thus, the bill that we now have before us remains significantly different from the bill that I cosponsored. In its attempt to root out frivolous lawsuits, this version of the bill will make it far too difficult for small investors to prevail when they have been defrauded by unscrupulous Wall Street dealmakers. I cannot support this unbalanced version of the bill.

It is my hope that the conferees will revisit these issues. We need securities litigation reform, and I would like to vote for a balanced conference report that fixes the many problems in the current system without creating new problems for small investors who have been fleeced by crooks on Wall Street.

Mr. WELLSTONE. Mr. President, today I address my comments once again to the reservations I have regarding an important piece of legislation that by my measuring is moving way too fast through this body, a piece of legislation that I believe may end up hurting legitimately aggrieved citizens; a piece of legislation that, although I believe it is necessary in some form and earnestly want to give it my support, I nonetheless find it difficult to support, given its present form. I am referring, Mr. President, to S. 240.

Mr. President, I have heard the charges—about unethical lawyers looking for deep pockets and hunting for a fast buck, about the tremendous number of meritless suits—some 300—that are filed and settled each year regarding alleged securities fraud. I have had extensive discussions with Minnesota-based companies, many of them new high-technology firms, about the pressing need to plug the legal loopholes that allow companies to be intimidated by unethical attorneys. And I have heard the arguments of my respected colleagues that this bill, S. 240, is the best way to stop such baseless strike suits.

First, with regard to this problem of strike suits, Mr. President, I do not think you will find anyone in this Chamber who believes in their heart that such lawsuits are in any way good for the country. Nobody is arguing on behalf of such behavior. My cautious opposition to this bill—in its present form—should not hide the fact that I consider such actions to be the equivalent of blackmail, and detestable in the extreme.

But Mr. President, there are swindlers and fraudulent securities setups out in the markets, and there are people who are legitimately hurt by such schemes. I have one report that in my State of Minnesota alone over the past decade, more than 25,000 Minnesotans have recovered $28½ million in money that was cheated out of them in stock and securities fraud; $28½ million, Mr. President, and that is just the money that was reportedly recovered. So it certainly would appear to me that in addition to the real problem of the meritless strike suits, there is another real problem—that of ongoing investment fraud.

The task of this bill in my view should be to balance these two needs: To create tighter protections for honest companies who are forced to pay the equivalent of extortion to unethical attorneys, while maintaining the protections that have existed for 60 years for legitimately aggrieved investors.

Does this bill accomplish this delicate balancing act? In my view, no, it does not. It is in my view reckless, not because of how it handles the problem of strike suits, but how it knocks down existing protections for those who have had their savings cheated out of them. One of my colleagues has in fact characterized this bill as addressing ''recklessness''—and I must say that I agree that this bill does deal with recklessness. But I must say that we part company on how and why we reach those conclusions. It is not just the subject of this bill that is recklessness—this bill itself is, by my measurement, reckless in how it turns back 60 years of protections that serve big and small investors alike.

On the surface I admit this bill appears to have very little to do with the average American family. It appears to deal with high-rolling bond salespeople and securities attorneys and CPA's who live and die by the smallest twists and turns of the financial markets. But scratch the surface and who do you find under this bill? Hard-working honest American families, that is who, Mr. President. After all, is it not retirement plans that fuel the economy? Isn't it the typical American family that has provided the capital needed by so many innovative startup firms simply by investing their hard-earned savings in stocks and securities? Is it not this great majority of our country that with $1,000 here, $5,000 there, a pension fund over there, have built the mightiest success stories that make up the American landscape?

Of course it is. But now we are presented with this bill—a complex piece of legislation by anyone's accounting—that will take away some of the protections that have served these millions and millions of investors so well and for so long. Mr. President, I liken this bill to using a sledgehammer to cut a slice of bread: if a little reform of the law is good, then an all out attack on the law must be better. I did not agree when we took a sledgehammer approach in the case of product liability reform, and I don't agree now.

There are hundreds of strike suits filed each year—but there are also thousands of legitimate cases of fraud as well. This bill should balance the two; it should make necessary corrections it seems to me to plug up the legal loopholes that allow unethical lawyers to collect while retaining important, existing investor protections. But is this the approach my colleagues have chosen? Do they propose to discreetly close loopholes, or judiciously plug up the cracks that have allowed the unethical attorneys to target big dollars? No, Mr. President, No, they do not. Instead my colleagues would hammer away at time-tested protections, saying in effect: ''No more. No more lawsuits. Unless you have overwhelming evidence, unless you lost millions, unless you have a sophisticated understanding of securities law, unless you catch the misdeed within a certain limited period, you can no longer sue to recover the money from the swindlers and cheats who robbed it from you.''

I am sure some of my colleagues would object to such a characterization of this bill—but, Mr. President, actions speak as loud as words. We have had many attempts on the floor to make this bill better, to more finely tailor

its language and scope to address the problem of strike suits. For example, we had an amendment on the floor that would have extended the period in which wronged investors could file a suit against those who committed the fraud. That sounds like a good protection to me—and it was an amendment that I supported. But did it pass? The answer is no. And let me emphasize: we have had numerous opportunities to amend this bill, make it better, more closely tailor it to the problems that exist, and I have supported those amendments. But Mr. President, those amendments have been consistently rejected.

Under this bill, investors who bring a legal challenge run the risk of facing a court order to pay the entire court costs, thus discouraging many people from bringing suit who have been defrauded. The bill also takes away the right to sue many of those who aid and abet in the fraud; effectively immunizing from private action lawyers, accountants, and countless others who may have assisted the primary wrongdoers who committee securities fraud.

Another example: This bill provides for extended immunity from private fraud liability for those corporations that release overly optimistic information when they have their first sale of stocks. This extended immunity does not protect investors; rather it is all but an open invitation for crooked corporations and swindlers to promise the Sun, Moon, and stars in their forward-looking statements, only then to take the money and run once it becomes clear that the corporation will never deliver what it promised. And those individuals, or private pension funds, or counties that invested and lost money on such a basis-too bad. Under this bill they are simply out of luck.

Individuals aren't the only ones who will be left with no protections under this bill; counties and municipal governments and public institutions will have fewer protections as well. I have heard several references to Orange County, CA, made on the floor during debate, but Orange County is not the only one hurt by losses from derivatives investments. In Minnesota alone: Dakota County, $2.5 million lost; in Chanhassen $4 million lost; the Minnesota Orchestral Association, $2 million lost; the University of Minnesota, $13-million lost; and Mr. President this is only a partial list. It is no wonder that groups like the Municipal Treasurers Association, the National Association of County Treasurers and Finance Officers, and the National League of Cities are but a few of the organizations opposing this bill as it is currently written.

Mr. President, we have heard the name of Charles Keating—perhaps one of the most famous of swindlers in recent memory—invoked many times on the floor during this debate. Some people say that under this bill, thousands of people would never have been able to recover one thin dime from Mr. Keating. I have also heard some people say that claim is not true, and that this bill will not affect individuals' rights to collect what has been taken from them.

But Mr. President, the fact that we have so many great and respected legal minds disagreeing so harshly over what this bill will actually do should be the issue here. And until I, and the rest of my colleagues, can be convinced beyond reasonable doubt that this bill will not hurt middle America, and will not swindle them out of their chance to prosecute the swindlers, there can be question. I cannot and will not support any measure that hurts those good, honest people who have entrusted us with their best interests.

Thank you, Mr. President, and I yield the floor.

Mr. LAUTENBERG. Mr. President, I believe I bring a somewhat different perspective to the issue of securities than most other Members of this body. Prior to coming to the U.S. Senate, I worked in the private sector. I cofounded a company with two others that today employs over 20,000. After the company went public in 1961, I filed countless statements with the SEC as its CEO. As the CEO, I believed it was important for investors to have as much information as possible.

Each year, I made it a practice to project earnings for the following year. And if those projections needed modification due to changed circumstances, I quickly went to the public to alert them to any revision. This process had significant rewards because investor confidence in my former company caused our stock, which is traded on the New York Stock Exchange, to sell at among the highest price-earnings ratios of all listed securities on any exchange.

As I look back on that period, I know that I was in the forefront of CEO's who provided investors with forward-looking statements on my company's financial health. It made sense to me then. It makes sense to me now. I know many companies want to provide this information but do not because they are concerned about their potential liability should their forecasts turn out to be off the mark. It is not in the public interest for these companies to go out of business because of a lawsuit based on a financial forecast, which despite the company's best efforts, later turns out to be inaccurate.

I remember how much the stock of biotech companies dropped when we were discussing health care last year. Should those companies be held accountable for this drop? Of course not. We want to protect such firms. But I believe this bill goes too far in the effort to do that; in fact, I believe the practical effect of this bill will be to immunize certain fraudulent statements. This is just one example of the many instances in which I believe the legislation is too extreme.

This is unfortunate because S. 240, the Private Securities Litigation Reform Act of 1995, had the potential to be a good bill, perhaps a very good bill. In my judgement, if a few key amendments had been adopted, this legislation would have eliminated current abuses in existing law without sacrificing investor protections. But, those amendments were not. As a result, the bill that will pass the Senate today and go to conference with the House will, I predict, undermine investor confidence in our markets, chill meritorious suits, and leave investors exposed to fraud. I also predict that Congress will revisit this issue in the foreseeable future. I can only hope that the next Charles Keating, whose fraudulent conduct will be facilitated by this bill, will not cost the taxpayers as much as the original.

Too often debate on this bill was reduced to accusations of special interest favoritism. It is a shame that the proponents of this bill believed anyone who opposed this legislation was merely siding with the trial lawyer bar. Likewise, the legitimate concerns of accountants and other deep pockets were downplayed by the opponents of this bill. Mr. President, I oppose S. 240, not because it might hurt trial lawyers and not because I do not believe certain groups are being unfairly targeted as deep pockets, but because it is unfair to investors and because I do not think it will serve as a deterrent to fraudulent behavior.

The sponsors of this legislation cite compelling anecdotal evidence of abuse by the so-called professional plaintiffs and their unscrupulous attorneys. I agree there are abusive securities class actions suits filed every year. I also agree that we need to protect companies, and even other shareholders, from these people. But in our zeal to tackle this problem, we should take care not to stifle legitimate claims.

Amendments were offered that would have tempered the Senate bill's overreaction to the purported securities litigation boom. There were amendments to: provide aiding-and-abetting liability in private implied actions; insert a safety net to ensure that small investors are able to fully recover their losses; extend the statute of limitations period on these claims, thus making it more difficult for bad actors to hide their fraud; and an amendment I cosponsored with Senator SARBANES that would not have insulated fraudulent statements as a result of the overly broad safe harbor provision in the bill. All were defeated.

In opposing these amendments, the sponsors of the bill cited some of the more egregious practices of professional plaintiffs and certain lawyers. What they do not mention is that this behavior would have been curbed by noncontroversial provisions contained in S. 240, provisions not affected by the amendments I mentioned above. These would include: prohibitions against referral fees and attorney conflicts of interest; requirements that the share of the settlement awarded to the name plaintiffs be calculated in the same

manner as the shares awarded to all other members of the class and that the name plaintiff certify that he did not purchase the security at the direction of his attorney; a prohibition against excessive attorneys' fees; and an assurance that all members of the class have access to information held by counsel of the name plaintiff.

I did not want to have to vote against a bill to curb frivolous securities lawsuits because I believe there are problems. I have met with accountants and executives of high-technology companies and have heard about their legal nightmares. But I have also heard from the director of my State's bureau of securities, the North American Securities Administrators Association, AARP, dozens of consumer groups, and some organizations with large pension funds.

Mr. President, I cannot in good conscience vote for a bill I believe will insulate fraudulent conduct, prevent investors injured by fraud from fully recovering damages, and chill meritorious litigation. In our rush to reform the problems detailed by the sponsors of this bill, we have overreacted.

Mr. CHAFEE. Mr. President, I am pleased to be a cosponsor of S. 240, the Private Securities Litigation Reform Act, which the Senate approved today. This proposal has been introduced by Senators DOMENICI and DODD year after year without ever reaching the full Senate for consideration. Finally, this year, the Senate debated and approved securities reform without substantial changes to the Domenici-Dodd bill, as reported by the Banking Committee.

Our's has become an increasingly litigious society. Opportunistic lawyers are prepared to spring into action with the least provocation. In the case of securities fraud suits, this class of attorneys claims to have the interests of small investors in mind, but the level of compensation they exact compared with the compensation received by their clients tells quite a different story.

As many as 300 securities fraud suits are filed annually. An astonishing 93 percent of these suits are resolved out of court, with an average settlement of more than $8 million each.

It is no accident that so many of these suits are settled out of court. That is one of the major problems addressed by S. 240. Under current law, every defendant can be found jointly and severally liable—or liable for the entire settlement cost—regardless of the extent of the defendant's involvement. It has become the practice of some lawyers to name as many deep pocket defendants as possible. Frequently, the fear of being held 100 percent responsible and the enormous cost of diverting substantial resources to defending against these suits leads these defendants to settle. S. 240 applies proportionate liability, enabling the court to determine the extent of a defendant's involvement and determining liability on the basis of that involvement.

S. 240 seeks to reduce abusive practices by prohibiting brokers or dealers from receiving a referral fee from attorneys seeking clients for class action suits; giving the court authority to determine whether a conflict of interest exists if an attorney is also a shareholder; and, by prohibiting funds discharged by the SEC from being used for attorneys' fees.

It seeks to limit frivolous lawsuits by eliminating professional plaintiffs, prohibiting attorneys' fees from exceeding a reasonable percentage of damages awarded, and giving courts the authority to appoint lead plaintiff on the basis of greatest financial loss rather than continuing the practice of naming lead attorneys based on who filed the suit first.

I believe that we have approved a bill that will benefit shareholders and corporations alike. Shareholders will have more information on which to base their investments and corporations will be able to operate in an environment free of meritless lawsuits. I commend Senators DOMENICI and DODD for proposing this worthwhile legislation and Chairman D'AMATO for moving it so swiftly through the legislative process.

Mr. PELL. Mr. President, today as the Senate comes to the conclusion of the debate over the Securities Litigation Reform Act, I state my support for this legislation. It has been a long process to achieve reform in this area and the Senate has worked for several years to craft legislation which will adequately address the problems in the laws which govern our securities industry without creating others. I commend the efforts of those most directly involved, particularly my good friend and colleague Senator DODD, for their commitment and hard work in bringing this bill to final passage.

The need for some type of reform in this area is universally acknowledged, even by those who have most vociferously opposed the version of reform contained in the final bill. Indeed, the bill had 51 cosponsors, an indication of overwhelming consensus that congressional action is necessary to correct a glaring problem. Simply put, the securities industry has been plagued by abusive and frivolous lawsuits for years. These lawsuits have been encouraged by a system that far too often does more to reward creative lawyers and undeserving plaintiffs than it does to protect the integrity of the securities markets and legitimate investors. The end result has been the unnecessary escalation of business costs as companies are forced to pay legal costs to defend against these meritless actions. In a growing number of cases, these escalated costs, combined with the chilling effect of the threat of groundless litigation, have resulted in bankruptcies, reluctance to release pertinent investment information, and in many cases, the decision to forego the formation of startup enterprises altogether. The latter has particularly been the case for fledgling high-technology companies, the next generation of American industry. As we strive to compete in the world marketplace, it becomes even more imperative that we work to discourage those aspects of our legal system which foster frivolous, costly, and unnecessary litigation.

I do not claim that this bill is perfect in all aspects. Indeed, some 17 amendments were offered to the legislation as we considered on the Senate floor and I supported many of them. I share the concerns expressed that as we rewrite our securities laws to eliminate abusive lawsuits, we must also protect the rights of legitimately wronged investors to have their day in court. Of particular concern are those small investors, many times senior citizens and those with stakes in pension funds, who face formidable odds in bringing actions against large corporations. Accordingly, I voted for stronger protection against fraudulent and misleading statements by corporate executives as well as for an alternative dispute mechanism which would have discouraged frivolous actions without the use of the courts. I also supported giving even the smallest investor a voice in choosing who would control suits brought on behalf of a large class of plaintiffs, an effort to ensure that everyone would be represented in legal actions, no matter how big or small. Unfortunately, these and other efforts to improve the bill were not supported by a majority of the Senate. However, even though these amendments did not succeed, the legislation as a whole merited support for its work to reform our legal system in a constructive way to curb unnecessary lawsuits in our securities industry without removing adequate protection for those legitimately harmed by fraud and wrongdoing.

Again, I commend the good work done by all involved with this legislation. There are still significant differences with the House that need to be worked out so I fear that we still have a way to go before the process of securities law reform is completed. With passage today, however, the Senate has taken an important step toward achieving that goal.

The PRESIDING OFFICER. Under the previous order, the committee amendment in the nature of a substitute, as amended, is agreed to, and the clerk will read S. 240 for the third time.

The bill was ordered to be engrossed for a third reading, and was read for the third time.

The PRESIDING OFFICER. Under the previous order, the Banking Committee is discharged from further consideration of H.R. 1058, and the Senate will proceed to its immediate consideration.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1058) to reform Federal securities litigation, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause of H.R. 1058 is stricken, and the text of S. 240, as amended, is inserted in lieu thereof.

The clerk will read H.R. 1058 for the third time.

The bill was read for the third time.

The PRESIDING OFFICER. Under the previous order there will now be 30 minutes of debate divided in the usual form.

Mr. SARBANES. Mr. President, I yield 5 minutes to the distinguished Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. BRYAN. Mr. President, I thank the Chair.

Mr. President, at this stage of the debate I acknowledge that the die is cast and this bill will pass. I must say that I believe it is a terrible mistake.

This has not been about whether you are for curtailing frivolous lawsuits or not. There is no disagreement on that. The provisions that deal with containing frivolous lawsuits I think enjoy a vast majority of our support, and certainly this Senator.

I have asked myself. Why are we doing this? Why are we undergoing all of this exercise? For the last 6 decades we have enjoyed the world's safest securities markets. They are the envy of the world. Could it be because there is a litigation explosion? The facts belie that. In the past 20 years, the number of cases filed in class action lawsuits remain about between 290 and 315 a year. There are some 235,000 civil filings each year. So that cannot be the reason. There are some 14,000 companies that have filings with the SEC. Each year only about 140 out of those 14,000 are brought in as party defendants in these class action cases.

Is it because there has been an inability to raise capital in our markets? In the past 20 years, the amount of capital raised has increased by 58,000 percent. So it certainly cannot be that.

Mr. President, this is clearly—as I observed at the beginning—a Trojan horse that brings us to the floor of the U.S. Senate to shield a large number of people from liability for their misconduct. Under securities action no one who is simply negligent or grossly negligent is liable. So it is extremely difficult. What this has all been about, in my view, is to emasculate the private individual, the private investor, from securing relief and recover from investment fraud.

I have prepared a little chart here which I think indicates the number of hurdles that have to be surmounted in order to get to the finish line. It will be more difficult to get these cases brought because of the limitations imposed. The shorter statute of limitations. The surrender of control of the wealthiest plaintiff which in effect becomes the lead plaintiff presumptively under this. The automatic discovery stage prevents the plaintiff from ascertaining what the state of mind is of the defendants who have perpetrated the fraud. The safe harbor provisions, that the distinguished Senator from Maryland has talked about; aiders and abettors—they are home free. They do not have any liability at all. The RICO liability has been wiped out.

Ultimately, if you are able to perform a feat that even Edwin Moses would have difficulty performing, and you get to the finish line, the prospect of recovery is greatly reduced because we have eliminated the concept as between those who are guilty of reckless misconduct or totally innocent. We are simply saying that those who are guilty of reckless misconduct only have proportionate liability, and the plaintiff, the investor who is damaged, does not recover the full amount.

That overturns hundreds and hundreds of years of legal precedent. For a social and economic policy that I just cannot comprehend as between the innocent party and the wrongdoer whose conduct is at least reckless, we are saying give the reckless actor immunity from the suit. In the case of the aider and abettor and in the other case where he may be a primary violator, we simply say he or she is only liable for the proportionate share. That makes no sense.

In the 1980's, Congress enacted the infamous Garn-St Germain. Within a decade, the savings and loan industry in America imploded and the American taxpayer was asked to write a bill which constitutes hundreds of billions of dollars.

I forecast that, as a consequence of the enactment of this kind of legislation, we are going to see innocent investors by the thousands deprived of their day in court. Fifty major newspapers in America who have looked at this issue have concluded that what we are about to do is a tragic mistake.

Mr. President, as I said at the outset, I acknowledge that this legislation will pass this Chamber, but I believe that we will rue the day and that our markets will be less secure and what the proponents may intend to accomplish will, indeed, have a countereffective result.

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

Who yields time?

Mr. D'AMATO. Mr. President, I yield 5 minutes to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 5 minutes.

Mr. BENNETT. Mr. President, the debates have been made. I remember the comment by my colleague from Connecticut during the Whitewater hearings when he said everything that needs to be said has been said but not everybody has said it. So I will try not to say too much about this.

Contrary to those who say, gee, everything has been wonderful up until now, the facts clearly demonstrate that there has been a serious problem. It has affected that portion of the stock market that most needs the entrepreneurial thrust of venture capital, and this bill will correct it.

I made all of the arguments that I intend to make. I simply want to make one additional observation. This problem has generated action in the House of Representatives. Now it is generating action in the Senate. In my view, the Senate bill is more responsible than the House bill. I congratulate the authors of the bill, Senator DOMENICI and Senator DODD, the chairman of the committee, Senator D'AMATO, in seeing to it that the Senate version is more responsible than the House version. I look forward to working with them in a conference committee to see that the Senate approach be adopted in every possible circumstance as there are differences between the Senate and the House.

These men have worked very hard, very responsibly and intelligently on this bill, and I for one have been delighted to have had the opportunity to work with them. I commend the work product to the entire Senate and, if you will, to the President himself when it gets to him for his ultimate signature.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. Mr. President, I yield 5 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 5 minutes.

Mr. DODD. Mr. President, I thank the Chair. Let me begin by thanking my colleague from New Mexico, Senator DOMENICI, Senator D'AMATO, Senator BENNETT, and others who have been present in the Chamber here almost for a week now. We considered 17 amendments and one motion to commit on this bill.

Let me also express my appreciation to my colleague from Maryland, my colleague from California, and my colleague from Nevada, all of whom have been actively involved in this legislation, along with the Senator from Pennsylvania, with a number of amendments that have been offered to this bill.

We have spent several years on this legislation. We have crossed the threshold of whether or not this was an area of the law that needed repair and significant repair. I would say to my colleagues that we can put behind us the days that we have rued, in a sense, the days when you ended up with somewhere between 93 and 98 percent of these cases all being settled, never going to litigation because, frankly, the system was designed in a way to produce settlements even when cases lack merit because of the outrageous costs involved. This was an area of the law where, frankly, a number of people had turned a profession into a business,

and we had lost the essence of the practice of law in the area of securities litigation.

This is a piece of legislation that we think goes a long way to protecting investors on all sides. It leaves that door very wide open for legitimate plaintiffs to bring their cases. It also makes it possible for those legitimate defendants to make sure that they will end up paying the price that they are required to pay, where they do something wrong. But it also protects the innocent investor of those very same companies from not being charged the cost of frivolous lawsuits and meritless litigation.

It is a technical area of the law but one that we think is going to do a great deal in terms of making it possible particularly for these smaller start-up companies, the bases of economic growth in the 21st century, the high-tech firms, the biotech firms, the ones that have the great volatility in the earliest stages of their development as industries and businesses from being preyed upon by meritless litigation.

There is still in the views of many, including this Senator, some legitimate discussion about the area of safe harbor. I feel very strongly that we should have a true safe harbor. My view is that in conference we are going to have to revisit the issue. We had a very close vote on an amendment offered by the Senator from Maryland.

I would love to be able to tell all of my colleagues that I am entirely satisfied everything we have done is absolutely going to work. I do not know that. I do know this, that we have corrected a significant problem and we have plugged up pleadings that were so loose that virtually almost any case that could be brought could lead to significant discovery, such as the situation where you had Peat Marwick on a $15,000 contract ending up at $7 million in legal fees. We stop the practice where you have Ratheon Corporation acquiring a firm and within 90 minutes of that announcement a lawsuit gets filed.

Those are the kinds of situations that were occurring, that we will have cleaned up with this legislation that I hope we are about to pass.

Is it perfect in every aspect? Anyone who will tell you that cannot say so with absolute certainty. This much we can say, that the previous situation, the situation that exists today, is a mess and it needs and demands to be cleaned up. And in this Senate bill we have moved great lengths toward achieving that goal.

Let me also underscore the comment made by the Senator from Utah. The House bill, in my view, goes way too far, way too far, and it is my fervent hope that we will not support the House-passed legislation.

Let me say here to my colleagues, as someone who has worked a long time along with my colleague from New Mexico on this—and I use this opportunity—that efforts to weaken this Senate bill by the House are going to cause this Senator serious reservations about recommending to his colleagues, if we come back with that, that it ought to be supported.

We have a long way to go yet with this legislation before it is done, but this is an opportunity for us to go on record to say the present system does not work; it needs to be changed.

We have made those changes here. For those reasons, I think the product we have produced is deserving of support. Again, it may not be perfect. We do not know that. Time will test that through the legal system of this country. But we think it does go a great way toward solving the kinds of problems where lawsuits were filed right and left without the kind of adequate protections for investors and innocent defendants.

For those reasons, I ask my colleagues to support this bill.

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

Who yields time?

The Senator from Maryland.

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Maryland has 9 minutes and 55 seconds; the Senator from New York has 7 minutes and 16 seconds.

Mr. SARBANES. I yield myself 6 minutes.

The PRESIDING OFFICER. The Senator is recognized for 6 minutes.

Mr. SARBANES. Mr. President, I think perhaps the best analogy that was used was by the Senator from Nevada earlier in this debate when he said what we have here is a Trojan horse moving forward under the pennant of frivolous lawsuits, but hidden within the Trojan horse are a lot of problems. That is this legislation. This legislation goes too far. I listened to my colleagues, and they get up and they talk about horror stories. And I do not quarrel with those horror stories. I think we need to bring those under control. And those of us on this side have consistently made that point.

But this bill goes too far. It overreaches. It is excessive. As one article said in U.S. News & World Report, ''Will Congress Condone Fraud?'' And then it concludes saying that, ''The pendulum is swinging much too far,'' and says, ''Unfortunately, some major investor frauds may have to take place before again it moves back toward the center.''

I want to avoid those major investor frauds. And that was what the whole effort to try to amend this legislation was about over the last few days.

Now, we are ignoring the advice of all of the regulators, Democrats and Republicans. The SEC, both under the former Chairman and under the current Chairman of the SEC, the 50 State securities regulators, the Government Finance Officers Association, they have all come in. They have all said, ''Yes, we want to get at the problem of frivolous lawsuits. Yes, there are reasonable ways to try to do it.'' Then they have made the point that this bill goes too far.

Now, we tried to correct it. We tried to correct the safe harbor provision, which is potentially one of the most dangerous features in this legislation. We urged the Senate to leave that to the SEC. That is where it ought to be, with the experts. The Senate rejected that.

We then said, ''Well, at least let us get a proper standard.'' We came very close on that issue, a vote of 48–50 with respect to getting a standard that was a more reasonable standard and that would not shield, as the Chairman of the SEC told us, not shield willful fraud.

The distinguished Senator from Nevada has pointed out, under the proportionate liability provision, innocent investors who are defrauded are now going to bear the burden of their loss ahead of people who participated in the fraud. I want to repeat that. People who participated in the fraud will be shielded from bearing the full burden of the fraud, and that burden will be thrown upon the innocent investor.

We sought to extend the statute of limitations from 1 to 3 years to 2 to 5 years. There is a lot of concealment that goes on in these fraud cases. And if you talk to people who get caught up in it as victims, they will tell you that often they cannot discover the fraud within a 3-year period. The SEC, once they know about a fraud, takes 2 years to bring the action. This bill requires people to act within 1 year.

We tried to restore aiding and abetting. The aiders and abettors are dancing down the street right now with this legislation. They will go scot-free. It is not a question with aiders and abettors, whether it is going to be recklessness as a standard, or whether you are going to go to a higher standard than recklessness—actual knowledge, actual intent. There is no liability for aiders and abettors. None. It is gone. This bill will make it harder for defrauded investors to bring legitimate suits and to recover their losses.

And I say to my colleagues, because a number have cosponsored this legislation at the outset, the legislation which they cosponsored had in it two very important provisions that we tried to add by amendment that are not in the bill before us. The original legislation extended the statute of limitations. The original legislation extended this statute of limitations so it took care of that particular provision. Now we have dropped that in this legislation that is before us.

And the original legislation sent the safe harbor issue, one of the most difficult and complex issues to deal with, sent it to the SEC where, I submit to you, it ought to be. That is where that ought to be made. Now they are trying to write the standard right in this bill.

So the original bill, which people cosponsored, took care of two of the issues that we have argued on the floor

of the Senate over the last few days. Why would we want to make it more difficult for defrauded investors to bring legitimate suits and make it more difficult for them to recover their losses in an effort to get at frivolous suits, which we support? This bill has gone so far, has swung the pendulum so far over that it is going to penalize, in a significant way, legitimate investors.

Now, this is bad not just for the individual investor, but it is bad for the country, it is bad for economic growth. Our markets, which are the marvel of the world, depend upon the confidence of the investors.

The PRESIDING OFFICER. The time is expired.

Mr. SARBANES. The confidence of the investor will be undermined by this legislation. I urge my colleagues to vote against it.

Mr. President, I reserve the remainder of our time.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

Mr. D'AMATO. Mr. President, I yield 4 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 4 minutes.

Mr. DOMENICI. Thank you very much, Mr. President.

I would like to thank the Senator from Connecticut, Senator DODD. Mr. President, I say to the Senator from Connecticut, Senator DODD, let me stay here on the floor, even though I only have a few moments, it has been a pleasure working with him on this legislation. I first got interested after I read some articles that led me to think this part of the judicial system of America was not working. That is how I got involved. I read three or four articles. I could not believe what I was reading. I was naive enough to think since it was so patently wrong, all I had to do was work on the bill and get someone like Senator DODD to help and it would all come through. I found that was not the case.

And the reason it is not the case is because this bill is bad for about 90 lawyers in America. This bill is bad for about 90 lawyers in America, not the plaintiff's bar—about 90 lawyers. And let me tell you, Mr. President, they are rich lawyers, because look at this little chart. They file these kinds of lawsuits. And out of every dollar in judgments, verdicts or settlements—here is the dollar—the high side of what the investors get is 14 cents. In many cases it is not 14 cents it is half that.

Now, let me tell you, if you start with a system that does that and is monopolized by a group of barristers who 20 years ago or 25 or 30, when I was in law school, would have been found guilty of champerty. We learned about two things you should never do, and one of them, my friend from Georgia will remember, is commit champerty, which said you should not promote unnecessary legislation that inures more to your benefit as a lawyer than to your client's. This is the epitome of that. They would not get through the door today.

The judges of yesteryear would say, ''Get rid of this kind of lawyer.'' So they are out there with gobs of money running advertisements all over the country like they are for the investors. They are 14 cents for the investor. They are 14 cents for the investor and 86 cents for themselves, the investigators who work for them, and all the other experts that they use.

Now, tell me you cannot fix that. If we could not fix it, I would give up on the U.S. Senate and say we are going to leave this up to lawyers and their entrepreneurial minds. And we are stopping that.

Essentially, under this reform lawyers are going to represent a class of people, not a select plaintiff that they choose as pet plaintiffs. Lawyers are going to be more responsible to the courts. Lawyers are going to have less fun running around getting facts.

And, Mr. President, clearly this bill is balanced.

Reform is supported by more than 19 major associations, 10 of the biggest public pension funds, 12 State pension fund administrators and regulators, and hundreds of companies—the list reads like who is who in making America's economy great.

The bill Senator DODD and I introduced has 51 cosponsors.

We heard a lot about Charles Keating. There is not a Senator in this body that would protect Keating. This bill has nothing to do with Keating. His name is well known. This bill has a lot to do with slowing down a group of entrepreneurial lawyers whose names are not well known.

The current system needs reform. It is a system that has given us millions for lawyers and pennies for plaintiffs.

When Congress enacted our securities laws, the 1933 and 1934, the basic foundation was disclosure of information and deterrence.

Congress did not by statute create the class action securities law suit under 10b and rule 10b–5. The courts created them. However, in the last decade, every significant Supreme case on the topic has scaled down the scope of the 10b–5 class action cases. It shortened the statute of limitations. It abolished aiding and abetting liability. The Court also seemed to be inviting Congress to legislate in this area. Today we are taking that historic step.

This bill gives investors a better system 12 ways:

First, it puts investors with real financial interests, not lawyers in charge of the case.

It puts investors with real financial interests, not professional plaintiffs with one or two shares of stock in charge of the case. It includes most adequate plaintiff; plaintiff certification; ban on bonus payments to pet plaintiffs; settlement term disclosure; attorney compensation reform; sanctions for lawyers filing frivolous cases; restrictions on secret settlements and attorneys' fees.

Second, it provides for notification to investors that a lawsuit has been filed so that all investors can decide if they really want to bring a lawsuit. It is likely that people trusted to manage pension funds and mutual funds—institutional investors—will get more involved (most adequate plaintiff provision).

Third, it puts the lawyers and their clients on the same side (reforms that change economics of cases, proportionate liability, settlement terms disclosure).

Fourth, it prohibits special side-deals where pet plaintiffs get an extra $10,000 or $15,000. It protects all investors, not just the lawyers' pet plaintiffs, so that settlements will be fair for all investors.

Fifth, it stops brokers from selling names of investors to lawyers.

Sixth, it creates an environment where CEO's can, and will talk about their predictions about the future without being sued. It gives investors a system with better disclosure of important information (safe harbor).

Seventh, it contains better disclosure of how much a shareholder might get under a settlement and how much the lawyers will get so that shareholders can challenge excessive lawyers' fees.

Eighth, no more secret settlements where attorneys can keep their fees a secret (restrictions on settlements under seal).

Ninth, it limits amounts that attorneys can take off the top. It limits attorneys' fees to a ''reasonable amount'' instead of confusing calculations (attorney compensation reform, banning lodestar method of calculating fees).

Tenth, it provides a uniform rule about what constitutes a legitimate law suit so that it will no longer matter where a case is filed. Investors in Albuquerque will have the same rules as investors in New York (pleading reform). It stops fishing expeditions where lawyers demand thousands of company documents before the judge can decide if the complaint is so sloppy that it should be dismissed on its face (discovery stay).

Eleventh, it will make merits matter so that strong cases recover more than weak cases. It will make sure people committing fraud compensate victims. It improves upon the current system so that victims will recover more than six cents on the dollar.

Twelfth, by weeding out frivolous cases, it gives the lawyers and judges more time to do a good job in protecting investors in meritorious cases. High-technology companies' executives can focus on running their companies and growing their businesses. Investors will get higher stock prices and bigger dividends.

S. 240 does exactly what Chairman Levitt said the system should do, protect all investors—not just a few.

I ask unanimous consent to have inserted in the RECORD the numerous organizations that have real interests, like money managers who have handled our money, who say this bill is a good bill. I also ask unanimous consent that some letter of support from various pension fund groups be printed in the RECORD.

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

SUPPORTERS OF SECURITIES LITIGATION REFORM

American Business Conference: Members of the American Business Conference include 100 chief executive officers of high-growth companies with revenues over $25 million. ABC serves as a voice of the midsize, high-growth job creating sector of the economy.

American Electronics Association: The American Electronics Association represents some 3,000 companies in 44 states that span the breadth of the electronics industry, from silicon to software, to all levels of computers and communication networks, and systems integration.

American Financial Services Association is a national trade association for financial service firms and small business. Its 360 members include consumer and auto finance companies, credit card issuers, and diversified financial services firms.

American Institute of Certified Public Accountants: The American Institute of Certified Public Accountants is the national professional organization of over 310,000 CPAs in public practice, industry, government, and academia.

Association for Investment Management and Research: The Association for Management and Research is an international nonprofit membership organization of investment practioners and educators with more than 40,000 members and candidates.

Association of Private Pension and Welfare Plans: The Association of Private Pension and Welfare Plans membership represents the entire spectrum of the private pension and employee benefits community: Fortune 500 companies, banks, insurance companies, law, accounting, consulting, investment and actuarial firms. APPWP members either sponsor directly or administer employee benefit plans covering more than 100 million Americans.

Association of Publicly Traded Companies: The Association of Publicly Traded Companies has an active membership of over 500 corporations consisting of a broad cross section of publicly traded companies, especially those traded on the NASDAQ national market.

BIOCOM/San Diego (Formerly the Biomedical Industry Council): BIOCOM/San Diego is a business association representing over 60 biotechnology and medical device companies in San Diego, CA.

Biotechnology Industry Organization: The Biotechnology Industry Organization represents more than 525 companies, academic institutions, state biotechnology centers and other organizations involved in the research and development of health care, agriculture and environmental biotechnology products.

Business Software Alliance: The Business Software Alliance promotes the continued growth of the software industry through its international public policy, education and enforcement programs in more than 60 countries, including the U.S., throughout North America, Asia, Europe and Latin America. BSA represents leading publishers of software for personal computers.

Information Technology Association of America: The Information Technology Association is a major trade association representing over 5,700 direct and affiliated member companies which provide worldwide computer software, consulting and information processing services.

National Association of Investors Corporation: The National Association of Investors Corporation is the largest individual shareowners organizations in the United States. NAIC has a dues-paid membership of investment clubs and other groups totalling more than 273,000 individual investors.

National Association of Manufacturers: The National Association of Manufacturers is the nations's oldest voluntary business association, comprised of more than 13,000 member companies and subsidiaries, large and small, located in every state. Its members range in size from the very large to the more than 9,000 small members that have fewer than 500 employees each. NAM member companies employ 85% of all workers in manufacturing and produce more than 80% of the nation's manufactured goods.

National Investor Relations Institute: The National Investor Relations Institute, now in its 25th year, is a professional association of 2,300 corporate officers and investor relations consultants responsible for communication between corporate management, shareholders, security analysts and other financial publics.

National Venture Capital Association: The National Venture Capital Association is made up of 200 professional venture capital organizations. NVCA's affiliate, the American Entrepreneurs for Economic Growth, represents 6,600 CEOs who run emerging growth companies that employ over 760,000 people.

Public Securities Association: The Public Securities Association is the international trade association of banks and brokerage firms which deal in municipal securities, mortgage and other asset-backed securities, U.S. government and federal agency securities, and money market instruments.

Securities Industry Association: The Securities Industry Association is the securities industry's trade association representing the business interests of more than 700 securities firms in North America which collectively account for about 90% of securities firm revenue in the U.S.

Semiconductor Industry Association: The Semiconductor Industry Association represents the $43 billion U.S. semiconductor industry on public policy and industry affairs. The industry invests 11% of sales on R&D and 15% of sales on new plant and equipment—more than a quarter of its revenue reinvested in the future—and thus seeks to improve America's equity capital markets.

Software Publishers Association: The Software Publishers Association is the principal trade association of the personal computer software industry, with a membership of over 1,000 companies, representing 90% of U.S. software publishers. SPA members range from all of the well-known industry leaders to hundreds of smaller companies; all of which develop and market business, consumer, and education software. SPA members sold more than $30 billion of software in 1992, accounting for more than half of total worldwide software sales.

MANAGERS OF PRIVATE OR PUBLIC PENSION FUNDS

Champion International Pension Plan: Champion Internation Pension Plan controls over $1.8 billion in total assets.

Connecticut Retirement and Trust Fund: The Connecticut Retirement and Trust Fund invests over $11 billion on behalf of over 140,000 employees and beneficiaries.

Eastman Kodak Retirement Plan: Eastman Kodak Retirement Plan manages over $10.9 billion in total assets and is ranked as one of the largest 60 pension plans in the U.S.

Massachusetts Bay Transportation Association: With over 12,000 participants, the Massachusetts Bay Transportation Association controls over $772 million in total assets.

New York City Pension Funds: Over $49 billion have been invested in the fund to insure the retirement security of 227,000 retirees and 138,000 vested employees.

Oregon Public Employees' Retirement System: Assets controlled by the fund total over $17.2 billion. The Oregon Public Employees' Retirement System is ranked among the largest 30 pension plans in the U.S.

State of Wisconsin Investment Board: One of the 10 largest pension funds in the United States, the State of Wisconsin Investment Board manages over $33 billion contributed by the State's public employees.

State Universities Retirement System of Illinois: The State Universities Retirement System is ranked as one of the country's 100 largest pension funds with total assets of $5.3 billion.

Teachers Retirement System of Texas: The Teachers Retirement System of Texas controls over $36.5 billion in total assets on behalf of its 700,000 members.

Washington State Investment Board: With assets totaling over $19.7 billion, the Washington State Investment Board is ranked in the largest 25 pension funds.

NATIONAL ASSOCIATION OF INVESTORS CORPORATION,
Royal Oak, MI, July 19, 1994.

Hon. CHRISTOPHER DODD,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DODD: I am writing to you as Chairman of the National Association of Investors to congratulate you on your sponsorship of the Private Securities Litigation Reform Act of 1994 (S. 1976) and to promise the support of the National Association of Investors Corporation.

NAIC is, we believe, the largest individual shareowners organization in the United States. We currently have a dues paid membership of investment clubs and other groups totalling more than 273,000 individual investors. NAIC has been in operation since 1951 and our members are the direct owners of shares in our nation's industry. We are a cross-section of the nation's population including individuals from every race, political persuasion and economic level.

Our purpose as an organization, is to help individuals learn the benefits provided by being an owner of a business and to learn how to do so successfully. Since our founding, nearly 4 million people have taken our training programs and a high percentage of our members enjoy an earnings rate on their securities equal to or exceeding that of the S&P 500 Index.

The current situation in the law permits and even encourages the filing of lawsuits with very little merit against corporations. The benefits derived from these suits are going primarily to attorneys.

However, these payments are actually coming from the pockets of serious, lifetime owners of the corporations like our members.

These unmerited suits take corporate executives away from the main task of running the business and building it for their shareowners.

Even more importantly, the fear of these kinds of suits causes executives to release less information about the business to shareholders because of the fear that this could lead to their being sued.

Our members devote about 25% of their investments to smaller companies and many of

these companies are high technology companies that have been a particular target of attorneys filling these questionable suits.

Again let me say that our members appreciate your interest in solving these problems and thus helping the great mass of the nation's investors by reducing the threat of a large and mischievous expense.

Yours respectfully,

THOMAS E. O'HARA,
Chairman, Board of Trustees.

JULY 19, 1994.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

Hon. PETE V. DOMENICI,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS DODD AND DOMENICI: As pension fund managers, we are responsible for safeguarding the investments of thousands of individuals in the securities markets. In making investment decisions on behalf of these individuals our success depends on both the integrity of the market and the vitality of the American economy.

For these reasons, we are writing to applaud your initiative in addressing the fundamental problems of the securities fraud litigation system. We agree that the current system is not protecting investors and needs reform. Under the current system, defrauded investors are receiving too little compensation, while plaintiffs' lawyers take the lion's share of any settlement. Moreover, meritless litigation costs companies millions of dollars—money that could be generating greater profit for the company and higher returns for investors. Finally, the fear of such meritless litigation has caused many companies to minimize the amount of information that they disclose—the opposite of what we need to do our job effectively.

Thank you again for pursuing long overdue reforms on the securities litigation system. We look forward to working with you to make the system work for all investors.

Sincerely,

Mr. John J. Gallahue, Jr., Executive Director, Massachusetts Bay Transportation Authority, Retirement Fund; Dr. Wayne Blevins, Executive Director, Teachers Retirement System of Texas; Mr. Alan G. Hevesi, Comptroller, The City of New York, New York City Pension Funds; Mr. John A. Ball, Senior Vice President, Champion International Corp., Champion International Pension Plan; Mr. Joseph M. Suggs Jr., Treasurer, State of Connecticut, Connecticut Retirement and Trust Funds; Mr. Jim Hill, Treasurer, State of Oregon, Oregon Public Employees' Retirement System; Ms. Patricia Upton, Executive Director, State of Wisconsin Investment Board; Mr. Kenneth E. Codlin, Chief Investment Officer, State Universities Retirement System of Illinois; Mr. Gary P. Van Graafeiland, Senior Vice President, Secretary and General Counsel, Eastman Kodak Co., Eastman Kodak Retirement Plan; Mr. Basil J. Schwan, Executive Director, Washington State Investment Board.

THE COMMONWEALTH OF MASSACHUSETTS, OFFICE OF THE TREASURER, STATE HOUSE,
Boston, MA, March 22, 1995.

Hon. ALFONSE D'AMATO,
Chairman, Senate Hart Building, Washington, DC.

DEAR SENATOR D'AMATO: I am writing you as Treasurer of the Commonwealth of Massachusetts and, in that capacity, as sole Trustee of the state's largest public pension fund for state teachers and employees. I would like to join with those elected officials around the country who are urging your committee to enact legislation to curtail the epidemic of meritless securities legislation which has begun to have a negative impact on the effectiveness and productivity of our nation's businesses and the capital formation process itself.

The concern about, and the reaction to, meritless lawsuits has caused industry, as well as accounting, law and insurance companies, to increase their costs and price tags ultimately paid by the consumer and the investing public, including a large percentage of our retirees and pension holders. Therefore, I urge your committee to enact legislation to eliminate these well-known abuses to our legal system. In doing so, I would urge the avoidance of ''lawyer bashing''. Although there is a sizable portion of the bar that generates and unduly profits from these meritless suits, the overwhelming percentage of lawyers represent their profession well and are constructive participants in our judicial system. I also urge caution in establishing a ''losers pay'' system to ensure that we do not preclude the middle class and the poor from bringing meritorious causes of action before our courts.

I am confident your committee will find a way to overhaul the current securities litigation system and pass meaningful legislation which will enhance the capital formation process in our country and enure to the economic benefit of millions of individuals and retirees who invest in corporate America for their own security.

Sincerely yours,

JOSEPH D. MALONE,
Treasurer and Receiver General.

STATE OF OHIO,
OFFICE OF THE TREASURER,
Columbus, OH, March 10, 1995.

Senator ALFONSE D'AMATO,
Chairperson, Senate Hart Building, Washington, DC.

DEAR SENATOR D'AMATO: As Treasurer of the State of Ohio, my office regularly issues debt and purchases securities on behalf of the people of the State of Ohio. In addition, my office is designated by law as the custodian of the assets of the State's pension funds. In the exercise of my responsibilities, I have become concerned that securities litigations, and the threat of securities litigation has begun to negatively impact the capital formation process essential to the economic growth for my state and the nation.

Under present law, attorneys have an incentive to file unsubstantiated claims, because there are no penalties for the filing of a meritless claim. Attorneys will file first and then use the discovery process to see if there is any merit to continuing the claim. In many cases, defendants have settled even unsubstantiated claims because it is more cost efficient to settle an unsubstantiated claim rather than to defend a lawsuit.

Furthermore, the amount of damages that plaintiffs have typically recovered represents only a percentage of their initial claims; but the lawyers who bring the claim extract substantial fees from any lawsuit filed. A system that was intended to protect investors now primarily benefits their lawyers.

The fear of meritless lawsuits has also caused many companies to minimize the amount of information they disclose to the public which is the opposite intent of the federal securities laws. Moreover, the fear of meritless lawsuits has caused accounting, law, and insurance firms to increase their costs to clients, discontinue service in some cases, and cause outside executives to refuse to serve on company's board of directors.

Federal legislation is needed to restore the protections that the 10B–5 action is supposed to provide and to eliminate the abuses of the system. At a minimum, legislation should address the liability scheme that rewards lawyers bringing meritless lawsuits and reduce the costs that the system imposes on the capital markets and business expansion.

Pension fund participants and other investors depend on the integrity of the market and the prospects of the economy. The current securities litigation system undermines both. I urge the Congress to pass meaningful reform legislation to protect the economic security of millions of individuals who invest in the securities markets.

Sincerely,

J. KENNETH BLACKWELL,
Treasurer of State of Ohio.

TREASURER OF THE
STATE OF ILLINOIS,
Springfield, IL, March 16, 1995.

Hon. CAROL MOSELEY-BRAUN,
Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: As the state official responsible for safeguarding the investments of public employees' pension funds, I am concerned about abuses in the securities litigation system that threaten investors' interests and impose unnecessary costs on the economy.

Abusive securities lawsuits are frequently filed on the basis of little more than a drop in a company's stock price. Enormous liability exposure and the onerous cost of mounting a defense leave companies with little choice but to settle, regardless of their culpability. Typically, plaintiffs recover only a small percentage of their damages, while lawyers extract substantial fees from the transactions. A system that was intended to protect investors now primarily benefits their lawyers.

Because shareholders are on both sides of this litigation, it merely transfers wealth from one group of shareholders to another. However, it wastes millions of dollars in company resources for legal expenses and other transaction costs that otherwise could be invested to yield higher returns for company investors. In addition, the fear of meritless litigation has caused many companies to minimize the amount of information they disclose, precisely the opposite of what investors need to invest safely and wisely.

Federal legislation is needed to restore the protections that the 10b–5 action is supposed to provide and to eliminate the abuses that plague the system. At a minimum, legislation should address the liability scheme that rewards lawyers for bringing abusive suits and reduce the cost that the system imposes on the capital markets and business expansion.

Pension fund participants and other investors depend on the integrity of the market and the prosperity of the economy. The current securities litigation system undermines both. I urge the Congress to pass meaningful reform legislation to protect the economic security of the millions of individuals who invest in the securities markets.

Sincerely,

JUDY BAAR TOPINKA,
State Treasurer.

STATE OF CALIFORNIA, DEPARTMENT OF CORPORATIONS, OFFICE OF THE COMMISSIONER,

Los Angeles, CA, February 9, 1995.

Re H.R. 10—The Securities Litigation Reform Act.

Hon. JACK FIELDS,

Chairman, Telecommunications and Finance Subcommittee, Committee on Commerce, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN FIELDS: As Commissioner of Corporations, I am responsible for the administration of the securities laws of the State of California. Before being appointed Commissioner of Corporations, I was an attorney in private practice specializing in corporate transactions, including securities offerings. It is an honor and privilege to present to you the following views concerning H.R. 10, the Securities Litigation Reform Act currently before your subcommittee.

I believe there is a compelling need to reform the current system of securities litigation. The problem with the current system is two-fold. First, the current system too often promotes the filing of meritless claims. Perhaps more importantly, the current system does not adequately serve the interests it is designed to protect—the interests of defrauded investors. Before I comment on particular provisions of H.R. 10, I would like to provide some background information with respect to this latter problem.

Defrauded Investors—Class Action Victims. At the January 19 Telecommunications and Finance Subcommittee hearing, the principal beneficiaries of the current system, class action attorneys, were its strongest defenders. While it is not surprising that the class action bar might put its interest in the status quo ahead of the nation's interest in a dynamic entrepreneurial economy, I have been concerned that, too often, class action lawyers appear to put their interests ahead of their clients'. The class action bar's handling of a number of cases arising out of the Prudential limited partnership scandal exemplifies this abuse of the current system.

In the 1980s, Prudential Securities engaged in a widespread pattern of sales abuses in its marketing of limited partnership investments. To settle charges stemming from these abuses, Prudential pled guilty to criminal securities law violations and entered into a comprehensive settlement with the Securities and Exchange Commission and securities regulators from 49 states. As part of this comprehensive settlement, an independent arbitration process was established to address aggrieved investors' claims. According to the Independent Claims Administrator's January 20, 1995 report, however, more than 100,000 claims or parts of claims have been rejected because they had been settled as part of a class action lawsuit. My office has received letters from scores of investors in this situation. Frequently, these investors didn't even know that their claim was part of a class action settlement. Now many feel they've been victimized twice—once by Prudential and another time by the class action litigation system ostensibly designed to protect their interests.

In the VMS Realty Partnership case, limited partnership interests were sold to thousands of unsuitable investors, often on the basis of materially misleading statements. A class action suit based upon these abuses was brought by Milberg, Weiss, Bershad, Hynes & Lerach, the nation's largest class action law firm. Despite the strong evidence of securities law violations, this case was settled for less than 8 cents on the dollar. While this may have represented a significant recovery for the lawyers, it woefully undervalued the investors' claims. Investors who opted out of the class action settlement and are now participating in the independent arbitration process are frequently receiving 100% of their losses. In addition, these investors haven't had to share their recovery with a lawyer ''representing their interest.''

The Energy Income Limited Partnership case provides another example of this type of abuse. Again, this case involved a pattern of securities law violations, which Prudential acknowledged when it pled guilty to criminal securities violations. After some discovery, the lead class action lawyers recommended that the court approve a $37 million cash settlement. After a number of state securities regulators strenuously objected, the judge deferred ruling on the proposed settlement.

Because of the regulators' action, the total settlement offer was ultimately increased more than three-fold to $120 million. At the point, the class action lawyers affirmatively fought my office's efforts to require that they clearly explain to their clients what the settlement offer meant to them—for good reason. Those investors who did not accept the settlement and are now participating in the independent arbitration process are frequently recovering 100% of their losses. Investors who accepted the recommendation of ''their lawyers'' and participated in the class action settlement, have had to accept roughly 25–30 cents for each dollar of loss.

These cases illustrate the flip-side of the abuses in the current system of class action litigation; not only are bad cases overvalued, but strong cases are too often undervalued. While quick settlement of these cases may serve the lawyers' interests, it frequently does not serve the interests of the defrauded investors.

Provisions of H.R. 10. H.R. 10 effectively addresses many of the current abuses of the securities class action litigation system. As the following analysis of certain of the provisions of H.R. 10 reflects, however, I would like to respectfully submit several suggested changes for the Subcommittee's consideration.

SECTION 202. PREVENTION OF LAWYER-DRIVEN LITIGATION

Section 202 puts in place several much-needed safeguards against certain abuses in the current system. It is important that the prosecution of securities claims be directed by the aggrieved investors, not by the lawyers. I would respectfully suggest however, that Section 202(a) be revised to evidence a strong preference for having a steering committee of investors perform this function rather than an appointed guardian ad litem. Those investors who are seeking to recover their losses are, on balance, likely to have a more complete commonality of views with the investor class than a court-appointed third party.

Section 202(b) does address a particular problem associated with class action settlements—woefully inadequate disclosure of the settlement terms. The settlement notice that was sent to investors in the Prudential Energy Income Limited Partnership case illustrates this problem. While the notice contained lengthy and complicated descriptions of the procedural history of the case, the paragraph that described the mechanism to determine what investors would receive in the settlement was buried near the back of the notice. In addition, the formula to calculate the settlement awards was nearly incomprehensible to average investors. As I noted earlier, the lead class action lawyers fought my office's efforts to make the description of the settlement terms more understandable to investors.

While Section 202(b) does provide some improvement over the current system of disclosure, I would respectfully suggest that it be amended to provide, at a minimum, that the amount that an investor could expect to receive in the settlement, on a per share or per unit basis, be prominently disclosed in the settlement notice. Section 202(b) might also be amended to require that the settlement notice be understandable to an average investor and focus more attention on the substance of the class action settlement, including the information now called for in Section 202(b), and less attention on the procedural history of the case.

SECTION 203. PREVENTION OF ABUSIVE PRACTICES THAT FOMENT LITIGATION

One of the most egregious abuses of the current system of class action securities litigation, the professional plaintiff, is effectively addressed by the elimination of bonus payments and limits on those investors who can serve as class representatives. I do have one suggested change, however. While it is important that class action representatives have a meaningful economic stake in the proceeding, I would respectfully suggest that Section 21(k) of the Securities Exchange Act, to be added by Section 203(a), be amended to reduce the amount of required investment from $10,000 to $5,000. While the amount of the minimum investment is admittedly a judgment call, I encourage the Subcommittee to strike the balance more in favor of the interests of small investors.

Under the current system, litigants are responsible for their own attorneys' fees. This can present two problems. Defendants in class action cases may feel coerced to settle a frivolous case to avoid the often high costs of litigation. In addition, the amount received by defrauded investors is reduced by the attorneys' fees, and, as a result, investors can never fully recover their losses. H.R. 10 addresses these problems by requiring the loser in a securities litigation case to pay the opposing side's legal fees in all cases.

While the solution offered by H.R. 10 should help weed out frivolous claims and afford investors an opportunity to receive full compensation for their losses, a strict loser-pays rule could put a significant and unwarranted barrier to investors, particularly small investors, seeking to recover losses allegedly associated with the defendant's fraudulent conduct. Putting too high a barrier to investors' claims could also undermine the important role that private securities litigation serves as an adjunct to governmental enforcement of the securities laws.

To address this concern, I would respectfully recommend that Section 21(m) be amended to require that the plaintiffs be obligated to pay the defendant's legal fees in those cases where (i) the case is dismissed on the pleadings or pursuant to a defendant's motion for summary judgment or (ii) the court otherwise finds at the end of the case that it was substantially without merit.

SECTION 204. PREVENTION OF ''FISHING EXPEDITION'' LAWSUITS

One of the most problematic elements of class action litigation is the prospect that a defendant who played a small role in the alleged securities law violation could be liable for the entire amount of investor losses. This prospect can be among the most coercive elements of securities litigation that compel so-called ''deep pocket'' defendants to accept unfair settlement proposals. H.R. 10 responds to this concern by requiring that plaintiffs show that the defendants were guilty of actual fraud.

I am concerned, however, that this solution to the problem associated with the rules of joint and several liability goes too far. Such a knowing fraud standard may encourage participants in the securities offering process to put a premium on remaining ignorant of the facts and undermine their commitment to do appropriate due diligence. To

avoid the unintended consequences associated with an absolute knowing fraud standard, I would respectfully suggest that Section 204 be amended to entitle investors to hold defendants who engaged in reckless conduct, not constituting knowing fraud, proportionately liable for their losses. Defendants who engaged in knowing fraud should remain jointly and severally liable for all investor losses.

While I respectfully recommend that certain changes be made to H.R. 10, I believe that H.R. 10 represents a significant step forward to correct certain of the problems in the current class action litigation system, and I want to urge the Subcommittee to continue to proceed with this important piece of legislation.

Very truly yours,

GARY S. MENDOZA,
Commissioner of Corporations.

STATE OF NORTH CAROLINA,
DEPARTMENT OF THE TREASURER,
Raleigh, NC, May 3, 1995.

Senator ALFONSE D'AMATO,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR D'AMATO: As State Treasurer and fiduciary for the North Carolina Retirement Systems and the State of North Carolina, I am writing to add my support for securities litigation reform legislation. I agree that the current securities fraud litigation system is not protecting investors and needs reform.

It is my understanding that the legislation was passed by the House of Representatives by an overwhelming bipartisan vote on March 8, 1995. Your support for these long overdue reforms would be greatly appreciated.

Sincerely,

HARLAN E. BOYLES,
State Treasurer.

STATE OF SOUTH CAROLINA,
OFFICE OF THE STATE TREASURER,
Columbia, SC, April 17, 1995.

Hon. ERNEST F. HOLLINGS,
Senate Office Building,
Washington, DC.

DEAR SENATOR HOLLINGS: As State Treasurer of South Carolina, I am concerned that abusive and meritless securities litigation inflicts tremendous harm on the capital formation process that is vital to the economic growth of South Carolina and the United States. Accordingly, I would like to join with those elected officials nationwide who are urging the Senate to pass meaningful reform legislation that would discourage meritless litigation and thereby enhance the capital formation process.

Under present law, attorneys have no disincentive to file unsubstantiated claims, because there are no penalties for filing such claims. Similarly, defendants are often pressured to settle meritless claims by the staggering costs of defending lawsuits in our overburdened courts.

Our nation's securities laws were enacted to protect investors and to improve our capital markets. However, the perverse incentive of attorneys to file meritless claims has created the exact opposite of the intended effects of our securities laws. Abusive lawsuits, triggered by a small group of lawyers, inflict tremendous harm on our nation's financial system and on the individuals and organizations drawn into them.

Our securities system was structured to provide broad disclosure of information to investors so they could make informed decisions. But there is overwhelming evidence that issuers of corporate securities filings include only limited disclosure, influenced largely by the threat of lawsuits. Additionally, lawyers, not investors, control the litigation system and reap the lion's share of financial rewards.

Growth companies are the most critical sector of our nation's economy as they provide the majority of new jobs. Unfortunately, such companies are also the target of an inordinate number of abusive lawsuits. These lawsuits undermine the confidence of investors and produce a higher cost of capital in the United States. This higher cost of capital puts us at a disadvantage with foreign competitors and harms workers, consumers, and investors.

Once again, I urge the Senate to pass meaningful reform legislation to enhance our economic future and to protect the investments of the State of South Carolina and those of individual investors.

Very truly yours,

RICHARD ECKSTROM,
State Treasurer.

STATE OF DELAWARE,
OFFICE OF STATE TREASURER,
Dover, DE, March 21, 1995.

Hon. ALFONSE M. D'AMATO,
U.S. Senate,
Washington, DC.

DEAR SENATOR D'AMATO: As Treasurer of the State of Delaware, I have become concerned that abusive securities litigation is negatively affecting the capital formation process essential to the economic growth of my state and the nation.

Problems with the current system have been well-documented in Congressional hearings, academic studies, and by the first-hand experiences of corporate executives and investors. Abusive lawsuits—often triggered merely by a stock price drop—and easy and inexpensive for plaintiffs' lawyers to bring. Once a company is sued, they are forced to settle, even if they are innocent, to avoid the high costs of fighting a meritless lawsuit. Such abusive class action litigation diverts corporate capital away from R&D, business expansion and job creation. High-technology and other high-growth companies are prime targets to these lawsuits, simply because of the inherent volatility of their stock prices.

Investors are also being harmed by the current system as it shortchanges people who have been victimized by real fraud. Studies show that plaintiffs receive 14 cents for every dollar of recoverable damages, at best, and a substantial portion of the settlement fund usually goes to the plaintiffs' attorneys. The plaintiffs' lawyers who specialize in these cases profit from bringing as many cases as possible and quickly settling them, regardless of the merits. Valid claims are being undercompensated in the current system because lawyers have less incentive to vigorously pursue them.

Investors lost out in another way. Studies show that abusive 10b-5 lawsuits are chilling voluntary corporate disclosure of information that would be useful to investors. A recent survey by the American Stock Exchange revealed that 75% of the corporate CEOs surveyed limit the information disclosed to investors out of fear of meritless lawsuits.

Federal legislation is needed to restore the protection that the 10b-5 action is supposed to provide while eliminating the abuses in the current system. Meaningful reform must include remedying the existing liability structure that creates the incentive to bring and settle meritless lawsuits. Legislation should also reduce the costs that the system imposes on the capital markets and on business and economic growth.

I urge Congress to pass securities litigation reform legislation to protect the investments of my state and of the millions of individual Americans who invest in the securities markets.

Sincerely,

JANET C. RZEWNICKI,
State Treasurer.

STATE OF COLORADO,
DEPARTMENT OF THE TREASURY,
Denver, CO, April 10, 1995.

Hon. ALFONSE D'AMATO,
Chairman, Senate Hart Building, Washington, DC.

DEAR SENATOR D'AMATO: As the Treasurer of the State of Colorado, my office issues debt and purchases securities on behalf of the people of the State of Colorado. With such responsibility, I am concerned that securities litigation and the threat of securities litigation are beginning to negatively impact our nation's business by hindering the capital formation process essential to the economic growth of Colorado and the nation.

Under the present law, attorneys are given an incentive to file unsubstantiated claims because there are no penalties for filing meritless claims. Attorneys will file claims on the basis of little more than a drop in a company's stock prices and then, through discovery, will determine if there is any merit to continuing the claim. Because of the liability exposure and the tremendous cost of defending a claim, companies are often left with no choice but to settle the unsubstantiated suit.

Additionally, the plaintiffs typically recover only a small percentage of their claim, as the lawyers extract large fees for bringing the suit. A system that was intended to protect investors now seems to benefit the lawyers.

The fear of meritless lawsuits has also caused many companies to minimize the amount of information they disclose to the public which is the exact opposite of the intent of the federal securities laws. This fear has also caused accounting and insurance firms to increase their costs to clients, discontinue service in some cases, and cause outside executives to refuse to serve on a company's board of directors.

Federal legislation is needed to restore the protections that the 10B–5 action is supposed to provide and to eliminate the abuse of the system. At a minimum, legislation should address the liability scheme that rewards lawyers for filing meritless suits and reduce the costs that the system imposes on the capital markets and business expansion.

Thank you for your consideration of this important issue.

Sincerely,

BILL OWENS,
State Treasurer.

ASSOCIATION OF PRIVATE PENSION
AND WELFARE PLANS,
Washington, DC, March 17, 1995.

Hon. PETE V. DOMENICI,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS DOMENICI AND DODD: On behalf of the membership of the Association of Private Pension and Welfare Plans (APPWP), I am writing to commend your efforts in pursuing reform of the securities litigation system. The APPWP is a national trade association for companies and individuals concerned about federal legislation affecting all aspects of the employee benefits system. The APPWP's members represent the entire spectrum of the private pension and employee benefits community: Fortune 500 companies, banks, insurance companies,

law, accounting, consulting, investment and actuarial firms. APPWP members either sponsor directly or administer employee benefit plans covering more than 100 million Americans.

Your initiative is necessary to address the critical problems with today's securities litigation system. As you have correctly noted, investors are ill-served by the present system. Because issuers fear abusive litigation, they have sharply curtailed the amount of information they are willing to disclose, leaving investors without information essential for intelligent decision making. To the detriment of shareholders, abusive securities litigation distracts companies from their principal tasks, discourages the development of new businesses and inhibits sound risk-taking. Finally, the existing litigation system encourages suit regardless of merit and the cost forces defendants to settle regardless of merit.

We support your efforts to change these skewed incentives, to encourage voluntary disclosure by issuers of securities and to transfer control of securities litigation from lawyers to investors. We look forward to working with you to make these reforms a reality.

Sincerely,

LYNN D. DUDLEY,
Director of Retirement Policy.

[From the Legal Times, February 1995]

TIME TO WAKE THE SLEEPING BEAR

(By Nell Minow)

In January of this year, the U.S. District Court for the Southern District of New York issued a decision dismissing a group of shareholders class actions against the Philip Morris Cos. The court noted that less than five hours after Philip Morris announced that its 40-cents-per-package price reduction on Marlboro cigarettes could reduce its operating earnings by as much as 40 percent, the first class action was filed.

The court further noted:

''[The first action was filed] by a plaintiff who had bought 60 shares of stock during the alleged class period. Four more lawsuits were filed that day, and on the very next business day . . . five additional lawsuits were commenced . . .. I note that in the few hours counsel devoted to getting the initial complaints to the courthouse, overlooked was the fact that two of them contained identical allegations, apparently lodged in counsel's computer memory of 'fraud' form complaints, that the defendants here engaged in conduct 'to create and prolong the illusion of [Philip Morris'] success in the toy industry.'''

In other words, in the race to the courthouse, the plaintiffs' lawyers had not even taken the time to do a ''global search and replace'' on a previous complaint, apparently against some toy company, to reflect the fact that the product Philip Morris was reporting on so ''fraudulently'' was actually cigarettes.

This demonstrates one-half of the problem in the current system for shareholders litigation. Most shareholder lawsuits are brought by people who care little, if at all, for shareholders as a group. The plaintiffs and their lawyers make grand statements about the integrity of the markets, but the primary motivation—and the primary outcome—is their own returns.

Typically, plaintiffs get a small award, and their lawyers get a large one. These merit less suits are filed whenever the stock performance is worse—or better—than the company predicted, and then settled by insurance companies for too much money (because insurers don't want to risk sending a complicated case to the jury).

The other half of the problem is that cases with merit are settled for too little or never brought at all. Because of free-rider and collective-choice issues, along with conflicts of interest, those shareholders with a meaningful stake have not been heard from.

The state of shareholder litigation is reminiscent of a line by William Butler Yeats: ''The best lack all conviction and the worst are full of passionate intensity.'' The system falls to protect shareholders from genuine abuses, but still deters managers from disseminating useful and legitimate information. The current proposals for securities litigation reform—a Senate bill, S. 240, that is similar to one introduced last year and a House bill, H.R. 10, that is part of the Contract With America—do a better job with the first half of the problem than with the second.

The current rules and procedures for securities class actions and derivative actions were designed to overcome the problem of collective choice. In certain cases, no one shareholder can justify the time and expense necessary to bring a lawsuit for only a pro rata share of the rewards. So the procedures were established to create incentives for participation in suits challenging fraudulent statements.

But the system fails to take into account the unusual makeup of the class of potential securities plaintiffs. The shareholder community is too diffuse, too diverse, and subject to change too frequently to be addressed meaningfully as a group.

More important, the disincentives for participation are strong. Can we see the trustees of the IBM Corp.'s pension fund joining, as plaintiffs, in a shareholder action against the management of the General Motors Corp., no matter how much is at stake?

Having created a system for filing suits that does not eliminate the powerful disincentives for legitimate plaintiffs, we are left with the tiny but highly prosperous community of ''Wilmington filers.'' The ambulance chasers of securities law, these people have made an industry out of nuisance suits. Anthony Bonden described them like this in the December 1989 issue of The American Lawyer (''The Shareholder Suit Charade''):

''Welcome to the plush and intimate confines of the Delaware chancery court, home turf of the Wilmington filers, the shareholder lawyers who sue any deal that moves. They are the bottom scrapers of the M&A world, the Wall Street Journal clippers with the mysterious professional plaintiffs. Racing to the courthouse on the merest rumor of a deal, they file triplicate copies of one another's suits—complaints that themselves read like duplicates from every other case. They are ''rapacious jackals,'' in the memorable words of Chicago federal judge Charles Kocoras in 1982, ''whose declared concern for the corporate well-being camouflages their unwholesome appetite for corporate dollars.'' And they are the ''pilgrams''—early settlers—litigators who never have to prove their mettle in a trial.''

What we want is for shareholders with a meaningful stake to file suit to enforce limits on corporate directors and managers who have neglected or abused their obligation to be candid about the company's status and prospects. We do not want shareholders with microscopic stakes to file dozens, even hundreds, of nuisance suits and to settle on terms that benefit the plaintiffs a little, their lawyers a lot, and their fellow shareholders not at all. We want to encourage corporate communication about the company and its prospects, but we want to discourage communication that is misleading or fraudulent.

The proposals before Congress address these goals with the following important and urgently needed reforms: The Racketeer Influenced and Corrupt Organizations law should not apply to ordinary securities cases. Forward-looking statements, as defined by the Securities and Exchange Commission, should have some ''safe harbor'' protection. Plaintiffs should bear the burden of proving that the defendant had ''actual knowledge'' that a statement was false or that a relevant statement was omitted. And a stay of discovery should be provided once a motion to dismiss, based on the safe harbor for forward-looking information, has been filed.

These measures will reduce the number of sloppy, race-to-the-courthouse actions, like the ones filed against Philip Morris, and put less pressure on insurers to settle. They will also encourage use of alternate dispute resolution. Indeed, the ADR provisions in the current bills should be strengthened, perhaps even requiring referral to a certified mediator with a background in securities law, who would resolve as many issues as possible.

To reduce the conflicts of interest between plaintiffs and their fellow shareholders, the proposals provide for appointment of a guardian ad litem or a plaintiff steering committee. This makes other aspects of the bills—including a minimum requirement for stock ownership and a limit on the number of actions a plaintiff can bring—unnecessary and possibly counterproductive. As long as there is an independent mechanism for ensuring that the interests of all shareholders are met, the identity and the holdings of the name plaintiff are unimportant. Indeed, an individual shareholder may be an excellent representative of the group.

Litigation reform efforts in fields where corporations pay big awards always raise the question of the English, or ''loser pays,'' rule. The theory is that ''loser pays'' discourages frivolous suits. But in this context, it is unnecessary.

There are already sufficient penalties available for frivolous suits. Furthermore, judges can penalize litigants by refusing to approve attorney fees, as the U.S. District Court in Maine did in a 1992 case, Weinberger, et al. v. Great Northern Nekoosa Corp., et al.

Lawyers had filed suit on behalf of the shareholders of Great Northern Nekoosa, a takeover target of the Georgia-Pacific Corp. Since the ultimate deal was better for shareholders than the proposal on the table at the time that the suit was filed, the attorneys argued that they had made an important contribution for which they deserved to be paid. Georgia-Pacific agreed to pay them $2 million, subject to what was expected to be routine approval by the court.

Instead, the court refused to allow any payment at all, issuing a decision with detailed objections to almost every item and calculation put forward to support the $2 million in fees. The judge ruled that even had the law firms justified their involvement, they had overbilled by 80 percent: ''Exaggeration, rather than restraint, has been the watchword of the plaintiff's counsel's entire exercise. . . . [Even a Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn.''

Since the plaintiffs bar normally takes these shareholders cases on a contingency basis, a decision like the one in the Georgia-Pacific case is a powerful deterrent to frivolous and unnecessary suits.

But just as we have to address the problem of too many bad suits, we need to address the problem of too few good ones. Institutional investors, including pension funds and money managers, often ignore notices of shareholders suits. It is almost unheard of for them to file one. The ''loser pay'' rule will only make this problem worse.

On the contrary, to encourage large shareholders to take on the task—and the commercial risk—of filing suit against major corporations, we may need to compensate them for the time and resources they expend. A steering committee, as in bankruptcy cases, could review such awards.

The Department of Labor, which has jurisdiction over ERISA and Taft-Hartley pension funds, has already raised the consciousness of the pension-fund community about its obligations with regard to proxy voting. The department could do the same with regard to shareholder litigation. Along with the other agencies that have jurisdiction over institutional investors—the SEC, the Internal Revenue Service, and the banking agencies—the Labor Department should establish a standard for evaluating a potential suit as one would any other asset.

To produce real reform—by encouraging suits brought to hold management's feet to the fire and discouraging suits brought to line the pockets of plaintiffs and their lawyers—institutional investors must be persuaded to share the burden of bringing shareholder litigation. When the system does not provide adequate incentive for them to protect their own interests and those of their fellow shareholders, it is institutional investors and their beneficiaries whom the system has failed the most.

TESTIMONY OF MARYELLEN ANDERSEN, INVESTOR AND CORPORATE RELATIONS DIRECTOR, CONNECTICUT RETIREMENT & TRUST FUNDS AND TREASURER OF THE COUNCIL OF INSTITUTIONAL INVESTORS, BEFORE THE SENATE BANKING SECURITIES SUBCOMMITTEE, JULY 21, 1993

Good morning. My Washington advisor ordered me not to start by telling you who I am and who I represent. She says you already know, or you wouldn't have invited me. She also says it is silly to read a string of titles and numbers, and it puts everyone to sleep.

So I won't read you a string of titles. But I think it is critical to emphasize that if there is *any* constituency here today that has every reason to get the securities litigation system right, and no reason to want to skew the system to favor anyone, it is the constituency I represent.

This is the constituency. I am here representing the public employees and retirees of the state of Connecticut. As some of you know, the state pension system invests over $9.54 billion dollars on behalf of over 140,000 employees and beneficiaries. I am also the Treasurer of the Council of Institutional Investors, whose members invest over $600 billion on behalf of many more millions of union, public, and other corporate employees and beneficiaries.

Why do we care about this legislation? We care because we are the largest shareholders in America. We are ones who are hurt if a system allows someone to force us to spend huge sums of money in legal costs by merely paying ten dollars and filing a meritless cookie cutter complaint against a company or its accountants when that plaintiff is disappointed in his or her investment. Our pensions and our jobs depend on our employment by and investment in our companies. If we saddle our companies with big and unproductive costs that other companies in other countries do not pay, we cannot be surprised if our jobs and raises begin to disappear and our pensions come up short as the population ages.

But we are also the shareholders who want to preserve our ability to sue when it is appropriate. We are the shareholders who are benefitted if the SEC or private parties bring appropriate law suits that police our markets and care for millions of individual investors who might not otherwise be able to protect themselves.

Let me emphasize this point. As the largest shareholders in most companies, we are the ones who have the most to gain from meritorious securities litigation. The awards directly and positively affect our returns. So, besides the general value that meritorious lawsuits have for keeping our markets clean, they have direct immediate financial value to us. We certainly, therefore would be foolish to advocate any change that would discourage the proper enforcement of our securities laws.

However, we are also both the employees and taxpayers who depend on corporate employers and a corporate tax base, and we are the millions of individual consumers of corporate goods and services. In both of these roles we are the ones who pay the cost of *all* corporate litigation, meritorious and otherwise. We pay by not getting raises, we pay by higher prices, we pay through lower shareholder returns. You must remember, in other words, that whenever you see a deserving plaintiff awarded, we are the ones paying the price. We are also the ones paying the settlements when the lawsuits are frivolous. And we are the ones paying the huge lawyers' fees. Since the Council of Institutional Investors' average retiree makes only $552 a month, we feel we are pretty needy and deserving too.

In short, we are the ones who are hurt if the system doesn't work right or efficiently, and we are the ones who stand to benefit most if it does.

And, with all due respect to the other parties present, I believe we are the ones with both the interest and the expertise necessary to address these issues and come up with solutions that are genuinely in the public interest.

What, then, do we think? I think most of us feel that despite all the strong language and political blood letting that this legislation has produced; there is reason to believe the system isn't yet working right.

There is still major disagreement about whether there are a huge number or a small number of frivolous securities strike suits filed. There is disagreement about whether the recent growth in the number of these suits is temporary or permanent. But whether the number is large or small, and whether the problem is temporarily worse than usual or not, the problem is one to be addressed: it is in our collective interest to look for ways to reduce or eliminate any frivolous or inefficient efforts to use our legal system and our private markets like a shareholder lottery.

There are also still major disagreements about the size and utility of the legal, administrative, settlement, and lost opportunity costs generated by the present system. But we all know that because of the tremendous number of these cases the costs are very significant. It is in our collective interest to look for ways to reduce these costs and insure that every dollar spent is spent as efficiently as possible and is as likely as possible to go to innocent victims, affected shareholders, and public administrative costs, not on individuals whose wealth depends on generating lawsuits more-or-less regardless of merit.

So I am here to offer to work with those who have every interest in getting this matter right—with labor, with the business community, with other investors, and with you and the SEC—to offer up our best effort at identifying and addressing securities litigation reform to protect our jobs and our pensions.

I am not here to endorse this specific piece of legislation or to pretend to be an expert on the intricacies of this bill or this issue more generally. I am not an accountant or a securities lawyer—my Washington advisor says this makes me ''a civilian.'' But one needn't be an expert to realize the importance of this issue and to conclude that this issue must be addressed to ensure that the system protects us as investors, employees, retirees, and citizens.

I close by repeating my offer to have the Council work with you, the SEC, labor, and business to try to reach constructive solutions to this and other litigation-related problems.

Mr. DOMENICI. I thank the Senator from New York for yielding. And I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I yield the remainder of our time to the distinguished Senator from California, who has been such a powerful advocate throughout this debate.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mrs. BOXER. Mr. President, I thank my ranking member so much. Since people are thanking people for working with them on this, I just have to say what an honor it has been to take this issue to the floor of the U.S. Senate with two of my role models, frankly, Senator SARBANES and Senator BRYAN. I have been so honored to be part of this team because when we started, we were really laughed at in some ways saying, ''Well you'll never get any votes for anything.'' By God, we actually won a couple of amendments.

We came close to fixing the safe harbor provision. I think we have shown with tenacity that we can make our points, and I am going to try to do that in the last couple of minutes.

Why do we need securities laws in the first place? Clearly, it is to protect the average investor. There are so many tears being shed here for corporate directors, and, by the way, most of them are wonderful, honorable, decent people in the community and they help the engine of economic growth, but I have not seen any tears shed on the other side for the victims of securities fraud.

I hear bashing of lawyers, that is in. Sure, bash, bash, that is the politics of the nineties. Every time we put up an amendment, bash the lawyers, beat the amendment.

But what we are about is saying get rid of the frivolous lawsuits, but do not give fast-moving insiders and others a chance to make a quick buck at the expense of the small investor.

I am going to tell you what some of the press have said about this bill relating to S. 240. The St. Louis Post-Dispatch: ''Don't protect securities fraud.'' That is what they think this bill does.

Contra Costa Times: ''Why would any Member of Congress vote to protect those involved in fraud at the expense of investors?''

Seattle Post-Intelligencer: ''The legislation is opposed by the U.S. Conference of Mayors, the Government Finance Officers, the American Association of Retired Persons, and the North American Securities Administrators Association.''

''S. 240 is bad news for investors. It would tie victims in legal knots while immunizing white-collar crooks against having to pay for their misdeeds.'' The Raleigh, NC, News and Observer.

The Philadelphia Inquirer: ''A crook is a crook, and S. 240 would relax penalties for many stock crooks.''

And then we have Jane Bryant Quinn of Newsweek: ''S. 240 makes it easier for corporations and stockbrokers to mislead investors.''

The Seattle Times: ''This legislation has proceeded almost unnoticed because it is hideously complicated.''

It is so complicated it is bad for the average investor. I hope we will register a ''no'' vote on this final passage.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, we have heard a lot said about this bill. I want to first commend Senators DOMENICI and DODD for their stewardship. Senator DOMENICI outlined how he detected a system that was more interested in making huge profits for lawyers and not give a whit about the so-called victims. In many cases, there were no victims until the small investors, people who had invested in companies that these lawsuits were manufactured against, became the victims.

Let me tell you about the people who brought these suits. About 30 percent of these suits were brought by one law firm—by one law firm. They went out and they hired their plaintiffs. Sixty-five plaintiffs appeared in two cases, 12 plaintiffs appeared in three cases, 3 plaintiffs appeared in four cases. They appeared to get their bonuses, $10,000, $15,000, $20,000—and by allowing their names to be used these plaintiffs allow the lawyers to race to the courthouse.

Let me tell you what this bill does. It ends the use of professional plaintiffs. I have not heard anybody say anything about that. It forces lawyers to work for real clients. We say the pension funds, the little guys who have invested in them, they should select who the lawyers are.

This bill will empower courts to weed out frivolous cases. It gives defendants the leverage to fight cases when they did nothing wrong. Now they cannot fight, they have to surrender, otherwise they are hit for millions of dollars in costs or damages, so even if you win you lose.

S. 240 will require accountants to report fraud to authorities. Nobody says anything about that. It gives the SEC the ability to go after bad guys, a power which they do not have today.

It will get more information to investors by making it so that people can make projections without being sued. It is a good bill, and it is long overdue. We would rectify a terrible situation that exists at the present time by passing this bill.

Mr. President, I urge the adoption of S. 240. I yield back the remainder of my time.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the bill having been read the third time, the question is, Shall the bill, H.R. 1058, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

The PRESIDING OFFICER (Mr. KYL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 70, nays 29, as follows:

[Rollcall Vote No. 295 Leg.]

YEAS—70

Abraham	Gorton	Mikulski
Akaka	Gramm	Moseley-Braun
Ashcroft	Grams	Murkowski
Baucus	Grassley	Murray
Bennett	Gregg	Nickles
Bradley	Harkin	Nunn
Brown	Hatch	Packwood
Burns	Hatfield	Pell
Campbell	Helms	Pressler
Chafee	Hutchison	Reid
Coats	Inhofe	Robb
Cochran	Jeffords	Rockefeller
Coverdell	Johnston	Roth
Craig	Kassebaum	Santorum
D'Amato	Kempthorne	Simpson
DeWine	Kennedy	Smith
Dodd	Kerry	Snowe
Dole	Kohl	Stevens
Domenici	Kyl	Thomas
Exon	Lieberman	Thompson
Faircloth	Lott	Thurmond
Feinstein	Lugar	Warner
Ford	Mack	
Frist	McConnell	

NAYS—29

Biden	Dorgan	Levin
Bingaman	Feingold	McCain
Boxer	Glenn	Moynihan
Breaux	Graham	Pryor
Bryan	Heflin	Sarbanes
Bumpers	Hollings	Shelby
Byrd	Inouye	Simon
Cohen	Kerrey	Specter
Conrad	Lautenberg	Wellstone
Daschle	Leahy	

ANSWERED ''PRESENT''—1

Bond

So, the bill (H.R. 1058), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 1058) entitled ''An Act to reform Federal securities litigation, and for other purposes'', do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Private Securities Litigation Reform Act of 1995''.

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

Sec. 1. Short title; table of contents.

TITLE I—REDUCTION OF ABUSIVE LITIGATION

Sec. 101. Elimination of certain abusive practices.
Sec. 102. Securities class action reform.
Sec. 103. Sanctions for abusive litigation.
Sec. 104. Requirements for securities fraud actions.
Sec. 105. Safe harbor for forward-looking statements.
Sec. 106. Written interrogatories.
Sec. 107. Amendment to Racketeer Influenced and Corrupt Organizations Act.
Sec. 108. Authority of Commission to prosecute aiding and abetting.
Sec. 109. Loss causation.
Sec. 110. Study and report on protections for senior citizens and qualified retirement plans.
Sec. 111. Amendment to Racketeer Influenced and Corrupt Organizations Act.
Sec. 112. Applicability.

TITLE II—REDUCTION OF COERCIVE SETTLEMENTS

Sec. 201. Limitation on damages.
Sec. 202. Proportionate liability.
Sec. 203. Applicability.

TITLE III—AUDITOR DISCLOSURE OF CORPORATE FRAUD

Sec. 301. Fraud detection and disclosure.

TITLE I—REDUCTION OF ABUSIVE LITIGATION

SEC. 101. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.

(a) PROHIBITION OF REFERRAL FEES.—Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)) is amended by adding at the end the following new paragraph:

''(8) PROHIBITION OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this title or under the Securities Act of 1933.''.

(b) ATTORNEY CONFLICT OF INTEREST.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(f) ATTORNEY CONFLICT OF INTEREST.—In any private action arising under this title, if a plaintiff is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(i) ATTORNEY CONFLICT OF INTEREST.—In any private action arising under this title, in which a plaintiff is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.''.

(c) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(g) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by

private parties seeking distribution of the disgorged funds.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

''(4) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.''.

SEC. 102. SECURITIES CLASS ACTION REFORM.

(a) RECOVERY RULES.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(h) RECOVERY RULES FOR PRIVATE CLASS ACTIONS.—

''(1) IN GENERAL.—The rules contained in this subsection shall apply in each private action arising under this title that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

''(2) CERTIFICATION FILED WITH COMPLAINTS.—

''(A) IN GENERAL.—Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

''(i) states that the plaintiff has reviewed the complaint and authorized its filing;

''(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this title;

''(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

''(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

''(v) identifies any action under this title, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve as a representative party on behalf of a class; and

''(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (3).

''(B) NONWAIVER OF ATTORNEY-CLIENT PRIVILEGE.—The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

''(3) RECOVERY BY PLAINTIFFS.—The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class.

''(4) RESTRICTIONS ON SETTLEMENTS UNDER SEAL.—The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

''(5) RESTRICTIONS ON PAYMENT OF ATTORNEYS' FEES AND EXPENSES.—Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of damages and prejudgment interest awarded to the class.

''(6) DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.—Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

''(A) STATEMENT OF PLAINTIFF RECOVERY.—The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

''(B) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

''(i) AGREEMENT ON AMOUNT OF DAMAGES.—If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement concerning the average amount of such potential damages per share.

''(ii) DISAGREEMENT ON AMOUNT OF DAMAGES.—If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement from each settling party concerning the issue or issues on which the parties disagree.

''(iii) INADMISSIBILITY FOR CERTAIN PURPOSES.—A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

''(C) STATEMENT OF ATTORNEYS' FEES OR COSTS SOUGHT.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

''(D) IDENTIFICATION OF LAWYERS' REPRESENTATIVES.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

''(E) REASONS FOR SETTLEMENT.—A brief statement explaining the reasons why the parties are proposing the settlement.

''(F) OTHER INFORMATION.—Such other information as may be required by the court.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(j) RECOVERY RULES FOR PRIVATE CLASS ACTIONS.—

''(1) IN GENERAL.—The rules contained in this subsection shall apply in each private action arising under this title that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

''(2) CERTIFICATION FILED WITH COMPLAINTS.—

''(A) IN GENERAL.—Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

''(i) states that the plaintiff has reviewed the complaint and authorized its filing;

''(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this title;

''(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

''(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

''(v) identifies any action under this title, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve as a representative party on behalf of a class; and

''(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (3).

''(B) NONWAIVER OF ATTORNEY-CLIENT PRIVILEGE.—The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

''(3) RECOVERY BY PLAINTIFFS.—The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award to any representative party serving on behalf of a class of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

''(4) RESTRICTIONS ON SETTLEMENTS UNDER SEAL.—The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

''(5) RESTRICTIONS ON PAYMENT OF ATTORNEYS' FEES AND EXPENSES.—Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of damages and prejudgment interest awarded to the class.

''(6) DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.—Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

''(A) STATEMENT OF PLAINTIFF RECOVERY.—The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

''(B) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

''(i) AGREEMENT ON AMOUNT OF DAMAGES.—If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement concerning the average amount of such potential damages per share.

''(ii) DISAGREEMENT ON AMOUNT OF DAMAGES.—If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement from each settling party concerning the issue or issues on which the parties disagree.

''(iii) INADMISSIBILITY FOR CERTAIN PURPOSES.—A statement made in accordance with

clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

''(C) STATEMENT OF ATTORNEYS' FEES OR COSTS SOUGHT.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

''(D) IDENTIFICATION OF LAWYERS' REPRESENTATIVES.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

''(E) REASONS FOR SETTLEMENT.—A brief statement explaining the reasons why the parties are proposing the settlement.

''(F) OTHER INFORMATION.—Such other information as may be required by the court.''.

(b) APPOINTMENT OF LEAD PLAINTIFF.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(i) PROCEDURES GOVERNING APPOINTMENT OF LEAD PLAINTIFF IN CLASS ACTIONS.—

''(1) EARLY NOTICE TO CLASS MEMBERS.—

''(A) IN GENERAL.—In any private action arising under this title that is brought on behalf of a class, not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

''(i) of the pendency of the action, the claims asserted therein, and the purported class period; and

''(ii) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

''(B) ADDITIONAL NOTICES MAY BE REQUIRED UNDER FEDERAL RULES.—Notice required under subparagraph (A) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

''(2) APPOINTMENT OF LEAD PLAINTIFF.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a notice is published under paragraph (1)(A), the court shall consider any motion made by a purported class member in response to the notice, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this subsection referred to as the 'most adequate plaintiff') in accordance with this paragraph.

''(B) CONSOLIDATED ACTIONS.—If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by subparagraph (A) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this paragraph.

''(C) REBUTTABLE PRESUMPTION.—

''(i) IN GENERAL.—Subject to clause (ii), for purposes of subparagraph (A), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that—

''(I) has either filed the complaint or made a motion in response to a notice under paragraph (1)(A);

''(II) in the determination of the court, has the largest financial interest in the relief sought by the class; and

''(III) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

''(ii) REBUTTAL EVIDENCE.—The presumption described in clause (i) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

''(I) will not fairly and adequately protect the interests of the class; or

''(II) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

''(iii) DISCOVERY.—For purposes of clause (ii), discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff—

''(I) may not be conducted by any defendant; and

''(II) may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

''(D) SELECTION OF LEAD COUNSEL.—The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new subsection:

''(k) PROCEDURES GOVERNING APPOINTMENT OF LEAD PLAINTIFF IN CLASS ACTIONS.—

''(1) EARLY NOTICE TO CLASS MEMBERS.—

''(A) IN GENERAL.—In any private action arising under this title that is brought on behalf of a class, not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

''(i) of the pendency of the action, the claims asserted therein, and the purported class period; and

''(ii) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

''(B) ADDITIONAL NOTICES MAY BE REQUIRED UNDER FEDERAL RULES.—Notice required under subparagraph (A) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

''(2) APPOINTMENT OF LEAD PLAINTIFF.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a notice is published under paragraph (1)(A), the court shall consider any motion made by a purported class member in response to the notice, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this subsection referred to as the 'most adequate plaintiff') in accordance with this paragraph.

''(B) CONSOLIDATED ACTIONS.—If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by subparagraph (A) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this paragraph.

''(C) REBUTTABLE PRESUMPTION.—

''(i) IN GENERAL.—Subject to clause (ii), for purposes of subparagraph (A), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that—

''(I) has either filed the complaint or made a motion in response to a notice under paragraph (1)(A);

''(II) in the determination of the court, has the largest financial interest in the relief sought by the class; and

''(III) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

''(ii) REBUTTAL EVIDENCE.—The presumption described in clause (i) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

''(I) will not fairly and adequately protect the interests of the class; or

''(II) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

''(iii) DISCOVERY.—For purposes of clause (ii), discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff—

''(I) may not be conducted by any defendant; and

''(II) may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

''(D) SELECTION OF LEAD COUNSEL.—The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.''.

SEC. 103. SANCTIONS FOR ABUSIVE LITIGATION.

(a) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(j) SANCTIONS FOR ABUSIVE LITIGATION.—

''(1) MANDATORY REVIEW BY COURT.—In any private action arising under this title, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure.

''(2) MANDATORY SANCTIONS.—If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure, the court shall impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure.

''(3) PRESUMPTION IN FAVOR OF ATTORNEYS' FEES AND COSTS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction for failure of the complaint or the responsive pleading or motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

''(B) REBUTTAL EVIDENCE.—The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

''(i) the award of attorneys' fees and other expenses will impose an undue burden on that party or attorney; or

''(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

''(C) SANCTIONS.—If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934

(15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(l) SANCTIONS FOR ABUSIVE LITIGATION.—

''(1) MANDATORY REVIEW BY COURT.—In any private action arising under this title, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure.

''(2) MANDATORY SANCTIONS.—If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure, the court shall impose sanctions in accordance with Rule 11 of the Federal Rules of Civil Procedure on such party or attorney.

''(3) PRESUMPTION IN FAVOR OF ATTORNEYS' FEES AND COSTS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction for failure of the complaint or the responsive pleading or motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

''(B) REBUTTAL EVIDENCE.—The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

''(i) the award of attorneys' fees and other expenses will impose an undue burden on that party or attorney; or

''(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

''(C) SANCTIONS.—If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.''.

SEC. 104. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

(a) SECURITIES ACT OF 1933.—

(1) STAY OF DISCOVERY.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(k) STAY OF DISCOVERY.—In any private action arising under this title, during the pendency of any motion to dismiss, all discovery and other proceedings shall be stayed unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.''.

(2) PRESERVATION OF EVIDENCE.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(l) PRESERVATION OF EVIDENCE.—It shall be unlawful for any person, upon receiving actual notice that a complaint has been filed in a private action arising under this title naming that person as a defendant and that describes the allegations contained in the complaint, to willfully destroy or otherwise alter any document, data compilation (including any electronically recorded or stored data), or tangible object that is in the custody or control of that person and that is relevant to the allegations.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 36. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

''(a) MISLEADING STATEMENTS AND OMISSIONS.—In any private action arising under this title in which the plaintiff alleges that the defendant—

''(1) made an untrue statement of a material fact; or

''(2) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the complaint shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the plaintiff shall set forth all information on which that belief is formed.

''(b) REQUIRED STATE OF MIND.—

''(1) IN GENERAL.—In any private action arising under this title in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each act or omission alleged to violate this title, specifically allege facts giving rise to a strong inference that the defendant acted with the required state of mind.

''(2) STRONG INFERENCE OF FRAUDULENT INTENT.—For purposes of paragraph (1), a strong inference that the defendant acted with the required state of mind may be established either—

''(A) by alleging facts to show that the defendant had both motive and opportunity to commit fraud; or

''(B) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness by the defendant.

''(c) MOTION TO DISMISS; STAY OF DISCOVERY.—

''(1) DISMISSAL FOR FAILURE TO MEET PLEADING REQUIREMENTS.—In any private action arising under this title, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of subsections (a) and (b) are not met.

''(2) STAY OF DISCOVERY.—In any private action arising under this title, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

''(3) PRESERVATION OF EVIDENCE.—It shall be unlawful for any person, upon receiving actual notice that a complaint has been filed in a private action arising under this title naming that person as a defendant and that describes the allegations contained in the complaint, to willfully destroy or otherwise alter any document, data compilation (including any electronically recorded or stored data), or tangible object that is in the custody or control of that person and that is relevant to the allegations.

''(d) LOSS CAUSATION.—In any private action arising under this title, the plaintiff shall have the burden of proving that the act or omission alleged to violate this title caused any loss incurred by the plaintiff. Damages arising from such loss may be mitigated upon a showing by the defendant that factors unrelated to such act or omission contributed to the loss.''.

SEC. 105. SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

(a) SECURITIES ACT OF 1933.—Title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 13 the following new section:

''SEC. 13A. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

''(a) SAFE HARBOR.—

''(1) IN GENERAL.—In any private action arising under this title that is based on a fraudulent statement, an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, a person acting on behalf of such issuer, or an outside reviewer retained by such issuer, shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that the statement—

''(A) projects, estimates, or describes future events; and

''(B) refers clearly (and, except as otherwise provided by rule or regulation, proximately) to—

''(i) such projections, estimates, or descriptions as forward-looking statements; and

''(ii) the risk that actual results may differ materially from such projections, estimates, or descriptions.

''(2) EFFECT ON OTHER SAFE HARBORS.—The exemption from liability provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (e).

''(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For purposes of this section, the term 'forward-looking statement' means—

''(1) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

''(2) a statement of the plans and objectives of management for future operations;

''(3) a statement of future economic performance contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

''(4) any disclosed statement of the assumptions underlying or relating to any statement described in paragraph (1), (2), or (3); or

''(5) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

''(c) EXCLUSIONS.—The exemption from liability provided for in subsection (a) does not apply to a forward-looking statement that is—

''(1) knowingly made with the purpose and actual intent of misleading investors;

''(2) except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, made with respect to the business or operations of the issuer, if the issuer—

''(A) during the 3-year period preceding the date on which the statement was first made—

''(i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 15(b)(4)(B); or

''(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

''(I) prohibits future violations of the anti-fraud provisions of the securities laws, as that term is defined in section 3 of the Securities Exchange Act of 1934;

''(II) requires that the issuer cease and desist from violating the anti-fraud provisions of the securities laws; or

''(III) determines that the issuer violated the anti-fraud provisions of the securities laws;

''(B) makes the forward-looking statement in connection with an offering of securities by a blank check company, as that term is defined under the rules or regulations of the Commission;

''(C) issues penny stock, as that term is defined in section 3(a)(51) of the Securities Exchange Act of 1934, and the rules, regulations, or orders issued pursuant to that section;

''(D) makes the forward-looking statement in connection with a rollup transaction, as that term is defined under the rules or regulations of the Commission; or

''(E) makes the forward-looking statement in connection with a going private transaction, as that term is defined under the rules or regulations of the Commission issued pursuant to section 13(e) of the Securities Exchange Act of 1934; or

''(3) except to the extent otherwise specifically provided by rule or regulation of the Commission—

''(A) included in a financial statement prepared in accordance with generally accepted accounting principles;

''(B) contained in a registration statement of, or otherwise issued by, an investment company, as that term is defined in section 3(a) of the Investment Company Act of 1940;

''(C) made in connection with a tender offer;

''(D) made in connection with an initial public offering;

''(E) made by or in connection with an offering by a partnership, limited liability corporation, or a direct participation investment program, as those terms are defined by rule or regulation of the Commission; or

''(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 13(d) of the Securities Exchange Act of 1934.

''(d) STAY PENDING DECISION ON MOTION.—In any private action arising under this title, the court shall stay discovery during the pendency of any motion by a defendant (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) for summary judgment that is based on the grounds that—

''(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

''(2) the exemption provided for in this section precludes a claim for relief.

''(e) AUTHORITY.—In addition to the exemption provided for in this section, the Commission may, by rule or regulation, provide exemptions from liability under any provision of this title, or of any rule or regulation issued under this title, that is based on a statement that includes or that is based on projections or other forward-looking information, if and to the extent that any such exemption is, as determined by the Commission, consistent with the public interest and the protection of investors.

''(f) COMMISSION DISGORGEMENT ACTIONS.—

''(1) IN GENERAL.—If the Commission, in any proceeding, orders or obtains (by settlement, court order, or otherwise) a payment of funds from a person who has violated this title through means that included the utilization of a forward-looking statement, and if any portion of such funds is set aside or otherwise held for or available to persons who suffered losses in connection with such violation, no person shall be precluded from participating in the distribution of, or otherwise receiving, a portion of such funds by reason of the application of this section.

''(2) JUDGMENT FOR LOSSES SUFFERED.—In any action by the Commission alleging a violation of this title in which the defendant or respondent is alleged to have utilized a forward-looking statement in furtherance of such violation, the Commission may, upon a sufficient showing, in addition to all other remedies available to the Commission, obtain a judgment for the payment of an amount equal to all losses suffered by reason of the utilization of the forward-looking statement that are not compensated through final adjudication or settlement of a private action brought under this title arising from the same violation.

''(g) EFFECT ON OTHER AUTHORITY OF COMMISSION.—Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

''(a) SAFE HARBOR.—

''(1) IN GENERAL.—In any private action arising under this title that is based on a fraudulent statement, an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, a person acting on behalf of such issuer, or an outside reviewer retained by such issuer, shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that the statement—

''(A) projects, estimates, or describes future events; and

''(B) refers clearly (and, except as otherwise provided by rule or regulation, proximately) to—

''(i) such projections, estimates, or descriptions as forward-looking statements; and

''(ii) the risk that actual results may differ materially from such projections, estimates, or descriptions.

''(2) EFFECT ON OTHER SAFE HARBORS.—The exemption from liability provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (e).

''(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For purposes of this section, the term 'forward-looking statement' means—

''(1) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

''(2) a statement of the plans and objectives of management for future operations;

''(3) a statement of future economic performance contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

''(4) any disclosed statement of the assumptions underlying or relating to any statement described in paragraph (1), (2), or (3); or

''(5) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

''(c) EXCLUSIONS.—The exemption from liability provided for in subsection (a) does not apply to a forward-looking statement that is—

''(1) knowingly made with the purpose and actual intent of misleading investors;

''(2) except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, made with respect to the business or operations of the issuer, if the issuer—

''(A) during the 3-year period preceding the date on which the statement was first made—

''(i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 15(b)(4)(B); or

''(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

''(I) prohibits future violations of the anti-fraud provisions of the securities laws;

''(II) requires that the issuer cease and desist from violating the anti-fraud provisions of the securities laws; or

''(III) determines that the issuer violated the anti-fraud provisions of the securities laws;

''(B) makes the forward-looking statement in connection with an offering of securities by a blank check company, as that term is defined under the rules or regulations of the Commission;

''(C) issues penny stock;

''(D) makes the forward-looking statement in connection with a rollup transaction, as that term is defined under the rules or regulations of the Commission; or

''(E) makes the forward-looking statement in connection with a going private transaction, as that term is defined under the rules or regulations of the Commission issued pursuant to section 13(e); or

''(3) except to the extent otherwise specifically provided by rule or regulation of the Commission—

''(A) included in financial statements prepared in accordance with generally accepted accounting principles;

''(B) contained in a registration statement of, or otherwise issued by, an investment company;

''(C) made in connection with a tender offer;

''(D) made in connection with an initial public offering;

''(E) made by or in connection with an offering by a partnership, limited liability corporation, or a direct participation investment program, as those terms are defined by rule or regulation of the Commission; or

''(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 13(d).

''(d) STAY PENDING DECISION ON MOTION.—In any private action arising under this title, the court shall stay discovery during the pendency of any motion by a defendant (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) for summary judgment that is based on the grounds that—

''(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

''(2) the exemption provided for in this section precludes a claim for relief.

''(e) AUTHORITY.—In addition to the exemption provided for in this section, the Commission may, by rule or regulation, provide exemptions from liability under any provision of this title, or of any rule or regulation issued under this title, that is based on a statement that includes or that is based on projections or other forward-looking information, if and to the extent that any such exemption is, as determined by the Commission, consistent with the public interest and the protection of investors.

''(f) COMMISSION DISGORGEMENT ACTIONS.—

''(1) IN GENERAL.—If the Commission, in any proceeding, orders or obtains (by settlement, court order, or otherwise) a payment of funds from a person who has violated this title through means that included the utilization of a forward-looking statement, and if any portion of such funds is set aside or otherwise held for or available to persons who suffered losses in connection with such violation, no person shall be precluded from participating in the distribution of, or otherwise receiving, a portion of such funds by reason of the application of this section.

''(2) JUDGMENT FOR LOSSES SUFFERED.—In any action by the Commission alleging a violation of this title in which the defendant or respondent is alleged to have utilized a forward-looking statement in furtherance of such violation, the Commission may, upon a sufficient showing, in addition to all other remedies available to the Commission, obtain a judgment for the payment of an amount equal to all losses suffered by reason of the utilization of the forward-looking statement that are not compensated through final adjudication or settlement of a private action brought under this title arising from the same violation.

''(g) EFFECT ON OTHER AUTHORITY OF COMMISSION.—Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 24 of the Investment Company Act of 1940 (15 U.S.C. 80a–24) is amended by adding at the end the following new subsection:

''(g) REGULATORY AUTHORITY FOR FORWARD-LOOKING STATEMENTS.—

''(1) IN GENERAL.—The Commission shall review and, if necessary to carry out the purposes of this title, promulgate such rules and regulations as may be necessary to describe conduct with respect to the making of forward-looking statements that the Commission deems does not provide a basis for liability in any private action arising under this title.

''(2) REQUIREMENTS.—A rule or regulation promulgated under paragraph (1) shall—

''(A) include clear and objective guidance that the Commission finds sufficient for the protection of investors;

''(B) prescribe such guidance with sufficient particularity that compliance shall be readily ascertainable by issuers prior to issuance of securities; and

''(C) provide that forward-looking statements that are in compliance with such guidance and that concern the future economic performance of an issuer of securities registered under section 12 shall be deemed not to be in violation of this title.

''(3) EFFECT ON OTHER AUTHORITY OF COMMISSION.—Nothing in this subsection limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.''.

SEC. 106. WRITTEN INTERROGATORIES.

(a) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(m) DEFENDANT'S RIGHT TO WRITTEN INTERROGATORIES.—In any private action arising under this title in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

''(m) DEFENDANT'S RIGHT TO WRITTEN INTERROGATORIES.—In any private action arising under this title in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.''.

SEC. 107. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting before the period '', except that no person may rely upon conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962''.

SEC. 108. AUTHORITY OF COMMISSION TO PROSECUTE AIDING AND ABETTING.

Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. 78t) is amended—

(1) by striking the section heading and inserting the following:

''LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS''; AND

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

''(e) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under paragraph (1) or (3) of section 21(d), any person that knowingly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation issued under this title, shall be—

''(1) deemed to be in violation of such provision; and

''(2) liable to the same extent as the person to whom such assistance is provided.''.

SEC. 109. LOSS CAUSATION.

Section 12 of the Securities Act of 1933 (15 U.S.C. 77l) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''Any person'';

(2) by inserting '', subject to subsection (b),'' after ''shall be liable''; and

(3) by adding at the end the following:

''(b) LOSS CAUSATION.—In an action described in subsection (a)(2), if the person who offered or sold such security proves that any portion or all of the amount recoverable under subsection (a)(2) represents other than the depreciation in value of the subject security resulting from such part of the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, then such portion or amount, as the case may be, shall not be recoverable.''.

SEC. 110. STUDY AND REPORT ON PROTECTIONS FOR SENIOR CITIZENS AND QUALIFIED RETIREMENT PLANS.

(a) FINDINGS.—The Congress finds that—

(1) senior citizens and qualified retirement plans are too often the target of securities fraud of the kind evidenced in the Charles Keating, Lincoln Savings & Loan Association, and American Continental Corporation situations;

(2) this Act, in an effort to curb unfounded lawsuits, changes the standards and procedures for securities fraud actions; and

(3) the Securities and Exchange Commission has indicated concern with some provisions of this Act.

(b) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall—

(1) determine whether investors that are senior citizens or qualified retirement plans require greater protection against securities fraud than is provided in this Act and the amendments made by this Act; and

(2) if so, submit to the Congress a report containing recommendations on protections that the Commission determines to be appropriate to thoroughly protect such investors.

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

(1) The term ''qualified retirement plan'' has the same meaning as in section 4974(c) of the Internal Revenue Code of 1986; and

(2) the term ''senior citizen'' means an individual who is 62 years of age or older as of the date of the securities transaction at issue.

SEC. 111. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting before the period '', except that no person may rely upon conduct that would have been actionable as fraud in the purchase of sale of securities to establish a violation of section 1962'': Provided however, That this exception shall not apply if any participant in the fraud is criminally convicted in connection therewith, in which case the statute of limitations shall start to run on the date that the conviction becomes final.

SEC. 112. APPLICABILITY.

The amendments made by this title shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 or title I of the Securities Act of 1933 commenced before the date of enactment of this Act.

TITLE II—REDUCTION OF COERCIVE SETTLEMENTS

SEC. 201. LIMITATION ON DAMAGES.

Section 36 of the Securities Exchange Act of 1934, as added by section 104 of this Act, is amended by adding at the end the following new subsection:

''(e) LIMITATION ON DAMAGES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), in any private action arising under this title, the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the value of that security, as measured by the median trading price of that security, during the 90-day period beginning on the date on which the information correcting the misstatement or omission is disseminated to the market.

''(2) EXCEPTION.—In any private action arising under this title in which damages are sought, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the median market value of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.''.

SEC. 202. PROPORTIONATE LIABILITY.

Title I of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

''SEC. 38. PROPORTIONATE LIABILITY.

''(a) APPLICABILITY.—This section shall apply only to the allocation of damages among persons who are, or who may become, liable for damages in any private action arising under this title. Nothing in this section shall affect the standards for liability associated with any private action arising under this title.

''(b) LIABILITY FOR DAMAGES.—

''(1) JOINT AND SEVERAL LIABILITY.—A person against whom a judgment is entered in any private action arising under this title shall be liable for damages jointly and severally only if the trier of fact specifically determines that such person committed knowing securities fraud.

''(2) PROPORTIONATE LIABILITY.—Except as provided in paragraph (1), a person against whom a judgment is entered in any private action arising under this title shall be liable solely for the portion of the judgment that corresponds to the percentage of responsibility of that person, as determined under subsection (c).

''(3) KNOWING SECURITIES FRAUD.—For purposes of this section—

''(A) a defendant engages in 'knowing securities fraud' if that defendant—

''(i) makes a material representation with actual knowledge that the representation is false, or omits to make a statement with actual knowledge that, as a result of the omission, one of the material representations of the defendant is false; and

''(ii) actually knows that persons are likely to rely on that misrepresentation or omission; and

''(B) reckless conduct by the defendant shall not be construed to constitute knowing securities fraud.

''(c) DETERMINATION OF RESPONSIBILITY.—

''(1) IN GENERAL.—In any private action arising under this title in which more than 1 person is alleged to have violated a provision of this title, the court shall instruct the jury to answer special interrogatories, or if there is no jury, shall make findings, concerning—

''(A) the percentage of responsibility of each of the defendants and of each of the other persons alleged by any of the parties to have caused or contributed to the violation, including persons who have entered into settlements with the plaintiff or plaintiffs, measured as a percentage of the total fault of all persons who caused or contributed to the violation; and

''(B) whether such defendant committed knowing securities fraud.

''(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories, or findings, as appropriate, under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each person found to have caused or contributed to the damages sustained by the plaintiff or plaintiffs.

''(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

''(A) the nature of the conduct of each person; and

''(B) the nature and extent of the causal relationship between that conduct and the damages incurred by the plaintiff or plaintiffs.

''(d) UNCOLLECTIBLE SHARE.—

''(1) IN GENERAL.—Notwithstanding subsection (b)(2), in any private action arising under this title, if, upon motion made not later than 6 months after a final judgment is entered, the court determines that all or part of a defendant's share of the judgment is not collectible

against that defendant or against a defendant described in subsection (b)(1), each defendant described in subsection (b)(2) shall be liable for the uncollectible share as follows:

''(A) PERCENTAGE OF NET WORTH.—Each defendant shall be jointly and severally liable for the uncollectible share if the plaintiff establishes that—

''(i) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net financial worth of the plaintiff; and

''(ii) the net financial worth of the plaintiff is equal to less than $200,000.

''(B) OTHER PLAINTIFFS.—With respect to any plaintiff not described in subparagraph (A), each defendant shall be liable for the uncollectible share in proportion to the percentage of responsibility of that defendant, except that the total liability under this subparagraph may not exceed 50 percent of the proportionate share of that defendant, as determined under subsection (c)(2).

''(2) OVERALL LIMIT.—In no case shall the total payments required pursuant to paragraph (1) exceed the amount of the uncollectible share.

''(3) DEFENDANTS SUBJECT TO CONTRIBUTION.—A defendant against whom judgment is not collectible shall be subject to contribution and to any continuing liability to the plaintiff on the judgment.

''(e) RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment pursuant to subsection (d), that defendant may recover contribution—

''(1) from the defendant originally liable to make the payment;

''(2) from any defendant liable jointly and severally pursuant to subsection (b)(1);

''(3) from any defendant held proportionately liable pursuant to this subsection who is liable to make the same payment and has paid less than his or her proportionate share of that payment; or

''(4) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

''(f) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsections (b) and (c) and the procedure for reallocation of uncollectible shares under subsection (d) shall not be disclosed to members of the jury.

''(g) SETTLEMENT DISCHARGE.—

''(1) IN GENERAL.—A defendant who settles any private action arising under this title at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

''(A) by any person against the settling defendant; and

''(B) by the settling defendant against any person, other than a person whose liability has been extinguished by the settlement of the settling defendant.

''(2) REDUCTION.—If a person enters into a settlement with the plaintiff prior to final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

''(A) an amount that corresponds to the percentage of responsibility of that person; or

''(B) the amount paid to the plaintiff by that person.

''(h) CONTRIBUTION.—A person who becomes liable for damages in any private action arising under this title may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

''(i) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—Once judgment has been entered in any private action arising under this title determining liability, an action for contribution shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the action, except that an action for contribution brought by a defendant who was required to make an additional payment pursuant to subsection (d) may be brought not later than 6 months after the date on which such payment was made.''.

SEC. 203. APPLICABILITY.

The amendments made by this title shall not affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 commenced before the date of enactment of this Act.

TITLE III—AUDITOR DISCLOSURE OF CORPORATE FRAUD

SEC. 301. FRAUD DETECTION AND DISCLOSURE.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting immediately after section 10 the following new section:

''SEC. 10A. AUDIT REQUIREMENTS.

''(a) IN GENERAL.—Each audit required pursuant to this title of the financial statements of an issuer by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

''(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

''(2) procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and

''(3) an evaluation of whether there is substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year.

''(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

''(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting an audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the financial statements of the issuer) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

''(A)(i) determine whether it is likely that an illegal act has occurred; and

''(ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

''(B) as soon as practicable, inform the appropriate level of the management of the issuer and assure that the audit committee of the issuer, or the board of directors of the issuer in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

''(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, after determining that the audit committee of the board of directors of the issuer, or the board of directors of the issuer in the absence of an audit committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of the accountant in the course of the audit of such accountant, the independent public accountant concludes that—

''(A) the illegal act has a material effect on the financial statements of the issuer;

''(B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and

''(C) the failure to take remedial action is reasonably expected to warrant departure from a standard report of the auditor, when made, or warrant resignation from the audit engagement; the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

''(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of directors receives a report under paragraph (2) shall inform the Commission by notice not later than 1 business day after the receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished to the Commission. If the independent public accountant fails to receive a copy of the notice before the expiration of the required 1-business-day period, the independent public accountant shall—

''(A) resign from the engagement; or

''(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) not later than 1 business day following such failure to receive notice.

''(4) REPORT AFTER RESIGNATION.—If an independent public accountant resigns from an engagement under paragraph (3)(A), the accountant shall, not later than 1 business day following the failure by the issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

''(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rule promulgated pursuant thereto.

''(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b), the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination to impose a civil penalty and the amount of the penalty shall be governed by the standards set forth in section 21B.

''(e) PRESERVATION OF EXISTING AUTHORITY.—Except as provided in subsection (d), nothing in this section shall be held to limit or otherwise affect the authority of the Commission under this title.

''(f) DEFINITION.—As used in this section, the term 'illegal act' means an act or omission that violates any law, or any rule or regulation having the force of law.''.

(b) EFFECTIVE DATES.—The amendment made by subsection (a) shall apply to each annual report—

(1) for any period beginning on or after January 1, 1996, with respect to any registrant that is required to file selected quarterly financial data pursuant to the rules or regulations of the Securities and Exchange Commission; and

(2) for any period beginning on or after January 1, 1997, with respect to any other registrant.

Mr. D'AMATO. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. D'AMATO. Mr. President, I send an amendment to the title to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

Amend the title so as to read:

''An act to amend the Federal securities laws to curb certain abusive practices in private securities litigation, and for other purposes.''

The PRESIDING OFFICER. The question is on agreeing to the amendment to amend the title.

The amendment was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. D'AMATO. Mr. President, I ask unanimous consent that S. 240 be placed back on the calendar.

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

Mr. D'AMATO. Mr. President, I would like to take just a few seconds to thank a very dedicated staff. Laura Unger, for the dedicated job she has done in a very complex bill—really, without her work, not only during the process on the floor but in committee, we would not have had this legislation. And our staff director, Howard Menell.

Let me also say it was a pleasure working with the ranking member, Senator SARBANES, handling a complex piece of legislation like this with a divergence of opinions. I think we demonstrated the process can work when people are willing to work at it in good will.

Notwithstanding differences of opinion, I could not ask, I think, for fairer debate, et cetera, as we tried to keep this moving. So I thank my colleagues. And certainly Senator DOMENICI and Senator DODD did an excellent job on this bill, bringing it to the point we could bring it to the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I would like to reciprocate to the chairman of the committee with respect to his sentiments. I point out, I think this legislation was considered in a way that I would hope all legislation can be considered. We had opening statements. Then we moved from opening statements to taking up amendments. We considered the amendments seriatim, we had good debate on the amendments, voted on the amendments, then we had closing statements, and then we went to final passage of the bill.

So I hope Members will agree, I know a number of Members I talked to felt we had a good consideration of it. People had a chance to express their points of view. We resolved them and moved forward.

I thank the chairman of the committee for his effort to construct a fair framework in which to address this legislation.

I thank my colleagues, and I want to acknowledge in particular the staff work of Mitchell Feuer, Andy Vermilye, and Brian McTigue, all of whom worked indefatigably on this legislation.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I thank the managers of the bill. I think they did demonstrate we can have an orderly debate and not waste any time. I do not remember there being very many quorum calls. It took a while, but it is a very important piece of legislation, and I want to comment both the managers and also my good friend, the chairman of the committee, Senator D'AMATO. I think this is probably his first major bill as chairman. I think he has done an outstanding job and I appreciate it very much.

Everybody has had a chance to debate. Nobody was shut off. There were not any cloture motions filed. There was not any time wasted. In fact, I was home last night watching on C–SPAN when you were all up here—watching you on C–SPAN, watching you debating until 9, 9:30, 10 o'clock. I commend the managers.

Mr. SARBANES. Will the majority leader yield for a question? Does it look better to watch it on C–SPAN than to watch it in person?

Mr. DOLE. It is better because you are further away. It was very interesting. The Senator from Pennsylvania was speaking and the Senator from Utah was answering. It was fairly quiet up here. It was fairly quiet at home, too, at 10 o'clock at night.

In any event, I thank the Democratic leader for his cooperation, too, and members of the staff on each side and others who participated in this bill.

Mr. DASCHLE. Mr. President, I associate myself with the remarks of the majority leader and his compliments for both managers of the bill just passed.

This is not an easy piece of legislation, both because of its complexity as well as its controversy. But I must say that our colleagues on both sides of the aisle have certainly acted in a very responsible manner. We have had a good debate. As the distinguished Senator from Maryland has said on a number of occasions, it is a debate that I think bears even closer watch and closer consideration as we go through the final stages of passage of this very important piece of legislation.

I particularly want to single out the distinguished Senator from Maryland, the ranking member, for his extraordinary work in leading our caucus in this effort and in sharing, as he has, his very valuable insights on a number of the ramifications of the bill and the amendments pending. He did an outstanding job and I deeply appreciate his leadership in this regard.

Let me also commend my colleague, the distinguished senior Senator from Connecticut, Senator DODD, for his advocacy of the legislation. While we differed on many of the issues pertaining to the bill, he, too, ought to be commended for the way with which he conducted this debate.

This has been a good debate. I appreciate very much the cooperation of the Republican leadership in ensuring that all Senators have the opportunity to present their amendments and to be heard as completely as they were heard, now, over the last several days.

I hope, now, as we turn to the budget conference report, that colleagues will use the time available to us, beginning at noon, to present their views. We will have 10 hours of debate. It is very important that we utilize this time as efficiently and as appropriately as we can. So I encourage colleagues on this side of the aisle to come to the floor beginning at noon to make their remarks and to utilize the opportunities that we will have over the course of the next several hours to express ourselves on this budget resolution.

So, again Mr. President, I commend our managers on the bill just passed, and hope we can have a good debate on the budget conference report beginning at noon.

I yield the floor.

UNANIMOUS-CONSENT AGREEMENT—BUDGET CONFERENCE REPORT

Mr. DOLE. Mr. President, I ask unanimous consent that at 12 noon—this has been cleared by the Democratic leader—the Senate begin 4 hours debate to be equally divided in the usual form on the budget conference report, and that when the Senate receives the conference report to cover the budget, House Concurrent Resolution 67, there be 6 hours remaining for consideration.

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

Mr. DOLE. I hope we may be able to use some more time later in the day.

MORNING BUSINESS

Mr. DOLE. Mr. President, I also ask unanimous consent there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each, between now and 12 noon.

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

REGULATORY REFORM

Mr. DOLE. Mr. President, we have had our colleagues, a number on each side—five, six, seven on each side—meeting in Senator DASCHLE's office on reg reform. They have made some progress. I am not certain what will be the final result.

We hope this afternoon, at least at 4 o'clock, to either go to reg reform or to try to proceed to reg reform—I think it depends on what happens during talks in the afternoon—to demonstrate, first of all, we are gaining a lot of support for the bill and, second, that it would be on the table, on the floor when we come back after the recess. We are not quite there yet, but I think they are working in good faith on each side.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I ask unanimous consent that I may speak as in morning business.

The PRESIDING OFFICER. The Senator has that right.

PAKISTAN AND THE F–16'S

Mr. PRESSLER. Mr. President, many years ago I sponsored an amendment dealing with our aid to Pakistan, and it has been a thorn in the side of our relationship with Pakistan. It ultimately involved the delivery of several F–16's. I had recently proposed a solution to that problem, a resolution of that problem, to the President of the United States.

As my colleagues know, I have held a special interest in South Asia for a number of years. I have the highest admiration for the character of the South Asian people as they strive to better their conditions.

The singular tragedy of South Asia has been war—the reality of conflicts past and the fear of future bloodshed. Pakistan and India have fought three wars since independence in 1947. Tension still remains high.

What was once a conventional military standoff has now become more ominous. Both sides can assemble nuclear weapons. Both sides are striving to obtain modern delivery systems, such as ballistic missiles and aircraft. Just last week, the New York Times and Defense News reported that in the past 3 months, Pakistan has received from Communist China key components that could be used in M–11 ballistic missiles. Without question, a nuclear war between India and Pakistan would be cataclysmic. The names of the perpetrators, and their accessories, would be cursed for a millennium.

To its credit, Mr. President, the U.S. Senate consistently has taken the initiative to promote peace and stability in South Asia—the core of that leadership has been the Senate Foreign Relations Committee. A decade ago, the committee—under the chairmanship of the distinguished senior Senator from Indiana [Mr. LUGAR]—decided to use the leverage of our aid to Pakistan to try to keep it from going nuclear. Just as important, the committee also decided that should Pakistan choose a nuclear option, we would not condone its action through United States aid.

Mr. President, those were the key reasons why the U.S. Congress adopted the so-called Pressler amendment 10 years ago. It was the right thing to do. President Ronald Reagan agreed. So did the Government of Pakistan at that time. I believe the Pressler amendment is needed now more than ever. To the extent that the current administration and this Congress chooses to back away from that standard, the prospects for regional instability and war are increased accordingly. Unfortunately, some have called for a myriad of modifications to the Pressler amendment, ranging from one-time waivers to outright repeal.

Mr. President, I have a more in-depth analysis of the Pressler amendment, which I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. PRESSLER. In summary, any unilateral attempt to weaken or modify the Pressler amendment for whatever reason—whether it be for economic assistance, or drug or terrorism control—would not be in the best interest of our more critical nuclear nonproliferation goals. I urge my colleagues to study this extended analysis before the Senate considers the foreign aid authorization bill later this year.

Today, however, I would like to discuss the initiative I offered to the committee 1 month ago—a new, constructive initiative that will make a significant contribution toward achieving a number of our foreign policy goals.

As my colleagues well know, in 1990, President Bush could no longer certify, under the terms of the Pressler amendment, that Pakistan did not possess a nuclear explosive device. As a result, 28 F–16 aircraft ordered by Pakistan could not be delivered. Today, those planes remain undelivered. Of these 28, 11 were sold on a foreign military sales basis—paid for up-front by the American taxpayer. The remaining 17 were paid for by Pakistan for about $650 million.

Let me be clear: I will oppose any attempt to waive the Pressler amendment to allow for Pakistan to take delivery of these aircraft. My rationale is simple: F–16's are capable of carrying a nuclear payload. It would be contrary to the spirit and letter of our Nation's nuclear non-proliferation policy for this Congress to allow Pakistan to take possession of nuclear delivery vehicles under any condition short of current law.

Doing so would have grave implications. Delivery of the F–16's could spark an unprecedented, destabilizing arms buildup in South Asia. This is not in the best interests of the people of the region. I would hope that no Member of Congress would want his or her fingerprints on any proposal that would spark such an unfortunate turn of events.

I recognize this leaves the United States in a quandary—a quandary that I hope we can eliminate. To do so, Mr. President, please allow me to turn our attention to the South China Sea, where the Communist Chinese military machine is on the march.

Taiwan continues to be threatened with an increasing level of intimidating military exercises by Communist China. In addition, the Philippine Government is the victim of Chinese aggression in the Spratley Islands. The Philippines and the other surrounding countries in the region are concerned that this increased activity by the Chinese military is a prelude to an outright attempt to gain control over the South China Sea.

Three points about the Philippines are worth mentioning:

First, the Philippines is the democratic country in Asia with the weakest military. Its government needs modern planes and naval craft. Second, the Philippines has a security treaty with the United States. The Philippine people are our allies.

Third, the U.S. Senate—through the leadership of former Foreign Relations Committee Chairman LUGAR and the distinguished Senator from Massachusetts, Mr. KERRY—was instrumental in bringing democracy back to the Philippines in 1986. We must not turn our back on them now.

My initiative is very simple. First, we arrange for the immediate delivery to the Philippines, on a FMS basis, of 11 F–16's of the 28 held up by the Pressler amendment—the ones already paid for by the American taxpayer.

At the same time, I recommended last month that we open negotiations with Taiwan on the immediate delivery of the remaining 17 aircraft. Taiwan already is purchasing 150 of the same model F–16 but the delivery date is not until June 1997.

At the time of my announcement, I sent letters to President Clinton, Philippine President Ramos and President Lee of the Republic of China, detailing my initiative. Last week, President Clinton responded to my proposal, stating that he was open to a third-party sale if it met certain areas of concern. First, the President said that a third-party transfer must serve our national interest. I agree. In fact, my initiative produces a number of winners:

For Pakistan, the F–16 issue goes away as an irritant in its relations with the United States. For India, 28 nuclear delivery vehicles do not show up on her border, and that is something I feel very concerned about. I think if these F–16's went to Pakistan, it would accelerate the arms race there. I feel strongly we should be friends with both India and Pakistan. Both countries have done a great deal with us and for us.

I see in the long range a trading partnership with both countries, and friendship. But also this will help us with Taiwan.

Taiwan can, for a price, close its 2-year window of vulnerability to modern Russian aircraft in the hands of Chinese pilots. Finally, the Philippines can get the air defense it needs.

By this initiative, a number of American foreign policy goals would be furthered: lower tensions in South Asia, maintenance of a strong nuclear nonproliferation policy, and an enhanced deterrent capability of two democratic, nonnuclear powers in Asia. At home, American aerospace would have new markets, and the American taxpayer would receive a measurable enhancement of our global security for almost no cost.

Second, the President stated that we would need to consider the return to Pakistan of the military equipment

other than the F–16's for which it has paid. Frankly, I believe we must study this option carefully. I would oppose the return of any military equipment to Pakistan that would serve to undermine our nuclear non-proliferation goals, and add to the current instability in the region. We should not limit the third-party sale option just to the F–16's exclusively.

Third, the President noted that a third party sale may not be satisfactory to Pakistan if it does not receive most, if not all, of the funds they originally paid to the United States Government for the aircraft. As I stated last month, if the Congress opts to use any of the funds raised from my initiative to compensate Pakistan for the previously paid F–16's, I would not object. However, I would hope that full compensation is not made a condition by the President for pursuing a third party sale. As it stands right now, I believe it would be difficult to convince Congress to either authorize the delivery of the F–16's to Pakistan, or appropriate the full amount paid by Pakistan. My initiative provides the Government of Pakistan the first real opportunity to gain some compensation in the near future.

I ask unanimous consent that the text of my letter to President Clinton dated May 23, 1995, and his response dated June 22, be printed in the RECORD following my remarks.

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

(See exhibit 2.)

Mr. PRESSLER. Mr. President, I am pleased the President remains open to a possible third party sale. Frankly, I believe that is his only option. Let me state for the record that the Republic of China is open to my proposal. I also received a very positive initial response from representatives of the Philippine Government.

This initiative is simple but bold. I hope my colleagues will join with me in urging the administration to make this initiative their own. I stand ready to do my part to reach a solution that serves our national interest—first and foremost being the preservation of a tough, sound nuclear nonproliferation policy.

Mr. President, last month, I had the opportunity to testify before the Foreign Relations Committee and present this idea. I am glad that the President has responded favorably. But much remains to be done to work out this agreement.

This has been a difficult matter to approach because in regard to the amendment that was passed in the 1980's, one could say that Pakistan purchased these planes with their eyes open, so to speak. They knew, on the one hand, of the existence of our law that said we would not continue aid if they developed a nuclear bomb. And, very frankly, they were not being candid in what they told the then Vice President and President George Bush about their nuclear program.

So if you take it from that point of view strictly, when the Pakistanis got into this thing, they had full knowledge of what they were doing back home in terms of developing a nuclear bomb. They knew our law said what it said, and they moved forward with this purchase which would have been in violation.

So we could say, ''Well, let us just let them be, that they made a bad deal, and they paid the price.'' On the other hand, there has been a great distinction in Pakistan. The military people have not always told the civilian government what is going on, very frankly. And the civilian government has engaged in some perhaps unwise decisions based on bad information. That is really Pakistan's problem, I suppose.

But, as the years have gone by, I see an opportunity to get these F–16's to Taiwan, which needs them to counterbalance China, and to the Philippines, which is a longtime ally of ours.

EXHIBIT 1

IN DEFENSE OF THE PRESSLER AMENDMENT

WHAT THE PRESSLER AMENDMENT REQUIRES

The Pressler Amendment requires Pakistan to satisfy two conditions before it is eligible to receive U.S. foreign assistance, including US military equipment or technology. Aid may be provided in any fiscal year only if the President has certified in that year that Pakistan (a) ''does not possess'' a nuclear explosive device and (b) that the proposed assistance ''will reduce significantly'' the risk of possession.

COMMON CRITICISMS OF THE PRESSLER AMENDMENT

Critics of the Pressler Amendment have alleged that this legislation: (1) is unfair and discriminatory; (2) is not effective; (3) is counterproductive; (4) penalizes Pakistan when it has not even assembled, deployed, or tested weapons; (5) is inflexible; (6) inhibits US encouragement of a free market in Pakistan; (7) hurts US economic competitiveness; (8) sets back US human rights initiatives; (9) interferes with US counter-terrorism and counter-narcotics efforts; and (10) fosters anti-Americanism in Pakistan.

Not one of these criticisms holds up to responsible analysis. The criticisms reveal more about the critics themselves than about any real shortcomings in the legislation. In particular, these criticisms reflect: (1) a profound misunderstanding of the purposes of the Pressler Amendment, (2) a flagrant case of historical amnesia; (3) a cynical fatalism about the inevitability of proliferation; (4) an ignorance of the regional, global, and US national security consequences of a Pakistani bomb; (5) the susceptibility of the legislative process to special interest lobbying; (6) the triumpth of slogans over analysis as a basis of policy; (7) an utterly bizarre conception of what constitutes a ''friend'' of the United States; (8) a distorted perspective on US national priorities; (9) a preference for the management rather than the prevention of proliferation; and (10) a compulsive desire to channel even more taxpayer dollars into unproductive pursuits.

REBUTTALS TO SPECIFIC CRITICISMS

1. ''Unfair and Discriminatory''

Between 1981 and 1990, Pakistan gave the US government both formal and informal assurances about the peaceful nature of its nuclear program, the level of enrichment of its uranium, foreign nuclear procurements, cooperation with China, and other such issues relating to nonproliferation issues—in each case, Pakistan broke its word.

It is not unfair for America to defend its interests by punishing those who violate their commitments to us.

On eight occasions, Congress authorized special waivers of US nonproliferation laws to permit aid to continue to flow to Pakistan. To this day, Pakistan is the only country ever to have received (or required) a waiver of the Glenn/Symington sanctions in order to qualify for US aid. It is true that America engaged in discrimination, but this was discrimination on behalf of Pakistan and against all other countries that played by the rules.

How can Pakistan simultaneously condemn the country-specific discrimination in the Pressler Amendment without also condemning the country-specific discrimination that authorized such aid?

Pakistan is not the only country to be mentioned by name in the context of nonproliferation sanctions—for years, Iraq, Iran, Libya, North Korea, and Cuba have been designated for special controls and sanctions.

US relations with India also have been affected by a variety of US nonproliferation laws. Because of India's unsafeguarded nuclear program, there is no US/Indian agreement for nuclear cooperation; US military cooperation with India is negligible; and the US will not export certain forms of missile equipment and technology to India and other goods related to weapons of mass destruction. Though sanctions under Glenn/Symington have not been invoked against India, it is because India, unlike Pakistan, has not violated that law.

2. ''Not effective''

US policy throughout the 1980s asserted that US aid was an effective way to lure Pakistan away from the bomb—yet Pakistan made its most significant nuclear achievements precisely when US aid was flowing at its highest levels.

The Pressler Amendment sanctions accomplished what $5 billion in US economic and military aid failed to accomplish—it led Pakistan to stop producing highly-enriched uranium.

The Pressler Amendment succeeded in enabling the continuation of US efforts to drive the Soviets out of Afghanistan while not sacrificing a bottom-line US nuclear nonproliferation objective: nonpossession. If it were not for this compromise, aid could have been terminated in 1985.

The Pressler Amendment was then and remains now a statement of the priority that America attaches to nonproliferation as a goal of policy.

The Pressler Amendment has unquestionably made Pakistan—especially its air force, army, and navy—pay for its misguided decisions to pursue the bomb. Indeed, if Pakistan once again qualifies for US aid, it will no doubt be Pakistan's military that will stand to benefit the most from the new aid. This gives Pakistan a tangible incentive to satisfy the certification terms under Pressler.

3. ''Counterproductive''

Though the sanctions have undoubtedly weakened Pakistan's military capabilities, there is no evidence that the sanctions have ''driven'' Pakistan to rely more upon nuclear deterrence as a national defense strategy.

Pakistan's decisions to stop producing highly-enriched uranium, not to test, and not to assemble or deploy nuclear weapons hardly suggests a policy of increased reliance on a nuclear deterrent.

The US denial of technology and aid has slowed down Pakistan's bomb-making potential, a long-standing goal of US nonproliferation policy.

Though Pakistan still has a nuclear weapons-capability and is still cooperating with China on the bomb, these activities were not ''caused by'' the Pressler Amendment. Pakistan was seeking this capability and engaging in this cooperation with China well before the Pressler Amendment came into existence.

For a truly counterproductive policy, one must look to the 1980s, when US taxpayers shelled out $5 billion in aid that was supposed to appease Pakistan's nuclear ambitions . . . aid that coincided Pakistan's acquisition of the bomb. Today, critics of the Pressler Amendment are arguing that more US taxpayer money should be channeled down that drain.

4. ''No assembly, deployment, or testing''

Pakistan's decisions not to assemble, deploy, or test have very little to do with the flow of US aid.

The US nuclear arsenal in the 1950s was stored in separate components: was the US a non-nuclear-weapon state as a result?

Even the State Department concedes that a country can still possess the bomb even if it has not yet actually assembled one.

Pakistan's position is that it does not ''possess'' the bomb because it has not assembled the requisite materials. By this logic, Pakistan could acquire a nuclear arsenal with hundreds of weapons simply by not tightening down the last screw on the casing of each bomb.

Pakistan's new emphasis on the issue of assembling is just another chapter of Pakistan's long history of dissembling about its bomb.

It is widely believed that Pakistan got a pre-tested bomb design from China. Why would Pakistan want to or need to test a pre-tested design?

Pakistan has very limited supplies of bomb-usable nuclear material. Why should it waste such precious material on an unnecessary test?

Why should Pakistan engage in a test that would only give India an excuse to commence a regional nuclear arms race that Pakistan could never win?

If Pakistan's nuclear program is, as its government claims, devoted entirely to peaceful purposes, how can it claim that it has ''kept components separate'' and not ''assembled'' the bomb? What would it have to assemble if its program were peaceful? If its program is so peaceful, why does it refuse to agree to international inspections independent of what India does?

5. ''Inflexible''

Supporters of the Pressler Amendment make no apologies to the charge that the law has been ''inflexible,'' assuming a normal dictionary definition of this term: ''of an unyielding temper, purpose, will, etc.'' The alternative of passive accommodation has little attraction to supporters of nonproliferation.

Even with the so-called ''inflexible'' label, the following activities take place: (a) the US still issues licenses to export commercial munitions and spare parts to Pakistan, including spares for Pakistan's nuclear-weapons delivery vehicle, the F–16; (b) US military visits and joint training exercises continue to take place; (c) US aid with respect to agriculture, counter-terrorism, nutrition, population control, literacy, advancement of women, health and medicine, environmental protection, disaster relief, and many other areas can continue to flow to Pakistan via nongovernmental organizations; (d) the Export-Import Bank also has extended loans, grants, and guarantees to Pakistan; (e) PL–480 agricultural aid continues; (f) arms control verification assistance continues (a seismic station); (g) millions of dollars of aid in the ''pipeline'' as of October 1990 was allowed to flow to Pakistan; (h) cooperation on peace keeping is continuing; and (i) Pakistan continues to receive billions of dollars in development assistance via multilateral lending agencies.

Pakistan used almost $200 million in FMS credits to fund the purchase of 11 F–16's between FY 1989 and 1993, of which about $150 million were used after the Pressler sanctions were invoked.

The US continues to review and approve licenses of dual-use technology to Pakistan.

All the above hardly suggest that the PRESSLER Amendment has been unduly inflexible.

6. ''Free Market''

Pakistan has a long way to go before it has a free market and the Pressler Amendment is hardly to blame.

A recent Heritage Foundation worldwide review characterized Pakistan's economy as ''Mostly Not Free.'' The report found that Pakistan has a ''very high level of protectionism.''

The only market that is truly free in Pakistan is its black market.

Free markets are an important US interest, but not an end in themselves—they need to be weighed against other US interests, especially national security, defense, and nonproliferation objectives. Encouraging a free market in weapons of mass destruction should not be high on America's list of priorities.

7. ''Hurts US Economic Competitiveness''

The US has exported hundreds of millions of dollars in defense goods to Pakistan since the Pressler Amendment came into effect.

In 1994, the Commerce Department approved $96 million in exports of dual-use goods to Pakistan, about triple the amount approved in each of the three previous years.

Total US exports to Pakistan still come to less than $1 billion. Even if all of this trade was lost, it would have no effect whatsoever upon the US national trade balance or US economic competitiveness. By comparison, US exports worldwide in 1994 were worth well over a half trillion dollars.

8. ''Sets Back Human Rights Initiatives''

Congress has expressly authorized the transfer of assistance to Pakistan via nongovernmental groups to advance the cause of human rights (as indeed several other nonmilitary causes).

Despite some modest improvements since the days of General Zia, the Pakistani government continues to repress the human rights of Pakistani citizens, as most recently documented both by the State Department's annual human rights report and a recent global survey by Amnesty International.

The US experience in Iran should have taught us to beware of cultivating cozy relationships with a repressive government.

9. ''Interferes with Counter-Terrorism and Counter-Narcotics Efforts''

Congress has expressly authorized the transfer of assistance to Pakistan via nongovernmental groups to terrorism and narcotics trafficking.

Widespread terrorism and narcotics trafficking persists in Pakistan.

Pakistan's recent cooperation with the US in apprehending terrorists indicates that the PRESSLER Amendment is no insuperable obstacle to such cooperation.

10. ''Fosters Anti-Americanism''

Anti-Americanism was not born in Pakistan with the enactment of the PRESSLER Amendment—it predated the amendment and has causes far beyond a nuclear dispute between the US and Pakistan.

America opposes the global spread of nuclear weapons: it should come as no surprise to witness leaders of governments that are secretly building bombs encouraging anti-Americanism.

America seeks to defend its national interests, not to win popularity contests. As President Clinton stated on October 18, 1994: ''There is nothing more important to our security and to the world's stability than preventing the spread of nuclear weapons and ballistic missiles.''

U.S. AID POLICIES AND PAKISTAN'S BOMB: WHAT WERE WE TRYING TO ACCOMPLISH?

Letters to Congress from Presidents Reagan and Bush, 1985 to 1989, required under sec. 620E(e) of Foreign Assistance Act (Pressler Amendment):

''The proposed United States assistance program for Pakistan remains extremely important in reducing the risk that Pakistan will develop and ultimately possess such a device. I am convinced that our security relationship and assistance program are the most effective means available for us to dissuade Pakistan from acquiring nuclear explosive devices. Our assistance program is designed to help Pakistan address its substantial and legitimate security needs, thereby both reducing incentives and creating disincentives for Pakistani acquisition of nuclear explosives.''—President George Bush, 10/5/89; President Ronald Reagan, 11/18/88; 12/17/87; 10/27/86; and 11/25/85.

President George Bush, letter to Congress (addressed to J. Danforth Quayle as President of the Senate), 12 April 1991, urging abandonment of Pressler certification requirement:

''. . . my intention is to send the strongest possible message to Pakistan and other potential proliferators that nonproliferation is among the highest priorities of my Administration's foreign policy, irrespective of whether such a policy is required by law.''

Deputy Assistant Secretary of State Teresita Schaffer, testimony before House subcommittee, 2 August 1989:

''None of the F–16's Pakistan already owns or is about to purchase is configured for nuclear delivery . . . a Pakistan with a credible conventional deterrent will be less motivated to purchase a nuclear weapons capability.''

Deputy Assistant Secretary of Defense Arthur Hughes, testimony before House subcommittee, 2 August 1989:

''Finally, we believe that past and continued American support for Pakistan's conventional defense reduces the likelihood that Pakistan will feel compelled to cross the nuclear threshold.''

Deputy Assistant Secretary of State Robert Peck, testimony before House subcommittee, 17 February 1988:

''We believe that the improvements in Pakistan's conventional military forces made possible by U.S. assistance and the U.S. security commitment our aid program symbolizes have had a significant influence on Pakistan's decision to forego the acquisition of nuclear weapons.''

Special Ambassador at Large Richard Kennedy, testimony before two House subcommittees, 22 October 1987:

''We have made it clear that Pakistan must show restraint in its nuclear program if it expects us to continue providing security assistance.''

Assistant Secretary of State Richard Murphy, testimony before Senate subcommittee, 18 March 1987:

''Our assistance relationship is designed to advance both our non-proliferation and our

strategic objectives relating to Afghanistan. Development of a close and reliable security partnership with Pakistan gives Pakistan an alternative to nuclear weapons to meet its legitimate security needs and strengthens our influence on Pakistan's nuclear decision making. Shifting to a policy of threats and public ultimata would in our view decrease, not increase our ability to continue to make a contribution to preventing a nuclear arms race in South Asia. Undermining the credibility of the security relationship with the U.S. would itself create incentives for Pakistan to ignore our concerns and push forward in the direction of nuclear weapons acquisition.''

Deputy Assistant Secretary of State Howard Schaffer, testimony before House subcommittee, 6 February 1984:

''The assistance program also contributes to U.S. nuclear non-proliferation goals. We believe strongly that a program of support which enhances Pakistan's sense of security helps remove the principal underlying incentive for the acquisition of a nuclear weapons capability. The Government of Pakistan understands our deep concern over this issue. We have made clear that the relationship between our two countries, and the program of military and economic assistance on which it rests, are ultimately inconsistent with Pakistan's development of a nuclear explosives device. President Zia has stated publicly that Pakistan will not manufacture a nuclear explosives device.''

Special Ambassador at Large Richard Kennedy, testimony before two House subcommittees, 1 November 1983:

''By helping friendly nations to address legitimate security concerns, we seek to reduce incentives for the acquisition of nuclear weapons. The provision of security assistance and the sale of military equipment can be major components of efforts along these lines. Development of security ties to the U.S. can strengthen a country's confidence in its ability to defend itself without nuclear weapons. At the same time, the existence of such a relationship enhances our credibility when we seek to persuade that country to forego [sic] nuclear arms . . . We believe that strengthening Pakistan's conventional military capability serves a number of important U.S. interests, including non-proliferation. At the same time, we have made clear to the government of Pakistan that efforts to acquire nuclear explosives would jeopardize our security assistance program.''

Statement by Deputy Assistant Secretary of State Harry Marshall, 12 September 1983, before International Nuclear Law Association, San Francisco:

''U.S. assistance has permitted Pakistan to strengthen its conventional defensive capability. This serves to bolster its stability and thus reduce its motivation for acquiring nuclear explosives.''

President Ronald Reagan, report to Congress pursuant to sec. 601 of the Nuclear Nonproliferation Act (''601 Report''), for calendar year 1982—

''Steps were taken to strengthen the U.S. security relationship with Pakistan with the objective of addressing that country's security needs and thereby reducing any motivation for acquiring nuclear explosives.''

President Ronald Reagan, report to Congress pursuant to sec. 601 of the Nuclear Nonproliferation Act (''601 Report''), for calendar year 1981—

''Military assistance by the United States and the establishment of a new security relationship with Pakistan should help to counteract its possible motivations toward acquiring nuclear weapons. . . . Moreover, help from the United States in strengthening Pakistan's conventional military capabilities would offer the best available means for counteracting possible motivations toward acquiring nuclear weapons.''

Assistant Secretary of State James Malone, address before Atomic Industrial Forum, San Francisco, 1 December 1981.

''We believe that this assistance—which is in the strategic interest of the United States—will make a significant contribution to the well-being and security of Pakistan and that it will be recognized as such by that government. We also believe that, for this reason, it offers the best prospect of deterring the Pakistanis from proceeding with the testing or acquisition of nuclear explosives.

Undersecretary of State James Buckley, testimony before Senate Foreign Relations Committee, 12 November 1981:

''We believe that a program of support which provides Pakistan with a continuing relationship with a significant security partner and enhances its sense of security may help remove the principal underlying incentive for the acquisition of a nuclear weapons capability. With such a relationship in place we are hopeful that over time we will be able to persuade Pakistan that the pursuit of a weapons capability is neither necessary to its security nor in its broader interest as an important member of the world community.''

Testimony of Undersecretary of State, James Buckley, in response to question from Sen. Glenn, Senate Foreign Relations Committee, 12 November 1981, on effects of a nuclear detonation on continuation of cash sales of F–16's:

''[Sen. Glenn] . . . so if Pakistan detonates a nuclear device before completion of the F–16 sale, will the administration cut off future deliveries?

''[Buckley] Again, Senator, we have underscored the fact that this would dramatically affect the relationship. The cash sales are part of that relationship. I cannot see drawing lines between the impact in the case of a direct cash sale versus a guaranteed or U.S.-financed sale.''

Undersecretary of State James Buckley, letter to NY Times, 25 July 1981:

''In place of the ineffective sanctions on Pakistan's nuclear program imposed by the past Administration, we hope to address through conventional means the sources of insecurity that prompt a nation like Pakistan to seek a nuclear capability in the first place.''

FROM MYTH TO REALITY: EVIDENCE OF PARKISTAN'S ''NUCLEAR RESTRAINT''

Early 1980's—Multiple reports that Pakistan obtained a pre-tested, atomic bomb design from China.

Early 1980's—Multiple reports that Pakistan obtained bomb-grade enriched uranium from China.

1980—US nuclear export control violation: Reexport via Canada (components of inverters used in gas centrifuge enrichment activities).

1981—US nuclear export control violation: New York, zirconium (nuclear fuel cladding material).

1981—AP story cites contents of reported US State Department cable stating ''We have strong reason to believe that Pakistan is seeking to develop a nuclear explosives capability . . . Pakistan is conducting a program for the design and development of a triggering package for nuclear explosive devices.''

1981—Publication of book, ''Islamic Bomb,'' citing recent Pakistan efforts to construct a nuclear test site.

1982/3—Several European press reports indicate that Pakistan was using Middle Eastern intermediaries to acquire bomb parts (13-inch ''steel spheres'' and ''steel petal shapes'').

1983—Recently declassified US government assessment concludes that ''There is unambiguous evidence that Pakistan is actively pursuing a nuclear weapons development program . . . We believe the ultimate application of the enriched uranium produced at Kahuta, which is unsafeguarded, is clearly nuclear weapons.''

1984—President Zia states that Pakistan has acquired a ''very modest'' uranium enrichment capability for ''nothing but peaceful purposes.''

1984—President Reagan reportedly warns Pakistan of ''grave consequences'' if it enriches uranium above 5%.

1985—ABC News reports that US believes Pakistan has ''successfully tested'' a ''firing mechanism'' of an atomic bomb by means of a non-nuclear explosion, and that US krytrons ''have been acquired'' by Pakistan.

1985—US nuclear export control violation: Texas, krytrons (nuclear weapon triggers).

1985—US nuclear export control violation: US cancelled license for export of flash x-ray camera to Pakistan (nuclear weapon diagnostic uses) because of proliferation concerns.

1985/6—Media cites production of highly enriched, bomb-grade uranium in violation of a commitment to the US.

1986—Bob Woodward article in Washington Post cities alleged DIA report saying Pakistan ''detonated a high explosive test device between Sept. 18 and Sept. 21 as part of its continuing efforts to build an implosion-type nuclear weapon;'' says Pakistan has produced uranium enriched to a 93.5% level.

1986—Press reports cite US ''Special National Intelligence Estimate'' concluding that Pakistan had produced weapons-grade material.

1986—Commenting on Pakistan's nuclear capability, General Zia tells interviewer, ''It is our right to obtain the technology. And when we acquire this technology, the Islamic world will possess it with us.''

1986—Recently declassified memo to then-Secretary of State Henry Kissinger states, ''Despite strong U.S. concern, Pakistan continues to pursue a nuclear explosive capability . . . If operated as its nominal capacity, the Kahuta uranium enrichment plant could produce enough weapons-grade material to build several nuclear devices per year.''

1987—US nuclear export control violation: Pennsylvania, maraging steel & beryllium (used in centrifuge manufacture and bomb components).

1987—London Financial Times reports US spy satellites have observed construction of second uranium enrichment plant in Pakistan.

1987—Pakistan's leading nuclear scientist states in published interview that ''what the CIA has been saying about our possessing the bomb is correct.''

1987—West German official confirms that nuclear equipment recently seized on way to Pakistan was suitable for ''at least 93% enrichment'' of uranium; blueprints of uranium enrichment plant also seized in Switzerland.

1987—US nuclear export control violation: California, oscilloscopes, computer equipment (useful in nuclear weapon R&D).

1987—According to photocopy of a reported German foreign ministry memo published in Paris in 1990, UK government officials tells German counterpart on European nonproliferation working group that he was ''convinced that Pakistan had 'a few small' nuclear weapons.''

1988—President Reagan waives an aid cutoff for Pakistan due to an export control violation; in his formal certification, he confirmed that ''material, equipment, or technology covered by that provision was to be

used by Pakistan in the manufacture of a nuclear explosive device.''

1988—Hedrick Smith article in New York Times reports US government sources believe Pakistan has produced enough highly enriched uranium for 4–6 bombs.

1988—President Zia tells Carnegie Endowment delegation in interview that Pakistan has attained a nuclear capability ''that is good enough to create an impression of deterrence.''

1989—Multiple reports of Pakistan modifying US-supplied F–16 aircraft for nuclear delivery purposes; wind tunnel tests cited in document reportedly from West German intelligence service.

1989—Test launch of Hatf-2 missile: Payload (500 kilograms) and range (300 kilometers) meet ''nuclear-capable'' standard under Missile Technology Control Regime.

1989—CIA Director Webster tells Senate Governmental Affairs Committee hearing that ''Clearly Pakistan is engaged in developing a nuclear capability.''

1989—Media claims that Pakistan acquired tritium gas and tritium facility from West Germany in mid-1980's.

1989—ACDA unclassified report cites Chinese assistance to missile program in Pakistan.

1989—UK press cites nuclear cooperation between Pakistan and Iraq.

1989—Article in Nuclear Fuel states that the United States has issued ''about 100 specific communiques to the West German Government related to planned exports to the Pakistan Atomic Energy Commission and its affiliated organizations,'' exports reportedly included tritium and a tritium recovery facility.

1989—Article in Defense & Foreign Affairs Weekly states ''sources close to the Pakistani nuclear program have revealed that Pakistani scientists have now perfected detonation mechanisms for a nuclear device.''

1989—Reporting on a recent customs investigation, West German magazine Stern reports, ''since the beginning of the eighties over 70 [West German] enterprises have supplied sensitive goods to enterprises which for years have been buying equipment for Pakistan's ambitious nuclear weapons program.''

1989—Gerard Smith, former US diplomat and senior arms control authority, claims US has turned a ''blind eye'' to proliferation developments in Pakistan and Israel.

1989—Senator Glenn delivers two lengthy statements addressing Pakistan's violations of its uranium enrichment commitment to the United States and the lack of progress on nonproliferation issues from Prime Minister Bhutto's democratically elected government after a year in office; Glenn concluded, ''There simply must be a cost to non-compliance—when a solemn nuclear pledge is violated, the solution surely does not lie in voiding the pledge.''

1989–1990—Reports of secret construction of unsafeguarded nuclear research reactor; components from Europe.

1990—US News cites ''western intelligence sources'' claiming Pakistan recently ''cold-tested'' a nuclear device and is now building a plutonium production reactor; article says Pakistan is engaged in nuclear cooperation with Iran.

1990—French magazine publishes photo of West German government document citing claim by UK official that British government believes Pakistan already possesses ''a few small'' nuclear weapons; cites Ambassador Richard Kennedy claim to UK diplomat that Pakistan has broken its pledge to the US not to enrich uranium over 5%.

1990—London Sunday Times cites growing US and Soviet concerns about Pakistani nuclear program; paper claims F–16 aircraft are being modified to nuclear delivery purposes; claims US spy satellites have observed ''heavily armed convoys'' leaving Pakistan uranium enrichment complex at Kahuta and heading for military airfields.

1990—Pakistani biography of top nuclear scientist (Dr. Abdul Qadeer Khan and the Islamic Bomb), claims US showed ''model'' of Pakistani bomb to visiting Pakistani diplomat as part of unsuccessful nonproliferation effort.

1990—Defense & Foreign Affairs Weekly reports ''US officials now believe that Pakistan has quite sufficient computing power in country to run all the modeling necessary to adequately verify the viability of the country's nuclear weapons technology.''

1990—Dr. A. Q. Khan, father of Pakistan's bomb, receives ''Man of the Nation Award.''

1990—Washington Post documents 3 recent efforts by Pakistan to acquire special arc-melting furnaces with nuclear and missile applications.

1991—Wall Street Journal says Pakistan is buying nuclear-capable M–11 missile from China.

1991—Sen. Moynihan says in television interview, ''Last July [1990] the Pakistanis machined 6 nuclear warheads. And they've still got them.''

1991—Time quotes businessman, ''BCCI is functioning as the owners' representative for Pakistan's nuclear-bomb project.''

1992—Pakistani foreign secretary publicly discusses Pakistan's possession of ''cores'' of nuclear devices.

EXHIBIT 2

U.S. SENATE,
Washington, DC, May 23, 1995.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Occasionally there is an opportunity to take a bold initiative which will further multiple American foreign policy goals. Two of those goals are the maintenance of peace and stability in South Asia and the deterrence of aggression in East Asia. Such an opportunity is at hand.

The inability of the President since October 1, 1990, to make the necessary certification under section 620E(e) of the Foreign Assistance Act of 1961 (relating to the nuclear activities of Pakistan) has prevented the delivery of twenty-eight F–16 aircraft to Pakistan. Since F–16s in American service are nuclear delivery vehicles, the possibility that these aircraft might yet be delivered to Pakistan has raised enormous concern in neighboring India. At the same time, our inability to transfer the aircraft is an irritant in our relations with Pakistan. For now, the aircraft in question are in storage in Arizona.

In East Asia, both the Republic of China on Taiwan and the Philippines have been the victims of aggression from the People's Republic of China. In the case of the former, it's military exercises designed to intimidate; in the latter it's the actual take over of Philippine territory in the South China Sea.

To serve as a deterrent for aggression across the Taiwan Straits, Taiwan has ordered 150 American F–16 aircraft. However, these aircraft will not begin to arrive in Taiwan until June of 1997 suggesting that there may be a ''window of opportunity'' for conflict. With regard to the Philippines, a combination of historical factors and the need to devote defense resources to opposing internal subversion has led to a severe lack of external defense capability.

Considering the twenty-eight F–16 aircraft in storage, it appears that eleven of them were to be delivered to Pakistan under the United States Foreign Military Sales (FMS) program. Essentially, they were paid for already by the American taxpayer. The remaining seventeen aircraft were paid for by Pakistan.

Therefore, I recommend that the Administration open negotiations with the Governments of the Philippines and the Republic of China on Taiwan for the transfer of the aircraft. Eleven of the aircraft could be transferred to the Philippines on an FMS basis and the remaining seventeen could be the subject of negotiations for payment with Taiwan. If a decision is made to return to Pakistan some or all of the money collected, I would not object.

If this initiative were carried out, it would directly further American foreign policy goals in South and East Asia, respectively. In South Asia tensions would be reduced as twenty-eight potential nuclear delivery vehicles would be removed from the region. In East Asia the military strength of our friends and allies would be enhanced significantly and a clear signal would be sent regarding our determination to oppose aggression.

This initiative is simple but it requires a bold imagination for execution. I hope that you will join with me in putting it into effect and making a significant contribution to our national security.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

THE WHITE HOUSE,
Washington, June 22, 1995.

Hon. LARRY PRESSLER,
U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: Thank you for writing to me about the opportunity before us to resolve the F–16 issue with Pakistan. I appreciate your initiative and hope some new thinking will help create a consensus between the Administration and Congress for a satisfactory solution.

As you know, when I met with Prime Minister Bhutto in April, I told her I would explore with Congress the options for returning either the F–16s and equipment or the funds Pakistan had paid. The proposal to sell the planes and return the funds is one possibility if we can resolve some areas of concern. First, we must determine that the transfer of this equipment to third parties would be in our national interest. Second, we would need to be prepared to return to Pakistan the equipment other than F–16s for which it has paid. We would need to work with Congress on the necessary authorities to do so. Third, such a proposal may make this solution less than satisfactory for the Government of Pakistan if it results in the return to Pakistan of significantly less money then they originally paid for the aircraft.

Again, let me say that a solution accepted by Congress and by Pakistan will clear the way for a more serious discussion of the critical nonproliferation issues that concern us all. It will also help to improve the atmosphere in our bilateral relations and thus advance other U.S. interests in the region.

Sincerely,

BILL CLINTON.

MILITARY BUILDUP IN CHINA

Mr. PRESSLER. Mr. President, on a totally separate subject, I have been concerned about the military buildup by China. I cannot understand who China views as its enemy. I cannot understand why China is not only building up its nuclear arsenal, but also proliferating ballistic missile technology to countries like Iran and Pakistan. China should be concerned about the

potential for a nuclear arms race by Islamic nations in South Asia and the Middle East. Indeed, if that does occur, if Iran does join the nuclear club, Israel will certainly react.

So the point I am making is I think the President can use my initiative not just to solve one of our foreign policy problems as it relates to Pakistan. He can use it to show our continued friendship with Taiwan. Taiwan is a democracy and a growing economic power in the Pacific. Taiwan usually is on our side 100 percent, even though we do not treat its leaders that way when they come here. Our relationship with Taiwan is one of the ironies of history.

My initiative sends a signal to the Chinese that we are going to be tough in that region and we will look after our allies, and that includes the Philippines, which would also get eleven of the F–16's under my initiative.

As I said earlier, my initiative is a bold step, but it is a partial solution. It is a step forward. I am glad that President Clinton has apparently begun to embrace this concept, to explore with these countries to see if we can get the F–16's out to Taiwan and the Philippines. Again, it is an initiative that can get some money back to Pakistan, although I would not necessarily guarantee full compensation because frankly, Pakistan had their eyes open when they went into this deal. Further, the Government of Pakistan was not being candid with the President of the United States at that time about what was going on in their nuclear program.

Mr. PRESSLER. Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MEDICARE

Mr. PRESSLER. Mr. President, I would like to speak on the subject of Medicare.

There has been much unjustified criticism of the Republican budget plan by the Democrats. As my colleagues know, we will be voting in this Chamber possibly tomorrow night on the budget of the United States for the next 7 years, the basic outline. And for the first time in nearly three decades, we are moving toward a balanced budget by the year 2002. I am proud of this great achievement.

This is the toughest budget since I have been a Member of Congress. It is tough, it is sound and it is right. If we can pass it in the House and in the Senate, it will be the first time in a long time that we have gone in the other direction—the right direction. Finally we will start to pay our bills as they become due.

Up to this point, we have been going in the wrong direction—of runaway spending and the build up of a huge Federal debt.

Included in the budget plan are reductions in the rate of growth in Medicare. I want all senior citizens to understand this budget. I am a champion of senior citizens. My mother is a senior citizen living in Sioux Falls. In fact, I will be one someday in the not too far future. So I am concerned about this subject. My goal is to save Medicare for our seniors. This budget saves Medicare. This budget will provide senior citizens with stability.

The present rate of increase of Medicare is about 10 percent a year. It is growing too fast, and if left alone, it will go bankrupt by the year 2002. This budget slows the rate of increase to about 7.2 percent. Thus, Medicare is still going to grow, but it is not going to grow quite as fast. We are slowing the growth to save the program from overheating and breaking down altogether.

How do we get the savings? It comes from streamlining some of the national administration. It comes from certain cost control reforms, and so forth.

Americans should not be misled about what we are doing here. Both Democrats and Republicans agree that Medicare is going to go bankrupt unless somebody steps forward with a plan to save it. So I would say to my liberal friends, what is your plan? The Republicans have a solvent plan. The Domenici-Dole plan in the Senate will save Medicare. We have to save Medicare.

Let me say a word or two about some of the other areas. This budget takes an across-the-board approach. I know every group that has a stake in the Federal budget will feel it. But I would say to farmers, ranchers, small businessmen, students, and others, that lower interest rates are one of your main concerns. Students, for example, pay back their loans at the going rate of interest after they have graduated from college. To the students of America, I say that one of the greatest threats to your economic security is, the massive Federal debt. That debt keeps interest rates high, forcing students to pay their college loans back at high interest rates. We are going to have high interest rates if we do not do something about the size of our deficit.

A third area of concern here is inflation and the soundness of our monetary system internationally. If we continue to build up the huge Federal debt, we also will be building up the specter of high inflation, high interest rates, and a currency that is not respected in the world, a currency that is weak, and a currency that will eventually be overtaken by the German mark or the Japanese yen.

So, Mr. President, as we engage in this debate on the budget for the next 2 days and as we vote on it here in the Senate tomorrow evening, let us remember that we are trying to save Medicare. We are trying to save our economy for our children—an economy with lower interest rates, a solvent dollar, and low taxes.

We are going to have many eloquent speeches in this Chamber about how the Federal Government is taking away money from here and taking away money from there. But if the Federal Government does not have any money to give, it ultimately has to take that money back either through inflation, high interest rates, and higher taxes, which will lead to all types of economic suffering.

So in conclusion, Mr. President, my concern here is to explain why I will be voting for the Dole-Domenici approach. I urge my colleagues to vote for it. We will have to fight off false charges that we are against senior citizens or that we are against farmers or we are against workers. That is not true. We are for them. This is an historic budget plan for all Americans. Everyone agrees the alternative is bankruptcy, the loss of the Medicare Program, and economic chaos. We are going to save our budget. We are going to save Medicare. We are going to save our economy. We are going to save our children's future.

I urge my colleagues to join us in voting for the Dole-Domenici budget.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BIDEN. Parliamentary inquiry, Mr. President.

Are we in morning business?

The PRESIDING OFFICER. We are. The Senator can speak for up to 10 minutes under the previous order.

Mr. BIDEN. I thank the Chair. I seek recognition for the purpose of speaking on the issue of the arms embargo in Bosnia.

The PRESIDING OFFICER. The Senator is recognized.

LIFTING THE BOSNIAN ARMS EMBARGO

Mr. BIDEN. Mr. President, I rise today to argue again for lifting the illegal and what I believe to be immoral arms embargo against the Government of Bosnia and Herzegovina. Actually, Mr. President, we should not even be in a position today of having to lift an embargo. In April 1992, when the Republic of Bosnia and Herzegovina was recognized internationally and granted admission to the United Nations, it automatically became covered by article 51 of the U.N. Charter, which grants every State the elemental right of self-defense.

Inexplicably, however, the Bush administration was asleep at the switch

and failed to act to abrogate the illegal embargo.

For 3 years, Mr. President, I have repeatedly advocated lifting this unfair and illegal embargo. I would prefer that the timing of the lift be responsive to the wishes of the Bosnian Government which, after all, is the aggrieved party. The aggrieved party is literally fighting for its life.

Not only am I frustrated and angry at the current situation, I am also disturbed that our country, which has been the beacon of hope to freedom-loving people around the world, should even be contemplating refusing to give the Bosnians the tools with which to defend themselves.

How much more, Mr. President, do the Bosnians have to suffer? They have been invaded across an international border by troops equipped and assisted by the fourth largest army in Europe. Against the Bosnian Serbs with sophisticated, modern weapons including planes, tanks, rocket launchers, and heavy artillery, the Bosnian Government forces have fought with small arms and dogged determination. Although recently they have been able to capture a few heavy weapons, and reportedly have been covertly supplied with modest defense weaponry, the Bosnian Government forces are still vastly underarmed compared to the Serbian aggressors.

Mr. President, let me repeat the phrase that I just used: Serbian aggressors. There is no moral equivalence in this conflict. The Government of the Republic of Bosnia and Herzegovina, one of the successor states of the former Yugoslavia, gave absolutely no provocation to the Bosnian Serbs, who have torn this small country apart.

On the contrary, in 1991 and early 1992, while Serbs and Croats were fighting in neighboring Croatia, the Bosnian Government strove to retain the multireligious and multiethnic fabric of its own State. But unscrupulous demagogic politicians like Milosevic in Serbia and Karadzic in Bosnia, in order to implement their vicious racist ideology, exploited fears and successfully widened existing religious and socioeconomic divisions. From this incitement came the centrally planned murder, rape, and vile ethnic cleansing that have so revolted the civilized world.

Mr. President, let us not tolerate criminals cynically wrapping themselves in religious garb. The Bosnian Serbs' behavior has absolutely nothing to do with Orthodox Christianity. French President Jacques Chirac forcefully made this point at a dinner of European Union leaders when he reportedly rebuked the President of Greece, an apologist for the Bosnian Serbs. He said, ''Don't speak to me about any religious war,'' Chirac said. ''These are people without any faith, without any sense of law. They are terrorists.''

Yet somehow Western European statesmen have criticized the Bosnian Government forces and chastised them for trying to break the blockades of Sarajevo and Bihac. Imagine the impertinence, Mr. President. Sarajevo has been blockaded for 38 months, more than 3 years. Its long-suffering population has been shelled and sniped at, and denied water, food, medicine, electricity, and gas. Mr. President, they literally string blankets and sheets across the narrow streets of the old parts of Sarajevo. When I was first there, I thought it was an unusual way of drying their laundry. I asked, ''why are they hanging sheets and blankets there?'' I was told that they are hanging there for only one reason—to thwart the Bosnian Serbs from sniping at Moslem, Croatian, and Bosnian Serb children. That is why they are there. No one denies this. Sniping at children is the Bosnian Serbs' calculated plan, which they carry out nearly every day.

Senator DOLE and I went to visit a hospital in Sarajevo. The only people there were children from ages 6 to 20 who were the victims of sniper fire—not random fire, not what they are doing with random shelling—sniper fire. So there is, in fact, a campaign of terror going on. And so here you have Sarajevo and Bihac, Sarajevo blockaded for 38 months, shelled and sniped at, the target of terrorist activities.

And so now, when outgunned Bosnian Government forces try to break the siege, which contravenes the U.N. resolution, not to mention basic human rights, what is the reaction of the most advanced industrialized democracies?

Well, Mr. President, in mid-June, we got a taste of their reaction at the G–7 summit in Halifax. The world's wealthiest nations, the United States included, called upon all parties, even those who have been under siege for 38 months, to display the greatest restraint. Is that not nice? This callous declaration surely set a new standard for arrogance, for blaming the victim.

I would ask the well-fed gentlemen of the G–7 if they could look into the face of an undernourished, weakened Sarajevo mother who gets shot at, literally shot at, while running to fetch a plastic jug of water for her children, and tell her that her government's army should display the greatest restraint.

Mr. Akashi, a great world citizen, a top U.N. diplomat in the Balkans, in deliberate violation of his own organization's declaration, announced on June 9 that UNPROFOR, the U.N. protective forces, henceforth would act only if the Bosnian Serbs agreed. Keep in mind that the Bosnian Serbs have Sarajevo, Bihac, and other cities under siege.

Mothers literally cannot go to get water because all the water has been cut off. The gas and electricity has been cut off. So they go to a public fountain, a spring, and are shot at, murdered cold-bloodedly—in cold blood. And Akashi says on June 9, that by the way, we, the U.N. forces, will take no action on any matter unless we first check with the snipers, the Bosnian Serbs.

Now, is that not wonderful? Is that not wonderful? But if the Bosnian Serbs do not agree, then the United Nations will not act. What is the Bosnian Government, having been criticized for trying to break the siege, supposed to do? They are under siege—no water, no food, no electricity, in a campaign to kill their children. And their government is told not to act unless the United Nations first talks to the Bosnian Serbs.

Well, Mr. President, the criticism of the Bosnian army for attacking to break the siege would be laughable if it were not so utterly grotesque. Nonetheless, some West European governments have criticized the United States for our advocacy of the victimized Bosnian Moslems.

Perhaps the following piece of counterfactual analysis might be helpful to our friends in London and Paris.

What if, Mr. President, a Moslem-dominated Bosnia and Herzegovina had attacked a peaceful, Orthodox Christian Serbia, carried out barbaric atrocities against Orthodox Serbian civilians, and then proudly announced that its policy of so-called ethnic cleansing had been successful—would Christian Europe then be sitting idly by, conjuring up excuse after excuse for not halting the cruel and cowardly aggression? I think the answer is self-evident.

Bigotry, sad to say, spreads more easily than tolerance. So we must not allow ourselves to fall into the trap of labeling all Serbs—in Bosnia, Serbia, or elsewhere—as racists. Nearly 200,000 Serbs, sometimes referred to as the forgotten Serbs, continue to live in the territory under the control of the Bosnian Government.

When I first visited Bosnia several years ago, I met with the Council of Leadership of the Bosnian Government, four of whom were Serbs. The army was 28-percent Serbian. It was a multiethnic country—the army and the Bosnian Government made up of Serbs, Croats, and Moslems, all of whom were Bosnians.

So I want to make it clear that not all the Serbs, by any stretch of the imagination, in fact, are like the aggressors.

I might add that when I visited Belgrade over 2 years ago and met with a group of about 75 leaders from business, academia, and other walks of life, including the press, two things were clear: First, the vast majority of the people living in Serbia did not know the truth. Second, if they did they would not support either the ethnic cleansing by the Bosnian Serbs or the actions taken by their own government. I felt they did not support what Karadzic was suggesting. But all they had was a totally government-controlled television outlet, like the old Communist days in Yugoslavia. So all they saw on the news were Bosnian Serb children being slaughtered and even hung up on racks like chickens. All pure propaganda, not true. The world acknowledges this now.

Milosevic did it to enrage his population, to play on centuries-old fears and divisions, and it worked. But the vast majority of the Serbian people are good, honorable, and decent, but they do not know the truth.

In the Government-controlled portion of Bosnia, there is an organized Bosnian Serb political opposition to Mr. Karadzic and his fellow thugs in Pale. There are many Bosnian Serbs and Bosnian Croats serving in the army of Bosnia and Herzegovina, including the Government army's deputy chief of staff who is a Bosnian Serb.

Indeed, there are thousands of decent, moral Serbs in Sarajevo, Belgrade, and elsewhere whose personal values rise above the primitive, provincial racism of Karadzic, Milosevic, and company.

Despite the almost unbelievable privations endured by Sarajevans, the Bosnian capital's Moslem, Orthodox, Catholic, and Jewish citizens are still living together, hoping against hope that their sophisticated city can receive the basics—food, water, and medicine—currently denied them by the Serbian bullies in the hills who cowardly snipe at their children and indiscriminately lob shells at innocent civilians.

I have already outlined the legal basis and moral imperative for giving the Bosnian Government the means to defend itself. Now I would like to address the tactical arguments often given against lifting the arms embargo.

Some critics assert that the Bosnian Serbs would react by overrunning the eastern enclaves of Srebrenica, Gorazde, and Zepa. I would remind those critics, first of all, that the Serbs have been attacking Gorazde for weeks without success. More importantly, the U.N. Security Council has called for defense of the safe areas with air power, if necessary, and with vigorous American leadership, NATO could do so.

A second criticism is that lifting the arms embargo would induce UNPROFOR to pull out. But I regret to say, Mr. President, that UNPROFOR troops have become the world's most expensive hostages and have ceased to be able to carry out their mandate. UNPROFOR has publicly abandoned its attempt to protect Sarajevo from bombardment of heavy artillery. On June 17, a U.N. spokesman admitted: ''The policy of weapons-collection points has now been abandoned.''

Moreover, the United Nations is manifestly unwilling to honor its commitment to use all necessary means—that is what the U.N. resolution says—all necessary means to bring supplies to the desperate civilian populations of Sarajevo, Bihac, and the eastern enclaves.

Mr. President, UNPROFOR is now mainly in the business of protecting itself, which I do not blame it for doing, but that is all it does. It has outlived its usefulness and should be withdrawn, independent of whether or not we lift the arms embargo.

Another frequently heard criticism of lifting the arms embargo unilaterally is that it would cause a rift in NATO. Mr. President, in case anyone is not looking, there is already a rift in NATO, and it is going to get bigger as the American people think over why we spend $110 billion a year, every year, for NATO. For what purpose? For what purpose? If they cannot affect events in Bosnia, for what purpose are our American taxpayers spending $110 billion a year?

Mr. President, I step back to no man or woman in this Senate in being a supporter of NATO. I respectfully suggest that I have been one of its strongest advocates for more than 20 years. But it seems to me that if we do not move and do something, NATO will be split and fractured more than by our unilaterally lifting an arms embargo.

NATO will be signing its own death warrant by a continuation of its ineffectual response in Bosnia, hobbled as it is by incomprehensible U.N.-controlled rules of engagement.

Some critics claim that lifting the arms embargo would automatically lead to spreading of the conflict to other parts of the Balkans. Mr. President, this assertion flies in the face of the facts by ignoring the example of the deterrence policy already employed by the United States on Serbia's southern border.

There, an outstanding success story of the Clinton administration's Balkan policy has been the sending of several hundred American troops to join the Nordic U.N. contingent in the former Yugoslav Republic of Macedonia. Combined with our warning to Milosevic not to even dream of attacking, this action—not the existence of the arms embargo—is what has kept Belgrade's hands off the fledgling Macedonian State.

He knows we mean it there and he has not moved. We should extend the warning to Milosevic that any intervention of his army in the conflict in Bosnia, either to aid the Bosnian Serbs after the lifting of the embargo or to harass the evacuation of UNPROFOR troops, would result in massive, disproportionate retaliation against Serbia proper.

Finally, some opponents of lifting the embargo foresee a dire precedent for unilateral embargo-breaking elsewhere, such as those currently in effect against Iraq and Libya.

The line goes, ''If we unilaterally lift the arms embargo against Bosnia, won't our allies lift the arms embargo against Iraq and Libya?'' But surely, Mr. President, one can point out even to the most disingenuous foreign politician that there is a world of difference between sanctions against Bosnia, the victim of international aggression, on the one hand, and an embargo against Iraq, a notorious international aggressor, on the other hand. We can and should use our considerable leverage against countries who would threaten deliberately to ignore this obvious and fundamental distinction.

In conclusion, Mr. President, in actuality, opponents of lifting the illegal arms embargo against Bosnia ignore a much more ominous precedent than breaking the U.N. sanctions.

The geostrategic reality of the future is that the primary danger to peace will much more likely come, not from nuclear missiles, but from regional crises, often in the form of ethnic conflicts and oppression of minorities.

In that context, therefore, the more dangerous precedent would be to reward an aggressor for his cold-blooded invasion, vile ethnic cleansing, murder, rape, pillage, and starvation by blockade. Europe, unfortunately, has other potential Milosevics and Karadzics. That is the sad reality to which we must adjust as we prepare to enter the 21st century. That, Mr. President, is not feel-good idealism. It is nuts-and-bolts realpolitik, and we should begin to practice it.

I yield the floor.

OFF-SHORE OIL AND NATURAL GAS DRILLING

Mr. BIDEN. Mr. President, I rise today to commend the House Appropriations Committee for its vote yesterday to restore the moratorium on off-shore oil and natural gas drilling. A bipartisan coalition of coastal State members led the successful fight to rightly reverse the subcommittee's recommendation to lift this needed ban.

Mr. President, our Nation's coastline is perhaps our most beautiful and cherished natural resource. With the Fourth of July weekend fast approaching, many American families are planning to head to the beech to escape the heat, walk along the boardwalk, and swim in our oceans. When they look out to sea, the only sight should be the Sun melting into an endless horizon. They do not want to see gigantic oil and gas drilling rigs and most importantly they do not want to expose their children to pollution.

Mr. President, for 14 years the Congress has stood behind the off-shore ban, which strikes a fair balance between the need for development of natural resources and environmental protection. Yesterday, the full Appropriations Committee recognized the necessity of this balance and I again commend committee members of both parties for their foresight.

I remain deeply concerned, however, that there may be yet another attempt to lift the ban as the appropriations bill moves through the legislative process. I will watch this situation closely and will oppose vigorously any attempt to open our shoreline to needless exploitation.

THE 100TH ANNIVERSARY OF THE INVENTION OF VOLLEYBALL IN MASSACHUSETTS

Mr. KENNEDY. Mr. President, most people know about the famous sport that was born during the late 19th century in Massachusetts. The sport was basketball, and its birthplace was Springfield. But what many may not know is that Massachusetts also gave birth to another outstanding game during that same era.

In 1895, William G. Morgan, the physical fitness director of the YMCA in Holyoke, invented a sport that he regarded as a cousin of badminton and called mintonette. Today, it is known as volleyball, and this year it is celebrating its 100th anniversary.

Just as the slams of Dee Brown and the no-look passes of Sherman Douglas for the Celtics today bear no resemblance to the basketball played beneath the peach baskets of the 19th century, the hard-hitting and fast pace that characterize volleyball today are a far cry from Morgan's invention.

He initially developed it for his noon businessmen's fitness class. He wanted a game that was less strenuous than basketball, that did not require physical contact, but that would still provide excellent exercise. Morgan's game was originally played indoors, with a soccer ball stripped of its leather cover. The rules were a conglomeration of regulations adapted from basketball, baseball, tennis, and handball. The net was 6 feet high, compared to the standard 8 feet today, and players could hit the ball as many times as necessary to return it. A game consisted of nine three-out innings, like baseball. A ball hitting the floor more than once was an out.

For a time, the Holyoke YMCA was volleyball's only home. But when players began to take the game outdoors, its popularity soared. Nets started appearing on playgrounds and beaches throughout Massachusetts and surrounding areas. In 1916, the YMCA and the NCAA jointly issued a new set of rules similar to those in use today.

At that time, there were 200,000 players of the still mostly American game. But when U.S. soldiers introduced volleyball to Europe during the First World War, the game began to spread to other countries, and it spread even more rapidly during the Second World War.

In 1947, the International Federation of Volleyball was created with 13 charter members. That number has now grown to 180. By the time volleyball became an official Olympic sport in 1964, teams from Europe and Asia were often dominant. Japan had developed a power game that later spread across the globe, and Soviet bloc nations frequently prevailed in international competitions.

In the 1970's, the United States built state-of-the-art training centers, in a major effort to recapture our own game. The result was the Los Angeles miracle of 1984. The American men's team had been ranked 19th in the world, and hadn't even qualified for the games since 1968. In 1984, it surprised and delighted the Long Beach Arena crowd by defeating Brazil in straight games to win the gold medal. Millions of Americans watched on television and shared in the glory of that magical night, leading to a rebirth of the sport throughout the Nation. America had finally caught up to our own game. Led by Steve Timmons and Karch Kiraly, the American team played an extremely exciting brand of volleyball and dominated the sport. At those same Olympics, the U.S. women's team also shined, winning a silver medal.

A large part of the game's rebirth in America has been on the beach, where professional beach volleyball is rapidly gaining popularity. One of the stars of the beach game is Massachusetts native Karolyn Kirby.

Kirby, from Brookline, grew up as a sports lover, cheering on the Celtics, Red Sox, and Bruins. In high school, she excelled in volleyball. She was a star collegiate player indoors, earning All-America designation at both Utah State and the University of Kentucky.

After college, she took up the outdoor game, and is now the world's best female beach volleyball player. She has been the No. 1 player on the Women's Professional Volleyball Tour since 1990, and she has won or shared the tour's MVP crown four times. She is also the world's No. 1-ranked beach player and will likely represent the United States in 1996 when beach volleyball becomes a full medal sport at the Olympics.

What makes volleyball such a popular sport is that it can be played at all skill levels and by all ages. Forty million Americans now play, making it one of the top 10 participatory sports in the Nation. Most of those 40 million citizens may not be adept at the bump-set-spike play, but they enjoy the game immensely, because it brings families and friends together in backyards, parks, playgrounds, and beaches throughout the Nation.

To commemorate this auspicious 100th anniversary, the men's Division I championship was held in Springfield in May, and was won by UCLA. The women's Division I championship is scheduled for December at the University of Massachusetts.

In October, the women's Division III title finals will be played at Mount Holyoke and Smith Colleges, and in conjunction with that event, new members will be inducted into the Volleyball Hall of Fame at Heritage State Park in Holyoke.

In addition, more than 250 men's and women's teams gathered for an international volleyball celebration from May 27 to June 3 at Westover Air Force Base in Massachusetts. The occasion was the annual USA Volleyball Indoor Open Championships, and for the first time in the event's 67-year history, teams from around the world participated.

Massachusetts is extremely proud of this aspect of its heritage, and I welcome this opportunity to commend all those who have made volleyball such a positive addition to the life of our Nation.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, the skyrocketing Federal debt, which long ago soared into the stratosphere, is like the weather—everybody talks about it but scarcely anybody had undertaken the responsibility to trying to do anything about it. That is, not until following the elections last November.

When the new 104th Congress convened in January, the U.S. House of Representatives approved a balanced budget amendment to the U.S. Constitution. In the Senate all but one of the Senate's 54 Republicans supported the balanced budget amendment; only 13 Democrats supported it. Since a two-third-vote is necessary to enact a conditional amendment the Senate's amendment failed by one vote. There will be another vote later this year or next year.

Mr. President, as of the close of business yesterday, Tuesday, June 27, the Federal debt—down to the penny—stood at exactly $4,890,154,885,704.22 or $18,563,11 for every man, woman, and child on a per capita basis.

NO TRADE WAR BETWEEN THE UNITED STATES AND JAPAN

Mr. GRAMM. Madam President, I yield myself 15 minutes.

Madam President, I think we are all happy today that there is going to be no trade war between the United States and Japan, and I congratulate the President for avoiding that crisis. But I think it is interesting to look back at all the political bravado of the Clinton administration in the last several months, to look back at all of their statements saying they were not going to budge an inch. Yet, today, when the final agreement came out, it is a voluntary agreement with no specifically defined targets. I think we have seen, once again, in dealing with the Clinton administration, after all is said and done, there is always more said than done.

CHARLES ''CHICK'' REYNOLDS

Mr. BYRD. Mr. President, it has been said that each man's death diminishes us all. Certainly all who knew him have felt a loss due to the recent passing of Charles ''Chick'' Reynolds.

A reporter of outstanding experience and qualifications, ''Chick'' Reynolds began his career in stenotype reporting in 1949, when he was employed by the Department of Defense.

In 1950, he went to work for the Alderson Reporting Co. here in Washington, where he continued until 1971, at which time he opened his own stenographic reporting firm. In 1974, he was

appointed an official reporter with the Senate Official Reporters of Debates serving in that capacity until he became Chief Reporter in 1988.

When ''Chick'' Reynolds was a working stenotype reporter, he was considered one of the fastest and most accurate in the country. He reported on Federal agency hearings and on various committees in both the House and the Senate, including the Joseph McCarthy and Jimmy Hoffa hearings on Capitol Hill. He was assigned to cover the White House during the Kennedy, Johnson, and Nixon administrations, and was in the Presidential motorcade on that tragic day when President Kennedy was assassinated in 1963.

''Chick'' Reynolds served the Senate and the Nation with distinction for 21 years, and only discontinued that service when ill-health forced him to do so earlier this year. His was an outstanding career, but, the recounting of one's career successes can never completely give the whole measure of a man.

By all accounts, ''Chick'' Reynolds in both his private and professional lives was an eminently decent human being, with great affection for his wife, Lucille, and a fine sense of humor. He was fond of saying that he took Lucille everywhere he went so that he would never have to kiss her goodbye. He liked to tell a story about one sultry evening when he was stuck in traffic on route 95 with the windows rolled down because of a faulty air conditioner. His only passenger, his cat, suddenly decided that it was too hot in the car, and leaped out of the window. ''Chick'' pulled over immediately and spent some time frantically searching for the cat in the heat and congestion. He did not want to go home to Lucille without that cat.

''Chick'' Reynolds was a man to whom his fellow employees could continually look for counsel and instruction, always given with humor and genuine concern. Those who worked with him are indeed fortunate to have been so close to this very special life. ''Chick'' will not be forgotten by his colleagues in the Senate. The institution has been diminished by his passing. His great competence and his institutional memory and comprehension are not easily replaced in a world now more interested in speed than in considered contemplation and mature judgment. ''Chick'' Reynolds was surely *sui generis,* one of a kind, in a world often far too short on wisdom and experience.

I extend my sincere regret and deep condolences to his family, and most especially to his beloved Lucille. He is gone. But, the lives ''Chick'' Reynolds touched and the difference he made through his service here, and through the force of his warm and magnanimous personality will remain. The Senate and all who knew him are measurably better for the life and example of Charles ''Chick'' Reynolds.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is closed.

THE BUDGET RESOLUTION

The PRESIDING OFFICER. There will now be a period for debate on House Concurrent Resolution 67, the concurrent resolution on the budget for fiscal year 1996.

The Chair, in his capacity as a Senator from the State of Missouri, suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Mr. President, is the pending business before the Senate the concurrent budget resolution?

The PRESIDING OFFICER. We are in a period for debate on the budget resolution.

Mr. DOMENICI. I understand that we have decided to take 4 hours today, equally divided, and Senator EXON might have other Senators who want to speak during his 2 hours.

Mr. EXON. I advise the Chair that the answer to that is yes.

Mr. DOMENICI. Mr. President, I want to say to Senators—particularly to those who are conferees and, in addition, those on the Budget Committee, all of them—I am not sure they knew we were going to be on this at noon today. Perhaps they thought it would be later, or perhaps even some might have thought tomorrow. I ask that they come to the floor, or call us if they would like some time. I would like as many of them who like to speak to do so. We will have some time tomorrow. I understand three of them want to speak today. This is my invitation to them so that we can arrange the time.

Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 15 minutes.

Mr. DOMENICI. Mr. President, today, the fiscal year 1996 concurrent budget resolution conference agreement, which will be before the Senate shortly, represents, in my opinion, a very historic step in bringing the Federal budget under control, bringing it to balance in 7 years by slowing the growth in Federal spending.

This blueprint that has been crafted is one which, first and foremost, reaches a balance by the year 2002 and does that by ratcheting down the deficit to a balance in 2002. It does that by reducing expenditures of the Federal Government. There are no other items making up that reduction and ratcheting down those deficits, other than reducing the amount of Government spending.

This provides, in addition, up to $245 billion in tax relief. But I want to repeat what we have spoken about so often in the Senate—that relief comes only when we have achieved a balanced budget by adopting this resolution with mandatory caps on the expenditures of appropriated accounts, with one set of caps for defense and one set for all the rest of the expenditures that occur annually, called ''appropriated accounts''; and then when we present from the respective committees to the Budget Committee the reconciliation bill, which will accommodate and respond to the instructions given by this resolution, and once they are in the hands of the Budget Committee here and in the House, we will have them evaluated by the Congressional Budget Office, the authenticator, the neutral group, chosen by most, and only a couple of years ago chosen officially before the American people by the President of the United States, as the real authenticator, which would have no smoke and mirrors, which would be objective—we will ask that entity to evaluate our performance. If the caps are enforced—and we intend to enforce them—and that bill called ''reconciliation''—a strange name, but I guess the best way to say it is that it reconciles the laws of the country with the budget resolution, thus, it is called reconciliation. That big package will address the issues of Medicare, Medicaid, and many other entitlements, and it will attempt to make Medicare solvent for the next 10 to 12 years, instead of leaving it on a spend-out that would yield to bankruptcy within 6 to 7 years. They will not have enough money to pay their bills in 6 to 7 years. So when that event occurs, and it is certified by that authenticator, then we will tell the American people and the U.S. Congress that we have a balanced budget.

At that point in time, what will happen is the $245 billion will be released to the Finance Committee in the Senate and its counterpart in the Ways and Means Committee in the House, and they will proceed. While we remain the custodians of the reconciliation bill, we are holding it, they will produce the tax bill after they have debates in their committee, and they will send that tax bill to the Budget Committee, who will then be the guardian of both and bring both to the floor. One will not be passed without the other. We will pass the big reconciliation bill, which the authenticator will say gets you to balance; and then, Mr. President, the American people should know that tax cuts cannot get you out of balance. That is part of the mandate. The tax cuts cannot, in the last year, the seventh year, be bigger than the economic dividend which created a surplus in that last year. It is around $50 billion. So if some wonder whether the tax cuts are going to deny the people of this country a balanced budget, it will not.

The deficits in each of the previous years will be a little higher than we thought they would be as the bill left the U.S. Senate, because we have to accommodate to $75 billion—not $245 billion, but to $75 billion more than we had accounted for in our budget. Those will be spread back across by way of increased deficits annually. But in the final year you will be in balance.

So we believe it is an exciting time, an exciting event to speak about today, to speak about tomorrow, and then to ask the U.S. Senate to vote yes or no. I am very hopeful that the vote will be more than 50 voting for it. I believe that is going to be the case, which means it will pass.

It will do a lot of good things for America. First of all, it demonstrates a commitment to keep our promise to the American people that we will, working together with them, enact a balanced budget for the American people.

It also is an answer to many—most of whom are on that side of the aisle—who said we do not need a constitutional balanced budget to get a balanced budget.

Saying, over and over, ''Just do it. Take the action that you must.'' We took it seriously. In 7 years, we produce that kind of budget.

From this Senator's standpoint, there is probably no event on the domestic side, in the past three or four decades, that is more important to the future of America and more indicative that we are changing directions, than this budget resolution. It is the framework to change the fiscal policy of America, and to change the way the Federal Government operates with and toward the sovereign States and the people of the country.

There should, when it is implemented, be less Government here. I believe the American people have been saying they want less Government here. It will say, ''You have more power at the State level.'' It will say, ''We are giving you more power over programs we have held both the purse strings and the power over.''

It is a vote of confidence in the Governors and legislators of America who are closer to the people than we are, and who are capable of modifying and melding programs so that they do not fall prey to the one-shoe-fits-all philosophy. That if there is one program with one definition, and one set of strings, it must be good for all Americans and for all States. It will change that premise of Government.

Incidentally, Mr. President, there is no question that we cannot get there unless we reform and alter and make better the programs of health care that America as a United States Government manages or funds, or operates. We will do that.

We will reform Medicaid and Medicare—at least our committees will—in response to this instruction of this budget resolution, requiring that they reconcile the law. I will talk about that in a little while.

In addition, sometimes we forget that of all our responsibilities, there is only one that we do alone and that the sovereign States do not do and we do not ask them to. That is our national defense. I assume when we come here as Senators and take the oath that we pledge our support to our Constitution and our Nation, but I think it is obvious that we are, at the minimum, committing ourselves to the national defense.

So we take care of the national defense here, also. Before we are finished with our presentation, for those who say we have raised defense spending while we have reduced spending in certain social programs—in particular, the entitlements—we will show the American people that, truly, defense, when we are finished with our 7 years, will not have grown, but of a steady starting point, will have come down by $17 billion—$17 billion less than 1995. So, while it comes down, contrary to what is being said by some, Medicare, Medicaid, and other entitlements will go up. Medicare itself will go up by 252 billions of dollars—not down—up. Medicaid will go up by about $180 billion cumulative over the 7 years—not down—up.

I would like to go on with a few other summaries and a few definitions. Then at the appointed time I will yield to Senator EXON, and from my side of the aisle, since we have half the time, fellow Republicans, I would like some Senators to use some of this time this afternoon, 15 or 20 minutes, by each Senator genuinely interested.

Let me give Senators Webster's definition of the word ''compromise.'' The third definition of compromise in this source dictionary ''is something midway between other things in quality, effect and criteria,'' et cetera.

Compromise is something our Founding Fathers envisioned. Clearly, this conference agreement before the Senate today is a compromise. Let me suggest from my standpoint, the Senator who chaired the Budget Committee that got it started out, that put the package together, I truly believe this is an excellent package and a very solid compromise that will serve our people well.

Clearly, the House did not get everything it wants in its 5-year blueprint for America; nor did we. Balance is achieved in 7 years by, first, reducing the rate of growth in total spending.

Let me give a few numbers and ways to look at that. Total Federal spending grows from $1.5 trillion in 1995 to $1.875 trillion in 2002. The average growth rate, Mr. President, will be 3 percent a year. When it goes from $1.5 trillion to $1.875—almost $1.9 trillion—it will grow at 3 percent. The Federal deficit would grow next year to nearly $200 billion if we do not adopt and enforce this resolution. Mr. President, $200 billion without the changes in policy which will reduce that to $170 billion. Thereafter, it will decline to a surplus of $7 billion in the year 2002.

The total deficit reduction over the next 7 years will reach almost $900 billion. Everyone should understand that reduction occurs while the budget is still growing. It is a reduction in the amount of growth by $900 billion, including the interest we will save.

The tax reductions that are contemplated, we should understand very clearly, and every Member of the Senate should, first, there is nothing in this budget resolution that will tell our Finance Committee, the tax-writing committee, what taxes they should reduce. There is nothing in any budget resolution adopted under the laws of this land that can tell a committee precisely what their finished product will be.

I cannot stand here and say that I am clairvoyant enough or understand the mind of the Finance Committee so well that this $245 billion, if they use it, will yield certain tax cuts. What I can say, unequivocally, that those reductions cannot and will not occur until the committees of this Senate have first met their spending reduction instructions.

Let me repeat: The tax reductions that we speak to, which I have alluded to in terms of how we constrain them so as to assure balance, cannot occur and will not occur unless the committees of the U.S. Senate—from the Agriculture to the Labor Committee, to the Finance Committee, to Government Operations, to Energy and others—until they reconcile the law and change it pursuant to this instruction to save the money, there will not be any opportunity for our Finance Committee of the U.S. Senate to pursue a tax bill.

Once that certification occurs—and I have explained that heretofore. Let me do it again. There will be, flowing from the Budget Committee to the Finance Committee, an allowable of $245 billion, $170 billion of which, Mr. President, is the economic dividend which we are entitled to for having reached balance. They will then proceed to write a tax bill, and they must have sufficient votes to get it done. And when they put it in the reconciliation bill in our hands, as custodians of both they will need 51 votes of the floor of the Senate also.

So in a very real sense, the Senate of the United States will decide what tax cuts there will be in this $245 billion allowed. And Senators will have a very big input into it. Ultimately, once again we will have to go meet with the House, who will do their job, and we will have to see what the product is.

Cumbersome it is. Unpredictable, with certainty today—even as short a time as 3 months from now we cannot predict, because committees will do their will. But we have come as close as we have ever come to putting an enforceable blueprint before the committees of this Senate. And the only thing they have to decide: Do you want to be part of balancing the budget or not? And if you do, you have to do what you

have been told to do. And I am not telling them what to do. When this vote occurs tomorrow, and a majority of this Senate says aye, the Senate is telling them what to do.

There is no other way under current procedures to get that job done. You could never bring those bills here without a budget resolution because they would be debated forever, amendable forever, and Americans would be waiting until God knows when for a balanced budget. So, while it is not nice to tell committees you have 2½ months or 3, because the date they must produce is September 22, they will produce it and send it over to the Budget Committee for interpretation.

I am certain most of the discussion in opposition to this budget resolution will say it is too quick, not quite the right time, this economy is perhaps not as robust as it was 2½ years ago. Let me say to everybody watching and all our Senators, for those who do not want to balance the budget of the United States it is never the right time to balance it. For, if you are on the up side of the business cycle, with a buoyant 4 percent growth, there will be those who say it is not the right time because we do not want to put any damper on that. Let us let that great economy go on. If you do it in the middle of the business cycle there will be those saying, oh, no, do not do that. It is too close to coming down. And if you wait until now, when you we have had a rather robust recovery for a rather prolonged time, there will be those saying do not do it now. We need to make sure the economy continues on.

But to all of those critics, I remind you that if a balanced budget is not worth something to our children and to the future and to opportunity for the future, then we ought not be doing it. But if it is, we ought to do it, for it has a bigger positive effect in our economic lives and the lives of our children than the temporariness of an up or down in the business cycle.

But, did you hear how much we are reducing the deficit in the first year? We are reducing it by $30 billion. It would have been $200 billion. We will get it down to $170. To anyone who wants to criticize this on the basis that it is bad for the economy, then let them say that a $30 billion reduction could harm an economy of almost $6 trillion.

I am also certain that there will be those who will say we should not reform Medicare. We should not do that as fast as we are doing it. And we will hurt people. And some will even say we are cutting Medicare.

Let me suggest, Medicare is going to grow from $158 billion to $244 billion as an annual expenditure of Medicare by the year 2002. It will grow at an annual average rate of 6.4 percent. The total Medicare spending over the next 7 years will top $1.6 trillion. Medicare is borderline solvent. It will not have money to pay its bills in 6 or 7 years. By the changes we are asking, the reforms we are asking, it will be made solvent and will be there for our seniors.

One last observation that should not go unnoticed. Per capita expenditures on Medicare will increase from $4,900 per recipient to $6,700 per recipient by the year 2002. Relative to what I perceive to be an unsustainable current spending path, the conference agreement reduces Medicare spending from that expected amount, which I do not believe was sustainable, and reduces it by $270 billion.

I will talk about Medicaid in due course, defense and nondefense spending. But, obviously, at this point I have given to the U.S. Senate and those concerned and observing at least an overview of why we are doing what we are doing.

I close with just my own pledge and my own feelings on this day about this event. Mr. President, fellow Senators, the time has come for adult Americans leading this country to produce a Government plan that no longer asks our children and grandchildren to pay our bills. The time has come for us to say enough is enough. No more burden on our children to pay for the deficit spending of today. Sooner or later we must do it for the general good of our country and for the specific well-being of our children and grandchildren. And I stand ready to support what we are suggesting and recommending because I believe the better good and the broader and more basic good for our country will come from us being responsible.

Mr. President, I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I yield myself such time I might need off time on our side.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I want to start out by congratulating my good friend, Senator DOMENICI from New Mexico, the chairman of the Budget Committee, for the remarks he has just made.

I say to Senator DOMENICI, the remarks I will make in the next few moments are certainly not intended directly at him. I have the highest regard for him, his ability, and, generally speaking, I would subscribe wholeheartedly to the road he just outlined to get from here to there with regard to a balanced budget.

I worked with Senator DOMENICI on the Budget Committee since I came here 17 years ago. He is a principled individual. He worked very hard to put this budget together. Unfortunately, we were not able to see eye to eye. I would simply say to my friend from New Mexico that the main disagreement here, as he understands fully, is not the goal that I think we both want, a balanced budget, but—and there has been considerable discussion and debate—which will continue—the roads or the paths we follow to get from here to there.

I think in summation, before I begin my remarks, I just wanted to say that he is the Republican leader and I am the Democratic leader. When we have this kind of democracy in action we are entitled to the majority view, we are entitled to the minority view. I simply say, I congratulate him for what he has done. I hope we could work together in the future.

But certainly, as he knows full well, the events of the last few months have not made it possible for us to join forces as I hoped, earlier, we might be able to. That is not his fault and it is not mine. That is the system under which we operate.

Mr. DOMENICI. Will the Senator yield?

Mr. EXON. I will be happy to yield.

Mr. DOMENICI. Mr. President, let me first say I am very gratified by the remarks, and I appreciate them. Frankly, I must say the feeling is mutual. I did not feel very good when I heard the Senator was not going to be around here very long, that he decided to go home and retire. I think he has done an excellent job for his people and for this great country. I am very sorry we do not have a budget we both can stand up here and say we are for.

I am quite sure that in many of the difficulties, many of the exact issues, the Senator from Nebraska and I would be on the same boat, he and I, traveling down that stream, trying to get to ''Balanceville,'' I guess I would say. We are not there this year. I know the Senator will hope for us the best in our journey. We will try to get there. If the Senator from Nebraska cannot help us now, perhaps he might later on when the President chooses to make it more difficult for us.

Maybe the Senator—who knows—might be in one of those meetings to see what we can do.

I thank him very much.

I yield the floor.

Mr. EXON. I thank my friend. I appreciate his very generous remarks. We have been on different sides on many issues. In 1993, when we passed the first great deficit reduction bill in history offered by the President, while I thought that my friend and colleague from New Mexico probably agreed with many of the thrusts of the President's initiative, he still was not able to support it.

I have reviewed some of the statements that he made in opposition to the President's measure which received not one single Republican vote in either the U.S. Senate or the House of Representatives. With that thought in mind, I have gone through the remarks that I am about to make and hope that Senator DOMENICI and others might not, in a year or two, be able to point back and say EXON said this and it did not turn out that way.

I will simply say that we do get carried away with rhetoric from time to time. I am going to try to be straightforward about this and explain my position, and the general Democratic position with regard to what we think is

an unfair, very troubled, very bumpy road, especially with regard to our senior citizens, our veterans, rural America, and others not so fortunately situated financially.

Mr. President, today we bring down the curtain on the first act of this budget drama that has been unfolding since February. And I hope I can bring a little Nebraska common sense to the sound and fury that has swirled around this budget.

Contrary to what we may read in the papers or see on television, the budget we are debating should not be about Presidential politics. It is not about the Republican Party or the Democratic Party.

This budget is about 100 million American households. It is about the 250 million Americans who are looking to us to make the right decisions about this budget. That is not the province of any person or party.

I am glad the President has become engaged in this landmark debate on how to balance the budget. The American people want to see cooperation between the two parties. They crave rational and civil discourse and meaningful dialog. They hope that we will take the best ideas—regardless of party—and forge a tough new alloy from these different metals.

Unfortanately, my Republican colleagues have a different view. They believe that their budget is so pure, so sacred, so perfect that it cannot be touched by those of us on this side of the aisle.

I am reminded of a story that Will Rogers told. It seems that a woman confessed to her priest that she was guilty of the sin of pride. She said, ''When I look in the mirror, I think I'm beautiful.'' The priest said, ''That's not a sin. That's a mistake!''

And so it is with this Republican budget. The Republicans may think so, but their budget has not improved with time. It has not turned into a dazzling butterfly. It is a mistake on a colossal scale.

At the opening of the conference on the budget, I predicted that the Senate budget would deteriorate. I wish that I had been wrong, but with each violent lurch forward, this budget gets meaner and uglier. The all-Republican conference merely twisted the knife.

And that is the story of Republican priorities throughout this budget: From bad to worse—from worse to worst.

Were the Medicare cuts softened to ease the pain on the elderly? No, they are worse—$14 billion worse, bringing the total Medicare cuts to $270 billion. That is the largest cut in Medicare history coming from the self-proclaimed saviors of Medicare. Hit men is more like it.

What about Medicaid? Was there any attempt to help the elderly, disabled and the children who rely on this health safety net? Not a chance in this Republican budget. Medicaid was slashed by an additional $7 billion, bringing the cuts to a staggering $182 billion over 7 years.

What about rural America, already reeling from the $11.9 billion in cuts in the Senate budget? This new budget heaps on further abuse with an additional $1.4 billion in agriculture cuts bringing the total damage to $13.3 billion.

And what about the tax cut? What about the so-called economic dividend we heard so much about on the Senate floor in May? It was the once and future tax cut. It was the tax cut that was not a tax cut, in the parlance of my friends across the aisle.

Thank goodness, we can finally end that charade. We can dispense with the play-acting. There is a tax cut in this conference agreement. It is a whopping $245 billion tax cut—$75 billion more than the Senate economic bonus and it is on page 32 of the conference report. That is where the Senate Republicans accommodate the Contract With America. ''Caved in'' would be a more accurate description.

We know how the Republicans will pay for the $245 billion tax cut. They pay for it by strip mining Medicare and Medicaid. They pay for it by gouging education, job training, and the earned income tax credit. They pay for it by flailing rural America.

Of course, we do not have any firm details on the tax cut itself. That will be up to the tax-writing committees, as Senator DOMENICI indicated. But I think we can venture a good guess at what will be in this witches' brew. The conference agreement is the vessel for the Contract With America and it's filled to the brim with tax cuts, primarily for the wealthy.

The Wall Street Journal reported that the $245 billion Republican tax cut could include such goodies for America's wealthiest as a $64 billion capital gains tax revision and a $500-per-child tax credit for families making up to $200,000 per year—key provisions of the Contract With America.

The sense-of-the-Congress resolution, sponsored by Senator BOXER, that stated that 90 percent of the tax benefits should go to working families making under $100,000 was changed beyond recognition. It was gutted in conference to drop the $100,000 cut-off. It was totally rewritten to conform with the Contract With America.

House conservatives are threatening to derail the reconciliation bill unless it meets their far-right litmus test. Representative PHIL BURTON, leader of the so-called Conservative Action Team, told the Journal, and I quote, ''It is imperative that it''—the child tax credit—''be kept at $200,000.'' House Ways and Means Chairman ARCHER said, and I quote, ''I'm not going to go back and do another tax bill.'' And why should he when the Senate Republicans are waving the white flag to the Speaker of NEWT GINGRICH's, army.

Mr. President, families making $200,000 a year do not need any largesse from the Federal Government. It is astonishing that at a time when we are asking for a helping hand for our elderly, our students, and middle-income Americans, we are giving a handout to the wealthy. It is obscene that my Republican colleagues are contemplating tax cuts for families making six figures. Is this mainstream America, Mr. President? I emphasize that. I think the Republicans are not so much concerned about mainstream America as they would have you believe. My Republican friends talk much about it. I can simply sum up by saying it certainly is not mainstream Nebraska.

Mr. President, the most confusing part of the tax cut package is that it costs $245 billion, but it is supposedly financed with an economic bonus of only $170 billion. Anyone can tell you that is $75 billion short.

Republican leaders have gone to great pains to explain this sleight of hand by focusing on the net effects of the cut and the bonus in the year 2002. In that year, the economic bonus will be $50 billion, the CBO says. The Republican package will thus be restricted to $50 billion as well for that year. In preceding years, however, the cost of the tax package will exceed—will exceed, Mr. President—the savings from the economic bonus by a significant margin. I underline that. In the preceding years, the costs of the tax package will exceed the savings from the economic bonus by a significant margin.

Despite the differences in the cost, the Republicans claim that the $245 billion tax cut can be included in the budget without compromising the goal of zero deficits in the last year.

In order for all of this to pan out, spending cuts in programs like Medicare and Medicaid once again will have to be used to finance the additional costs. This is coming from the party that claims it is ''saving'' Medicare. For Medicare, any more of these kinds of ''savings'' will assure that there will not be anything left for the program.

My Republican colleagues are not only short $75 billion to pay for their tax cut, they are also short on explanations. They are not explaining to the American people that the extra $75 billion in tax cuts would result in higher debt service and, in turn, higher deficits—up to $100 billion—for the years leading up to the magic balanced budget year of 2002, and that, in turn, would cause higher debt service costs for those intervening years. Mr. President, that is clear.

I mentioned earlier that this budget is about American people, and so it is. I want to take a few minutes to get beneath the shiny surface of this budget that is all glitter and glut for the wealthiest. Nowhere do we see this more than in Medicare and Medicaid. The Republicans now siphon off $275 billion from Medicare to help pay for their tax cut. That means the average Medicare beneficiary will pay $3,345 more over the next 7 years in out-of-

pocket costs—$860 more alone in the year 2002.

The $182 billion in Medicare cuts is especially harsh on the elderly, the disabled and children. Average Federal and State spending would be reduced by nearly 30 percent by the year 2002, and of the children covered by Medicare, more than half live in working families.

Mr. President, under the Republican budget, the States would be forced to roll back the number of people served. I estimate that 8 million people, including children, could fall through the safety net by the year 2002. As many as 2.9 million seniors and disabled, including children, could lose access to long-term care.

From day one of this budget, I have expressed my deepest concern about the betrayal of rural America. Rural America has been sold out. Rural America became a popular fall guy for this Republican budget. What is particularly galling to this Senator is that agriculture is being asked to take such a whack once again. It is totally out of all proportion to other cuts in the budget.

Where is fairness in this budget? Farm program cuts in the Republican budget represent 20 to 25 percent in spending reductions over the next 5 years.

Agriculture Secretary Glickman warns, and I quote, ''Cuts in spending of this magnitude could be especially burdensome on those farming areas that specialize in the production of target price commodities and could reduce producer payments, incomes, and their ability to borrow.''

The Republican budget does not stop with these programs. It wraps its fingers around and squeezes the life from numerous programs vital to Americans. The earned-income tax credit was high on their hit list. The EITC, as it is commonly called, is a refundable tax credit for working families. It helps families get off and stay off welfare by boosting the value of low-wage jobs.

While the conference report folds EITC changes into the overall savings for welfare reform, the description suggests that the far more draconian Senate-passed cuts are assured. If enacted, these provisions would result in tax increases—that is right, Mr. President, tax increases—for more than 14 million families. Families with two or more children would be the hardest hit, losing $305 in 1996 alone. More than 72,000 Nebraska families will lose $110 million in benefits under this proposal over the next 7 years. They would experience an average tax increase of $230 in 1996 alone. Families with two children would lose $290 in 1996.

Mr. President, do not tell me that there are no tax increases in the Republican budget because they are there and they are real.

The Republicans are just as short-sighted about job training. The conference cut job training by 20 percent. That means that by the year 2002, 1.3 million fewer disadvantaged youths will be able to participate in the summer jobs programs. That also means that nearly 1.3 million fewer dislocated workers could be assisted in their efforts to return to productive employment.

Mr. President, let us look, too, at education. The Republican budget makes scandalous cuts in one of the greatest investments our Nation can make.

Let us start at the beginning with Head Start. Under the Republican budget, preschool children from disadvantaged backgrounds could be denied this critical service that prepares them to succeed in school. Even if Head Start was funded at the current level of the current law, over 350,000 children would be denied services over the next 7 years because the population of eligible children will continue to grow.

The same is true with title I, education for the disadvantaged. Under the conference agreement, up to 2 million children from disadvantaged backgrounds could be denied funding to help them improve basic math and reading skills. And that is even if title I programs were funded at the current levels.

We have also heard a lot about the hit on student loans. The conference agreement assumes elimination of the in-school interest subsidy for 500,000 graduates and professional students. This would cost an average graduate student between $3,000 and $6,600 more in interest payments over the life of his or her loan.

However, do not for one second believe that this is the full extent of the cut. Eliminating this subsidy for graduate students does not account for the full $10 billion cut required by the conference agreement. All students, including undergraduates, could be required to pay hundreds of dollars more for loans in the form of higher upfront fees or loss of the grace period that currently prevents interest from accruing on loans until 6 months after graduation.

Under the conference agreement, the 3.7 million college students receiving Pell grants—30,000 of them in Nebraska alone—could lose the value of these grants and see them cut dramatically. Even if Pell grants were funded at current levels, their value would decrease by nearly 40 percent by the year 2002 simply because of inflation. And student population will continue to grow over this time. Nearly half of all of the Pell grant recipients have annual incomes of less than $10,000 a year. Fairness, Mr. President? I think not.

I also want to touch briefly on impacted aid. Under this Republican budget, Nebraska school districts, with large amounts of Federal land within their boundaries, could see their operating budget shrink to unacceptable levels.

The level of funding for veterans programs and the cuts therein are an abomination. For example, the cut in VA medical funding will result in the cancellation of approximately 74 projects. These are projects which are needed for the VA to meet current community health care delivery standards. Our veterans deserve better than this Republican budget.

Mr. President, I could go through this budget function by function and line by line and program by program and prove how it hurts ordinary Americans and hurts them badly. That is what is often lost in these budget debates—the human factor. We speak in baselines. We speak in acronyms. We do not speak in terms that put a face to the budget. And I have been able to partially do that today in these remarks.

In conclusion, let me say that the face that is reflected in the Republican budget is not one of mainstream America. It is not the face of our elderly. It is not the face of our children. It is not the face of our middle class or our veterans or our working poor. It is not the face of rural America. And as one from rural America, I can assure you beyond any question that it is not the face of rural America.

The face reflected in this Republican budget is one for the privileged few, the wealthiest among us who do not have to worry about Medicare or job training or college tuition loans or crop prices or the state of care at the local Veterans Administration hospital. They are not being asked to make the sacrifice.

The others are the ones that are being asked to make this sacrifice, all for the good of the wealthiest citizens of America. They are the ones, the wealthiest, who will benefit most from this package with a $250 billion unfair tax cut. From the beginning of this budget process I have stated that the only way to balance the budget is through shared sacrifice. The only way to balance the budget is through bipartisanship. But for the past 6 months my Republican colleagues have worn blinders. They have seen only their core constituency. They have seen only their own party, which has veered dramatically to the right.

If the Republicans insist on maintaining their narrow version, they do so at their own peril and the peril for mainstream America. The stage has been set for a confrontation between the Republican Congress and the Democratic White House. I have called it a train wreck. That is an apt description.

However, if the Republicans open their eyes, they will see there is an alternative, one that will get us to the same destination and without the chaos of a Government held hostage to politics.

That alternative is called bipartisanship. I tell my Republican friends, meet us halfway, and we will create a budget that is not only a balanced one, but represents the whole citizenry of this great Nation.

Mr. President, I understand that there has been an informal agreement

that we could go next to Senator KENNEDY. And, if acceptable, I would yield to him whatever time he might need. And then following that, it would be two Republican Senators in a row, after the two Democrats, myself and Senator KENNEDY.

In furtherance of that agreement, and if there is no objection, I yield 15 minutes or such additional time as he might need to my friend and colleague from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Thank you very much, Mr. President. I want to say at the outset how much all of us appreciate the good efforts of our friend and colleague from New Mexico, Senator DOMENICI, and Senator EXON in trying to help chart responsible expenditures for our national endeavors. And I want to thank, in particular, the Senator from Nebraska for an extraordinary statement. He clearly understands these issues in fiscal terms. But I think, most importantly, he understands them in human terms. This afternoon he explained very eloquently to the Senate and to the American people the impact of these budget recommendations on the families of our great country. And I want to build on his excellent presentation.

In looking at a budget, we have to consider the bottom line in terms of the expenditures, but we also have to consider what the real impact on the families of this country is going to be. When we talk about having ''fair sacrifice'' and ''shared sacrifice,'' it is only fair to try to review, in some detail, exactly where the belt-tightening is going to come. And when we look over, as the Senator from Nebraska has pointed out, the total expenditures, we find out that it does come down particularly hard on the working families of this country, and it comes down particularly hard on the children of those working families, those that go on to our fine State schools and colleges across the country and those that go into the schools that enhance students' academic achievement and accomplishments. In addition, the burden falls on the men and women who have been a part of our great national economy and national life over a period of many years and now are experiencing, and should experience, the glories of old age with a degree of security in Medicare. Moreover, the burden falls on those who, out of necessity, are being attended to with the coverage of Medicaid.

Of the extraordinary cuts that we are going to be facing in the Medicaid program, two-thirds of the cuts are going to be from home care for the very frail and the neediest, the poorest of Americans. SSI is covered within that chunk, and the rest is in the coverage of some 18 million children. These are poor children. We are going to see significant cuts in the coverage of poor children. Half of those poor children have working parents. This gives us some idea of where the burdens are going to fall.

So it seems to me, Mr. President, as we review this budget, that there is going to be a significant burden placed on the Medicare for elderly people who have built this country, sacrificed for their children, and made America the strong country that it is.

In addition to Medicare and Medicaid, there is also a slash in the education programs that the Senator from Nebraska already discussed. There will be a significant slash in college opportunities. The Senator from Nebraska talked about the reduction in assistance for graduate students who receive loans. These students are now able to defer those loans until they get out of graduate school. We call that the in-school interest rate. The fact is, those who are going to the graduate schools will pay for it, as well as those in the colleges.

Every family should know that students will not be able to defer college loan interest while they are still in school. This ought to be a wake-up call for every family that is making $75,000 a year or less. Eighty-eight percent of all of the college loan programs go to families that are making $75,000 a year or less. Well, I have news about what this means for your family. After 10 hours of debate on the floor of the U.S. Senate, and after this legislation is passed, it is going to mean that your children, if they are fortunate enough to get a student loan, are going to pay one-third more—from $3,500 to $4,500 more—for that student loan program. Obviously, the amount rises even higher in relation to the size of the loan.

As the Senator from Nebraska also pointed out, there is a slash in wages for working families. There will be $21 billion in tax benefits for tax expenditures over the next 7 years of this program. But, the men and women who will have a tax increase are those individuals who are making $26,000 a year or less. That is why I think it is only fair, when we look at what this budget means, to do what the Senator from Nebraska has done, to see who it is going to impact adversely.

There will be an adverse impact, as the Senator from Nebraska has pointed out and the Senator from Maryland has pointed out, on working families who are making $26,000 or less a year. We have news for you: Your taxes are going up. Taxes will not go up if you are in the very wealthy incomes of this country, but they are going up for working families, and it is going to mean less in take-home pay for the worker.

It is not surprising to me, Mr. President, that this budget would come out this way, because the Republicans have resisted any increase in the minimum wage to make work pay. They have failed to say to men and women who are prepared to work 40 hours a week, 52 weeks of the year, that you will not live in poverty, which has been an age-old commitment since the late 1930's under Republican and Democratic administrations.

We have opposition to increasing the minimum wage to make it a livable one. We have an assault on the Davis-Bacon families who are averaging $27,000 a year to try to cut their wages. And now we have, on the measure that is before us, the $21 billion burden in taxes that is going to be on the working families of this country. When we look over here at this chart, we see that this proposal asks our seniors, the very young, those going to college, the working families—all Americans—if they are prepared to tighten their belts if they need to because we have a shared responsibility for our national interest that is what is called for in the name of our national interest. Why are we doing it?

The answer is right over here on this chart. It is to pay for the $245 billion of tax cuts for the wealthiest individuals in this country. This is what we are asking workers: ''Tighten your belts.''

This is what we are saying to those who want to go to college—the 88 percent of those who get student assistance who come from families making $75,000 a year or less: ''You are going to have your belt tightened; you are going to pay anywhere from $3,000 to $5,000 more over the life of your indebtedness.'' We are going to undermine higher education programs.

We are saying to families that we are going to penalize 350,000 to 500,000 young children who will not be able to go to a Head Start Program. We are going to exclude the 2 million American children who otherwise would qualify for programs that assist the economically distressed under the Title I program. We are going to slash the School-to-Work Program that was enacted and had strong bipartisan support in the Congress last year.

Finally, we are saying to our senior citizens over the period of these next 7 years, ''You are going to pay a cumulative total of some $3,200 out-of-pocket more with this Republican budget,'' if we are going to have shared cuts in Medicare between the provider and between the beneficiary. If you are a family on Social Security and retired, you will pay a cumulative total of $6,400. The average income for those families is only about $17,000.

Make no mistake about it, we will hear a lot of talk about a billion dollars here and a billion dollars there. What I am talking about here is who it is going to hit. For what? To pay for these tax cuts for the rich.

Finally, I would have thought—I am about to yield to my friend from Maryland—at least out of a sense of some decency, that the Budget Committee would have come returned to the floor and said, ''I know we have voted on the billionaires tax cut.'' What is the billionaires tax cut? It is the provision that exists in the IRS that says, effectively, that if you have made hundreds of millions of dollars over the past years, you renounce your citizenship,

take citizenship overseas, and say, ''Goodbye, America,'' and become a modern-day Benedict Arnold, you can take all of your accumulations of wealth and not pay any taxes. That is wrong.

We have already overwhelmingly voted on that issue. I would have thought that the Budget Committee, returning from conference would have said—and the House has gone on record on this—we are serious enough to indicate we are going to close that loophole, so that we are not going to have so many cuts in Medicare, education, or wages for working families. But it is not in there, I say to my friends. All that stands in there are the provisions which will provide some $245 billion for tax benefits that will go to the wealthiest individuals.

If you read, as I am sure the Senator from Maryland has, the Senate budget closely, you will notice that a measure passed the Senate that said that 90 percent of any tax would go to working families under $100,000 a year. I do not know whether the Senator from Maryland noticed, in reading through the budget, but the conference eliminated the $100,000—eliminated the $100,000. We know what is going on. We know who they want to benefit. It is the wealthiest individuals.

Why? When the Senate passes something so overwhelmingly that says that 90 percent of the tax benefits is going to go to those working families that earn under $100,000, and it comes back from conference saying it will go to working families, but they take off the $100,000, what does that say? I can tell you what it says to this Senator. It says, ''You are right; when we get our chance to cut the $245 billion, who is going to get it? It is going to pay for the tax cuts for the rich.''

Mr. SARBANES. Will the Senator yield for a question?

Mr. KENNEDY. That is what this is about. That is basically what we are talking about in these 10 hours prior to the time the Senate is going to vote, and it is going to be something that every family in this country should pay attention to.

They should pay attention today. They should pay attention tomorrow. They should pay attention to when these measures are put before the Congress in real terms, in terms of the cuts on appropriations and in terms of reflecting the budgets over the period of these next several weeks. If the American people want us to go on that path, then they should be urging all of us to vote ''yes.''

However, if the American people say, ''Hey, wait a minute, wait a minute, wait a minute. Cuts in education, cuts in our Medicare, raising the taxes for working people—for tax cuts for the wealthiest individuals? That is not what last fall was about.'' It certainly was not about that in my State of Massachusetts, and it was not about that in the State of Maryland. Maybe it was in some other part of this country. But that is not what the people of my State elected me to see done—cutting education, cutting college opportunities, cutting wages for working families, and slamming it to the retirees so that we can get tax cuts for the wealthiest individuals.

(Mr. FAIRCLOTH assumed the chair.)

Mr. SARBANES. If the Senator will yield for a question, I ask the Senator from Massachusetts—because I know that there will be an effort to defend this budget resolution on the basis that it is going to balance the budget over a 7-year period—if they did not provide $245 billion in tax cuts for the wealthy, is it not the case that we could reduce the slashes in these programs by $245 billion and still have a balanced budget?

Mr. KENNEDY. The Senator is absolutely correct. In real terms, it would say to those 18 million children—effectively a quarter of all of the children in this country that are covered by the Medicaid Program—and, it would say to the 5 to 7 million of those that are going to lose any kind of coverage under this Medicaid cut, that you still will have some coverage. What it would say to those children, half of whom are the sons and daughters of working families that are trying to make it in the United States of America, is that they would not lose their coverage. And what it would say to the frailest senior citizens, the ones absolutely dependent upon the Medicaid Program in so many instances, that they will receive assistance, and so forth. The Senator is correct. If we could take that $245 billion and say that we are not going to have those kinds of cuts in the Medicaid Program, we would say to those seniors and to those children that they are important and we are not going to balance the budget by cutting support for their significant needs.

Mr. SARBANES. If the Senator will yield further. This is an extremely important point. I thank the Senator from Massachusetts for the very effective way in which he has made the point. People must understand that the very deep cuts in these programs that are so important to them—Medicare for our senior citizens, educational assistance in order to send our young people to college, and the earned income tax credit for working families—that these very deep cuts being made in those programs in this budget resolution are not solely in order to balance the budget. Those deep cuts are being made in order to provide $245 billion that will be given in tax cuts for the people at the top end of the income scale.

There is a direct connection between the Senator's two charts, and it must be understood. A senior citizen must understand that the Medicare cuts to which they are going to be subjected are much more severe and much deeper in order to create a pot of money with which to give a tax cut to the very people at the top end of the income scale. This is a very important point because senior citizens are going to be told that this is necessary in order to balance the budget, and balancing the budget is a good thing for them. But cuts of this magnitude are not necessary to balance the budget.

So the issue that is posed by this budget resolution is the simple question: Is it more important for America that people with six-figure incomes, $200,000, $300,000, $400,000, should get a tax cut and a senior citizen should suffer a reduction in their Medicare benefits? Is it more important to give a tax break to those at the very top of the income scale and deny a young person the opportunity to go to college? That is the question that is being framed by the priorities that are outlined in this budget resolution. These deep cuts are not being made to balance the budget; $245 billion of those deep cuts are not to balance the budget; they are to give a tax break to the wealthiest people in the country.

I defy anyone to explain to me the fairness and the rationale of doing that. As the Senator from Massachusetts has so eloquently stated, you are going to have young people wanting to go to college who are going to find doing so much more difficult because of this resolution. I ask the Senator, has the forgiveness of interest on the money people borrow to go to college while they are in school been eliminated by this budget resolution?

Mr. KENNEDY. Well, effectively, it will mean that the in-school interest which was deferred until after college and after graduate school, that provision will effectively be wiped out. You recover approximately $3 billion to recover the in-school interest for graduate students. Under the mandate in the Republican budget, the only way you can make the other money up is to require those young people, the day after they get that loan, when they are going to school, to start off repaying it immediately.

Let me comment about that and I will yield further. The fact of the matter is that a year ago, even 2 years ago, when we were considering the direct loan program in higher education, our Republican friends asked us over here on the Labor and Human Resources Committee, ''After the graduation date, should we not give the students 6 months to be able to find a job so they do not take that first job just to pay back loans?'' It did make sense, and we had a strong bipartisan coalition in support of it. We overwhelmingly passed an amendment to give the college student or graduate student a very short period of time, 6 to 9 months to get that first job, deferring payment of loans during that time. And it made sense from an actuarial point of view. You are demonstrating, when that young person has the 6 to 9 months, by and large they get a better job and it is easier to pay back the loans. That is

the history of the payback of the student loan program. So, now we are going in just the opposite direction.

Our Republican colleagues persist in suggesting that this budget eliminates the in-school interest subsidy for graduate students only. But the numbers do not add up. This budget requires savings of $10.8 billion over 7 years from student loan accounts.

But eliminating the in-school interest subsidy for graduate students saves only $3 billion over 7 years, according to the official CBO numbers that govern this budget. That leaves the budget $7 billion short in the student loan accounts alone.

Where will that $7 billion come from in this Republican budget? It will come from the nation's students one way or another. Either the Republicans will eliminate the in-school interest subsidy for undergraduates as well as graduates. That would save the required $10 billion. Or students will be asked to give up the other benefits that we have fought to secure for them—on a bipartisan basis—over the last 5 years. They will no longer have the 6-month grace period in which to find a job before they have to start paying back loans. That would save $3 billion. Or they will face higher up-front loan fees and interest rates. That would save another $3½ billion.

The bottom line is that this budget assumes a $10 billion cut in student loan accounts, and the graduate student subsidy accounts for less than one third of that amount. It is bad enough that the Republicans have designed a budget that taxes students to pay for tax cuts for the rich. It's worse that they insist on hiding the ball about the true impact of these cuts on the Nation's students.

It is important to note also that the student loan cuts are only a portion of the total education cuts contained in this misguided budget. This Republican budget contains the largest education cuts in U.S. history. It eliminates one-third of the Federal investment in education by the year 2002, based on Congressional Budget Office estimates. The specific cuts are as follows:

COLLEGE AID

Cuts $30 billion in Federal aid to college students over the next 7 years.

Half of all college students receive Federal financial aid.

Seventy-five percent of all student aid comes from the Federal Government.

Increases personal debt for students with subsidized loans by 20 to 48 percent by eliminating the in-school interest subsidy.

Affects up to 4 million students a year.

Undergraduate students who borrow the maximum of $17,125 will pay an extra $4,920.

Reduces Pell grants for individual students by 40 percent by the year 2002, or terminates Pell grants altogether for over 1 million students per year, even assuming a freeze at 1995 levels.

Could increase up-front student loan fees by 25 percent, raise interest rates on student loans, or eliminate the grace period for students to defer payment on loans after graduation.

SCHOOL AID

Elementary and Secondary Education Act: Cuts funding for improving math and reading skills to 2 million children; reduces funding for 60,000 schools.

Safe and drug free schools and communities: Cuts over $1 billion in anti-drug and antiviolence programs serving 39 million students in 94 percent of the Nation's school districts.

Head Start: Denies preschool education to between 350,000 and 550,000 children.

Special education: Eliminates $5 billion in Federal support for special education services for 5.5 million students with disabilities.

Goals 2000: Denies assistance to 47 States and more than 3000 school districts helping students to achieve higher education standards.

School-to-work: Cuts $5.3 billion from initiatives to improve job skills for up to 12 million students through local partnerships of businesses, schools, and community colleges.

Technology: Eliminates Federal initiatives to develop and provide educational technology for the classroom through collaboration with private funders.

Now, that you have heard the facts, I would like to ask the Senator a question as to whether or not he would agree with me. We will hear these eloquent statements about how this glidepath for the country is moving us toward a balanced budget and that it is necessary for these college students to pay 30 percent more on their student loans, see a further reduction in the value of the Pell grants which go to the neediest children—a 40-percent reduction in that program over the life of this budget. We are going to see the indebtedness of the young people of this country increase dramatically.

Would the Senator from Maryland tell me how he would be able to convince the students in the State of Maryland who get a student loan program, how he would be able to convince them and say that what we are doing to you is increasing your indebtedness so we will have a balanced budget so that your future would be better off? Is there any logic to that rationale? I do not see it.

I do not see how we say to the young people, going back to the point of the Senator from Maryland, that we are taking the savings and putting it toward a tax cut for the rich. We are trying to say to the young people going to schools and colleges, ''Pass this and your future will be more secure.'' Someone better tell the college students they will pay 30 percent more for their loans. And the value of their Pell grant will be 40 percent less, meaning they have to borrow more. How are they better?

Mr. SARBANES. Some of them will not get an education.

Mr. KENNEDY. The Senator is correct.

Mr. SARBANES. The fact is some are on the edge now, and they need the forgiveness of the interest while they are in school in order to be able to pay their tuition.

What we have done now is knocked some students out of even getting an education. The ones who are able to go on will assume an even heavier burden.

I know an argument that will be made. They will say to the young people, ''We will be reducing the deficit over time and that is a desirable thing for you.'' I will not quarrel with that.

The fact of the matter is that these programs are being cut an additional one-quarter of $1 trillion, $250 billion, in order to give tax cuts to the people at the top end of the income scale.

If we did not do that, if we did not give the tax cuts, we would have $250 billion with which we could ease the deep cuts that are being made in these programs. Our young people would have a much greater chance to get an education.

I ask the Senator from Massachusetts, is not the loan program we are talking about, the Stafford loan program—is that what it is called?

Mr. KENNEDY. Yes, named after one of the very important education leaders from the State of Vermont, who happened to be a Republican.

Mr. SARBANES. A Republican; just to prove the point that in the past there was very strong bipartisan support for this program.

Mr. KENNEDY. The Senator is correct.

I think it is important for these families to understand something else. That is, what has been happening in the States. So often around here we say we can cut student loans because the States will make up the difference. I can say that the cost of tuition in my own State of Massachusetts—for our State schools and colleges—has the second-highest tuition rates of any State in the country, if we include the tuition and fees. Of course, there are different ways of calculating it.

When we talk about what a family is paying out, what both the students and their parents are having to do, we have seen a significant reduction, over $350 million less, in State appropriations in support our higher education system. I daresay that has been happening in many, many States.

It is important for families that care about the education of their young to recognize that when we do this today there is not any indication—maybe in some States, but by and large, the past record is not encouraging—that States will be making up the difference and assisting those needy students.

Let me ask the Senator from Maryland a question. I can remember not long ago, probably in the last 8 or 9 years, when the tuition for the University of Massachusetts in Boston was

$800. They raised it to $950. About 12 percent of all the student applications went down with that $150 increase. This happened because 85 percent of the students that go to University of Massachusetts in Boston had parents that never went to college and 85 percent of the students that went there already worked 25 hours a week or more.

These are kids trying to get an education. Hard working, recognizing the importance of education being their opportunity—150 bucks makes a big difference—and we are talking to these students about hundreds, thousands of dollars of increased indebtedness to them.

We are talking about what happens in those schools and colleges—I know that the Senator from Maryland pays attention to what happens in his State and education policy there, generally—but does the Senator not agree with me that $200 or $300 increases in tuition is big money?

When we ask the families to take on indebtedness, when they are paying a mortgage, and when we force them to pay for other things—for example, in the greater Boston area we have seen dramatic increases in the water rate to pay for unfunded Federal programs to help clean up the clean water —the families turn to us and say, ''Look, we have had it up to here. What are you doing to us? Why are you cutting back in terms of our children's future, our family's future.'' I wonder whether the Senator from Maryland does not find similar stories in his own State.

Mr. SARBANES. Mr. President, I say to the distinguished Senator, we are experiencing exactly the same problem in Maryland. The Governor of my State has indicated clearly that there is no way that the State can compensate for these cuts. So the cuts will actually fall on our young people who are trying to get an education.

The critical question before the Senate is, when we balance the budget, how will we go about doing it? What priorities are we going to set? Who will feel the impact of the affect of this balancing effort?

As the Senator from Massachusetts has pointed out very clearly in his chart, this plan cuts education, it cuts Medicare, it cuts nutrition programs, it slashes important investments in our Nation's future, it raises taxes on working people by the impact on the earned income tax credit. So the children, the elderly, and working families, are asked to bear the brunt of this deficit reduction. And then the conference agreement provides for large tax decreases for the very wealthy.

We must put those two things together. In effect, what is happening in this resolution is we are slashing all these programs for people who need them, in order to give a large tax break to the wealthy—not in order to balance the budget. If we did not give the large tax break, we would have $250 billion less in these severe cuts, and the budget would still be balanced.

It is not a matter of balancing the budget. It is a matter of slashing these important programs, in order to give large tax cuts to the very wealthy.

I defy anyone with any reasonable sense of priorities to tell me why someone making $200,000, $300,000, $400,000 a year, should get a tax cut, and a young person trying to get to college should now have to pay interest on their college loan while they are in school and not working. Or why a very wealthy person should get a tax cut, and a senior citizen on Medicare who is fighting to find the means to provide for their health care needs is going to experience a decrease in their medical services. That is the sense of priorities that is contained in this concurrent resolution, which has been made far worse in the conference than when it left the Senate. The budget was bad enough when it left the Senate. Now it has been made worse. The cuts in the student loans have been doubled in the conference.

This sense of priorities that is in this budget resolution is a disaster for America.

I very much hope it will be rejected.

Mr. KENNEDY. Mr. President, I say finally, because the hour has moved on and there are others who wish to speak, the final bottom line of what the Senator from Maryland has pointed out, it is not just older people, it is not just students, it is not just some workers, it is America's working families.

This all comes together. It all comes together for working families. It is their children that are going to be paying more out for the loans. It is their parents who are going to be paying out more for their copayments, deductibles, and for other payments that Medicare will not cover.

It is their families, their immediate families, that will find their taxes rising higher, if they are making less than $26,000, than they otherwise would have. It is their schools that will not get those incentive grants to enhance their academic achievement. It is their children in those schools that will be denied the violence and drug abuse prevention programs, to try to help those young people resist the appeals of violence and substance abuse.

This is what this issue is really about. This Republican budget is historic indeed. It is an historic attack on American working families, senior citizens, children, families, and veterans, brought to us by the same Republican Party whose policies created the huge budget deficits of the 1980's.

The Republican budget takes the bad bill passed by the Senate and makes it worse: Greater tax breaks for the rich, deeper cuts in Medicare and Medicaid, even heavier burdens for families struggling to educate their children. Americans will be paying a higher price for the impact of this budget well into the next century if these harsh cuts ever actually become law.

But, these cuts will not become law if Democrats have anything to say about it. The Republican budget deal being rammed through Congress is veto bait. It is even worse than the misguided version passed earlier by the Senate. Splitting the difference between the extreme Senate version and the even more extreme House version is a hold-your-nose compromise that is beginning to smell already. The Medicare cuts are extreme by any standard. These cuts are far deeper than any cuts that could conceivably be justified by any need to keep Medicare solvent. The Republican argument on the insolvency of Medicare is a sham.

Mr. President, I hope this measure will not be accepted. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from the State of Washington.

Mr. GORTON. Mr. President, I am authorized by the manager on this side to yield myself such time as I may take. I point out the Senator from New Hampshire, under the previous order, is the next to be recognized.

Mr. President, do you remember that wonderful phrase that a few years ago was turned into the title of a movie, ''Only In America,'' an expression of awe and wonder? Mr. President, I think we have to rephrase it as a question of stunned disbelief. Only among Democrats, only among the few left on that side of the aisle who, as liberals, worship at the shrine of an ever-increasing Government, only among those who debate against this budget resolution is a $300-billion-plus increase in what this country will spend on Medicare described not as a cut but a slash.

Mr. President, if this budget resolution passes, not only will we preserve a Medicare system which otherwise will go bankrupt, we will spend more than $300 billion in increased Government support of Medicare in the next 7 years. Yet these last two Senators speak of cuts and slashes, deserting of our commitments.

The increase in Medicaid during that period of time will be almost half as much. It is also described as a cut, as a slash. Only among liberal Democrats, Mr. President, only among liberal Democrats is a modest reduction in a check coming to an individual from the Government described as a tax increase. But that is the way we mistranslate for the American people. If your welfare payment goes down, that is a tax hike by their description. Only among Democrats, Mr. President.

Mr. President, they are right about this. This is perhaps the most significant budget resolution to be passed by the Congress of the United States since we instituted the concept of budget resolutions. Why? Because this is the first one that gives a real and enforceable promise that the budget will be balanced. It is the goal of this process to end the time, the decades during which Members of Congress spend the people's money and send the bills to their children and to their grandchildren. That is not a policy for our

future, for those children and for those grandchildren. We propose to end that era.

Why? Because borrowing, year after year, $200 billion more than we can repay, eats into our ability to invest in our own future. It drives up interest rates and drives up job opportunities for the very people our opponents, in defending the status quo and defending those deficits, claim to be supporting but are actually oppressing. Even the promise in this budget resolution, if appropriately enforced, gives us a dividend of $170 billion for the public sector in lower interest rates on the debt we have, and in increased tax collections from a more vibrant economy which has created more jobs. And it gives far more than that to the people whom we are here to serve.

Granted, on the part of the manager of this bill for the Democrats and some of his colleagues, there is lip service given to the idea of a balanced budget, someday, long in the future—but not now and not in this way. Always in some different way.

The President of the United States, when he was a candidate, told us he would pass a balanced budget. He claimed 2 years ago to have reduced our budget deficit which he did almost entirely by increasing taxes on the American people and then is surprised this year when the tax bill comes due and at the very time it comes due, because money is taken out of our pockets, we have a pause, a dip in our own economy—a possible recession caused by those tax increases.

Earlier this year, the President was not interested in a balanced budget at all. More recently, he has come to feel it is appropriate. But not now and not in this way and not with valid figures.

We say it is time. The time is now and this is the way. Some of us will say, as we often do in many bills here: This bill is not perfect, but it is the best we can come up with. Mr. President, I guess I do not think it is perfect. It is not exactly what I would have written or the direction I would have gone. But that is absolutely irrelevant. There are 100 of us here in this body, each with a different point of view, and none of us with an absolute certainty as to what perfection is. But what this is is the reaching toward a goal. Perfection is not our goal, a balanced budget is. This budget will lead us to that point and in doing so, will allow more money to remain in the pockets of the American people, will create more jobs for them, will lower the interest rates on their homes and, not at all incidentally, lower the interest rates on those student loans we have heard so much about—undoubtedly by considerably more than whatever the changes in those loan policies may well be. A balanced budget is a concrete goal. A balanced budget is what we will reach if we pass and enforce this budget resolution.

In doing so, yes, Mr. President, we will lower taxes on the American people. Only over there on that side of the aisle, Mr. President, is a $500 family tax credit for any person who makes enough money to pay $500 in income taxes described as a tax break for the rich. Only over there is someone who pays any income tax at all and gets a break under this proposal—rich.

The people whom we serve will be surprised to learn how many of the wealthy there are who presumably are on the dole of these tax reductions. And I guess, Mr. President, that is the single worst element of this proposal from the point of view of those who love the status quo and love the Government we have today. The thought that an American—any American—might possibly be allowed to keep any additional amount of what they earn is the worst possible policy from their point of view because they believe the Government ought to be spending that money, and we do not. That is the difference between us.

Mr. President, this is a budget resolution that will build America. And this is a budget resolution which I must say is a tribute to the senior Senator from New Mexico, the chairman of the Budget Committee. New Mexico's inestimable gift to the U.S. Senate, my friend, the friend of the Presiding Officer, who, with a tremendous commitment to the future of this country and a patience which I know that I could not match and a willingness to listen to different points of view, both reasonable and unreasonable but never abandoning the goal of a better America, an America which stops sending its bills to its future, has led us to a budget resolution which will reach that goal.

I want to say in conclusion, Mr. President, that I hope this budget resolution passes with a large majority. But large or small, it will make for a better country, and its passage will be a magnificent tribute to its author, the senior Senator from New Mexico.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the senior Senator from New Mexico.

Mr. DOMENICI. Mr. President, I understand Senator GREGG is going to follow with his remarks for as long as he wants to and then we have another Senator on our side ready. We will go back and forth. I will have to leave the floor for a little while.

I say to Senator GORTON, let me just thank you for those remarks. I appreciate them. I want to say frankly to the U.S. Senate, while everyone will be here to participate in this victory, that our system puts a special burden and a special responsibility on committees. And every now and then a committee has an opportunity to do something very, very sensational, or fall back into a quagmire of making excuses, or let us do it like we have always done it. But this Budget Committee is made up of a group of veterans and a group of newcomers, two of whom are on the floor, Senator GORTON is here, and Senator GREGG is here. They did an excellent job. I mean they did not flinch. They voted for tough, tough things because they had a goal and they wanted to achieve it.

I want to thank Senator GORTON for his participation, as well as all the other members.

Let me say to Senator GREGG that I asked him early on to head a task force on the toughest part of this budget. How do we fix in some meaningful way the rampant growth of entitlements led by the two health care programs, but not exclusively. And he worked for well over 2 months with exciting ideas, and difficult challenges. You came up with some very, very rational reasons, and we followed them ever since.

So I thank him for that. I am sure the Senate looks forward to his remarks. He has a wonderful way of showing what reality is instead of letting those who would be against everything show it their way. I hope the Senate and the people pay attention to his analysis today.

I yield the floor.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire.

Mr. GREGG. Mr. President, first I want to thank the Senator from New Mexico for his very generous comments, and join the Senator from Washington in exalting the efforts of the Senator from New Mexico who has for the first time in 25 years been able to put this country on the right track. Passing a balanced budget resolution is an amazing event. But, more importantly than that—and I know that this is what the Senator from New Mexico has kept his energies focused on in this area, and has kept us all focused on the goal—it is a great gift to our children and to the next generation. The Senator from New Mexico has a few, and also has a few grandchildren.

It was because of his concern about their future and the fact that he has been for many years fighting the battle of making sure that we do not pass on to our children and our grandchildren a Nation which is bankrupt, that he has kept this committee and this Congress focused on the end line. The end line is to produce a budget which gets to balance, and as a result reduces the burden of debt which we are passing on to our children.

So, once we pass this budget—which I am sure we will—and once we institute its recommendations, it will be a tremendous gift, which really will have been because of the author of and the wrapper of, and which we will be passing on to our children as a result of his efforts. I thank the Senator from New Mexico for having given us all this leadership in this area.

I also would like to pick up on a comment that was made by the Senator from Washington because he is a pretty astute observer of this. He sort of alluded to the fact that we just heard a presentation from the Senator from Massachussetts and the Senator from

Maryland which essentially said, if you would argue it properly, they were presenting the philosophy of the liberal approach to Government, sort of the philosophers of the left, so to say. It is their belief that Government must always grow and must always expand.

I think their real outrage comes from the fact that we are contracting the size of Government. We are saying that really it cannot be allowed to constantly grow and expand beyond the ability to pay for it. And that as we contract the size of Government we are going to return some of the benefit of the contraction in the size of Government, or at least its rate of growth—we are never going to actually downsize it, but the rate of growth—return some of the benefit of that to the people through a tax break. It is sort of like prying money out of the hand of someone who is at the door of death, the liberal philosophy being at the door of death in my opinion, to try to get them to give any money back to the American people through tax cuts.

That is what we are proposing. Think about it in the context of what these tax cuts are. They represent two-tenths of 1 percent of the total spending that the Federal Government will undertake over the 7-year period. We are going to spend $12 trillion over the next 7 years. We are talking about cutting taxes $245 billion. Yet, you would think that we were exercising a scorched earth policy against the actions of the Government by instituting that sort of really rather minuscule return to the American people of their benefit. Is this going to flow to the wealthy in America? First off, the resolution says it is not. The resolution says the tax cuts shall flow to the working people of America. And that is pretty obvious.

We are talking about primarily the biggest tax cut being a benefit for the working families, people with kids; a $500 tax credit to people with kids. Now, sure, a lot of wealthy Americans have kids. A lot of middle-class Americans have kids. A lot of lower-income Americans have kids. I suspect if you were to line all those kids up and put them on a scale, you would find that the number of kids of the middle class and working Americans far exceed by a factor of millions, I suspect, the number of kids of the wealthy Americans.

So, by definition, the vast majority of this tax cut is going to flow to just plain working American families that have children. That is where it is going. And is it such an outrage to take two-tenths of 1 percent of the spending that is going to occur over the next 7 years and say we are going to rebate it to you, the American people? Well, it is, if you are a liberal, because, basically, if you are a liberal, you believe you own that money, and you should not give it up. We own it, if you look at it from a liberal prospective. We should design the programs to tell you how to run your family.

Well, what we are saying is let us let the American people have the money and manage their own families a little bit, have a little bit more money to manage their own families rather than have the Federal Government tell them how to run their families and how the money will be spent. This whole tax cut issue is really a lot of smoke from the other side both on substance and I think on policy also.

I wanted to focus a little bit today on some other issues because we have heard a lot about how we are slashing and cutting Medicare and Medicaid and we are raising defense spending, and I have not heard too many numbers that have defended that in real terms because they cannot, if you look at the numbers.

The fact is that if you take a freeze baseline—I think that is the only way to do it honestly—you say what are we spending today on Medicare; what are we spending today on Medicaid; what are we spending today on defense. Let us say it was $100 today. Two years from now, are we going to be spending $102 on these programs, or are we going to be spending $98 on these programs?

That is an honest way of evaluating whether or not spending is going up or coming down. None of this current services baseline, none of this assumption baseline. It is what you actually take out and put on the table in the way of dollars for these programs. That is what counts for whether or not it goes up or it goes down.

If you look at those numbers—like everybody else in this institution, I only function now with charts—you will see that over the 7-year period, Medicare spending, off the current baseline of a freeze, which would be $176 billion, goes up $349 billion. That is new dollars that we will be spending on Medicare over the next 7 years over what is being spent this year.

Medicaid spending under this budget goes up $149 billion over the next 7 years over what we are spending this year. Defense spending goes down—this number happens to be wrong; it has been reestimated—$13 billion over the 7-year period.

So this representation that we are somehow slashing Medicare, slashing Medicaid, in order to raise defense spending is absolutely false. There is no other word for it. It is false. The fact is Medicare and Medicaid spending are going up, and this chart shows it in a bar graph. This is how much Medicare spending goes up. This is how much Medicaid spending goes up. And as you can see, it is a very sizable portion. Medicare spending is going up almost—well, better than twice Medicaid spending, but Medicaid spending is going up better than 149 times what defense spending is going up because defense spending is not going up; it is going down. And so let us have a little integrity around here when we start talking these numbers.

Some other numbers that I think are important are how these spending factors that we undertake over the next 7 years relate to the past 7 years, because we have heard a lot about how we are cutting Medicare, we are cutting Medicaid, and we are increasing defense.

Well, if you look at it in relationship to the last 7 years, defense spending was $2.02 trillion over the last 7 years. Over the next 7 years, it is going to be $1.88 trillion. We will spend less on defense over the next 7 years than we spent on defense in the prior 7 years.

Remember, there is no adjustment for inflation in here. That means defense is going down in hard dollars. It means defense is going down, if you look at it in inflationary dollars, even more. So defense is going down in comparison to the last 7 years.

If you look at Medicaid spending and compare it to the last 7 years, over the last 7 years we spent $445 billion in Medicaid. Over the next 7 years we are going to spend $772 billion on Medicaid, almost twice the amount of money we spent in the last 7 years. So we are dramatically increasing the amount we are spending on Medicaid.

If you look at Medicare, Medicare spending over the last 7 years was $923 billion. If you look at it over the next 7 years, we are going to spend $1.6 trillion or 73 percent more than we spent in the prior 7-year period.

How can you define that as a cut? There must be some new math that I did not learn when I was in school that you get if you go to certain schools in this country which could define an increase of 73 percent as a cut. Not only is it not a cut, it is a substantial increase.

Why are we doing this in the Medicare accounts? I think we have to understand that this budget resolution accomplishes a couple of very significant public policy events.

No. 1, of course, is it balances the budget for the first time in 25 years, which is absolutely critical to our children. We hear a lot of talk about children and concern for the children. I do not think there is any question that everybody in this institution is genuinely concerned about our children and their future and how we address them. But I cannot think of a single thing that is more important relative to our children's future than to be able to give them the opportunity to have a prosperous lifestyle. And whether or not you have a prosperous lifestyle depends on how much debt you have to pay.

It works that way in your home. If you run up a big debt and you have to pay it off, you are basically going to have a lot of trouble doing that. You are going to have to work hard, and you are probably going to work longer hours and you are probably going to find that you are able to keep less because you are paying off a big debt. This country is passing a big debt on to its kids, and unless we get this budget under control, it will get a lot bigger.

So the most significant thing this resolution does is it improves the opportunity for our children to have a decent and prosperous lifestyle, and that, I believe, is the largest gift of all, as I said earlier, and will far outweigh some of the negatives that were alleged will occur from the other side, which I do not agree to anyway. But even if you accepted them on face value, they are far outweighed by the positive of balancing this budget for our children's future.

Second, what this budget does is that, in driving this Government to be fiscally responsible and managed in a way that we can afford it, we are taking a hard look at all the major programs that are in this institution. And a lot of them were created with good intentions, but they have not worked. The classic example, of course, is welfare. No program has had a more disastrous track record than welfare considering the amount of money that has been spent on it. I am sure there are more disastrous programs, but in relationship to the amount of dollars spent on it, it would be hard to find.

The fact is what this budget does is assumes that we are going to take the welfare system and improve it substantially, basically by putting it back in the control of the States that have the imagination and flexibility and the originality to create new and aggressive programs, and the Governors are excited about the opportunity. I can tell you, as a former Governor, they will deliver a heck of a lot more dollars to the recipients that need it by having flexibility than by having a huge bureaucracy on their back. So we are going to reorganize welfare.

We are also going to take a hard look at the other entitlement programs, all of them, but the one entitlement program that needs the most scrutiny because it is the most sensitive and it is the most critical right now is Medicare, because the trustees of the Medicare trust fund—and this is not a Republican group; in fact, four of the six trustees are members of this administration, including the Secretary of HHS and the Secretary of the Treasury—the trustees of the Medicare trust fund have said that if something is not done to correct the fundamental financial situation or imbalance of the trust fund, it will go bankrupt in the year 2002.

This is a chart that reflects that. This is where we are today, and this is where it goes—bankruptcy in 2002 for the trust fund.

What are the practical implications of that? The practical implications are that there will be no insurance program for seniors in the year 2002. And so what does this budget proposal put forward? It puts forward ways in which we can effectively address that issue and bring under control the rate of growth of the Medicare trust fund so that we can afford it, and so that it will exist and work well for our seniors.

It does not assume that seniors will get less care. It actually assumes that seniors will get more care. They will get more care because we will give them more options; we will give them more choices. And in the process, we will, hopefully, move them from a fee-for-service system into fixed-cost systems which can deliver high quality care but for costs which are predictable.

Are we talking about cutting the Medicare trust fund to do this or cutting Medicare spending to do this? No. As I mentioned earlier, we are talking about increasing it rather dramatically, $345 billion of increase over the 7 years. And what does that work out in this inflation factor? It works out to the fact that today the Medicare spending is growing at 10.5 percent.

What we are talking about in this resolution is accomplishing a rate of growth that is basically 6.4 percent. Mr. President, 6.4-percent rate of growth. That is what we are assuming for the Medicare spending under this resolution. Is that a cut? Only if you function under the liberal new math. Under any reasonable math, even moderate math, a 6.4-percent annual increase is still an increase in spending and it a very substantial increase in spending. In fact, it represents twice the rate of growth of inflation. That is the commitment we made in this budget. And it is a significant commitment to our senior citizens, and it will, we believe, produce a budget which will be in balance.

Now, there has been some discussion about a couple other issues I wanted to touch on quickly. That is the education issue. There is a representation, if you were to listen to the earlier colloquy between the Senators from Maryland and Massachusetts, that all students everywhere will be impacted adversely by this resolution. Well, I think maybe they are not up to speed on what the resolution does.

The resolution does say that graduate students will be impacted, but undergraduate students will continue to have their programs and have them pretty much the way they are today. Graduate students, yes. They will be asked to pay the cost of interest on their loans after they graduate from graduate school. Their interest on their loans will accrue while they are in graduate school, which they do not now.

What does that mean? Well, it basically means John and Mary Jones working at the local diner, 60 hours a week to try to make ends meet, will no longer have to subsidize the guy who is going to law school and his graduate loan and the interest on that graduate loan. It means that lawyers, in fact, they will still be subsidizing them to some degree but that person going to law school will, when they get out of law school, because their earning capacity will be significantly increased, be required to pay the burden of the interest that was accrued on that loan. I think that is fairly reasonable.

Yes, we should maintain the programs for undergraduates. I believe they should keep undergraduates free from the interest cost during the period they are in school. But for graduates, I can see no legitimate reason for not requiring them once they get out of graduate school, where they have increased their earning capacity dramatically, to pay back that interest. Because, after all, if we do not do that, what we are basically doing is transferring to our wealthiest Americans, the graduate students, from our moderate- and middle-income Americans' tax dollars, something that there appears to be outrage about over the tax cut. It does not clone that direction as mentioned earlier. But it seems to be acceptable relative to graduate students from that side of the aisle, this income transfer, from hard-working Americans to people who are clearly going to be quite wealthy once they get out of the graduate schools, whether it is law school or medical school or whatever.

So that is, I think, a bit of a specious argument to begin with. But second it is specious because it ignores probably the most underlying positive event which this balanced budget amendment is going to generate for all Americans, not just for the Federal Government; that is, the fact that all the economists that have looked at this, including CBO, have said if we put in place a budget which balances the Federal budget over the next 7 years and does it in real numbers, with real terms, as this one does, that there will be a drop in the interest rates in this country of 2 percent. A 2-percent drop in interest rates is a huge benefit to homeowners, to people who are borrowing on their credit cards, people who are buying cars, and equally people who are going to graduate school. And I suspect just that the percent drop will more than pay for the cost of incurring the interest in later years or will certainly pick up a significant proportion.

So, I do not find this argument to be very persuasive. Good politics, which unfortunately appears to be a big part of this debate, but not persuasive on the facts as is the argument that there is a Medicare cut here which is maybe good politics but is inaccurate and clearly not true on the facts.

Now, the President presented a budget in this process also. The President has presented a number of budgets. The first budget was out of balance by $200 billion a year or $1.2 trillion over 5 years. And then he came forward and presented a second budget, just a little while ago. And that unfortunately came forward, scored by his own folks on the basis of his own numbers, something that he said he would not do, not scored by CBO. And when it was scored by CBO it turned out that budget was also out of balance by about $200 billion a year for essentially as far as the eye could see.

But I want to congratulate the President. I think he has stepped on the playing field, finally. We have had a second effort here in June. And basically he has gotten involved in the process where he was not before. His first budget was clearly a walkaway from the budget process. Sort of a Pontius Pilot approach to the budget, just washing his hands of it. But this budget is not what he presented. Granted, CBO has scored it as a budget which does not get to balance. But when it was sent up it was sent up with some very basic assumptions which I think are good assumptions and good intentions.

First, he has agreed we need to get to a balanced budget. His timeframe is 10 years. Ours is 7. I was interested in the Senator from Massachusetts's discussion of this issue. I was thinking that if we were to accept the President's budget, the Senator from Massachusetts would have been here—I am sorry I did not have a chance to ask him this—would have been here for 45 years before we get to a balanced budget, if I calculate right, since 1965. In any event, it is a long way away, but at least we agree it is a balanced budget.

Second, he has stated that we need Medicaid and Medicare reform. That is important. Because you cannot get to a balanced budget unless you address the issue of Medicaid and Medicare spending.

Third, he has agreed we need welfare reform. He not only agrees to it, he was the primary mover in this area. I give him credit for coming out early and aggressively to do something in the area of welfare reform, and hopefully we can accomplish it. So those are three areas of agreement.

Fourth, he has agreed that other entitlement programs have to be addressed and discretionary spending has to be addressed and in the budget he sent up he had some good numbers in those areas.

And fifth, he has proposed a tax cut. Less than what is in this budget but still a tax cut so it recognizes the need to flow dollars back to the people as we address this issue of balancing the budget.

So, on five major points, five major points, we are basically in agreement, and the question comes down to dollars and timing. I think there is an area for significant action here.

For example, in the Medicare, for all the slashing and cutting that we are alleged to do from Members on that side of the aisle in the Medicare accounts, I would point out if you compare the President's number to our number, in outlays—that is really the only honest way to do it—you take out all the assumptions, and the President's number is only $11 billion off from our number each year in a program that is spending hundreds of billions of dollars. Not really a very significant difference in the sense of coming to agreement. Significant difference? Yes. But a difference which is clearly manageable—Mr. President—$11 billion on accounts which spend hundreds of billions of dollars. So the President's numbers and our numbers are pretty close.

On Medicaid it is even closer. The President's outlay numbers are only $9 billion different from ours. On some of the other entitlements, welfare, for example, $10 billion of difference from ours. Those are numbers that are very close. And I think they are numbers that can be resolved. And so the President has come forward with a budget which basically agrees philosophically with five of the points we have been raising: First, you need to get to balance; second, you need to address Medicare and Medicaid; third, you need welfare reform; fourth, you need to address the other entitlements in discretionary accounts; and, fifth, you need a tax cut. Which is what our budget does.

And then his numbers in the key accounts, which are the entitlements accounts, are clearly in striking distance of our own numbers. So it seems to me there is an opportunity there for significant action to reach accommodation and reach agreement. Which brings me back to my original premise, which is that this budget is a no-nonsense, make-sense budget about how we get to balance and delivers to our children the opportunity to have a country which has some prosperity and hope for them.

The President, from his presentation, appears to also understand the need for that. I hope that the Members on the other side of the aisle would agree with the President's view and agree that these goals are what are needed and agree that these numbers are places he can start, because as we go over to the appropriations and reconciliation process, maybe we can reach the accommodations necessary to deliver to our children this gift which is so critical, a balanced budget.

I thank the President, and I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER (Mr. COVERDELL). The Chair recognizes the Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I give 15 minutes of our time to the distinguished Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank the Senator from New Jersey, and I thank my colleagues.

Let me first say that a balanced budget should be our goal. In fact, I offered an alternative budget resolution during debate on the budget in the Senate that balanced the budget, and did so by 2004, without counting Social Security surpluses, and did so with a different set of priorities contained in the budget before us today.

I think it is fair to say that the Republican budget resolution before us today is a fraud. Over and over, we have heard it stated on the floor of the Senate and in the news media that they have balanced the budget. Apparently, nobody has bothered to look at the budget resolution, because if you look at the budget resolution, you find out they have not balanced the budget. Here it is. Here is the conference report that we are debating today, and on page 3 of conference report, under ''Deficits,'' it says:

> For purposes of the enforcement of this resolution, the amounts of the deficits are as follows:

And we go to the year 2002, in which they are claiming they have balanced the budget. Do you know what one finds? It is the dirty little secret of this budget. There is not a zero by ''deficits'' in the year 2002. That is what we would have if they balanced the budget. It does not say zero. It says the deficit in fiscal year 2002 is $108.4 billion. That is not a balanced budget. That is not within hailing distance of a balanced budget. That is a budget that is not anywhere close to balancing, a $108 billion deficit in the year 2002.

How is it the Republicans claim they have balanced the budget? They claim it because they are looting and raiding the Social Security trust funds of every dime of surplus that is in those accounts. That is their plan. That is what they have in mind for America, to take every penny, every dime of the Social Security surplus, more than $600 billion over the next 7 years, take it all, spend it on other things, use it to give tax cuts to the wealthiest among us. That is the plan that is before us. It is a giant fraud. It is a huge hoax. That is what is before the American people today.

This is the biggest transfer-of-wealth scheme ever in the history of this country. They are going out there and taking money from people from their payroll taxes—and by the way, 73 percent of the American people pay more in payroll taxes than they pay in income taxes—and they are taking that money from them on the promise that it will be used to fund their Social Security retirement.

That is not what they are doing. They are taking that money and they are spending every dime of the Social Security surpluses. Just in the year 2002, they are taking $108 billion of Social Security trust fund surpluses. They are using that to spend on other parts of the budget, and they are using it to give giant tax breaks to the wealthiest among us. That is their plan.

If the American people are hoodwinked on this one, at some point they will find the bill coming due, because last year the Entitlements Commission told us precisely what will happen if such a plan goes forward. We will face either an 85-percent tax increase or a 50-percent cut in benefits in order to fund those entitlement programs, because it does not add up.

Mr. President, this Republican budget is a monument to misguided priorities. It is unfair and just plain wrong. There are draconian reductions in Medicare, Medicaid, education, agriculture,

and public investments that benefit average Americans. And why? So they can give massive tax breaks to the wealthiest among us.

This budget, make no mistake, is a return to trickle-down economics. It gives the wealthy a massive tax reduction and asks the middle class to pay the bill. One middle-class program after another is reduced in order to finance a tax break for those that have the most.

For example, the Republicans are reducing Medicare $270 billion over this 7-year period; Medicaid by $182 billion. Make no mistake, rural hospitals all across America will close. I have dozens of such hospitals in my State. I have talked to the administrators. I have asked them the effect of these budget plans, and they have said to me, ''Senator, we will close our doors. We will have no option.''

Our Republican friends say they are for welfare reform, they want people to work. They are right about that, people should work. But with the budget cuts that they have outlined, people will not be working. The Congressional Budget Office told the Finance Committee, under the Senate Republican plan that 44 of the 50 States in this country will not have a work requirement. They will not be able to have a work requirement. They will be better off taking a 5-percent penalty and not having any work requirement in 44 of the 50 States of this country because there will not be enough funds for child care and for job training. What a fraud, but the wealthy will get their tax cut.

The Republicans take domestic spending, spending in this country on infrastructure, spending on education, spending on research and development—the very things that are critical to our future—and they cut those $190 billion below a hard freeze.

In the budget plan I offered, we froze those programs for 7 years. Their program cuts $190 billion below a freeze, tough, harsh cuts in education, in infrastructure and research, in the things that matter to the future of our country, but the wealthy will get their tax cut.

The Republican budget agreement also makes draconian and drastic cuts in agriculture programs. Many people do not understand agriculture outside of the heartland of the country. But I tell you, our farmers work every day competing not only against the French farmer and the German farmer, but against the French Government and the German Government, and this budget signals unilateral disarmament; we are going to give up in this trade battle; we are going to leave that playing field to our European competitors; and we are going to back away from one more market where the United States has been dominant; we are going to raise the white flag of surrender in this trade battle and give up these agricultural markets.

Make no mistake, that is precisely what is going to happen under this plan.

Middle-class program after middle-class program will be devastated, but the wealthy will get their tax cut. Those priorities do not make sense, and they certainly do not benefit the middle class. The tax cuts that our friends have in mind are tax cuts that benefit disproportionately those who are the wealthiest among us.

This chart shows an analysis of the House plan. We do not yet have the Senate plan. The House plan is very clear in terms of who benefits from the Republican tax bill. If you are a family of four earning over $200,000 a year, you get an $11,000 tax break. If you are a family of four earning $30,000 a year, you get $124. That is 100 times as much to the family of four earning $200,000 as to the family of four earning $30,000. That is the Republican idea of targeting tax relief: Give the crumbs to the middle class; give the cake to the wealthy. That is the Republican plan that is before us today.

This budget resolution is nothing more than a repeat of the failed trickle-down economics of the 1980's. We learned a lesson in the 1980's that some have forgotten. We learned then that wealth does not trickle down, it gets sucked up. That is precisely what the plan before us today will do: Big bucks for the big guys and crumbs for the middle class. That is the plan that is before us.

I say to my colleagues and friends that if these policies are enacted, we will witness an even larger redistribution of wealth than the one that took place in the early 1980's. I remind my colleagues what happened. From 1983 to 1989, the last time the Republicans had control, this is what happened to growth in financial wealth in this country. The top 1 percent got 66 percent of the increased wealth in that period—the top 1 percent got 66 percent of the increased wealth. The bottom 80 percent—the vast majority of the people in this country—went backward. They saw their wealth reduced by 3 percent.

Mr. President, the Republican commentator, Kevin Phillips, had an interesting comment on National Public Radio several weeks ago. He said:

> If the budget deficit were really a national crisis . . . we'd be talking about shared sacrifice, with business, Wall Street, and the rich—the people who have the big money—making the biggest sacrifice. Instead, the richest 1 or 2 percent—far from making sacrifices—actually get new benefits and tax reductions.

That is the plan that is before us—an enormous transfer of wealth, from the middle class and the lower income people to those who are the highest on the income scale in this country. That is not fair, that is not right, and that is not an economic plan for the future of America.

During Senate debate on the budget resolution, I and a number of my colleagues offered an alternative balanced budget, one that balanced the budget by the year 2004, without counting Social Security surpluses. And we had much different priorities. Yes, we reduced the rate of increase in Medicare and Medicaid, because that must be done—but not in the draconian fashion contained in this budget resolution.

We also had reductions in the rate of growth for nutrition programs, and others—but not the draconian reductions that we see here. We were able to do that by going to the wealthiest among us and asking them to participate in a plan to restore America's fiscal health. Shared sacrifice; everybody has to play a part. That is the American way. That is the way we ought to do what needs to be done.

Mr. DORGAN. I wonder if the Senator from North Dakota will yield for a question.

Mr. CONRAD. I am happy to yield.

Mr. DORGAN. I appreciate it. I have been watching some of the discussion. I have noticed several Members of the majority side nearly breaking their arms patting themselves on the back in the last hour or so because they say they have brought a balanced budget to the floor of the Senate. I noticed in the press conference at which they unveiled it, they said they kept their promise, ergo, a balanced budget. I notice the press reported that they had brought a balanced budget to the floor of the Senate. Then I notice on page 3 of the document before the Senate, the very chart that I think the Senator from North Dakota has, Senator CONRAD, where it says ''deficits,'' it appears they have been patting themselves on the back too soon.

The Senator from North Dakota is saying, is he not, that there are no balanced budgets in 2002? In fact, this budget resolution would leave a deficit of $108 billion in the year 2002; is that correct? And, if so, why is everybody patting themselves on the back and claiming that the budget is in balance if on page 3 it says it is not in balance, that it is $108 billion short of balance in the year 2002?

Mr. CONRAD. The Senator is exactly right. I think they are hoping nobody actually reads the document. So far, they have been wildly successful in that. The news media have not bothered to read the source document either. If they do, they will see under ''deficits'' in the year 2002, it does not say zero; it does not say they have reached a balanced budget. It shows a deficit of $108 billion in the year 2002. That is because they have looted every penny of the Social Security surplus trust funds during this period.

The PRESIDING OFFICER. The time yielded to the Senator from North Dakota has expired.

Mr. CONRAD. I yield the floor, Mr. President.

Mr. LAUTENBERG. Mr. President, we will yield to the Republican side now, despite the fact that we had only

one Democrat speak after two Republicans in a row. But we have a distinguished friend on the other side, Senator GRASSLEY from Iowa, who wishes to speak. I now yield so that the Senator can use some of his time.

The PRESIDING OFFICER. The Chair recognizes the Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself 20 minutes.

The PRESIDING OFFICER. The Senator is recognized for 20 minutes.

Mr. GRASSLEY. Mr. President, I do not want to engage the Senator from North Dakota because I want to make my remarks and run to a meeting that I have to have. But I want to make this point in his presence, and we can argue about it at a later time. What he said I am not going to say is inaccurate because he has the documentation for what he said. But he spoke about our document and our claim of a balanced budget as being a fraud on the American people. We can accept that judgment if he is willing to say that if we had the President's document as a final document before this body to pass as the budget resolution for this year, with the claim that the President balanced it in the year 2005, which is 3 years longer than ours, the Senator from North Dakota would have to say that the President's budget is a fraud on the American people, because the document that we have before this body, that we correctly claim will balance the budget by the year 2002, uses exactly the same accounting procedure that has been used in this body by both Republicans and by Democrats when they were in the majority. It would also be used by the President of the United States in saying he had a balanced budget.

The President would use the same approach that we used. The fact of the matter is that our document is not a fraud. Our document balances the budget by the year 2002. And except for the fact that the President of the United States uses OMB numbers instead of CBO projections for the future, I would have to say that the President balances the budget by the year 2005. Therefore, the President's document is not a fraud and our document is not a fraud.

I hope that if the Senator from North Dakota is going to say that the way we do business and account for the balance is a fraud, he would be willing to say that the way the President of the United States did it as well was fraudulent. But the fact is that we are balancing the budget. We are balancing the budget because the United States people have finally sent a very clear message to the Congress of the United States that it is morally wrong for this generation to live high on the hog and to let our children and grandchildren pick up the bill.

Now, most of the debate behind the desire to have a balanced budget in this body is going to be based solely upon the public policy that it is good economics to have a balanced budget. And I agree with those statements. But I think that the main reason we should balance the budget is because for one generation we had anything we want through the Federal budget because of the bottomless pit of borrowing and that is not right. I do not believe it was ever right.

Obviously, it got into the thinking of public servants that there was nothing wrong with one generation living off future generations.

We are finally going to be able to put our house in order so that after the year 2002, we are going to be able to pay our own way. Then future generations can have a better life. They will not be saddled with the high interest and the high debt. If we did not change business as usual in this country on fiscal policy, future generations would be facing tax rates in the high 80 percent to pay for the debt that we have loaded on them.

If any Member wonders whether or not we can have a great future without borrowing to the extent to which we borrow, $4.9 trillion, just think, for the first 165-year history of our country, except for the years you classify as war years, our forefathers were able to show surpluses in budgets of the Federal Government 3 out of 4 years.

So the economic philosophy that has come to dominate public policymaking in Washington, DC, that somehow we had to have a deficit to have prosperity, that does not square with the practice of our forefathers who lived within their income and still built a strong, viable economy and a society that was strong.

The moral arguments for this budget are very, very strong, I think the overriding reason for victory that the balanced budget brings.

One other comment that is somewhat a reaction to what has been said on the other side of the aisle about the tax cuts, most importantly about the hogwash of the tax cuts going to the wealthy. I think they express those points of view because there is not an appreciation of what $500 per child in the pockets of middle-class Americans can do for the families of America and what it can do for the economy.

Maybe there is not an appreciation by the limousine liberals of America of what $500 means to a family because the philosophy on the other side of the aisle, quite frankly, is that somehow all the resources of this country belong to the Government, that we let, somehow out of the goodness of our heart, a certain amount of money be given by the Government to the families.

That is all wrong. Everything belongs to the families and the workers of America. Under our constitutional system, people might give up some of their resources to Government through taxes to exercise certain functions that can be done by Government for the good of all of society.

In the last 30 or 40 years, the concept of tax expenditures has crept into our policymaking here in Washington. We say that the deduction for children is a tax expenditure. We say that the tax deduction for interest on home mortgage is a tax expenditure. We say this or that which you can subtract from your income tax is a tax expenditure.

Well, a tax expenditure implies that Government owns all the resources of this Nation and we might expend some of the money back to the families to keep.

We can complain about high taxes and $500 tax credits for families on the other side of the aisle very easily when you start with the concept that every penny made by the working families of America in this country belongs to the Government and Government is going to let the families keep something. That turns good reasoning on its head.

We, on this side of the aisle, accept the premise that all the resources of this country belong to the families and the workers of America and that we, Government, ought to only take from those families what is legitimately needed to exercise the legitimate functions of Government.

That is why on the other side of the aisle they can make light of and maybe even make fun of a $500 tax credit per child.

I want to commend the chairman of the Budget Committee for his hard work in reaching this budget compromise. I want to say it this way so the American people out there, cynical about one person any place in American society maybe can make a difference—and I believe one person can make a difference. I believe that any one person, any place, regardless of their station in American life, can make a difference if they want to. Our society and our system of government allows that to happen. And each person that says they cannot make a difference belittles their contributions that they can make and underestimates their contribution that they can make to American society.

That is true in this body, as well. One person can sometimes make a difference. I think that Senator PETE DOMENICI's desire to have a sound fiscal policy for this country and to work to a balanced budget has made a difference, just because of the single individual of Senator DOMENICI. I think I can hold him up as an example, when people are cynical about an individual in Congress making a difference, that we are going to have a balanced budget in the year 2002 because of 1 person out of 535 in this Congress. Maybe I ought to say at least of the 100 Members of the Senate, because Senator DOMENICI of New Mexico, chairman of the Budget Committee, made a difference.

I suppose, as the Senator from Washington said about an hour ago, everybody cannot have everything that they want in a balanced budget. You can have everything you want when you can borrow unlimited amounts of money to pay for it. But the principle of a balanced budget, for the first time

in a generation, dictates that you cannot have all your desires. It dictates the establishment of priorities within Government. It also dictates that every Member of this body cannot have everything they want in a budget.

I, too, like the Senator from Washington, can find parts of this conference report that maybe I do not like. But we cannot lose sight of its singular accomplishment that it balances the budget in 7 years.

This balanced budget will mean that our children and grandchildren will have a better tomorrow. This resolution will also help working families today with lower interest rates and better wages because of the increased productivity that is going to come from it.

It is for these reasons that I intend to vote for this conference report.

While the Congress has produced a balanced budget for the benefit of our children, I want to note by contrast, that the administration has still failed to provide a plan to achieve balance.

Last week I spoke on the floor, urging the administration to provide the additional spending cuts necessary for their new budget proposal to achieve balance. And I urged them to do what the President said he was going to do in February 1993 in his first budget resolution, to use the Congressional Budget Office's economic projections.

As is well known, CBO has stated that President Clinton's budget proposal—that is the second one this year—provides a deficit of $210 billion in the year 2002, the year that Congress' budget resolution gets into balance, the Republican budget resolution gets our budget in balance.

And in the year 2005, the President's budget will still have a $209 billion deficit.

I am very pleased that leaders on the other side of the aisle have already come forward, urging their President to provide for more spending cuts and to use CBO's economic projections so his budget will have integrity and so it will actually be in balance.

Monday's Wall Street Journal quotes the minority leader as saying that President Clinton must find hundreds of billions of dollars in more spending cuts. And in the Washington Times that same day, the minority leader is quoted as saying the White House will comply with CBO estimates.

Another Democratic Senator is quoted in the Washington Times as saying, ''They cooked the numbers. The President needs to get back to the CBO numbers.''

I am glad to see Members on the other side of the aisle agree that the administration must use CBO estimates and must provide hundreds of billions of dollars in more spending cuts. This is necessary if the White House is going to have any credibility in efforts to achieve a balanced budget.

Now the ball is once again in the White House court. I strongly encourage the administration not to punt the ball for a third time. The American people do not want their President to abdicate leadership on the budget. They are glad he is in the ballgame now, but we want him in the ballgame playing as a full member of the team.

This budget we have before us preserves Medicare. Medicare would otherwise be bankrupt in the year 2002. I am glad the President recognizes in his budget that Medicare would be bankrupt by the year 2002, and he proposes slower growth of Medicare as we propose slower growth of Medicare. And even with slower growth, it is still going to grow at 7 percent. Even at slower growth the per capita expenditure for Medicare is going to go up from $4,900 today to $6,500 in the year 2002. We are going to be spending $1.7 trillion on Medicare. We are going to have Medicare still be one of the biggest, if not the biggest programs in the Federal budget. Medicare will not go bankrupt under this budget.

Agriculture is going to do very well under this budget. I thank the chairman for helping us in the Senate hold a strong line on the Senate's figures for agriculture. I think this conference report represents a real victory for agriculture because the House was going to cut agriculture $17 billion for 7 years. Normally, splitting the difference we would have been cutting more than $14 billion. Our figures will be at $13 billion, just above the Senate's recommendations, and the conference retained the sense-of-the-Senate language that only 20 percent of the savings required of the Agriculture Committee should be realized from farm programs.

No one will benefit more from this effort to balance the budget than our family farmers. Because of the intense amount of capital that it takes to be a family farmer and because, especially among young farmers, so much of this capital is borrowed, lower interest rates will be of enormous benefit to this capital-intensive industry. Lower interest rates will result from a balanced budget.

The Food and Agricultural Policy Research Institute, which is a combination of the University of Missouri and Iowa State University, analyzed the impact on the farm economy of a balanced budget. In a preliminary estimate, this organization took the CBO estimates of reduced interest rates that would be realized from a balanced budget and said it would translate into a $2.5 billion increase in farm income in the year 2002.

Finally, on the subject of taxes, this conference report assumes $245 billion in tax cuts for the American people, especially working families. I am particularly pleased that under this budget resolution there can be no tax cuts until after CBO has certified that the budget does get to balance.

We all know we have a credibility problem with the American people when we talk about balancing the budget and cutting taxes at the same time. But we overcome that problem with the American people because this resolution will ensure that we have done the hard work first, that we have actually cut the necessary spending that it takes to achieve a balanced budget. It will be an enforceable reconciliation package. And then it will be scored by the Congressional Budget Office so we know there are *x* number of dollars available for a tax cut and that the tax cut is paid for and we do not cut taxes until that is done. That protects us from the usual traditional use of smoke and mirrors that are too often used, and never gets us to our targeted deficit reduction.

When it comes to tax cuts, as a member of the Finance Committee I state categorically I do not agree with the House of Representatives that we should give middle-income tax cuts to families up to $200,000. As a member of the Finance Committee, I will be working to have that be capped at $100,000. But there is no question that families will greatly benefit from being able to retain more of their income. Families will be able to use those resources for their children's education, their children's health, their children's nutrition. Let the families make the decision, not big Government make the decision on where this money should be spent. Because I am confident that families will make the better choice.

One last note on taxes. I want to make a brief comment about a small, very small but very important part of this budget resolution. I am very pleased that the House agreed to join the Senate in rejecting the off-budget funding for the Internal Revenue Service. The off-budget funding was proposed by the administration to provide for approximately 6,000 more IRS agents. The Senate last month, by a vote of 58 to 42, and it was a bipartisan vote, rejected this off-budget funding for the Internal Revenue Service. By rejecting this off-budget funding gimmick the Congress showed, first, that we would not engage in smoke and mirrors budgeting to achieve balance and, second, by eliminating this off-budget funding for IRS, we showed the American people that this Congress is committed to getting big Government off their back. The IRS has more than sufficient resources to do its job. It does not need the thousands more agents knocking on taxpayers' doors, as proposed by the administration.

This was a small but important victory for the taxpayers. It is a symbol that this new Congress did get a message from the last November election that Americans want to see a smaller, less intrusive Government. In this regard, again, this could not have been done without the help of the chairman of the Budget Committee, Senator DOMENICI. His dogged work in ensuring that this off-budget funding for the IRS was eliminated made that possible.

This victory would not have been possible, then, without his determined support. I want to close by saying this

is truly a historic vote. I did not think I would see the day when we would have a credible budget conference report that would get us to balance, either in my public service or in my lifetime. By adopting this conference report we take the necessary steps to put our fiscal house in order and provide the benefits of a balanced budget to our children and grandchildren.

We all tell our children and grandchildren that it is good and important to have dreams and hopes. This budget will help our children and grandchildren make these dreams and hopes come true.

I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank the distinguished occupant of the chair.

Mr. President, the Republican budget before us purports to solve our deficit problem in 7 years. However, it will not do the job. For one thing, the budget claims balance by using billions of dollars in the Social Security trust fund. In some ironic way that is almost a joke because no company, no corporation—and I come with some experience having been the CEO of a major American corporation, the one that I helped build with a couple of other young fellows—none of them would dare propose to show their balance sheets, or their financial statement, as having been balanced using the company's pension fund.

By the way, Mr. President, I allow myself up to 20 minutes or such time less than that which I care to use.

The PRESIDING OFFICER. That is the Senator's right.

Mr. LAUTENBERG. Mr. President, no corporation would dare use the pension fund that does not belong to them as a line on their financial statement suggesting that in fact they have had a pretty good year. That would amount to absolute fraud. And I think any chairman or president of a company who signs such a statement, the financial officer, could be accused and charged with fraud, and could be charged with violation of the accounting rules that apply to public companies.

Meanwhile, my Republican colleagues claim that they are going to balance the budget in 7 years, but only by using billions of dollars in the Social Security trust fund that are reserved for senior citizens, the beneficiaries. I hope they will not break their arms patting themselves on the back about this.

In any case, Mr. President, there is a much larger question involved in this debate. And that question is Whose side are you on?

Those on the Republican side of the aisle are on the side of high-income people with lots of assets. And so it is not surprising that they advocate a tax cut for the wealthy.

They claim it will help the economy. I think it was at one point called trickle down. Trickle down was something like—I know this is a play on words—trickle-dee trickle-dum. But the fact is that trickle down economics did not work.

Meanwhile, Mr. President, we Democrats are here to represent ordinary Americans. The people who work every day, trying to provide for their families, trying to buy a home, a roof over their heads, trying to supply an education for their children, trying to reserve funds for their older age, or trying to help a parent. These people will not benefit by a tax cut to the rich.

Mr. President, the Republicans justify their budget by talking about debt. But there is a lot of confusion about debt.

Debt is a recognized and an acceptable aspect of personal and business life in this country. Show me a company, any company of size, a company doing $50 million a year, $100 million a year, probably a lot smaller than that, that does not have debt on its books, and I will show you a private company owned by perhaps one individual. But assume as soon as you get other owners in the business, public companies and so forth, it goes almost without saying that they need debt, that they need to borrow to expand, to invest in the future, to invest in research, product development, and marketing. That is the way it is.

What is the dream of the average American family? The largest asset that most Americans have is their home. And I do not know anybody, middle income, modest income, or rich, that buys a home for cash. They go to the bank or they go to a lending institution. They say, ''Lend me money based on my collateral; the brick and mortar that was used to build my house, the piece of property that I own.'' And for many, throughout their lifetime of work, the largest asset that they acquire is their home or the equity in their home at such time as they dispose of it.

So it has to be with government at times. And we ought not to make phony comparisons of government to business or government to individuals. You hear the argument that American families balance their budget, so why not government. That is phony. Everybody knows that. Every American family lives like every American business conducts itself. They borrow money. It is part of our system.

Yet we should try to balance the operating budget. And there is no question that we need to do much more to cut wasteful spending and move in that direction.

There may be some disagreement about the date, whether it is the year 2002 or the year 2005. But both Democrats and Republicans share the overall goal.

The question is how do we get there and who pays the ultimate price? Whose side are you on?

We have heard our friends on the other side claim that they are not cutting Medicare, or that they are simply cutting into the growth of Medicare. The fact of the matter is that when you take $270 billion out of Medicare over the next 7 years, with the huge growth in the number of beneficiaries, and rising medical costs, that money goes for less per person than it would otherwise. These cuts in Medicare will mean a cut of over $3,300 per individual, almost $7,000 per couple, over the next 7 years. And that is a lot of money for the average family. As a matter of fact, the average senior citizen today pays 20 percent of his or her income in out-of-pocket health care costs.

We are talking about people whose incomes at best are modest. Seventy-five percent of Medicare recipients have incomes under $25,000 a year; 35 percent have incomes under $10,000 a year. But we are talking about an average increase for those folks of $3,300 per person, or roughly almost $7,000 for a senior couple.

Student loans—it is going to cost students $3,000 more over the period of a student loan. And the question is, who is going to be deprived of the opportunity to go to college?

Mr. President, I have heard lots of personal stories about our colleagues. There are some illustrious, distinguished careers that were built among people here in this body with relatively modest starts. And I was one of those people. I came from a family where my mother was widowed at age 36. I was 18 and had already enlisted in the Army to do what I had to in World War II. There was no money in that household—nothing. The modest allotment that I sent home was small. It helped my mother. She worked hard to take care of my sister and herself and to maintain the small apartment that they lived in.

When I got out of the service, I was 22. I wanted to go to college and was accepted to a fine university. Were it not for the GI bill, Mr. President, I do not know which way my career would have gone. But I created a business. I am actually a member of the hall of fame of an industry, the information processing industry, for what is called my pioneering efforts in building the service side of the computer business today larger than the hardware side of the computer business. A company I helped found with two other fellows today employees over 20,000 people. It is a wonderful story about America and the success that can be achieved here from three poor kids, and I was one of them. The other two are brothers.

It was the GI bill that sent me to Columbia University. Without that I never would have known which turn to take in the road, very frankly. But with that assistance from the Government, I made a contribution. It is an industry that employs over a million people today, and I take some measure of the credit for having helped create

the notion that you could buy computer services outside of your company; you did not have to own the hardware and you did not have to have the programmers, the technicians; you could do it—all because I got a start from my Government.

My father during the Depression years was humiliated by the fact that he had to work under a WPA program. It was a very unpleasant experience. But my father knew even more than his dignity, he had to have a week's pay and he had to put some food on the table, and he had to maintain the respectability that he had as head of the household. So he took a Government program job. It was not long, but it was necessary.

So here we have education, employment. If only my father had health insurance during the year of his sickness when my mother worked behind the counter of a luncheonette so she could pay doctor bills and administer to him at the same time.

So here we have a picture of America, Mr. President. What kind of a country are we? Is our mission primarily to cut taxes for the wealthy or is our mission here to build citizenry in the proudest way possible, to make patriots out of people because they love their country, because their country does something for them? And if it takes us a couple of years more to eliminate a budget deficit, so it shall be. Because the price of not doing it could be detrimental to our country for decades to come.

We go to the 21st century with the heaviest competition that this country has ever seen, whether it is from the European Union, 350 million people strong, or from the Pacific rim where energy is just boiling and people want to take our markets and take our products and take our opportunity. We can avoid being in that competition very clearly by not educating our people, by not training them, by not penetrating those markets, by eliminating Government's assistance in helping to get to those markets. We can do those things. In this case, a penny saved is liable to be a dollar lost.

So we have to do this with some sense of compassion, with some sense of mission about what our democracy is like.

And yet, in this budget, we are going to take away the earned-income tax credit for modest families. We are going to make students pay more to get their loans. And we are going to cut Medicare benefits.

But we are going to take care of our friends who are in the high side of the income strata. We are going to make sure that they get their tax cut. I think it is ridiculous.

The people who are looking at this placard have to ask themselves the question: Whose side are you on? Where are we going to go? Are we going to be a Government that provides energy and seed money and encouragement for people to develop, or are we going to say, no, no, no, you have to live without these things and if the child does not have sufficient nutrition, so be it. And if the child does not have an education and goes to prison, we will build enough prisons. But will we build enough pride in our citizenry? That is the question.

So we are here with a conference report today that says we are going to give out 245 billion dollars' worth of tax cuts, but we are going to take $270 billion out of Medicare and $182 billion out of Medicaid.

Medicaid. My goodness, I live in a State that has the second- or third-highest per capita income in the country, New Jersey, but we also have the paradox of some of America's poorest cities in our midst. And those cities and other urban areas, where incomes are not high, very often are totally dependent on Medicaid to carry the hospitals that will serve the needs of children. But we are going to say we are going to cut that because we are saving money. Yes, we are saving over here. We are going to give some to those rich guys over there, but we are saving money. And so those children will not get treated. And what kind of respect will they have for themselves, their families or their country if they have not enough to eat and not enough health care? Not much, I can tell you. They will find other ways to satisfy their basic needs.

(Ms. SNOWE assumed the chair.)

Mr. LAUTENBERG. And so, Madam President, the debate will go on and we will have different perspectives, but the one thing that will ring through this debate loudly and clearly in my view is: Whose side are you on? The Democrats believe that people in modest income levels, people in the middle class may need that extra little push to help them move their families along so that they can move up the social and economic ladder. And our friends on the other side will say, no, no, no, we are not going to spend money on those silly programs like child nutrition and day care and those kinds of things. No, we have to give tax cuts to the rich so that they can perhaps let something trickle down for others.

I do not believe that is what America wants. It will be interesting to see how the American public receives this debate.

And with that, Madam President, I am prepared to yield.

Madam President, the next speaker is ordered from the Republican side, and they will allot their time as they see fit.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. I thank the Chair. I yield myself whatever time I may take—I believe 15 minutes or so.

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

Mr. ABRAHAM. I thank the Chair.

Madam President, last November, voters sent 11 new Members to the Senate. I believe all of us came to Congress dedicated to keeping the promises we made in our campaigns, and specifically we promised to end business as usual and to replace the old equation here in Washington of higher taxes and more Government with smaller Government and the goal of letting people keep more of what they earn.

Central to our campaign was a commitment to end 25 years of deficit spending here in the Congress.

Today, the Senate is debating a budget resolution which delivers on those promises. First and foremost, this resolution balances the Federal budget over the next 7 years. It does so by slowing the growth of Federal spending from 5 percent a year to 3 percent a year. In dollars, that means Federal spending will continue to grow from $1.6 trillion next year to $1.9 trillion in the year 2002.

Now some, of course, have argued that we moved too fast. But the facts are quite simple. If we do not take action now, America will face an economic crisis far greater than any this Nation has ever confronted before. Here is why.

If Washington keeps spending money the way it has for the last quarter of a century, the Medicare trust fund will go bankrupt in 7 years. In 15 years spending on entitlements and interest payments on the national debt alone will equal all tax revenues. That means not $1 for national defense, law enforcement, education, job training, veterans programs and so on, unless we run up even higher deficits in the future, deficits at levels we have never previously contemplated.

Most importantly, unless the actions we begin in Congress are enacted and signed by the President, a child born this year, 1995, would during their lifetime pay $187,000 in Federal taxes, not in total, but just to cover their share of interest on the national debt that already exists and will accumulate during their lifetimes.

By adopting this budget we can avoid fiscal disaster and begin the process of removing the mountain of debt from the backs of our children. Moreover, balancing the budget also sets the stage for an era of lower interest rates, accompanied by expanded job creation and a higher standard of living. Balancing the budget will result in significantly lower interest rates, which means that the average homeowner can save up to $500 per month on their mortgage. In addition, the GAO reports that balancing the budget could produce real income growth of up to 36 percent by the year 2020. For families and children then, balancing the budget means more than just reducing public debt, it means keeping a roof over their heads, putting food on their table, going to better schools and financing retirement. It means a brighter future.

How do we get there? We get to a balanced budget by setting priorities and making tough decisions. We get to a

balanced budget by keeping our promises, promises to eliminate wasteful spending, to evolve programs to the States and control growth of entitlements and provide taxpayers with some badly needed relief.

First, this resolution trims the fat off of the Government and does so by eliminating unnecessary agencies, consolidating duplicative programs and privatizing those functions that are better served by the private sector.

The resolution includes the elimination of almost 150 departments, administrations, agencies, commissions, committees, boards and councils—everything from the Board of Tea Experts to the Department of Commerce. It also assumes the privatization of entities like the naval petroleum reserve and the Uranium Enrichment Corporation and the Alaska Power Marketing Administration, all of which provides services which are better left to the private sector.

Finally, this resolution consolidates duplicative programs to make the Government less cumbersome and more efficient. And all these reforms save the American taxpayer $190 billion over the next 7 years.

This budget also devolves powers to State and local governments. During my campaign I promised the people of Michigan to return the operation of various Government functions back to the State, where Governor Engler and our legislature are out front on important issues like reforming welfare, Medicaid and education. I know Governors from other States are equally as innovative.

This budget takes advantage of the tremendous talent outside the beltway by utilizing block grants to replace the hundreds of Federal welfare, housing and education programs. These block grants, which in many committees are already moving forward on a bipartisan basis, will provide the Governors with the resources and the freedom they need to carry out such reforms.

Another promise I made to the people in Michigan was to work to control the growth of Federal entitlement programs. The need for this reform was made apparent in February when the Medicare trustees announced the trust fund will be insolvent 7 years from now. The trustees concluded that the HI program is severely out of financial balance and that the trustees believe that the Congress must take timely action to establish long-term financial stability for the program. This budget embraces this call to act by addressing both the short- and the long-term insolvency of Medicare programs.

First, it allows Medicare to continue to grow at a 6.4 percent rate per year. This reform enables Medicare to pass the trustee short-term solvency test while still growing at twice the rate of inflation.

Second, the resolution includes a call for a special commission to address the long-term stability questions facing Medicare and to advise Congress on how to keep Medicare's promise for future generations. President Clinton's most recent budget endorses this approach by advocating similar reforms.

Now, we have heard a lot during the debate on this budget when it first came before us, and we heard already today, and I am sure tomorrow we will hear issues raised as to whether or not we should do these things with regard to entitlement programs and Medicare in particular, whether or not we can limit the growth to twice the rate of inflation. And the claims will be made that this is impossible to do simply because, if we did this at the current rate of growth, the current rate of inflation in health care programs, it will have this, that or the other effect. All these horror stories we heard suggests it is impossible to change any system in this country.

That is certainly not the case, at least based on the recent evidence we have seen in the health care area. What we have seen is that in the private sector the inflationary health care has been dramatically reduced as corporate America, small business America, as families in America have addressed these growth problems by finding innovative ways to deal with health care and health insurance costs, by engaging in more preventive medicine and joining managed care facilities, by finding other alternatives to simply assuming that the rate of inflation can never change. I think it can. I think on a bipartisan basis we can, while providing the same level of service, limit the rate of growth of Medicare to the types of percentage that are contained in this budget resolution.

Another central promise of my campaign was to fight for tax relief for America's families and businesses. Federal, State, and local taxes today combine to take almost 40 percent of every American's dollar that they earn. The tax burden on American families has increased by 300 percent over the past 40 years. Our Tax Code is excessive and it is often arbitrary and too often it chokes innovation and job creation.

In my campaign, I promised the people of Michigan to support much-needed tax relief, like the $500 per child family tax credit, which we have talked about already and will continue to discuss in this body. This budget delivers on those promises by providing $245 billion in relief over the next 7 years. Under this resolution when spending has been cut and a balanced budget is ensured, $245 billion is made available to the Finance Committee for legislation providing family tax relief and incentives to stimulate savings and investment. And we need those incentives. Recent economic indicators suggest the economy may be slowing down. If slower growth is on the horizon, then we need to do more than just focus on spending. Slower economic growth endangers our common goal of a balanced budget in the year 2002. According to the OMB a 1-percent slower economic growth rate translates into $150 billion in higher deficits over the next 5 years. By including real incentives for investment and savings, we can help stimulate the economy and ensure that revenues keep pace with projections.

A good example of how this can work, I think, was embodied in Jack Kemp's original enterprise zone proposal. In these zones lower taxes on capital would encourage businesses and employers to go into economically depressed areas, spurring economic growth and job creation. The primary benefits of these zones go to the residents of the zones themselves as their neighborhood is given a much-needed boost. And within the next few weeks I plan to introduce a bill that would supercharge the current empowerment zones with powerful savings and investment tax incentives such as those that have been previously outlined in enterprise zone bills to try to create that kind of job creation.

By including a tax cut in the budget, we are opening the door for tax reforms like enterprise zones, family tax credits, and other incentives for savings and investment. These tax cuts in turn will increase—grow, create jobs, improve savings and ultimately improve the standard of living for most Americans. I intend to work with the Finance Committee to provide Americans with a profamily, progrowth tax cut this year.

Madam President, 2 weeks ago Bill Clinton sent to Congress a proposal that embraces the central themes of this Republican budget. It cuts spending. It limits the growth of entitlements, and it provides Americans with relief from excessive Federal taxes. In short and in many ways, the President's budget alternative vindicates Republican efforts to balance the budget. While the plan falls short of its goals, which has been quantified by the Congressional Budget Office, I still think it is a good start in the right direction. I also hope that the President now will support other Republican efforts to create jobs and strengthen our economy, and I look forward to working with the administration to do so.

Madam President, this budget resolution takes a historic step toward balancing the budget by slowing the growth of Government and returning power to the States. It is a credit to Senator DOMENICI and to the members of the Budget Committee and to the leadership, I think, that we have set this goal and stuck with it.

As is the case, I know, with the President and many others in this Chamber, there are parts of this budget resolution that I wish were different. There is an area, for example, in the student loan area where I wish it were different, closer to something that I had worked out before.

But I think it does an extraordinarily good job of ordering priorities and reaching the commonly held objective of bringing the budget into balance,

and it is the reason that I strongly support what we are attempting to do today and tomorrow.

The question before Congress is not just about dollars and cents, revenues and outlays. The question confronting us is whether this will be the first generation of Americans that fails to pass on to our children as much freedom and opportunity as we inherited from our parents. Like many other new Republicans in Congress, I ran for the Senate promising to fight for an agenda that would guarantee my children and their generation more freedom and opportunity. This budget, I think, keeps those promises, because it guarantees that the freedoms and opportunities for future generations are greater than ever. I look forward to working with the President and, hopefully, congressional Democrats to get this job done.

We heard earlier today numerous people comment on the implications of this budget. The previous speaker was quite eloquent in trying to outline his view of America and where he thought this budget would take us. He talked about his family and their experiences in this country. I would just like to close by talking about my family.

My grandparents were all immigrants. They came to this country about a century ago in search of freedom. None of the four could speak English. Probably cumulatively the four had about $5 in resources when they got here. But they came to this country because they wanted to live in a country that was free and they wanted their kids and their grandchildren and future generations of their family to live in a nation that was free.

They did not come here seeking a nation for the purpose of finding a place where there were great Government benefits. They believed in their own capacities to do things, and they wanted a place where they would have a chance to enjoy the freedom to do the things they want.

My parents were very hard-working folks. Neither of them had a college education. They were not really well educated, in fact, but they cared an awfully lot about their children and they wanted my sisters and me to have a little more opportunity than they did.

My dad worked for almost 20 years as a UAW member on an assembly line in Lansing, MI, in an Oldsmobile factory, and he and my mom had a small business after that. They worked very hard, 6, sometimes 7 days a week, to give my sisters and me a chance to have the other part of the American dream—freedom and opportunity.

I think what they envisioned for my generation and what I think they all wanted for my children's generation was a chance to grow up in a nation that provided these opportunities. I sincerely believe that if we burden the next generations with an ever-increasing amount of debt, we will not pass on the kind of freedom that my grandparents came to this country to find and that my parents tried to pass on to my sisters and to me.

I just will close by saying this. We heard a lot of talk about compassion and which party has the ability to provide it and what this budget will do. But just remember, Madam President, that in this budget, we will be spending over the 7-year period involved something in the vicinity of $12 trillion of taxpayers' money, of moneys sent to us by hard-working people across this country. We are a very compassionate Nation, I think, and we are spending most of those dollars in one way or another on programs which benefit people who are less fortunate.

So I think we are a compassionate Nation. If we continue to provide the people with the freedoms and the incentives to pursue their entrepreneurial instincts and pursue the kind of opportunity my grandparents came to this country to find, we will get the job done.

I cannot imagine, in a nation that does as much, how we can ever get to the floor and suggest we are not compassionate, our programs are not effective. I think this budget allows us to continue providing support for people who are truly needy but, at the same time, make it possible for people to enjoy the freedom and opportunities in America.

So I strongly support what we have done and look forward to working to adopt this resolution.

At this time, I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Madam President, I yield 10 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I am struck sometimes, in listening to the discussion on the floor of the Senate, by some Members of the Senate who think that it is always intrusive to ask someone in this country to pay taxes; that it is, after all, their money and they should not be required to send it, and the only reason the Congress asks them to send it is so the Congress can squander it on one thing or another.

The fact is, in our country, we do a lot of things together. When we do things together, there is an obligation for all of us to pay for it—educating our kids, building our roads, paying for our police and fire protection, and providing for the common defense of our country. That is what we must do in our country, and all of us have an obligation to pay for some of that. And we do that through taxes.

None of us enjoys it, perhaps, but I happen to consider the taxes I pay a good investment in my children's education. I am pleased I do. I happen to consider the taxes that I pay something that I am proud to do to support the men and women, for example, who serve in our Armed Forces and risk their lives in defense of this country's liberty and freedom. So I think we ought to talk about what is it that makes a good country and what are our obligations to each other and to our country.

About 6 months ago, I went to Dulles Airport to meet an airplane. I had about a month or two prior to that been watching television and saw on television a young woman in Bosnia whose parents had been killed, who had been critically wounded herself, and who lay in a hospital for some long while. Her brother, in the same attack that killed her parents and critically wounded her, was miraculously spared, and he was able to come to the United States. She, on the other hand, when she recovered from her wounds, after laying in critical condition, having lost her parents and then her brother having been taken from her, was living in a single room with a candle trying to study, despondent over losing her family.

I decided I was going to see if I could help this young woman somehow, and I did. She came to the United States, and I picked her up at Dulles Airport and reunited her with her brother. Coincidentally, this happened 1 year to the day after my daughter had died.

I was thinking on the way to the airport to meet this young woman from Bosnia who had suffered from such tragedy a lot of things that were very emotional for me, because we could not do much to save my daughter, and yet I thought perhaps I was helping some other young woman start a new life. I felt at least in some ways maybe there was some opportunity to reach out.

Her plane arrived and she got off the plane and was overcome with emotion as she met her brother, whom she never expected again to see. She cried and was extraordinarily emotional. When we were talking after this, she said to me, ''It was only something I barely was able to dream about, that I might some day ever come to the United States of America. You don't have any idea what this means to someone to be able to come to the United States of America. We view the United States as a land of opportunity, as a place where opportunity exists to live a good life and live in peace and live in freedom.''

I thought to myself, when she said that through her tears, that all of us in this Chamber, I think, and probably all of us in this country from time to time, take too much of this country for granted. If by chance we are able to hear from others what this country means to them, we can understand again what our great grandparents and grandparents and our parents helped build in this country. It is a pretty remarkable, special, unusual place. This is a superpower, a world economic leader. It did not start that way. But because of genius in people, because of a free market capitalist system, because of businesses that took risks, and, yes, even because of Governments that did

things and invested the taxpayers' money and also provided opportunity, this country has progressed. We led the way.

We, as we moved along, decided there is a right way and a wrong way to do things. The captains of industry in the turn of the century were producing tainted meat with rat poison. Upton Sinclair wrote his book about how they killed rats by lacing the bread with arsenic. He said they would shove the bread and rats down the chute and it would get mixed in and they would produce a mystery meat that would end up on the shelf. We decided we did not want to eat tainted meat.

We also decided we did not want to pollute our air. In the last 20 years, we are using twice as much energy and we have cleaner air. Is it because the captains of industry said we are going to spend money to clean up emissions? No, it is because people here in the Senate and across the way in the House said there is a right way and a wrong way to do things. We said we were going to require less pollution. Yes, it will cost a little more. But we have cleaner air now than we had 20 years ago, and we have cleaner water than we had 20 years ago.

Is it a nuisance to comply with all of that? I suppose so. Is it good for our kids to leave this country in better shape? You bet it is. The Government provided leadership and did the right thing. We have to provide the leadership in fiscal policy as well. Do we not have to balance the Federal budget? You bet. There is no question about that. There ought not to be one scintilla of debate on the floor of the Senate on the question of whether we should put our fiscal house in order. The question is not whether we should, the question is how. There is a right and a wrong way to do that as well.

The Federal budget represents our priorities. One hundred years from now they can look at the budget and figure out what the people in this country thought was important to them. They can determine that just by looking at what they decided to spend money on. I know it is easy to criticize. I do not mean to be critical. As has been said, ''Any jackass can kick a barn door down, but it takes a carpenter to build one.'' Yet, I must be critical of the priorities in the budget. I think they are wrong.

I want to balance the budget. I have supported initiatives to do so. But I do not think we ought to make it harder for kids to go to college. That is what this budget does. I do not think we should do it by deciding that health care is going to be more expensive for the poor and elderly. We do not advance the economic interests of this country when we decide a poor child at school should not be entitled to a hot lunch, but the richest Americans are entitled to a tax cut. That does not make sense for this country.

This is a debate about priorities. I have been watching people break their arms patting themselves on the back today for a balanced budget. I only observe that if you take this document that is on every single desk in the Senate and turn to page three, look at the heading called deficits, and look at the year 2002, you will see that in the year 2002, on this majority party budget deficit document, it says the budget is not in balance. It is, in fact, a $108 billion deficit.

I have a standing offer of $1,000 of Senator ROCKEFELLER's money—because he has a little more than the rest of us, so he would provide $1,000 of his money to anyone—to any Member of the Senate or any journalist who would demonstrate to us that this budget is in balance. I made that offer 24 hours ago, and nobody has taken the $1,000 dollars yet, and nobody will, largely because this budget is not in balance. Everybody in this Chamber knows it. Yet, they are spending most of their time complimenting themselves on doing something they have not done. That might be fun for them and might eat up some of their time, and it might even convince some people it is in balance. But those who have taken simple arithmetic and who can read page numbers can simply go to page 3 and understand that it is not in balance.

Again, I say, about priorities, that the priorities here are not the right priorities. We can, should, and will debate the priorities. And, in my judgment, it is investing in our children's education. It is in balancing the budget, but doing so in a way that spends money that is productive, that yields investments.

If I have 1 or 2 minutes left, I want to tell a story I have told before. It represents what I think is the future of this country. The oldest Member of Congress, when I came here, was Claude Pepper. I went to his office to meet him. Behind his desk were two pictures on the wall. One was of Orville and Wilbur Wright taking their first flight. You know, it was autographed. That is how old Claude was. It said, ''To Congressman Pepper with deep admiration.'' He came to Congress in the 1930's and was still here in the 1980's. Beneath the autographed picture of Orville and Wilbur Wright making their first flight was a picture of Neil Armstrong standing on the Moon.

What was it in that relatively short period of decades that produced people that went from the ground to the air to the Moon? Education and genius. It was massive amounts of education in our country, allowing people to become the best they can be—engineers, scientists, and more. It was not just going to the Moon; it was progressing in so many other areas. Why? Because we made the right investments. We understood the right priorities.

The right priorities, in my judgment, are this country's children. This budget short-changes America's children. Someone once said that 100 years from now your income will not matter, or how big your house was, but the world might be a different place because you were important in the life of a child.

The question for us about priorities is: Will we pass a budget that is important in the lives of America's children? If we will, it will not be this one because its priorities are wrong. We can do much better, and will, if we reject this budget, reject the tax cuts for the rich, reject more money for defense, and invest more in America's kids, and make sure we take care of the things that are important in this country.

I yield back the entire balance of my time.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Madam President, I rise today in support of the budget agreement. I want to congratulate Senator DOMENICI. I want to congratulate Congressman KASICH. It is very seldom in American politics that you get an opportunity to vote for a big bill—a budget in this case—that takes a step toward fundamentally changing the way our Government does its business.

I am not saying that this is the be-all and end-all of budgeting. I am not saying that this budget in and of itself is going to fundamentally change the future of America. But I am saying that it is an important step in the right direction. It is clearly the most dramatic and important budget that we have adopted in the U.S. Congress since 1981.

I believe that the American people will be beneficiaries of this budget. And it is not perfect, from my point of view. I think we could have cut spending more. I think we could have let working people keep more of what they earned. I think we could have done more to change fundamentally American Government. The bottom-line truth is that this is a dramatic change in policy, and I think everybody who has had anything to do with this budget can be proud of what they have done.

Let me set in perspective what we are doing here today. We are writing, over a 7-year period, a binding budget that, if enforced over that 7-year period, will balance the Federal budget. That is something that we have not done since 1969.

The important thing to note about this budget is that we are not promising to do things in the future that will balance the budget. What we are doing in this budget, and in the follow-on legislation that we will adopt this year, is we are making changes now that will, over the next 7 years, if the economy stays roughly as we now anticipate it will stay, in a modest recovery mode, balance the Federal budget and will, for the first time in over a quarter-century, mean that the Federal Government is living within its means. That is a very important change in public policy. What did it take to achieve this change?

Some of our colleagues on the other side of the aisle are going to talk about deep cuts, about denying benefits, but let me try to set that in perspective.

Since 1950, Federal spending has grown, on average, about 7½ percent a year. Federal spending since 1950 has grown 2.5 times as fast as family income has grown.

An interesting number is, that if the family budget since 1950 had grown as fast as the Federal budget has grown, and if the Federal budget had grown as fast as the budget of the average family in America has grown, the average income of working families in America today would be almost $130,000 a year and the Federal Government would be one-third the size it is today.

Given a choice between the America we have and that America, I would take the America of higher family income and smaller government.

What we are doing in this budget is limiting the growth of Federal spending to no more than 3 percent a year, each year, for the next 7 years.

Now I know we have many people on the other side who will say, well, after having grown at 7½ percent a year for 40 years that to limit the growth to 3 percent a year is going to decimate Government programs.

I would just like to remind my colleagues that every day in America, businesses make tougher decisions than that just to keep their doors open. Every day in America, families make far tougher decisions than that in dealing with the real world problems that families in America face every single day.

The difference is that families and businesses live in the real world in America where you have to make tough choices. Our Government has not lived in the real world for the past 40 years. I think we can take a little pride in the fact that this budget is a major step toward bringing our Government in Washington back into the real world that everybody else lives in.

Under the old budget, under the Clinton budget, the Federal Government over the next 7 years would have spent $13 trillion. Under this budget, we are still going to spend $12 trillion. We are talking about spending roughly $1 trillion less than we would have spent.

But we are talking about more than simply controlling the growth of Government. We are talking about something that I fought for in the Senate. I offered an amendment to cut spending further so we could let working families keep more of what they earn. That amendment was not successful. But I am very proud of the fact that the conference accepted, basically, a variant of the House language that allows working families to keep more of what they earned.

In 1950, the average family with two little children in America sent $1 out of every $50 it earned to Washington, DC. Today that average family with two children is sending $1 out of every $4 it earns to Washington, DC.

I do not think there are many people in America that believe that Washington is doing a better job of spending that family's money than that family would do if we let them keep more of what they earn, to invest in their own children, in their own family, in their own business.

I am very proud of the fact that we are making a major step in this budget that is going to let us enact a $500 tax credit per child so that families can spend more of their own money on their own children on their own future.

In our tax cut, we call for a cut in the capital gains tax rate. I know the President says if you cut tax rates, rich people will exploit the situation. They will invest their money. If they are successful they will earn profits.

Welcome to America. That is how our system works. We want to encourage more people to invest money. I do not understand a country and a Government and people who love jobs but hate people who create them. I do not understand all this class warfare that we are always debating about. If we want people to invest money, we have to provide incentives to people who have money. Those are basically people who have been successful.

What a different world our President is from than the world I am from. When I was growing up and we rode by the nicest house in town, never once did my mama point her finger out and say, ''We ought to tax those people, and give us their money.'' My mother always pointed her finger out and said, ''If you work hard and you make good grades, you can have a house like that.'' I like my mama's America a lot better than I like Bill Clinton's America.

I am proud of the fact that in our budget we provide incentives for people to invest their money to create jobs and growth and opportunity so that other Americans can get their foot on the bottom rung of the economic ladder and climb up and begin to create success for themselves, their family, and their country.

This tax cut that we are talking about in this bill sounds like a small amount of money in Washington, DC, $500 per child. Many have said, well, it is not enough money to make any difference. Well, to a two-child family in Texas, that is $1,000. And $1,000 is real money. The fact that $1,000 is not real money in Washington, DC, tells more about the problems in Washington, DC, than it does about anything else.

The tax credit for children that we contemplate in our budget will mean that a family with four children, that makes $35,000 a year, will be taken off the income tax rolls. A family with two children that earns $45,000 a year, if we go on now and adopt the tax cut that goes with this budget, will see its income taxes cut by one-fourth.

This will mean that working families can keep more of their own money to invest in education, in housing, in nutrition. The President, in criticizing our budget, says this budget cuts spending on children. This is not a debate about how much money we spend on children, but it is certainly a debate about who will do the spending.

President Clinton and the Democrats want the Government to do the spending. We want the family to do the spending. We know the Government and we know the family. We know the difference.

We believe that letting families keep more of what they earn to invest in their own children will mean that they will do a better job and they will be richer and freer and happier.

When we concluded the debate on this budget, I was concerned that we were not going to fulfill the promises that Republicans made in the campaign.

We promised the American people three things if they made Republicans the majority: No. 1, we would balance the budget; No. 2, we would let working families keep more of what they earn; No. 3, we would provide incentives for economic growth. I am proud of the fact that in this final budget we are balancing the budget over a 7-year period. We are letting families keep more of what they earn. We are providing incentives for economic growth.

Promises made, promises kept. That is something that there has not been enough of in Washington, DC. I am very proud to have been part of an effort where we have fulfilled our promises and where we are, in fact, beginning to change the way our Government does its business. I served in the House and in the Senate. I have never had an opportunity to vote for a budget that if fully enforced, under realistic assumptions, would do the job of balancing the Federal budget. I am very proud that I am going to have an opportunity to cast my vote for this budget. It may very well be that 2 years from now or 4 years from now we will have to go back and make an adjustment. It may very well be that we will have to reduce the growth in spending further at some point to get the job done. I am certainly willing to do that.

The important thing today is—and I think every Member of the Senate, whether they vote for this budget or not, can be proud of the fact—that we have written a budget that is a fundamental change. This budget would never have been written had the 1994 elections not been held, had there not been a fundamental change in the makeup and control of Congress.

But we are writing, today, a budget that under realistic assumptions will balance the budget over the next 7 years. It represents a change in policy. It represents the fulfillment of a commitment that we have made to the American people. I think every person who is privileged to serve in the Senate today can be proud of the fact that this budget does what the American people wanted done, change the way we do business in Washington.

It does not complete the job. In and of it itself today, it does not balance the budget. But it lays the foundation for a 7-year program that if we stay with it, if we are willing to make

changes when things go wrong—and they inevitably go wrong—with modest adjustments over the next 7 years, we can guarantee the American people that we will balance the Federal budget, and if things go well, we can do it without further action.

I think that is a tremendous achievement. I am very proud to have played a small role in it. I congratulate Senator DOMENICI. I congratulate Members of the House and Senate. And I am delighted to have an opportunity to cast a vote for this budget.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Madam President, I yield myself 10 minutes.

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

Mr. SIMON. Madam President, there is credit to be spread around. And there is blame to be spread around, for the deficit and where we are. I thought Senator DORGAN's remarks earlier were right on target. It is why I am proud to have him as a Member of the U.S. Senate.

The Republicans, and I specifically commend Senator DOMENICI, deserve credit for having the target of balancing the budget. The Democrats, on the other hand, I think, have the right priorities, and the priorities that we are offered in this budget are not the priorities that the Nation needs.

I add that I would feel much better about this if we had a balanced budget amendment. I would feel better because we would have interest at least 1 percent lower and that means, over a 7-year period, $170 billion to spend on things that are needed in this country. And the irony is that some of the groups that fought the balanced budget amendment are now having their programs hurt because we do not have a balanced budget amendment. We need it also because our history is that when we adopt a program like this we keep it for about 2 years, as in Gramm-Rudman—which I voted for—and then it becomes too politically awkward, and we lose it.

What is wrong in terms of the priorities that we have? For national defense, we increase spending. We already are spending more than the next eight countries in the world combined. If you go back to the 1973 defense budget and add the inflation factor, we end up spending more money in fiscal year 1996 than we did in fiscal year 1973, and the Berlin Wall has fallen. You would never guess it, looking at the budget. In 1973, we had troops in Vietnam. In 1973, we had almost twice as many troops in Europe. In 1973, we were building up our nuclear arsenal. Now we are buying, including buying weapons the Defense Department says we do not need—B–2 bombers. They tell us it is a white elephant, yet we are going to go ahead, I assume. We will have a vote on it, not with my vote, but we will go ahead and have B–2 bombers. We are going to spend $59.8 billion in an increase over where we are right now on national defense.

International affairs, foreign aid. I recognize it is not popular. But among the industrial nations of the world, do you know where we are in terms of percentage of our budget that we spend on foreign aid? We are dead last. And the great threat today is not a military threat. I want a strong military, but the great threat is instability. And we are saying in our budget we want to keep that military option as the greater option to the economic option. It does not make sense.

What other nations today worry about is, frankly, not whether we have the equipment technology and the manpower to respond. The question is whether we have the backbone in the administration, in Congress, in the American people, not in our Armed Forces. Cutting back foreign aid, though it is politically popular, it is extremely shortsighted.

Education? I commend the Presiding Officer, the junior Senator from Maine, for her amendment which added money back in for education. Yet, this budget cuts back education a total of $67 billion. Every study—conservative, liberal, you name it—says what we ought to be doing for the future of our country is we ought to be investing more in education. Yet this budget does the opposite.

Medicaid? We hear a lot of Medicare. I agree with my colleagues who make the speeches on Medicare. But frankly, I am more concerned about Medicaid because Medicaid is poor people. When we reduce the spending on Medicaid $182 billion, let us keep in mind, half the people on Medicaid are children, poor children. Would the people of the United States want us to cut back on that? I do not think so.

Tax cuts? I disagree with the Republicans. I disagree with the Democrats on tax cuts. I do not think we ought to be having tax cuts when we have deficits. Would I like a tax cut? Of course. We all like tax cuts. But if I give myself a tax cut, I know I am hurting the future of my three grandchildren. Faced with that option, the American people do not want a tax cut. Yet, both political parties are pandering—that is what we are doing, pandering—on the tax cut. The Senate, assuming that you had interest reduction, would have given a $170 billion tax cut; the House, $345 billion; the conference is $245 billion. Are we better off applying that to the deficit or applying it to education? I think, very clearly, the Nation would be much ahead if we applied it to the deficit or to education.

I ask unanimous consent, Madam President, to have printed in the RECORD a column by Robert Samuelson that appeared in the Washington Post called ''Macho Tax Cuts,'' and a New York Times editorial, ''The Rich Get Richer Faster.''

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

MACHO TAX CUTS: DON'T BELIEVE IT, THEY'RE ACTUALLY TINY AND UNDESIRABLE

(By Robert J. Samuelson)

Among Republicans, cutting taxes has always been macho. Writing recently in the Wall Street Journal, House Speaker Newt Gingrich said the case for tax cuts rests on the ''key principle'' of the Contract With America, which is: ''The American government's money does not belong to the American government. That money belongs to Americans, and it's time to give Americans some of their own money back.'' It will surely surprise most Americans to know that, once they've paid their taxes, the money still belongs to them. But if so, why be timid? Give all of it back. End taxation. Period.

The silliness of this rhetoric emphasizes the undesirability of instant tax cuts. Taxes are the price of government; they shouldn't be cut unless the budget is in surplus. The populist pap that tax money belongs to ''the people'' is simply the latest of many pretexts, advanced by both parties, to prolong budget deficits. The money belongs to ''the people'' until ''the people'' divert it to government for purposes that, presumably, serve their needs. If Americans want lower taxes, they'll have to ordain smaller government.

These arguments are now relevant because, in the current House-Senate conference to write a budget, tax cuts loom as the largest disagreement. Between 1996 and 2002, the House would cut taxes by $354 billion; the Senate would reduce taxes only if balancing the budget provides extra revenues through faster economic growth. The tax cuts taint otherwise courageous budget proposals. Although the Republicans' plans can be faulted on details, they broach the critical—often unpopular—choices that must be faced to control spending and deficits.

By contrast, the instant tax cuts feed the illusion that people don't have to pay for government. It is, ironically, the House Republicans who best discredit this false logic. In a new book (''Restoring the Dream: The Bold New Plan by House Republicans''), they call a balanced budget a ''moral imperative'' to avoid burdening ''our children and our children's children'' with a huge federal debt. If so, what's the excuse for adding $354 billion to that debt, which under the House plan would grow to $4.5 trillion in 2002, up from $3.6 trillion in 1995?

One possible excuse is that Americans need to be bribed, via lower taxes, to accept unpleasant spending cuts. Although this is plausible, some public-opinion surveys actually suggest just the opposite. A recent NBC/Wall Street Journal poll asked respondents to select priorities: Deficit reduction (54 percent) ranked ahead of tax cuts (37 percent). A CBS/New York Times poll similarly asked respondents to choose deficit reduction or tax cuts: 56 percent picked lower deficits and 40 percent lower taxes.

Mostly, the tax cuts indulge partisan symbolism—''hey look, we shrunk government.'' In fact, this is highly misleading, because the tax cuts would be tiny. They would average about 3.8 percent for individuals and families, estimates the Joint Committee on Taxation. In 2002 the federal tax burden would be 18.2 percent of our economy's output (gross domestic product), says the House Budget Committee. If taxes weren't cut, the tax burden would be only 18.8 percent of GDP. (Indeed, the tax burden has been highly stable since World War II. It averaged 17.6 percent of GDP in the 1950s and 19 percent in the 1980s.)

The $354 billion of tax cuts are so small because, in the same seven-year period, federal spending would total about $12 trillion. For many Americans, the tax cuts would be trivial or nonexistent. There's a $500 tax credit

for each child under 18 in families with less than $200,000; but that wouldn't affect 77 percent of taxpayers, says the Joint Committee. There's modest relief (up to a $145 credit) of the so-called marriage penalty, but that would apply to only about 11 percent of taxpayers.

The obvious danger is the tax cuts could prevent a balanced budget. The House plan rests on optimistic assumptions. Economic growth is expected to rise and interest rates to fall. They might not. Spending on Medicare—federal health insurance for the elderly—is assumed to slow sharply. Even if (a big if) legislation is passed to curb Medicare, the desired savings might no materialize. Health spending has routinely resisted precise forecasting.

The drive for lower taxes may also impel unwise spending cuts. Defense is the federal government's first responsibility. Is it adequately financed? Maybe not. It would be virtually frozen for seven years with little adjustment for inflation. In 2002, defense spending ($280 billion under the House plan) would be about $45 billion below the present ''base line.'' Republicans would also transfer, via block grants, welfare, Medicaid and, possibly, some food programs to states. But if block grants are set too low, states will have to raise taxes or cut services sharply.

It is imprudent to cut taxes before the consequences of these policies are better understood. Finally, tax cuts are simply unfair before the budget is balanced. Until then, they would mainly represent a transfer from the poor (whose benefits are cut) to the well-to-do. About half the tax cut of the House bill would go to the eighth of taxpayers making more than $75,000 a year, who also pay about half the taxes. Naturally, these people tend to vote Republican while the poor don't.

The politics are straightforward, but in a cynical age, they may not be shrewd. By and large, Americans see through rhetorical ruses. If tax cuts are passed, people will ultimately grasp that they don't amount to much. They will feel (correctly) misused, especially if deficits persist. The dilemma for House Republicans is that, having made an unprincipled promise to cut taxes, they cannot change without seeming to break their word. But it is better to admit a mistake than to perpetuate it.

A balanced budget aims to restore discipline to government—to revive traditional notions that choices must be made, that people must pay for what they get and that government must live within limits. Such discipline is not just an accounting exercise. It is also a moral code. It takes government seriously and seeks not only to eliminate what it can't (or shouldn't) do but also to improve what it should (and can) do. A lot of Republicans aren't there yet; they're too busy, in Tarzan fashion, thumping their chests and screaming: ''Me Tax Cutter.''

[From the New York Times, Apr. 18, 1995]

THE RICH GET RICHER FASTER

The gap between rich and poor is vast in the United States—and recent studies show it growing faster here than anywhere else in the West. The trend is largely the result of technological forces at work around the world. But the United States Government has done little to ameliorate the problem. Indeed, if the Republicans get their way on the budget, the Government will make a troubling trend measurably worse.

Some inequality is necessary if society wants to reward investors for taking risks and individuals for working hard and well. But excessive inequality can break the spirit of those trapped in society's cellar—and exacerbate social tensions.

After years of little change, inequality exploded in America starting in the 1970's. According to Prof. Edward Wolff of New York University, three-quarters of the income gains during the 1980's and 100 percent of the increased wealth went to the top 20 percent of families.

The richest 1 percent of households control about 40 percent of the nation's wealth—twice as much as the figure in Britain, which has the greatest inequality in Western Europe. In Germany, high-wage families earn about 2.5 times as much as low-wage workers; the number has been falling. In America the figure is above 4 times, and rising.

Interpreting these trends requires caution. Inequality rose here in the 1980's in part because the United States created far more jobs—many low-paid—than did Western Europe. Low-paying jobs are better than no jobs. Rising inequality in the United States has also been caused in substantial part by middle-class families that moved up the income ladder, opening a gap with those below them.

About half of Americans move a substantial distance up or down the income ladder over a typical five-year period. In a mobile society, where workers rotate among high- and low-earning jobs, earnings gaps are less frightening because any given job would be less entrapping.

But mobility has offset none of the increased inequality in income. Studies at the Maxwell School at Syracuse University show that mobility in America is not higher than in Germany. Nor does mobility here appear to be higher today than it was in the early 1970's.

The best guess about the factor behind burgeoning inequality is technology; the wage gap between high- and low-skilled workers in America doubled during the 1980's. College graduates used to earn about 30 percent more than high school graduates, but now earn 60 percent more. Prof. Sheldon Danziger of the University of Michigan estimates that trends in private pay rates explain about 85 percent of recent increases in inequality; Reagan-Bush tax cuts for the rich and spending cuts for the poor explain much of the other 15 percent.

But even if government is not the main actor, it could be part of the solution. Changes in the Canadian economy during the 1980's also hit hard at low-wage workers. But there the Government stepped in to keep poverty rates on a downward path. In the United States, poverty rose.

House Republicans are now pushing the Federal budget in the wrong direction. At a time when employers are crying out for well-educated workers, the G.O.P. proposes to cut back money for training and educational assistance. America needs better Head Start, primary and secondary education. It needs to train high school dropouts and welfare mothers. The G.O.P. policy would leave the untrained stranded. That would harm the nation's long-term productivity—and further distort an increasingly tilted economy.

Mr. SIMON. Madam President, the goal of balancing the budget is noble. I applaud that. I joined the Republicans when that vote was established in the Budget Committee. I went over and voted with the Republicans for that. The priorities that we have in this budget, however, are wrong. I think we will have to reexamine this as we move into reconciliation, as we move ahead. I will be here a year and a half. Within a year after I get out of this body, we will be shifting away from this goal unless we change the priorities. I think the goal is one we ought to be fighting for, and I hope we will shift the priorities.

(Mr. GRAMS assumed the chair.)

Mr. SIMON. Mr. President, I have how much time remaining on this side?

The PRESIDING OFFICER. The Senator from Illinois has 4 minutes and 45 seconds.

Mr. SIMON. Mr. President, if someone on this side wants to take the time now, fine. Otherwise, I will yield that remaining time. I yield the time that remains to the Senator from Washington, and I ask unanimous consent that I be allowed to yield an additional 4 minutes to the Senator from Washington from the 6 hours remaining under the statute on the budget resolution.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. It is not clear from that when my colleague would want that time. Does he want that time tonight?

Mr. SIMON. Now. We are talking about yielding 10 minutes to the Senator from Washington now.

Mr. DOMENICI. We have been asked by the Republican leader—you have 4 minutes. We have 2 minutes. Is that correct? The Senator can yield that 4 minutes to her right now. Or he can wait and do a bigger package.

Mr. SIMON. The Senator from Washington indicates she would like to wait and take it a little later then.

Mr. DOMENICI. The Republican leader is here. If the leader would not mind, I have 2 minutes in which I would like to respond. Then we will yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have 2 minutes left. I will take it now. I understand the other side will yield back this time, and we will give the floor to the Republican leader at that time.

Mr. President, I think perhaps with all of the things said on that side of the aisle, I would like to make two points. It has always been a problem with bodies such as this, legislative bodies in which everybody seems to be for the same idea, everybody seems to say we want to get to the same place. But the difficulty is to get them to go to that place following the same path, to decide they want to do some tough things and to concede and compromise along the way.

So, Mr. President, I did not expect this U.S. Senate to unanimously agree on a balanced budget and then say we were doing it the right way. So Americans should understand that is the way it is always done in bodies such as this. Everybody agrees on some principles, but how you get there only Senators can decide.

Second, the question has been asked on whose side is this budget or whose side are we on? Mr. President, I say to the Senator and to the American people, this budget is a budget for all Americans. We do not believe we want to pick and choose. We want a budget that is good for our country, we want a budget that is good for Americans, and we want a budget that is good for our

children and for our grandchildren and children not yet born. We are convinced we cannot spend on the programs that are currently part of America at the same level, and give everybody everything they are getting under current programs, and be a budget that is good for all Americans, because the debt will continue, the interest rates will go up. And what it all boils down to it is that Americans will pay in the end with less of an economy, less good jobs, and less opportunities.

So I answer the question posed on that side of the aisle with a great deal of pride, that this budget is good for America and the people of America. We are not picking and choosing. We are producing a budget that will make America a better place for everyone.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BAUCUS. Mr. President, I rise in opposition to this conference report.

When Senator DOMENICI's budget resolution passed the Senate, I said it was a good accountant's budget. That is, it had the right bottom line, and it made some tough choices by eliminating Cabinet Departments and reducing spending. But in the end, it failed the test of priorities and values.

It cut Medicare service by $256 billion, which would reduce the essential Medicare health services for older Americans by nearly a quarter and place intense financial pressure on their children. And it weakened our future prospects by cutting education severely.

At the same time, the Senate budget left in place wasteful Federal projects like courthouses, foreign spending like the so-called TV Marti, and luxury items like space telescopes. At the same time, it provided a large tax cut whose benefits went primarily to wealthy individuals and corporations rather than middle-income Americans.

So I voted against it. But I hoped that with some changes in these priorities areas it could be made acceptable.

Unfortunately, the opposite has happened.

Medicare will be cut by an additional $14 billion, threatening the well-being of Montana's 125,000 senior citizens and the survival of Montana's rural hospitals.

Support for agriculture will decline by an additional $1.4 billion to a total of $13.3 billion over 7 years. Per farm, that means agricultural supports will fall by $1,000 every year for the next 7 years. And with 85 percent of American farms grossing under $100,000 per year, we will see a severe cut in income all over rural America.

Education will be reduced by $10 billion, meaning our children will be less able to compete with our trade rivals abroad.

And wealthy people will get $75 billion more in tax breaks, which comes directly from senior citizens, rural hospitals, agricultural producers, and investment in education.

Finally, it is no longer a good accountant's budget. Senator DOMENICI's sober projections have been replaced by unrealistic rosy scenario assumptions about growth, interest rates, and so on. It is far less likely to lead to a balanced budget.

So this budget is significantly worse than the version the Senate voted on last month. It is less disciplined. Less far-sighted. And more damaging to senior citizens, rural America, and our future.

I oppose it, and I urge the conference committee to go back to the drawing board and start over.

Mr. EXON. How much time is remaining on our side?

The PRESIDING OFFICER. Three minutes twenty seconds.

Mr. EXON. I ask unanimous consent that we be allowed to reserve that time for later in the debate without further charging to this side of the aisle.

How much time is left on the other side?

The PRESIDING OFFICER. Five seconds.

Mr. DOLE. Five seconds?

The PRESIDING OFFICER. That is correct.

Mr. DOLE. We will yield that back.

[Laughter]

Mr. EXON. We do not yield ours back at this time.

UNANIMOUS CONSENT AGREEMENT

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I have been conferring throughout the day with the distinguished Democratic leader, Senator DASCHLE. I think we have an arrangement that will satisfy most of our colleagues on both the budget and regulatory reform and the program for the remainder of the week.

So I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 118, S. 343, the regulatory reform bill, and we have 1 hour of debate on S. 343 commencing as soon as we obtain the consent.

Mr. DASCHLE. Mr. President, reserving the right to object, I will not object, but simply to clarify what I understand to be the circumstances.

Senator DOLE, the majority leader, and I have been talking about the opportunity for Senators to discuss the issue of regulatory reform and to do it in the context of S. 343 for the next hour. Then it would be our assumption that we could go back to it again sometime tomorrow and discuss it further. But it is also our understanding that there will not be any amendments offered during this time, to accommodate the effort that is now underway on both sides in good faith off the floor to try to continue to work through some of the disagreements that may continue to exist with regard to the draft that Senator DOLE and Senator JOHNSTON and others have been working on.

It is with that understanding that I think this would be a very good approach and would offer no objection at this time.

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

Mr. DOLE. Mr. President, let me thank the distinguished Democratic leader.

There has been some progress. There have been a number of meetings. I am not certain whether either one of us can stand here and predict that everything is going to be worked out. I would guess the odds are that probably not everything is worked out. But we had a bipartisan press conference today. We think there is an opportunity here for a bipartisan improvement. We may reach a point where we have to say, OK, we will offer amendments and have the debate, up or down, and then proceed with the bill in that fashion.

Mr. DASCHLE. If I could just clarify the majority leader's understanding as I have stated it, is that correct?

Mr. DOLE. That is correct.

I ask unanimous consent that between now and 5 p.m. we debate S. 343, and that the time be equally divided and then we go back to the budget resolution, and all time consumed this evening be subtracted from the statutory time limitation on the budget resolution.

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

SCHEDULE

Mr. DOLE. So, for the information of all Senators, there will be no further votes today. When the Senate completes its business this evening it will stand in recess until 9 a.m. on Thursday June 29, 1995; following the prayer, the leaders' time will be reserved, and there will be a period for the transaction of routine morning business not to extend beyond the hour of 10:30 a.m.

As I understand, there will be a Democratic caucus in the morning at 9:30. So, I think there are requests for morning business. Then perhaps following that caucus the two leaders would have further conversation. Hopefully, we could proceed again for a period of time on S. 343, regulatory reform.

Then also, depending on the House action on the budget conference report, we could eat up more time than the 10 hours. We now have 6 hours remaining on the budget, as I understand it.

So there will be no more votes tonight. We will try to accommodate many of our colleagues who must travel long distances and who would like to depart tomorrow evening. It is our hope that we could work that out. There may be a rescissions package. I understand it is still in negotiation with the White House, with Senator

HATFIELD and Senator BYRD on this side and their House counterparts. If that can be done, I hope we can get an agreement on the Senate side that we do it by consent. Otherwise, it would be open to amendment and we would be here for days. But I believe that if the White House, the President, and bipartisan leaders on appropriations can agree on a package, perhaps we could obtain consent to do that. If we had to do that Friday morning, perhaps we could do it without a vote.

Mr. DASCHLE. That would be my hope as well. We have a lot of Senators we are trying to accommodate. This is an important effort. It has been under way now for a couple of weeks. We are so close, it would be nice to finish it and be convinced that it is our best product. Indeed, I think it would be.

The PRESIDING OFFICER. Without objection, the foregoing requests are agreed to.

COMPREHENSIVE REGULATORY REFORM ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 343) to reform the regulatory process, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs to strike out all after the enacting clause and inserting in lieu thereof the language shown in italic; and from the Committee on the Judiciary with amendments as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

[SECTION 1. SHORT TITLE.

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

[SEC. 2. DEFINITIONS.

[Section 551 of title 5, United States Code, is amended—

[(1) in paragraph (13), by striking out ''; and'' and inserting in lieu thereof a semicolon;

[(2) in paragraph (14), by striking out the period and inserting in lieu thereof ''; and''; and

[(3) by adding at the end thereof the following new paragraph:

[''(15) 'Director' means the Director of the Office of Management and Budget.''.

[SEC. 3. ANALYSIS OF AGENCY RULES.

[(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 RULES

[''§ 621. Definitions

[''For purposes of this subchapter the definitions under section 551 shall apply and—

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

[''(2) the term 'cost' means the reasonably identifiable significant adverse effects, including social, environmental, and economic costs that are expected to result directly or indirectly from implementation of, or compliance with, a rule or an alternative to a rule;

[''(3) the term 'cost-benefit analysis' means an evaluation of the costs and benefits of a rule, quantified to the extent feasible and appropriate and otherwise qualitatively described, that is prepared in accordance with the requirements of this subchapter at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition;

[''(4)(A) the term 'major rule' means—

[''(i) a rule or a group of closely related rules that the agency proposing the rule, the Director, or a designee of the President reasonably determines is likely to have a gross annual effect on the economy of $100,000,000 or more in reasonably quantifiable direct and indirect costs; or

[''(ii) a rule or a group of closely related rules that is otherwise determined to be a major rule by the agency proposing the rule, the Director, or a designee of 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, local, or tribal government agencies, or geographic regions;

[''(II) significant adverse effects on wages, economic growth, 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;

[''(III) a serious inconsistency or interference with an action taken or planned by another agency;

[''(IV) the material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

[''(V) a significant impact on a sector of the economy, or disproportionate costs to a class of persons and relatively severe economic, social, and environmental consequences for the class; and

[''(B) the term 'major rule' shall not include—

[''(i) a rule that involves the internal revenue laws of the United States;

[''(ii) a rule or agency action that authorizes the introduction into, or removal from, commerce, or recognizes the marketable status, of a product; or

[''(iii) a rule exempt from notice and public comment procedure under section 553 of this title;

[''(5) the term 'market-based mechanism' means a regulatory program that—

[''(A) imposes legal accountability for the achievement of an explicit regulatory objective, including the reduction of environmental pollutants or of risks to human health, safety, or the environment, on each regulated person;

[''(B) affords maximum flexibility to each regulated person in complying with mandatory regulatory objectives, and such flexibility shall, where feasible and appropriate, include 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 at their own discretion in an automatic manner, consistent with subparagraph (B), 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 under subparagraph (A);

[''(6) the term 'performance standard' means a requirement that imposes legal accountability for the achievement of an explicit regulatory objective, such as the reduction of environmental pollutants or of risks to human health, safety, or the environment, on each regulated person;

[''(7) the term 'risk assessment' has the same meaning as such term is defined under section 632(5); and

[''(8) the term 'rule' has the same meaning as in section 551(4) of this title, and shall not include—

[''(A) a rule of particular applicability that approves or prescribes for the future rates, wages, prices, services, corporate or financial structures, reorganizations, mergers, acquisitions, accounting practices, or disclosures bearing on any of the foregoing;

[''(B) a rule relating to monetary policy proposed or promulgated by the Board of Governors of the Federal Reserve System or by the Federal Open Market Committee;

[''(C) a rule relating to the safety or soundness of federally insured depository institutions or any affiliate of such an institution (as defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)); credit unions; the Federal Home Loan Banks; government-sponsored housing enterprises; a Farm Credit System Institution; foreign banks, and their branches, agencies, commercial lending companies or representative offices that operate in the United States and any affiliate of such foreign banks (as those terms are defined in the International Banking Act of 1978 (12 U.S.C. 3101)); or a rule relating to the payments system or the protection of deposit insurance funds or Farm Credit Insurance Fund; or

[''(D) a rule issued by the Federal Election Commission or a rule issued by the Federal Communications Commission pursuant to sections 312(a)(7) and 315 of the Communications Act of 1934.

[''§ 622. Rulemaking cost-benefit analysis

[''(a) Before 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 effective date of this subchapter, no later than 30 days after such date), 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, determine whether it is a major rule under section 621(4)(A)(ii). For the purpose of any such determination, a group of closely related rules shall be considered as one rule.

[''(b)(1) If an agency has determined that a rule is not a major rule, the Director or a designee of the President may, as appropriate, determine that the rule is a major rule no 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 effective date of this subchapter, no later than 60 days after such date).

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

[''(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 file an initial cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

[''(B)(i) When the Director or a designee of the President has published a determination 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 an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

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

[''(2) Each initial cost-benefit analysis shall contain—

[''(A) an analysis of the benefits of the proposed rule, including any benefits that cannot be quantified, and an explanation of how the agency anticipates that such benefits will be achieved by the proposed rule, including a description of the persons or classes of persons likely to receive such benefits;

[''(B) an analysis of the costs of the proposed rule, including any costs that cannot be quantified, and an explanation of how the agency anticipates that such costs will result from the proposed rule, including a description of the persons or classes of persons likely to bear such costs;

[''(C) an identification (including an analysis of costs and benefits) of an appropriate number of reasonable alternatives allowed under the statute granting the rulemaking authority 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 voluntary programs, performance standards, or market-based mechanisms that permit greater 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) an explanation of the extent to which the proposed rule—

[''(i) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply; and

[''(ii) employs voluntary programs, performance standards, or market-based mechanisms that permit greater flexibility in achieving the identified benefits of the proposed rule;

[''(F) a description of the quality, reliability, and relevance of scientific or economic evaluations or information in accordance with the cost-benefit analysis and risk assessment requirements of this chapter;

[''(G) if not expressly or implicitly inconsistent with the statute under which the agency is proposing the rule, an explanation of the extent to which the identified benefits of the proposed rule justify the identified costs of the proposed rule, and an explanation of how the proposed rule is likely to substantially achieve the rulemaking objectives in a more cost-effective manner than the alternatives to the proposed rule, including alternatives identified in accordance with subparagraph (C); and

[''(H) if a major rule subject to subchapter III addresses risks to human health, safety, or the environment—

[''(i) a risk assessment in accordance with this chapter; and

[''(ii) for each such proposed or final rule, an assessment of incremental risk reduction or other benefits associated with each significant regulatory alternative considered by the agency in connection with the rule or proposed rule.

[''(d)(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking file 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 under subsection (c)(2)(C)(iii); and

[''(B) if not expressly or implicitly inconsistent with the statute under which the agency is acting, a reasonable determination, based upon the rulemaking file considered as a whole, whether—

[''(i) the benefits of the rule justify the costs of the rule; and

[''(ii) the rule will achieve the rulemaking objectives in a more cost-effective manner than the alternatives described in the rulemaking, including the market-based mechanisms identified under subsection (c)(2)(C)(iii).

[''(e)(1) The analysis 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 units of measurement, using comparable assumptions, including time periods, 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. An agency shall not be required to make such evaluation primarily on a mathematical or numerical basis.

[''(2)(A) In evaluating and comparing costs and benefits and in evaluating the risk assessment information developed under 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.

[''(f) As part of the promulgation of each major rule that addresses risks to human health, safety, or the environment, the head of the agency or the President shall make a determination that—

[''(1) the risk assessment and the analysis under subsection (c)(2)(H) are based on a scientific evaluation of the risk addressed by the major rule and that the conclusions of such evaluation are supported by the available information; and

[''(2) the regulatory alternative chosen will reduce risk in a cost-effective and, to the extent feasible, flexible manner, taking into consideration any of the alternatives identified under subsection (c)(2) (C) and (D).

[''(g) The preparation of the initial or final cost-benefit analysis required by this section shall only be performed under the direction of an officer or employee of the agency. The preceding sentence shall not preclude a person outside the agency from gathering data or information to be used by the agency in preparing any such cost-benefit analysis or from providing an explanation sufficient to permit the agency to analyze such data or information. If any such data or information is gathered or explained by a person outside the agency, the agency shall specifically identify in the initial or final cost-benefit analysis the data or information gathered or explained and the person who gathered or explained it, and shall describe the arrangement by which the information was procured by the agency, including the total amount of funds expended for such procurement.

[''(h) The requirements of this subchapter shall not alter the criteria for rulemaking otherwise applicable under other statutes.

[''§ 623. Judicial review

[''(a) Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall not be subject to judicial review except in connection with review of a final agency rule and according to the provisions of this section.

[''(b) Any determination by a designee of the President or the Director that a rule is, or is not, a major rule shall not be subject to judicial review in any manner.

[''(c) The determination by an agency that a rule is, or is not, a major rule under section 621(4)(A)(i) shall be set aside by a reviewing court only upon a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time the agency made the determination. Any determination by an agency that a rule is, or is not, a major rule under section 621(4)(A)(ii) shall not be subject to judicial review in any manner.

[''(d) If the cost-benefit analysis or risk assessment required under this chapter has been wholly omitted for any major rule, a court shall vacate the rule and remand the case for further consideration. If an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.

[''(e) Any cost-benefit analysis or risk assessment prepared under this chapter shall not be subject to judicial consideration separate or apart from review of the agency action to which it relates. When an action for judicial review of an agency action is instituted, any regulatory analysis for such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action, and shall, to the extent relevant, be considered by a court in determining the legality of the agency action.

[''§ 624. Deadlines for rulemaking

[''(a) All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

[''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

[''(2) the date occurring 6 months after the date of the applicable deadline.

[''(b) All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

[''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

[''(2) the date occurring 6 months after the date of the applicable deadline.

[''(c) In any case in which the failure to promulgate a rule by a deadline occurring during the 2-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

[''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

[''(2) the date occurring 6 months after the date of the applicable deadline.

[''§ 625. Agency review of rules

[''(a)(1)(A) No later than 9 months after the effective date of this section, each agency shall prepare and publish in the Federal Register a proposed schedule for the review, in accordance with this section, of—

[''(i) each rule of the agency that is in effect on such effective date and which, if adopted on such effective date, would be a major rule; and

[''(ii) each rule of the agency in effect on the effective date of this section (in addition to the rules described in clause (i)) that the agency has selected for review.

[''(B) Each proposed schedule required under subparagraph (A) shall be developed in consultation with—

[''(i) the Administrator of the Office of Information and Regulatory Affairs; and

[''(ii) the classes of persons affected by the rules, including members from the regulated industries, small businesses, State and local governments, and organizations representing the interested public.

[''(C) Each proposed schedule required under subparagraph (A) shall establish priorities for the review of rules that, in the joint determination of the Administrator of the Office of Information and Regulatory Affairs and the agency, most likely can be amended or eliminated to—

[''(i) provide the same or greater benefits at substantially lower costs;

[''(ii) achieve substantially greater benefits at the same or lower costs; or

[''(iii) replace command-and-control regulatory requirements with market mechanisms or performance standards that achieve substantially equivalent benefits at lower costs or with greater flexibility.

[''(D) Each proposed schedule required by subparagraph (A) shall include—

[''(i) a brief explanation of the reasons the agency considers each rule on the schedule to be a major rule, or the reasons why the agency selected the rule for review;

[''(ii) a date set by the agency, in accordance with subsection (b), for the completion of the review of each such rule; and

[''(iii) a statement that the agency requests comments from the public on the proposed schedule.

[''(E) The agency shall set a date to initiate review of each rule on the schedule in a manner that will ensure the simultaneous review of related items and that will achieve a reasonable distribution of reviews over the period of time covered by the schedule.

[''(2) No later than 90 days before publishing in the Federal Register the proposed schedule required under paragraph (1), each agency shall make the proposed schedule available to the Director or a designee of the President. The President or that officer may select for review in accordance with this section any additional rule.

[''(3) No later than 1 year after the effective date of this section, each agency shall publish in the Federal Register a final schedule for the review of the rules referred to in paragraphs (1) and (2). Each agency shall publish with the final schedule the response of the agency to comments received concerning the proposed schedule.

[''(b)(1) Except as explicitly provided otherwise by statute, the agency shall, pursuant to subsections (c) through (e), review—

[''(A) each rule on the schedule promulgated pursuant to subsection (a);

[''(B) each major rule promulgated, amended, or otherwise continued by an agency after the effective date of this section; and

[''(C) each rule promulgated after the effective date of this section that the President or the officer designated by the President selects for review pursuant to subsection (a)(2).

[''(2) Except as provided pursuant to subsection (f), the review of a rule required by this section shall be completed no later than the later of—

[''(A) 10 years after the effective date of this section; or

[''(B) 10 years after the date on which the rule is—

[''(i) promulgated; or

[''(ii) amended or continued under this section.

[''(c) An agency shall publish in the Federal Register a notice of its proposed action under this section with respect to a rule being reviewed. The notice shall include—

[''(1) an identification of the specific statutory authority under which the rule was promulgated and an explanation of whether the agency's interpretation of the statute is expressly required by the current text of that statute or, if not, whether it is within the range of permissible interpretations of the statute;

[''(2) an analysis of the benefits and costs of the rule during the period in which it has been in effect;

[''(3) an explanation of the proposed agency action with respect to the rule, including action to repeal or amend the rule to resolve inconsistencies or conflicts with any other obligation or requirement established by any Federal statute, rule, or other agency statement, interpretation, or action that has the force of law; and

[''(4) a statement that the agency seeks proposals from the public for modifications or alternatives to the rule which may accomplish the objectives of the rule in a more effective or less burdensome manner.

[''(d) If an agency proposes to repeal or amend a rule under review pursuant to this section, the agency shall, after issuing the notice required by subsection (c), comply with the provisions of this chapter, chapter 5, and any other applicable law. The requirements of such provisions and related requirements shall apply to the same extent and in the same manner as in the case of a proposed agency action to repeal or amend a rule that is not taken pursuant to the review required by this section.

[''(e) If an agency proposes to continue without amendment a rule under review pursuant to this section, the agency shall—

[''(1) give interested persons no less than 60 days after the publication of the notice required by subsection (c) to comment on the proposed continuation; and

[''(2) publish in the Federal Register notice of the continuation of such rule.

[''(f) Any agency, which for good cause finds that compliance with this section with respect to a particular rule during the period provided in subsection (b) of this section is contrary to an important public interest may request the President, or the officer designated by the President pursuant to subsection (a)(2), to establish a period longer than 10 years for the completion of the review of such rule. The President or that officer may extend the period for review of a rule to a total period of no more than 15 years. Such extension shall be published in the Federal Register with an explanation of the reasons therefor.

[''(g) If the agency fails to comply with the requirements of subsection (b)(2), the rule for which rulemaking proceedings have not been completed shall cease to be enforceable against any person.

[''(h) Nothing in this section shall relieve any agency from its obligation to respond to a petition to issue, amend, or repeal a rule, for an interpretation regarding the meaning of a rule, or for a variance or exemption from the terms of a rule, submitted pursuant to any other provision of law.

[''§ 626. Public participation and accountability

[''In order to maximize accountability for, and public participation in, the development and review of regulatory actions each agency shall, consistent with chapter 5 and other applicable law, provide the public with opportunities for meaningful participation in the development of regulatory actions, including—

[''(1) seeking the involvement, where practicable and appropriate, of those who are intended to benefit from and those who are expected to be burdened by any regulatory action;

[''(2) providing in any proposed or final rulemaking notice published in the Federal Register—

[''(A) a certification of compliance with the requirements of this chapter, or an explanation why such certification cannot be made;

[''(B) a summary of any regulatory analysis required under this chapter, or under any other legal requirement, and notice of the availability of the regulatory analysis;

[''(C) a certification that the rule will produce benefits that will justify the cost to the Government and to the public of implementation of, and compliance with, the rule, or an explanation why such certification cannot be made; and

[''(D) a summary of the results of any regulatory review and the agency's response to such review, including an explanation of any significant changes made to such regulatory action as a consequence of regulatory review;

[''(3) identifying, upon request, a regulatory action and the date upon which such action was submitted to the designated officer to whom authority was delegated under section 644 for review;

[''(4) disclosure to the public, consistent with section 634(3), of any information created or collected in performing a regulatory analysis required under this chapter, or under any other legal requirement; and

[''(5) placing in the appropriate rulemaking record all written communications received from the Director, other designated officer, or other individual or entity relating to regulatory review.

[''SUBCHAPTER III—RISK ASSESSMENTS

[''§ 631. Findings and purposes

[''(a) The Congress finds that:

[''(1) Environmental, health, and safety regulations have lead to dramatic improvements in the environment and have significantly reduced risks to human health; except—

[''(A) many regulations have been more costly and less effective than necessary; and

[''(B) too often, regulatory priorities have not been based upon a realistic consideration of risk, risk reduction opportunities, and costs.

[''(2) The public and private resources available to address health, safety, and environmental risks are not unlimited. Those resources should be allocated to address the greatest needs in the most cost-effective manner and to ensure that the incremental costs of regulatory options are reasonably related to the incremental benefits.

[''(3) To provide more cost-effective protection to human health, safety, and the environment, regulatory priorities should be supported by realistic and plausible scientific risk assessments and risk management choices that are grounded in cost-benefit principles.

[''(4) Risk assessment has proved to be a useful decisionmaking tool, except—

[''(A) improvements are needed in both the quality of assessments and the characterization and communication of findings;

[''(B) scientific and other data must be better collected, organized, and evaluated; and

[''(C) the critical information resulting from a risk assessment must be effectively communicated in an objective and unbiased manner to decision makers, and from decision makers to the public.

[''(5) The public stakeholders should be involved in the decisionmaking process for regulating risks. The public has the right to know about the risks addressed by regulation, the amount of risk reduced, the quality of the science used to support decisions, and the cost of implementing and complying with regulations. Such knowledge will allow for public scrutiny and will promote the quality, integrity, and responsiveness of agency decisions.

[''(b) The purposes of this subchapter are to—

[''(1) present the public and executive branch with the most realistic and plausible information concerning the nature and magnitude of health, safety, and environmental risks to promote sound regulatory decisions and public education;

[''(2) provide for full consideration and discussion of relevant data and potential methodologies;

[''(3) require explanation of significant choices in the risk assessment process that will allow for better public understanding; and

[''(4) improve consistency within the executive branch in preparing risk assessments and risk characterizations.

[''§ 632. Definitions

[''For purposes of this subchapter, the definitions under sections 551 and 621 shall apply and:

[''(1) The term 'covered agency' means each of the following:

[''(A) The Environmental Protection Agency.

[''(B) The Department of Labor.

[''(C) The Department of Transportation.

[''(D) The Food and Drug Administration.

[''(E) The Department of Energy.

[''(F) The Department of the Interior.

[''(G) The Department of Agriculture.

[''(H) The Consumer Product Safety Commission.

[''(I) The National Oceanic and Atmospheric Administration.

[''(J) The United States Army Corps of Engineers.

[''(K) The Nuclear Regulatory Commission.

[''(L) Any other Federal agency considered a covered agency under section 633(b).

[''(2) The term 'emergency' means a situation that is immediately impending and extraordinary in nature, demanding attention due to a condition, circumstance or practice reasonably expected to cause death, serious illness or severe injury to humans, or substantial endangerment to private property or the environment if no action is taken.

[''(3) The term 'estimates of risk' means numerical representations of the potential magnitude of harm to populations or the probability of harm to individuals, including, as appropriate, those derived by considering the range and distribution of estimates of dose-response (potency) and exposure, including appropriate statistical representation of the range and most likely exposure levels, and the identification of the populations or subpopulations addressed. When appropriate and practicable, a description of any populations or subpopulations that are likely to experience exposures at the upper end of the distribution should be included.

[''(4) The term 'hazard identification' means identification of a substance, activity, or condition as potentially causing harm to human health, safety, or the environment.

[''(5) The term 'risk assessment' means—

[''(A) identifying, quantifying to the extent feasible and appropriate, and characterizing hazards and exposures to those hazards in order to provide structured information on the nature of threats to human health, safety, or the environment; and

[''(B) the document containing the explanation of how the assessment process has been applied to an individual substance, activity, or condition.

[''(6) The term 'risk characterization' means the integration, synthesis, and organization of hazard identification, dose-response and exposure information that addresses the needs of decision makers and interested parties. The term includes both the process and specific outputs, including—

[''(A) the element of a risk assessment that involves presentation of the degree of risk in any regulatory proposal or decision, report to Congress, or other document that is made available to the public; and

[''(B) discussions of uncertainties, conflicting data, estimates of risk, extrapolations, inferences, and opinions.

[''(7) The term 'screening analysis' means an analysis that arrives at a qualitative estimate or a bounding estimate of risk that permits the risk manager to accept or reject some management options, or permits establishing priorities for agency action. Such term includes an assessment performed by a regulated party and submitted to an agency under a regulatory requirement.

[''(8) The term 'substitution risk' means a reasonably likely increased risk to human health, safety, or the environment from a regulatory option designed to decrease other risks.

[''§ 633. Applicability

[''(a) Except as provided in subsection (c), this subchapter shall apply to all risk assessments and risk characterizations prepared by, or on behalf of, or prepared by others and adopted by any covered agency in connection with a major rule addressing health, safety, and environmental risks.

[''(b)(1) No later than 18 months after the effective date of this section, the President, acting through the Director of the Office of Management and Budget, shall determine whether other Federal agencies should be considered covered agencies for the purposes of this subchapter. Such determination, with respect to a particular Federal agency, shall be based on the impact of risk assessment documents and risk characterization documents on—

[''(A) regulatory programs administered by that agency; and

[''(B) the communication of risk information by that agency to the public.

[''(2) If the President makes a determination under paragraph (1), the provisions of this subchapter shall apply to any affected agency beginning on a date set by the President. Such date may be no later than 6 months after the date of such determination.

[''(c)(1) This subchapter shall not apply to risk assessments or risk characterizations performed with respect to—

[''(A) an emergency determined by the head of an agency;

[''(B) a health, safety, or environmental inspection or individual facility permitting action; or

[''(C) a screening analysis.

[''(2) This subchapter shall not apply to any food, drug, or other product label, or to any risk characterization appearing on any such label.

[''§ 634. Savings provisions

[''Nothing in this subchapter shall be construed to—

[''(1) modify any statutory standard or requirement designed to protect human health, safety, or the environment;

[''(2) preclude the consideration of any data or the calculation of any estimate to more fully describe risk or provide examples of scientific uncertainty or variability; or

[''(3) require the disclosure of any trade secret or other confidential information.

[''§ 635. Principles for risk assessment

[''(a) The head of each covered agency shall ensure that risk assessments and all of the components of such assessments—

[''(1) provide for a systematic means to structure information useful to decision makers;

[''(2) provide, to the maximum extent practicable, that policy-driven default assumptions be used only in the absence of relevant available information;

[''(3) promote involvement from all stakeholders;

[''(4) provide an opportunity for public input throughout the regulatory process; and

[''(5) are designed so that the degree of specificity and rigor employed is commensurate with the consequences of the decision to be made.

[''(b) A risk assessment shall, to the maximum extent practicable, clearly delineate hazard identification from dose-response and exposure assessment and make clear the relationship between the level of risk and the level of exposure to a hazard.

[''§ 636. Principles for risk characterization

[''In characterizing risk in any risk assessment document, regulatory proposal, or decision, each covered agency shall include in the risk characterization, as appropriate, each of the following:

[''(1)(A) A description of the exposure scenarios used, the natural resources or subpopulations being exposed, and the likelihood of those exposure scenarios.

[''(B) When a risk assessment involves a choice of any significant assumption, inference, or model, the covered agency or instrumentality preparing the risk assessment shall—

[''(i) identify the assumptions, inferences, and models that materially affect the outcome;

[''(ii) explain the basis for any choices;

[''(iii) identify any policy decisions or policy-based default assumptions;

[''(iv) indicate the extent to which any significant model has been validated by, or conflicts with, empirical data; and

[''(v) describe the impact of alternative choices of assumptions, default options or mathematical models.

[''(C) The major sources of uncertainties in the hazard identification, dose-response and exposure assessment phases of the risk assessment.

[''(D) To the extent feasible, the range and distribution of exposures and risks derived from the risk assessment should be included as a component of the risk characterization.

[''(2) When a covered agency provides a risk assessment or risk characterization for a proposed or final regulatory action, such assessment or characterization shall include a statement of any significant substitution risks, when information on such risks has been made available to the agency.

[''§ 637. Peer review

[''(a) The head of each covered agency shall develop a systematic program for independent and external peer review required under subsection (b). Such program shall be applicable throughout each covered agency and—

[''(1) shall provide for the creation of peer review panels that—

[''(A) consist of members with expertise relevant to the sciences involved in regulatory decisions and who are independent of the covered agency; and

[''(B) are broadly representative and balanced and, to the extent relevant and appropriate, may include persons affiliated with Federal, State, local, or tribal governments, small businesses, other representatives of industry, universities, agriculture, labor consumers, conservation organizations, or other public interest groups and organizations;

[''(2) shall not exclude any person with substantial and relevant expertise as a panel member on the basis that such person represents an entity that may have a potential interest in the outcome, if such interest is fully disclosed to the agency, and in the case of a regulatory decision affecting a single entity, no peer reviewer representing such entity may be included on the panel;

[''(3) shall provide for a timely completed peer review, meeting agency deadlines, that contains a balanced presentation of all considerations, including minority reports and an agency response to all significant peer review comments; and

[''(4) shall provide adequate protections for confidential business information and trade secrets, including requiring panel members to enter into confidentiality agreements.

[''(b)(1)(A) Except as provided under subparagraph (B), each covered agency shall provide for peer review in accordance with this section of any risk assessment or cost-benefit analysis that forms the basis of any major rule that addresses risks to the environment, health, or safety.

[''(B) Subparagraph (A) shall not apply to a rule or other action taken by an agency to authorize or approve any individual substance or product.

[''(2) The Director of the Office of Management and Budget may order that peer review be provided for any risk assessment or cost-benefit analysis that is likely to have a significant impact on public policy decisions or would establish an important precedent.

[''(c) Each peer review under this section shall include a report to the Federal agency concerned with respect to the scientific and technical merit of data and methods used for the risk assessments or cost-benefit analyses.

[''(d) The head of the covered agency shall provide a written response to all significant peer review comments.

[''(e) All peer review comments or conclusions and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

[''(f) No peer review shall be required under this section for any data, method, document, or assessment, or any component thereof, which has been previously subjected to peer review.

["§ 638. Guidelines, plan for assessing new information, and report

[''(a)(1)(A) As soon as practicable and scientifically feasible, each covered agency shall adopt, after notification and opportunity for public comment, guidelines to implement the risk assessment and risk characterization principles under sections 635 and 636, as well as the cost-benefit analysis requirements under section 622, and shall provide a format for summarizing risk assessment results.

[''(B) No later than 12 months after the effective date of this section, the head of each covered agency shall issue a report on the status of such guidelines to the Congress.

[''(2) The guidelines under paragraph (1) shall—

[''(A) include guidance on use of specific technical methodologies and standards for acceptable quality of specific kinds of data;

[''(B) address important decisional factors for the risk assessment, risk characterization, and cost-benefit analysis at issue; and

[''(C) provide procedures for the refinement and replacement of policy-based default assumptions.

[''(b) The guidelines, plan and report under this section shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State agencies and local governments, and such other departments and agencies, organizations, or persons as may be advisable.

[''(c) The President shall review the guidelines published under this section at least every 4 years.

[''(d) The development, issuance, and publication of risk assessment and risk characterization guidelines under this section shall not be subject to judicial review.

["§ 639. Research and training in risk assessment

[''(a) The head of each covered agency shall regularly and systematically evaluate risk assessment research and training needs of the agency, including, where relevant and appropriate, the following:

[''(1) Research to reduce generic data gaps, to address modelling needs (including improved model sensitivity), and to validate default options, particularly those common to multiple risk assessments.

[''(2) Research leading to improvement of methods to quantify and communicate uncertainty and variability among individuals, species, populations, and, in the case of ecological risk assessment, ecological communities.

[''(3) Emerging and future areas of research, including research on comparative risk analysis, exposure to multiple chemicals and other stressors, noncancer endpoints, biological markers of exposure and effect, mechanisms of action in both mammalian and nonmammalian species, dynamics and probabilities of physiological and ecosystem exposures, and prediction of ecosystem-level responses.

[''(4) Long-term needs to adequately train individuals in risk assessment and risk assessment application. Evaluations under this paragraph shall include an estimate of the resources needed to provide necessary training.

[''(b) The head of each covered agency shall develop a strategy and schedule for carrying out research and training to meet the needs identified in subsection (a).

["§ 640. Interagency coordination

[''(a) To promote the conduct, application, and practice of risk assessment in a consistent manner and to identify risk assessment data and research needs common to more than 1 Federal agency, the Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall—

[''(1) periodically survey the manner in which each Federal agency involved in risk assessment is conducting such risk assessment to determine the scope and adequacy of risk assessment practices in use by the Federal Government;

[''(2) provide advice and recommendations to the President and Congress based on the surveys conducted and determinations made under paragraph (1);

[''(3) establish appropriate interagency mechanisms to promote—

[''(A) coordination among Federal agencies conducting risk assessment with respect to the conduct, application, and practice of risk assessment; and

[''(B) the use of state-of-the-art risk assessment practices throughout the Federal Government;

[''(4) establish appropriate mechanisms between Federal and State agencies to communicate state-of-the-art risk assessment practices; and

[''(5) periodically convene meetings with State government representatives and Federal and other leaders to assess the effectiveness of Federal and State cooperation in the development and application of risk assessment.

[''(b) The President shall appoint National Peer Review Panels to review every 3 years the risk assessment practices of each covered agency for programs designed to protect human health, safety, or the environment. The Panels shall submit a report to the President and the Congress at least every 3 years containing the results of such review.

["§ 640a. Plan for review of risk assessments

[''(a) No later than 18 months after the effective date of this section, the head of each covered agency shall publish a plan to review and revise any risk assessment published before the expiration of such 18-month period if the covered agency determines that significant new information or methodologies are available that could significantly alter the results of the prior risk assessment.

[''(b) A plan under subsection (a) shall—

[''(1) provide procedures for receiving and considering new information and risk assessments from the public; and

[''(2) set priorities and criteria for review and revision of risk assessments based on such factors as the agency head considers appropriate.

["§ 640b. Judicial review

[''The provisions of section 623 relating to judicial review shall apply to this subchapter.

["§ 640c. Deadlines for rulemaking

[''The provisions of section 624 relating to deadlines for rulemaking shall apply to this subchapter.

['' SUBCHAPTER IV—EXECUTIVE OVERSIGHT

["§ 641. Definition

[''For purposes of this subchapter, the definitions under sections 551 and 621 shall apply.

["§ 642. Procedures

[''The Director or other designated officer to whom authority is delegated under section 644 shall—

[''(1) establish procedures for agency compliance with this chapter; and

[''(2) monitor, review, and ensure agency implementation of such procedures.

["§ 643. Promulgation and adoption

[''(a) Procedures established pursuant to section 642 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 642 include review of any initial or final analyses of a rule required under this chapter, the time for any such review of any initial analysis shall not exceed 60 days following the receipt of the analysis by the Director, a designee of the President, or by an officer to whom the authority granted under section 642 has been delegated pursuant to section 644.

[''(2) The time for review of any final analysis required under this chapter shall not exceed 60 days following the receipt of the analysis by the Director, a designee of 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.

[''§ 644. Delegation of authority

[''(a) The President shall delegate the authority granted by this subchapter to the Director or to another officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate.

[''(b) Notice of any delegation, or any revocation or modification thereof shall be published in the Federal Register.

[''§ 645. Public disclosure of information

[''The Director or other designated officer to whom authority is delegated under section 644, in carrying out the provisions of section 642, shall establish procedures (covering all employees of the Director or other designated officer) to provide public and agency access to information concerning regulatory review actions, including—

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

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

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

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

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

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

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

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

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

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

[''§ 646. Judicial review

[''The exercise of the authority granted under this subchapter by the Director, the President, or by an officer to whom such authority has been delegated under section 644 shall not be subject to judicial review in any manner.''.

[(b) REGULATORY FLEXIBILITY ANALYSIS.—

[(1) IN GENERAL.—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), no 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 a 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 no 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 effective date 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 such effective date.

[(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 analysis.
[''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 RULES

[''621. Definitions.
[''622. Rulemaking cost-benefit analysis.
[''623. Judicial review.
[''624. Deadlines for rulemaking.
[''625. Agency review of rules.
[''626. Public participation and accountability.

[''SUBCHAPTER III—RISK ASSESSMENTS

[''631. Findings and purposes.
[''632. Definitions.
[''633. Applicability.
[''634. Savings provisions.
[''635. Principles for risk assessment.
[''636. Principles for risk characterization.
[''637. Peer review.
[''638. Guidelines, plan for assessing new information, and report.
[''639. Research and training in risk assessment.
[''640. Interagency coordination.
[''640a. Plan for review of risk assessments.
[''640b. Judicial review.
[''640c. Deadlines for rulemaking.

[''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

[''641. Definition.
[''642. Procedures.
[''643. Promulgation and adoption.
[''644. Delegation of authority.
[''645. Public disclosure of information.
[''646. 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''.

[SEC. 4. CONGRESSIONAL REVIEW.

[(a) IN GENERAL.—Part I of title 5, United States Code, is amended by inserting after chapter 7 the following new chapter:

[''CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

[''§ 801. Congressional review of agency rulemaking

[''(a) For purposes of this chapter, the term—

[''(1) 'major rule' means a major rule as defined under section 621(4) of this title and as determined under section 622 of this title; and

[''(2) 'rule' (except in reference to a rule of the Senate or House of Representatives) is a reference to a major rule.

[''(b)(1) Upon the promulgation of a final major rule, the agency promulgating such rule shall submit to the Congress a copy of the rule, the statement of basis and purpose for the rule, and the proposed effective date of the rule.

[''(2) A rule submitted under paragraph (1) shall not take effect as a final rule before the latest of the following:

[''(A) The later of the date occurring 45 days after the date on which—

[''(i) the Congress receives the rule 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 (i) 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.

[''(C) The date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under subsection (i) is approved).

[''(c) A major rule shall not take effect as a final rule if the Congress passes a joint resolution of disapproval described under subsection (i), which is signed by the President or is vetoed and overridden by the Congress.

[''(d)(1) Notwithstanding any other provision of this section (except subject to paragraph (2)), a major rule that would not take effect by reason of this section may take effect if the President makes a determination and submits written notice of such determination to the Congress that the major rule should take effect because such major 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.

[''(2) An exercise by the President of the authority under this subsection shall have no effect on the procedures under subsection (i) or the effect of a joint resolution of disapproval under this section.

[''(e)(1) Subsection (i) shall apply to any major rule that is promulgated 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 (i), a major 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 (i) 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 (i), no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such major rule, related statute, or joint resolution of disapproval.

[''(h) If the agency fails to comply with the requirements of subsection (b) for any rule, the rule shall cease to be enforceable against any person.

[''(i)(1) For purposes of this subsection, the term 'joint resolution' means only a joint resolution introduced after the date on which the rule 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) In the Senate, a resolution described in paragraph (1) shall be referred to the committees 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 rule submitted under subsection (b)(1); or

[''(ii) the rule is published in the Federal Register.

[''(3) In the Senate, 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 on a petition approved by 30 Senators from further consideration of such resolution and such resolution shall be placed on the Senate calendar.

[''(4)(A) In the Senate, 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 shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Senator 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 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 Senate until disposed of.

[''(B) In the Senate, 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) In the Senate, 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 Senate rules, 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 to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

[''(5) If, before the passage in the Senate of a resolution described in paragraph (1), the Senate receives from the House of Representatives a resolution described in paragraph (1), then the following procedures shall apply:

[''(A) The resolution of the House of Representatives shall not be referred to a committee.

[''(B) With respect to a resolution described in paragraph (1) of the Senate—

[''(i) the procedure in the Senate 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.

[''(j) No requirements under this chapter shall be subject to judicial review in any manner.''.

[(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting after the item relating to chapter 7 the following:

[''8. Congressional Review of Agency Rulemaking ..... 801''.

[SEC. 5. STUDIES AND REPORTS.

[(a) RISK ASSESSMENTS.—The Administrative Conference of the United States shall—

[(1) develop and carry out an ongoing study of the operation of the risk assessment requirements of subchapter III of chapter 6 of title 5, United States Code (as added by section 3 of this Act); and

[(2) submit an annual report to the Congress on the findings of the study.

[(b) ADMINISTRATIVE PROCEDURE ACT.—No later than December 31, 1996, the Administrative Conference of the United States shall—

[(1) carry out a study of the operation of chapters 5 and 6 of title 5, United States Code (commonly referred to as the Administrative Procedure Act), as amended by section 3 of this Act; and

[(2) submit a report to the Congress on the findings of the study, including proposals for revision, if any.

[SEC. 6. RISK-BASED PRIORITIES.

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

[(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

[(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

[(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

[(b) DEFINITIONS.—For the purposes of this section:

[(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a

process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

[(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

[(A) The Environmental Protection Agency.

[(B) The Department of Labor.

[(C) The Department of Transportation.

[(D) The Food and Drug Administration.

[(E) The Department of Energy.

[(F) The Department of the Interior.

[(G) The Department of Agriculture.

[(H) The Consumer Product Safety Commission.

[(I) The National Oceanic and Atmospheric Administration.

[(J) The United States Army Corps of Engineers.

[(K) The Nuclear Regulatory Commission.

[(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

[(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

[(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

[(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

[(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

[(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

[(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

[(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

[(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

[(A) the covered agency determines to be the most serious; and

[(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

[(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

[(A) the likelihood, irreversibility, and severity of the effect; and

[(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

[(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

[(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

[(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

[(d) COMPARATIVE RISK ANALYSIS.—

[(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

[(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

[(II) to conduct a comparative risk analysis.

[(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

[(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

[(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

[(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

[(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

[(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in sections 635 and 636 of this title;

[(D) the methodologies and principal scientific determinations made in the analysis are subjected to independent and external peer review consistent with section 637, and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

[(E) there is an opportunity for public comment on the results before making them final; and

[(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

[(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

[(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

[(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

[(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

[(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

[(2) recommending—

[(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

[(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

[(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

[(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

[(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

[(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

[(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

[(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

[SEC. 7. REGULATORY ACCOUNTING.

[(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

[(1) AGENCY.—The term ''agency'' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

[(A) the General Accounting Office;

[(B) the Federal Election Commission;

[(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

[(D) government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

[(2) REGULATION.—The term ''regulation'' means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedures or practice requirements of an agency. The term shall not include—

[(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

[(B) regulations issued with respect to a military or foreign affairs function of the United States; or

[(C) regulations related to agency organization, management, or personnel.

[(b) ACCOUNTING STATEMENT.—

[(1) IN GENERAL.—(A) The President shall be responsible for implementing and administering the requirements of this section.

[(B) Every 2 years, no later than June of the second year, the President shall prepare and submit to Congress an accounting statement that estimates the annual costs of Federal regulatory programs and corresponding benefits in accordance with this subsection.

[(2) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

[(3) TIMING AND PROCEDURES.—(A) The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

[(B) The President shall propose the first accounting statement under this subsection no later than 2 years after the effective date of this Act and shall issue the first accounting statement in final form no later than 3 years after such effective date. Such statement shall cover, at a minimum, each of the fiscal years beginning after the effective date of this Act.

[(4) CONTENT OF ACCOUNTING STATEMENT.—(A) Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this paragraph. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

[(B)(i) An accounting statement shall estimate the costs of Federal regulatory programs by setting forth, for each year covered by the statement—

[(I) the annual expenditure of national economic resources for each regulatory program; and

[(II) such other quantitative and qualitative measures of costs as the President considers appropriate.

[(ii) For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

[(I) Private sector costs.

[(II) Federal sector costs.

[(III) State and local government costs.

[(C) An accounting statement shall estimate the benefits of Federal regulatory programs by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in human health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

[(c) ASSOCIATED REPORT TO CONGRESS.—

[(1) IN GENERAL.—At the same time as the President submits an accounting statement under subsection (b), the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an ''associated report''). The associated report shall contain, in accordance with this subsection—

[(A) analyses of impacts; and

[(B) recommendations for reform.

[(2) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

[(A) The cumulative impact on the economy of Federal regulatory programs covered in the accounting statement. Factors to be considered in such report shall include impacts on the following:

[(i) The ability of State and local governments to provide essential services, including police, fire protection, and education.

[(ii) Small business.

[(iii) Productivity.

[(iv) Wages.

[(v) Economic growth.

[(vi) Technological innovation.

[(vii) Consumer prices for goods and services.

[(viii) Such other factors considered appropriate by the President.

[(B) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

[(3) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

[(A) A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

[(B) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

[(d) GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers and the agencies, develop guidance for the agencies—

[(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to this section and section 3 of this Act, including—

[(A) detailed guidance on estimating the costs and benefits of major rules; and

[(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

[(2) to standardize the format of the accounting statements.

[(e) RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.—After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

[(1) for improving accounting statements prepared pursuant to this section, including recommendations on level of detail and accuracy; and

[(2) for improving associated reports prepared pursuant to this section, including recommendations on the quality of analysis.

[(f) JUDICIAL REVIEW.—No requirements under this section shall be subject to judicial review in any manner.

[SEC. 8. EFFECTIVE DATE.

[Except as otherwise provided in this Act, this Act shall take effect 180 days after the date of the enactment of this Act.]

SECTION 1. SHORT TITLE.

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

SEC. 2. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''this subchapter'' and inserting ''this chapter and chapters 6, 7, and 8'';

(2) in paragraph (13), by striking ''and'';

(3) in paragraph (14), by striking the period at the end and inserting ''; and''; and

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

''(15) 'Director' means the Director of the Office of Management and Budget.''.

SEC. 3. RULEMAKING.

Section 553 of title 5, United States Code, is amended to read as follows:

''§ 553. Rulemaking

''(a) This section applies to every rulemaking, according to the provisions thereof, except to the extent that there is involved—

''(1) a matter pertaining to a military or foreign affairs function of the United States;

''(2) a matter relating to the management and personnel practices of an agency;

''(3) an interpretive rule, general statement of policy, guidance, or rule of agency organization, procedure, or practice that is not generally applicable and does not alter or create rights or obligations of persons outside the agency; or

''(4) a rule relating to the acquisition, management, or disposal by an agency of real or personal property, or of services, that is promulgated in compliance with criteria and procedures established by the Administrator of General Services.

''(b)(1) General notice of proposed rulemaking shall be published in the Federal Register, unless all persons subject thereto are named and either personally served or otherwise have actual notice of the proposed rulemaking in accordance with law. Each notice of proposed rulemaking shall include—

''(A) a statement of the time, place, and nature of public rulemaking proceedings;

''(B) a succinct explanation of the need for and specific objectives of the proposed rule, including an explanation of the agency's determination of whether or not the rule is a major rule within the meaning of section 621(4);

''(C) an explanation of the specific statutory interpretation under which a rule is proposed, including an explanation of—

''(i) whether the interpretation is expressly required by the text of the statute; or

''(ii) if the interpretation is not expressly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and an explanation why the interpretation selected by the agency is the agency's preferred interpretation;

''(D) the proposed provisions of the rule;

''(E) a summary of any initial analysis of the proposed rule required to be prepared or issued pursuant to chapter 6;

''(F) a statement that the agency seeks proposals from the public and from State and local governments for alternative methods to accomplish the objectives of the rulemaking that are more effective or less burdensome than the approach used in the proposed rule;

''(G) a description of any data, methodologies, reports, studies, scientific evaluations, or other similar information available to the agency for the rulemaking, including an identification of each author or source of such information and the purposes for which the agency plans to rely on such information; and

''(H) a statement specifying where the file of the rulemaking proceeding maintained pursuant

to subsection (f) may be inspected and how copies of the items in the file may be obtained.

''(2) Except when notice or hearing is required by statute, a final rule may be adopted and may become effective without prior compliance with this subsection and subsections (c) and (f) if—

''(A) the agency for good cause finds that providing notice and public procedure thereon before the rule becomes effective is contrary to an important public interest or is unnecessary due to the insignificant impact of the rule;

''(B) the agency publishes the rule in the Federal Register with such finding and a succinct explanation of the reasons therefor; and

''(C) the agency complies with this subsection and subsections (c) and (f) to the maximum extent feasible prior to the promulgation of the final rule, and fully complies with such provisions as soon as reasonably practicable after the promulgation of the rule.

''(3) Whenever the provisions of a final rule that an agency plans to adopt are so different from the provisions of the proposed rule that the original notice of proposed rulemaking did not fairly apprise the public of the issues ultimately to be resolved in the rulemaking or of the substance of the rule, the agency shall publish in the Federal Register a notice of the final rule the agency plans to adopt, together with the information relevant to such rule that is required by the applicable provisions of this section and that has not previously been published in the Federal Register. The agency shall allow a reasonable period for comment on such final rule.

''(c)(1) After providing the notice required by this section, the agency shall give interested persons not less than 60 days to participate in the rulemaking through the submission of written data, views, or arguments.

''(2)(A) To collect relevant information, and to identify and elicit full and representative public comment on the significant issues of a particular rulemaking, the agency may use such other procedures as the agency determines are appropriate, including—

''(i) the publication of an advance notice of proposed rulemaking;

''(ii) the provision of notice, in forms which are more direct than notice published in the Federal Register, to persons who would be substantially affected by the proposed rule, but who are unlikely to receive notice of the proposed rulemaking through the Federal Register;

''(iii) the provision of opportunities for oral presentation of data, views, information, or rebuttal arguments at informal public hearings, which may be held in the District of Columbia and other locations;

''(iv) the provision of summaries, explanatory materials, or other technical information in response to public inquiries concerning the issues involved in the rulemaking; and

''(v) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in a rulemaking.

''(B) The decision of an agency to use or not to use such other procedures in a rulemaking pursuant to this paragraph shall not be subject to judicial review.

''(3) To ensure an orderly and expeditious proceeding, an agency may establish reasonable procedures to regulate the course of informal public hearings under paragraphs (1) and (2), including the designation of representatives to make oral presentations or engage in direct or cross-examination on behalf of several parties with a common interest in a rulemaking. Transcripts shall be made of all such public hearings.

''(4) An agency shall publish any final rule it adopts in the Federal Register, together with a concise statement of the basis and purpose of the rule and a statement of when the rule may become effective. The statement of basis and purpose shall include—

''(A) an explanation of the need for, objectives of, and specific statutory authority for, the rule;

''(B) a discussion of, and response to, any significant factual or legal issues raised by the comments on the proposed rule prior to its promulgation, including a description of the reasonable alternatives to the rule proposed by the agency and by interested persons, and the reasons why each such alternative was rejected;

''(C)(i) an explanation of whether the specific statutory interpretation upon which the rule is based is expressly required by the text of the statute; or

''(ii) if the specific statutory interpretation upon which the rule is based is not expressly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and why the agency has rejected other interpretations proposed in comments to the agency;

''(D) an explanation of how the factual conclusions upon which the rule is based are substantially supported in the rulemaking file maintained pursuant to subsection (f); and

''(E) a summary of any final analysis of the rule required to be prepared or issued pursuant to chapter 6.

''(5) The provisions of sections 556 and 557 shall apply in lieu of this subsection in the case of rules that are required by statute to be made on the record after opportunity for an agency hearing.

''(d) An agency shall publish the final rule in the Federal Register not less than 60 days before the effective date of such rule. An agency may make a rule effective in less than 60 days after publication in the Federal Register if the rule grants or recognizes an exemption, relieves a restriction, or if the agency for good cause finds that such a delay in the effective date would be contrary to an important public interest and publishes such finding and an explanation of the reasons therefor, with the final rule.

''(e)(1) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

''(2) Each person subject to a major rule may petition—

''(A) for the issuance, amendment, or repeal of such rule;

''(B) for the amendment or repeal of an interpretive rule or general statement of policy or guidance;

''(C) for an interpretation regarding the meaning of the rule, interpretive rule, general statement of policy, or guidance; and

''(D) for a variance or exemption from the terms of the rule.

''(3)(A) Any person subject to a rule, interpretive rule, general statement of policy, or guidance may petition an agency for the amendment or repeal of any rule, interpretive rule, general statement of policy, or guidance.

''(B) If such petition presents a reasonable likelihood that, considering its future impact, the rule, interpretive rule, general statement of policy, or guidance is, or has the effect of, a major rule within the meaning of section 621(4), and its amendment or repeal is required to satisfy the decisional criteria of section 624, the agency shall grant the petition and shall, within one year, conduct a cost-benefit analysis under chapter 6.

''(C) If, considering its future impact, the rule, interpretive rule, general statement of policy, or guidance does not satisfy the requirements of chapter 6, including the decisional criteria set forth in section 624, the agency shall take immediate action either to revoke or to amend the rule, interpretive rule, general statement of policy, or guidance to conform it to the requirements of chapter 6, including the decisional criteria in section 624.

''(4) The agency shall grant or deny a petition made pursuant to this subsection, and give written notice of its determination to the petitioner, with reasonable promptness, but in no event later than 180 days after the petition was received by the agency. The written notice of the agency's determination shall include an explanation of the determination and a response to each factual and legal claim that forms the basis of the petition. 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 carry out its action.

''(5) Following a decision to grant or deny a petition to conduct a cost-benefit analysis for a rule, interpretive rule, general statement of policy, or guidance under this subsection, no further petition for such rule, interpretive rule, general statement of policy, or guidance, submitted by the same person, shall be considered by any agency unless such petition is based on a change in a fact, circumstance, or provision of law underlying or otherwise related to the rule, interpretive rule, general statement of policy, or guidance occurring since the initial petition was granted or denied, that warrants the amendment or repeal of the rule, interpretive rule, general statement of policy, or guidance.

''(f)(1) The agency shall maintain a file for each rulemaking proceeding conducted pursuant to this section and shall maintain a current index to such file. The file and the material excluded from the file pursuant to paragraph (4) shall constitute the rulemaking record for purposes of judicial review. Except as provided in paragraph (4), the file shall be made available to the public beginning on the date on which the agency makes an initial publication concerning the rule.

''(2) The rulemaking file shall include—

''(A) the notice of proposed rulemaking, any supplement to, or modification or revision of, such notice, and any advance notice of proposed rulemaking;

''(B) copies of all written comments received on the proposed rule;

''(C) a transcript of any public hearing conducted on the rulemaking;

''(D) copies, or an identification of the place at which copies may be obtained, of all material described by the agency pursuant to subsection (b)(1)(G) and of other factual and methodological material not described by the agency pursuant to such subsection that pertains directly to the rulemaking and that was available to the agency in connection with the rulemaking, or that was submitted to or prepared by or for the agency in connection with the rulemaking; and

''(E) any statement, description, analysis, or any other material that the agency is required to prepare or issue in connection with the rulemaking, including any analysis prepared or issued pursuant to chapter 6.

''(3) The agency shall place the materials described in paragraph (2) in the file as soon as practicable after such materials become available to the agency.

''(4) The file required by paragraph (1) need not include any material that need not be made available to the public under section 552(b)(4) if the agency includes in such file a statement that notes the existence of such material and the basis upon which the material is exempt from public disclosure under such section. The agency may not substantially rely on any such material in formulating a rule unless it makes the substance of such material available for adequate comment by interested persons. The agency may use summaries, aggregations of data, or other appropriate mechanisms to protect the confidentiality of such material to the maximum extent possible.

''(5) No court shall hold unlawful or set aside an agency rule because of a violation of this subsection unless the court finds that such violation has precluded fair public consideration of a material issue of the rulemaking taken as a whole. Judicial review of compliance or noncompliance with this subsection shall be limited to review of action or inaction on the part of an agency.

''(g) Notwithstanding any other provision of law, this section shall apply to and supplement the procedures governing rulemaking under statutes that are not generally subject to this section.

''(h) Nothing in this section authorizes the use of appropriated funds available to any agency to pay the attorney's fees or other expenses of persons participating or intervening in agency proceedings.''.

SEC. 4. ANALYSIS OF AGENCY RULES.

(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 RULES

''§ 621. Definitions

''For purposes of this subchapter—

''(1) the term 'benefit' means the reasonably identifiable significant incremental 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;

''(2) the term 'cost' means the reasonably identifiable significant incremental 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;

''(3) the term 'cost-benefit analysis' means an evaluation of the costs and benefits of a rule, quantified to the extent feasible and appropriate and otherwise qualitatively described, that is prepared in accordance with the requirements of this subchapter at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition;

''(4)(A) the term 'major rule' means—

''(i) a rule or a group of closely related rules that the agency proposing the rule, the Director, or a designee of 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, the Director, or a designee of 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;

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

''(III) a serious inconsistency or interference with an action taken or planned by another agency;

''(IV) the material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

''(V) disproportionate costs to a class of persons within the regulated sector, and relatively severe economic consequences for the class;

''(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 or agency action that authorizes the introduction into, or removal from, commerce, or recognizes the marketable status, of a product;

''(5) 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 freely 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;

''(6) the term 'performance-based standards' means requirements, expressed in terms of outcomes or goals rather than mandatory means of achieving outcomes or goals, that permit the regulated entity discretion to determine how best to meet specific requirements in particular circumstances;

''(7) the term 'reasonable alternatives' means the range of regulatory options that the agency has discretion to consider under the text of the statute granting rulemaking authority, interpreted, to the maximum extent possible, to embrace the broadest range of options that satisfy the decisional criteria of section 624(b); and

''(8) the term 'rule' has the same meaning as in section 551(4), and—

''(A) includes any statement of general applicability that alters or creates rights or obligations of persons outside the agency; and

''(B) does not include—

''(i) a rule of particular applicability that approves or prescribes the future rates, wages, prices, services, corporate or financial structures, reorganizations, mergers, acquisitions, accounting practices, or disclosures bearing on any of the foregoing;

''(ii) a rule relating to monetary policy or to the safety or soundness of Federally insured depository institutions or any affiliate of such an institution (as defined in section 2(k) of the Bank Holding Company Act of 1956), credit unions, Federal Home Loan Banks, government sponsored housing enterprises, farm credit institutions, foreign banks that operate in the United States and their affiliates, branches, agencies, commercial lending companies, or representative offices, (as those terms are defined in section 1 of the International Banking Act of 1978); or

''(iii) a rule relating to the payment system or the protection of deposit insurance funds or the farm credit insurance fund.

''§ 622. Rulemaking cost-benefit analysis

''(a) 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.

''(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 Director or a designee of 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 file an initial cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

''(B)(i) When the Director or a designee of 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 an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

''(ii) Following the issuance of an initial cost-benefit analysis under clause (i), the agency shall give interested persons an opportunity to comment in the same manner as if the initial cost-benefit analysis had been issued with the notice of proposed rulemaking.

''(2) Each initial cost-benefit analysis shall contain—

''(A) an analysis of the benefits of the proposed rule, and an explanation of how the agency anticipates each benefit will be achieved by the proposed rule, including a description of the persons or classes of persons likely to receive such benefits;

''(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, including a description of the persons or groups of persons likely to bear such costs;

''(C) an identification (including an analysis of the costs and benefits) of reasonable alternatives that the agency has discretion to adopt under the decisional criteria of the statute granting the rulemaking authority, as supplemented by the decisional criteria in section 624, for achieving identified benefits, including, where appropriate, 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 voluntary or performance-based standards, market-based mechanisms, or other flexible regulatory alternatives that permit the greatest flexibility in achieving the identified benefits of the proposed rule;

''(D) an assessment of the feasibility of establishing a regulatory program that operates through the application of voluntary programs, voluntary consensus standards, performance-based standards, market-based mechanisms, or other flexible regulatory alternatives;

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

''(F) an analysis, to the extent practicable, of the effect of the rule on—

''(i) the cumulative burden of compliance with the rule and other existing regulations on persons complying with it; and

''(ii) the net effect on small businesses with fewer than 100 employees, including employment in such businesses;

''(G) an analysis of whether the identified benefits of the proposed rule justify the identified costs of the proposed rule, and an analysis of whether the proposed rule will achieve greater net benefits or, where applicable, lower net costs, than any of the alternatives to the proposed rule, including alternatives identified in accordance with subparagraphs (C) and (D).

''(d)(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking file 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 flexible regulatory alternatives identified pursuant to subsection (c)(2)(C) and (D); and

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

''(i) whether the benefits of the rule justify the costs of the rule; and

''(ii) whether the rule will achieve greater net benefits or, where section 624(c) applies, lower net costs, than any of the reasonable alternatives that the agency has discretion to adopt under the decisional criteria of the statute granting the rulemaking authority, as supplemented by the decisional criteria in section 624, for achieving identified benefits, including, where appropriate, alternatives referred to in subsection (c)(2)(C) and (D).

''(e)(1)(A) The analysis 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, 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. An agency shall not be required to make such evaluation primarily on a mathematical or numerical basis.

''(B) Where practicable and appropriate, 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 relevant information 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.

''(f) The preparation of the initial or final cost-benefit analysis required by this section shall only be performed by an officer or employee of the agency. The preceding sentence shall not preclude a person outside the agency from gathering data or information to be used by the agency in preparing any such cost-benefit analysis or from providing an explanation sufficient to permit the agency to analyze such data or information. If any such data or information is gathered or explained by a person outside the agency, the agency shall specifically identify in the initial or final cost-benefit analysis the data or information gathered or explained and the person who gathered or explained it, and shall describe the arrangement by which the information was procured by the agency, including the total amount of funds expended for such procurement.

''§ 623. Petition for cost-benefit analysis

''(a)(1) Any person subject to a major rule may petition the relevant agency, the Director, or a designee of 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 and the amendment or repeal requested.

''(3) The agency, the Director, or a designee of the President shall grant the petition if the petition shows that there is a reasonable likelihood that, considering the future impact of the rule—

''(A) the rule is a major rule; and

''(B) the proposed amendment or repeal of the rule is required to satisfy the decisional criteria of section 624.

''(4) A decision to grant, or final agency action to deny, a petition under this subsection shall be made not later than 180 days after submittal.

''(5) Following a decision to grant or deny a petition to conduct a cost-benefit analysis for a rule under this subsection, no further petition for such rule, submitted by the same person, shall be considered by any agency, the Director, or a designee of the President, unless such petition is based on a change in a fact, circumstance, or provision of law underlying or otherwise related to the rule occurring since the initial petition was granted or denied, that warrants the amendment or repeal of the rule.

''(b) Not later than 1 year after the date on which a petition has been granted for a major rule under subsection (a), the agency shall conduct a cost-benefit analysis in accordance with this subchapter, and shall propose amendments to, or repeal of, the rule if required by the decisional criteria set forth in section 624.

''(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 interpretive rule, guidance, or general statement of policy that would have the effect of a major rule if the interpretive rule, guidance, or general statement of policy had been adopted as a rule.

''(2) The petition shall identify with reasonable specificity why the interpretive rule, guidance, or general statement of policy would have the effect of a major rule 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 have the effect of a major rule if adopted as a rule.

''(4) A decision to grant, or final agency action to deny, a petition under this subsection shall be made not later than 180 days after the petition is submitted.

''(e) For each interpretative rule, guidance, or general statement of policy for which a petition has been granted under subsection (d), the agency shall—

''(1) immediately withdraw the interpretive rule, guidance, or general statement of policy; or

''(2) within one year, propose a rule in compliance with this subchapter incorporating, with such modifications as the agency considers appropriate, the regulatory standards or criteria contained in such interpretive rule, general statement of policy, or guidance.

''(f) Upon withdrawing an interpretive rule, guidance, or general statement of policy, or where such interpretive rule, guidance, or general statement of policy is not withdrawn and a final rule is not promulgated within 2 years of granting a petition under subsection (d), the agency shall be prohibited from enforcing against any person the regulatory standards or criteria contained in such interpretive rule, guidance, or general statement of policy, unless and until they are included in a rule promulgated in accordance with this subchapter.

''(g)(1) Any person subject to a major rule may petition the relevant agency to modify or waive the specific requirements of the major rule and to authorize such person to demonstrate compliance through alternative means not otherwise permitted by the major rule. The petition shall identify with reasonable specificity the requirements for which the waiver is sought and the alternative means of compliance being proposed.

''(2) The agency shall grant the petition if the petition shows that there is a reasonable likelihood that the proposed alternative means of compliance would achieve the specific benefits of the major rule with an equivalent or greater level of protection of health, safety, and the environment than would be provided by the major rule, and would not impose an undue burden on the agency that would be responsible for enforcing such alternative means of compliance.

''(3) Following a decision to grant or deny a petition under this subsection, no further petition for such rule, submitted by the same person, shall be considered by any agency unless such petition is based on a change in a fact, circumstance, or provision of law underlying or otherwise related to the rule occurring since the initial petition was granted or denied, that warrants the granting of such further petition.

''§ 624. Decisional criteria

''(a) The requirements of this section shall supplement any other decisional criteria otherwise provided by law.

''(b) Subject to subsection (c), no final rule subject to this subchapter shall be promulgated unless the agency finds that—

''(1) the potential benefits from the rule justify the potential costs of the rule; and

''(2) the rule will produce the most cost-effective result of any of the reasonable alternatives that the agency has discretion to adopt under the decisional criteria of the statute granting the rulemaking authority.

''(c) If a statute requires or permits that a rule be promulgated and that rule cannot, applying the express decisional criteria in the statute, satisfy the criteria provided in subsection (b), the agency shall not promulgate the rule unless the rule imposes—

''(1) lower costs than any of the reasonable alternatives; or

''(2) the least costs taking into account benefits that the agency has discretion to adopt under the decisional criteria of the statute granting the rulemaking authority.

''(d) If an agency promulgates a rule that is subject to subsection (c), the agency shall prepare a written explanation of why the agency was required to promulgate a rule with potential costs that were not justified by the potential benefits and shall transmit that explanation along with the final cost-benefit analysis to Congress when the final rule is promulgated.

''§ 625. Judicial review

''(a) 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 final agency action under this subchapter.

''(b)(1) Any cost-benefit analysis of, or risk assessment concerning, a rule shall constitute part of the whole rulemaking record of agency action for the purpose of judicial review and shall be considered by a court in determining the legality of the agency action, but only to the extent that it relates to the agency's decisional responsibilities under section 624 or the statute granting the agency authority to take the agency action.

''(2) No analysis required by this subchapter shall be subject to judicial review separate or apart from judicial review of the agency action to which it relates.

''(3) The court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to take the action.

''(4) The court shall set aside agency action that fails to satisfy the decisional criteria of section 624, applying the applicable judicial review standards.

''§ 626. Deadlines for rulemaking

''(a) 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 shall be suspended until such time as the requirements of this subchapter are satisfied.

''(b) 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 this chapter shall be suspended until such time as the requirements of this subchapter are satisfied.

''(c) In any case in which the failure to promulgate a rule by a deadline would create an obligation to regulate through individual adjudications by another deadline, the deadline for such regulation shall be suspended to allow the requirements of this subchapter to be satisfied.

''§ 627. Agency review of rules

''(a)(1)(A) Not later than 9 months after the date of enactment of this section, each agency shall prepare and publish in the Federal Register a proposed schedule for the review, in accordance with this section, of—

''(i) each rule of the agency that is in effect on such effective date and which, considering its future impact, would be a major rule under this subchapter;

''(ii) each rule of the agency that is inconsistent or incompatible with, or duplicative of, any other obligation or requirement established by any Federal statute, rule, or other agency statement, interpretation, or action that has the force of law; and

''(iii) each rule of the agency in effect on the date of enactment of this section (in addition to the rules described in clauses (i) and (ii)) that the agency has selected for review.

''(B) Each proposed schedule required by subparagraph (A) shall include—

''(i) a brief explanation of the reasons the agency considers each rule on the schedule to be a major rule under section 621(4)(A), or the reasons why the agency selected the rule for review;

''(ii) a date set by the agency, in accordance with subsection (b)(1), for the completion of the review of each such rule; and

''(iii) a statement that the agency requests comments from the public on the proposed schedule.

''(C) The agency shall set a date to initiate review of each rule on the schedule in a manner that will ensure the simultaneous review of related items and that will achieve a reasonable distribution of reviews over the period of time covered by the schedule.

''(2) Not later than 90 days before publishing in the Federal Register the proposed schedule required under paragraph (1), each agency shall make the proposed schedule available to the Director or a designee of the President, or to the Vice President or other officer to whom oversight authority has been delegated under section 643. The President or that officer may select for review in accordance with this section any additional rule.

''(3) Not later than 1 year after the date of enactment of this section, each agency shall publish in the Federal Register a final schedule for the review of the rules referred to in paragraphs (1) and (2). Each agency shall publish with the final schedule the response of the agency to comments received concerning the proposed schedule.

''(b)(1) Except as explicitly provided otherwise by statute, the agency shall, pursuant to subsections (c) through (e), review—

''(A) each rule on the schedule promulgated pursuant to subsection (a);

''(B) each major rule under section 621(4) promulgated, amended, or otherwise renewed by an agency after the date of the enactment of this section; and

''(C) each rule promulgated after the date of enactment of this section that the President or the officer designated by the President selects for review pursuant to subsection (a)(2).

''(2) Except as provided in subsection (f)—

''(A) in the case of a regulation that takes effect after the date of enactment of this section, the regulation shall terminate on the date that is 5 years after the date on which the regulation takes effect, unless the review required by this section has been completed by the date that is 5 years after the date on which the regulation takes effect; and

''(B) in the case of a regulation in effect on the date of enactment of this section, the regulation shall terminate on the date that is 7 years after the date of enactment of the Regulatory Reform Act of 1995, unless the review required by this section has been completed by the date that is 7 years after the date of enactment of the Regulatory Reform Act of 1995.

''(c) An agency shall publish in the Federal Register a notice of its proposed action under this section with respect to a rule being reviewed. The notice shall include—

''(1) an identification of the specific statutory authority under which the rule was promulgated and an explanation of whether the agency's interpretation of the statute is expressly required by the current text of that statute or, if not, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and an explanation why the interpretation selected by the agency is the agency's preferred interpretation;

''(2) an analysis of the benefits and costs of the rule during the period in which it has been in effect;

''(3) an explanation of the proposed agency action with respect to the rule, including action to repeal or amend the rule to resolve inconsistencies or conflicts with any other obligation or requirement established by any Federal statute, rule, or other agency statement, interpretation, or action that has the force of law; and

''(4) a statement that the agency seeks proposals from the public for modifications or alternatives to the rule which may accomplish the objectives of the rule in a more effective or less burdensome manner.

''(d) If an agency proposes to repeal or amend a rule under review pursuant to this section, the agency shall, after issuing the notice required by subsection (c), comply with the provisions of this chapter, chapter 5, and any other applicable law. The requirements of such provisions and related requirements shall apply to the same extent and in the same manner as in the case of a proposed agency action to repeal or amend a rule that is not taken pursuant to the review required by this section.

''(e) If an agency proposes to renew without amendment a rule under review pursuant to this section, the agency shall—

''(1) give interested persons not less than 60 days after the publication of the notice required by subsection (c) to comment on the proposed renewal; and

''(2) publish in the Federal Register notice of the renewal of such rule, an explanation of the continued need for the rule, and, if the renewed rule is a major rule under section 621(4), an explanation of how the rule complies with section 624.

''(f) Any agency, which for good cause finds that compliance with this section with respect to a particular rule during the period provided in subsection (b) is contrary to an important public interest, may request the President, or an officer designated by the President, to establish a period longer than 5 years, in the case of a regulation that takes effect after the date of enactment of this section, or 7 years, in the case of a regulation in effect on the date of enactment of this section, for the completion of the review of such rule. The President or that officer may extend the period for review of a rule to a total period of not more than 10 years. Such extension shall be published in the Federal Register with an explanation of the reasons therefor.

''(g) In any case in which an agency has not completed the review of a rule within the period prescribed by subsection (b) or (f) of this section, the agency shall immediately publish in the Federal Register a notice proposing to issue the rule under subsection (c), and shall complete proceedings pursuant to subsection (d) or (e) not later than 180 days after the date on which the review was required to be completed under subsection (b) or (f).

''(h) Nothing in this section shall relieve any agency from its obligation to respond to a petition to issue, amend, or repeal a rule, for an interpretation regarding the meaning of a rule, or for a variance or exemption from the terms of a rule, submitted pursuant to any other provision of law.

''§ 628. Special rule

''Notwithstanding any other provision of the Comprehensive Regulatory Reform Act of 1995, or the amendments made by such Act, for purposes of this subchapter and subchapter IV, the head of each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act), the National Credit Union Administration, the Federal Housing Finance Board, the Office of Federal Housing Enterprise Oversight, and the Farm Credit Administration, shall have authority with respect to such agency that otherwise would be provided under such subchapters to the Director, a designee of the President, Vice President, or any officer designated or delegated with authority under such subchapters.

''SUBCHAPTER III—RISK ASSESSMENTS

''§ 631. Definitions

''For purposes of this subchapter—

''(1) the term 'benefit' has the meaning given such term in section 621(1);

''(2) the term 'best estimate' means an estimate that, to the extent feasible and scientifically appropriate, is based on—

''(A) central estimates of risk using the most plausible and realistic assumptions;

''(B) an approach that combines multiple estimates based on different scenarios and weighs the probability of each scenario; and

''(C) any other methodology designed to provide the most plausible and realistic level of risk, given the current scientific information available to the agency concerned;

''(3) the term 'cost' has the meaning given such term in section 621(2);

''(4) the term 'cost-benefit analysis' has the meaning given such term in section 621(3);

''(5) the term 'emergency' means an actual, immediate, and substantial endangerment to health, safety, or the human environment;

''(6) the term 'hazard identification' means identification of a substance, activity, or condition that may cause to health, safety, or the environment based on empirical data, measurements, or testing showing that it has caused significant adverse effects at some levels of dose or exposure combined degree of toxicity and actual exposure, or other risk the hazards pose for individuals, populations, or natural resources; and

''(7) the term 'major cleanup plan' means any proposed or final environmental cleanup plan for a facility, or Federal guidelines for the issuance of any such plan, the expected costs, expenses, and damages of which are likely to exceed, in the aggregate, $10,000,000, including a corrective action requirement under the Solid Waste Disposal Act (notwithstanding section 4(b)(1)(C) of such Act, but only to the extent of such requirement), a removal or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any other environmental restoration or damage assessment carried out by, on behalf of, or as required or ordered by, an agency or Federal court, or pursuant to the authority of a Federal statute with respect to any substance;

''(8) the term 'major rule' has the meaning given such term in section 621(4);

''(9) the term 'negative data' means data that fail to show that a given substance or activity

induces an adverse effect under certain conditions;

''(10) the term 'risk assessment' means—

''(A) the process of identifying hazards, and of quantifying (to the maximum extent practicable) or describing the combined degree of toxicity and actual exposure, or other risk the hazards pose for individuals, populations, or natural resources; and

''(B) the document containing the explanation of how the assessment process has been applied to an individual substance, activity, or condition;

''(11) the term 'risk characterization'—

''(A) means the element of a risk assessment that involves presentation of the degree of risk to individuals and populations expected to be protected, as presented in any regulatory proposal or decision, report to Congress, or other document that is made available to the public; and

''(B) may include discussions of uncertainties, conflicting data, estimates, extrapolations, inferences, and opinions, as appropriate;

''(12) the term 'rule' has the meaning given such term in section 621(7); and

''(13) the term 'substitution risk' means a potential increased risk to health, safety, or the environment resulting from market substitutions, a reduced standard of living, or a regulatory alternative designed to decrease other risks.

"§ 632. Applicability

''(a) Except as provided in subsection (b), this subchapter shall apply to all risk assessments and risk characterizations prepared by, or on behalf of, or prepared by others and adopted by, any agency in connection with health, safety, and environmental risks.

''(b)(1) This subchapter shall not apply to risk assessments or risk characterizations performed with respect to—

''(A) a situation that the head of the agency finds to be an emergency;

''(B) a rule or agency action that authorizes the introduction into or removal from commerce, or initiation of manufacture, of a substance, mixture, or product, or recognizes the marketable status of a product;

''(C) a health, safety, or environmental inspection, compliance or enforcement action, or individual facility permitting action; or

''(D) a screening analysis clearly identified as such.

''(2)(A) An analysis shall not be treated as a screening analysis for the purposes of paragraph (1)(D) if the result of the analysis is used—

''(i) as the basis for imposing a restriction on a previously authorized substance, product, or activity after its initial introduction into manufacture or commerce; or

''(ii) to characterize a finding of risk from a substance or activity in any agency document or other communication made available to the public, the media, or Congress.

''(B) Among the analyses that may be treated as a screening analyses for the purposes of paragraph (1)(D) are product registrations, reregistrations, tolerance settings, and reviews of premanufacture notices under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

''(3) This subchapter shall not apply to any food, drug, or other product label or to any risk characterization appearing on any such label.

"§ 633. Principles for risk assessment

''(a)(1) The head of each agency shall apply the principles set forth in subsection (b) when preparing any risk assessment for a major rule to ensure that the risk assessment and all of its components—

''(A) distinguish scientific findings and best estimates of risk from other considerations;

''(B) are, to the maximum extent practicable, scientifically objective, plausible, and realistic, and inclusive of all relevant data;

''(C) rely, to the extent available and practicable, on scientific findings; and

''(D) use situation- or decision-specific information to the maximum extent practicable.

''(2) An agency shall not be required to repeat discussions or explanations required under this section in each risk assessment document if there is an unambiguous reference to the relevant discussion or explanation in another reasonably available agency document that was prepared in accordance with this subchapter.

''(b) The principles to be applied when preparing risk assessments are as follows:

''(1)(A) When assessing human health risks, a risk assessment shall consider and discuss both the most important laboratory and epidemiological data, including negative data, and summarize the remaining data that finds, or fails to find, a correlation between a health risk and a substance or activity.

''(B) When conflicts among such data appear to exist, or when animal data are used as a basis to assess human health, the assessment shall include a discussion of possible reconciliation of conflicting information. Greatest emphasis shall be placed on data that indicates the biological basis of the resulting harm in humans. Animal data shall be reviewed with regard to relevancy to humans.

''(2) When a risk assessment involves a choice of any significant assumption (including the use of safety factors and default assumptions), inference, or model, the agencies or instrumentality preparing the assessment shall—

''(A) present a representative description and explicit explanation of plausible and alternative similar assumptions, inferences, or models (including the assumptions incorporated into the model) and the sensitivity of the conclusions to them;

''(B) give preference to the model, assumption, input parameter that represents the most plausible or realistic inference from supporting scientific information;

''(C) identify any science policy or value judgments and employ those judgments only where the policy determination has been approved by the head of the agency, after notice and opportunity for public involvement, as appropriate for the circumstance under consideration;

''(D) describe any model used in the risk-assessment and make explicit the assumptions incorporated into the model; and

''(E) indicate the extent to which any significant model has been validated by, or conflicts with, empirical data.

''(3) Risk assessments that provide a quantification or numerical output shall be calculated using the best estimate for each input parameter and shall use, as available, probabilistic descriptions of the uncertainty and variability associated with each input parameter.

''(4) A risk assessment shall clearly separate hazard identification from risk characterization and make clear the relationship between the level of risk and the level of exposure to a potential hazard.

''(5) A risk assessment shall be prepared at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition.

''(6) Where relevant, practicable, and appropriate, data shall be developed consistent with standards for the development of test data promulgated pursuant to section 4 of the Toxic Substances Control Act, and standards for data requirements promulgated pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act.

''(c)(1) The head of each agency shall promote early involvement by all stakeholders in the development of risk assessments that may support or affect agency rules, guidance, and other significant actions, by publishing as part of its semiannual regulatory agenda, required under section 602—

''(A) a list of risk assessments and supporting assessments, including hazard, dose or exposure assessments, under preparation or planned by the agency;

''(B) a brief summary of relevant issues addressed or to be addressed by each listed risk assessment or supporting assessment;

''(C) an approximate schedule for completing each listed risk assessment and supporting assessment;

''(D) an identification of potential rules, guidance, or other agency actions supported or affected by each listed risk assessment and supporting assessment; and

''(E) the name, address, and telephone number of an agency official knowledgeable about each listed risk assessment and supporting assessment.

''(2)(A) The head of each agency shall provide an opportunity for meaningful public participation and comment on any risk assessment throughout the regulatory process commensurate with the consequences of the decision to be made.

''(B) In cases where the risk assessment will support a major rule, the agency shall publish, at the earliest opportunity in the process, an advanced notice of relevant risk assessment related information that includes, at a minimum, an identification of—

''(i) all relevant hazard, dose, exposure, and other risk related documents that the agency plans to consider;

''(ii) all risk related guidance that the agency considers relevant;

''(iii) all hazard, dose, exposure, and other risk assumptions on which the agency plans to relay and the bases therefor; and

''(iv) all data and information deficiencies that could affect agency decisionmaking.

''(d)(1) No agency shall automatically incorporate or adopt any recommendation or classification made by an entity described in paragraph (2) concerning the health effects or value of a substance without an opportunity for notice and comment. Any risk assessment or risk characterization document adopted by an agency on the basis of such a recommendation or classification shall comply with this title.

''(2) An entity referred to in paragraph (1) includes—

''(A) any foreign government and its agencies;

''(B) the United Nations or any of its subsidiary organizations;

''(C) any international governmental body or standards-making organization; and

''(D) any other organization or private entity without that does not have a place of business located in the United States or its territories.

"§ 634. Principles for risk characterization and communication

''In characterizing risk in any risk assessment document, regulatory proposal or decision, report to Congress, or other document relating in each case to a major rule that is made available to the public, each agency characterizing the risk shall comply with each of the following:

''(1) The head of the agency shall describe the exposure scenarios used in any risk assessment, and, to the extent feasible, provide an estimate of the size of the corresponding population or natural resource at risk and the likelihood of such exposure scenarios.

''(2) If a numerical estimate of risk is provided, the head of the agency, to the extent feasible and scientifically appropriate, shall provide—

''(A) the range and distribution of exposures derived from exposure scenarios used in a risk assessment, including, where appropriate, central and high-end estimates, but always including a best estimate of the risk to the general population;

''(B) the range and distribution of risk estimates, including best estimates and, where quantitative estimates of the range of distribution of risk estimates are not possible, a list of

qualitative factors influencing the range of possible risks; and

''(C) a statement of the major sources of uncertainties in the hazard identification, dose-response, and exposure assessment phases of risk assessment and their influence on the results of the assessment.

''(3) To the extent feasible, the head of the agency shall provide a statement that places the nature and magnitude of individual and population risks to human health in context.

''(4) When a Federal agency provides a risk assessment or risk characterization for a proposed or final regulatory action, such assessment or characterization shall include a statement of any significant substitution risks to human health identified by the agency or contained in information provided to the agency by a commentator.

''(5) An agency shall present a summary in connection with the presentation of the agency's risk assessment or the regulation if—

''(A) the agency provides a public comment period with respect to a risk assessment or regulation;

''(B) a commentator provides a risk assessment, and a summary of results of such risk assessment; and

''(C) such risk assessment is reasonably consistent with the principles and the guidance provided under this subtitle.

''§ 635. Requirement to prepare assessment

''(a) Except as provided in section 632 and in addition to any requirements applicable under subchapter II, the head of each agency shall prepare—

''(1) for each major rule relating to health, safety, or the environment, and for each major cleanup plan, that is proposed by the agency after the date of enactment of this subchapter, is pending on the date of enactment of this subchapter, or is subject to a granted petition for review pursuant to section 553(e) or 623, a risk assessment in accordance with this subchapter;

''(2) for each such proposed or final plan, and each reasonable alternative within the statutory authority of the agency taking action, a cost-benefit analysis equivalent to that which would be required under subchapter II if subchapter II were applicable; and

''(3) for each such proposed or final plan, quantified to the extent feasible, a comparison of any health, safety, or environmental risks addressed by the regulatory alternatives to other relevant risks chosen by the head of the agency, including at least 3 other risks regulated by the agency and to at least 3 other risks with which the public is familiar.

''(b) A major cleanup plan is subject to this subchapter if—

''(1) construction has not commenced on a significant portion of the work required by the plan; or

''(2) if construction has commenced on a significant portion of the work required by the plan, unless—

''(A) it is more cost-effective to complete construction of the work than to apply the provisions of this subchapter; or

''(B) the application of the provisions of this subchapter, including any delays caused thereby, will result in an actual and immediate risk to human health or welfare.

''(c) A risk assessment prepared pursuant to this subchapter shall be a component of and used to develop any cost-benefit analysis required by this subchapter or subchapter II, and shall, along with any cost-benefit analysis required by this subchapter, be made part of the administrative record for judicial review of any final agency action.

''§ 636. Requirements for assessments

''(a) The head of the agency, subject to review by the Director or a designee of the President, shall make a determination that, notwithstanding any other provision of law—

''(1) for each major rule and major cleanup plan subject to this subchapter, the risk assessment required under section 635 is based on a scientific, plausible, and realistic evaluation, reflecting reasonable exposure scenarios, of the risk addressed by the major rule and is supported by the best available scientific data, as determined by a peer review panel in accordance with section 640; and

''(2) for each major cleanup plan subject to this subchapter, the plan has benefits that justify its costs and that there is no alternative that is allowed by the statute under which the plan is promulgated that would provide greater net benefits or that would achieve an equivalent reduction in risk in a more cost-effective and flexible manner.

''(b) Notwithstanding any other provision of law, no agency shall prohibit or refuse to approve a substance or product on the basis of safety where the substance or product presents a negligible or insignificant human risk under the intended conditions of use.

''(c) Notwithstanding any other provision of law, issuance of a record of decision or a final permit condition or administrative order containing a major cleanup plan, or denial of, or completion of agency review pursuant to, a petition for review of a major cleanup plan under section 637(c), shall constitute final agency action subject to judicial review at the time this action is taken.

''§ 637. Regulations; plan for assessing new information

''(a)(1) Not later than 1 year after the date of enactment of this subchapter, the Director or a designee of the President shall—

''(A) issue a final regulation that has been subject to notice and comment under section 553 that directs agencies to implement the risk assessment and risk characterization principles set forth in sections 633 and 634; and

''(B) provide a format for summarizing risk assessment results.

''(2) The regulation under paragraph (1) shall be sufficiently specific to ensure that risk assessments are conducted consistently by the various agencies.

''(b) Review of a risk assessment or any entry (or the evaluation underlying the entry) on an agency-developed database (including, but not limited to, the Integrated Risk Information System), shall be conducted by the head of the agency on the written petition of a person showing a reasonable likelihood that—

''(1) the risk assessment or entry is inconsistent with the principles set forth in sections 633 and 634;

''(2) the risk assessment or entry contains different results than if it had been properly conducted under sections 633 and 634;

''(3) the risk assessment or entry is inconsistent with a rule issued under subsection (a); or

''(4) the risk assessment or entry does not take into account material significant new scientific data or scientific understanding.

''(c) Review of a risk assessment, a cost-benefit analysis, or both, for a major cleanup plan shall be conducted by the head of the agency on the written petition of a person showing a reasonable likelihood that—

''(1) the risk assessment warrants revision under any of the criteria set forth in subsection (b); or

''(2) the cost-benefit analysis warrants revision under any of the criteria set forth in section 624.

''(d)(1) Not later than 90 days after receiving a petition under subsection (b), the head of the agency shall respond to the petition by agreeing or declining to review the risk entry, the cost-benefit analysis, or both, referred to in the petition, and shall state the basis for the decision.

''(2) If the head of the agency agrees to review the petition, the agency shall complete its review not later than 180 days after the decision made under paragraph (1), unless the Director agrees in writing with an agency determination that an extension is necessary in view of limitations on agency resources. Prior to completion of the agency review, the agency's written conclusions concerning the review shall be subjected to peer review pursuant to section 640.

''(3) A risk assessment review completed pursuant to a petition may be the basis for initiating a petition pursuant to any other provision of law.

''(4) Following a decision to grant or deny a petition under subsection (b) or (c), no further petition for such risk assessment, entry, or cost-benefit analysis, submitted by the same person, shall be considered by any agency unless such petition is based on a change in a fact, circumstance, or provision of law underlying or otherwise related to the matters covered by the initial petition, occurring since the initial petition was granted or denied, that warrants the granting of such further petition.

''(e) The regulations under this section shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State agencies and local governments, and such other departments, agencies, offices, organizations, or persons as may be advisable.

''(f) At least every 4 years, the Director or a designee of the President shall review, and when appropriate, revise, the regulations published under this section.

''§ 638. Rule of construction

''Nothing in this subchapter shall be construed to—

''(1) preclude the consideration of any data or the calculation of any estimate to more fully describe risk or provide examples of scientific uncertainty or variability; or

''(2) require the disclosure of any trade secret or other confidential information.

''§ 639. Regulatory priorities

''(a)(1) Not later than 180 days after the date of enactment of this section, the Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall enter into appropriate arrangements with an accredited scientific body to—

''(A) conduct a study of the methodologies for using comparative risk to rank dissimilar health, safety, and environmental risks; and

''(B) to conduct a comparative risk analysis in accordance with paragraph (2).

''(2) The study of the methodologies under paragraph (1)(A) shall be conducted as part of the first comparative risk analysis under paragraph (1)(B). The study shall—

''(A) seek to develop and rigorously test methods of comparative risk analysis;

''(B) have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for health, safety, and environmental risk prevention and reduction; and

''(C) review and evaluate the experience of States that have conducted comparative risk analyses.

''(3)(A) The comparative risk analysis under paragraph (1)(B) shall compare and rank, to the extent feasible, health, safety, and environmental risks potentially regulated across the spectrum of programs relating to health, safety, and the environment administered by the departments, agencies, and instrumentalities of the Federal Government.

''(B) In carrying out the comparative risk analysis under this paragraph, the Director shall ensure that—

''(i) the scope and specificity of the analysis are sufficient to provide the President and the heads of agencies guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

''(ii) the analysis is conducted through an open process, by individuals with relevant expertise, including, as appropriate—

''(I) toxicologists;

''(II) biologists;

''(III) engineers; and

''(IV) experts in the fields of medicine, industrial hygiene, and environmental effects;

''(iii) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles described in sections 633 and 634;

''(iv) the methodologies and principal scientific determinations made in the analysis are subjected to peer review under section 640 and the conclusions of the peer review are made publicly available as part of the final report;

''(v) there is an opportunity for public comments on the results of the analysis prior to making them final; and

''(vi) the results of the analysis are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

''(4) The comparative risk analysis shall be completed, and a report submitted to Congress not later than 3 years after the date of enactment of this section. The analysis shall be reviewed and revised not less often than every 5 years thereafter for a minimum of 15 years following the release of the initial analysis.

''(b) Not later than 180 days after the date of enactment of this section, the Director of the Office of Management and Budget, in collaboration with the head of each Federal agency, shall enter into a contract with the National Research Council to provide technical guidance to the agencies on approaches to using comparative risk analysis in setting health, safety, and environmental priorities to assist the agencies in complying with subsection (c).

''(c)(1) In exercising authority under any laws protecting health, safety, or the environment, the head of an agency shall prioritize the use of the resources available under such laws to address the risks to health, safety, and the environment that—

''(A) the agency determines are the most serious; and

''(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources to be expended.

''(2) In identifying the sources of the most serious risks under paragraph (1), the head of the agency shall consider, at a minimum—

''(A) the plausible likelihood and severity of the effect; and

''(B) the plausible number and groups of individuals potentially affected.

''(3) The head of the agency shall incorporate the priorities identified in paragraph (1) into the budget, strategic planning, and research activities of the agency by, in the agency's annual budget request to Congress—

''(A) identifying which risks the agency has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), and the basis for that determination;

''(B) explicitly identifying how the agency's requested funds will be used to address those risks;

''(C) identifying any statutory, regulatory, or administrative obstacles to allocating agency resources in accordance with the priorities established under paragraph (1); and

''(D) explicitly considering the requirements of paragraph (1) when preparing the agency's regulatory agenda or other strategic plan, and providing an explanation of how the agenda or plan reflects those requirements and the comparative risk analysis when publishing any such agenda or strategic plan.

''(4) In March of each year, the head of each agency shall submit to Congress specific recommendations for repealing or modifying laws that would better enable the agency to prioritize its activities to address the risks to health, safety, and the environment that are the most serious and can be addressed in a cost-effective manner consistent with the requirements of paragraph (1).

''§ 640. Establishment of program

''(a) The Director of the Office of Science and Technology or the Director, as appropriate, shall develop a systematic program for the peer review of work products covered by subsection (c), which program shall be used, in as uniform a manner as is practicable, across the agencies.

''(b) The program under subsection (a)—

''(1) shall provide for the creation of peer review panels consisting of independent and external experts who are broadly representative and balanced to the extent feasible;

''(2) shall not exclude peer reviewers merely because they represent entities that may have a potential interest in the outcome, if that interest is fully disclosed;

''(3) shall exclude experts who were associated with the generation of the specific work product either directly by substantial contribution to its development, or indirectly by consultation and development of the specific product;

''(4) shall provide for differing levels of peer review depending on the significance or complexity of the issue or the need for expedition;

''(5) shall contain balanced presentations of all considerations, including minority reports and an agency response to all significant peer review comments; and

''(6) shall provide an opportunity for interested parties to submit issues for consideration by peer review panels.

''(c) Matters requiring peer review shall include—

''(1) risk assessments and cost-benefit analyses for major rules;

''(2) quantitative estimates of risk or hazard that are used in making regulatory determinations, including all entries into the Integrated Risk Information System;

''(3) risk assessment and risk characterization regulations and cost-benefit guidelines; and

''(4) any other significant or technical work product, as designated by the head of each agency, the Director of the Office of Science and Technology, or the Director.

''(d) All underlying data shall be submitted to peer reviewers, except to the extent necessary to protect confidential business information and trade secrets. To ensure such protections, the head of the agency may require that peer reviewers enter into confidentiality agreements.

''(e) The peer review and the agency's responses shall be made available to the public for comment and the final peer review and the agency's responses shall be made part of the administrative record for purposes of judicial review.

''(f) The proceedings of peer review panels under this section shall be subject to the applicable provisions of the Federal Advisory Committee Act.

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

''§ 641. Procedures

''(a) The Director or a designee of the President shall—

''(1) establish procedures for agency compliance with this chapter; and

''(2) monitor, review, and ensure agency implementation of such procedures.

''(b) Not later than 12 months after the date of enactment of this subchapter the Office of Management and Budget shall issue regulations to assist agencies in preparing the cost-benefit analyses required by this subchapter. The regulations shall—

''(1) ensure that cost and benefit evaluations are consistent with this subchapter and, to the extent feasible, represent realistic and plausible estimates;

''(2) be adopted following public notice and adequate opportunity for comment; and

''(3) be used consistently by all agencies covered by this subchapter.

''§ 642. Promulgation and adoption

''(a) Procedures established pursuant to section 641 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 641 include review of any initial or final analyses of a rule required under chapter 6, the time for any such review of any initial analysis shall not exceed 30 days following the receipt of the analysis by the Director, a designee of the President, or by an officer to whom the authority granted under section 641 has been delegated pursuant to section 643.

''(2) The time for review of any final analysis required under chapter 6 shall not exceed 30 days following the receipt of the analysis by the Director, a designee of 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.

''§ 643. 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.

''§ 644. Judicial review

''The exercise of the authority granted under this subchapter by the Director, the President, or by an officer to whom such authority has been delegated under section 643 shall not be subject to judicial review in any manner under this chapter.''.

(b) REGULATORY FLEXIBILITY ANALYSIS.—

(1) JUDICIAL REVIEW.—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 2 years 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;

''(B) prepared a final regulatory flexibility analysis pursuant to section 604; or

''(C) did not prepare an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604 except as permitted by sections 605 and 608,

an affected small entity may petition for the judicial review of such certification, analysis, or lack of analysis, in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction to review such certification or analysis.

''(2)(A) Notwithstanding any other provision of law, an affected small entity shall have 2 years to challenge such certification, analysis or lack of analysis.

''(B) If 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 2 years 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) Notwithstanding section 605, if the court determines, on the basis of the rulemaking record, that there is substantial evidence to conclude that the rule would have a significant economic impact on a substantial number of small entities, the court shall order the agency to prepare a final regulatory flexibility analysis pursuant to section 604.

''(B) If 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) The court may stay the rule or grant such other relief as it deems appropriate 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.

''(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) CHAPTER ANALYSIS.—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 analysis.
''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 RULES

''621. Definitions.
''622. Rulemaking cost-benefit analysis.
''623. Petition for cost-benefit analysis.
''624. Decisional criteria.
''625. Judicial review.
''626. Deadlines for rulemaking.
''627. Agency review of rules.
''628. Special rule.

''SUBCHAPTER III—RISK ASSESSMENTS

''631. Definitions.
''632. Applicability.
''633. Principles for risk assessment.
''634. Principles for risk characterization and communication.
''635. Requirement to prepare risk assessment.
''636. Requirements for assessments.
''637. Regulations; plan for assessing new information.
''638. Rule of construction.
''639. Regulatory priorities.
''640. Establishment of program.

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

''641. Procedures.
''642. Promulgation and adoption.
''643. Delegation of authority.
''644. Judicial review.''.

(2) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

''SUBCHAPTER I—REGULATORY ANALYSIS''.

SEC. 5. JUDICIAL REVIEW.

(a) SCOPE OF REVIEW.—Section 706 of title 5, United States Code, is amended to read as follows:

''§ 706. Scope of review

''(a) To the extent necessary to reach a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

''(1) compel agency action unlawfully withheld or unreasonably delayed; and

''(2) hold unlawful and set aside agency action, findings and conclusions found to be—

''(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

''(B) contrary to constitutional right, power, privilege, or immunity;

''(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

''(D) without observance of procedure required by law;

''(E) unsupported by substantial evidence in a proceeding subject to sections 556 and 557 or otherwise reviewed on the record of an agency hearing provided by statute;

''(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, as distinguished from the policy or legal basis, of a rule adopted in a proceeding subject to section 553; or

''(G) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

''(b) In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

''(c) In reviewing an agency interpretation of a statute governing the authority for an agency action, including agency action taken pursuant to a statute that provides for review of final agency action, the reviewing court shall—

''(1) hold erroneous and unlawful—

''(A) an agency interpretation that is other than the interpretation of the statute clearly intended by Congress; or

''(B) an agency interpretation that is outside the range of permissible interpretations of the statute; and

''(2) hold arbitrary, capricious, or an abuse of discretion—

''(A) an agency action as to which the agency—

''(i) has improperly classified an interpretation as being within or outside the range of permissible interpretations; or

''(ii) has not explained in a reasoned analysis why it selected the interpretation and why it rejected other permissible interpretations of the statute; or

''(B) in the case of agency action subject to chapter 6, an interpretation that does not give the agency the broadest discretion to develop rules that will satisfy the decisional criteria of section 624.

''(d) Notwithstanding any other provision of law, the provisions of this subsection shall apply to, and supplement, the requirements contained in any statute for the review of final agency action which is not otherwise subject to this subsection.''.

(b) COURT OF FEDERAL CLAIMS.—

(1) IN GENERAL.—Section 1491(a) of title 28, United States Code, is amended—

(A) in paragraph (1), by amending the first sentence to read as follows: ''The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States for monetary relief founded either upon the Constitution or any Act of Congress or any regulation or action of an agency, or upon any expressed or implied contract with the United States, in cases not sounding in tort, or for invalidation of any Act of Congress or any regulation of an executive department that adversely affects private property rights in violation of the fifth amendment of the United States Constitution.'';

(B) in paragraph (2), by inserting before the first sentence the following: ''In any case within its jurisdiction, the Court of Federal Claims shall have the power to grant injunctive and declaratory relief when appropriate.''; and

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

''(4) In cases otherwise within its jurisdiction, the Court of Federal Claims shall also have ancillary jurisdiction, concurrent with the courts designated in section 1346(b), to render judgment upon any related tort claim authorized under section 2674.

''(5) In proceedings within the jurisdiction of the Court of Federal Claims which constitute judicial review of agency action (rather than de novo proceedings), the provisions of section 706 of title 5 shall apply.''.

(2) PENDENCY OF CLAIMS IN OTHER COURTS.—Section 1500 of title 28, United States Code, is repealed.

(c) JUDICIAL PROCEEDINGS.—

(1) CONSENT DECREES.—Chapter 7 of title 5, United States Code, is amended by adding at the end the following new section:

''§ 707. Consent decrees

''In interpreting any consent decree in effect on or after the date of enactment of this section that imposes on an agency an obligation to initiate, continue, or complete rulemaking proceedings, the court shall not enforce the decree in a way that divests the agency of discretion granted to it by the Congress or the Constitution to respond to changing circumstances, make policy or managerial choices, or protect the rights of third parties.''.

(2) AFFIRMATIVE DEFENSE.—Chapter 7 of title 5, United States Code, is further amended by adding at the end the following new section:

''§ 708. Affirmative defense

''Notwithstanding any other provision of law, it shall be an affirmative defense in any enforcement action brought by an agency that the regulated person or entity is complying with a rule, regulation, adjudication, directive, or order of such agency or any other agency that is inconsistent, incompatible, contradictory, or otherwise cannot be reconciled with the agency rule, regulation, adjudication, directive, or order being enforced.''.

(3) AGENCY INTERPRETATIONS IN CIVIL AND CRIMINAL ACTIONS.—

(A) IN GENERAL.—Chapter 7 of title 5, United States Code, is further amended by adding at the end the following new section:

"§ 709. Agency interpretations in civil and criminal actions

''(a)(1) No civil or criminal penalty shall be imposed in any action brought in a Federal court, including an action pending on the date of enactment of this section, for the alleged violation of a rule, if the defendant, prior to the alleged violation—

''(A) reasonably determined, based upon a description, explanation, or interpretation of the rule contained in the rule's statement of basis and purpose, that the defendant was in compliance with, exempt from, or otherwise not subject to, the requirements of the rule; or

''(B) was informed by the agency that promulgated the rule, or by a State authority to which had been delegated the responsibility for ensuring compliance with the rule, that the defendant was in compliance with, exempt from, or otherwise not subject to, the requirements of the rule.

''(2) In determining, for purposes of paragraph (1)(A), whether a defendant reasonably relied upon a description, explanation, or interpretation of the rule contained in the rule's statement of basis and purpose, the court shall not give deference to any subsequent agency description, explanation, or interpretation of the rule relied on by the agency in the action that had not been published in the Federal Register or otherwise directly and specifically communicated to the defendant by the agency, or by a State authority to which had been delegated the responsibility for ensuring compliance with the rule, prior to the alleged violation.

''(b)(1) In a civil or criminal action in Federal court to redress an alleged violation of a rule, including an action pending on the date of enactment of this section, if the court determines that the rule in question is ambiguous, the court shall not give deference to an agency interpretation of the rule if the defendant relied upon an interpretation of the rule to the effect that the defendant was in compliance with or was exempt or otherwise not subject to the requirement of the rule, and the court determines that such determination is reasonable.

''(2) Without regard to whether the defendant relied upon an interpretation that the court determines is reasonable under paragraph (1), if the court determines that the rule failed to give the defendant fair warning of the conduct that the rule prohibits or requires, no civil or criminal penalty shall be imposed.

''(c)(1) No agency action shall be taken, or any action or other proceeding maintained, seeking the retroactive application of a requirement against any person that is based upon—

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

''(B) a determination of fact,

if such interpretation or determination is different from a prior interpretation or determination by the agency or by a State or local government exercising authority delegated or approved by the agency, and if such person relied upon the prior interpretation or determination.

''(2) This subsection shall take effect on the date of enactment of the Comprehensive Regulatory Reform Act of 1995 and shall apply to any matter for which a final unappealable judicial order has not been issued.

''(d) This section shall apply to the review by a Federal court of any order of an agency assessing civil administrative penalties.''.

(B) UNPUBLISHED AGENCY GUIDANCE.—Section 552(a)(1) of title 5, United States Code, is amended by inserting at the end the following new sentence: ''In an action brought in a Federal court seeking a civil or criminal penalty for the alleged violation of a rule, including actions pending on the date of enactment of this sentence, no consideration shall be given to any interpretive rule, general statement of policy, or other agency guidance of general or specific applicability, relied upon by the agency in the action, that had not been published in the Federal Register or otherwise directly and specifically communicated to the defendant by the agency, or by a State authority to which had been delegated the responsibility for ensuring compliance with the rule, prior to the alleged violation.''.

(4) TECHNICAL AMENDMENT.—The analysis for chapter 7 of title 5, United States Code, is amended by adding at the end the following new items:

''707. Consent decrees.
''708. Affirmative defense.
''709. Agency interpretations in civil and criminal actions.''.

SEC. 6. CONGRESSIONAL REVIEW.

(a) IN GENERAL.—Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"§ 801. Congressional review of agency rulemaking

''(a)(1) Before a rule takes effect as a final rule, the agency promulgating such rule shall submit to the Congress a report containing a copy of the rule, the notice of proposed rulemaking, and the statement of basis and purpose for the rule, including a complete copy of any analysis required under chapter 6, and the proposed effective date of the rule. In the case of a rule that is not a major rule within the meaning of section 621(4), summary of the rulemaking proceedings shall be submitted.

''(2) A rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of the following:

''(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 (g) 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.

''(C) The date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under subsection (g) is approved).

''(b) A rule shall not take effect as a final rule if the Congress passes a joint resolution of disapproval described under subsection (g), which is signed by the President or is vetoed and overridden by the Congress.

''(c)(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 (g) or the effect of a joint resolution of disapproval under this section.

''(4) This subsection and an Executive order issued by the President under paragraph (2) shall not be subject to judicial review by a court of the United States.

''(d)(1) Subsection (g) 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 (g), 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.

''(e) Any rule that takes effect and later is made of no force or effect by the enactment of a joint resolution under subsection (g) shall be treated as though such rule had never taken effect.

''(f) If the Congress does not enact a joint resolution of disapproval under subsection (g), 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.

''(g)(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 (a) 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 (a)(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 resolution 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.

''(h) This section shall not apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.''.

(b) TECHNICAL AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

''8. Congressional Review of Agency Rulemaking ..... 801''.

SEC. 7. ACCOUNTING.

(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) REGULATION.—The term ''regulation'' means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedures or practice requirements of an agency. The term shall not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) regulations issued with respect to a military or foreign affairs function of the United States; or

(C) regulations related to agency organization, management, or personnel.

(2) AGENCY.—The term ''agency'' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

(A) the General Accounting Office;

(B) the Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b) ACCOUNTING STATEMENT.—

(1) IN GENERAL.—(A) The President shall be responsible for implementing and administering the requirements of this section.

(B) Every 2 years, not later than June of the second year, the President shall prepare and submit to Congress an accounting statement that estimates the costs of Federal regulatory programs and corresponding benefits in accordance with this subsection.

(2) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

(3) TIMING AND PROCEDURES.—(A) The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

(B) The President shall propose the first accounting statement under this subsection not later than 2 years after the date of the enactment of this Act and shall issue the first accounting statement in final form not later than 3 years after the date of the enactment of this Act. Such statement shall cover, at a minimum, each of the 8 fiscal years beginning after the date of the enactment of this Act.

(4) CONTENT OF ACCOUNTING STATEMENT.—(A) Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this paragraph. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

(B)(i) An accounting statement shall estimate the costs of Federal regulatory programs by setting forth, for each year covered by the statement—

(I) the annual expenditure of national economic resources for the regulatory program; and

(II) such other quantitative and qualitative measures of costs as the President considers appropriate.

(ii) For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

(I) Private sector costs.

(II) Federal sector administrative costs.

(III) Federal sector compliance costs.

(IV) State and local government administrative costs.

(V) State and local government compliance costs.

(VI) Indirect costs, including opportunity costs.

(C) An accounting statement shall estimate the benefits of Federal regulatory programs by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(c) ASSOCIATED REPORT TO CONGRESS.—

(1) IN GENERAL.—At the same time as the President submits an accounting statement under subsection (b), the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an ''associated report''). The associated report shall contain, in accordance with this subsection—

(A) analyses of impacts; and

(B) recommendations for reform.

(2) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(A) Analyses prepared by the President of the cumulative impact of Federal regulatory programs covered in the accounting statement on the following:

(i) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(ii) Small business.

(iii) Productivity.

(iv) Wages.

(v) Economic growth.

(vi) Technological innovation.

(vii) Consumer prices for goods and services.

(viii) Such other factors considered appropriate by the President.

(B) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(3) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(A) A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(B) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

(d) GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers, provide guidance to agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to sections 3 and 7 of this Act, including—

(A) detailed guidance on estimating the costs and benefits of major rules; and

(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

(2) to standardize the format of the accounting statements.

(e) RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.—After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving accounting statements prepared pursuant to this section, including recommendations on level of detail and accuracy; and

(2) for improving associated reports prepared pursuant to this section, including recommendations on the quality of analysis.

SEC. 8. STUDIES AND REPORTS.

(a) RISK ASSESSMENTS.—The Administrative Conference of the United States shall—

(1) develop and carry out an ongoing study of the operation of the risk assessment requirements of subchapter III of chapter 6 of title 5, United States Code (as added by section 4 of this Act); and

(2) submit an annual report to the Congress on the findings of the study.

(b) ADMINISTRATIVE PROCEDURE ACT.—Not later than December 31, 1996, the Administrative Conference of the United States shall—

(1) carry out a study of the operation of the Administrative Procedure Act (as amended by section 3 of this Act); and

(2) submit a report to the Congress on the findings of the study, including proposals for revision, if any.

Mr. DOLE. Mr. President, I again thank the Democratic leader, Senator DASCHLE.

Mr. President, today we begin consideration of regulatory reform, one of the most important and fundamental reforms that this Congress will address. No doubt about it, the American people are fed up with a regulatory state that is out of control. That was one of the messages the American people delivered last November.

The regulatory state has become so pervasive that it lies on our economy like a blanket, stifling innovation, and killing infant industries and small businesses before they get off the ground. Although the Federal Government has a department for just about everything else, it does not have a department of lost opportunities. And that is what this is all about—getting the Government off the backs of the American people; and letting them have an honest opportunity to succeed, for example, when they open a small business.

I want to note at the outset that the reforms before us are the product of over a decade of bipartisan work. The first major attempt at regulatory reform took place here in the Senate in 1982, when we passed S. 1080 unanimously. S. 1080 itself grew out of a bill I introduced in 1981, again with bipartisan support.

S. 1080 contained sweeping revisions of the Administrative Procedures Act. Most of those revisions are included in the bill before us.

S. 1080 imposed a requirement that major rules be subjected to cots-benefit analyses. The structure of the cost-benefit analyses in the bill we consider today closely follow those in S. 1080.

S. 1080 required judicial review of cost-benefit analyses in order to provide meaningful enforcement. The bill before us does the same.

I have provided this brief history for two reasons. First, there are many Senators still in this body on both sides of the aisle who supported S. 1080 in 1982. And, second, there has been a concerted attempt by those who defend the status quo to ignore that history and act as if the bill under consideration today was a radically new approach with little thought for the consequences. Nothing could be further from the truth.

Every President since President Nixon, including President Clinton, has issued an Executive order that imposed such requirements on agencies, though Executive orders are necessarily limited in scope and cannot provide for court enforcement, the bill we consider today draws on two decades of agency experience with those Executive orders.

This bill is also the product of four major committees. I want to especially commend the chairmen of those committees, Senators HATCH, ROTH, MURKOWSKI, and BOND, and their members for their hard work. This bill is the product of negotiations with the Clinton administration, and Democrat colleagues. From the beginning, it has had bipartisan support. I especially want to commend Senator HEFLIN for his leadership in working on the bill in the Judiciary Committee. And, finally, the text of the bill we consider today is the product of weeks of work with Senator JOHNSTON who has long championed reforms in risk assessment in this body.

Given this history and broad bipartisan support, it might be surprising that regulatory reform has been met with often strident opposition.

But this bill is about fundamental change—needed change—and those who defend the status quo will fight it tooth and nail. Apparently, they will do so without even pretending to read the legislation.

Let me be clear: These reforms will not place at risk human health or safety or protection of the environment.

I understand that Ralph Nader and Joan Claybrooke are out running ads in part of the country that Senator DOLE, the majority leader, is for dirty meat, for unhealthy meat. So we have a lot of these incredible statements being made, but they have nothing to do with this bill.

And the bill before us makes this explicit in any number of provisions. Those who argue otherwise should stop trying to scare people and take the time to actually read the bill.

What opponents of regulatory reform really mean, but are embarrassed to admit, is that they believe that strong laws must always mean the most costly laws. Now, they will not say that of course. No, they will pay lip service to common sense. But as soon as you actually propose a way to consider costs and benefits, they switch subjects and accuse reformers of endangering human health and safety. I doubt anyone outside Washington, DC, who has to deal with regulations in their daily lives really believes that line anymore.

Mr. President, I have enough faith in our ingenuity to believe that we can find better, smarter ways to achieve otherwise worthwhile goals.

Nor—as opponents of reform would phrase it—is this a debate about placing a value on human life. The bill makes clear that there are often nonquantifiable benefits, and that an agency decisionmaker may well have to make judgments that are not subject to quantification. What the bill demands is accountability, by insisting that the decisionmaker articulate the basis for these judgments on the record. The principles of judging risks and weighing costs and benefits are rational and widely used in our daily lives. What is unacceptable is to allow Government agencies to avoid these types of judgments when enacting regulations that impose huge costs on our economy.

These reforms are about limited government. For too long, decisionmakers in Washington, DC, have acted as though bigger government—taking more of our taxes and savings, and suppressing individual initiative—could exist without more coercion and more rules. But that is wrong. For 40 years, the number and scope of regulations have skyrocketed out of control. The costs and annoyances of regulations have grown unbearable. And what is worse: We have not even attempted to use common sense in order to determine whether the costs are worth it.

These reforms are about accountability. Open government. Forcing the Government to tell the rest of us why it chooses to regulate a certain way, and making it defend its choice. This aspect of regulatory reform is not often discussed, but I would argue that it may be the most important of all.

It has often been remarked by historians that the decline of great civilizations—such as ancient Rome—is typically marked by an overabundance of bureaucracy that relied on secret, often contradictory, rules. Eventually, the entire regulatory structure brings progress to a standstill and it collapses of its own weight. It is no accident that we described complex, inscrutable procedures as byzantine.

Mr. President, we are a long way from reaching that point certainly. But we should understand that this is a battle that we will fight again and again. I, for one, intend to win this battle. The reforms we take up today are a giant step forward for common sense and our great country.

So I am pleased that we are on the bill. I thank my colleagues on the other side for not objecting to moving to the bill. We will have a brief debate today. We will have a longer debate tomorrow and probably some debate on Friday of this week. Hopefully, when we return from the July 4 recess, we will be able to finish this bill in the week following the recess, because I think it is probably the most important legislation we will have considered so far this year.

Mr. President, I would ask the distinguished Senator from Utah to be in charge of the time on this side. I guess Senator JOHNSTON will be in charge of the time on that side.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. How much time does this side have?

The PRESIDING OFFICER. There are 20 minutes remaining.

Mr. HATCH. I yield myself 7 minutes.

Mr. President, today we begin the debate on one of the most important pieces of legislation this Congress will address this year: the Comprehensive Regulatory Reform Act of 1995. This is a bill that will change the way the Government does business.

It is high time that we respond to the American people's loud and clear demands that government become smaller and more streamlined—their demand

that government become more responsive. It is high time that we realize just who is working for whom.

The fact that government often takes forever to carry out its functions; spends a fortune in doing so; at best inconveniences citizens in the process; and yet still does not seem to get the job done properly, is reason enough for this legislation.

It is high time that Congress acted to require government to act in a timely, sensible, and rational manner.

If this bill becomes law, the Federal bureaucrats will, from now on, have to prove to America that their regulations do more good than harm to society.

I submit that nothing could be more basic to our democracy and to our federal system of government than the notion that the Federal Government should only act when it helps people and when its actions are justified. That is just plain common sense, and that is what this bill is about.

This bill forces the Federal bureaucracy to justify the costs of the rules and regulations that it places on hard-working Americans.

I. THE NEED FOR REFORM

I do not disagree that there is a need for some government regulation. Unfortunately, under the current system, there is little notion of restraint or balance in the way that government agencies operate. The Federal bureaucracy has become bloated, inefficient, and wasteful. Excessive, needless government regulation is running rampant. It has done tremendous damage to our economy, and it continues to do so every year.

A. STATISTICS

The bottom line is that American people pay for this bureaucracy several times over.

First, of course, they have to pay for the salaries and other expenses for the Federal agencies to operate. These direct expenditures, of course, figure in to our budget. To the extent that such expenditures are not offset by cuts elsewhere, the cost of maintaining the Federal bureaucracy adds to the national deficit and to the national debt, which is already at about $18,500 for every man, woman, and child in America.

Second, there are the hidden costs of complying with all this regulation. The American people have to pay to comply with the regulations the bureaucracy churns out. It has been estimated that complying with Federal regulation costs the average American family $4,000 a year. [The Heritage Foundation, citing Jonathan Adler, ''Regulated . . . out of this world'', the Washington Times, June 3, 1992].

And that is the low estimate. If you include indirect costs—such as increased prices for goods and services because sellers are passing on some of their regulatory burden to buyers—some estimates run as high as $8,000 to $17,000 a year. [William Laffer, the Heritage Foundation].

That is staggering, particularly when compared with the average annual income tax of $5,491 [IRS, 1992]. The costs of regulation are operating as a hidden tax on the system. Not only should that tax be cut, but the agencies should be made accountable so that the American people know what they are paying and what they are getting.

Third, these costs have indirect consequences and impose opportunity costs. It has been estimated that the costs of Federal regulation have reduced the total output of the Nation, the GDP, by nearly 6 percent. [Thomas Hopkins, ''Costs of Regulation: Filling the Gaps,'' citing a study by Hazilla and Kopp]. How does this happen?

It is simple enough. When businesses have to devote resources to meeting a Federal directive, alternative—and more productive—uses of those resources cannot be made. That means that the economy is slower, and jobs are lost because of regulatory excesses.

Mr. President, the status quo is simply unacceptable. Federal regulation is stifling the American Dream. It used to be said that America was the land of opportunity, where the streets were paved with gold. Today, the streets are paved with redtape.

B. EXAMPLES

Where regulation is doing its jobs and is helping society, there is no problem. The supporters of beneficial regulations have nothing to fear from this bill. But, too often regulations not only fail to do the job, but also they are downright dumb. Those are the regulations that this bill seeks to eliminate.

For example, there is a regulatory requirement that drive-through cash machines must be equipped with Braille pads. Now, how many blind Americans are driving cars to drive-through ATMs? [The Heritge Foundation, citing Insight which was quoting TCF Bank Savings of Minneapolis Chairman William Cooper]. That type of regulation is simply ridiculous on its face.

In another instance, a rancher was fined $4,000 for killing a grizzly bear that had eaten his sheep previously and was attacking him. [The Heritage Foundation, citing a Wall Street Journal article by Ike Scrugg, dated June 23, 1993].

What is worse is that excessive regulations have often thwarted the very ends those regulations seek to further. Take the case of the Abyssinian Baptist Church in Harlem. That church struggled for 4 years to get approval for a Head Start Program in a newly renovated building. Most of those 4 long years was spent arguing with Federal bureaucrats concerning the dimensions of rooms.

Now, we do not want Head Start Programs in unsafe facilities. I agree with that. But, where is the common sense here? What exactly are we trying to do? Provide early childhood educational opportunities for low-income children? Or, keep regulators busy with their tape measures? Clearly, we failed at the former and were a great success in the latter. An entire generation of head starters were unable to participate in that valuable program.

This is really a shameful waste of resources that could have been provided by this church in Harlem for the benefit of neighborhood children.

A representative from the church complained about the unresponsiveness of the people in Washington.

All the bureaucrats wanted to tell her, she said, was what could not be done rather than what could be done. She said that when she told them that they were talking about pieces of paper, and she was talking about children, they did not seem to care. [''The Death of Common Sense.'']

Mr. President, I believe this particular example is an excellent illustration of how our regulatory system has gone haywire. It is hard to believe that regulators do not care about children and their access to Head Start or any other kind of service.

But, this example clearly shows that our regulatory policy has become more concerned with process than with outcomes. It has become so obessed with the objective that room size not deviate an inch from the Federal standard that it has completely lost sight of what Head Start is supposed to accomplish.

I have to believe that similar examples of form over substance exist at the Department of Labor, the EPA, the Interior Department, and just about every other Federal agency.

Regulation has also reached deep into our smallest businesses. Take the case of Dutch Noteboom. Mr. Noteboom is 72 years old and has owned a small meat-packing plant in Springfield, OR, for 33 years.

Despite the fact that Mr. Noteboom employs only four people, the U.S. Department of Agriculture has one full-time inspector on his premises. Another inspector spends over half his time there. This level of attention is astonishing and must be extremely costly.

Mr. Noteboom says that he is swimming in paperwork, and that he does not even know a tenth of the rules. He says, ''You should see all these USDA manuals.'' [''The Death of Common Sense'']

Well, I have seen some of the Government's manuals and regulations and they are shocking in their length and complexity.

Consider, for example, the Federal regulations on the sale of cabbage. Now, the Gettysburg Address is 286 words in length, and the Declaration of Independence contain 1,322 words. But Government regulations on the sale of cabbage total an eye-popping 26,911 words. [Heritage, citing a letter from Congressman McIntosh to Grover Norquist].

I am frankly wondering just how much there is to restrict about the sale of cabbage that would justify nearly 27,000 words. I had my staff do a quick

calculation: 27,000 words is approximately the same length as the Federalist Papers Nos. 1 through 15. We have transformed regulatory compliance into an industry all by itself. We have gone from simple rules that reasonable people could understand and comply with to a Code of Federal Regulations that by itself takes up a whole wall of shelf space—not counting other agency guidance and field memos. We forget how fast is mount up.

Could I ask how much time I have left?

The PRESIDING OFFICER. The Senator has 11 minutes remaining.

Mr. HATCH. I will yield 1 more minute to me, and the rest of my time to Senator ROTH, after Senator JOHNSTON finishes.

Since 27,000 words is approximately the same length as the Federalist papers Nos. 1 through 15, how can there be any question that we have gone too far?

Mr. President, Mr. Noteboom's story highlights another major mutation of U.S. regulatory policy.

I can go on and on, but the point I am making is this: They are taking away our properties, our private properties, and interfering with small business. They are hurting people and stopping kids from getting the care they need. And, frankly, it is all because of ridiculous regulations in large part written by people who are not thinking about what is best for the American people and what is cost efficient in doing so. This bill will make a terrific difference. It will make our bureaucrats better and make us better. And, frankly, it is high time we did it.

I want to compliment the distinguished Senator from Kansas, our majority leader, and also my good friend and colleague from Louisiana, who both worked long and hard to get together, and a whole raft of others. I will put their names in the RECORD by unanimous consent.

Mr. President, I reserve the balance of our time.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

PRIVILEGE OF THE FLOOR

Mr. JOHNSTON. I ask unanimous consent that Dr. Robert Simon be given the privilege of the floor for the pendency of S. 343 and any votes thereon.

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

Mr. JOHNSTON. Mr. President, I want to thank my colleague, Mr. HATCH, as well as Senator DOLE, and their staffs, and Senator ROTH, and others on the other side of the aisle, for making this bill and the negotiation on it thus far a true bipartisan effort.

The Judiciary Committee bill was, indeed, the product of last Congress' risk assessment legislation, which I sponsored, as well as S. 1020, which dealt with regulatory reform from earlier in the 1980's. Since that time, Mr. President, the distinguished Senator from Kansas, Senator DOLE, and I, worked together over a period of some 10 hours—excuse me—12 hours of direct negotiation in working out what we called the Dole-Johnston draft, discussion draft. Since that was filed in the RECORD, we have spent an additional—or at least I have spent 20 hours in negotiation with both Republicans and Democrats, seeking to work out the problems in that draft.

All of our problems have not yet been worked out. But if I may give my colleagues and others the state of play on it, I think the mood is there, the will is there, and I think eventually substantial agreement can be arrived at, dealing with nine major points:

First, judicial review. The argument about judicial review is now not about the principle, it is about the language. I believe our language achieves the result. We will continue to listen, but I believe it achieves the result that everyone wishes.

Supermandate has been eliminated from the bill. I believe that is also clear. And both sides agree that underlying statutes are not superseded. Whatever the requirements of the Clean Air Act are, for example, are still in place. And we believe that the language of the draft now reflects that. We are willing to work further to clarify that—not to clarify, but to reassure Senators that that is so.

With respect to decisional criteria, Mr. President, I believe that from our side of the aisle the language now in the draft fully gives the discretion to the agencies that we wish.

I call attention of my colleagues to the language of section 624, which states certain requirements, such as the benefits rule to justify the cost. But it goes on to say that if scientific, technical, or economic uncertainties or nonquantifiable benefits to the health or safety of the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objective of the statute appropriate and in the public interest, and the agency head provides an explanation of that, that they may chose the more costly alternative.

Mr. President, we will listen to further elucidation on this.

But it seems to me that this is a complete victory for those on our side of the aisle who have always said the difficulty with risk assessment is sometimes scientific uncertainty, where scientists do not agree in some areas, where the data is uncertain or where you have values that are nonquantifiable by their nature, such as the value of life, the value of good health, the value of environment, the value of clean air which are, by their nature, nonquantifiable.

As I say, the theme, the idea is there, and I believe is clear. But to the extent it is not, we are certainly willing to negotiate, I believe, on both sides of the aisle. The question, again, is not whether to grant discretion for these things, but rather the question is how best to phrase the language.

With respect to petition, appeal on that petition, sunset, consolidation, we believe, Mr. President, that we now have complete agreement on that. It covers the issue of agency overload, and we will soon be filing in the RECORD language that will reflect that agreement. Anything, of course, is subject to further wordsmithing, but we believe both Democrats and Republicans have arrived at a decision in that very difficult area.

With respect to effective date, I hope we can come to agreement on that. On the Democratic side, we do not want to have to go back and redo regulations which have, in some cases, been 2 or 3 years in the making. On the Republican side, the concern has been that they do not want to have a flood of new regulations come in at the last minute to escape the requirements of this bill. I believe effective date can be appropriately worked out and pick some date such as July 1 of this year.

With respect to threshold, I believe the threshold should be 100 million, and 50 million is now in the bill. I believe also that is a doable thing. My prediction is that we will end up agreeing on 100 million with some language with respect to small business because small business has really been a concern here. At least I am in good hopes we can agree on that.

I hope we can agree to drop Superfund at some point. Not that anybody thinks a process of risk assessment should not be applicable to Superfund, it should definitely be applicable to Superfund, but we believe that is best done by the Environment and Public Works Committee, working their will against special requirements of the Superfund site. To put it in this bill, I believe, would be very difficult.

With respect to toxic release inventory, the language now in the Dole-Johnston draft, I believe, can be much improved. It, in turn, was an improvement over the Judiciary Committee draft. Frankly, we are waiting for some kind of improvement language that we hope will solve this problem.

Toxic release inventory is a high-profile issue, but I believe, in terms of importance of the issue, it is clearly one of the lesser issues in this bill and should not stand in our way of getting a bill.

The final point I have has to do with the Delaney rule. We greatly improve the Judiciary Committee draft on the Delaney rule. The language now in the Dole-Johnston draft says that an administrator or an agency head cannot fail to license a chemical if it has negligible or insignificant foreseeable risk to human health resulting from its intended use. It seems to me that this ought to be the standard. It is a good standard. I have heard no defense of keeping the Delaney rule as it is, and I submit that the votes will be on the floor to change the Delaney rule.

Our request is that those who think the standard we have in this draft is not appropriate should come up with

alternative language which we are happy to consider. We have given notice of consideration of alternative language now for a week or two, and I have not yet received it. So I urge people who want that to be reconsidered to please submit language.

The point I am making, Mr. President, is that the most difficult things about this bill—things like decisional criteria, judicial review, supermandate—have been agreed upon in principle, and the problem now is to determine language that carries out the principle.

We all understand that language and wordsmithing in this area is very important, is crucial, is critical, and we will continue to negotiate to seek very precise language that carries this out, and we solicit that from both sides of the aisle.

But, Mr. President, frankly, given the attitudes on both sides of the aisle, I believe it is going to be possible to come to those agreements, not with all Senators. We are not going to get 100 votes, but I believe that there is a real possibility for a broad consensus, and I am happy to be part of the group that is putting together what I consider to be the most important bill in this field that has ever been enacted by the Congress.

Mr. President, I reserve the remainder of my time.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from Delaware.

Mr. HATCH. I yield the remainder of our time to the Senator from Delaware.

The PRESIDING OFFICER. There are 9 minutes 51 seconds remaining.

Mr. ROTH. Mr. President, first of all, I would like to thank the distinguished Senator from Louisiana for the constructive role he has played in the effort to bring the two sides together. Like him, I am optimistic that we are going to be able to fashion legislation that will satisfy the large majority on both sides of the aisle.

I, frankly, can think of no legislation of more critical importance, both from the standpoint of enforcement of the legislation or statutes on the books, but also from getting a better bang for the taxpayers' buck. So, again, I congratulate and thank the distinguished Senator for his contribution.

Mr. President, today marks a milestone in the effort to build a smarter, more effective regulatory process. From all quarters, Americans are calling for change from the often overbearing and counterproductive regulatory monolithic that has grown out of control these past couple of decades. President Clinton has admitted that many regulations, regulations that are costing our Nation billions of dollars, are bad regulations.

George McGovern has described in brilliant detail how overbearing regulations put him out of business when all he was trying to fulfill was the dream of being an entrepreneur of owning his own New England inn.

Economists are telling us that Federal regulations are costing our households some $6,000 annually, costing our country about $600 billion a year, and this at a time when our policies must be those that make our Nation competitive abroad, economically secure at home and confident within our families.

Financial costs are not the only burden. As we move further into the information age, the old adage, ''Time is money,'' rings truer than ever before. Time alone is becoming one of America's most vital economic resources. In a competitive world of instant information, a world where time is measured in cyberseconds, businesses, entrepreneurs, service providers, researchers, scientists, farmers, and others must be able to accelerate their response time in providing their services and bringing new products to market.

In our age of information, time is often the difference between profit and loss. But today, Federal regulations, like cholesterol clogging a vital artery, not only slow down the process but often disrupts it. Well over 5 billion hours—I repeat—well over 5 billion hours a year are spent by our private sector just trying to meet government paperwork demands.

The legislation we are considering today, S. 343, the comprehensive regulatory reform act of 1995, is a real and workable solution to the problems being expressed on both sides of the aisle. That is why I am supporting this legislation. It is the most comprehensive reform of the regulatory process since the enactment of the Administrative Procedure Act of 1946. Since then, efforts to reform Federal regulations have been like a man trying to save himself by running up the aisle in the opposite direction on a runaway train. What this legislation does, Mr. President, is get that runaway train under control and places it back on the right track.

This legislation substantially changes the requirements for the issuance of Federal regulations. It requires regulators to directly consider whether the benefits of a new regulation would justify its cost. Regulators who want to issue environmental and health and safety regulation regulations under this legislation have to make realistic estimates of the risks to be addressed. They have to disclose to the public any assumptions they make to measure the risk.

The bill encourages agencies to set priorities to achieve the greatest overall risk reduction at the least cost. More generally, this bill requires agencies to review existing regulations, to be sensitive to the cumulative regulatory burden, and to select the most cost effective, market-driven method feasible.

This, Mr. President, is smarter regulation. Smarter regulation benefits us all—our farmers, our businesses of all sizes; it benefits State and local government, and, most important, it benefits the consumer, the wage earner, the taxpayer, and the family.

I support this legislation because it is a reform of Federal regulations, not a rollback. And the distinction is extremely important. I am an environmentalist and honored to be called an environmentalist. On this floor, I have fought many battles to stop ocean dumping and incineration, to preserve the northern coastal plain of Alaska, to protect forests and precious wildlife. I can say with pride that Federal regulations have made our air cleaner. They have made our water purer, and they have improved conditions in our cities, lakes, and along our shores.

Regulation in itself is not bad. The problem is that the huge regulatory enterprise, like that runaway train, has gained so much inertia these past few decades that it is posing a real and dangerous threat to our future. What we are looking for is balance, and this legislation provides that balance. It will restore common sense to the regulatory process.

This legislation helps us achieve necessary regulation in the most flexible and cost-effective way possible. We have learned with experience that regulations often have been more costly and less effective than they could have been. This legislation addresses that problem by making Government more efficient, more effective. I believe, as best they can, regulators should issue regulations whose benefits justify their cost. I believe that a fair, commonsense test requiring that the benefits of a regulation justify its cost should be consistent with environmentalism, not contrary to it.

Environmentalists and conservationists have long recognized that we live in a world of limited resources. In this vein, we must use those limited resources to achieve the greatest benefit at the least cost. This is absolutely consistent with our objectives.

Throughout my career, Mr. President, I have advocated reducing Government waste and inefficiency. I have led efforts to reduce waste in Government procurement practices, particularly in defense contracts. At the time, some critics suggested that I was undermining support for a strong military. How could I support a strong military, they asked, if I challenged the practices of the Department of Defense? The answer was simple. I pushed for reform to make the Department of Defense work better, reform to make it more efficient and effective in carrying out its mission. And toward this end, we have been successful. Our reform of the procurement process improved the department. DOD was strengthened as precious resources were spared to be used much more efficiently and effectively.

In the same way, as a committed environmentalist, I want to reduce the inefficiency of the Environmental Protection Agency as well as other Federal

agencies that serve the public interest. Some critics suggest that we cannot support strong cost benefit analysis, and the Dole-Johnston compromise bill requires and still favors protecting the environment, health and safety, but these critics are wrong. Without effective regulatory reform, the EPA and other agencies will not carry out their mission in an efficient and effective manner.

Mr. President, this legislation simply requires commonsense in the regulatory process. We should require no less. I urge my colleagues to support this commonsense legislation. Thank you, Mr. President.

Mr. JOHNSTON. Mr. President, I yield 10 minutes to the Senator from Ohio, with the understanding that he will yield some time to Senator LEVIN.

The PRESIDING OFFICER. The Senator from Louisiana has 13 minutes total remaining.

The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, I hope that when the press writes about what happened on the floor today, they get away from the idea that this is the ultimate in confrontation, which seems to be what the questions lead to when we go out of the Chamber—talking about regulatory reform—because, today, I would hope the message would go out that we are united in the Senate of the United States, Democrat and Republican, on one thing: we need regulatory reform.

Sometimes we get strident here and give people the wrong impression. But we have a need for regulatory reform, and that is felt by those who have been negotiating on the particulars of this legislation over the past several days. So the importance of regulatory reform is well understood, and we all share in a devotion to what we are trying to do here.

I think a lot of people wonder why we have regulations and rules. We need to remember that we pass laws here on the Senate floor, in the Congress, that are signed by the President requiring agencies to issue rules. After we pass laws, rules and regulations written by the agencies become applicable in every community across this country.

I say to those listening that your children today, your family today, can have milk that is safe because of rules and regulations. You can eat food that is safe. You do not have to worry about it, because of rules and regulations to ensure safety to public health. Transportation, whether by air, bus, or plane, comes under certain rules and regulations that let your family travel safely.

The problem is that we have gone too far in some of these matters with some rules, and some regulation writers have been overzealous.

So we have come full circle in needing to put a rein on some of the rules and regulations. We need to set up new processes for making sure that we do not get into the quagmires of where we do not use common sense. Some of them are ridiculous. We can all cite anecdotal evidence.

On the Governmental Affairs Committee, we started working on what was landmark regulatory reform, doing a study back in 1977. This issue is not something that is brand new. Through the years, we dealt with OMB and OIRA, and it has been an open process.

While I was chair of the committee, we had a number of hearings, and this year, Senator ROTH, our chairman this year, has had four hearings on our bill, S. 291. We took a bipartisan and deliberative approach to it and voted that bill out of committee, unanimously, 15–0. Republicans and Democrats united together.

Any bill must have a balance. On the Governmental Affairs Committee, I believe we achieved that balance. I would like to run through very briefly some of the central issues for regulatory reform in the limited time I have here today.

My approach, and the approach taken by our committee, on regulatory reform is the following: First, agencies should be required to perform risk assessment and cost-benefit analysis for all major rules; second, cost-benefit analysis should inform agency decisionmaking, but it should not override other statutory rulemaking criteria; third, risk assessment requirements should apply only to major risk assessments, and these requirements must not be overly prescriptive; fourth, agencies should review existing rules, but the reviews should not be dictated by special interests; fifth, Government accountability requires sunshine in the regulatory review process; sixth, judicial review should be available to ensure the final agency rules are based on adequate analysis; it should not be a lawyer's dream with unending ways for special interest to bog down agencies with litigation; seventh, regulatory reform should not be the fix for every special interest.

Now, Mr. President, the Senator from Louisiana mentioned a number of the areas that are still in contention with this legislation. While we will have to work these issues out, we are all united in the need for regulatory reform.

The decision criteria: Will it be least cost, or will it be the cost effectiveness? Judicial reform has yet to be ironed out completely. Can we get a threshold of $100 million? How about the petition process, the sunset, special interest additions? These are issues we still need to work together on. We have yet to iron out exactly how we do these things.

Mr. President, any bill on the subject of regulatory reform to be deserving of support must pass a test. This test is twofold. I close with this: No. 1, does the bill provide for reasonable, logical, appropriate changes to regulatory procedures that eliminate unnecessary burdens on businesses and individuals? No. 2, at the same time, does the bill maintain the ability to protect the health, the safety, and the environment of the American people?

Now, that is a dual test that is very simple, and one we need to keep in mind as we debate this legislation. If the answer is ''yes,'' to both questions, the bill should be supported. Any bill that relieves regulatory burdens but threatens the protections for the American people in health or safety or environment should be opposed.

I will come back to this test many times when we debate regulatory reform the rest of this week and after the Fourth of July break.

I thank my colleague from Louisiana for yielding time. I yield the balance of my time to Senator LEVIN.

The PRESIDING OFFICER. The Senator from Michigan has 6 minutes remaining.

Mr. LEVIN. Let me commend all those involved in this effort. It is a very complicated effort, and most importantly perhaps, an essential and bipartisan effort. It has been that way from the beginning. I hope it stays that way throughout this process.

The original bill which was introduced was flawed. It did not achieve both goals we need to achieve, which is regulatory reform, to make this process more responsive to cost, to allow Members to review rules. We all, I hope, want to do that.

We all, I hope, want cost effective rules. We all, I hope, want to try to protect some basic health, safety, and environmental concerns. And I think we all believe that we can achieve all of that.

The original bill which was introduced in the bill that is now pending had some real limitations in those regards. The Senator from Louisiana and the Senator leader, the majority leader, and people on both sides of the aisle worked to come up with a substitute. I think they made some significant progress. They should be commended for it.

After that happened, there were a number of deficiencies that were pointed out by various people—the Senator from Louisiana and others who were open to the process of considering suggestions to improve their product—and we have made some significant progress in our private discussions to improve the so-called Dole-Johnston substitute.

Right now, assuming that the language is agreed upon, even though we have only reached two or three of the key nine issues, there has been some significant changes in that draft, which I think most of the people that have been involved in these negotiations, say represent improvements.

Now, there are still some outstanding issues. For instance, the majority leader and others have said ''We don't want a supermandate.'' This bill is intended to supplement and not to supersede.

Some have raised the question, what happens if the material in this bill, which is intended to supplement, conflicts with what it is intended not to supersede. Then what?

We are assured that the underlying legislation governs. Some have said ''Why don't we just simply say that?'' The answer has been, ''There is no need to because there is no conflict,'' yet the concern remains, and we are trying to figure out language which will address the concern of those who want to be sure that what the Republican leader says is the intent, the majority leader says is the intent—that there not be a supermandate, in fact, implemented in this bill.

We made some real progress in the so-called petitions area. Before this progress was made, I am afraid we were going to substitute a judicial quagmire for what is already a complicated regulatory process.

Nobody is benefited if we throw to the drowning folks who are drowning in regulations another bucket of water. What they need is a lifeline, not another complicating superstructure of judicial consideration.

That is what I am afraid we were about to do in the so-called petition area, until we had some very fruitful discussions, which have now, I think, reached a point where we can hope to avoid adding a judicial superstructure of huge complication to a regulatory process.

Mr. President, I am glad that these discussions are going to continue. I want to commend, particularly, Senator GLENN, Senator ROTH, others on the Governmental Affairs Committee who have worked on the Governmental Affairs bill which contained so many elements of the bill which we are going to consider during the days that we do consider regulatory reform.

We need regulatory reform. We must have cost benefit analysis. We need risk assessment. But we also need to be sure that what we are achieving protects, in a sensible way, the environment and the health and the safety of the people of the United States.

Some people say, ''Why don't you just have the cheapest regulation automatically?'' Well, the answer is because the cheapest may not be the most cost effective. Just like the cheapest pair of shoes is not the sensible pair of shoes. The cheapest car is not the best car to buy, or else we would all be driving Yugos.

We need cost-benefit analysis, but that assumes that something which is slightly more costly might have huge benefits, and in that case we surely want to be able to consider the cost effectiveness of the regulation and not be required to always go with what is the cheapest, because that may not be the most cost effective.

I think there is kind of an understanding, almost a consensus that that is correct; that we do not want to be driven always to the cheapest, that a marginal increase might be sensible and might achieve some great benefits and that ought to be permitted under this process.

Let me close by again commending my colleagues on Governmental Affairs, Senators GLENN and ROTH and others; the majority leader and Senator DASCHLE have been critical in this, Senator JOHNSTON, Senator HATCH, and others—so many who have been involved in getting us where we are today. We are making progress. I hope that progress will be allowed to continue and will not be thwarted in any way that is inconsistent with what our common goal is.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized. All time has expired.

Mr. JOHNSTON. Mr. President, I ask unanimous consent I be able to proceed for 2 minutes.

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

Mr. JOHNSTON. Mr. President, I commend my colleagues on this side of the aisle who have been involved in this negotiation, particularly Senator LEVIN, Senator GLENN, Senator BIDEN, Senator BAUCUS, Senator KERREY, and Senator LAUTENBERG especially, who have contributed so much in bringing the draft up to where it is now.

As I say, it is not a done deal yet in terms of satisfying everyone's concerns, but it is much, much closer to that than when the Judiciary Committee bill started out.

Mr. President, I am advised it is the majority leader's intention Friday afternoon to withdraw the committee amendments to S. 343 and send the substitute to the desk. That substitute is, in effect, the Dole-Johnston discussion draft filed a few days ago, which is being supplemented by the agreement identified by myself and Senator LEVIN, and with other modifications which we have worked on during these hours.

So I ask unanimous consent that be printed in the RECORD tonight, when submitted to the Chair.

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

On page 33, beginning with line 5, strike all through the end of the bill and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''this subchapter'' and inserting ''this chapter and chapters 7 and 8'';

(2) in paragraph (13), by striking ''and'';

(3) in paragraph (14), by striking the period at the end and inserting ''; and''; and

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

''(15) 'Director' means the Director of the Office of Management and Budget.''.

SEC. 3. RULEMAKING.

Section 553 of title 5, United States Code, is amended to read as follows:

''§ 553. Rulemaking

''(a) APPLICABILITY.—This section applies to every rulemaking, according to the provisions thereof, except to the extent that there is involved—

''(1) a matter pertaining to a military or foreign affairs function of the United States;

''(2) a matter relating to the management or personnel practices of an agency;

''(3) an interpretive rule, general statement of policy, guidance, or rule of agency organization, procedure, or practice, unless such rule, statement, or guidance has general applicability and substantially alters or creates rights or obligations of persons outside the agency; or

''(4) a rule relating to the acquisition, management, or disposal by an agency of real or personal property, or of services, that is promulgated in compliance with otherwise applicable criteria and procedures.

''(b) NOTICE OF PROPOSED RULEMAKING.—General notice of proposed rulemaking shall be published in the Federal Register, unless all persons subject thereto are named and either personally served or otherwise have actual notice of the proposed rulemaking in accordance with law. Each notice of proposed rulemaking shall include—

''(1) a statement of the time, place, and nature of public rulemaking proceedings;

''(2) a succinct explanation of the need for and specific objectives of the proposed rule, including an explanation of the agency's determination of whether or not the rule is a major rule within the meaning of section 621(5);

''(3) a succinct explanation of the specific statutory basis for the proposed rule, including an explanation of—

''(A) whether the interpretation is clearly required by the text of the statute; or

''(B) if the interpretation is not clearly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and an explanation why the interpretation selected by the agency is the agency's preferred interpretation;

''(4) the terms or substance of the proposed rule;

''(5) a summary of any initial analysis of the proposed rule required to be prepared or issued pursuant to chapter 6;

''(6) a statement that the agency seeks proposals from the public and from State and local governments for alternative methods to accomplish the objectives of the rulemaking that are more effective or less burdensome than the approach used in the proposed rule; and

''(7) a statement specifying where the file of the rulemaking proceeding maintained pursuant to subsection (j) may be inspected and how copies of the items in the file may be obtained.

''(c) PERIOD FOR COMMENT.—The agency shall give interested persons not less than 60 days after providing the notice required by subsection (b) to participate in the rulemaking through the submission of written data, views, or arguments.

''(d) GOOD CAUSE EXCEPTION.—Unless notice or hearing is required by statute, a final rule may be adopted and may become effective without prior compliance with subsections (b) and (c) and (e) through (g) if the agency for good cause finds that providing notice and public procedure thereon before the rule becomes effective is impracticable, unnecessary, or contrary to the public interest. If a rule is adopted under this subsection, the agency shall publish the rule in the Federal Register with the finding and a succinct explanation of the reasons therefor.

''(e) PROCEDURAL FLEXIBILITY.—To collect relevant information, and to identify and elicit full and representative public comment on the significant issues of a particular rulemaking, the agency may use such other procedures as the agency determines are appropriate, including—

''(1) the publication of an advance notice of proposed rulemaking;

''(2) the provision of notice, in forms which are more direct than notice published in the Federal Register, to persons who would be substantially affected by the proposed rule but who are unlikely to receive notice of the proposed rulemaking through the Federal Register;

''(3) the provision of opportunities for oral presentation of data, views, information, or rebuttal arguments at informal public hearings, meetings, and round table discussions, which may be held in the District of Columbia and other locations;

''(4) the establishment of reasonable procedures to regulate the course of informal public hearings, meetings and round table discussions, including the designation of representatives to make oral presentations or engage in direct or cross-examination on behalf of several parties with a common interest in a rulemaking, and the provision of transcripts, summaries, or other records of all such public hearings and summaries of meetings and round table discussions;

''(5) the provision of summaries, explanatory materials, or other technical information in response to public inquiries concerning the issues involved in the rulemaking; and

''(6) the adoption or modification of agency procedural rules to reduce the cost or complexity of the procedural rules.

''(f) PLANNED FINAL RULE.—If the provisions of a final rule that an agency plans to adopt are so different from the provisions of the original notice of proposed rulemaking that the original notice did not fairly apprise the public of the issues ultimately to be resolved in the rulemaking or of the substance of the rule, the agency shall publish in the Federal Register a notice of the final rule the agency plans to adopt, together with the information relevant to such rule that is required by the applicable provisions of this section and that has not previously been published in the Federal Register. The agency shall allow a reasonable period for comment on such planned final rule prior to its adoption.

''(g) STATEMENT OF BASIS AND PURPOSE.—An agency shall publish each final rule it adopts in the Federal Register, together with a concise statement of the basis and purpose of the rule and a statement of when the rule may become effective. The statement of basis and purpose shall include—

''(1) an explanation of the need for, objectives of, and specific statutory authority for, the rule;

''(2) a discussion of, and response to, any significant factual or legal issues presented by the rule, or raised by the comments on the proposed rule, including a description of the reasonable alternatives to the rule proposed by the agency and by interested persons, and the reasons why such alternatives were rejected;

''(3) a succinct explanation of whether the specific statutory basis for the rule is expressly required by the text of the statute, or if the specific statutory interpretation upon which the rule is based is not expressly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and why the agency has rejected other interpretations proposed in comments to the agency;

''(4) an explanation of how the factual conclusions upon which the rule is based are substantially supported in the rulemaking file; and

''(5) a summary of any final analysis of the rule required to be prepared or issued pursuant to chapter 6.

''(h) NONAPPLICABILITY.—In the case of a rule that is required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 shall apply in lieu of subsections (c), (e), (f), and (g).

''(i) EFFECTIVE DATE.—An agency shall publish the final rule in the Federal Register not later than 60 days before the effective date of such rule. An agency may make a rule effective in less than 60 days after publication in the Federal Register if the rule grants or recognizes an exemption, relieves a restriction, or if the agency for good cause finds that such a delay in the effective date would be contrary to the public interest and publishes such finding and an explanation of the reasons therefor, with the final rule.

''(j) RULEMAKING FILE.—(1) The agency shall maintain a file for each rulemaking proceeding conducted pursuant to this section and shall maintain a current index to such file.

''(2) Except as provided in subsection (k), the file shall be made available to the public not later than the date on which the agency makes an initial publication concerning the rule.

''(3) The rulemaking file shall include—

''(A) the notice of proposed rulemaking, any supplement to, or modification or revision of, such notice, and any advance notice of proposed rulemaking;

''(B) copies of all written comments received on the proposed rule;

''(C) a transcript, summary, or other record of any public hearing conducted on the rulemaking;

''(D) copies, or an identification of the place at which copies may be obtained, of factual and methodological material that pertains directly to the rulemaking and that was considered by the agency in connection with the rulemaking, or that was submitted to or prepared by or for the agency in connection with the rulemaking; and

''(E) any statement, description, analysis, or other material that the agency is required to prepare or issue in connection with the rulemaking, including any analysis prepared or issued pursuant to chapter 6.

The agency shall place each of the foregoing materials in the file as soon as practicable after each such material becomes available to the agency.

''(k) CONFIDENTIAL TREATMENT.—The file required by subsection (j) need not include any material described in section 552(b) if the agency includes in the file a statement that notes the existence of such material and the basis upon which the material is exempt from public disclosure under such section. The agency may not substantially rely on any such material in formulating a rule unless it makes the substance of such material available for adequate comment by interested persons. The agency may use summaries, aggregations of data, or other appropriate mechanisms to protect the confidentiality of such material to the maximum extent possible.

''(*l*) RULEMAKING PETITION.—(1) Each agency shall give an interested person the right to petition—

''(A) for the issuance, amendment, or repeal of a rule;

''(B) for the amendment or repeal of an interpretive rule or general statement of policy or guidance;

''(C) for an interpretation regarding the meaning of a rule, interpretive rule, general statement of policy, or guidance; and

''(D) for a variance or exemption from the terms of a rule to which the petitioner is otherwise subject, provided the statute authorizing the rule does not prohibit a variance or exemption.

''(2) The agency shall grant or deny a petition made pursuant to paragraph (1), and give written notice of its determination to the petitioner, with reasonable promptness, but in no event later than 18 months after the petition was received by the agency.

''(3) The written notice of the agency's determination shall include an explanation of the determination and a response to each significant factual and legal claim that forms the basis of the petition.

''(m) JUDICIAL REVIEW.—(1) The decision of an agency to use or not to use procedures in a rulemaking under subsection (e) shall not be subject to judicial review.

''(2) The rulemaking file required under subsection (j) shall constitute the rulemaking record for purposes of judicial review.

''(3) No court shall hold unlawful or set aside an agency rule based on a violation of subsection (j), unless the court finds that such violation has precluded fair public consideration of a material issue of the rulemaking taken as a whole.

''(4)(A) Judicial review of compliance or noncompliance with subsection (j) shall be limited to review of action or inaction on the part of an agency.

''(B) A decision by an agency to deny a petition under subsection (*l*) shall be subject to judicial review immediately upon denial, as final agency action under the statute granting the agency authority to carry out its action.

''(n) CONSTRUCTION.—(1) Notwithstanding any other provision of law, this section shall apply to and supplement the procedures governing informal rulemaking under statutes that are not generally subject to this section.

''(2) Nothing in this section authorizes the use of appropriated funds available to any agency to pay the attorney's fees or other expenses of persons intervening in agency proceedings.''.

SEC. 4. ANALYSIS OF AGENCY RULES.

(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 RULES

''§ 621. Definitions

''For purposes of this subchapter—

''(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

''(2) the term 'benefit' means the reasonably identifiable significant favorable effects, including social, environmental, health, and economic effects, that are expected to result directly or indirectly from implementation of a rule or other agency action;

''(3) the term 'cost' means the reasonably identifiable significant adverse effects, including social, environmental, health, and economic effects that are expected to result directly or indirectly from implementation of a rule or other agency action;

''(4) the term 'cost-benefit analysis' means an evaluation of the costs and benefits of a rule, quantified to the extent feasible and appropriate and otherwise qualitatively described, that is prepared in accordance with the requirements of this subchapter at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition;

''(5) the term 'major rule' means—

''(A) a rule or set of closely related rules that the agency proposing the rule, the Director, or a designee of the President determines is likely to have a gross annual effect on the economy of $50,000,000 or more in reasonably quantifiable increased costs; or

''(B) a rule that is otherwise designated a major rule by the agency proposing the rule, the Director, or a designee of the President

(and a designation or failure to designate under this clause shall not be subject to judicial review);

''(6) 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 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;

''(7) the term 'performance-based standards' means requirements, expressed in terms of outcomes or goals rather than mandatory means of achieving outcomes or goals, that permit the regulated entity discretion to determine how best to meet specific requirements in particular circumstances;

''(8) the term 'reasonable alternatives' means the range of reasonable regulatory options that the agency has authority to consider under the statute granting rulemaking authority, including flexible regulatory options of the type described in section 622(c)(2)(C)(iii), unless precluded by the statute granting the rulemaking authority; and

''(9) the term 'rule' has the same meaning as in section 551(4), and—

''(A) includes any statement of general applicability that substantially alters or creates rights or obligations of persons outside the agency; and

''(B) does not include—

''(i) a rule that involves the internal revenue laws of the United States, or the assessment and collection of taxes, duties, or other revenues or receipts;

''(ii) subject to section 633(c)(6), a rule or agency action that implements a treaty or international trade agreement to which the United States is a party;

''(iii) a rule or agency action that authorizes the introduction into commerce, or recognizes the marketable status, of a product;

''(iv) a rule exempt from notice and public procedure under section 553(a);

''(v) a rule or agency action relating to the public debt;

''(vi) a rule required to be promulgated at least annually pursuant to statute, or that provides relief, in whole or in part, from a statutory prohibition, other than a rule promulgated pursuant to subtitle C of title II of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.);

''(vii) a rule of particular applicability that approves or prescribes the future rates, wages, prices, services, corporate or financial structures, reorganizations, mergers, acquisitions, accounting practices, or disclosures bearing on any of the foregoing;

''(viii) a rule relating to monetary policy or to the safety or soundness of federally insured depository institutions or any affiliate of such an institution (as defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k))), credit unions, Federal Home Loan Banks, government sponsored housing enterprises, farm credit institutions, foreign banks that operate in the United States and their affiliates, branches, agencies, commercial lending companies, or representative offices, (as those terms are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101));

''(ix) a rule relating to the payment system or the protection of deposit insurance funds or the farm credit insurance fund;

''(x) any order issued in a rate or certificate proceeding by the Federal Energy Regulatory Commission, or a rule of general applicability that the Federal Energy Regulatory Commission certifies would increase reliance on competitive market forces or reduce regulatory burdens;

''(xi) a rule or order relating to the financial responsibility of brokers and dealers or futures commission merchants, the safeguarding of investor securities and funds or commodity future or options customer securities and funds, the clearance and settlement of securities, futures, or options transactions, or the suspension of trading under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or emergency action taken under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or a rule relating to the protection of the Securities Investor Protection Corporation, that is promulgated under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); or

''(xii) a rule that involves the international trade laws of the United States.

''§ 622. Rulemaking cost-benefit analysis

''(a) DETERMINATION OF MAJOR RULE.—Prior to publishing a notice of proposed rulemaking for any rule (or, in the case of a notice of proposed rulemaking that has been published but not issued 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(5)(A)(i) and, if it is not, whether it should be designated as a major rule under section 621(5)(A)(ii).

''(b) DESIGNATION.—(1) If an agency has determined that a rule is not a major rule within the meaning of section 621(5)(A)(i) and has not designated the rule as a major rule within the meaning of section 621(5)(A)(ii), the Director or a designee of the President may, as appropriate, determine that the rule is a major rule or designate the rule as 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 1 year 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) INITIAL COST-BENEFIT ANALYSIS.—(1)(A) When the agency publishes a notice of proposed rulemaking for a major rule, the agency shall issue and place in the rulemaking file an initial cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

''(B)(i) When an agency, the Director, or a designee of 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 an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

''(ii) Following the issuance of an initial cost-benefit analysis under clause (i), the agency shall give interested persons an opportunity to comment in the same manner as if the initial cost-benefit analysis had been issued with the notice of proposed rulemaking.

''(2) Each initial cost-benefit analysis shall contain—

''(A) a succinct analysis of the benefits of the proposed rule, including any beneficial effects that cannot be quantified, and an explanation of how the agency anticipates such benefits will be achieved by the proposed rule, including a description of the persons or classes of persons likely to receive such benefits;

''(B) a succinct analysis of the costs of the proposed rule, including any costs that cannot be quantified, and an explanation of how the agency anticipates such costs will result from the proposed rule, including a description of the persons or classes of persons likely to bear such costs;

''(C) a succinct description (including an analysis of the costs and benefits) of reasonable alternatives for achieving the identified benefits of the proposed rule, including, where such alternatives exist, alternatives that—

''(i) require no government action, where the agency has discretion under the statute granting the rulemaking authority not to promulgate a rule;

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

''(iii) employ performance-based standards, market-based mechanisms, or other flexible regulatory options that permit the greatest flexibility in achieving the regulatory result that the statutory provision authorizing the rule is designed to produce; or

''(iv) employ voluntary standards;

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

''(E) an explanation of whether the proposed rule is likely to meet the decisional criteria of section 624.

''(d) FINAL COST-BENEFIT ANALYSIS.—(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking file 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 record, including flexible regulatory options of the type described in subsection (c)(2)(C)(iii), and a description of the persons likely to receive such benefits and bear such costs; and

''(B) an analysis, based upon the rulemaking record considered as a whole, of whether and how the rule meets the decisional criteria in section 624.

''(3) In considering the benefits and costs, the agency, when appropriate, shall consider the benefits and costs incurred by all of the affected persons or classes of persons (including specially affected subgroups).

''(e) REQUIREMENTS FOR COST-BENEFIT ANALYSES.—(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.

''(B) The quantification or numerical estimate shall—

''(i) be made in the most appropriate unit of measurement, using comparable assumptions, including time periods;

''(ii) specify the ranges of predictions; and

''(iii) explain the margins of error involved in the quantification methods and the uncertainties and variabilities in the estimates used.

''(C) 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.

''(D) The agency evaluation of the relationship of benefits to costs shall be clearly articulated.

''(E) An agency shall not be required to make such evaluation primarily on a mathematical or numerical basis.

''(F) Nothing in this subsection shall be construed to expand agency authority beyond the delegated authority arising from the statute granting the rulemaking authority.

''(2) Where practicable and when understanding industry-by-industry effects is of central importance to a rulemaking, 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.

''(f) HEALTH, SAFETY, OR EMERGENCY EXEMPTION FROM COST-BENEFIT ANALYSIS.—(1) A major rule may be adopted and may become effective without prior compliance with this subchapter if—

''(A) the agency for good cause finds that conducting cost-benefit analysis is impracticable due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources; and

''(B) the agency publishes in the Federal Register, together with such finding, a succinct statement of the basis for the finding.

''(2) Not later than 180 days after the promulgation of a final major rule to which this section applies, the agency shall comply with the provisions of this subchapter and, if thereafter necessary, revise the rule.

''§ 623. Agency regulatory review

''(a) PRELIMINARY SCHEDULE FOR RULES.—(1) Not later than 1 year after the date of the enactment of this section, and every 5 years thereafter, the head of each agency shall publish in the Federal Register a notice of proposed rulemaking under section 553 that contains a preliminary schedule of rules selected for review under this section by the head of the agency and in the sole discretion of the head of the agency, and request public comment thereon, including suggestions for additional rules warranting review. The agency shall allow at least 180 days for public comment.

''(2) In selecting rules for the preliminary schedule, the head of the agency shall consider the extent to which, in the judgment of the head of the agency—

''(A) a rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

''(B) a rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

''(C) a rule could be revised in a manner allowed by the statute authorizing the rule so as to meet the decisional criteria of section 624 and to—

''(i) substantially decrease costs;

''(ii) substantially increase benefits; or

''(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii).

''(3) The preliminary schedule under this subsection shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(4) Any interpretive rule, general statement of policy, or guidance that has the force and effect of a rule under section 621(9) shall be treated as a rule for purposes of this section.

''(b) SCHEDULE.—(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), and subject to subsection (c), the head of each agency shall publish a final rule that establishes a schedule of rules to be reviewed by the agency under this section.

''(2) The schedule shall establish a deadline for completion of the review of each rule listed on the schedule, taking into account the criteria in subsection (d) and comments received in the rulemaking under subsection (a). Each such deadline shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(3) The schedule shall contain, at a minimum, all rules listed on the preliminary schedule.

''(4) The head of the agency shall modify the agency's schedule under this section to reflect any change ordered by the court under subsection (e) or subsection (g)(3) or contained in an appropriations Act under subsection (f).

''(c) PETITIONS AND COMMENTS PROPOSING ADDITION OF RULES TO THE SCHEDULE.—(1) Notwithstanding section 553(*l*), a petition to amend or repeal a major rule or an interpretative rule, general statement of policy, or guidance may only be filed during the 180-day comment period under subsection (a) and not at any other time. Such petition shall be reviewed only in accordance with this subsection.

''(2) The head of the agency shall, in response to petitions received during the rulemaking to establish the schedule, place on the final schedule for review within the first 3 years of the schedule any rule for which a petition, on its face, together with any relevant comments received in the rulemaking under subsection (a), establishes that there is a substantial likelihood that, considering the future impact of the rule—

''(A) the rule is a major rule under section 621(5)(A); and

(B) the head of the agency would not be able to make the findings required by section 624 with respect to the rule.

''(3) For the purposes of paragraph (2), the head of the agency may consolidate multiple petitions on the same rule into 1 determination with respect to review of the rule.

''(4) The head of the agency may, at the sole discretion of the head of the agency, add to the schedule any other rule suggested by a commentator during the rulemaking under subsection (a).

''(d) CRITERIA FOR ESTABLISHING DEADLINES FOR REVIEW.—The schedules in subsections (a) and (b) shall establish deadlines for review of each rule on the schedule that take into account—

''(1) the extent to which, for a particular rule, the preliminary views of the agency are that—

''(A) the rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

''(B) the rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

''(C) the rule could be revised in a manner allowed by the statute authorizing the rule so as to meet the decisional criteria under section 624 and to—

''(i) substantially decrease costs;

''(ii) substantially increase benefits; or

''(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii);

''(2) the importance of each rule relative to other rules being reviewed under this section; and

''(3) the resources expected to be available to the agency under subsection (f) to carry out the reviews under this section.

''(e) JUDICIAL REVIEW.—(1) Notwithstanding section 625 and except as provided otherwise in this subsection, agency compliance or noncompliance with the requirements of this section shall be subject to judicial review in accordance with section 706 of this title.

''(2) The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to review agency action pursuant to subsection (b) and subsection (c).

''(3) A petition for review of final agency action under subsection (b) or subsection (c) shall be filed not later than 60 days after the agency publishes the final rule under subsection (b).

''(4) The court upon review, for good cause shown, may extend the 3-years deadline under subsection (c)(2) for a period not to exceed an additional year.

''(5) The court shall remand to the agency any schedule under subsection (b) only if final agency action under subsection (b) is arbitrary or capricious. Agency action under subsection (d) shall not be subject to judicial review.

''(f) ANNUAL BUDGET.—(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

''(A) identify as a separate sum the amount requested to be appropriated for implementation of this section during the upcoming fiscal year; and

''(B) include a list of rules which may terminate during the year for which the budget proposal is made.

''(2) Amendments to the schedule under subsection (b) that change a deadline for review of a rule may be included in annual appropriations Acts for the relevant agencies. An authorizing committee with jurisdiction may submit, to the House of Representatives or Senate appropriations committee (as the case may be), amendments to the schedule published by an agency under subsection (b) that change a deadline for review of a rule. The appropriations committee to which such amendments have been submitted shall include or propose the amendments in the annual appropriations Act for the relevant agency. Each agency shall modify its schedule under subsection (b) to reflect such amendments.

''(g) REVIEW OF RULE.—(1) For each rule on the schedule under subsection (b), the agency shall—

''(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be continued, amended, or repealed;

''(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

''(i) addresses public comments generated by the notice in subparagraph (A);

''(ii) contains a preliminary analysis provided by the agency of whether the rule is a major rule, and if so, whether it satisfies the decisional criteria of section 624;

''(iii) contains a preliminary determination as to whether the rule should be continued, amended, or repealed; and

''(iv) solicits public comment on the preliminary determination for the rule; and

''(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

''(i) addresses public comments generated by the notice in subparagraph (B); and

''(ii) contains a final determination of whether to continue, amend, or repeal the rule; and

''(iii) if the agency determines to continue the rule and the rule is a major rule, contains findings necessary to satisfy the decisional criteria of section 624; and

''(iv) if the agency determines to amend the rule, contains a notice of proposed rulemaking under section 553.

''(2) If the final determination of the agency is to continue or repeal the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(C).

''(3) An interested party may petition the U.S. Court of Appeals for the District of Columbia Circuit to extend the period for review of a rule on the schedule for up to two years and to grant such equitable relief as is appropriate, if such petition establishes that—

''(A) the rule is likely to terminate under subsection (i);

''(B) the agency needs additional time to complete the review under this subsection;

''(C) terminating the rule would not be in the public interest; and

''(D) the agency has not expeditiously completed its review.

''(h) DEADLINE FOR FINAL AGENCY ACTION ON MODIFIED RULE.—If an agency makes a determination to amend a major rule under subsection (g)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years of the date of publication of the notice in subsection (g)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a major rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

''(i) TERMINATION OF RULES.—If the head of an agency has not completed the review of a rule by the deadline established in the schedule published or modified pursuant to subsection (b) and subsection (c), the head of the agency shall not enforce the rule, and the rule shall terminate by operation of law as of such date.

''(j) FINAL AGENCY ACTION.—(1) The final determination of an agency to continue or repeal a major rule under subsection (g)(1)(C) shall be considered final agency action.

''(2) Failure to promulgate an amended major rule or to make other decisions required by subsection (h) by the date established under such subsection shall be considered final agency action.

''§ 624. Decisional criteria

''(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law.

''(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

''(1) the benefits from the rule justify the costs of the rule;

''(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(3)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

''(4) if a risk assessment is required by section 632—

''(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

''(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

''(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

''(2)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest, and the agency head provides an explanation of those consideration, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

''(3) if a risk assessment is required by section 632—

''(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

''(d) PUBLICATION OF REASONS FOR NONCOMPLIANCE.—If an agency promulgates a rule to which subsection (c) applies, the agency head shall prepare a written explanation of why the agency was required to promulgate a rule that does not satisfy the criteria of subsection (b) and shall transmit the explanation with the final cost-benefit analysis to Congress when the final rule is promulgated.

''§ 625. Jurisdiction and judicial review

''(a) REVIEW.—Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall be subject to judicial review only in accordance with this section.

''(b) JURISDICTION.—(1) Subject to paragraph (2), each court with jurisdiction under a statute to review final agency action to which this title applies, has jurisdiction to review any claims of noncompliance with this subchapter and subchapter III.

''(2) No claims of noncompliance with this subchapter or subchapter III shall be reviewed separate or apart from judicial review of the final agency action to which they relate.

''(c) RECORD.—Any analysis or review required under this subchapter or subchapter III shall constitute part of the rulemaking record of the final agency action to which it pertains for the purposes of judicial review.

''(d) STANDARDS FOR REVIEW.—In any proceeding involving judicial review under section 706 or under the statute granting the rulemaking authority, failure to comply with this subchapter or subchapter III may be considered by the court solely for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion (or unsupported by substantial evidence where that standard is otherwise provided by law).

''(e) INTERLOCUTORY REVIEW.—(1) The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review—

''(A) an agency determination that a rule is not a major rule pursuant to section 622(a); and

''(B) an agency determination that a risk assessment is not required pursuant to section 632(a).

''(2) A petition for review of agency action under paragraph (1) shall be filed within 60 days after the agency makes the determination or certification for which review is sought.

''(3) Except as provided in this subsection, no court shall have jurisdiction to review any agency determination or certification specified in paragraph (1).

''§ 626. Deadlines for rulemaking

''(a) STATUTORY.—All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''(b) COURT-ORDERED.—All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''(c) OBLIGATION TO REGULATE.—In any case in which the failure to promulgate a rule by a deadline occurring during the 5-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''§ 627. Special rule

''Notwithstanding any other provision of the Comprehensive Regulatory Reform Act of 1995, or the amendments made by such Act, for purposes of this subchapter and subchapter IV, the head of each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act), the National Credit Union Administration, the Federal Housing Finance Board, the Office of Federal Housing Enterprise Oversight, and the Farm Credit Administration, shall have authority with respect to such agency that otherwise would be provided under such subchapters to the Director, a designee of the President, Vice President, or any officer designated or delegated with authority under such subchapters.

''§ 628. Requirements for major environmental management activities

''(a) DEFINITION.—For purposes of this section, the term 'major environmental management activity' means—

''(1) a corrective action requirement under the Solid Waste Disposal Act;

''(2) a response action or damage assessment under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

''(3) the treatment, storage, or disposal of radioactive or mixed waste in connection with site restoration activity; and

''(4) Federal guidelines for the conduct of such activity, including site-specific guidelines,

the expected costs, expenses, and damages of which are likely to exceed, in the aggregate, $10,000,000.

''(b) APPLICABILITY.—A major environmental management activity is subj ect to this section unless construction has commenced on a significant portion of the activity, and—

''(1) it is more cost-effective to complete construction of the work than to apply the provisions of this subchapter; or

''(2) the application of the provisions of this subchapter, including any delays caused thereby, will result in an actual and immediate risk to human health or welfare.

''(c) REQUIREMENT TO PREPARE RISK ASSESSMENT.—(1) For each major environmental management activity or significant unit thereof that is proposed by the agency after the date of enactment of this subchapter, is pending on the date of enactment of this subchapter, or is subject to a granted petition for review pursuant to section 623, the head of an agency shall prepare—

''(A) a risk assessment in accordance with subchapter III; and

''(B) a cost-benefit analysis equivalent to that which would be required under this subchapter, if such subchapter were applicable.

''(2) In conducting a risk assessment or cost-benefit analysis under this section, the head of the agency shall incorporate the reasonably anticipated probable future use of the land and its surroundings (and any associated media and resources of either) affected by the environmental management activity.

''(3) For actions pending on the date of enactment of this section or proposed during the year following the date of enactment of this section, in lieu of preparing a risk assessment in accordance with subchapter III or cost-benefit analysis under this subchapter, an agency may use other appropriately developed analyses that allow it to make the judgments required under subsection (d).

''(d) REQUIREMENT.—The requirements of this subsection shall supplement, and not supersede, any other requirement provided by any law. A major environmental management activity under this section shall meet the decisional criteria under section 624 as if it is a major rule under such section.

''SUBCHAPTER III—RISK ASSESSMENTS

''§ 631. Definitions

''For purposes of this subchapter—

''(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

''(2) the term 'exposure assessment' means the scientific determination of the intensity, frequency and duration of actual or potential exposures to the hazard in question;

''(3) the term 'hazard assessment' means the scientific determination of whether a hazard can cause an increased incidence of one or more significant adverse effects, and a scientific evaluation of the relationship between the degree of exposure to a perceived cause of an adverse effect and the incidence and severity of the effect;

''(4) the term 'major rule' has the meaning given such term in section 621(5);

''(5) the term 'risk assessment' means the systematic process of organizing and analyzing scientific knowledge and information on potential hazards, including as appropriate for the specific risk involved, hazard assessment, exposure assessment, and risk characterization;

''(6) the term 'risk characterization' means the integration and organization of hazard and exposure assessment to estimate the potential for specific harm to an exposed population or natural resource including, to the extent feasible, a characterization of the distribution of risk as well as an analysis of uncertainties, variabilities, conflicting information, and inferences and assumptions in the assessment;

''(7) the term 'screening analysis' means an analysis using simple conservative postulates to arrive at an estimate of upper and lower bounds as appropriate, that permits the manager to eliminate risks from further consideration and analysis, or to help establish priorities for agency action; and

''(8) the term 'substitution risk' means an increased risk to human health, safety, or the environment reasonably likely to result from a regulatory option.

''§ 632. Applicability

''(a) IN GENERAL.—Except as provided in subsection (c), for each proposed and final major rule, a primary purpose of which is to protect human health, safety, or the environment, or a consequence of which is a substantial substitution risk, that is proposed by an agency after the date of enactment of this subchapter, or is pending on the date of enactment of this subchapter, the head of each agency shall prepare a risk assessment in accordance with this subchapter.

''(b) APPLICATION OF PRINCIPLES.—(1) Except as provided in subsection (c), the head of each agency shall apply the principles in this subchapter to any risk assessment conducted to support a determination by the agency of risk to human health, safety, or the environment, if such determination would be likely to have an effect on the United States economy equivalent to that of a major rule.

''(2) In applying the principles of this subchapter to risk assessments other than those in subsections (a), (b)(1), and (c), the head of each agency shall publish, after notice and public comment, guidelines for the conduct of such other risk assessments that adopt the principles of this subchapter in a manner consistent with section 633(a)(4) and the risk assessment and risk management needs of the agency.

''(3) An agency shall not, as a condition for the issuance or modification of a permit, conduct, or require any person to conduct, a risk assessment, except if the agency finds that the risk assessment meets the requirements of section 633 (a) through (f).

''(c) EXCEPTIONS.—(1) This subchapter shall not apply to risk assessments performed with respect to—

''(A) a situation for which the agency finds good cause that conducting a risk assessment is impracticable due to an emergency or health and safety threat that is likely to result in significant harm to the public or natural resources;

''(B) a rule or agency action that authorizes the introduction into commerce, or initiation of manufacture, of a substance, mixture, or product, or recognizes the marketable status of a product;

''(C) a human health, safety, or environmental inspection, an action enforcing a statutory provision, rule, or permit, or an individual facility or site permitting action, except to the extent provided by subsection (b)(3);

''(D) a screening analysis clearly identified as such; or

''(E) product registrations, reregistrations, tolerance settings, and reviews of premanufacture notices under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

''(2) An analysis shall not be treated as a screening analysis for the purposes of paragraph (1)(D) if the result of the analysis is used—

''(A) as the basis for imposing a restriction on a previously authorized substance, product, or activity after its initial introduction into manufacture or commerce; or

''(B) as the basis for a formal determination by the agency of significant risk from a substance or activity.

''(3) This subchapter shall not apply to any food, drug, or other product label or labeling, or to any risk characterization appearing on any such label.

''§ 633. Principles for risk assessments

''(a) IN GENERAL.—(1) The head of each agency shall design and conduct risk assessments in a manner that promotes rational and informed risk management decisions and informed public input into the process of making agency decisions.

''(2) The head of each agency shall establish and maintain a distinction between risk assessment and risk management.

''(3) An agency may take into account priorities for managing risks, including the types of information that would be important in evaluating a full range of alternatives, in developing priorities for risk assessment activities.

''(4) In conducting a risk assessment, the head of each agency shall employ the level of detail and rigor considered by the agency as appropriate and practicable for reasoned decisionmaking in the matter involved, proportionate to the significance and complexity of the potential agency action and the need for expedition.

''(5) An agency shall not be required to repeat discussions or explanations in each risk assessment required under this subchapter if there is an unambiguous reference to a relevant discussion or explanation in another reasonably available agency document that was prepared consistent with this section.

''(b) ITERATIVE PROCESS.—(1) Each agency shall develop and use an iterative process for risk assessment, starting with relatively inexpensive screening analyses and progressing to more rigorous analyses, as circumstances or results warrant.

''(2) In determining whether or not to proceed to a more detailed analysis, the head of the agency shall take into consideration whether or not use of additional data or the analysis thereof would significantly change the estimate of risk and the resulting agency action.

''(c) DATA QUALITY.—(1) The head of each agency shall base each risk assessment only on the best reasonably available scientific data and scientific understanding, including scientific information that finds or fails to find a correlation between a potential hazard and an adverse effect, and data regarding exposure and other relevant physical conditions that are reasonably expected to be encountered.

''(2) The agency shall select data for use in a risk assessment based on a reasoned analysis of the quality and relevance of the data, and shall describe such analysis.

''(3) In making its selection of data, the agency shall consider whether the data were published in the peer-reviewed scientific literature, or developed in accordance with good laboratory practice or published or other appropriate protocols to ensure data quality, such as the standards for the development of test data promulgated pursuant to section 4 of the Toxic Substances Control Act (15 U.S.C. 2603), and the standards for

data requirements promulgated pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a), or other form of independent evaluation.

''(4) Subject to paragraph (3), relevant scientific data submitted by interested parties shall be reviewed and considered by the agency in the analysis under paragraph (2).

''(5) When conflicts among scientific data appear to exist, the risk assessment shall include a discussion of all relevant information including the likelihood of alternative interpretations of the data and emphasizing—

''(A) postulates that represent the most reasonable inferences from the supporting scientific data; and

''(B) when a risk assessment involves an extrapolation from toxicological studies, data with the greatest scientific basis of support for the resulting harm to affected individuals, populations, or resources.

''(6) The head of an agency shall not automatically incorporate or adopt any recommendation or classification made by any foreign government, the United Nations, any international governmental body or standards-making organization, concerning the health effects value of a substance except as provided in paragraph (2) of this subsection. Nothing in this paragraph shall be construed to affect the implementation or application of any treaty or international trade agreement to which the United States is a party.

''(d) USE OF POLICY JUDGMENTS.—(1) To the maximum extent practicable, each agency shall use policy judgments, including default assumptions, inferences, models or safety factors, only when relevant scientific data and scientific understanding, including site-specific data, are lacking. The agency shall modify or decrease the use of policy judgments to the extent that higher quality scientific data and understanding become available.

''(2) When a risk assessment involves choice of a postulate, the head of the agency shall—

''(A) identify the postulate and its scientific or policy basis, including the extent to which the policy judgment has been validated by, or conflicts with, empirical data;

''(B) explain the basis for any choices among policy judgments; and

''(C) describe reasonable alternative policy judgments that were not selected by the agency for use in the risk assessment, and the sensitivity of the conclusions of the risk assessment to the alternatives, and the rationale for not using such alternatives.

''(3) An agency shall not inappropriately combine or compound multiple policy judgments.

''(4) The agency shall, subject to notice and opportunity for public comment, develop and publish guidelines describing the agency's default policy judgments and how they were chosen, and guidelines for deciding when and how, in a specific risk assessment, to adopt alternative policy judgments or to use available scientific information in place of a policy judgment.

''(e) RISK CHARACTERIZATION.—In each risk assessment, the agency shall include in the risk characterization, as appropriate, each of the following:

''(1) A description of the hazard of concern.

''(2) A description of the populations or natural resources that are the subject of the risk assessment.

''(3) An explanation of the exposure scenarios used in the risk assessment, including an estimate of the corresponding population at risk and the likelihood of such exposure scenarios.

''(4) A description of the nature and severity of the harm that could plausibly occur.

''(5) A description of the major uncertainties in each component of the risk assessment and their influence on the results of the assessment.

''(f) PRESENTATION OF RISK ASSESSMENT CONCLUSIONS.—(1) To the extent feasible and scientifically appropriate, the head of an agency shall—

''(A) express the overall estimate of risk as a range or probability distribution that reflects variabilities, uncertainties and data gaps in the analysis;

''(B) provide the range and distribution of risks and the corresponding exposure scenarios, identifying the reasonably expected risk to the general population and, where appropriate, to more highly exposed or sensitive subpopulations; and

''(C) where quantitative estimates of the range and distribution of risk estimates are not available, describe the qualitative factors influencing the range of possible risks.

''(2) When scientific data and understanding that permits relevant comparisons of risk are reasonably available, the agency shall use such information to place the nature and magnitude of risks to human health, safety, and the environment being analyzed in context.

''(3) When scientifically appropriate information on significant substitution risks to human health, safety, or the environment is reasonably available to the agency, or is contained in information provided to the agency by a commentator, the agency shall describe such risks in the risk assessments.

''(g) PEER REVIEW.—(1) Each agency shall provide for peer review in accordance with this section of any risk assessment subject to the requirements of this subchapter that forms that basis of any major rule or a major environmental management activity.

''(2) Each agency shall develop a systematic program for balanced, independent, and external peer review that—

''(A) shall provide for the creation or utilization of peer review panels, expert bodies, or other formal or informal devices that are balanced and comprised of participants selected on the basis of their expertise relevant to the sciences involved in regulatory decisions and who are independent of the agency program that developed the risk assessment being reviewed;

''(B) shall not exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential interest in the outcome, if such interest is fully disclosed to the agency, and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person;

''(C) shall provide for a timely completed peer review, meeting agency deadlines, that contains a balanced presentation of all considerations, including minority reports and agency response to all significant peer review comments; and

''(D) shall provide adequate protections for confidential business information and trade secrets, including requiring panel members to enter into confidentiality agreements.

''(3) Each peer review shall include a report to the Federal agency concerned detailing the scientific and technical merit of data and the methods used for the risk assessment, and shall identify significant peer review comments. Each agency shall provide a written response to all significant peer review comments. All peer review comments, conclusions, composition of the panels, and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

''(4)(A) The Director of the Office of Science and Technology Policy shall develop a systematic program to oversee the use and quality of peer review of risk assessments.

''(B) The Director or the designee of the President may order an agency to conduct peer review for any risk assessment or cost-benefit analysis that is likely to have a significant impact on public policy decisions, or that would establish an important precedent.

''(5) The proceedings of peer review panels under this section shall not be subject to the Federal Advisory Committee Act.

''(h) PUBLIC PARTICIPATION.—The head of each agency shall provide appropriate opportunities for public participation and comment on risk assessments.

''§ 634. Rule of construction

''Nothing in this subchapter shall be construed to—

''(1) preclude the consideration of any data or the calculation of any estimate to more fully describe or analyze risk, scientific uncertainty, or variability; or

''(2) require the disclosure of any trade secret or other confidential information.

''§ 635. Comprehensive risk reduction

''(a) SETTING PRIORITIES.—The head of each agency with programs to protect human health, safety, or the environment shall set priorities for the use of resources available to address those risks to human health, safety, and the environment, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

''(b) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each agency in subsection (a) shall incorporate the priorities identified under subsection (a) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner using the priorities set under subsection (a), the basis for that determination, and explicitly identify how the agency's requested budget and regulatory agenda reflect those priorities.

''(c) REPORTS BY THE NATIONAL ACADEMY OF SCIENCES.—(1) Not later than 6 months after the date of enactment of this section, the Director of the Office of Science and Technology Policy shall enter into an arrangement with the National Academy of Sciences to investigate and report on comparative risk analysis. The arrangement shall provide, to the extent deemed appropriate and feasible by the Academy, for—

''(A) 1 or more reports evaluating methods of comparative risk analysis that would be appropriate for agency programs related to human health, safety, and the environment to use in setting priorities for activities; and

''(B) a report providing a comprehensive and comparative analysis of the risks to human health, safety, and the environment that are addressed by agency programs under subsection (a), along with companion activities to disseminate the conclusions of the report to the public.

''(2) The report or reports prepared under paragraph (1)(A) shall be completed not later than 3 years after the date of enactment of this section. The report under paragraph (1)(B) shall be completed not later than 4 years after the date of enactment of this section, and shall draw, as appropriate, upon the insights and conclusions of the report or reports made under paragraph (1)(A). The companion activities under paragraph (1)(B) shall be completed not later than 5 years after the date of enactment of this section.

''(3)(A) The head of an agency with programs to protect human health, safety, and

the environment shall incorporate the recommendations of reports under paragraph (1) in revising any priorities under subsection (a).

''(B) The head of the agency shall submit a report to the appropriate Congressional committees of jurisdiction responding to the recommendations from the National Academy of Sciences and describing plans for utilizing the results of comparative risk analysis in agency budget, strategic planning, regulatory agenda, enforcement, and research and development activities.

''(4) Following the submission of the report in paragraph (2), for the next 5 years, the head of the agency shall submit, with the budget request submitted to Congress under section 1105(a) of title 31, a description of how the requested budget of the agency and the strategic planning activities of the agency reflect priorities determined using the recommendations of reports issued under subsection (a). The head of the agency shall include in such description—

''(A) recommendations on the modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

''(B) recommendation on the modification or elimination of statutory or judicially mandated deadlines,

that would assist the head of the agency to set priorities in activities to address the risks to human health, safety, or the environment that incorporate the priorities developed using the recommendations of the reports under subsection (a), resulting in more cost-effective programs to address risk.

''(5) For each budget request submitted in accordance with paragraph (4), the Director shall submit an analysis of ways in which resources could be reallocated among Federal agencies to achieve the greatest overall net reduction in risk.

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

''§ 641. Procedures

''(a) IN GENERAL.—The Director or a designee of the President shall—

''(1) establish and, as appropriate, revise procedures for agency compliance with this chapter; and

''(2) monitor, review, and ensure agency implementation of such procedures.

''(b) PUBLIC COMMENT.—Procedures established pursuant to subsection (a) shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

''(c) TIME FOR REVIEW.—(1) If procedures established pursuant to subsection (a) include review of any initial or final analyses of a rule required under chapter 6, the time for any such review of any initial analysis shall not exceed 90 days following the receipt of the analysis by the Director, or a designee of the President.

''(2) The time for review of any final analysis required under chapter 6 shall not exceed 90 days following the receipt of the analysis by the Director, a designee of the President.

''(3)(A) The times for each such review may be extended for good cause by the President or by an officer to whom the President has delegated his authority pursuant to section 642 for an additional 45 days. At the request of the head of an agency, the President or such an officer may grant an additional extension of 45 days.

''(B) Notice of any such extension, together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

''§ 642. Delegation of authority

''(a) IN GENERAL.—The President may delegate the authority granted by this subchapter to an officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate.

''(b) NOTICE.—Notice of any delegation, or any revocation or modification thereof shall be published in the Federal Register.

''§ 643. Judicial review

''The exercise of the authority granted under this subchapter by the Director, the President, or by an officer to whom such authority has been delegated under section 642 and agency compliance or noncompliance with the procedure under section 641 shall not be subject to judicial review.

''§ 644. Regulatory agenda

''The head of each agency shall provide, as part of the semiannual regulatory agenda published under section 602—

''(1) a list of risk assessments subject to subsection 632 (a) or (b)(1) under preparation or planned by the agency;

''(2) a brief summary of relevant issues addressed or to be addressed by each listed risk assessment;

''(3) an approximate schedule for completing each listed risk assessment;

''(4) an identification of potential rules, guidance, or other agency actions supported or affected by each listed risk assessment; and

''(5) the name, address, and telephone number of an agency official knowledgeable about each listed risk assessment.''.

(b) REGULATORY FLEXIBILITY ANALYSIS.—

(1) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

''(c)(1) Except as provided in paragraph (2), no final rule for which a final regulatory flexibility analysis is required under this section shall be promulgated unless the agency finds that the final rule minimizes significant economic impact on small entities to the maximum extent possible, consistent with the purposes of this subchapter, the objectives of the rule, and the requirements of applicable statutes.

''(2) If an agency determines that a statute requires a rule to be promulgated that does not satisfy the criterion of paragraph (1), the agency shall—

''(A) include a written explanation of such determination in the final regulatory flexibility analysis; and

''(B) transmit the final regulatory flexibility analysis to Congress when the final rule is promulgated.''.

(2) JUDICIAL REVIEW.—Section 611 of title 5, United States Code, is amended to read as follows:

''§ 611. Judicial review

''(a)(1) For any rule described in section 603(a), and with respect to which the 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;

''(B) prepared a final regulatory flexibility analysis pursuant to section 604; or

''(C) did not prepare an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604 except as permitted by sections 605 and 608,

an affected small entity may petition for the judicial review of such certification, analysis, or failure to prepare such analysis, in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction over such petition.

''(2)(A) Notwithstanding any other provision of law, an affected small entity shall have 1 year after the effective date of the final rule to challenge the certification, analysis or failure to prepare an analysis required by this subchapter with respect to any such rule.

''(B) If an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection may be filed not later than 1 year 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 subject to the provisions of, or otherwise required to comply with, the final rule.

''(4) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

''(5)(A) Notwithstanding section 605, if the court determines, on the basis of the court's review of the rulemaking record, that there is substantial evidence that the rule would have a significant economic impact on a substantial number of small entities, the court shall order the agency to prepare a final regulatory flexibility analysis that satisfies the requirements of section 604.

''(B) If the agency prepared a final regulatory flexibility analysis, the court shall order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the court's review of the rulemaking record, that the final regulatory flexibility analysis does not satisfy the requirements of section 604.

''(6) The court shall stay the rule and grant such other relief as the court determines to be appropriate if, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5), the agency fails, as appropriate—

''(A) to prepare the analysis required by section 604; or

''(B) to take corrective action consistent with section 604.

''(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) Except as otherwise required by the provisions of this subchapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct the rulemaking.''.

(c) REVISION OF CERTAIN PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT RELATING TO TESTING.—In applying section 409(c)(3)(A), 512(d)(1), or 721(b)(5)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A), 360b(d)(1), 379e(b)(5)(B)), the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency shall not prohibit or refuse to approve a substance or product on the basis of safety, where the substance or product presents a negligible or insignificant foreseeable risk to human health resulting from its intended use.

(d) TOXIC RELEASE INVENTORY REVIEW.—

(1) Not later than 180 days after the date of enactment of this subsection, the Administrator of the Environmental Protection Agency shall carry out a review of each characterization or listing of a substance added since November 8, 1994, to the Toxic Release Inventory under section 313(c) of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11023(c)).

(2) In this review, the Administrator shall determine with respect to each such characterization or listing whether removal of the substance from the Toxic Release Inventory

presents a foreseeable significant risk to human health or the environment.

(3) The Administrator shall remove from the Toxic Release Inventory any substance the removal of which is justified by a determination under paragraph (2).

(4)(A) Not later than 90 days after the date of enactment of this section, the Administrator shall publish a draft review and the Administrator's preliminary plans to use the authority under paragraph (3), and afford interested persons an opportunity to comment.

(B) Promptly upon completion of the review, the Administrator shall provide Congress with a written report summarizing the review and the reasons for action or inaction on each characterization or listing subject to this subsection.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—Part I of title 5, United States Code, is amended by striking the chapter heading and table of sections for chapter 6 and inserting 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 analysis.
''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 RULES

''621. Definitions.
''622. Rulemaking cost-benefit analysis.
''623. Agency regulatory review.
''624. Decisional criteria.
''625. Jurisdiction and judicial review.
''626. Deadlines for rulemaking.
''627. Special rule.
''628. Requirements for major environmental management activities.

''SUBCHAPTER III—RISK ASSESSMENTS

''631. Definitions.
''632. Applicability.
''633. Principles for risk assessments.
''634. Rule of construction.
''635. Comprehensive risk reduction.

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

''641. Procedures.
''642. Delegation of authority.
''643. Judicial review.
''644. Regulatory agenda.''.

(2) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

''SUBCHAPTER I—REGULATORY ANALYSIS''.

SEC. 5. JUDICIAL REVIEW.

(a) IN GENERAL.—Chapter 7 of title 5, United States Code, is amended—

(1) by striking section 706; and

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

"§ 706. Scope of review

''(a) To the extent necessary to reach a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

''(1) compel agency action unlawfully withheld or unreasonably delayed; and

''(2) hold unlawful and set aside agency action, findings and conclusions found to be—

''(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

''(B) contrary to constitutional right, power, privilege, or immunity;

''(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

''(D) without observance of procedure required by law;

''(E) unsupported by substantial evidence in a proceeding subject to sections 556 and 557 or otherwise reviewed on the record of an agency hearing provided by statute;

''(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, in the case of a rule adopted in a proceeding subject to section 553; or

''(G) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

''(b) In making the determinations set forth in subsection (a), the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

"§ 707. Consent decrees

''In interpreting any consent decree in effect on or after the date of enactment of this section that imposes on an agency an obligation to initiate, continue, or complete rulemaking proceedings, the court shall not enforce the decree in a way that divests the agency of discretion clearly granted to the agency by statute to respond to changing circumstances, make policy or managerial choices, or protect the rights of third parties.

"§ 708. Affirmative defense

''Notwithstanding any other provision of law, it shall be an affirmative defense in any enforcement action brought by an agency that the regulated person or entity reasonably relied on and is complying with a rule, regulation, adjudication, directive, or order of such agency or any other agency that is incompatible, contradictory, or otherwise cannot be reconciled with the agency rule, regulation, adjudication, directive, or order being enforced.''.

(b) TECHNICAL AMENDMENT.—The analysis for chapter 7 of title 5, United States Code, is amended by striking the item relating to section 706 and inserting the following new items:

''706. Scope of review.
''707. Consent decrees.
''708. Affirmative defense.''.

SEC. 6. CONGRESSIONAL REVIEW.

(a) FINDING.—The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the implementation of certain significant final rules is imposed in order to provide Congress an opportunity for review.

(b) IN GENERAL.—Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

''801. Congressional review.
''802. Congressional disapproval procedure.
''803. Special rule on statutory, regulatory, and judicial deadlines.
''804. Definitions.
''805. Judicial review.
''806. Applicability; severability.
''807. Exemption for monetary policy.

"§ 801. Congressional review

''(a)(1)(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

''(i) a copy of the rule;

''(ii) a concise general statement relating to the rule; and

''(iii) the proposed effective date of the rule.

''(B) The Federal agency promulgating the rule shall make available to each House of Congress and the Comptroller General, upon request—

''(i) a complete copy of the cost-benefit analysis of the rule, if any;

''(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

''(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

''(iv) any other relevant information or requirements under any other Act and any relevant Executive orders, such as Executive Order No. 12866.

''(C) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each committee with jurisdiction.

''(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction to each House of the Congress by the end of 12 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

''(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

''(3) 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 60 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 section 802 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 section 802 is enacted).

''(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

''(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

''(b) A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 802.

''(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this chapter 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;

''(C) necessary for national security; or

''(D) issued pursuant to a statute implementing an international trade agreement.

''(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

''(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of 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, section 802 shall apply to such rule in the succeeding Congress.

''(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

''(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

''(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

''(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a final rule can take effect.

''(3) A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

''(e)(1) Section 802 shall apply in accordance with this subsection to any major rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on November 20, 1994, through the date on which the Comprehensive Regulatory Reform Act of 1995 takes effect.

''(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

''(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of enactment of the Comprehensive Regulatory Reform Act of 1995; and

''(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

''(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

''(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

''(g) If the Congress does not enact a joint resolution of disapproval under section 802, 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.

''§ 802. Congressional disapproval procedure

''(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced during the period beginning on the date on which the report referred to in section 801(a) is received by Congress and ending 60 days thereafter, 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.)

''(b)(1) 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.

''(2) For purposes of this subsection the term 'submission or publication date' means the later of the date on which—

''(A) the Congress receives the report submitted under section 801(a)(1); or

''(B) the rule is published in the Federal Register.

''(c) If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such resolution in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d)(1) When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. 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.

''(2) 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.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a), 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.

''(4) 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 subsection (a) shall be decided without debate.

''(e) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(1) The resolution of the other House shall not be referred to a committee.

''(2) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(B) the vote on final passage shall be on the resolution of the other House.

''(f) This section is enacted by Congress—

''(1) 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 subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) 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.

''§ 803. Special rule on statutory, regulatory, and judicial deadlines

''(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

''(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

''§ 804. Definitions

''(a) For purposes of this chapter—

''(1) the term 'Federal agency' means any agency as that term is defined in section 551(1) (relating to administrative procedure);

''(2) the term 'major rule' has the same meaning given such term in section 621(5); and

''(3) the term 'final rule' means any final rule or interim final rule.

''(b) As used in subsection (a)(3), the term 'rule' has the meaning given such term in section 551, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

''§ 805. Judicial review

''No determination, finding, action, or omission under this chapter shall be subject to judicial review.

''§ 806. Applicability; severability

''(a) This chapter shall apply notwithstanding any other provision of law.

''(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

''§ 807. Exemption for monetary policy

''Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.''.

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect on the date of enactment of this Act and shall apply to any rule that takes effect as a final rule on or after such effective date.

(d) TECHNICAL AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

SEC. 7. REGULATORY ACCOUNTING.

(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) MAJOR RULE.—The term ''major rule'' has the same meaning as defined in section 621(5)(A)(i) of title 5, United States Code. The term shall not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) regulations issued with respect to a military or foreign affairs function of the United States or a statute implementing an international trade agreement; or

(C) regulations related to agency organization, management, or personnel.

(2) AGENCY.—The term ''agency'' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

(A) the General Accounting Office;

(B) the Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b) ACCOUNTING STATEMENT.—

(1) IN GENERAL.—(A) The President shall be responsible for implementing and administering the requirements of this section.

(B) Not later than June 1, 1997, and each June 1 thereafter, the President shall prepare and submit to Congress an accounting statement that estimates the annual costs of major rules and corresponding benefits in accordance with this subsection.

(2) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

(3) TIMING AND PROCEDURES.—(A) The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

(B) The President shall propose the first accounting statement under this subsection not later than 2 years after the date of enactment of this Act and shall issue the first accounting statement in final form not later than 3 years after such effective date. Such statement shall cover, at a minimum, each of the fiscal years beginning after the date of enactment of this Act.

(4) CONTENT OF ACCOUNTING STATEMENT.—(A) Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this paragraph. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

(B)(i) An accounting statement shall estimate the costs of major rules by setting forth, for each year covered by the statement—

(I) the annual expenditure of national economic resources for major rules, grouped by regulatory program; and

(II) such other quantitative and qualitative measures of costs as the President considers appropriate.

(ii) For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

(I) Private sector costs.

(II) Federal sector costs.

(III) State and local government administrative costs.

(C) An accounting statement shall estimate the benefits of major rules by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(c) ASSOCIATED REPORT TO CONGRESS.—

(1) IN GENERAL.—At the same time as the President submits an accounting statement under subsection (b), the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an ''associated report''). The associated report shall contain, in accordance with this subsection—

(A) analyses of impacts; and

(B) recommendations for reform.

(2) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(A) Analyses prepared by the President of the cumulative impact of major rules in Federal regulatory programs covered in the accounting statement on the following:

(i) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(ii) Small business.

(iii) Productivity.

(iv) Wages.

(v) Economic growth.

(vi) Technological innovation.

(vii) Consumer prices for goods and services.

(viii) Such other factors considered appropriate by the President.

(B) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(3) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(A) A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(B) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

(d) GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers, provide guidance to agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to sections 3 and 7 of this Act, including—

(A) detailed guidance on estimating the costs and benefits of major rules; and

(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

(2) to standardize the format of the accounting statements.

(e) RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.—After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving accounting statements prepared pursuant to this section, including recommendations on level of detail and accuracy; and

(2) for improving associated reports prepared pursuant to this section, including recommendations on the quality of analysis.

(f) JUDICIAL REVIEW.—No requirements under this section shall be subject to judicial review in any manner.

SEC. 8. STUDIES AND REPORTS.

(a) RISK ASSESSMENTS.—The Administrative Conference of the United States shall—

(1) develop and carry out an ongoing study of the operation of the risk assessment requirements of subchapter III of chapter 6 of title 5, United States Code (as added by section 4 of this Act); and

(2) submit an annual report to the Congress on the findings of the study.

(b) ADMINISTRATIVE PROCEDURE ACT.—Not later than December 31, 1996, the Administrative Conference of the United States shall—

(1) carry out a study of the operation of the Administrative Procedure Act (as amended by section 3 of this Act); and

(2) submit a report to the Congress on the findings of the study, including proposals for revision, if any.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) EFFECTIVE DATE.—Except as otherwise provided, this Act and the amendments made by this Act shall take effect on the date of enactment.

(b) SEVERABILITY.—If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Mr. JOHNSTON. Mr. President, I understand that will be the pending business when the Senate returns from recess. In the meantime, we will continue to discuss this package with our colleagues and, hopefully, will be able to arrive at further modifications along the lines we have talked about. I believe those negotiations will happen tomorrow.

Mr. LEVIN. Reserving the right to object, Mr. President, there was a unanimous-consent agreement that had been entered into previously between Senator DOLE and Senator DASCHLE. Is there any intent in what the Senator from Louisiana has just said to modify in any way the previous unanimous-consent agreement that had been entered into?

Mr. JOHNSTON. No, the only unanimous consent I asked is that when this draft is prepared, that it be printed in the RECORD for notice.

The majority leader, I was just informed, will ask on tomorrow afternoon—I did not ask unanimous consent but I was just advised that he would ask for permission to withdraw the committee amendments to S. 343 and send a substitute to the desk.

I am not asking that be done. I was just giving the Senate notice because his staff just gave me that notice. I wanted to make the Senate aware of that.

I hope tomorrow we can reassure Senators on matters, or change that which needs to be changed, and get a very broad consensus bill so when we come back after the recess we will have a bill that passes overwhelmingly.

Mr. President, I said a moment ago Senator DOLE intended to put in the substitute tomorrow afternoon. I meant on Friday afternoon, because that is what he meant. I wanted to give my colleagues notice of that.

THE BUDGET RESOLUTION

The PRESIDING OFFICER (Mr. DEWINE). Under the previous order, the Senate will resume debate on the conference report to House Concurrent Resolution 67, the budget resolution for fiscal year 1996.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I rise this afternoon to voice my strong support for the budget conference report, which I believe is a historic document that looks forward and not back; one that promises freedom, not Government servitude; and one that delivers hope and not despair.

Mr. DOMENICI. Mr. President, I wonder if the Senator will yield for a moment?

Mr. GRAMS. Yes, go ahead.

Mr. DOMENICI. Mr. President, I understand we are going to be on this resolution for 1 hour now; is that correct?

The PRESIDING OFFICER. There is not an hour to end the debate, or to begin debate.

Mr. DOMENICI. We will be going back and forth? I ask the Senator, how much time would the Senator like?

Mr. GRAMS. No more than 10 minutes.

Mr. DOMENICI. I yield 10 minutes to the distinguished Senator.

Mr. GRAMS. Mr. President, talking about the budget, this historic budget is a budget unlike any other approved by Congress in more than a quarter of a century because, not only does it balance the budget within 7 years without raising taxes, it actually cuts taxes for middle-class Americans.

It marks the first time since 1969 that Congress has committed itself to a balanced budget, and reflects the change demanded by the voters in November: Get government off our backs and out of our back pockets.

Mr. President, our budget resolution provides $245 billion in tax relief, making it the largest tax refund in history.

I am proud that the centerpiece of the tax relief package will be the $500 per-child tax credit originally proposed by me and my very good friend from Indiana, Senator COATS, in our families-first legislation, and by Representative TIM HUTCHINSON in the House.

Along with my freshman colleague, Senator ABRAHAM, and the leadership of Senator DOLE, we have ensured that this Senate goes on record supporting middle-class tax relief, and incentives to stimulate savings, investment, job creation, and economic growth.

And, Mr. President, this tax relief could not have come at a better time.

Government has become a looming presence in the lives of the American people, mostly through the encouragement of Congress.

Each year, the people are asked to turn more and more responsibilities over to the Federal Government—for Government regulation, for Government support.

From the time they get up in the morning till the time they go to bed at night, there are very few aspects of daily American life that are not touched by the hand of government.

So government has been forced to grow just to keep up.

Consider that government spending at the Federal State, and local levels has jumped from less than 12 percent of national income in the 1930's to more than 42 percent today.

And the burden for keeping these ever-ballooning bureaucracies in operation has fallen on the taxpayers, of course—through more and higher taxes.

As a sign of just how big the Federal Government has grown—and how the number of tax dollars sent to Washington have grown right along with it—look what has happened to the IRS.

Today, it has an annual operating budget in excess of $7.5 billion. If it were a private company, its gross receipts—more than $1 trillion—would put it at the top of the Fortune 500 list.

All that—just by processing tax dollars.

Most middle-class American families pay more in Federal taxes than they spend for food, clothing, and shelter combined.

Families with children are now the lowest after-tax income group in America—below elderly households, below single persons, below families without children.

Since 1948, when Americans paid just 22 cents per dollar of their personal income in taxes, the Gallup organization has asked Americans what they think about the taxes they pay.

That first year, 57 percent of the people said yes, taxes are too high. Today, nearly 50 cents of every dollar earned by middle-class Americans goes to taxes of some sort—and 67 percent of the people say they're handing over too much of their own money to the Federal Government.

They might feel differently if they were getting a fair return on then investment. But Americans see their hard-earned dollars being wasted by the Federal Government. They look at the services they are getting in return and they feel like they are being taken to the cleaners.

The 1993 tax bill offered by President Clinton did not help, either. As the largest tax increase in American history, it hit middle-class Americans right where it hurt the most—their wallets.

The President's 1993 tax hike actually increased their tax burden, making it more difficult for the middle class to care for themselves and their children.

And I remind you—not a single Republican voted for it.

The tax burden has become so heavy in my home State of Minnesota that it took until May 14 this year—134 days into 1995—for us to finally reach Tax Freedom Day.

That is the day when Minnesotans are no longer working just to pay off taxes, and can finally begin working for themselves. Nearly 20 weeks, over 800 hours on the job just to pay Uncle Sam and his cousins at the State level.

In order to pay all these taxes, Americans are spending more time on the job. Within the past three decades, the average American has added about 160 hours annually to their work schedule. That is about 4 extra weeks of work a year.

They are overworked, overstressed, and they are moonlighting more than ever before.

In 1995, one in six Americans holds more than one job. One out of every three is regularly working on weekends and evenings. And it is not because they necessarily want to—it is because they must.

A significant number of families are relying on that second job just to pull themselves above the poverty line and meet their annual tax obligations.

The majority of families who have reached a middle-class standard of living are families relying on two incomes. They are still pursuing the American dream, but the ever-increasing tax burden keeps pushing it out of reach.

Imagine what those longer work hours are doing to the family. Or better yet, listen to taxpayers like Natalie Latzska-Wolstad of Coon Rapids, MN, who struggle with the demands of family life, the job, and the Government—while pursuing their own version of the American Dream.

I went to the floor of the Senate last month to talk about Natalie and her family, after she wrote me a moving letter about the enormous tax burden her family is forced to bear.

It hit home for Natalie after she and her husband met with their realtor, only to learn that they simply could not afford to purchase a new home on their own.

Let me quote just a few paragraphs from Natalie's letter: ''I have finally reached the point of complete frustration and anger over the amount of taxes being deducted from my check each month,'' she wrote.

When we got home that evening my husband and I sat down with our checkbook and our bills and tried to determine what we were doing wrong.

After taking everything into consideration we determined that we weren't spending our money foolishly.

The only real problem we found was when we looked at our paycheck stubs and actually realized how much of our income was going to pay for taxes.

It saddens me to think of how hard my husband and I work and how much time we have to spend away from our daughter to be at work, and still we cannot reach the American dream.

This is a disturbing letter, and I am even more troubled knowing it is just one of hundreds I have received from across the country. I know you have heard some Senator on the floor say: Americans do not want tax relief. I do not know who they are talking to, or who is writing them letters. But I hear something completely different from the people that I get letters from. Here is another example.

From California:

Our families desperately need tax relief, and our Government needs to stop spending so wastefully.

From Georgia:

I want to personally thank you for fighting for tax relief for families. Your efforts do not go unnoticed.

From Illinois:

We are a one-paycheck family struggling to keep our heads above water.

Two of our three children are in a private school. The burden of paying for the public and private school systems is great for us. Nonetheless, we must do what we know to be best for our children.

It is encouraging to know there are members of the government who understand our struggle and are working on our behalf.

From Kentucky:

We realize you are fighting a tough battle and we fully support you on this issue. Keep fighting!

From Oklahoma:

I want to let you know there are a lot of us middle-income heads of households who support you firmly.

And finally from Pennsylvania:

Please continue to keep the pro-family community in mind. The family, its strength, is what keeps this nation strong.

Those are strong words, Mr. President, from people who know what they are talking about.

As somebody once told me, those who say, We don't need a tax cut probably do not pay taxes.

Contrary to 40 years of conventional wisdom in Washington, American families are better equipped and better able than the Federal Government to spend their own dollars. And they need the tax relief offered in the budget resolution more than ever.

When we first introduced the idea of family tax relief and the $500 per-child tax credit in 1993, our arguments were simple: taxes were too high, the burden of tax increases fell disproportionately on the middle-class, and big government was forcing more workers out of the working class and into the welfare class.

Today, those same problems remain, and the arguments for tax relief have not changed, either. The big difference, however, is that this year, with this Congress—with this budget resolution—we are finally doing something about it.

The $500 per-child tax credit takes money out of the hands of the Washington bureaucrats and leaves it in the hands of the taxpayers. It would return $25 billion annually to families across America, $500 million to my Minnesota constituents alone.

And it is truly a tax break for the middle class. We will ensure that 9 out of every 10 dollars of this tax relief go to families making less than $100,000.

That is not the wealthy, Mr. President. That is middle-class America.

The Clinton administration and the Treasury Department have tried to refute our tax relief numbers.

Without dwelling on the inherent bias in asking the President's own Treasury Department to examine a Republican budget plan, let me just say that our budget figures are based on numbers provided by the nonpartisan Congressional Budget Office and the Joint Tax Committees.

Members of the President's own party have called on him to use CBO numbers—numbers which clearly show middle-class taxpayers benefit most from our tax relief.

Along with tax relief, the other important aspect of the budget resolution is that we have balanced the budget.

For decades, Congress has offered up budgets which raised taxes, sent government spending spiraling out of control, and created massive deficits.

They built up a national debt of nearly $5 trillion because Congress thrives on spending other people's money.

But who gets stuck with the bill?

Not this generation. No, we are passing this debt on to our kids and grandkids.

Even the Clinton administration, despite all its talk about shrinking the deficit, has washed its hands of the problem.

Under both of the President's budget plans, the deficit would increase from $177 billion this year to well over $200 billion through the next decade, and add another $1.5 trillion to the national debt.

When the voters ushered in a new political reality in November, they soundly rejected business as usual in Washington.

They looked to the Republicans for an alternative, for a budget that could turn back 40 years of spending mentality and the belief that ''money will fix everything, especially if it's your money and Washington can spend it.''

Today, we have delivered.

We crafted a document the naysayers said could never be achieved—a resolution that brings the budget into balance by the year 2002—and it is proof that we are serious about living up to our pledge.

And we have done it without slashing Federal spending, without putting children, seniors, and the disadvantaged at risk.

Most of our savings are achieved by slowing the growth of Government.

Will there need to be some sacrifices? Yes, although the Government will have to sacrifice more than the people will.

Will belts need to be tightened? Yes.

But a belt that is not tightened today may become a noose tomorrow, a noose around the necks of our children and grandchildren.

As I hear over and over from Minnesotans: The American people are willing to make those sacrifices—if they believe their Government is serious about making change.

At long last, America has a Congress that is serious.

Mr. President, what we do with this budget resolution, we are doing for the taxpayers who silently foot the Government's bills—the average men and women who get up every morning, send their kids to school, go to work, maybe at more than one job, and pay their taxes every year.

They are the forgotten middle-class families, the people who have for too long borne the burden of Federal overspending.

The taxpayer have watched their money vanish and then reappear in the form of some lavish Federal program which benefits few but the bureaucrats themselves.

Mr. President, is it fair to ask these middle-class Americans to endure greater economic hardships if we continue to do nothing?

Is it fair to expect middle-class Americans to endure greater economic hardships if we continue to do nothing?

Is it fair to expect middle-class Americans to do without, when their Government has never had to, if we continue to do nothing?

Is it fair to enslave the children of middle-class America with our debts if we continue to do nothing?

If each Senator in this Chamber asks themselves those very questions, the budget resolution will pass and it will be an overwhelming victory—a victory not for this Congress, but a victory for the people.

Thank you, Mr. President. I yield the remainder of my time.

Mr. DOMENICI. Mr. President, I understand that Senator BROWN was next.

How much time is the Senator going to use?

Mr. BROWN. I would like 10 minutes.

Mr. DOMENICI. I yield 15 minutes to Senator BROWN. And then following that, we will go to Senator FRIST if there is no Democrat who wants to be heard.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. I thank the Chair.

I wish to start this discussion off with a tribute to a Senator who has been on the front line in this fight for a long time. Senator DOMENICI's brilliant efforts not only helped put together a package that has not been put

together before in this Senate, at least during the last quarter century, but he brought people with widely diverse views into agreement over a plan that will rescue America. This is a bailout for America's finances. I believe it is due in large part to an enormous amount of dedicated effort by the Senator from New Mexico.

Mr. President, I said bailout of America's finances. That is not an overstatement. That is precisely what I meant.

For those who are listening, let me share with you why I believe that is true. The chart on my left is a simple, straightforward chart on the amount of money this country owes.

Mr. President, let me quickly acknowledge these are not numbers that an accountant would use. There is no CPA firm in the country that would show this as the amount we owe. It is far from what we owe. It does not use sound accounting principles that are generally accepted, but it is the numbers that we use. It does not show our contingent liabilities. It does not show a wide balance sheet. But this is the net amount, if you are in the marketplace to borrow each year, and it is significant in that it is the amount that American working men and women have to pay interest on each year.

What we have seen for a quarter century is a continuous growth line of budget deficits. They go up in bad times and down slightly in good times, but they continue to grow and grow and grow and grow.

Mr. President, what is depicted here is nothing more on a straight basis than the amount we owe coming from the lower levels in the 1950's, rising to almost $5 trillion. That is roughly $40,000 for every working person in this country.

Let me put it in perspective. That is every man, woman and child who has a full-time or a part-time job owes over $40,000 for their share of the national debt. What is significant is that they have to pay the interest on that every year. Before a penny goes to support their family, before a penny goes to support their parents or their children, before a penny goes to pay the necessities of life, they have to come up with the interest on over $40,000.

The problem is that this amount is expected to explode even higher. Any reasonable person, Democrat or Republican, liberal or conservative, who can look at these numbers, who can look at this chart, who can look at the forecasts that have been put in place, cannot but conclude that this problem has to be solved. It is not a question of can we wait until tomorrow. It is not a question of can we hide from it. It is not a question of can we refigure it in a way that will not look as bad. It is a simple, straightforward question that we are at a point now where the deficits are in a runaway fashion, and if we fail to address it, if we fail to acknowledge it, every American, rich or poor, will be poorer because of it. The predominance of the American economy in the 20th century will be lost. Our ability to be able to finance our debt, our very ability to borrow in the international marketplace will be destroyed.

I believe people who do research of this type cannot help but notice what has happened to the value of the dollar in this crisis has gotten worse. The value of the dollar has plummeted. As a young man in the United States Navy when I visited Japan, the dollar would buy over 400 yen. And as we speak it is in the neighborhood of 85. It used to be, at the end of the war, that the dollar would buy 5 deutsche marks. As we speak it is about 1⅓.

The trend is not good. The reality is the financial crisis that has gripped our country has seen the rapid depreciation of the value of our currency. We have turned the biggest trade surplus in the world's history into the biggest trade deficit in the world's history. We have turned the greatest creditor nation in the world into the biggest debtor nation in the world.

I honestly believe that unless we address this problem, what we will face is a drastic, almost catastrophic financial failure of this Nation.

The good news is that this budget does address it. This budget does give us a plan, and it gives us a commitment. It involves a proposal to revise the programs when reconciliation bill comes before this body.

Some will say it is too harsh, and some, like me, will say it is too weak; it is not strong enough; we ought to do more; we ought to end the deficit in the next year or two and not wait 7 years. But the political reality is that this is a budget that can pass. This is a budget that will solve the problem. It is a moderate proposal, but it is essential. We do not continue to have a viable financial circumstance for this Nation as a whole if this problem goes unaddressed.

The normal process is for the President of the United States to come forward and recommend a budget. One may fairly ask: What did the President recommend in light of those astronomic increases in the deficit?

Here is what the President suggested. He suggested huge increases in spending each year for the next 5 years, and proposed increasing the annual deficit from what was then estimated as $177 billion for 1995, increasing it each and every year up to $276 billion in the year of 2000. Now, that is reestimated by the Congressional Budget Office over the next 5 years.

Members will note that what we have talked about is a 7-year budget that not only comes into balance but provides a surplus. But the President's plan for this Nation was not to reduce the annual deficit but to increase it and to increase it dramatically. I believe that had we followed the President's course, the U.S. finances would be comparable to those of Orange County today. What the President had prescribed was a plan for fiscal disaster for this Nation and a poorer life for every working American and higher interest charges for every working American to pay, and, yes, a further decline in the value of the dollar.

Some will say: Well, the President stepped forward and revised those figures and, instead of proposing continuous, increasing deficits, advocated balancing the budget within 10 years. Indeed, all Americans have heard the President speaking on TV, talking about he proposes a balanced budget in 10 years and the Republicans in 7 years. So what are we talking about? In fact, he even said his was far more humane.

Mr. President, I wish to address that because the President of the United States himself has indicated that the Congressional Budget Office is the one that ought to be the arbiter of these figures.

The Congressional Budget Office did evaluate his figures. They did come back and tell us what the President's revised proposal was. It was not a $276 billion debt increase in the year 2000, as he had originally proposed. What he proposed was something that involved a 10-year budget, but in the 7th year it called for a $210 billion deficit.

Mr. President, here is the proposal: Continuous rising debt, continuous rising spending by the President and a deficit by the year 2002, a deficit increase by the year 2002 of $210 billion.

The agreement that is before this body is a surplus proposal for that year of $6.4 billion—a $210 billion increase in the deficit versus a $6.4 billion surplus.

Some will say: Wait a minute; that is not what the President said. He said he wanted it balanced by the end of 10 years.

Mr. President, the figures are not what he said in his rhetoric but what they total up to when you have an independent Congressional Budget Office review them.

The reason I mention all of this is because this body faces a choice. It faces a choice of whether we vote yes or no on this budget resolution.

Let me remind the body of what the choices that have been presented are, and they are the only alternative choices out there. One is to balance the budget in 7 years and have a $6.4 billion surplus. The other is the President's revised plan that calls for a $210 billion deficit and a failure to address the problem in the following years. Mr. President, there is no choice. And that is the bottom line of what we consider here today. It is either fiscal disaster, continuing increases in deficits and debt, a higher and higher burden for every working American, or it is a responsible plan that slows the growth of spending.

Now, Mr. President, some may say, ''It slows the growth? I thought you were cutting?'' Mr. President, on this chart we see what this budget does. It modestly increases spending each year and modestly reduces the deficit each year, attaining a surplus by the year 2002.

Some will say, ''Wait a minute. Let us talk about real numbers and real figures. What does this budget really do?'' We have heard, and it has been said nationwide, that the President says we slashed and cut Medicare. Mr. President, that is false. That is inaccurate. That is not true. That is not a fair representation of the facts of this budget.

Now what are the facts of this budget? Medicare in 1995 spends $158 billion. Medicare under this plan by the year 2002 will spend $244 billion. Medicare will increase over the distance of this plan by $317 billion on a net basis and $349 billion on a gross basis.

Some will say, ''Wait a minute. Medicare increases? I thought you were cutting it.'' What this budget plan calls for is a slowing of the rate of increase in Medicare. It does not call for a cut in Medicare. It calls for a huge increase in Medicare. Let me repeat it. On a gross basis, this budget calls for a $349 billion gross increase over 7 years in Medicare spending. To depict it as a slash in Medicare is simply inaccurate. Literally over the next 7 years we will spend $1.6 trillion on Medicare. And total spending on Medicare in the next 7 years will be 73 percent higher over the next 7 years than it has been in the past 7 years.

I hope as Americans listen to this debate, they will have firmly fixed in their minds that what this budget does is to increase Medicare spending, not cut it. It also slows the rate of increase in Medicare spending, so that it is less likely that the trust fund goes bankrupt. For those who think we ought to increase spending even faster than this budget does, I hope they will accept the burden to come here and explain what they do when they bankrupt the trust fund, how they provide health care, because, Mr. President, that is the bottom line for the debate on health care. Yes, you can spend up all your savings account, but what happens when it runs out? That is what this budget attempts to address.

Now, some have said we will cut Medicaid. What are the facts? Medicaid spent $89 billion in 1995 and will spend $124 billion a year by the year 2002. Medicaid spending will rise $149 billion on a net basis. It will spend a total of $772 billion in the next 7 years. The total spending in the next 7 years on Medicaid will be 73 percent higher than it was in the past 7 years.

Well, perhaps by now people are saying, ''Wait a minute, I have heard all the numbers. What is bottom line?'' The bottom line is the rhetoric by those naysayers that say we cannot change anything. The bottom line is, what they have used to describe and attack this budget has not been accurate. The bottom line is, what we have seen is a misdescription of what this budget does.

Mr. President, lastly what I heard some of the detractors say is, this budget provides a huge increase in defense spending. Mr. President, if you look at the numbers, I think they speak for themselves. Defense spending goes from $270 billion in 1995 to $271 billion in the year 2002.

The PRESIDING OFFICER. The Chair will advise the Senator his time is expired.

Mr. BROWN. I ask unanimous consent that I have an additional 4 minutes.

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

Mr. BROWN. Mr. President, the reality on defense spending is that between now and the next 7 years, compared to 1995 defense spending, it will drop $13 billion. It will not increase; it will drop. Some will say, ''Wait a minute. It might have dropped more under other plans.'' That is absolutely correct. But let me remind the body that that $13 billion drop is a drop in stated dollars and not adjusted for inflation. If you viewed it in constant dollars, it would be much more dramatic dollars. Could we save more in defense? My view is we could, and should. But to say this is a bad budget because it increases defense spending simply flies in the face of the real fact.

Now, Mr. President, I want to put back up the chart we started with, because I think it displays in cold, hard facts the reality of this debate. Do we adopt a budget that brings us into balance? Or do we go on as we have? Is the status quo that the President advocates good enough? Or do we need to take strong, firm steps to slow the growth of spending and bring the budget into balance and restore fiscal soundness?

Mr. President, I believe there is no choice. I believe there is no choice because there is no alternative before the body. If you select staying with the status quo, you not only condemn American working men and women to carry a burden of interest payments and debt that will cause the greatest economy in the world to stagger and fall, you not only foment a fiscal crisis, but you deny the men and women and the children and their children and their great grandchildren any possibility of having a competitive economy in the years ahead.

There is no choice on this budget, Mr. President. It is either adopt a reasonable plan to move this budget into balance or offer the status quo that the President has advocated and see the future of our children and grandchildren lost. Great nations and great societies have arisen in abundance on this Earth. They abound around the globe. The glories of the Samarian society and the Egyptian society are renowned in the textbooks of history. The Greek civilization brought great advances to mankind. Perhaps few have achieved the dominance of the Romans. There was a time when French glory spread its influence around the world. And there was a time when the Sun never set on the British Empire.

Each nation in its turn has had its time in the Sun. And now, Mr. President, the question is whether or not the Sun will set on the greatest experiment in democracy in the history of mankind—the United States of America. This budget offers our children a future.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. I yield such time as may be required for me, which I will take from our side.

Mr. President, I rise today, first, to commend my colleagues on the Budget Committee who participated in the conference on the budget resolution. I was not a member of the conference, but as a member of the Budget Committee, I certainly appreciate the hard work that went into this package from Members in both Houses of Congress.

Second, I want to express my strong support for this package and to point out why the reforms Republicans have outlined in this plan are vital to America's future. This is truly a historic budget agreement, one that will achieve balance in 2002 for the first time in almost three decades. And this budget is fair. It slows the growth of Federal spending. Even President Clinton has now agreed that we must balance the budget and that we must change our spending habits if we are ever to restore the long-term health of this country.

Mr. President, as a physician, I would like to focus on the health care spending aspect of this budget agreement, because I think it is critical for each and every American to understand exactly what the Republicans have proposed. But first I would like to commend the conferees on coming to an agreement with respect to tax relief for hard-working Americans.

The conference agreement ensures that we get to balance by first locking in spending cuts and then, and only then, by cutting taxes to put hard-earned dollars back into the hands of the working families and small businesses of the country.

I look forward to working with the Finance Committee to craft the specifics of the Senate tax relief bill which I hope will, indeed, include family tax relief, as well as capital gains tax cuts. These reductions will greatly benefit the American family and the American economy.

Mr. President, the most important provisions of the budget conference agreement in my mind are those which address the growth in the Medicare and Medicaid Programs. Like the earlier resolution passed by the Senate, the budget resolution conference report sets forth outlay levels for Medicare spending that are based on reforms necessary to preserve and protect Medicare. These new spending levels will require structural changes in our Medicare system, changes which will improve the system, will improve the delivery of care, changes which are absolutely essential to ensure that Medicare will be solvent in the year 2002 and beyond.

By beginning the process of reform to avoid bankruptcy in the short-term, we will be on our way toward structural reform that will ensure Medicare's long-term viability so that this program, which is so important to many seniors and individuals with disabilities, will be there for years to come.

Yet, even though these reductions in the growth of Medicare spending will certainly require change, it is important to understand that both total spending and spending for each Medicare beneficiary will continue to grow over time, will continue to increase at a rate well above that of inflation.

Total spending grows in Medicare from $178 billion in 1995 to $274 billion in the year 2002. That is an average annual growth rate of 6.4 percent in the Medicare Program, which is twice as fast as the average projected inflation rate over the next 7 years.

More importantly and easier to understand, I think, and I will refer to this chart next to me, is that the Medicare per capita spending in this conference agreement—that is, how much we are spending per Medicare beneficiary—increases over time. A Medicare beneficiary today will have spending associated of $4,816 in 1995, and in this conference agreement, that will increase by the year 2002 to $6,734. This is not a cut, this is an increase from 1995 to the year 2002 for each individual in the Medicare Program, from $4,800 to $6,700. That is a 40-percent increase over 7 years. Even after accounting for inflation, that is a 12-percent increase per person in our Medicare Program over these 7 years.

These numbers show two things. First, the Republican budget takes care of our seniors. The conference agreement increases spending for each Medicare beneficiary so that we can continue to provide access to high-level, high-quality care for our seniors and disabled citizens.

Second, these numbers show that the Republican budget is responsible by requiring the Medicare Program to be improved and to be restructured, it strengthens and preserves the fiscal viability of the program for our Nation's seniors now and for generations to come.

Finally, the conference agreement strikes the right balance on Medicaid as well. Currently, the growth in Medicaid is simply unsustainable. Medicaid comprises nearly 20 percent of State budgets. In my own State of Tennessee, Medicaid accounts for 25 percent of the overall State budget, $3 billion of a $12 billion State budget. If left unchecked, Federal spending on Medicaid will double by the year 2002. It is simply not sustainable.

The conference agreement gradually slows the rate of growth in the Medicaid Program from over 11 percent now down next year to 8 percent, gradually down to 7, 6, 5, and then 4 percent by the year 2002. Still, total Federal spending on the Medicaid Program will be $773 billion over the next 7 years.

Again and again, Governors all across this country have told us that if we strip away the regulations, if we increase flexibility and return control of these programs in Medicaid over to the States that they will be able to institute reforms to achieve these levels of Federal spending.

Mr. President, the States are the entities responsible for managing the Medicaid Program, and I am confident that the levels agreed to in the budget resolution conference report will be attainable.

I wanted to outline the specifics of the Medicare and Medicaid spending today, because I do believe it is important, critical that we look at the facts and not just get lost in the rhetoric. The rhetoric that we have heard today, and will likely hear tomorrow, undoubtedly will continue to surround our consideration of this agreement as we hear that there are tax cuts being taken on the backs of the elderly and the poor. This representation really ignores the problems that are inherent in our Federal health programs that do need to be improved, that do need to be changed. And this representation is, in my judgment, an inappropriate response to an impending crisis that is staring us in the face.

Again, I am proud of my colleagues and honored to be a part of this historic occasion.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BUMPERS. Mr. President, the great French philosopher Voltaire once said, ''History doesn't repeat itself, men do.'' So here we go again, precisely as Voltaire said, plowing the same ground, the same way we did in 1981, and it will be a few years from now before we can stand on the floor and say, ''I told you so.''

In 1981, I stood right here at this desk and fought like a saber-toothed tiger to keep us from quadrupling the deficit. But there was a herd instinct that swept across this floor, and only 11 Senators—only 11—stood up for common sense.

What did we get? We got a deficit which grew to $290 billion in 1992, and which accumulated over the years into today's $4.6 trillion national debt.

This chart shows what the Republicans promised in 1981. They were going to balance the budget in 1983, no later than 1984, and here is where they said the deficit would go—down toward zero. Between 1984 and 1985, they said, we would have a balanced budget.

''How do you reach a balanced budget?'' we asked. ''You double defense spending and cut taxes,'' they said. That was their method of balancing the budget.

What happened? Here it is. By 1983, we had a $200 billion deficit. Even those of us who were terrified by the 1981 budget changes would never have guessed that could happen.

David Stockman, President Reagan's head of OMB, wrote a book about that.

Here it is. It is called ''The Triumph of Politics,'' and he wrote it in 1986, after the damage had been done. In the book he says that the 1981 Reagan budget plan was all done on the back of an envelope. Where were the numbers coming from, he asked? People kept putting things on his desk that he did not understand.

Stockman was a friend of Senator MOYNIHAN because he had studied under Senator MOYNIHAN while in college. And in his book, Stockman relates a conversation he had over dinner with the Senator and Mrs. Moynihan on September 24, 1981 after the damage of the Reagan tax cuts had already been done. Stockman says he told MOYNIHAN, ''You guys on the hill are going to have to rescue this. We went too far with the tax cut and now I can't get them to turn back.''

And MOYNIHAN responds, ''I am not sure whether anything can be done about it.''

And so the damage continued to pyramid. In 1992, Bill Clinton was elected President. President Clinton came to this body in 1993 with a proposal to raise taxes by $250 billion and cut spending by $250 billion, and we passed it, without one single Republican vote in the House and without one single Republican vote in the Senate.

And this chart shows where the deficit was when President Clinton made his proposal. It was headed for a $300 billion deficit in 1992. We had nearly a $300 billion deficit. The Republicans said the Clinton proposal would be a disaster for the Nation and would bring on a terrible depression. The predictions were ominous and endless. But what happened? The deficit, the first year, went from $300 billion to $255 billion; the next year, to $203 billion; and this year to $175 billion, without one single Republican vote.

So here we are. We cannot stand to admit the success of that. So we have this budget here. I daresay I could walk down the streets of Little Rock and pick out 535 people at random, bring them to Washington, put 435 in the House and 100 in the Senate, and I promise you that we could come out with a better budget, a more compassionate budget, and a fairer budget, than this one.

I heard a Congressman say the other day that there is ''plenty of pain in this for everybody.'' Really? Pain for everybody? What about Members of Congress? Where is their pain? Where is the pain of people who can afford to send their children to school without Pell grants and student loans?

The one thing that will restore some sense of decency, civility, culture, and social fabric in this country is education. You can stand on this floor and

moralize all you want. You are not going to force people to go to church by moralizing with them. You are not going to force people to quit having babies out of wedlock by moralizing with them. You are going to solve all of these problems by educating people. The one thing Joycelyn Elders said—and it is not popular to quote her these days, but this is worth repeating—when they asked, ''What are you going to do about this generation?'' She said, ''Nothing, they are already lost. I am going after the next generation.'' Well, I do not totally agree with that, but I can tell you that is where our money ought to be spent—on the coming generation.

So what are we going to do? Cut $11 billion out of education for the next 7 years and stand back and ask why our children are not learning.

What else? Why, we are going to deny 350,000 children the right to Headstart. Everybody knows what Headstart means to children, particularly from poverty areas. So what are we going to do? Sorry, we are closed.

What else? Two things that we fund here are, for some reason, such an anathema to most Republicans. I watch public broadcasting and Discovery and Arts and Entertainment. I do not watch sitcoms. I do not know any of those people. I do not say that boastingly. It just does not interest me. I have an intense curiosity about everything, and I am interested in knowledge; I want to learn all I can before I die—and that is not too far away. But I am still curious about everything, so I watch the Learning Channel and the channels where I am likely to learn something, not the channels where I know I am not going to learn anything.

So what do the Republicans propose? Eliminate PBS. Eliminate the National Endowment for the Arts. ''Well, Senator, you favor pornography, or you must if you favor the National Endowment for the Arts.'' No, I do not favor pornography. But I am hot to keep the Arkansas symphony afloat. I am hot to keep the Arkansas Repertory Theater afloat. I am hot to see people in small rural communities of this Nation get exposed to Shakespeare now and then. I deplore the Mapplethorpe exhibit as much as the Presiding Officer or any other Senator. It is like welfare—eight percent rip off. You cannot design a program that somebody is not going to corrupt.

So two of the few civil, decent culturally enriching things in this Nation, public broadcasting and the National Endowment for the Arts, they go on the block.

Earned-income tax credit. You think about the earned-income tax credit, which everybody considers to be the greatest program ever invented to keep people off welfare. This is where people who make less than $28,000 a year get a refundable credit of up to $2,200 a year, on a sliding scale. We make money off of it because we keep them off welfare. Is that what DALE BUMPERS says? No. That is what Senator DOMENICI, chairman of the Budget Committee, said. What did he say about the earned income tax credit? ''It is a great way to help families with the costs of raising their children. It sends assistance to those in need; to those who work hard and yet struggle to make a living and provide for their children.'' That was Senator DOMENICI, not DALE BUMPERS. This is what Senator PACKWOOD said: ''A key means of helping low-income workers with dependent children get off and stay off welfare.'' Those are Senator PACKWOOD's words. This is what President Reagan said: ''The best antipoverty, the best profamily, the best job creation measure to come out of the Congress.''

So what do we do to that? About $21 billion is whacked off of it in this budget resolution.

Family values. I must tell you that I get sick listening to the moralizing about family values from the same people who choose to torpedo the best program we have going to help families stay together and stay off welfare.

What else are we going to do? We are going to sell the Presidio, the most magnificent piece of property left in America. The old Fort Presidio goes on the auction block.

What else? We are going to sell the naval petroleum reserves, which we have always relied on in a time of military crisis. The naval petroleum reserve. We are going to sell it to the highest bidder.

What else? We are going to privatize all those people who are in the towers at the airports who guide our planes. We are going to privatize them. It will run for profit in the future—not for safety necessarily, but for profit.

What else? We are going to sell the Uranium Enrichment Corporation and the Power Marketing Administration which make the Government money. We will get a pretty good amount of revenue in the year that we sell those programs, but then we will fail to get the annual revenue that we are getting now.

What else? We are getting down to the bone now, Mr. President. We are going to cut Medicare $270 billion. How are we going to do that? We are going to reform Medicare. How are we going to reform it? Nobody knows. Nobody has said.

We can either bankrupt every rural hospital in America, which we would do in my State, cut doctors' fees to the point they do not want to participate in the program anymore, or assess every single Medicare recipient in the country $3,345 over the next 7 years.

Medicaid, the poorest of the poor, we are going to increase 4 percent. It has been increasing by 10 percent. What will happen? We will do block grants to the States and we will have 50 different programs for Medicaid.

Mr. President, all 100 people who sit in this body get a nice fat check every month, $133,000 a year. A lot of them never dreamed they would make that much. I guess I am one of them. We get $133,000 a year. We have a nice, fat, cushy pension waiting to retire. But we have a health care plan second to none. Any doctor or hospital in this city is more than pleased to see a Member of Congress come in because they know our plan will pay for everything.

But do you know what we forget? We forget that 37 million people in this country are over 65, and 50 percent of them go to bed terrified at night for fear they will get sick and not be able to pay their medical bills. We in Congress have no such fears.

What are we going to do? We are going to give a $245 billion tax cut. Not a middle-class tax cut. I cannot believe people have the temerity to call this a middle-class tax cut. This tax cut, at least the House tax cut, goes to virtually the wealthiest people in America.

What in the name of God are we thinking about? Seventy percent of the people of this country say, ''Don't spend that $245 billion on tax cuts.'' If you can come up with $245 billion, put it on the deficit.

Mr. President, what is next? Defense—the Senate Armed Services Committee is this day marking up a bill that is calculated to do one thing: that is to gin up the cold war one more time. More B–2 bombers. For whom? Whom are we going to bomb? Even new battleships—two battleships. All kinds of things the Defense Department, even the Joint Chiefs of Staffs, say they do not want. We in Congress will teach the Joint Chiefs a thing or two about military battles.

Imagine Senators telling old people we are cutting Medicare by $270 billion and telling poor people we are cutting Medicaid by $180 billion. What do we say to the Defense Department? Have it all; just have what you want. Do you want to kill the ABM treaty so the Russians have no choice but to start rearming? Do you want to build all the weapons systems that really have no meaning in today's world? Here is the proof of the pudding.

The United States is spending $280 billion this year, counting the Energy Department's budget, on defense; the eight biggest military nations on Earth outside NATO—Russia, China, North Korea, Iraq, Iran, Libya, Syria, Cuba, our most likely adversaries—the combined total budgets of all eight nations is $121 billion.

We are spending twice as much in the United States alone as our eight most likely adversaries combined. When we add NATO spending of $250 billion, the United States and NATO are spending four times more than all these nations combined. Mr. President, this sounds like sheer lunacy, because it is.

In a few days, the Budget Committee will send over all their mandatory spending instructions to the committees to report back to them by September 22. Then CBO will certify that the budget really will be in balance in the year 2002. Then the Budget Committee

will tell the Finance Committee, ''Come up with a big tax cut of $245 billion over the next 7 years,'' and then the Budget Committee will combine all of this mandatory savings legislation with a tax cut bill, and it is all going to be passed in one fell swoop.

What does that mean? That means that we will pass a tax cut this fall. We will pass this budget, and all the appropriations bills that go with it, and then we will be free to have an immediate tax cut.

Then next year, it will require only 51 votes to undo every bit of our balanced budget. If we have a recession, a war, if we have a trade war, earthquakes, hurricanes, floods, every Senator in this body will fall all over himself to vote to pay for every bit of it, and there goes our balanced budget because we will have already passed a $245 billion tax cut.

Mr. President, we are back to square one. I know my time is about to expire. I wanted to say some other things. I just want to close by making a couple of observations.

This budget is guaranteed not to solve the problems of this Nation. This budget tells the American people only one thing: That it has been crafted with the utmost cynicism to keep people's attention diverted just long enough to get this tax cut passed.

When we pass a tax cut, think of who will feel the pain. Here is the chart. On capital gains alone, 76.3 percent of the capital gains tax cuts will go to the wealthiest 5 percent of people in America—76 percent to the wealthiest 5 percent of people in America. If that is what America is about, somehow or another, I missed it all. You could not hold a gun to my head and make me vote for this budget. I yield the floor.

Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time consumed by the quorum not be charged against the resolution.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. PELL. Mr. President, it should come as no surprise that the budget resolution which has come back to us from conference is far worse and more dismaying in its impact than the version which passed the Senate on May 25.

What I said when I voted against the resolution the first time applies now with even more force: This budget is a plan for the evisceration of progressive government as we have come to know it in the past 40 years. Sadly, it marks the end of an era of high intentions and decency and compassion in public policy.

On of the worst provisions of the conference report, from my point of view, is the mandatory cut of some $10 billion in education programs, notwithstanding the fact that the Senate last month voted 67–32 to restore $9.2 billion to this account.

The conference cut in education will substantially increase the indebtedness that students incur to pay for college tuition, adding some $4,000 to $5,000 to the cost of an average student loan. It could well mean that literally millions of students will have to trim, defer or even drop their plans for college.

A number of important education programs—such as Safe and Drug Free Schools, Goals 2000, School to Work Opportunities, Head Start, Pell grants, the National and Community Service Act and Vocational Education—could well be subject to severe funding reductions and even elimination.

At a time when our Nation needs a more educated and better prepared workforce, these education cuts mean we would be moving in precisely the opposite and wrong direction.

Similarly, Mr. President, the conference report's outline for spending on foreign affairs, the so-called 150 account, indicates that over time, there will be significant cuts in funding for U.S. foreign affairs agencies, personnel and assistance programs; there will be an enormous reduction in U.S. financial support for the United Nations and U.N. peacekeeping missions; and there will be major constraints on the ability of the United States to conduct diplomacy and exert influence abroad.

If we follow the prescriptions in this budget plan, the United States will be unable to exercise leverage over or work cooperatively with the international community to resolve conflicts, advance our interests, or promote democratic and free market principles.

I am particularly disturbed by the potential impact of the budget plan on our ability to contribute to the United Nations. Having just returned from the 50th anniversary celebration of the United Nations, I am once again reminded of the tremendous contributions that the United Nations has made to support and advance U.S. foreign policy goals, and of how useful a tool it could be for the United States in the future. I am not so naive as to profess that the United Nations has always lived up to its potential, but for every example of failure that are numerous countervailing examples of success.

These cuts will set us squarely down the road toward retrenchment and withdrawal. If we choose to go this route, we will do grave disservice to the next generation of Americans. At the end of World War II, we chose not to yield to the temptation of isolationism, and our country prospered as it never had before. I think we should have learned our lesson by now.

These cuts in education funding and in the foreign affairs account typify the great differences in priorities and values which distinguish the opponents from the proponents of this resolution. All of us agree that many Federal programs should be trimmed or restructured or phased out altogether. But we have significant differences over where the axe should fall.

I for one think that far more critical attention should be given to modifying and reducing the elaborate defense and security structure which in many ways is a casualty of its own success in the cold war.

I am dismayed that the conference report comes back to us with even greater allowance for defense outlays than we originally provided. As I see it, we should be spending far less on defense and more on domestic social programs.

The same might be said for the vast hidden budget of our intelligence apparatus which I note spent some $10 billion in its unsuccessful efforts to estimate the state of the Soviet economy, the collapse of which it failed to anticipate.

Mr. President, as I indicated last month, my differences on the budget go deeper than priorities. I continue to question the basic premise that the Federal budget must be brought into absolute balance in a specific time frame.

And I particularly question the wisdom, indeed the sanity, of providing for tax cuts at the very time our objective should be to bring revenues and expenditures into balance. It seems preposterous that the budget resolution now comes back to us with a provision for tax cuts of $245 billion, notwithstanding the Senate's decisive rejection by a vote of 69 to 31 of the Gram amendment last month.

For every dollar of opportunistic tax cuts provided by this resolution, an offsetting dollar must come from some other source. The designers of this budget actually propose to borrow funds in the next few years to make up for the lost revenue, and then the impact will fall on school children, college students and Medicare recipients among many others.

This seems like a strange way indeed for a modern society to manage its affairs. A far better way, it seems to me, would be to make judicious cuts, reduce the deficit to reasonable proportions and, if necessary, raise additional revenues to preserve worthy programs.

We should not loose sight of Franklin Roosevelt's wise dictum that ''Taxes, after all, are the dues that we pay for the privileges of membership in an organized society.'' In the end, we get what we pay for.

OPPOSITION TO DEFENSE FUNDING LEVELS

Mr. GRASSLEY. Mr. President, I have asked to speak at length on this conference agreement to raise some serious reservations about the funding levels it contains for defense. I appreciate Chairman DOMENICI's cooperation in allowing me this time.

I would like to say first that I will vote for this conference report. I spoke

at length earlier today about the positive aspects of this budget, and why it's needed for this country's future. Whatever reservations I have about the defense numbers, they are secondary to the main priority—which is a credible, balanced budget.

To me, the explosion of debt sanctioned by Congress over the last three decades is unconscionable. It has become a moral issue with me. We are mortgaging our children's future by failing to act responsibly now. It has to stop. The goal of this conference agreement is, in fact, to restore responsibility to our fiscal policy. And that's why I support the conference agreement despite my opposition to the defense budget levels.

Let me also say that I strongly supported the Senate budget, including the defense numbers. To me, the Senate's version of the budget we passed in May was the most credible budget passed by this body that I have voted for. There was no smoke and mirrors. Just sound, tough choices. And as I have done before on this floor, including today, I want to once again commend Chairman DOMENICI for his outstanding leadership in crafting that budget.

Having provided that context, Mr. President, I would like now to address the defense issue.

The conference report pumps $40 billion into the defense budget over the next 7 years. There are two justifications given. First, the defense budget is ''underfunded.'' Second, we need more money for weapons so we can have more money for readiness.

Neither argument has credibility, in my view.

The defense debate is often dominated by fancy buzz words and phrases. Two examples are: First, the defense budget is ''underfunded''; and second, we cannot sacrifice ''future readiness'' for current readiness. These are the phrases being used. But what do they mean?

What I plan to do is explain these arguments in terms the taxpayers can understand. That way, they can see how they are getting ripped off.

First, the underfunding argument. This argument cites a gap between the level of funding for programs in the defense budget, versus the realistic cost of those same programs when the bills come due. It says more money is needed to fund everything that's in the defense budget.

This argument is bogus. The fact of the matter is, more money would not be needed if the defense managers were to manage their programs properly. The funding gap cited in the conference agreement is future cost overruns that happen historically because defense managers are not doing their jobs.

The defense budget is not underfunded; it is overprogrammed. The cost of what is in the budget is deliberately underestimated. That way, the bureaucrats can squeeze more programs in. It is a bait-and-switch game that would make the best of the con artists green with envy.

Once they get all the programs stuffed in by underestimating their cost, they turn around and say: ''Gosh, we need more money to pay for everything we just crammed in there.''

If it were not for the conscious game of deliberately underestimating costs to shoehorn more programs into the budget, the term ''underfunding'' might be legitimate. But that is not the case. The fact that it is a deliberate scheme to game the system is why it is really a case of overprogramming, not underfunding.

For example, when Republicans accuse President Clinton of using rosy economics to balance the budget—therefore, claiming his budget really is not balanced—we are accusing him of not making the tough choices. By assuming a rosier revenue stream, he is trying to fit more programs into the Federal budget, and make fewer cuts. It is poor management and leadership. It will lead to higher deficits. In his case, our accusations are justified.

It is the same with the defense budget. That is why I call the defense budget a ''blivet''—5 pounds of manure in a 4-pound sack. The question is, after they pull this bait-and-switch routine, do we give them a bigger sack, or do we ask them to manage their manure better?.

Interestingly, Mr. President, I used this argument to successfully freeze the defense budget in 1985—during the height of the Soviet threat. If the argument was successful then for spending less money, why would we use it now to argue for more money, especially when the threat is gone?

Simply put, those who are using the argument now to justify more spending do not understand the issue.

The Defense Department has a history of playing the overprogramming game. I first uncovered it in 1983, and used analysis of that problem to show how more money was making the funding gap worse. The answer was not more money, but rather better management. Using that argument, we froze defense spending in 1985, and it has been plateaued ever since.

The overprogramming gap was bad back in 1983, and it hasn't gotten any better. The data confirm this. The conference report language acknowledges that the problem is still with us. But what the report does not do is present a logical case for why an argument that once was used to justify less spending and better management, is now used to justify more spending in place of better management.

If my colleagues were to respond correctly to this problem, we would say better management must substitute for more money. That means taking away a pound of manure, rather than getting a bigger sack. Better yet, preventing the excess manure in the first place is what we want. That is proper management. If all we do is keep getting a bigger sack, we're rewarding bad management.

It is a game. It is a game mastered by crafty bureaucrats to extort taxpayer money out of Congress. In reality, by doing what is argued for in this conference agreement, we would be covering the cost overruns that will result from putting in more money.

You see, the cost overruns have not occurred yet. They will occur each of the next 7 years, if business is conducted as usual. Putting $40 billion more in the defense budget guarantees that business will be as usual. And we will get $40 billion of cost overruns as a result.

Now, let me address the second argument used by the conferees. It is really just another symptom of the problem I just described.

The second argument goes like this: More money lessens the need for Pentagon decisionmakers to sacrifice future readiness to meet current readiness requirements.

''Current readiness'' means spare parts, fuel, and training. ''Future readiness'' means procurement. This argument simply means that DOD managers do not want to have to manage and prioritize. As cost overruns due to bad management occur in each of the next 7 years in weapons accounts, the managers don't want to have to rob the readiness accounts to pay for the weapons. That is what they used to do. But that would hollow out the force. Instead, this time they want more procurement money to cover the cost overruns.

When you hear the cry for more money for things like ''procurement'' or ''modernization'' or ''future readiness needs''—all of which are fancy buzz words—those are euphemisms for putting in more money to cover cost overruns. It says, ''We are not going to manage better. We have run the defense budget this way for decades, and we're not going to change now.''

That is the attitude that troubles me, Mr. President. What troubles me even more is that the new Republican Congress is willing to tolerate it. We are treating it as a sacred cow. Worse. We are treating it as a sacred fatted cow.

Why is it that Members on my side of the aisle send their management principles on a vacation whenever the defense budget is mentioned? We scrutinize every other program for better performance. But when it comes to the defense budget, it is a jobs jamboree. A pork paradise.

It is hypocritical. It undermines our credibility as a party. We are not willing to tolerate business-as-usual in any corner of the Federal Government, except for defense. On defense, we worship at the altar of the sacred fatted cow.

I want to make it clear, Mr. President, that my colleagues in the Senate did not have this attitude, for the most part. It was mainly those of the other body. During the conference, we met with our counterparts in a very important defense discussion. Afterward, we

reached a compromise on the defense numbers.

I do not intend to mention names. But I would like to relay a couple points that were made by House leaders in defense of pumping up the defense budget.

The first argument was the pork argument. At the time of the defense meeting of conferees, the relevant House committee had already completed work on this year's defense bill. If the conferees did not pump up the numbers, it would mean going back to Members of Congress and saying we would have to go back on our promise to fund this project or that program.

Now, when a Member of Congress is faced with a choice like that, guess what he or she will do? The choice is, go along with the pumped-up defense numbers, or we'll cancel this project in your district. And that'll mean jobs.

What kind of national security strategy is this, Mr. President?

Everyone knows, the defense budget is justified by a national security strategy. We've all heard of the two-war strategy. The defense budget is built on a strategy of fighting and winning two near-simultaneous wars in different parts of the globe.

Now, I am not so naive to think there's any real tight connection between a national strategy and our defense budget. But at least our defense community usually goes along with the gag. They pay lip service to the connection, even though we all know the defense budget is as much a big pork factory as it is a generator of fighting capabilities. If we did not pay lip service, there would be no justification for budget increases, and hence no credibility.

In this case—in my discussion in that defense meeting—there was not even lip service. It was unadulterated realpolitik. The justification for more defense spending was more pork ad more jobs. Period.

The other comment that was made was the recognition that a national security strategy is no longer the basis of our defense budget, since the cold war is over. So what, I asked, is the justification for the present budget, let alone vast new increases. The answer I got was that more defense spending is needed because the United States must police the world. And we are the only ones who can do it.

My question is, how in the world can that justify the spending levels in this agreement? If anything, it undermines it. This defense budget is still based on an obsolete, cold war strategy. We are still buying cold war relics. Before this conference agreement, we were on a path toward a post-cold war budget. But with this influx of money, we are now returning to the cold war budget in a post-cold war era.

If we are now going to be policemen of the world, why are we still buying things that were specifically designed to counter the Soviet threat, not to police the world? We are still buying Seawolfs and B–2's and F–22's and Comanche helicopters, and the like. If we are supposed to now police the world, why are we buying these? The fact is, this argument does not justify these larger defense numbers.

Another argument is that the defense budget is not going up, we are simply trying to freeze it, and keep it from going down. But this is not a credible argument. And it never has been. The defense budget is based on a national strategy, at least supposedly. If the budget declines, which would be consistent with the disappearance of the Soviet threat, what is the problem? There should not be a problem—unless, that is, we view it as a port factory with jobs attached.

Mr. President, there is no logical basis for the defense numbers in this conference agreement. The arguments are bogus, and they reflect a lack of serious, credible justification.

As I mentioned earlier, I support the conference agreement because I believe it will lead to a legitimate balanced budget in 2002. And I am willing to accept the defense compromise if that's what it takes to get an overall agreement.

But I am taking this opportunity to warn my Republican colleagues not to repeat the mistakes we made in the 1980's with the defense budget. In the 1980's, our goal was not a defense build-up. It was a defense budget build-up. We ended up buying much less with much more than we got and spent under the Carter administration. That's because we substituted more money for better management. We lost credibility as a party because of it.

As the party that now controls Congress for the first time in 40 years, we are right back where we were in 1981. Our defense policy, as reflected in this conference agreement, is to once again build up the defense budget, not defense. It is to, once again, create jobs, not a lean fighting machine.

I have been given assurances by Members of the other body that defense reforms are forthcoming. After concentrating this year on health care reform, the top reform priority of the other body next year will be major defense reform.

By inference, my colleagues are admitting that they will tolerate business-as-usual with the Defense Department—at least for 1 more year. I am here to warn my colleagues that 1 year is all they will get. One year to conclude that better management will win out over more money, as a solution.

Because if there is not a change next year to doing business-as-usual in defense, then I will expend everything in mu arsenal to bring sanity to our defense policy. Just like I did from 1983 to 1985, when I ended the irrational defense budget buildup under President Reagan. It was my amendment on this very floor on May 2, 1985, by a vote of 50–49 that ended the insanity back then. And I will do it again.

Even if it takes me 2 full years to do it, like it did back then. And I will win. Because it is not right to have a double standard—one for defense, and one for the rest of Government. All that will do is hurt the credibility of our party. And I do not want that. Because in my view, our party is the only one that can restore hope and opportunity for the next generation.

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak therein.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE CORPORATION FOR PUBLIC BROADCASTING—MESSAGE FROM THE PRESIDENT—PM 58

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

As required by section 19(3) of the Public Telecommunications Act of 1992 (Public Law 102–356), I transmit herewith the report of the Corporation for Public Broadcasting.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 28, 1995.*

MESSAGES FROM THE HOUSE

At noon, a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 38. Concurrent resolution authorizing the use of the Capitol grounds for the Greater Washington Soap Box Derby.

The message also announced that the hose has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 18. Concurrent resolution authorizing the Architect of the Capitol to

transfer the catafalque to the Supreme Court for a funeral service.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1565. An act to amend title 38, United States Code, to extend through December 31, 1997, the period during which the Secretary of Veterans Affairs is authorized to provide priority health care to certain veterans exposed to agent orange, ionizing radiation, or environmental hazards.

The message also announced that pursuant to the provisions of section 9355(a) of title 10, United States Code, the Speaker announces the appointment as members of the Board of Visitors to the U.S. Air Force Academy the following Members on the part of the House: Mr. YOUNG of Florida, Mr. HEFLEY, Mr. DICKS, and Mr. TANNER.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1565. An act to amend title 38, United States Code, to extend through December 31, 1997, the period during which the Secretary of Veterans Affairs is authorized to provide priority health care to certain veterans exposed to agent orange, ionizing radiation, or environmental hazards; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEE

The following report of committee was submitted:

By Mr. STEVENS, from the Committee on Rules and Administration:

Special Report entitled ''Review of Legislative Activity During the 103D Congress'' (Rept. No. 104–100).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs:

Deborah Dudley Branson, of Texas, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1996.

Charles L. Marinaccio, of the District of Columbia, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1996.

Steve M. Hays, of Tennessee, to be a Member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 1997.

Martin Neil Baily, of Maryland, to be a Member of the Council of Economic Advisers.

Tony Scallon, of Minnesota, to be a Member of the Board of Directors of the National Consumer Cooperative Bank for a term of three years.

Sheila Anne Smith, of Illinois, to be a Member of the Board of Directors of the National Consumer Cooperative Bank for a term of three years.

Marianne C. Spraggins, of New York, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1997.

Albert James Dwoskin, of Virginia, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1998.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PACKWOOD, from the Committee on Finance:

Ira S. Shapiro, of Maryland, for the rank of Ambassador during his tenure of service as Senior Counsel and Negotiator in the Office of the United States Trade Representative:

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CHAFEE:

S. 975. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel JAJO, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. NICKLES:

S. 976. A bill to transfer management of the Tishomingo National Wildlife Refuge in Oklahoma to the State of Oklahoma, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HATCH:

S. 977. A bill to correct certain references in the Bankruptcy Code; to the Committee on the Judiciary.

By Mrs. HUTCHISON (for herself and Mr. DODD):

S. 978. A bill to facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws, to clarify the inapplicability of antitrust laws to charitable gift annuities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. BOXER (for herself, Mr. KENNEDY, Ms. MIKULSKI, Mrs. MURRAY, Mrs. FEINSTEIN, Ms. SNOWE, Mr. LAUTENBERG, Mr. INOUYE, Mr. GLENN, Mr. PACKWOOD, Mr. DODD, and Mr. SPECTER):

S. 979. A bill to protect women's reproductive health and constitutional right to choice, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HARKIN:

S. 980. A bill to amend the Public Health Service Act and the Social Security Act to protect and improve the availability, quality and affordability of health care in rural areas, and for other purposes; to the Committee on Finance.

By Mr. EXON:

S. 981. A bill entitled ''Truck Safety and Congressional Partnership Act''; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NICKLES:

S. 976. A bill to transfer management of the Tishomingo National Wildlife Refuge in Oklahoma to the State of Oklahoma, and for other purposes; to the Committee on Environment and Public Works.

THE TISHOMINGO NATIONAL WILDLIFE REFUGE ACT

Mr. NICKLES. Mr. President, I take the floor today to introduce a bill which will turn the management responsibilities of the Tishomingo National Wildlife Refuge from the U.S. Fish and Wildlife Service over to the Oklahoma Department of Wildlife Conservation. This legislation responds to unacceptable policies promulgated by the Fish and Wildlife Service in their management of national wildlife refuges.

During the past several years, the Fish and Wildlife Service has attempted to restrict public access and traditional activities on our wildlife refuge preserves. Long-allowed public uses on refuges such as wildlife viewing, hunting, fishing, hiking, grazing, and boating, have come under close scrutiny and curtailment. These shortsighted restrictions proposed by the administration's political appointees have resulted in unnecessary burdens and pressures on the public who use and benefit from our wildlife refuges.

What the Fish and Wildlife Service fails to realize is that the taxpayers own and finance the refuge lands. Outdoor recreation contributes significantly to local economies and local support for the refuges. Allowing traditional activities, such as fishing and boating at Tishomingo, is integral in maintaining continued public support and funding for the refuge system.

Due to ill-advised changes in Federal management practices during the last 10 years, wildlife populations on the Tishomingo refuge have severely declined. The State of Oklahoma, however, presently provides suitable habitats for wildlife resources across the State and currently manages 650,000 acres of Federal land. State officials have assured me that they will improve habitat conditions for wildlife at the refuge and work to reverse the negative impact of inadequate Federal management.

My legislation will ensure limited Federal funding for the Tishomingo Refuge and will ultimately result in significant savings to the Federal Government. The Oklahoma Department of Wildlife Conservation can manage the refuge more efficiently and with fewer taxpayer dollars. Specifically, my bill stipulates annual funding be made available to the State in the amount of 50 percent of the refuge's current operating costs.

In conclusion, I believe the State of Oklahoma can manage the Tishomingo National Wildlife Refuge in an efficient and cost-effective manner and do so with fewer employees than the Federal Government. Local management will result in better communication between the managers of the refuge and

the public. Those responsible for managing our national refuges must be held accountable to the needs of the public they serve.

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. 976

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

SECTION 1. TRANSFER OF MANAGEMENT OF TISHOMINGO NATIONAL WILDLIFE REFUGE.

(a) TRANSFER.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Interior shall transfer, with the consent of the Governor of Oklahoma, the management of the lands and waters within the Tishomingo National Wildlife Refuge in Oklahoma to the State of Oklahoma for administration by the Director of the Oklahoma Department of Wildlife Conservation (or any successor agency).

(b) MANAGEMENT.—

(1) IN GENERAL.—The lands and waters transferred under subsection (a) shall—

(A) be managed for the same uses and in the same manner as the lands were managed by the United States Fish and Wildlife Service prior to 1994; and

(B) continue to be a national wildlife refuge.

(2) APPLICABLE LAWS.—The laws (including regulations) applicable to the National Wildlife Refuge System established under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd *et seq.*) shall continue to be applicable to the lands and waters on and after the effective date of the transfer under subsection (a).

(c) AUTHORIZATION OF FUNDING.—For each fiscal year commencing after the date of enactment of this Act, there is authorized to be appropriated to the Secretary of the Interior to make annual grants to the State of Oklahoma for management of the lands and waters transferred under subsection (a) an amount equal to 50 percent of the amount made available to the Secretary of the Interior in fiscal year 1994 for the management of the refuge.

By Mr. HATCH:

S. 977. A bill to correct certain references in the Bankruptcy Code; to the Committee on the Judiciary.

TECHNICAL CORRECTION LEGISLATION

● Mr. HATCH. Mr. President, I am pleased to introduce legislation that would work a purely technical correction to certain references in the Bankruptcy Code.

Title 11, United States Code, section 1228 contains incorrect cross references to 11 U.S.C. §1222(b)(10). Those references should be to 11 U.S.C. §1222(b)(9). The errors have been pointed out to me by practitioners, and have been commented on by the leading bankruptcy treatise. See 5 ''Collier on Bankruptcy'' ¶1288.01 at p. 1228–3 n.1 (15th ed. 1994). The bill I introduce today would correct those errors.

The substance behind the corrections is fairly straightforward. Section 1228 provides for the discharge of debt in chapter 12 bankruptcies. Under that provision, as soon as the debtor completes all payments under the debtor's pan, debt will generally be discharged, subject to a few, limited exceptions. One obvious exception covers certain payments that, under the plan, will necessarily extend beyond the period of the plan. It simply makes sense that, where the plan contemplates payments to be made beyond the period of the plan, the debt will not be discharged at the close of the plan period.

The exception currently refers to subsections 1222(b)(5) and 1222(b)(10), which appear in that section of chapter 12 governing the contents of the plan. The reference to subsection 1222(b)(10) is plainly in error, however, and should be to subsection 1222(b)(9). Subsections 1222(b)(5) and 1222(b)(9) both concern debts on which payments are due following completion of the plan. Subsection 1222(b)(10), however, concerns something entirely different: the vesting of property in the debtor or another entity. The current cites to subsection 1222(b)(10) should be to 1222(b)(9). This bill corrects those errors, in accordance with the suggestions of practitioners and commentators.

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. 977

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

SECTION 1. REFERENCE.

Section 1228 of title 11, United States Code, is amended by striking ''section 1222(b)(10)'' each place it appears and inserting ''section 1222(b)(9)''.●

By Mrs. HUTCHISON (for herself and Mr. DODD):

S. 978. A bill to facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws, to clarify the inapplicability of antitrust laws to charitable gift annuities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE CHARITABLE GIVING PROTECTION ACT OF 1995

● Mrs. HUTCHISON. Mr. President, one of charities' most important sources of funds—charitable gift annuities—is threatened.

Ever since the American Bible Society entered into the first planned giving arrangement in the 1830's, charitable gift annuities have been a traditional method of giving in America. Typically, the donor gives property to a charity and receives some of the investment income for the rest of her life. After the donor's death, the charity keeps the property to help with its charitable mission.

Donors establish charitable gift annuities to help feed and clothe the neediest among us, to provide relief for disaster victims, to heal the sick, to educate our children, and to bring culture to our communities.

The threat to charities comes from the misapplication of laws to protect consumers from securities fraud and unfair competition to charitable giving. A lawsuit filed in Federal court in Wichita Falls, TX, challenges the ability of charities under Federal securities laws and antitrust laws to engage in planned giving with donors.

The lawsuit alleges that the American Council on Gift Annuities—an educational organization sponsored by more than 1,500 charities to assist them in issuing gift annuities—violated antitrust law by providing actuarial tables to charities to assist them in determining the interest they should pay on annuities. The lawsuit also alleges that commingling of more than one charities' trust funds in a pooled income fund is a violation of the Investment Company Act of 1940, and other securities laws.

The plaintiff—a disappointed potential heir of the elderly woman who made the charitable donation—says that it is price-fixing for the council to suggest what charities should pay in interest on gift annuities. She overlooks that gift annuities aren't trade or commerce in the first place. Congress recognized this fact in the Technical Corrections Act of 1988 when it excepted gift annuities from the definition of commercial insurance.

Instead of getting the best possible return on her investment, a charitable donor is trying to help the charity. If she wanted investment return, she would go to a bank or a brokerage house, not the Red Cross.

Lawyers for the plaintiff are seeking class action certification to expand the suit to charities from every State. The lawyers ask for the return of all charitable annuity donations plus treble damages—damages that would have to be paid from endowments or unrelated donations.

Such an award could financially disable thousand of charities, including hospitals, relief organizations, arts groups, museums, universities, and every religious denomination in the country. One of the plaintiff's lawyers in this case has boasted that this is a ''billion-dollar lawsuit,'' because it will extract huge sums of money from our Nation's noblest institutions—and earn him a big contingency fee.

Today I am introducing legislation to prevent the financial security of American charities from being undermined. The bill exempts charitable organization's annuity activities from the antitrust laws. It also codifies current SEC policy for irrevocable trusts by clarifying that charities may make collective investments under the securities laws, such as investment in pooled income funds. For revocable trusts, the bill provides a 3-year window for compliance with the securities laws, termination of revocable trusts, or conversion of revocable trusts into irrevocable trusts.

Similar legislation was unanimously passed this spring by the Texas Legislature to clarify that charities issuing gift annuities are not required to be licensed as insurance companies or incorporated as trust companies.

Charities in America have a consistent track record of honoring their promises and commitments to donors, and will remain liable for fraudulent acts—although none are alleged in this lawsuit. My bill does not exempt charities from liability for fraud. The persons responsible for the Foundation for New Era Philanthropy ''Ponzi Scheme'' would still be held responsible for their acts.

Charities are not harming anyone—the only harm being done is by this lawsuit to America's charities. We must act now to protect charitable giving from harm, and to protect our laws from being misapplied.

Returning charitable annuity gifts and opening up endowments to pay treble damages will harm all of us. Every dollar lost is a child unvaccinated, a baby unfed, a sick person with no medical care, a Boy Scout troop that will cease to exist, a house for a poor family that will not be built, and a scholarship that will not be granted. I urge all Senators to protect their most important institutions and pass this bill as soon as possible.●

By Mrs. BOXER (for herself, Mr. KENNEDY, Ms. MIKULSKI, Mrs. MURRAY, Mrs. FEINSTEIN, Ms. SNOWE, Mr. LAUTENBERG, Mr. INOUYE, Mr. GLENN, Mr. PACKWOOD, Mr. DODD, and Mr. SPECTER):

S. 979. A bill to protect women's reproductive health and constitutional right to choice, and for other purposes; to the Committee on Labor and Human Resources.

THE WOMEN'S CHOICE AND REPRODUCTIVE HEALTH PROTECTION ACT

● Mrs. BOXER. Mr. President, I introduce the Women's Choice and Reproductive Health Protection Act with my colleagues, Senator KENNEDY, Senator MIKULSKI, Senator MURRAY, Senator FEINSTEIN, Senator SNOWE, Senator LAUTENBERG, Senator INOUYE, Senator GLENN, Senator PACKWOOD, Senator DODD, and Senator SPECTER. Similar legislation will be introduced in the House by Representatives SCHROEDER and LOWEY.

The Women's Choice and Reproductive Health Protection Act unequivocally calls on Congress to maintain current policies which preserve a woman's right to choose and critical reproductive health care services.

Specifically, the bill upholds the following policies which represent gains for women that were achieved through legislative action, Presidential Executive order or court decisions:

Medicaid funding of abortions for victims of rape or incest;

Protection for reproductive health care clinics and a woman's access to them;

Reauthorization of family planning programs;

Funding for contraceptive research and for screening programs in all 50 States for breast cancer, cervical cancer, and chlamydia;

The prohibition of any ''gag rule'' on information pertaining to reproductive medical services;

Fair evaluation of the drug RU–486;

Ensuring that all women, including Federal employees, can obtain insurance policies that provide the full range of reproductive health care services;

Allowing women in the military to use their own funds to obtain abortion services at overseas facilities; and

A woman's right to choose, as decided by the Supreme Court in Roe versus Wade.

The American people overwhelmingly support a woman's right to choose. Yet there are those in this Congress who are determined to turn the clock back—on clinic access, on family planning, and on reproductive rights. The women of America cannot afford to go back and this bill calls on Congress to hold firm against such attacks.

I urge my colleagues to join me in cosponsoring this bill and in reaffirming their support for a woman's right to choose and for crucial reproductive health care services.●

By Mr. HARKIN:

S. 980. A bill to amend the Public Health Service Act and the Social Security Act to protect and improve the availability, quality and affordability of health care in rural areas, and for other purposes; to the Committee on Finance.

THE RURAL HEALTH CARE PROTECTION AND IMPROVEMENT ACT OF 1995

● Mr. HARKIN. Mr. President, today I introduce the Rural Health Care Protection and Improvement Act of 1995. I have introduced similar legislation in previous sessions of Congress but believe the need for the legislation has grown more critical in light of our failure to enact comprehensive health care reform and because of the impending cuts in Medicare and Medicaid.

Perhaps no where else will the proposed Medicare and Medicaid cuts hit harder than in Iowa and other rural States where there is such a high proportion of seniors, uninsured and others without access to health care. Iowa ranks first in percent of citizens over age 85 and third nationally in percent of the population over age 65. The health care system in many small towns in Iowa is already on the critical list—we have too few doctors, nurses, and other health care professionals and many of our rural hospitals are barely making it.

Because of demographics our health care providers in Iowa depend heavily on Medicare payments. Many Iowa hospitals are financially strained and 75 percent of all hospitals lost money on patient revenue in 1993. But, according to a recent study conducted by Lewin-VHI, under the Republican budget plan, Iowa hospitals will lose on average $1,276 for each Medicare care patient in the year 2000—and losses for rural hospitals will be even greater.

Mr. President, without question, the future of rural health care is jeopardized by the budget plan we will consider later this week and the reconciliation bill that will implement it. The level of cuts proposed would be absolutely devastating to the fragile health care systems in rural areas and thus to our rural and small town economies as hospitals are typically the largest employer in small towns and help keep other businesses there. So our first and most important concern must be to stop the level of cuts proposed by the budget resolution. If they become law, there is very little that could be done to resuscitate rural health care. Smaller efforts, while well intentioned, will not be successful in counteracting the impacts of such cuts.

We need to be improving access to and affordability of quality health care in rural areas, not reducing it. The legislation I introduce today would do just that. It would make a number of important improvements to rural health. First, it would establish a grant program to expand access to health services in rural areas through the use of telemedicine. For 6 years as chairman of the Appropriations Subcommittee on Labor, Health and Human Services, and Education my committee funded many telemedicine projects including several in my own State of Iowa. These funds have spurred great interest and activity in telemedicine across the country. But more needs to be done.

The grant program in my legislation will encourage the development of telemedicine networks which can play a critical role in ensuring that people in rural areas have access to high quality health care. Telemedicine puts technology to work to improve the delivery of health care. It uses technology to link patients and their doctors in rural or remote hospitals with highly-trained medical specialists and state of the art medical technology located hundreds, or even thousands of miles away. These linkages will allow more patients to receive care in their community and will ease the burden on specialists in underserved areas. By increasing the education and training opportunities for providers in rural areas these links will also help underserved communities recruit and retain physicians.

Telemedicine will help ensure that people who live in small towns and rural communities have the same access to quality health care as people in Beverly Hills or Palm Beach.

Rural hospitals and other facilities can benefit from the cost savings and access to specialists that telemedicine provides. Using a network, a family doctor in Muscatine, IA could immediately consult with a specialist at the

University of Iowa for an instant diagnosis in a life-or-death situation. A specialist in Mercy Hospital in Des Moines could provide emergency advice and help oversee a difficult surgery taking place in Centerville. And a radiologist at Methodist Hospital in Des Moines could help examine x rays just taken in Jefferson.

My home State of Iowa has developed a world class fiber optic system that holds great potential in the area of telemedicine. Fiber optic cables greatly enhance the potential of telemedicine because they carry much more information than traditional, copper telephone wires.

My President, telemedicine will allow patients to stay close to home for support. For most people, one of the most traumatic times in their life is when they are sick or injured. And we should be helping them stay with their family and friends, who often provide the support and love they need to get well. This will also reduced costs associated with travel.

One of the obstacles for further expansion of telemedicine is the lack of a payment system in Medicare and Medicaid. To begin to address this problem, my legislation would require the Department of Health and Human Services to issue regulations regarding reimbursement for telemedicine.

This legislation would also authorize the Rural Health Outreach Grant Program. I began this program as chairman of the Health Appropriations Subcommittee several years ago and it has been a great success. Many rural communities suffer critical shortages of health providers. Distance, lack of public transportation, rough terrain, and unpredictable weather, present additional obstacles. This initiative recognizes that existing health and social services agencies do not always cooperate and coordinate to reach needy populations in rural America.

Through the Rural Health Outreach Program rural organizations have been able to come together to collaborate and build networks to deliver much needed health care. For example, communities used funds provided by the Outreach Program to provide basic health care services to isolated seniors, to provide care to pregnant women, to build emergency medical systems, and to bring mental health services to isolated communities with the help of telemedicine.

In my own State of Iowa, outreach funds were used to help get a new hospice program in rural Grundy County up and running. The local hospital joined with the local health department and volunteer organizations to develop a program to help families coping with terminal illness. The program helps families that are struggling to survive under the weight of nursing chores, daily responsibilities and grief.

Mr. President, the Rural Health Care Protection and Improvement Act would also extend the Medicare Department, Small, Rural Hospital Program. Between 1980 and 1990, 330 rural hospitals were forced to close their doors, in large part because of inequities in Medicare reimbursement. In OBRA 1989, Congress wisely acted to redress these inequities by establishing the Medicare Dependent Small Rural Hospital [MDH] Program. The MDH Program allows rural hospitals under 100 beds to qualify for somewhat higher reimbursement if over 60 percent of their patient days went to caring for Medicare patients. But, Mr. President this program expired in October 1994.

Iowa has 45 Medicare department, small, rural, hospitals. These hospitals mean access to health care services and retention of local health care providers. They also provide economic stability and are a strong draw for businesses and residents into the area. If the hospital or clinic closes it means that the local economy goes, and the nursing home goes, and so does the local economy. It is a domino effect.

The MDH Program is helping many Iowa hospitals survive and this program should be extended to ensure that these small rural hospitals continue to provide health care services.

So, Mr. President, the Rural Health Care Protection and Improvement Act will help improve access and enhance the quality of health care in rural areas. It will help shore up the fragile health care infrastructure in our rural communities and towns. I am pleased that Senator KASSEBAUM has included the Rural Outreach Grant Program and a Telemedicine Grant Program in her Health Centers Consolidation Act of 1995 that will soon be voted on in the Labor and Human Resources Committee. And, I am hopeful that as we consider steps to improve our Nation's health care system, the Medicare Department, Small, Rural Hospital Program will be extended. But not even my bill will be enough to save rural health care if the unprecedented level of cuts to Medicare being proposed become a reality. We must defeat those proposals and work toward a more sound, a more reasonable effort to reform Medicare.●

By Mr. EXON:

S. 981. A bill entitled ''Truck Safety and Congressional Partnership Act''; to the Committee on Commerce, Science, and Transportation.

THE TRUCK SAFETY AND CONGRESSIONAL INVOLVEMENT ACT

● Mr. EXON. Mr. President, I introduce legislation which the Senate was expected to consider as an amendment to the National Highway System. Last minute negotiations between the chairman of the Commerce Committee and myself produced an understanding that this legislation would be considered by the full committee at the next scheduled markup.

This legislation is a very simple and very narrow measure. It preserves congressional involvement in critical truck safety issues currently before a trinational committee authorized under the North American Free-Trade Agreement. This legislation simply states that if the executive branch moves to set a standard for single trailer lengths pursuant to the NAFTA negotiations and that standards exceeds 53 feet, the executive branch must come to the Congress for such authority.

This legislation only applies to Federal regulations on truck trailer length issue pursuant to the North American Free-Trade Agreement.

Last year, I chaired a hearing on this issue of truck lengths and safety. Needless to say there are serious concerns about the safety of longer and heavier trucks.

Pursuant to the NAFTA agreement, the Governments of Mexico, Canada, and the United States of America are negotiating the harmonization of traffic safety laws. The Senate has been very concerned about these negotiations and following the approval of NAFTA, approved a resolution expressing the sense of the Senate that these negotiations should bring Canadian and Mexican traffic safety up to United States levels, rather than lower United States standards. I am pleased to report that the Clinton administration expressed their desire to involve Congress in the adoption of any new safety rules arising out of these negotiations. this legislation simply locks in that commitment.

Since the Federal Government maintains no single trailer length standards, there is a risk that a future administration cold use the NAFTA negotiations to increase lengths beyond the generally accepted 53-foot standard.

This legislation assures that the Congress will remain involved in critical truck safety issues. Again, Mr. President, this bill only applies if the administration sets a single trailer length standards pursuant to NAFTA negotiations exceeding 53 feet. In such a case, congressional action would be necessary to implement the longer Federal standard.

The amendment does not restrict State action.

The amendment does not affect Federal legislative action.

The amendment does not affect Federal regulatory action not related to the North American Free-Trade Agreement.

The amendment is consistent with the intent of the Reigle-Exon NAFTA/truck safety resolution, approved by the Senate following the approval of NAFTA, and in no way disrupts the long combination vehicles freeze Senator LAUTENBERG and I authored as part of the 1990 highway bill.

I ask my colleagues to consider and support this narrow legislation which will preserve congressional discretion over truck safety and the NAFTA.●

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. BREAUX, the names of the Senator from Vermont

[Mr. LEAHY] and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

At the request of Mr. ROTH, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 12, supra.

S. 67

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 67, a bill to amend title 10, United States Code, to authorize former members of the Armed Forces who are totally disabled as the result of a service-connected disability to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft.

S. 73

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 73, a bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary stores and post and base exchanges.

S. 594

At the request of Mrs. BOXER, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 594, a bill to provide for the administration of certain Presidio properties at minimal cost to the Federal taxpayer.

S. 607

At the request of Mr. WARNER, the names of the Senator from North Carolina [Mr. HELMS], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of S. 607, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 692

At the request of Mr. GREGG, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 692, a bill to amend the Internal Revenue Code of 1986 to preserve family-held forest lands, and for other purposes.

S. 789

At the request of Mr. CHAFEE, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 789, a bill to amend the Internal Revenue Code of 1986 to make permanent the section 170(e)(5) rules pertaining to gifts of publicly traded stock to certain private foundations, and for other purposes.

S. 849

At the request of Mr. D'AMATO, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 849, a bill to amend the Age Discrimination in Employment Act of 1967 to protect elected judges against discrimination based on age.

S. 851

At the request of Mr. JOHNSTON, the names of the Senator from Alaska [Mr. STEVENS] and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 851, a bill to amend the Federal Water Pollution Control Act to reform the wetlands regulatory program, and for other purposes.

S. 939

At the request of Mr. SMITH, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 939, a bill to amend title 18, United States Code, to ban partial-birth abortions.

S. 942

At the request of Mr. BOND, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of S. 942, a bill to promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitary regulatory enforcement actions against small entities, and for other purposes.

S. 950

At the request of Mrs. BOXER, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 950, a bill to amend the Outer Continental Shelf Lands Act to direct the Secretary of the Interior to cease mineral leasing activity on submerged land of the Outer Continental Shelf that is adjacent to a coastal State that has declared a moratorium on mineral exploration, development, or production activity in adjacent State waters, and for other purposes.

S. 971

At the request of Mr. COATS, the names of the Senator from Ohio [Mr. DEWINE] and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 971, a bill to amend the Public Health Service Act to prohibit governmental discrimination in the training and licensing of health professionals on the basis of the refusal to undergo or provide training in the performance of induced abortions, and for other purposes.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of Senate Resolution 103, a resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Wednesday, June 28, 1995 at 1 p.m. to mark up the Department of Defense Authorization Act for fiscal year 1996.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Banking Committee be permitted to meet on Wednesday, June 28, 1995, beginning at 10:40 a.m. to mark up S. 883, the Credit Union Reform Enhancement Act of 1995 and consider pending nominations.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, June 28, 1995, for purposes of conducting a full committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this meeting is to consider pending calendar business.

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

COMMITTEE ON FINANCE

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet on Wednesday, June 28, 1995, beginning at 9:30 a.m. in room SD–215, to conduct a hearing on the perspective of the Governors on Medicaid.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, June 28, 1995, beginning at 9:45 a.m., in room 485 of the Russell Senate Office Building on S. 814, a bill to provide for the reorganization of the Bureau of Indian Affairs, and for other purposes.

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

SUBCOMMITTEE ON ACQUISITION AND TECHNOLOGY

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Subcommittee on Acquisition and Technology be authorized to meet on Wednesday, June 28, 1995, at 9 a.m. to mark up the Department of Defense Authorization Act for fiscal year 1996.

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

SUBCOMMITTEE ON AIRLAND FORCES

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Subcommittee on Airland Forces be authorized to meet on Wednesday, June 28, 1995, at 11 a.m. to continue mark up of the Department of Defense Authorization Act for fiscal year 1996.

The PRESIDING OFFICER. Without objection it is so ordered.

SUBCOMMITTEE ON IMMIGRATION

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Subcommittee on Immigration for the Senate Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, June 28, 1995, at 10 a.m. to hold a hearing on the Report of the U.S. Commission of Immigration.

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

ADDITIONAL STATEMENTS

''ASSESSMENT STANDARDS FOR SCHOOL MATHEMATICS'' RECENTLY PUBLISHED BY THE NATIONAL COUNCIL OF TEACHERS OF MATHEMATICS

• Mr. HATFIELD. Mr. President, 6 years ago the National Council of Teachers of Mathematics [NCTM] released a publication, the ''Curriculum Standards for School Mathematics,'' which established national standards for mathematics education. The Standards presented a vision of appropriate mathematical goals for all students. It represented a consensus view of educators, mathematicians, classroom teachers, researchers, lay persons, and leaders in business.

The Standards are based on the assumption that all students are capable of learning mathematics. The Standards describe what a high-quality mathematics education for North American students, K–12, should comprise. However, since their publication, NCTM has granted permission for the Standards to be translated into the Chinese, Korean, Spanish, and Portuguese languages. The Standards are being used as a guide to mathematics education reform in many countries around the world. This publication has given the world a vision of meaningful mathematics education.

NCTM's goal was to develop mathematics power for all students. Reaching this goal required more than a vision. Two years later this publication was followed by a second document, ''Professional Standards for Teaching Mathematics.'' These Professional Standards are a guide for the creation of a curriculum and an environment in which teaching and learning are to occur. It is now being used by colleges and universities in their mathematics teacher preservice education programs. The goal is to develop public school teachers who are more proficient in selecting tasks to engage students in learning mathematics, providing opportunities for understanding mathematics, promoting the investigation and growth of mathematical ideas, using technology and other tools to promote investigations, and connecting mathematics to previous and developing knowledge.

The Curriculum Standards contained the vision. The Professional Standards outlines teacher training methods that will enable educators to achieve this vision. Recently, NCTM has released a third publication, the ''Assessment Standards for School Mathematics.'' This publication will establish criteria for student assessment and program evaluation and elaborate the vision of assessment that was described in the previous documents. The purposes of assessment include monitoring student progress, making instructional decisions, evaluating student achievement, and evaluating programs. The assessment standards should reflect the mathematics that all students need to know and be able to do, should enhance mathematics learning, should promote equity, and should be an open process.

If meaningful and long lasting change is to realized, all aspects of school mathematics—content, teaching, and assessment—need to change on a systemic basis. These three documents are tools, not solutions. They will provide the tools needed for significant mathematics reform to take place. This effort is truly exemplary in that first, the community came together on its own, and second, standards have been developed without one dollar from the Federal Government.

I appreciate this opportunity to bring this publication to the attention of fellow Senators and voice my support for worthwhile education reforms. I congratulate NCTM for their efforts to this end by providing the mathematics community these valuable documents.•

IN MEMORY OF TREASURY ENFORCEMENT PERSONNEL AND SPECIAL AGENTS LOST IN OKLAHOMA CITY BOMBING

• Mr. KERREY. Mr. President, it has been 2 months since a bomb exploded at 9:02 a.m. April 19 in Oklahoma City. The rescue is over but we are still in shock, still grieving, and still trying to understand this tragedy. I come to the floor today with a profound sense of sadness. My heart goes out to the families of the fine people whose lives have been tragically taken by this horrific act. I feel that it is my duty as the ranking member of the Appropriations Subcommittee which funds the Department of Treasury that I share my thoughts on Treasury law enforcement and their losses. All law enforcement—agent and personnel alike—live with the threat of losing a colleague, but no matter how dangerous the job, no matter how families and the law enforcement community prepare themselves, it is never enough.

It is particularly devastating to have the lives of law enforcement lost in this manner—helpless, unaware, and going about their daily business as were the rest of the employees in the Alfred P. Murrah Federal Building. Wednesday, April 19, 1995, 9:02 a.m., was a sad day for all Americans across the United States. It was also the day that the U.S. Secret Service suffered the largest loss in its history. Assistant special agent in charge, Alan G. Whicher, age 40; office manager, Linda G. McKinney, age 48; special agent, Cynthia L. Brown, age 25; special agent, Mickey B. Maroney, age 50; special agent, Donald R. Leonard, age 50; and investigative assistant, Kathy L. Siedl, age 39. In addition, the U.S. Customs Service lost two senior special agents, Claude A. Meaderis, age 41; and Paul D. Ice, age 42.

Let me just say a few words about these fine people.

Alan Whicher, appointed as a special agent to the U.S. Secret Service on April 12, 1976 in the Washington field office, known by his friends as Al, was a devoted father and husband. His career, which spanned two decades, included the Vice Presidential Protective Division during the Reagan administration and the Presidential Protective Division of two Presidents. He is survived by his wife Pamela Sue Whicher and their three children, Meredith, Melinda, and Ryan.

Linda G. McKinney, was appointed to the Secret Service on June 28, 1981 in Oklahoma City. Linda served as the office manager. She is survived by her husband Danny, and son Jason Derek Smith, age 22. Her mother, Minnie J. Griffon, also survives her. I know she will be sorely missed as a daughter, wife, and mother.

Cynthia L. Brown, who had celebrated her first year as a rookie agent and was married only 40 days to Secret Service Special Agent Ron Brown of the Phoenix field office. They were both waiting for transfers so they could be together. Cindy was only 25, a bright future ahead of her both in her career and in her new life with Ron.

Mickey Maroney, was appointed as a special agent to the U.S. Secret Service in the Fort Worth office on June 14, 1971. Mickey's distinguished career included the Johnson Protective Division and Lady Bird Johnson's protective detail. Mickey is survived by his wife Robbie, and children Alice, age 27, and Mickey Paul, age 23. I know he will be missed by those whose lives he touched.

Don Leonard, was appointed as a special agent to the U.S. Secret Service in Oklahoma City on November 16, 1970. His career spanned over two decades including assignments in the Tulsa resident office, the Protective Support Division, the Vice Presidential Protective Division and the St. Louis field office. Don is survived by his wife Diane, and sons, Eugene, age 26, Jason, age 23, and Timothy, age 22.

Kathy Siedl, was appointed to the U.S. Secret Service on March 17, 1985, as an investigative assistant. She served her country for over a decade. Kathy is survived by her husband Glenn and her son Clint, who I understand collects Secret Service pins. In addition, she is survived by her parents, Dallas and Sharon Davis, and Carol Reiswig, her sister, who works

for the Internal Revenue Service in Oklahoma City.

Paul D. Ice, born and raised in Oklahoma, was a senior special agent for the U.S. Customs Service and had a lengthy record of Government service. He began his career as a Marine jet pilot and spent 5 years with the IRS as an agent in the Criminal Investigation Division before transferring to Customs as a special agent. He was one of the first special agents assigned to the resident agent office in Oklahoma City and had been there for 7 years. He was a member of the Marine Corps Reserve for 20 years, retiring last year with the rank of lieutenant colonel. Paul is survived by his daughters, Sara and Miranda, their mother Faith, and his parents Jack and Neva Ice.

Claude A. Medearis was a senior special agent for the U.S. Customs Service and also a native of Oklahoma and a veteran of public service. Before coming to the Customs Service he served in the military and in the Oklahoma State probation and parole office. He began his career with Customs in Del Rio, TX, before transferring to Oklahoma City in 1992. He was recently promoted to senior special agent status. Claude is survived by his wife Sharon and daughter Kathy.

Mr. President, in light of all that has happened since the bombing, I would simply like to remind us of this simple fact—these brave people who worked in Federal law enforcement were members of the Oklahoma City community. They were mothers and fathers, sons and daughters, they shared the same dreams and goals for their children that their neighbors did—they were little league coaches and volunteers in their community. They were willing to give the supreme sacrifice to their Nation and community—we should not tarnish their families' memories by vilifying them. They are not faceless, nameless robots. They hurt like you when they lose a loved one, as their families hurt now from losing them.●

DON'T SIGN A BAD DEAL IN GENEVA

● Mr. BOND. The world's attention is focused on today's deadline for a resolution of the auto parts trade dispute between the United States and Japan. At the same time, however, another critical trade deadline looms largely unnoticed.

On June 30, the United States must decide whether to lock open its financial services markets regardless of whether our trading partners do the same. We would do this by surrendering our right to take an exemption from the most-favored-nation [MFN] provision of the World Trade Organization's General Agreement on Trade in Services [GATS].

For many years, it has been the policy of the United States to provide open access and national treatment to foreign financial firms that want to enter our market, regardless of foreign barriers to entry by U.S. firms. During the past decade, our Government, actively aided by our financial services industry, has worked to open foreign financial markets. The Uruguay round of the GATT negotiations, which began in 1986, aimed at achieving for the first time multilateral standards for open trade in financial services. Our negotiators sought commitments from other countries that would guarantee substantially full market access and national treatment to U.S. financial firms in foreign markets. Unfortunately, those negotiations ran into difficulties as some of our trading partners with the most restrictive practices in financial services were reluctant to make the market opening commitments needed to bring them to a successful conclusion.

In December 1993, as the Uruguay round concluded in Geneva, negotiators agreed to include financial services within the GATS. That agreement establishes a multilateral framework of principles and rules for trade in financial services, including the principles of national treatment and MFN status. However, members were bound by these principles only to the extent they made commitments in their GATS offers. Unfortunately, the commitments made by many countries to open their markets to foreign financial institutions under that framework were far less than the United States had hoped for. As a result, the United States, as it was legally permitted to do, took an exemption from the GATS MFN obligation with respect to new establishment and new powers for foreign financial firms. The purpose of doing so was to allow our Government to differentiate among members of the World Trade Organization in regard to providing their firms a guarantee they would always have full access with national treatment in our market. In essence, we did not want to lock our market open, while other countries were given GATS protection to continue restricting access to theirs.

The Uruguay round final agreement provided that for 6 months after the GATS went into effect, countries would suspend their MFN exemption and continue to negotiate.

The stakes in these talks are enormous. Exports of financial products and services represent one of the greatest potential export markets the United States will have in the coming century. We are far ahead of most of the rest of the world in development of our markets and of new financial instruments. One need only think of the billions of people in China, India, Indonesia, Brazil, and other developing nations who have no insurance, who do not have access to an ATM machine, who have not ever invested in mutual funds or who do not yet even have saving accounts. As these countries develop and personal income levels rise, U.S. firms can and should play a role in providing those services.

Even more important is the impact of financial services on other trade and investment. The ability of other American industries to sell their goods overseas depends, in large part, on the support of American banks and securities firms in those markets. As U.S. Trade Representative Mickey Kantor recently told the Senate Banking Committee, ''if you can't get your financial services companies into a market, it has a negative effect upon your ability to get your products into the market and, of course, that has a negative effect on the U.S. economy.''

The United States has approached these talks with a call for fair and open markets. We have offered—and urged all other countries to offer— a system of national treatment, whereby foreign institutions would be treated the same as domestic ones.

Unfortunately, it appears likely that come midnight on June 30, we will not have seen sufficient progress to justify signing an agreement. Although several countries have put forward offers that would provide national treatment, the WTO's MFN rule prevents us from guaranteeing these countries national treatment in our market without giving it to all other WTO members as well. Thus, for example, if the United States and the European Union accept each other's offers and guarantee each other national treatment, other countries not doing the same would still reap the benefit of that agreement and get national treatment in both Europe and the United States without offering equal access to their market. These free riders would be getting the benefit of the agreement without giving anything in return.

Many of the offers on the table today are simply unacceptable. India, for example, has closed its insurance market to all private companies. Brazil maintains a total prohibition on new foreign financial firms entering their market. Korea continues to restrict foreign access to its financial markets. A number of Southeast Asian nations have placed on the table offers that could require United States financial companies to divest their current holdings in local firms. These are some of the fastest growing and potentially most lucrative markets in the world. Signing an agreement under these conditions, would lock in these barriers and provide countries a legal right under the WTO to enforce them. That would deny our financial firms access to good markets, and would hurt our ability to get U.S. goods and investments into those markets. We would be insane to sign an agreement which would legitimize these barriers and effectively shut American firms out of these markets in perpetuity while locking our market open to firms from these same countries.

There is an alternative for U.S. negotiators, however; we can reject a bad agreement, maintain our MFN exemption, and begin to negotiate bilateral agreements with countries that want

open financial markets. Under such a plan, the United States could immediately sign agreements with the European Union, Switzerland, Norway, and other countries that are offering national treatment. We could then continue to negotiate with other nations, using access to our lucrative American market as a lever to get them to open their own.

There is no question the United States is under strong international pressure to surrender our MFN exemption. Earlier this year, a senior British trade official flew to Washington to pressure United States Treasury officials to sign an agreement in Geneva—regardless of whether it makes sense for the United States. And the head of the WTO argued recently that the United States must make the right decision and sign whatever agreement is on the table when the deadline rolls around.

Proponents of a deal argue that failure to conclude an agreement will weaken the WTO. But that argument is hogwash. To the contrary, the worst thing we could do would be to sign an agreement that sanctions closed markets and unfair barriers. That would weaken support for the WTO far more than failure to reach an agreement in Geneva. The American people rightly expect that free trade must be a two-way street.

In recent days, some have proposed an extension of the talks as one way to deal with the lack of progress. I believe an extension makes sense since it will allow us to build on the progress that has been made to date. I believe strongly, however, that for the United States to maintain its leverage during any extended talks—whether in the multilateral WTO forum, or on a bilateral basis—the United States must exercise its MFN exemption. To do otherwise would remove any incentive for countries such as Korea, which wants to expand in our market, to negotiate in good faith. Exercising our MFN exemption would not require the United States to retaliate against other countries or to, in any way, close off its market. It would merely give us the right to do so at a later date, if we decided it was in our best interest to do so. Granting MFN, on the other hand, would lock our market open—and thereby remove our leverage in the talks.

U.S. negotiators should stand firm. The United States has played the sucker far too many times in international trade negotiations. The stakes this time are simply too high. Handshakes and promises of future action are not good enough. If the final written offers are not significantly better than those on the table today, U.S. trade officials should act in our clear national interest, and walk away from the table.●

RECOGNIZING RECIPIENTS OF THE GIRL SCOUT GOLD AWARD FROM THE STATE OF MARYLAND

● Ms. MIKULSKI. Mr. President, each year an elite group of young women rise above the ranks of their peers and confront the challenge of attaining the Girl Scouts of the United States of America's highest rank in scouting, the Girl Scout Gold Award.

It is with great pleasure that I recognize and applaud two young women from the State of Maryland who are some of this year's recipients of this most prestigious and time honored award.

These young women are to be commended on their extraordinary commitment and dedication to their families, their friends, their communities, and to the Girl Scouts of the United States of America.

The qualities of character, perseverance, and leadership which enabled them to reach this goal will also help them to meet the challenges of the future. They are our inspiration for today and our promise for tomorrow.

I am honored to ask my colleagues to join me in congratulating these recipients. They are the best and the brightest and serve as an example of character and moral strength for us all to imitate and follow.

Finally, I wish to salute their families and Scout leaders who have provided these young women with continued support and encouragement.

It is with great pride that I submit these two names as recipients of the Girl Scout Gold Award.

GIRL SCOUT GOLD AWARD RECIPIENTS

Miranda Jean Buck of Frederick, MD
Carla R. Williams of Union Bridge, MD.●

TRIBUTE TO JEFF DURHAM

● Mr. COATS. Mr. President, when America celebrates its independence, it celebrates the courage and sacrifice of the men and women who defend it—people who pay a price of pain, inconvenience, and danger.

Jeff Durham has shown that courage, paid that price, and earned our thanks.

Millions of Americans were inspired by the dedication and boldness of the team that rescued Scott O'Grady. When Captain O'Grady returned to America, he gave the lion's share of praise to both God and those soldiers who saved him. As a vital part of that dramatic and successful mission, Jeff Durham is an example of courage and commitment.

There is no virtue more generous than courage. It values duty over comfort, honor over safety, others over self. It is the hallmark of heroes.

From moment to moment our Nation depends on people who will stand guard for American interests and American ideals. That is a lonely watch in a dangerous world. It is a privilege to praise someone who fulfilled that duty with such skill and distinction.

Thank you, Jeff, from all of us in Indiana, for serving God and your neighbors by serving your Nation so well.●

PEACEKEEPING AND PEACEMAKING: THE FUTURE CHALLENGE

● Mrs. FEINSTEIN. Mr. President, I was recently privileged to address the convention of the United Nations Association during its conference in San Francisco, coinciding with the celebration of the 50th anniversary of the United Nations. I took the opportunity to make some observations about the past, present, and future of U.N. peacekeeping, and I offer them here for the record.

THE U.N. MISSION: A TREND TOWARD PEACEKEEPING

When we look at the 50-year history of the United Nations, certain facts and trends become evident. One of these is the increasing trend toward peacekeeping. In the first 43 years of its existence, from 1945 to 1988, the United Nations launched 13 peacekeeping missions in places such as Lebanon, the Dominican Republic, the then-Congo, Cyprus, between India and Pakistan, and along Arab-Israeli borders. While the results of these missions were not uniformly successful, the United Nations proved it was able to play an important role in resolving, or at least containing, a number of dangerous conflicts.

And yet, during this period, the United Nations faced certain realities, the largest of which was the superpower rivalry between the United States and the Soviet Union. As conflicts developed, the countries involved were forced, either through external or internal forces, to align themselves with one superpower or the other. In this environment, the United Nations was often left on the sidelines. When United States and Soviet interests collided, each could cancel out the other's initiatives with their Security Council vetoes. When conflicts involved vital United States and Soviet interests, the two powers did not hesitate to take it upon themselves to try to resolve the conflict in their favor rather than seeking a negotiated resolution through the United Nations.

There is no question that the cold war was a time of serious international insecurity. The specter of two superpowers, with weapons of immense destructive capability aimed at each other, competing for influence across the globe, lasted for nearly 45 years, ending startlingly in 1990 with the collapse of the Soviet Union.

Even today, many people share the misconception that the demise of the Soviet Union has created a more secure world. I do not believe that this is necessarily the case.

The cold war, for all its dangers, had the unintended effect of discouraging many smaller countries, nationalities, and ethnic minorities from fighting one another. The danger that any uprising could, and would with certainty, be put down brutally by the Soviet Union, clearly contained insurrections and civil wars in areas like the former Yugoslavia. If Tito were in power

today, under Soviet control, the civil war would most probably not have happened. A dying vestige of this cold war control is seen today in Chechnya, where a weakened Russia is brutally struggling to contain and vanquish Chechen rebels.

However, the potential for nuclear war also had a deterrent and stabilizing effect on both major superpowers in their dealing with each other.

Today, with these cold war constraints gone, an equally, if not more dangerous scenario has developed whereby smaller conflicts that had been festering just beneath the surface have now emerged, many erupting with unprecedented force and brutality. Though the numbers vary almost weekly, through most of 1994 and 1995, there have been over 30 wars raging simultaneously across the world.

Trouble spots seem to crop up everywhere. Some fizzle quickly, while others spread into larger regional conflicts. Once again, genocide, starvation, ethnic cleansing, mass rape, torture, and millions of homeless people confront all of us. From Bosnia and Croatia to Rwanda and Burundi, from Afghanistan to Algeria, and from Sudan to Tajikistan, ethnic, religious and national grievances are taking a tremendous toll in human life. And whether these conflicts are internal or across borders, they all contribute to the deepening sense of international insecurity.

In this increasingly complex and dangerous environment, there has never been a greater need for the United Nations to provide leadership. No other body, and certainly no single nation, is equipped to deal with the problems of ancient territorial disputes, ethnic and religious rivalries, inherent in the host of newly emergent independent nations, many with ruthless dictators.

For this reason, peacekeeping is fast becoming the most important and significant function of the United Nations. As the world community grapples for ways to deal with these burgeoning conflicts, multilateral peacekeeping is increasingly seen as the best or the only viable recourse. As such, the United Nations alone is also seen—and rightfully so—as the only body with the structure, the experience and the international mandate to make a nonpartisan peacekeeping effort succeed.

The numbers bear out this trend: After 13 peacekeeping missions in its first 43 years, the United Nations has performed 25 such missions in the last 7 years alone. Today there are 16 concurrent peacekeeping missions underway. In 1988 there were 9,000 soldiers from different countries participating in peacekeeping missions. Today there are more than 61,000 from over 80 countries.

I believe that on this anniversary, we should pause, take stock, and reevaluate where events mandate change in both the role and mission of the United Nations. Clearly, peacekeeping has become a major and expanding role. The question is: Can the blue-helmeted observer of the past and present effectively be the peacekeeper of the future?

For a moment, let us look at some peacekeeping successes.

In Cyprus, U.N. peacekeepers have helped since 1964 to prevent a resumption of hostilities that could lead to war between two of our NATO allies, Greece and Turkey.

On the Golan Heights, U.N. peacekeepers have helped make the Israeli-Syrian border one of the quietest in the Middle East for the last 21 years.

In El Salvador and Cambodia, U.N. peacekeepers helped to safeguard the reconciliation process at the end of those countries' civil wars, and helped provide the order necessary to conduct free and democratic elections.

Clearly, these were, and are, successful missions. When peacekeeping works, it can stabilize, reduce tension and hostility, and provide the backdrop needed before which peacemaking can succeed.

It is worth noting here that, today, even with the dramatic increase in peacekeeping missions, U.S. troops constitute only about 5 percent of total U.N. peacekeeping efforts around the world—about 3,300 out of over 61,000.

Now let's look at some of the problems.

As peacekeeping missions increase in numbers, more funding is required to keep it going. In 1988, the [U.N.] peacekeeping budget was $230 million. In 1994, the budget grew to $3.5 billion.

Here, the United States makes its primary contribution to U.N. peacekeeping in financial terms, paying 31 percent of all assessed costs, although Congress has mandated that the U.S. share be reduced to 25 percent this October. In 1988, the U.S. contribution for assessed peacekeeping cost was $36.7 million. In 1994, the U.S. share rose to $991 million — a huge increase.

Clearly not all peacekeeping operations have been successful. We can and should learn from the tragedies of Bosnia and Somalia—perhaps the two most difficult examples of U.N. peacekeeping in the last 50 years. Why have they been so difficult? I would submit that not all peacekeeping missions are the same, and they often become confused. Different peacekeeping missions require different types of peacekeeping efforts. You cannot lump them all together.

For example, in Somalia, the United Nations started out engaged in a successful humanitarian mission to prevent hundreds of thousand from starving to death, but the mission soon changed into one of nation-building and political involvement, finally resulting in confrontations with the warring factions.

The U.N. forces in Somalia proved unable to respond to a shifting set of dynamics. The dynamics in one country are not going to be the same as the dynamics in another, and the dynamics within a country can change overnight. The blue-helmeted observer that cannot fire back to protect himself or civilians, without a convoluted approval process, cannot maintain peace when warring factions want to have at each other.

Somalia was a classic lesson in that regard. We saw a renegade warlord who was prepared to circumvent the peacekeeping mission one way or another. The U.N. forces, when challenged, could not fight back effectively. The result was more than 100 U.N. peacekeepers and 18 U.S. Army Rangers killed during that 24 month mission, and the United Nations and the United States pulled out with mixed results.

But the ultimate challenge in this century to peacekeeping has been the war in the former Yugoslavia. There the United Nations faces insurmountable problems and dilemmas. Literally, more than 800 year of animus, hatred, and territorial disputes have combined to provide UNPROFOR Its most difficult and challenging mission in U.N. history.

Perhaps in 1878, Benjamin Disraeli said it best when he offered these words, in the British House of Lords:

> No language can describe adequately the condition of that large portion of the Balkan peninsula—Serbia, Bosnia, Hercegovina and other provices—[the] political intrigues, constant rivalries, a total absence of all public spirit . . . hatred of all races, animosities of rival religions and absence of any controlling power . . . nothing short of any army of 50,000 of the best troops would produce anything like order in these parts.

And that was 117 years ago.

On one hand, there has been a dramatic decrease in civilian casualties in that terrible conflict—from 130,000 in 1992 down to 3,000 in 1994. On the other hand, it is in Bosnia that we begin to see the major shortcomings of United Nations forces as peacekeepers.

We saw it on May 25 in Tuzla, a ''U.N. Safe Area'' when 71 young people, all under age 28, were killed by a single Serb shell—one of many instances when Serb forces have eroded safe areas with attacks—without any retaliation, despite a Security Council resolution authorizing such responses.

We saw it when 377 U.N. troops were recently taken hostage after a NATO airstrike on a Serbian ammunition dump.

We saw it when Captain O'Grady's F–16 was shot down, the second plane lost in Deny Flight operations, without response [as] scores of hostages were still held captive.

We see it every day, as U.N. peacekeepers attempt to protect innocent civilians, sometimes successfully, but often not.

And we saw it, most poignantly, on June 10, when the United Nations mission in Sarajevo announced it would not respond to protect Muslim enclaves from attack without the consent of the Bosnian Serbs.

I believe it is fair to say that U.N. forces have neither the training, the

equipment, nor the rules of engagement, to allow them to sufficiently respond to attacks against them or against civilian populations. They are meant to be observers—not fighters.

These problems have taken their toll on U.S. congressional support. And they have taken their toll, I think unfairly, on support for the UNPROFOR troops. In the Congress, there has been continuing debate over whether a unilateral or a multilateral lifting of the arms embargo against Bosnia, or the withdrawal of UNPROFOR troops altogether is the humane or the inhumane action to take. And, because the United States has no troops on the ground in Bosnia, we have less leverage in influencing nations that do have troops on the ground.

It is my belief that the United Nations must address peacekeeping efforts more realistically in view of the variety of situations they find themselves in, and provide a speedy and effective response dependent on the individual situation. The rapid reaction force recently created for Bosnia should help. We all hope they can be moved into the scene speedily, and that they will be properly empowered and commanded, in order to have an effective and immediate impact.

The idea of rapid response units has been discussed repeatedly over the past 50 years. At the international seminar hosted by the Netherlands Government in the spring of 1995, the Minister of Foreign Affairs of the Netherlands, Mr. Hans van Mierlo, presented a proposal of how such a force might work. Mr. van Mierlo's plan proposes a permanent rapid response nucleus, which would be able to be sent to a critical area of the world on very short notice. Such a force, if headed by a well-trained commanding officer with field experience, could provide a robust response to any aggressive action.

So my first point here today is that the entire United Nations peacekeeping structure must be reexamined, and perhaps redefined and restructured. Those of us who consider ourselves friends of the United Nations, and who believe that the world needs the United Nations, and vice versa, are prepared to make a case for continued U.S. participation, even for payment of our dues, but our success depends upon the willingness of the U.N. leadership to meet and discuss these issues with the Congress, and on their willingness to make improvements in the way peacekeeping is conceived and carried out.

PEACEKEEPING VERSUS PEACEMAKING

The second point I would like to make here involves peacekeeping versus peacemaking. Clearly the record on peacekeeping over 50 years has been, by and large, successful. The record on peacemaking is less clear.

I believe that the United Nations has an important and viable role in peacekeeping. And at times, the U.N. leadership has proven to be able mediators, and have helped parties in conflict reach a negotiated settlement. At other times it has been unsuccessful. But I do not believe that the United Nations is set up for peacemaking, because sometimes peacemaking requires force, or at least the ability to bring force to bear. The United Nations generally lacks the ability to bring such force to bear—whereas states, and alliances of states, have a greater capacity to do so.

So, I would suggest that peacemaking efforts also be reevaluated. This reevaluation should begin with an assessment of regional and political imperatives that lend themselves toward specific peacemaking alliances. Regional political forces, in the form of strong geographically based alliances, can more effectively spearhead diplomatic and military efforts to promote peacemaking than can the United Nations alone.

For example, peace has reigned in Europe for five decades since World War II, primarily because of the strong NATO alliance. NATO has been an important framework for making and maintaining peace between longtime adversaries—like Greece and Turkey, or Germany and France, and it has deterred aggression and conflict between East and West.

When peacemaking, rather than peacekeeping is called for, the United Nations needs to work with alliances like these to bring about the desired result. The United Nations can even foster the creation of such alliances, as indeed it did through a series of resolutions during the 1990–91 Persian Gulf crisis. When the situation calls for peacemaking, the United Nations must understand whether diplomacy is sufficient, and where it is not, the United Nations must cooperate with individual states and alliances of states that can bring the necessary force to bear.

I am one that believes that the solution in Bosnia must be a negotiated one. In other words, a diplomatic solution rather than a military solution. Why? I can think of no military solution that would solve these 800-year old animosities without enormous bloodshed and loss of life. Nor can I think of a diplomatic solution that will work without the force of military action to compel it and, perhaps, to maintain it.

Warren Zimmerman, former Ambassador to Yugoslavia, in a recent article in the Washington Post, laid out what I believe is the only realistic goal: Give the Bosnian Serbs a limited time and certain deadline to agree to the plan advanced by the so-called contact group of five nations—a plan to which Mr. Milosevic has already agreed—which divides Bosnia virtually in half between the Serbs and their adversaries. But, as Ambassador Zimmerman correctly concludes, this outcome is only realistic if the Bosnian Serbs believe the West means business.

If this solution remains unacceptable to the Bosnian Serbs, there appears to be no other choice but a multilateral lifting of the arms embargo and an expedited removal of UNPROFOR forces.

Based on briefings I have had, I can find no acceptable rationale for a unilateral lifting of the embargo that would not involve the massive loss of life, or one without America being forced to arm and train Muslim forces, with the probability of a major spread of conflict in Croatia, Kosovo, and Macedonia.

In Bosnia, the single biggest problem for UNPROFOR has been that it is trying to carry out its mission with its hands tied. I truly believe that if a U.N. peacekeeping operation is unable to respond to hostile action taken against it, then it is unlikely to succeed.

UNPROFOR troops, through no fault of their own, have had to stand by and watch civilians get picked off by sniper fire, have their own equipment stolen and used against them, and finally, have 377 of them become hostages themselves.

The primary lesson of Bosnia for U.N. peacekeeping is that U.N. military commanders on the ground must have the authority, the weapons, and the trained fighting personnel to respond to hostile action with sufficient force to protect civilians and peacekeepers, and deter attack. This may require the establishment of permanent rapid response teams within U.N. peacekeeping missions, which will protect the mission and enable it to carry out its mandate.

In addition, peacekeepers need to be able to adapt to changing conditions. No matter how well a mission is planned, warring parties can force the United Nations to change its mission, and U.N. troops need to be able to respond. In this case, NATO's military response in the form of airstrikes is based on a ''dual key'' decisionmaking process, whereas both the United Nations and NATO commanders decide upon and coordinate the response. Targeting and execution are joint decisions by United Nations authorities and NATO military commanders.

The final point I'd like to make is that there is a need to develop alternative structures and alliances that can be employed both for peacekeeping and peacemaking.

Neither the United States, nor any other member state, can participate in every U.N.-sponsored effort to resolve every conflict. But I do believe that the United Nations can proceed most effectively if it is able to develop solid back-up among regional groupings and alliances.

Secretary General Boutros-Ghali has suggested that regional groupings like NATO, the Organization of the American States [OAS], and the Organization of African Unity [OAU] could appropriately take on peacekeeping responsibilities for certain types of missions in their regions. Other organizations that might contribute include the Association of Southeast Asian Nations [ASEAN] and the Newly Independent States of the former Soviet

Union. There is a healthy logic to putting together specific alliances in specific areas of the world, so that peacekeeping is carried out with some geographical relationship. Such missions would be strengthened by the political determination of neighbors—who could be affected should a war spread—to see that peace is the only result.

There are successful models that should be considered. One such case involved the United States, Israel, and Egypt, who, in the 1979 Camp David Accords, jointly established a private, United States-led peacekeeping operation in the Sinai peninsula—the Multinational Force and Observers [MFO]. This successful mission, undertaken without U.N. involvement, goes on to this day. It might serve as a model for other missions.

I have little doubt that the value of the United Nations to the international community and the United States will continue to grow. The United States simply does not have the support of its people, nor the resources, to assume the role of world-caretaker for the settlement of all disputes. The recognition of this fact will always bring people back to the conclusion that the United Nations is the best institution we have for dealing in a collective way with problems that affect the security of the United States and others.

Therefore, the United States has an obligation to work with the United Nations—not against it—to improve it, strengthen it, and make it more successful. With U.S. leadership, U.N. peacekeeping can indeed become more effective, better defined, and more realistically employed.●

TRIBUTE TO VAN VANCE

● Mr. MCCONNELL. Mr. President, I stand today to pay tribute to Van Vance, the ''Voice of the Cards.'' Van Vance has kept University of Louisville basketball and football fans tuned in on WHAS radio since the 1981–82 seasons. And today, I'm saddened to announce that one of the biggest Cardinals fans is giving up two of his true loves; play-by-play for U of L basketball and his ''Sportstalk'' radio show.

Van's voice will surely be missed by U of L basketball fans next season. He will also be missed by his old buddy and cohost, Jock Sutherland. For Cardinal fans, Jock and Vance are like the Siskel and Ebert of basketball, they have been inseparable for the past 13 seasons. Jock describes Van as ''an absolute total professional.'' In a recent article in Louisville's Courier Journal Jock called Van ''the Walter Cronkite of Louisville Sports. They can replace you and replace you with a good man, but there'll only be one Walter Cronkite.''

Van's love for basketball started at an early age. He earned the nickname ''Hawkeye'' while playing basketball at Park City High School. He lead the team in scoring during the 1951–52 season, and even though his career high was 39 points, Van most remembers a 34-point performance that included a perfect 18 of 18 from the free throw line. Those are just several reasons Van earned letters in four sports and an athletic scholarship to Western Kentucky University.

His first job in radio came after a station manager in Glasgow, KY, heard his delivery of an ''I Speak for Democracy'' speech. He wasted no time getting to work, he started the job just hours after his last basketball game at Park City High in 1952. Van still had ''Hoop Dreams.'' He went to play basketball for legendary Ed Diddle at Western Kentucky, but when the coach made him choose between basketball and radio, Van gave up the courts for the studio.

After several radio jobs, Van finally landed at WHAS–AM in Louisville. He started as a staff announcer in 1957, and then joined the sports staff in 1970. That same year, WHAS acquired the rights to broadcast the Kentucky Colonels' games of the American Basketball Association. Van did play-by-play for the Colonels until the franchise disbanded in 1976. Then in 1981, WHAS–AM was awarded the rights to U of L football and basketball games, and Van Vance was back on the air. The rest is Cardinals sports history.

Mr. President, I ask you and my fellow colleagues to pay tribute to the career of Van Vance. It has been a memorable one, highlights include; doing play-by-play for the Louisville victory over Duke in the 1986 NCAA championship, the Kentucky Colonels' victory in the 1975 ABA championship, the first basketball ''Dream Game'' between U of L and UK, and the football Cardinals big win in the 1991 Fiesta Bowl. A recent quote from Van sums it up best: ''I've always said a play-by-play announcer is like a surfer—the better the team, the better the game, the better announcer you can be. If you have a good wave, just ride it.'' Let's hope Van catches the ''Big Kahuna'' and the ''Voice of the Cards'' lives on in the hearts of cardinal fans young and old.●

ORDER OF BUSINESS

DEPARTMENT OF JUSTICE AND THE INFORMATION AGE

Mr. DOLE. Mr. President, 2 weeks ago the Senate took a dramatic step toward transforming our telecommunications laws for the 21st century.

CONGRESS SETS TELECOM POLICY

There were many important issues addressed in that debate. But today, I would want to hit on one of the bill's main themes. It is simple, but important—Congress will not play second fiddle to the courts, or any other branch of Government, when it comes to establishing telecommunications policy. Despite heavy opposition by the White House, I believe the final vote of 81 to 18 clearly demonstrated that Congress is now in charge.

This is not just a simple turf battle. Although, I seem to recall, that legislating is a function of Congress, sometimes the courts have forgotten this constitutional separation of powers.

No other branch has greater accountability than ours. Voters have the power to elect us, and they have the power to send us home. We serve at their pleasure.

So in effect, when Congress sets policy, it is set by the people. Neither the courts nor the executive branch can make that claim.

That is why I found it so troubling when the courts usurped Congress' authority to set telecommunications policy in the early 1980's. Instead of the voices of 535 Members of Congress, any judge in the country could unilaterally set telecommunications policy. And they have done so often, sending conflicting signals.

EXPANDING DOJ'S ROLE

The reason I raise this point is some Members of this body wanted to give the Department of Justice the same decisionmaking role as the courts. Under existing antitrust statutes, the Department of Justice prepares an analysis that it must defend and prove in court. In effect, it is the prosecutor. What DOJ wanted in the telecommunications bill, however, was to be both prosecutor and judge. Sort of one-stop shopping.

Mr. President, I did not support this expansion of power. To me, this was not an issue of whether you were pro-Bell or pro-long distance. Instead, I thought it set bad precedent. If we expanded DOJ's authority over Bell companies, someone could legitimately ask: ''Why shouldn't this so-called one-stop shopping be extended to the entire telecommunications industry? And why stop there. Maybe we should give DOJ such authority over all sectors of our economy.''

I do not believe that was the intent of my colleagues who supported giving the Department of Justice a decisionmaking role, but what I did hear, however, was that many colleagues believed that current antitrust standards were not sufficient.

AN OVERZEALOUS DOJ

Mr. President, antitrust standards are not only sufficient, but it seems to me that the current Department of Justice is overzealous in its use of these statutes.

Just take a look at an article entitled, ''Microsoft Corporation Broadly Attacks Antitrust Unit'' that appeared in the June 27 edition of the Wall Street Journal. It outlines Microsoft's latest problem with the Department of Justice's antitrust division.

More importantly, it sheds some light on how the Department of Justice intends to use its antitrust authority to regulate the information age. And to me it is frightening.

The article chronicles Microsoft's latest run-in with the Department of Justice and reports that DOJ is considering blocking Microsoft's efforts to

give customers package deals on certain Microsoft products. The specific products involved are Microsoft's updated windows software package and its new on-line service.

Let us understand what is going on here. A company develops a new product. A product that consumers want. But now the Government steps in and is in effect attempting to dictate the terms on which that product can be marketed and sold. Pinch me, but I thought we were still in America.

If somebody makes something and somebody wants it, you sell it. You do not have to go to the Department of Justice to get their approval.

Unfortunately, DOJ does not stop there. According to the article, and I quote, ''One of the [DOJ] document requests asks the company to produce 'all strategic plans prepared by or for Microsoft by any party and any documents provided by or to the board or top executives of Microsoft concerning predictions as to the future of computers and computer technology.' ''

If this report is accurate, DOJ is out of control.

Let us not forget, however, Justice has gone after Microsoft more than once this year. First, there was the accord reached between Microsoft and DOJ that Judge Sporkin opposed until the case was taken away from him.

Then there was Microsoft's efforts to purchase Intuit, a maker of personal banking software. This fell through after DOJ sued to block the deal. According to the Wall Street Journal, before DOJ took Microsoft to court, the company had complied with two DOJ subpoenas which involved producing 772 boxes of paper and a ''foot-high stack of answers'' to DOJ questions. That is right, 772 boxes of paper. Bureaucrats gone wild. Imagine all the time and money, not to mention a forest or two, wasted on complying with Justice's requests.

DOJ: AN EQUAL OPPORTUNITY MEDDLER

And it is not just Microsoft that DOJ has been eyeing lately. For instance, earlier this year this same Antitrust Division declared that a new cellular company by the name of Air Touch was a regional Bell operating company. As a result, it would carry all the restrictions of a Baby Bell company.

True enough, Air Touch was a spin-off from the Baby Bell company called Pactel. But let us not forget the facts.

Fact No. 1. Air Touch is not a subsidiary of Pactel, it is a separate company.

Fact No. 2. Air Touch was purchased with money not connected with Pactel.

Fact No. 3. Cellular or wireless services were not restricted under Judge Greene's break-up of Ma Bell. As Air Touch is a wireless company, how can it have restrictions placed upon it that are not even applicable to a real Bell company? It just does not make any sense.

Now DOJ may believe that Air Touch is a Bell company because it is composed of former Bell property. I guess that makes Bell companies the modern day equivalent of King Midas—anything they touch turns into a Bell company.

Unfortunately, that line of logic creates a new problem. Bell companies have been off-loading all sorts of property to different companies in the last decade. Does that make all of these buyer companies a Bell company, too?

The bottom line is that DOJ cannot and has not justified its actions.

BIG GOVERNMENT: DOJ'S EXPERTISE

Ironically, this is the same Department of Justice that wanted us to give them a key role to play in telecommunications policy, because, get this, they have greater expertise than the FCC. I read articles like the Wall Street Journal's and I am left wondering: ''Greater expertise in what?'' Maybe it's in big government micromanaging business. Or maybe it's that they have greater expertise in scuttling new services and products. Whatever it is, America does not need that type of expertise.

CONCLUSION

Mr. President, if DOJ is able to be this meddlesome under current law, just imagine if we had increased its authority under the telecommunication bill. Unlike Congress, they have little or no accountability.

That is why Congress—not the executive or judiciary branches—should set telecommunications policy.

Mr. President, I ask unanimous consent that the article which appeared in the June 27 Wall Street Journal be printed in the RECORD.

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

[From the Wall Street Journal, June 27, 1995]

MICROSOFT CORP. BROADLY ATTACKS ANTITRUST UNIT

ACTING TO QUASH SUBPOENA, FIRM SAYS IT'S FACING APPARENT ''HARASSMENT''

(By Viveca Novak and Don Clark)

Microsoft Corp., trying to quash a government subpoena related to its new on-line information service, launched a broad attack on the Justice Department's antitrust division.

In its unusual challenge to the subpoena, the Redmond, Wash., software giant lashed out against the department and belittled the legal theories the agency might use to block the company from bundling access to the Microsoft Network with Windows 95, the much-promoted operating system due for release in late August.

Microsoft says it ''has been subjected to a series of burdensome document demands . . . that shows no sign of abating.'' The antitrust division ''seems to be doing its level best to hinder Microsoft's efforts,'' it says, and it calls the subpoena ''the latest salvo in what increasingly appears to be a campaign of harassment directed against Microsoft.''

Microsoft's petition, filed Friday in federal court in the Southern District of New York, asks that the subpoena be set aside. The Justice Department responded yesterday with a motion to strike the petition, setting forth a different version of circumstances surrounding last week's subpoena. The subpoena gave the company only a few days to respond to 33 sets of questions and 16 requests for documents, some of them sweeping.

For example, one of the document requests asks the company to produce ''all strategic plans prepared by or for Microsoft by any party and any documents provided by or to the board or top executives of Microsoft concerning predictions as to the future of computers and computer technology.''

The two sides even disagree about the date the subpoena was issued; Microsoft said it was Wednesday, while the government asserts Microsoft was given a ''courtesy copy'' two days earlier, with slight modifications on Wednesday.

William Neukom, Microsoft's general counsel, said that filing the petition was simply a matter of ''protecting ourselves against the consequences'' of missing the government's deadline, since Microsoft didn't comply with Wednesday's subpoena. The government could have asked a judge to impose sanctions on the company.

Mr. Neukom said Microsoft filed the petition in New York because it was convenient to the company's outside law firm and because courts in New York ''have a history of dealing with fast-moving, complicated business transactions.'' Antitrust experts speculated that Microsoft didn't want to file in Washington because the company might draw Judge Stanley Sporkin, whose sharply critical decision against a separate antitrust accord involving Microsoft was recently overturned.

For its part, the Justice Department contends it was still in negotiations with Microsoft on the scope and timing of delivering the documents when Assistant Attorney General Anne Bingaman received a Friday-morning call from Microsoft's outside counsel ''stating that he was standing in the chambers'' of a district court judge and had moved to quash the subpoena.

Microsoft acted in bad faith, the department's motion defending the subpoena states, by abruptly terminating ''an established negotiating process.'' Microsoft and a Justice Department lawyer had been negotiating Thursday to narrow the scope of the subpoena, and talks hadn't broken off. The motion asserts that Microsoft's petition concerns a matter that should be worked out between the parties. Microsoft's petition is a ''tempest in a teapot,'' the department says.

If the Justice Department were to file suit to force Microsoft to remove software for tapping into its new on-line service from Windows 95, Microsoft may have trouble meeting its Aug. 24 deadline to release the product.

Microsoft is taking an unusual step in filing a copy of the latest Justice Department subpoena with its petition. Many targets of antitrust probes attempt to keep such information requests from becoming part of the public record, since the documents sometimes contain confidential company data or give unflattering hints about areas the agency is investigating. In this case, Microsoft apparently hopes to use the sheer breadth of the department's latest subpoena to bolster the company's case that it is being treated unfairly.

Microsoft isn't the only company receiving subpoenas with short turnaround times. The department also has issued such subpoenas to competing on-line services, software suppliers and companies that plan to supply content for the Microsoft Network, also known as MSN.

One major focus of Wednesday's subpoena is the relationship between the MSN and independent companies that will sell goods or information over the new network. That suggests the agency is examining whether the company is competing unfairly with other on-line services in wooing ''content'' suppliers.

The subpoena asks for the ''full consideration'' paid by Microsoft to each content

company, for example, and whether Microsoft has exclusive rights to their content. Microsoft has said content companies get a standard split of revenues for their services, and are not required to sign exclusive contracts.

Another focus is on Microsoft software, dubbed Blackbird, for developing new content offerings, and on whether companies that use Blackbird can develop content for other on-line services. The subpoena also asks for extensive data on projected sales and expenses tied to MSN and other Microsoft products, including Windows 95.

Last Week, the agency intensified its search for data that might bolster a case that Microsoft's new network might attain market dominance quickly.

One previously undisclosed source is Pipeline Communications Inc. Among other things, the Atlanta company works for on-line services, offering a speedy way for new PC users to try out those services soon after they turn on their machines for the first time. The Justice Department approached Pipeline early last week.

According to Pipeline's data, about 60% of the people offered these trial memberships subscribed, said Matt Thompson, Pipeline's president. If that experience carried over to the huge number of Windows 95 users, MSN could quickly dwarf other on-line services, some industry executives said. Dataquest Inc. expects Windows 95 to sell 30 million copies in just its first six months on the market.

Microsoft's petition seems at least partly a bid to elicit sympathy by portraying itself as the victim of intensive and unfairly focused antitrust-division scrutiny since August 1993. That's when Ms. Bingaman, the division's head, reopened a Federal Trade Commission investigation begun in 1990 and closed after commissioners deadlocked on whether to bring a case.

In large part, the petition catalogs Justice Department requests for information. For example, when Microsoft sought last fall to buy Intuit Inc., a maker of popular personal-finance software, it gave the department 37 boxes of documents in response to its first subpoena, the petition said. A second department request produced 735 more boxes of papers, plus a foot-high stack of answers to questions, after the request was narrowed in negotiations, according to the petition. The Justice Department sued to block the Intuit acquisition, and Microsoft dropped the deal.

The subpoena being challenged is the second issued to Microsoft in connection with the current investigation. Another was issued June 5 and demanded a response by June 9, but the department agreed to extend the deadline. Mr. Neukom was in Washington to meet with Ms. Bingaman last week when he learned the department wanted more data.

TRIBUTE TO EDWARD BANKS

Mr. DOLE. Mr. President, at the end of this month, the Senate will be losing one of our most distinguished employees when Edward Banks retires.

Currently the assistant supervisor of the material facility warehouse section of the U.S. Senate Service Department, Edward has served the Senate with loyalty and dedication for over 36 years.

When Edward served as a messenger in the 1970's and 1980's, he was fondly known throughout the Senate as the ''wagon master''—hailing back to the days of the 1800's when documents, materials, and equipment were delivered by horse and wagon on the Capitol grounds.

Edward carried this affectionate title with pride and great distinction.

I know I speak for all the Senate when I thank Edward Banks for his 3½ decades of distinguished service, and wish him a happy and healthy retirement.

TRIBUTE TO FLORENCE NOLAND

Mr. DOLE. Mr. President, with the August retirement of Florence Nolan, customer service and records specialist in the U.S. Senate Service Department, the Senate will be losing the services of an employee who truly has mastered the nuts and bolts operations of this Chamber.

Florence began her Senate service in the Senate restaurant in 1959. In 1970, she accepted a position with the Sergeant-at-Arms in the service department, where she has worked in a variety of positions ever since.

She is an extremely competent and loyal employee who has made a difference wherever she has served.

I join with all my colleagues in thanking Florence Nolan for her many years of service, and in sending our best wishes for her retirement.

TRIBUTE TO CLAIRE CRIM

Mr. DOLE. Mr. President, for 37 years, Senators, staffers, and members of the public who have dealt with the Senate Services Department have come into contact with Claire Crim.

It is Claire who has welcomed staff and visitors, routed phone calls, filed work orders, and entered computer data. She has fulfilled all these duties and more with a great degree of skill and professionalism.

Claire is retiring from her position as customer service/records specialist at the end of the month, and I join with all my colleagues in thanking her for her nearly four decades of services, and in wishing her a happy and healthy retirement.

SALUTE TO ERIK WEIHENMAYER AND AFB HIGHSIGHTS '95

Mr. DOLE. Mr. President, on Tuesday evening Erik Weihenmayer and his climbing partners reached the summit of Mount McKinley, 20,320 feet into the Alaskan sky and the highest point in North America. Mount McKinley is called ''Denali''—the Great One—by Native Alaskans.

Under the best of circumstances, Mount McKinley is one of the toughest climbs in the world. Average daytime temperatures are a bonechilling 20 degrees below zero, dipping to 40 below at the summit. The National Park Service reports that the success rate for reaching the top is just 47 percent. Since 1913, 79 climbers have died on the mountain. Six died earlier this year.

Mount McKinley is the ultimate challenge for any serious climber. But it is a unique challenge for Erik Weihenmayer, who is blind. Erik was born with limited vision, and lost all his sight by age 13.

Most of the time, Erik is a 26-year old fifth-grade teacher and wrestling coach in Phoenix, AZ. About 10 years ago he took up mountain climbing. He uses two ski poles to locate the footprints of the hiker ahead of him, and then steps in the same tracks. To maintain balance and direction, Erik hangs on to a taut rope tied to his partner. Other than that, he carries the same gear and equipment as other team members.

As Erik has said, ''I may do things a little different, but I achieve the same process * * * . There's very little my team has to do to accommodate me.''

Over the past 10 years, Erik had trekked the Inca Trail in the Andes of South America, the Rockies in Colorado, and other demanding spots around the world.

On June 9, under the sponsorship of the American Foundation for the Blind, Erik and four others set out to conquer the summit of Mount McKinley. The other members of the AFB HIGHSIGHTS '95 team are Sam Epstein, of Tempe, AZ; Ryan Ludwig of Laramie, WY; and Jeff Evans and Jamie Bloomquist of Boulder, CO.

The AFB HIGHSIGHTS '95 team prepared for this climb for 8 months, with rigorous training. Since January, the team also climbed Humphrey's Peak near Flagstaff, AZ; Long's Peak in Colorado; and Mount Rainier in Washington State, all in blizzard-like conditions.

Mr. President, the American Foundation for the Blind deserves great credit for making this climb possible. Founded in 1921, AFB is one of the Nation's leading advocates for the blind.

AFB's motto is ''We help those who cannot see live like those who do.'' Erik exemplifies this spirit. Early on, he decided that ''Blindness would often be a nuisance, would always make my life more challenging, but would never be a barrier in my path.''

Mr. President, the message of AFB HIGHSIGHTS '95 is universal, extending well beyond blindness. It inspires all of us to realize our potential rather than focusing on our limitations.

Coincidentally, Tuesday also marked the 115th anniversary of the birth of Helen Keller. For 40 years, Helen Keller was AFB's Ambassador of Goodwill. At the age of 74, on an around the world flight, she said, ''It is wonderful to climb the liquid mountains of the sky. Behind me and before me is God and I have no fears.'' I imagine that Erik and the AFB HIGHSIGHTS '95 team have been similarly inspired.

Mr. President, let us wish Erik Weihenmayer and his climbing partners Godspeed and a safe return.

CHANGE OF VOTES

Mr. AKAKA. Mr. President, I ask unanimous consent that I be allowed to

change my vote on final passage of H.R. 1058, vote No. 295, the Securities Reform Act of 1995. I voted in favor of the passage of the bill. It was my intention to vote ''no.'' This change in vote will not alter the outcome of the vote.

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

Mr. AKAKA. Mr. President, I also ask unanimous consent that I be allowed to change my June 20, 1995, vote on the motion to table the Lautenberg amendment, vote No. 270, relating to highway speed limits during the debate on S. 440, the National Highway System designation bill. I had inadvertently voted in support of the motion to table the amendment. I wish to be recorded as having voted against the motion to table the Lautenberg amendment. This change in vote will not alter the outcome of the original vote.

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

PRIVATE SECURITIES LITIGATION REFORM ACT

Mr. ROCKEFELLER. Mr. President, today, I joined a large number of my Senate colleagues in voting for S. 240, the Private Securities Litigation Reform Act of 1995. The 70-to-29 vote for this bill in its revised form demonstrated strong bipartisan commitment to repairing and changing the country's securities litigation system.

Like any effort to change the status quo, especially through legislation that must win a majority of support from diverse corners, this final product cannot be called perfect. Compromises and tough judgment calls had to be made throughout the process of grappling with a very complex set of issues posed by securities and the legal system. After much consultation and reflection, today I felt the vote for a more rational, less costly, and improved system was a vote for this bill.

This bill's fundamental purpose is to reduce and deter frivolous and meritless lawsuits in the securities area. The idea is by no means just to protect potential defendants. the need for legislation is based on the costs and problems created by the current system for investors when they cannot get helpful information on investment opportunities; for working Americans when the legal costs of the current system saps jobs, capital, and growth; and for participants like accountants who are at risk of liability that's far beyond their fault. In other words, repairing the system is designed to resolve problems that are hurting small and large investors, workers and our communities, and specific people professionally involved in securities.

Thirty-one years ago I went to Emmons, WV, to be a VISTA worker because I wanted to make some small difference in the lives of other people. I quickly learned that West Virginians are people who value hard work, and are ready to earn their fair share of what society has to offer.

But there were not enough jobs in Emmons, or in many other places in West Virginia. After deciding to make public service my career and West Virginia my permanent home, I also made creating long-term, well-paying jobs for West Virginians one of my main goals. Three decades later, it is still my focus. Almost everything I do for West Virginia must be weighed against that goal of creating the opportunity for West Virginians to earn a living, and, through work, to achieve the quality of life they seek.

And when West Virginians are able to earn a decent living, and are able perhaps to invest a few dollars for their futures through savings or investment, I want to make sure that they are treated fairly and are protected.

It was for both of these reasons—protecting the small companies in West Virginia that create quality jobs and protect wage-earner investors—that I have sponsored the current legislation regarding securities litigation. The bill I sponsored would go a long way toward curtailing what I believe is an epidemic of frivolous securities fraud lawsuits that are brought by a small cadre of lawyers against often small and start-up companies, and against their lawyers and accountants who may have little to do with the operation of the company.

The stated purpose of S. 240, as introduced last January, was to facilitate the ability of companies to gather capital for investment, the underlying theory being that frivolous lawsuits against corporations make it very difficult to do so. While American securities markets have been very successful, the Banking Committee, after extensive hearings, reported that class action suits, as well as the fear of being sued in a class action by professional plaintiffs has the capital formation markets in terror. From this flows the need to come to a better balance between protecting the rights of investors and the standards of recovery. In my view, this is an appropriate goal.

When I was asked to cosponsor S. 240 in January, I carefully analyzed its provisions to make sure that it struck a fair balance, and I came to the conclusion that it did. Regarding frivolous lawsuits, the bill contained many important provisions to assure that meritless lawsuits can be dealt with in an expeditious and less costly way. And there were several important protections for investors as well, including a 1-year extension of the statute of limitations for securities suits, the creation of a self-disciplinary auditor oversight board to assure truthfulness of securities statements; and encouragement of alternative dispute resolution for both plaintiffs and defendants, rather than resorting to lengthy and costly litigation in the courts. Unfortunately, several of these investor protection provisions have been deleted from the bill.

The Banking Committee's action was not one-sided, however, and the bill contains a number of valuable provisions, and changes, to help deter frivolous lawsuits. A review of these changes reveals that the Committee did:

Lower the pleading requirements, somewhat, to a standard set by the leading Federal circuit.

Eliminate an onerous ''loser pays'' provision, but replaced it with a mandatory requirement that judges review pleadings in these cases under Federal Rule 11, which will most often mean that investor-plaintiffs, but not defendants, may be punished. Judges already have this responsibility under Rule 11, and it should be equally applied to plaintiffs and defendants—An amendment by Senator BINGAMAN has now made this provision more balanced.

Eliminate an investor-plaintiff ''steering committee'' to manage the securities class action, but replaced it with a troublesome lead plaintiff provision which will likely result in large institutional investors—to the exclusion of small investors—controlling class actions—An amendment by the Senator BOXER, which would have corrected this shortcoming was defeated during earlier consideration of the bill.

Eliminate a dollar threshold to be the named plaintiff.

Partially restore SEC enforcement against those who aid and abet the commission of a fraud by another, but failed to restore a private right of action.

Other changes included in the committee bill include:

Expanding the protections of the legislation to include the 1933 Securities Act.

Creating a legislative safe harbor for forward-looking economic statements about a company, thus ending an ongoing rulemaking on this subject by the SEC.

An extension of the proportional liability protections.

Providing that investors with the largest financial interest, will control securities class action suits.

Eliminating the loser pays provision, as stated earlier, and replacing it with a provision with a strong presumption of fee-shifting against investors only.

During the Senate's floor consideration of the legislation over the past week, a number of amendments were proposed by some of my colleagues from the Banking Committee. I strongly supported a number of these initiatives, and want to review each of them.

STATUTE OF LIMITATIONS AMENDMENT

In 1991, the Supreme Court decided in the Lampf versus Gilbertson case to establish a uniform statute of limitations applicable to implied private actions under the Securities Exchange Act of 1934. Before this decision, Federal courts had followed the statute of limitations in the applicable State.

The timeframe established was consistent with that for express causes of action for false statements, misrepresentation, and manipulation under the 1934 Act: One year from the date of discovery of the violation or discovery of the facts constituting the violation, or 3 years from the date of the violation.

In 1991, an extension of this statute of limitations was proposed as part of the FDIC Improvement Act. Its supporters sought to change the statute of limitations to 2 years after the plaintiff knew of the securities violation, but in no event more than 5 years after the violation occurred. This provision was dropped because of the argument that it should only be enacted as part of a bill with further reform of the securities litigation system, as we are now doing.

The extension of the statute of limitations was part of both the Domenici/Dodd bill from the 103d Congress, and the original version of S. 240 this year that I cosponsored.

The original S. 240 also provided that a violation that should have been discovered through the exercise of reasonable diligence would fall under the 2-year category.

An amendment rejected by the Senate would have returned the statute of limitation provision to that which was in the original version of S. 240. In the committee markup, the statute of limitation provision was taken out, returning to a shorter 1-year/3-year provision.

A good number of our colleagues believed that this provision was harmful to business in that it would establish, at least de facto, a 5-year statute of limitation; that 3 years is a reasonable cap because after that, cases become stale and more difficult to defend; that a 1-year minimum is enough time to get a suit ready; that there are other adequate remedies including State actions, blue sky laws, and occasionally awarding of disgorgement funds by the SEC; and that the amendment would invite claim speculation—allowing investors to sit back and see if they turn a profit before suing.

There were persuasive arguments put forth by supporters, as well. For example, the Senator from Nevada [Mr. BRYAN] argued that:

The bill as reported has a statute of limitations that is shorter than that in 31 states. Thirteen States also allow tolling of the statute until fraud is discovered.

Under current law, it is too easy for a claim to be barred through no fault of the investor, especially because fraud is difficult to detect.

I supported the amendment because I did not believe that it would adversely impact capital formation, and thus job creation.

AIDING AND ABETTING AMENDMENT

Prior to 1994, courts in every circuit supported the right of investors to sue those who aid and abet securities fraud. This right arose from common law, but was not specifically provided for in Federal securities statutes. For primarily this reason, the Supreme Court—in 1994—eliminated the right of investors to sue aiders and abettors of fraud.

The Senator from Connecticut [Mr. DODD] upon whose advice I depend heavily in this matter, as well as the SEC, the administration, and even the Supreme Court, has expressed the belief that the private right of action to pursue those who aid and abet should be replaced by statute. At the Committee hearing, Senator DODD said, ''This is conduct that must be deterred, and Congress should enact legislation to restore aiding and abetting liability in private actions.''

The SEC testified before the Banking Committee strongly in favor of restoring this investor right because of its deterrent effect on fraudulent behavior. Otherwise, those who knowingly or recklessly assist in a fraud will be shielded.

However, the committee failed to restore the private right of action, but did empower the SEC to bring aid and abet actions, although not authorizing any additional resources for the SEC to undertake this added responsibility.

In my opinion, protecting aiding and abetting has nothing to do with capital formation, since it is not applicable to the primary investment company. I thus supported an amendment, offered by the Senator from Nevada [Mr. BRYAN] which sought to restore this important right of investors to seek redress only against those who knowingly or recklessly provide substantial assistance to another who commits fraud.

SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS AMENDMENT

The term ''forward-looking statements'' is broadly defined in S. 240 to include financial projections on items such as revenues, income, and dividends, as well as statements of future economic performance required in documents filed with the SEC. As with any attempt to foresee the future, such statements always have an element of risk to them, and prudent investors must be careful in relying on them.

Up until 1979, the SEC prohibited disclosure of such forward-looking information because it felt that this information was unreliable, and it feared that investors would place too much emphasis on these materials. After extensive review, the SEC adopted a safe harbor regulation for forward-looking statements in 1979. This regulation—known as rule 175—offers protection for specified forward-looking statements when made in documents filed with the SEC. The theory for the safe harbor was to encourage voluntary disclosure by companies to the SEC. To sustain a fraud suit, a plaintiff/investor needed to show that the forward-looking information lacked a reasonable basis and was not made in good faith.

The effectiveness of this regulation has been widely criticized, and as recently as May 19, 1995, SEC Chairman Arthur Levitt acknowledged ''a need for a stronger safe harbor than currently exists.'' In fact, the SEC is currently conducting a rulemaking on its safe harbor regulation.

The original S. 240 bill required the SEC to consider adopting rules or making recommendations for expanding the safe harbor. This idea was strongly endorsed by SEC Chairman Levitt, among others.

However, the Banking Committee abandoned this approach in favor of enacting a statutory safe harbor provision. Many have argued that the SEC is in the best position. Many have argued that the SEC is in the best position to tailor rules for this issue. The SEC will be able to closely monitor the effects of any new policy and quickly modify it if need be. The SEC also has the advantage of having already examined this problem in great detail.

More important, however, is the way the committee did this. Under the committee version of S. 240, a forward-looking statement can only be the basis for fraud finding if the investor-plaintiff can prove that the statement is knowingly made with the expectation, purpose, and actual intent of misleading investors. Expectation, purpose, and actual intent are to be treated as separate elements, each of which must be proven independently. This is an extremely difficult standard to meet—an amendment adopted by voice vote removed the ''expectation'' requirement.

Any safe harbor provision, whether statutory or by regulation, places a greater burden on the investor to uncover fraudulent misrepresentations. However, in order to encourage companies to file information with the SEC, most believe it is important to have some safe harbor provision. Because I believed that the committee's changes to S. 240 might make it more difficult for investors to prove that forward-looking statements should be liable for fraud—and thus that the SEC promulgated rule currently is a much better standard and that the Congress should leave this to the SEC—I supported the amendment to return this provision to the original S. 240 version.

That amendment failed, and the Senator from Maryland, Mr. SARBANES, proposed an amendment to modify the standard for recovery for fraudulent forward looking statements to require a showing that it was made with actual knowledge it was false or actual intent of misleading. This was what I believed was a reasonable middle-ground standard between what all agreed to be an ineffective current rule on safe harbor—reasonable basis/good faith—and the stringent actual intent standard inserted in the bill by the committee. Unfortunately, this amendment was tabled.

PROPORTIONAL LIABILITY AMENDMENT

Under current law, each defendant who conspires to commit a securities violation is joint and severally liable, and thus can be held accountable for

100 percent of damages found by a court. Most agree that this unfairly treats defendants who have only a small percentage of responsibility.

As originally introduced, S. 240 provided for joint and several liability to be maintained only for primary wrongdoers, knowing violators, and those controlling knowing violators.

As the bill reported by the committee, only knowing violators are held joint and severally liable. Knowing securities fraud is defined in the bill to exclude reckless violators, whose liability would be reduced to proportional liability. Additionally, if the judgment is uncollectible, proportionally liable defendants can be held to pay an additional 50 percent of their share, and can be made to pay the uncollectible share to investors with net worth less than $200,000 and who have lost more 10 percent of their net worth. Under the 50 percent provision, a defendant could be liable for up to 150 percent of their proportional share.

The bill's proportionality provision is an improvement over current law, but may not fully protect investors when a judgment is uncollectible from a primary defendant. An exception was carved out so that those who have invested more than 10 percent of their net worth might still recover at least some portion of the damages even from the non-primary defendant.

An amendment proposed by Senators BRYAN and SHELBY would have allowed for full reallocation of uncollectible shares among culpable defendants, while maintaining a system of proportionality as contained in the committee bill, to protect minimally responsible defendants, who are usually the accountants and attorneys, but at the same time would have been, I believe, fairer to victims of investment fraud.

I supported this important amendment because I believed that it was a vast improvement over the current system of joint and several liability, but also as a stronger protection for investors.

To conclude, Mr. President, I am disappointed that the managers supporting S. 240 rejected the amendments offered that I voted for. Perhaps some further enlightenment and discussion will inspire the conferees to incorporate some of them to ensure the balance that I think the legal system also calls for.

Because the current system and its problems should not be left alone, I still came to the conclusion that a vote for the bill was in the interests of the people I represent and the country. Most of us may not be aware of the way the securities litigation system ultimately affects jobs, economic growth, and opportunity. The proponents of this bill have reminded us of these very real-life and serious effects. Today, I felt it was time to support action to revise and change the system so that it's more about common sense than a proliferation of lawyers and legal costs.

PRIVATE SECURITIES LITIGATION REFORM ACT

Mr. DODD. Mr. President, now that the Senate has completed action on S. 240, the Securities Litigation Reform Act, I wanted to take a few moments to focus on many of the salient provisions of this legislation that were not fully discussed during our 5 days of debate on 17 different amendments.

Of course, I am extremely pleased that the legislation received an overwhelming vote of support from my colleagues this morning, passing by a margin of 70 to 29.

This vote is yet another confirmation of the very strong bipartisan support that the bill has received in the Senate and it also reflects the broad coalition of investor groups and businesses that have supported these reform efforts for the past 4 years.

This is certainly an important day for American investors and the American economy. Passage of S. 240 puts us well on the road to restoring fairness and integrity to our securities litigation system.

To some, this may sound like a dry and technical subject, but in reality, it is crucial to our investors, our economy and our international competitiveness. We are all counting on our high-technology and bio-technology firms to fuel our economy into the 21st century. We are counting on them to create jobs and to lead the charge for us in the global marketplace.

But those are the same firms that are most hamstrung by a securities litigation system that works for no one—save plaintiffs' attorneys.

Over the past 1½ years, the intense scrutiny on the securities litigation system has dramatically changed the terms of debate, as we have seen on the floor for the past 5 days.

We are no longer arguing about whether the current system needs to be repaired; we are now focused on how best to repair it.

Even those who once maintained that the litigation system needed no reform are now conceding that substantive and meaningful changes are required if we are to maintain the fundamental integrity of private securities litigation.

The flaws in the current system are simply too obvious to deny. The record is replete with examples of how the system is being abused and misused.

While there has been much discussion of the position of the Securities and Exchange Commission, it is important to note that the Chairman of the SEC, Arthur Levitt, agrees with the fundamental notion that we must enact some meaningful reform:

> There is no denying that there are real problems in the current system—problems that need to be addressed not just because of abstract rights and responsibilities, but because investors and markets are being hurt by litigation excesses.

The legislation under consideration today is based upon the bill that Senator DOMENICI and I have introduced for the last two Congresses.

There are some provisions from the original version of S. 240 that I would have liked to see included in this bill, such as an extension of the statute of limitations on private actions.

In fact, I strongly supported an amendment offered by my good friend, Senator BRYAN, that would have extended the statute of limitations from 1 year after the fraud is discovered to 2 years and from 3 years after the actual perpetration of the fraud to 5 years.

It is also important to note that the statute of limitations was decreased by the Supreme Court in last year's Central Bank decision, and not by any part of S. 240.

But I certainly understand why this provision was taken out of the committee's product. It is excruciatingly difficult to produce a balanced piece of legislation, especially in such a complex and contentious area.

But that is exactly what the Senate passed today, a bill that carefully and considerately balances the needs of our high-growth industries with the rights of investors, large and small. I am proud of the spirit of fairness and equity that permeates the legislation.

I am also proud of the fact that this legislation tackles a complicated and difficult issue in a thoughtful way that avoids excess and achieves a meaningful equilibrium under which all of the interested parties can survive and thrive.

As I stated earlier, this is a broadly bipartisan effort. This bill passed the Banking Committee with strong support from both sides of the aisle, and the 70 Senators from both parties who voted in favor of the bill this morning, represent all points on the so-called ideological spectrum.

I believe that this morning's strong show of support displays the desire of the Senate to stand in favor of the balanced approach of S. 240. In my view this vote also demonstrates the Senate's disagreement with the more extreme securities reform bill (H.R. 1058) that passed the other body in March.

Those of us who have supported this legislation must be very mindful of the close vote that occurred on the second SARBANES amendment to further limit the safe harbor provisions of the bill.

I, for one, am committed to ensuring that as we move to a conference with the other body, we retain a safe harbor provision that is truly meaningful but that gives no aid and comfort to those who would try to defraud investors.

And I would like to use this opportunity to reinforce the statement that I made earlier today: I will urge my colleagues to reject any conference report that includes safe harbor provisions —or any other provision for that matter—that are so broadly expanded that they breach the rights of legitimately aggrieved investors.

Mr. President, H.L. Mencken once said that every problem has a solution that is neat, simple, and wrong. Believe me, if there were a simple solution to the problems besetting securities litigation today, we would have been able

to pass a bill after 5 minutes, rather than 5 days, of floor debate.

But these problems are so pervasive and complex that we have moved far beyond the point where the public interest is served by waiting for the courts or other bodies to fix them for us.

The private securities litigation system is too important to the integrity and vitality of American capital markets to continue to allow it to be undermined by those who seek to line their own pockets with abusive and meritless suits.

Let me be clear: Private securities litigation is an indispensable tool with which defrauded investors can recover their losses without having to rely upon Government action.

I cannot possibly overstate just how critical securities lawsuits brought by private individuals are to ensuring public and global confidence in our capital markets. These private actions help deter wrongdoing and help guarantee that corporate officers, auditors, directors, lawyers, and others properly perform their jobs. That is the high standard to which this legislation seeks to return the securities litigation system.

But as I said at the beginning of floor debate, the current system has drifted so far from that noble role that we see more buccaneering barristers taking advantage of the system than we do corporate wrongdoers being exposed by it.

But there is more at risk if we fail to reform this flawed system. Quite simply, the way the private litigation system works today is costing millions of investors—the vast majority of whom do not participate in these lawsuits—their hard-earned cash.

Mary Ellen Anderson, representing the Connecticut Retirement & Trust Funds and the Council of Institutional Investors, testified that the participants in the pension funds,

> . . . are the ones who are hurt if a system allows someone to force us to spend huge sums of money in legal costs . . . when that plaintiff is disappointed in his or her investment. Our pensions and jobs depend on our employment by and investment in our companies. If we saddle our companies with big and unproductive costs . . . we cannot be surprised if our jobs and raises begin to disappear and our pensions come up short as our population ages.

There lies the risk of allowing the current securities litigation system to continue to run out of control. Ultimately, it is the average investor, the retired pensioner who will pay the enormous costs clearly associated with this growing problem.

Much of the problem lies in the fact that private litigation has evolved over the years as a result of court decisions rather than explicit Congressional action.

Private actions under rule 10(b) were never expressly set out by Congress, but have been construed and refined by courts, with the tacit consent of Congress. But the lack of Congressional involvement in shaping private litigation has created conflicting legal standards and has provided too many opportunities for abuse of investors and companies.

First, it has become increasingly clear that securities class actions are extremely vulnerable to abuses by entrepreneurs masquerading as lawyers. As two noted legal scholars recently wrote in the Yale Law Review:

> . . . The potential for opportunism in class actions is so pervasive and evidence that plaintiffs' attorneys sometimes act opportunistically so substantial that it seems clear that plaintiffs' attorneys often do not act as investors' ''faithful champions.''

It is readily apparent to many observers in business, academia—and even Government—that plaintiffs' attorneys appear to control the settlement of the case with little or no influence from either the named plaintiffs or the larger class of investors.

For example, during the extensive hearings on the issue before the Subcommittee on Securities, a lawyer cited one case as a supposed showpiece of how well the existing system works. This particular case was settled before trial for $33 million.

The lawyers asked the court for more than $20 million of that amount in fees and costs. The court then awarded the plaintiffs' lawyers $11 million and the defense lawyers for the company $3 million. Investors recovered only 6.5 percent of their recoverable damages. That is 6½ cents on the dollar.

This kind of settlement sounds good for entrepreneurial attorneys, but it does little to benefit companies, investors or even the plaintiffs on whose behalf the suit was brought.

A second area of abuse is frivolous litigation. Companies, particularly in the high-technology and bio-technology industries, face groundless securities litigation days or even hours after adverse earnings announcements.

In fact, the chilling consequence of these lawsuits is that companies—especially new companies in emerging industries—frequently release only the minimum information required by law so that they will not be held liable for any innocent, forward-looking statement that they may make.

Last week, I related to my colleagues the case of Raytheon Co., one of the Nation's largest high-tech, firms. This example warrants recapitulation here. Raytheon made a tender offer of $64 a share for E-Systems, Inc., a 41 percent premium over the closing market price. Let me allow Raytheon to explain what happened next:

> Notwithstanding the widely held view that the proposed transaction was eminently fair to E-Systems shareholders, the first of eight purported class action suits was filed less than 90 minutes after the courthouse doors opened on the day that the transaction was announced. [Raytheon letter to Senator Dodd; June 19, 1995.]

No one lawyer could possibly have investigated the facts this quickly. What the lawyers want here is to force a quick settlement.

The Supreme Court in Blue Chip Stamps versus Manor Drug Store echoed this concern about abusive litigation, pointing out:

> [i]n the field of federal securities laws governing disclosure of information, even a complaint which by objective standards may have very little success at trial has a settlement value to the plaintiff out of any proportion to its prospect of success at trial . . . The very pendency of the lawsuit may frustrate or delay normal business activity of the defendant which is totally unrelated to the lawsuit.

The third area of abuse is that the current framework for assessing liability is simply unfair and creates a powerful incentive to sue those with the deepest pockets, regardless of their relative complicity in the alleged fraud.

The result of the existing system of joint and severable liability is that plaintiffs' attorneys seek out any possible corporation or individual that has little relation to the alleged fraud—but which may have extensive insurance coverage or otherwise may have financial reserves. Although these defendants could frequently win their case were it to go trial, the expense of protracted litigation and the threat of being forced to pay all the damages make it more economically efficient for them to settle with the plaintiffs' attorneys.

The current Chairman of the SEC, Arthur Levitt, as well as two former Chairmen, Richard Breeden and David Ruder, have all spoken out against the abuses of joint and several liability. Chairman Levitt said at the April 6 hearing of the Securities Subcommittee that he was concerned, in particular, ''about accountants being unfairly charged for amounts that go far beyond their involvement in particular fraud.''

Frequently, these settlements do not appreciably increase the amount of losses recovered by the actual plaintiffs, but instead add to the fees collected by the plaintiffs' attorneys.

Again, the current system has devolved to a point where it favors those lawyers who are looking out for their own financial interest over the interest of virtually everybody else.

At the beginning of debate on this bill, I spent a fair amount of time discussing, in some detail, the various provisions of the legislation. I would like to again return our focus to how the legislation that the Senate passed earlier today deals with the existing problems in the securities litigation system:

First, the legislation empowers investors so that they, not their lawyers, have greater control over their class action cases by allowing the plaintiff with the largest claim to be the named plaintiff and allowing that plaintiff to select their counsel.

Second, it gives investors better tools to recover losses and enhances existing provisions designed to deter fraud, including providing a meaningful safe harbor for legitimate forward-looking statements so that issuers are encouraged, instead of discouraged,

from volunteering much-needed disclosures.

Third, it limits opportunities for frivolous or abusive lawsuits and makes it easier to impose sanctions on those lawyers who violate their basic professional ethics.

Fourth, it rationalizes the liability of deep-pocket defendants, while protecting the ability of small investors to fully collect all damages awarded them through a trial or settlement.

I would like to go into each of these provisions in more detail.

The legislation ensures that investors, not a few enterprising attorneys, decide whether to bring a case, whether to settle, and how much the lawyers should receive.

The bill strongly encourages the courts to appoint the investor with the greatest losses—usually an institutional investor like a pension fund—to be the lead plaintiff. This plaintiff would have the right to select the lawyer to pursue the case on behalf of the class.

So for the first time in a long time, plaintiffs' lawyers would have to answer to a real client. We are bringing an end to the days when a plaintiffs attorney can crow to Forbes magazine that ''I have the greatest practice of law in the world. I have no clients.''

The bill requires that notice of settlement agreements that are sent to investors clearly spell out important facts such as how much investors are getting—or giving up—by settling and how much their lawyers will receive in the settlement. This means that plaintiffs would be able to make an informed decision about whether the settlement is in their best interest—or in their lawyers' best interest.

And the bill would end the practice of the actual plaintiffs receiving, on average, only 6 to 14 cents for every dollar lost, while 33 cents of every settlement dollar goes to the plaintiffs' attorneys. This bill would require that the courts cap the award of lawyers fees based upon how much is recovered by the investors. Simply putting in a big bill will not guarantee the lawyers multimillion-dollar fees if their clients are not the primary beneficiaries of the settlement.

Taken together, these provisions should ensure that defrauded investors are not cheated a second time by a few unscrupulous lawyers who siphon huge fees right off the top of any settlement.

The bill mandates, for the first time in statute, that auditors detect and report fraud to the SEC, thus enhancing the reliability of independent audits. The bill maintains current standards of joint and several liability for those persons who knowingly engage in a fraudulent scheme, thus keeping a heavy financial penalty for those who would commit knowing securities fraud.

The bill restores the ability of the Securities and Exchange Commission to pursue those who aid and abet securities fraud, a power that was diminished by the Supreme Court in last year's Central Bank decision.

With regard to frivolous litigation, the bill clarifies current requirements that lawyers should have some facts to back up their assertion of securities fraud by adopting the reasonable standards established by the second circuit court of appeals. This legislation is therefore using a pleading standard that has been successfully tested in the real world; this is not some arbitrary standard pulled out of a hat.

The bill requires the courts, at settlement, to determine whether any attorney violated rule 11 of the Federal Rules of Civil Procedure, which prohibits lawyers from filing claims that they know to be frivolous. If a violation has occurred, the bill mandates that the court must levy sanctions against the offending attorney. Though the bill does not change existing standards of conduct, it does put some teeth into the enforcement of these standards.

The bill provides a moderate and thoughtful statutory safe harbor for predicative statements made by companies that are registered with the SEC. It provides no such safety for third parties like brokers, or in the case of merger offers, tenders, roll-ups, or the issuance of penny stocks. There are a number of other exceptions to the safe harbor as well. Importantly, anyone who deliberately makes false or misleading statements in a forecast is not protected by the safe harbor.

By adopting this provision, the Senate will encourage responsible corporations to make the kind of disclosures about projected activities that are currently missing in today's investment climate.

While almost everyone, including SEC chairman Arthur Levitt, recognizes the need to create a stronger safe harbor for forward-looking statements, this is clearly one of the most controversial parts of the bill.

I recognize the desire of my colleagues who have opposed this provision to clearly and firmly protect investors from fraudulent statements by corporate executives, and I am committed to maintaining the most balanced possible language on safe harbor as we enter into conference with the other body.

I would point out that the legislation preserves the rights of investors whose losses are 10 percent or more of their total net worth of $200,000. These small investors would still be able to hold all defendants responsible for paying off settlements, regardless of the relative guilt of each of the named parties.

And while the bill would fully protect small investors—so that they would recover all of the losses to which they are entitled—the bill establishes a proportional liability system to discourage the naming of deep-pocket defendants.

The court would be required to determine the relative liability of all the defendants, and thus deep-pocket defendants would only be liable to pay a settlement amount equal to their relative role in the alleged fraud. A defendant who was only 10 percent responsible for the fraudulent actions would only be required to pay 10 percent of the settlement amount. In some circumstances, the bill requires solvent defendants to pay 150 percent of their share of the damages, to help make up for any uncollectible amount. By creating a two-tiered system of both proportional liability and joint-and-several liability, the bill preserves the best features of both systems.

Mr. President, the legislation passed by the Senate today will keep the door to the courthouse wide open for those investors who legitimately believe that they are the victims of fraud, while slamming the door shut to those few entrepreneurial attorneys who file suit simply with the intent of enriching themselves through coercing settlements from as many defendants as possible.

It has become clear that today's securities litigation system has become a system in which merits and facts matter little, in which plaintiffs recover less than their attorneys, and in which defendants are named solely on the basis of the amount of their insurance coverage or the size of their wallet; in short, we have a system in which there is increasingly little integrity and confidence. Mr. President, such a system of litigation is rendered incapable of producing the confidence and integrity in our Nation's capital markets for which it was originally designed.

I am extremely pleased that this morning the Senate took the important step of repairing this ailing system by overwhelmingly passing the Securities Litigation Reform Act.

NATIONAL DAIRY MONTH

Mr. LEAHY. Mr. President, I want to bring to your attention that June is National Dairy Month.

Earlier this month I was in Vermont during the Enosburg Falls Dairy Festival in Franklin County, VT, home of some of the finest dairy farms and dairy products in America.

June 1, 1995, was Dairy Day in Montpelier, the State capital. There was a grand celebration with cows on the State house lawn and a milking contest. It was the first chance for Vermont's new agriculture commissioner, Leon Graves, a dairy farmer himself, to show his expertise. And while the celebration is light hearted and fun, there is a serious side to it.

In Vermont we stop and take the time to celebrate the importance of dairy farmers in our State and the importance of milk in our lives. In Vermont we pay tribute to the men and women of America who get up so early in the morning to milk the cows and bring us the safest, most wholesome supply of milk in all the world. I think

we should pay tribute here in Washington, too.

We should also remember how important dairy products are to American culture and to the diet of Americans.

Little League games just would not be the same without the promise of a trip to the drive-in for a cone after the game. The Indy 500 winner still drinks milk in victory lane and cookouts would not be the same without a sizzling burger topped by a slice of cheddar.

More important than the enjoyment we get from dairy products, is the nutrition we get from dairy products. There are some who try to hurt the image of milk and others who distort the truth about the nutritional value of milk, but the facts cannot be denied.

Milk is a nutrient dense food that is an important part of the American diet. Milk and dairy foods supply 75 percent of the calcium in the U.S. food supply as well as substantial amounts of riboflavin, protein, potassium, vitamin B 12, zinc, magnesium, and vitamins A and B 6. Some might argue that calcium can be gained through fortified foods or taking calcium supplements. While these alternatives can supply calcium, research has shown that people who have low calcium intakes also have low intakes of several other nutrients which can be supplied by dairy foods. A recent report from the National Institutes of Health recommends that ''the preferred source of calcium is through calcium rich foods such as dairy products.''

Adequate calcium intake is especially critical for young women. Building optimal bone mass before age 30 is one of the best ways to prevent osteoporosis later in life. Increasingly, we see young women failing to get the calcium they need. In addition, nutrients from dairy products are keys to preventing high blood pressure, which increases the risk of heart disease, stroke, and renal failure.

Many Americans are becoming more conscious about their diets. It is important that people not eliminate nutritious foods such as dairy foods from their diets as they attempt to reduce fat intake. A wide array of dairy foods come in low fat and nonfat versions, while delivering the same amount of nutrients. Research has shown that people can increase dairy food consumption to recommended levels without gaining weight or increasing blood cholesterol.

I will not talk about policy or politics today except to add we need to keep the importance of dairy products in mind as we consider changes to our nutrition programs. And we need to remember the hard working men and women who bring us nature's most perfect food as we craft our dairy policy this year during the farm bill.

I do not often rise to talk about commemorative days, weeks, or months. But I hope my colleagues will join with me in raising the awareness of Americans about good nutrition and expressing our appreciation to America's dairy farmers for their hard work.

ORDER OF PROCEDURE

Mr. GRASSLEY. Mr. President, I have some business to wrap up for this evening, and it has been cleared by the Democratic side of the aisle.

AUTHORIZING USE OF THE CAPITOL GROUNDS FOR THE GREATER WASHINGTON SOAP BOX DERBY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 38, just received from the House.

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

The clerk will state the concurrent resolution.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 38) authorizing the use of the Capitol grounds for the greater Washington Soap Box Derby.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the concurrent resolution be considered and agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

So the resolution (H. Con. Res. 38) was agreed to.

ORDERS FOR THURSDAY, JUNE 29, 1995

Mr. GRASSLEY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9 a.m. on Thursday, June 29, 1995; that following the prayer, the Journal of the proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business until the hour of 10:30 a.m., with Senators permitted to speak therein for up to 5 minutes each, with the following exceptions: Senator THOMAS, 30 minutes; Senator MURKOWSKI, 15 minutes; Senator DORGAN, 30 minutes; Senator FEINSTEIN, 15 minutes; further, that at the hour of 10:30 a.m., the Senate resume consideration of S. 343, the regulatory reform bill.

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

Mr. GRASSLEY. I further ask unanimous consent that prior to the Senate recessing for Independence Day, that debate only be in order to S. 343, with the exception of the withdrawal of the committee amendments, and the majority leader offering a substitute amendment.

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

PROGRAM

Mr. GRASSLEY. For the information of all Senators, the Senate will resume consideration of the regulatory reform bill tomorrow at 10:30 a.m., pending the arrival of the budget conference report from the House on which approximately 5 hours of debate remain.

Therefore, all Senators should expect rollcall votes during Thursday's session of the Senate.

RECESS UNTIL 9 A.M. TOMORROW

Mr. GRASSLEY. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recession under the previous order.

There being no objection, the Senate, at 7:08 p.m., recessed until Thursday, June 29, 1995, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate June 28, 1995:

DEPARTMENT OF STATE

FRANCES D. COOK, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SULTANATE OF OMAN.

J. STAPLETON ROY, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF INDONESIA

THOMAS W. SIMONS, JR., OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ISLAMIC REPUBLIC OF PAKISTAN.

JOHN M. YATES, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BENIN.

DEPARTMENT OF TRANSPORTATION

GEORGE D. MILIDRAG, OF MICHIGAN, TO BE A MEMBER OF THE ADVISORY BOARD OF THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION, VICE L. STEVEN REIMERS.

DEPARTMENT OF THE TREASURY

LAWRENCE H. SUMMERS, OF MASSACHUSETTS, TO BE DEPUTY SECRETARY OF THE TREASURY, VICE FRANK N. NEWMAN, RESIGNED.