

Mr. President, it means something to me and I think every American—it means something—for a person to be a law enforcement officer. Among other things, it means that the American people have placed their trust in that law enforcement officer. It means that they represent the people, all the people. And it means that they have taken an oath to uphold and enforce the law, and if we cannot rely on law enforcement officers to do that, upon whom can we rely?

That any American, but especially any law enforcement officer who holds a sacred trust, would engage in these racist activities is an outrage, and it must be condemned. To be an effective law enforcement officer, you must have the trust and the respect of our people. Indeed, law enforcement officers take an oath to defend the community. When law enforcement officers engage in racist activities, they betray the trust of the people and they disgrace the uniforms that they are empowered to wear.

This is not only a concern of African-Americans, this is a concern to all Americans. We have a right to expect that our law enforcement officers will treat all citizens equally. If the press reports are true, and these officers engaged in hateful racist conduct, not only must their actions be condemned, but they should be dismissed from their positions, for no one in whom the people's trust is placed should be allowed to destroy that trust by engaging in such hateful behavior.

No doubt some of the participants will say that they were aware of what was going on but did not directly participate. I would ask them, What were you thinking? If you were at a party and people were selling drugs, would you not do something as a law enforcement officer? Those who would stand by while others engage in this kind of conduct are no less guilty than those who turn their heads when crimes are committed on the street. We simply cannot tolerate any sort of racist conduct on behalf of our law enforcement officers, not of any sort by any law enforcement officers.

I hope Director Magaw will take swift action to determine whether these allegations are true and, if so, to dismiss those who are involved.

Similarly, I would tell State and local law enforcement agencies to purge themselves of agents who would violate the people's sacred trust by engaging in such hateful activities. This is America. We are one Nation under God. We are a Nation that guarantees liberty and justice to all people. When one citizen is mistreated regardless of race, color, or creed, all citizens should be outraged. And when a person clothed with the authority of the people engages in hateful conduct, that person's conduct must be condemned by the people. We simply cannot condone racial discrimination in any of its vile forms.

Having said that, I have to say almost all law enforcement officers are good, decent people, but those who betray the public trust by displaying deplorable judgment and terrible prejudice, they forfeit that trust.

Let me be clear that this is not the voice of political correctness. Being a law enforcement officer is a public trust, because public-safety matters of life and death are in the hands of law enforcement officers. The overwhelming majority of our law enforcement officers are really good people. But if someone authorized to wield a gun in the name of the law can organize and find comfort at gatherings such as the one I have described, that person does not deserve the people's trust.

Faced with a threatening situation, or the perception of a threat, can we be confident that such an agent would not react based on prejudice if the situation involved an African-American or some other minority person?

This is not a matter of concern only to African-Americans, I might add. Prejudice is not so readily limited. But I would not want someone exhibiting such terrible judgment and prejudice enforcing the law with respect to me either. If it is determined that these various officers have done these things and that these accounts are true, then, I reiterate, those law enforcement agents who knowingly participated ought to be fired. They ought to be terminated. We should not have them in positions of trust among the people. They should certainly not wear the badge of the Alcohol, Tobacco, and Firearms Bureau.

Having said that, I hope that the director will get behind this, find out exactly what the true facts are, determine who the people are who are culpable and responsible for this kind of activity. I think they should be fired on the spot.

It is just one of those things that you just cannot tolerate in a society as great as ours.

I yield the floor.

#### COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, I know there has been a unanimous-consent agreement. Do we have any time agreements or just consent to start something?

Mr. HATCH. We did not have any time agreements because the Senator from California was not here. Now that she is, we would like to work out a time agreement.

Mr. GLENN. If the majority leader will yield, we are going to try to get time agreements for everything coming to the floor from now on. I hope we can get 15 minutes a side for everything that comes to the floor. We are going to propose that. I hope people listening can think about this and agree to it. We have been wasting time with

people talking, and also on various subjects that do not have anything to do with the legislation that we are considering here. So I hope everybody can come up with time agreements, if possible.

Mr. DOLE. In some cases, there may be second-degree amendments on either side. So it may take a bit longer than 30 minutes.

Mrs. BOXER. Mr. President, I ask the majority leader, if he will yield on that point, I feel very strongly that I want to have a vote on my amendment. If there is going to be a second-degree, I will not agree to a time agreement. I will be happy to agree to 15 minutes on each side, but if there is a second-degree, I cannot agree because there is no way for me to get a vote on my underlying amendment. It is a problem for me.

Mr. GLENN. I think that would be the general attitude all the way through this thing. Unless we know what is coming up on the second-degree amendment, we are not likely to agree to a time agreement on it. If we can agree to these things without second-degreeing everything—

Mr. HATCH. But we do not even know the form of the amendment.

Mr. DOLE. We do not even know what the first-degree amendment is.

Mr. HATCH. That is the way the Senate operates.

Mr. GLENN. Then maybe we cannot get time agreements.

Mr. DOLE. Mr. President, at 11 o'clock, we said we were going to start mowing them down around here, and I know the Senator from Louisiana was surprised when I filed cloture. But, frankly, I was surprised when he offered an amendment to knock out Superfund. I did not know that was going to happen. So there has been a double surprise here. We are trying to come to grips with that amendment.

In the meantime, I think there has been agreement to go to the amendment of the Senator from California. But to suggest that we cannot get time agreements and you cannot offer second-degree amendments, then I think we are going to be in real trouble, because both sides always reserve the right to offer second-degree amendments. It seems to me that it is something we need to work out before we start.

Mr. President, the liberal opponents of commonsense regulatory reform must be celebrating after watching some of this week's reports on the evening news, and reading some of the stories and columns in some of our most distinguished newspapers.

Last night, a report on ABC's "World News Tonight" claimed Republican supporters of regulatory reform are "on the defensive." And it is no wonder, considering how the media have fed the American people a steady diet of phony claims that we are out to promote tainted meat and unhealthy food.

Liberal New York Times Columnist Bob Herbert a few days ago took a page

out of the liberal consumer activist playbook, labeling our regulatory reform bill "An all-out assault on food safety regulations," adding that it "Would block implementation of the Agriculture Department's meat safety initiative for 2 to 3 years, and probably longer."

If this outright distortion wasn't enough, listen to this from Margaret Carlson's "Outrage of the Week" on CNN's "Capital Gang": "Senator BOB DOLE, under the guise of regulatory reform, is letting the meat industry lawyers block this [meat safety test]." Wrong again.

One network aired a report Monday night that included the following, and I quote:

With Senator Dole's regulatory reform bill, industries could challenge rules they considered too costly or too burdensome. Thirteen-year-old Eric Mueller died in 1993 from E. coli poisoning after eating a fastfood hamburger. His father says any delay in adopting new meat inspection rules is a travesty.

This is indeed a tragic story. The only problem is, this report, like so many others, was simply wrong in its suggestions about this bill.

Our legislation has always made it explicitly clear that regulations are exempted from any delay if there is "an emergency or health or safety threat." Additionally, the Agriculture Department has already conducted a cost-benefit analysis of the meat inspection rule and it passed. But the facts did not stop that network from reporting Monday night that, "A delay is looking more and more likely."

However, on Tuesday, if it was not clear enough already, we specifically added to the bill the words "food safety, including an imminent threat from E. coli bacteria."

But that did not stop the media's drumbeat on food safety. Last night, a network anchor for whom I have great respect claimed that on regulatory reform, Republicans "went further than the public may want on the issue of food inspection." Wrong again. I do not know how many times we have to say it to get the media to understand the fact that this bill does not compromise food safety. Yesterday, the former head of the FDA and four eminent scientists and physicians spoke at a press conference to explain how our bill protects food, health, and the environment—but the media did not seem to notice. I did not see it anywhere. It was not on ABC News, CBS or NBC. They get some liberal Senator on the floor to make some claim, and that was the news. That was the liberal spin and the one the media jumped to in a second.

But ABC did not stop with the issue of food safety. Then they broke out the chainsaws, the strip mining, pesticides, potentially dirty drinking water, and cute endangered animals in their effort to explain the impact of regulatory reform. They do not know any bounds once they get carried away with the liberal spin in this body.

Mr. President, these are just a few examples of the kinds of distortions we

have had to confront on this bill. And I am not the only one who has noticed this trend. According to a study released last week by the Advancement of Sound Science Coalition, "media coverage of the congressional debate over environmental regulatory reform slants 'clearly against the regulatory revisions.'" According to Dr. Robert M. Entman of North Carolina State University, who conducted the study, there was a 3-to-1 negative imbalance in news stories about reform between last November and this May 11. Not surprisingly, the study claims that 74 percent of paragraphs that evaluated reforms were critical, criticism reached 87 percent on editorial pages, and 70 percent of the stories on the commercial television networks and in weekly news magazines criticized reform. I ask unanimous consent that the Advancement of Sound Science Coalition's statement about its study be printed in the RECORD.

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

MEDIA REPORTS SLANTED AGAINST REGULATORY REFORM EFFORTS, STUDY SHOWS  
WASHINGTON, DC, July 7, 1995—Media coverage of the Congressional debate over environmental regulatory reform slants "clearly against the regulatory revisions," according to a study released today by The Advancement of Sound Science Coalition (TASSC).

"While some outlets refer in favorable terms to the general idea of reform, most devote far greater space and time to denouncing the specific legislation calling for rigorous application or risk and cost benefit analysis," according to the study, conducted by Dr. Robert M. Entman, Professor of Communication, North Carolina State University and Adjunct Professor of Public Policy, University of North Carolina (Chapel Hill).

"This study demonstrates once again that the media, whether it is consciously aware of it or not, is portraying important, scientific issues in the same 'who's up, who's down' play by play style of reporting that they use in describing political campaigns or football games. While all stories deserve more balanced treatment, stories involving science cry for more fair reporting," said Dr. Garrey Carruthers, Chairman of TASSC, a national organization of scientists, researchers, academicians and others.

The most striking finding in Dr. Entman's study is the "negative imbalance in covering the proposed reform legislation." Dr. Entman said that there was a three-to-one negative imbalance in news stories about reform. Fully 74 percent of paragraphs that evaluated the reforms were critical. On editorial pages, criticism reached 87 percent, a seven-to-one negative ratio. Among his other findings:

70 percent of the stories on the commercial television networks criticized reform.

Weekly magazines surveyed also were 70 percent critical.

Certain key words function to reinforce negative impressions. For example, the word "lobby" or related words show up 10 times as often when referring to those supporting reform as those opposing it, even though both sides are lobbying the Congress.

Headlines, which frame the audience's emotional response to the content of the story, were often emotional or slanted opposed to the reform ideas. For example, Time magazine's "Congressional Chain Saw Massacre" or Newsday's "GOP Frenzy Is Gutting Safety Rules."

Visual images portrayed supporters of reform as enemies of the environment. For example, scenes of industrial plants with numerous pipes and tanks; smokestacks spewing smoke; a large bulldozer. Viewers were repeatedly exposed to "archetypal images of pollution and danger," the report states, images likely to "stir negative emotions toward reform."

While analysis of the "why" of this media slant was beyond the scope of Dr. Entman's study, the report says, "reasons go beyond the standard interpretation of liberal bias. They include the media's tendency to oversimplify; journalists' lack of training in policy analysis; and the commercial incentives that news organizations interpret as requiring appeals to emotion over cognition."

Dr. Carruthers said TASSC commissioned the study because "we want to offer information on how scientific issues are communicated to the public as another means of ensuring that only sound science is used in making public policy decisions."

"Too often, legislation or regulations are the result of political decisions, where the science does not back up the action. One way to better understanding this phenomena is to understand how the media portray scientific issues. TASSC is committed to pointing out not only when unsound science is used to make a decision, but also to point out the media's important role in the public's understanding of science and research," Carruthers said.

To conduct his study, Dr. Entman examined 29 major newspapers across the country, Time, Newsweek and the three broadcast network evening news programs. Stories reviewed included those published or broadcast between November 1, 1994 and May 11, 1995.

Mr. DOLE. Mr. President, I know the media have a tough job to do. But if I believed everything I saw on the evening news or in the newspapers, I would vote against this bill, too. I imagine if all of the anchor people were on the floor, they would vote against it because they would not read it. They would just listen to some liberal on the other side of the aisle and swallow it all and say "I am against it." Fortunately, the facts are on our side, even if some folks in the media are not.

This is not a question of partisanship, not a question of anything but commonsense reform. Maybe those who report the news at the big networks do not worry about things that people have to put up with, the people in my State of Kansas, like businessmen and women, farmers, and ranchers. That is not their concern. They buy into "the more Government the better." If you have little Government, let us have a little more regulation, which costs the average family \$6,000 a year.

So we will continue to try to correct the record. We know that it will never make the news. In fact, I challenged the media yesterday, when we had all these eminent scientists and a former FDA commissioner there, to report something they said. There was not one peep, because they were trying to give us facts, not the liberal spin. It makes a great difference in this body and in this town.

Mr. GLENN. Mr. President, I would like to reply to the distinguished majority leader's statement. I want to make it very clear that in S. 343 we say

that if there is a real problem, the agency can make an exception and say that the rule can go in.

But the rule that could involve safety, health, E. coli, and cryptosporidium and all the rest of these things, in the original legislation, could only be in effect 180 days, to give them a chance to take into account all the requirements of the law, and then unless they had it done within 180 days, the regulation that protected the health and safety of people in this country would be negated. It would no longer be effective.

Now we have changed that on the floor this evening with the proposal by Senator JOHNSTON that makes it 1 year instead of 180 days. Most of these regulations take 3, 4, 5 years to come into final form. We still have the danger there that we can, with this legislation, have a requirement to complete all this re-analysis in 180 days. It is not done, the regulation goes out, and whether it dealt with E. coli, cryptosporidium or the other things that have caused actual deaths in the country and we know are dangerous, and not need a new investigation, but the regs would be knocked out.

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

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

Mr. ROTH. It is true under the original legislation that not later than 180 days after the promulgation of the final major rule to which the section applies, the agency shall comply with the provisions of the subchapter, and as therefore necessary revise the rule.

But I am not aware of anywhere where it says the rule is terminated.

Mr. GLENN. The rule could be judicially challenged because it had not complied with the requirements of the legislation, so there would be a judicial challenge. The Senator is right. There would have to be a judicial challenge, but we are such a litigious society today, I do not doubt there would be multiple lawsuits if there is any crack in the law that can benefit a meatpacker or food processor or whoever it may be.

Mr. ROTH. I do not think the court would terminate the rule. A person could go into court and ask that they force the agency to comply with the requirement that the analysis be made.

I think the important point to recognize and understand, there is nothing in this legislation, unless the distinguished Senator from Ohio knows something I do not know, that provides for the termination of the rule.

Mr. GLENN. Let me reverse this. Does the distinguished Senator from Delaware—

The PRESIDING OFFICER. Under a previous order, the order of business was to recognize the Senator from California. If the Senator would wrap this up in a few seconds.

Mr. GLENN. Mr. President, I ask unanimous for 2 more minutes.

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

Mr. GLENN. I ask my distinguished friend from Delaware, is there anywhere in there that says there cannot be a judicial challenge? I know there is not. That means there would be a judicial challenge, the analysis would not be completed, the time would have run out.

Mr. ROTH. The question is, was it violated? If they do not make the study within the times required, then, yes, they can go into court and force the agency to make the study.

There is nothing in it that requires the termination of the rule.

Mr. GLENN. The Senator does not think there would be a judicial challenge?

Mr. ROTH. Not under these circumstances.

Mr. GLENN. I think that is guaranteed in this. We would have a judicial challenge to this, and the rule would be out because the studies had not been completed.

Mr. ROTH. It says here in the legislation a major rule may be adopted and may become effective without prior compliance with the subchapter. It specifically provides the rule shall become effective.

Mr. GLENN. Followed by subchapter—if the agency in good cause finds conducting cost-benefits impractical and so on, but then not later than 180 days, which is now changed to a year after promulgation.

The final rule to which this section applies, "the agency shall comply with the provisions," if they have not done so, it would be subject to judicial challenge. With the provisions of this subchapter, each one of those subchapter provisions would have to be met, or the judicial challenges, and it is thereafter necessary to revise the rule, and if they have not done that, it would still be subject to judicial challenge.

Mr. ROTH. But nowhere does it say the rule terminates. In fact, to the contrary. It says the rule goes into effect. The language that the Senator just quoted does give the right to go into court and require the agency to make the appropriate study. That is all it does.

The PRESIDING OFFICER. Amendment No. 1517 is set aside. The Senator from California is recognized to offer an amendment.

AMENDMENT NO. 1524 TO AMENDMENT NO. 1487  
(Purpose: To protect public health by ensuring the continued implementation of mammography quality rules)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. FEINSTEIN, Mr. DORGAN, Mr. KENNEDY, Mr. REID, Mr. BUMPERS, Mr. BIDEN, Mr. LEAHY, Ms. MOSELEY-BRAUN, and Mr. DASCHLE proposes an amendment numbered 1524 to amendment No. 1487.

Mr. DOLE. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. Is there objection to dispensing of the reading of the amendment?

Mrs. BOXER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. I object.

The PRESIDING OFFICER. The clerk will report.

The amendment is as follows:

On page 19, line 7, strike the period and insert the following:

"; or (xiii) a rule intended to implement section 354 of the Public Health Service Act (42 U.S.C. 263b) (as added by section 2 of the Mammography Quality Standards Act of 1992)."

AMENDMENT NO. 1525 TO AMENDMENT NO. 1524

Mr. DOLE. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 1525 to amendment No. 1524.

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following:

It is the sense of the Senate that nothing in this Act is intended to delay the timely promulgation of any regulations that would meet a human health or safety threat, including any rules that would reduce illness or mortality from the following: heart disease, cancer, stroke, chronic obstructive lung diseases, pneumonia and influenza, diabetes mellitus, human immunodeficiency virus infection, or water or food borne pathogens, polio, tuberculosis, measles, viral hepatitis, syphilis, or all other infectious and parasitic diseases.

Mr. DOLE. Mr. President, I believe this is a responsible second-degree amendment, that we can dispose of a number of these issues in the spirit expressed this morning by the Democratic leader and managers of the bill so we can move on and try to complete action on this bill no later than next Tuesday. It is offered in that spirit, the spirit of cooperation.

My view is it is a good amendment. I hoped it might be acceptable. It seems to me that it would save hours and hours of debate here and put to rest all the arguments that some people like to make about which party or which side of the aisle is more concerned about some of the health and safety regulations. We are ready to stipulate we are just as concerned as they are on the other side. We think this would lay that to rest. I would hope the amendment would be accepted.

Mr. HATCH. Mr. President, we have now been on this bill 6 days and we have handled very few amendments. One reason is that everyone wants to exempt some rule or other, or some special interest or other, or some issue or other, from the provisions of this

bill. This bill's whole purpose is to make sure that the best available science is applied to regulations.

Now, the distinguished Senator from California is very sincere in bringing up her amendment. But, it is another in a series of amendments that we will spend the next 3 months debating if we do not find some way of making clear that the only purpose of this bill is to improve the regulatory process and that everybody should support that goal.

No one is more concerned about breast cancer than I am. It is a grave, grave disease, and each and every Member in this body is disturbed about its incidence and the increase in its incidence. I do not want to see standards delayed unnecessarily any more than Senator BOXER or Senator MURRAY or Senator GLENN.

First of all, I think it is important to know that the Mammography Quality Standards Act was enacted in 1992, 3 years ago. If the proponents of this amendment want to talk about hamstringing the FDA from issuing regulations on the bill, I think they ought to ask themselves, "What has the FDA been doing in the almost 3-year period since the bill's enactment?" They have controlled the FDA for a year and a half of that time.

I understand that my colleagues have stated today that new, proposed regulations are expected this fall to implement the bill. I think we ought to ask ourselves, "Why has the FDA allowed almost 3 years to elapse before the regulations are issued?"

I can answer part of that question. The program is already up and operating. The program is already up and operating.

As I believe Senator GLENN noted earlier, the program is operating under interim final regulations issued on December 23, 1993. Interim final regulations are, by definition, final. They have the full force and effect of law. There is no requirement that they be made final.

I would just like to ask my colleagues, "What public health issues have been raised that need to be addressed now in new regulations?"

The second thing I would ask is this, "If these regulations are such a priority and are needed to save women's lives, then why, on May 8, when the administration issued its regulatory agenda for the year—and I am holding the Federal Register which contains that agenda—then why did the administration when it issued all of its regulatory priorities and set target dates for each regulation, why did they not list a projected date for the MQSA final regulation?"

In fact, they did not list an October date or a September date or any date. Ten weeks ago they talked about the current interim final regulation. They did not even mention a new, proposed regulation in the book that was supposed to outline the whole regulatory agenda for the government. In other

words: It was not a crisis then, so why is it a crisis today?

I know my colleague, Senator BOXER, is worried that the Act would get caught up in the \$100 million threshold in the bill and would be subject to cost-benefit analysis. In fact, in the administration's own regulatory plan, issued only 10 weeks ago, that is just 2½ months ago, the administration printed the following in the Federal Register: "Mammography Quality Standards Act of 1992, Anticipated Costs and Benefits: Direct Federal costs in 1994 are \$13 million."

That is \$87 million less than what would trigger this bill's cost/benefit requirements.

The administration goes on to say:

There are approximately 10,000 mammography facilities in the United States. Approximately 8,200 have accreditation or have applied for accreditation and will not incur significant additional cost. The remaining 1,800 facilities will incur approximately \$26 million in one-time costs, and recurring costs of about \$27 million. Amortizing the one-time costs, the annual costs of the interim rule is about \$33 million.

This \$33 million is still \$67 million less than needed to trigger the effect of this bill.

Thus, the OMB certified estimate, printed in the Federal Register only 10 weeks ago, was \$33 million. That was 10 weeks ago.

How can it be over \$100 million today? Or anywhere near \$100 million now? Or even within the next number of years?

I would like to ask my colleagues who offer this amendment another question: "Why will it take years for FDA to do a cost-benefit analysis on something as important, as significant, and as understandable as the Mammography Quality Standards Act of 1992?"

I suspect part of the reason is that FDA historically has not had a very good record of moving things through very quickly. This is abundantly true with drug approvals, now taking 10 to 15 years at a cost of hundreds of millions of dollars for a major drug. No other country in the world takes that amount of time.

Medical device approvals are also lagging way behind the expectations of Congress. This is true for countless other regulatory undertakings.

In fact, with the FDA we have an agency which is fighting S. 343 as hard as it can.

We have an agency which is sending up packets of information, raising all sorts of red herrings about this bill. We have an agency who wants business as usual, who wants to preserve the status quo, who does not want the pressures that this bill will bring upon them to do their job in a better fashion and in a better manner.

I am not sure we can count on the FDA to seriously take into account the mandates of this bill with this kind of attitude.

I would also like to ask why women should not have access to the most cost-effective procedures? I think it is

important to note that our bill does not have the so-called supermandate provision. Our bill does not change any existing requirement of Federal law with respect to the need for quality standards for mammography clinics, including the quality of the mammograms, the training for clinic personnel, or recordkeeping.

All our bill does is say that in implementing the law, the agency must act in a way so that benefits outweigh costs. It goes to the process of implementation, not the need for implementation.

As one who, as I think everybody in this body knows, was very involved, with Senator Adams and Senator MIKULSKI, in drafting the Mammography Quality Standards Act of 1992, as one who has been a leader in this effort, I wish to point out that I recognize the need for that law.

But I also think both the Act and American women can benefit by subjecting the law to a cost-benefit analysis. Especially if the costs of regulation under this law reach a threshold of \$100 million in this country.

I am aware that last year one rural hospital in Utah had to close down its mammography machine because of the implementing regulations.

I would suspect that this has not led to better quality mammograms for the citizens of that rural area. I suspect what it means is that women in that rural area will not get mammograms at all, because of some of the bureaucratic ensnarments which occur in the implementation of legislation, and indeed at times, in the legislation.

S. 343 is essential and it should not be continually tested on this type of basis—which some believe is purely a political basis—when it only delays going forward on this bill.

I do not think that my constituents in that rural Utah community have benefitted by this situation. I do not think that is the way the law or the regulatory process are supposed to work.

I think that the FDA is fighting this bill with everything it can because this bill will correct a lot of the excesses out at the agency, and, indeed, at every Federal agency. It will make them do better, do a better job of regulating.

So it keeps coming back to the question of why women should not have access to the most cost-effective procedures?

As I say, I was involved in writing the MQSA. I have been involved with this issue for years, and with virtually every other health care issue.

I understand how important the MQSA is. Frankly, this bill would not have the dire effects on the MQSA that proponents of this amendment allege, even if the costs of regulation under the law should rise to the level of \$100 million—which they will not according to an official appraisal by the administration just 10 weeks ago.

Let me just mention what the second-degree amendment that Senator DOLE has filed says:

It is the sense of the Senate that nothing in this Act is intended to delay the timely promulgation of any regulations that would meet a human health or safety threat, including any rules that would reduce illness or mortality from the following: heart disease, cancer, stroke, chronic obstructive lung diseases, pneumonia and influenza, diabetes mellitus, human immunodeficiency virus infection, water or food-borne pathogens, polio, tuberculosis, measles, viral hepatitis, syphilis, or all other infectious and parasitic diseases.

You know, the 10 leading causes of death have just been pretty well defined in this sense-of-the-Senate resolution. It makes it clear the Federal regulators can go right ahead and promulgate regulations that are necessary in this area.

What this bill requires is that they do it in a good, cost-efficient manner with good risk assessment considerations as part of the process.

This makes sense.

But the reason we listed all of these diseases in the amendment is that we know we are going to get papered to death on the other side with amendment after amendment with every special interest trying to exempt themselves from the effects of this bill, when in most cases they would be exempt anyway, just as mammography is. This is all for the purpose of making political statements.

We think it is time for the Senate to get around to passing this bill. We need to get time agreements and debate the serious issues that are really needed to resolved, including the amendment of the distinguished Senator from Louisiana.

I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Ohio.

Mr. GLENN. Mr. President, I point out that the second-degree amendment starts out with "It is the sense of the Senate." That is all it is, a sense of the Senate. It does not give anything binding and has no standing in law whatsoever. It just says the thoughts of the Senate at the moment happen to be that.

What we are talking about is giving real protections here that the Senator from California is offering as a proposal to exempt this from some of the requirements that would be imposed upon it by S. 343.

One of the reasons she is concerned about this, of course, is because the existing rule, as has already been pointed out, is going to be improved. They have an improved regulation coming out supposedly in October. That would be subject now to all of the review processes. It would have to go back through all of the requirements that are in S. 343, the Dole bill. That does cause delay.

My colleague from Utah asks: Why can we not get it out? They have 3 years. What is the delay? If they are concerned about this, why do we not get that out?

I think there is a lack of knowledge around here about what a regulation is

and how voluminous it could be. We used as an example yesterday just one. Let me give an example. This is important for people to understand. Regulations are not something you go over there for and have a little meeting, decide this is what you are going to put out, and then you put out the regulation. They are required by the law that we passed here to go through multiple procedures such as peer review, public meetings, and scientific analysis in all of these areas.

I use this as an example to show why it is not so easy to get a regulation out.

Mr. JOHNSTON. Will the Senator yield for a question?

Mr. GLENN. I would rather go through my statement. Then I will yield.

The Clean Water Act passed in 1972; was amended in 1972; an amendment passed in 1977; in 1987, it had another amendment. For the Clean Water Act, one of the things that was required was effluent limitations on metal products and machinery. It took 8 years to get that one regulation out of EPA. Could they have done it faster? I do not know whether they could have or not. But for the "Effluent Limitations Guidelines and Standards for Metal Products and Machinery", which is the title of it, it took 8 years to get out. This is just the index of that regulation, what is covered. I do not know how many pages it is. It is several hundred pages.

The other document we have here—this is what they were required to do by the law which we passed here. They do not dream these things up. They are by law. This is the development document for how they do the index and how they do the regs. This is the guideline for it—2 inches thick of fine paper.

Listen to this: The final documents on this regulation cover shelf space of 123 feet. To give some idea what that means, we asked the Architect yesterday how high this Chamber is. It is about 42½ feet. The regulations on this one regulation out of several hundred put out pursuant to the Clean Water Act of 1972 are 42½ feet. That means the documentation would be three piles of paper in this well to the ceiling right here—three piles of paper, and that is just one regulation and the backup substantiating documents.

Why do we need that much? I do not know. Look in the mirror, Members of Congress. Look in the mirror, Members of the Senate, as to why we required that much. We are the ones who put out the guidelines for the people as to what is required, what they have to do, and all the studies they have to make in order to make this whole thing work. That is what is required just in one regulation. That is the reason you cannot get these things out in such a short period of time.

We have had, under the Presidential Executive order, requirements to do some of the cost-benefit analysis and to do some of the risk assessment and so on that is being asked for here.

Some of those things are already underway. But when we ask why they cannot get these things out faster, that happens to be one of the reasons.

I just hope that the public and the media that have been excoriated here a little bit this afternoon—not on this side of the aisle—but I hope the public and the media have been paying attention to the debate on this bill, because yesterday we spent most of the day trying and finally succeeding in getting votes on two proposals to exempt two rules now in the pipeline designed to protect our people from illness and from death:

The Daschle amendment to exempt from the potentially destructive provisions of this act a rule that protects meat and poultry from contamination with E. coli was defeated by a vote of 51 to 49; the Kohl amendment to exempt from the potentially destructive provisions of S. 343 a rule to protect our drinking water from contamination from cryptosporidium was tabled 50 to 48.

What do we want to conclude from those votes? What principles should we draw from those votes?

S. 343 has a number of exemptions built into it. No one seems to have pointed these things out. There are a number of exemptions already in this thing.

For instance, first, the IRS rules or other rules concerning assessment and collection of taxes and duties—these are all exemptions.

Second, any rule implementing international trade agreements. The Maquiladora in Mexico get an exemption, protection. For the safety and health of Americans, we do not.

Third, any rule that authorizes the introduction into commerce of a product like a bioengineered tomato is free and clear, for instance. It is exempted.

Fourth, any rule or agency action relating to the public debt—that is, selling a Government bond—is exempted, and should be. I agree with these.

Fifth, any rule required to be promulgated at least annually pursuant to statute. For instance, duck hunting rules. I favor this. We exempted duck hunting rules that have to be put out by Federal mandate each year. Duck hunting rules are exempt from this bill. But serious health and safety protections are not.

Sixth, any rule that approves corporate mergers and acquisitions. Wall Street gets an exemption. But the average American's protection from bad meat and bad water does not get an exemption. It does not get that same kind of exemption.

Seventh, any rule relating to the safety and soundness of banks and lending institutions is exempted.

Eighth, any rule by the FERC [Federal Energy Regulatory Commission] that reduces regulatory burdens is exempted. Electric utilities, for instance, get an exemption. For protection from bad meat and bad water, we could not even get that same kind of exemption.

Mr. President, I do not object to the above exemptions. I favor those exemptions. But I say along with it, do we not want to hit some balance and say that the health and safety of our families, of our children, our fathers and mothers, deserves similar protections?

The health and safety concerns addressed in the E. coli and the cryptosporidium votes yesterday are not imagined. Those dangers are not dreamed up dangers or mere possibilities. Quite the opposite. E. coli and similar foodborne illnesses kill some 3,000 to 7,000 people every year in this country. A couple of years ago in Milwaukee, cryptosporidium in the water supply made over 400,000 people seriously ill and 100 of them died.

So these are not imagined dangers, they are real dangers. We know the danger from them. They are not fictitious thoughts that need more and more and more review to determine if there is a danger. Nothing should be permitted to hold up the corrective regulations as could happen under S. 343.

I wish to protect the exemptions listed above. I think they are correct, and I am glad they are in there. Yes, we want to protect those, of course. But I would note that with the exception of duck hunting and the Federal Energy Regulatory Commission, the other six exemptions deal with economic matters.

Now, that, too, is fine as far as I am concerned, but I also firmly believe that we should show the same concerns for known health and safety matters with all of our people.

Mr. ROTH. Will the Senator yield for a question?

Mr. GLENN. Just a moment until I finish my statement here.

Now, it was also brought up that our side of the aisle, apparently it is being talked about that we are delaying things somewhat. It was said that the administration is sending up red herrings. Last night, the distinguished majority whip, I believe, termed them nit-picking on our side.

Yesterday, since we started debate on this bill, we have had 16 amendments put out, 11 by Republicans; 6 of those were withdrawn; we had five votes on Democratic matters here and these were on such things as E. coli, killing 500 people a year; cryptosporidium, from which 100 people died—foodborne diseases kill 3,000 to 7,000 people annually—votes on Abraham and Nunn on small business matters; Senator DOLE put forward an E. coli amendment himself; Johnston-Levin combined to deal with supermandate problems.

So I do not see that these are nit-picking, and these are not red herrings. These are very substantive amendments, most of them dealing with the health and safety of the people of this country.

What the Senator from California is talking about is something that is very important—mammography, the standards for it, and surely having that ex-

empted so that they would not have rules delayed for several years, or the potential for the new and improved rules, they hope, to be delayed for several years, while S. 343, if passed, would force them to go back into a reanalysis that could take a lengthy period of time, as I indicated, from what happens under just one regulation and all the voluminous paperwork which is part of that process.

I do not see these things as being nit-picking as they were referred to last night, nor do I see them as a red herring now.

So I would like to point out once more before I yield the floor here that the second-degree amendment by the distinguished majority leader is a sense-of-the Senate and nothing more. It is not binding in law. And that is what the Senator from California is talking about. I do not disagree. I do not know whether I would vote for this sense-of-the Senate or not. I presume that I would. But it still does not have standing in law. And so it means nothing except it is filling up the tree and trying to delay things further, I guess. Delay on this one certainly is not coming from our side of the aisle.

I yield the floor.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. ROTH. Will the Senator yield for a question?

Mr. GLENN. I suggest the absence of a quorum temporarily.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JOHNSTON. Mr. President, I was going to ask the Senator from Ohio and perhaps the Senator from Delaware to tell me about the status of the rule-making under mammography. What I wish to know is if the information I have is correct, which is that there is an interim final rule which has been published and is in effect on mammography. Is that correct? I ask the Senator from Delaware, does he know that, or the Senator from Utah?

Mr. HATCH. Yes, that is correct.

Mr. JOHNSTON. It is. And it has the effect of an interim final rule?

Mr. HATCH. That is correct.

Mr. JOHNSTON. And as I understand it, in October there will be a proposed rule to be published by the FDA. Some say it is not on the President's schedule; some say it is on the President's schedule. Does the Senator from Utah know?

Mr. HATCH. We have been told that that is the case, that there will be a proposal in October. However, it was not listed in the May 5 Federal Register which outlined the administration's regulatory program for the year. But we now have been told by the FDA that it is proposed for October.

Mr. JOHNSTON. There is in fact some doubt as to whether that will be—

Mr. HATCH. I do not think there is much doubt. I think it will happen, but I cannot guarantee it.

Mr. JOHNSTON. But it is a proposed rule to be published in October, by some statements?

Mr. HATCH. That is right.

Mr. JOHNSTON. There may or may not be doubt about whether they will actually go to the proposed rule, but they might as of October go to a proposed rule.

Mr. HATCH. That is right.

Mr. JOHNSTON. Now, that proposed rule—

Mr. HATCH. The odds are they will.

Mr. JOHNSTON. That proposed rule is not an effective rule; it is, in effect, a proposal for rulemaking which will require the full rulemaking process. Is that not correct?

Mr. HATCH. That is correct.

Mr. JOHNSTON. Now, I also understand that their analysis shows that it has a \$97 million impact, and under the President's Executive order, which calls for risk analysis, which has a \$100 million cutoff, that would not qualify under the President's order as a major rule?

Mr. HATCH. That is correct.

Mr. JOHNSTON. They are, however, as I understand it, treating this as a major rule. Is that correct?

Mr. HATCH. We are told that, but we do not know that. That is the rumor.

Mr. JOHNSTON. I understand that they are treating it as a major rule, that they are proceeding with a risk assessment and with a cost-benefit analysis as though it were a major rule.

Mr. HATCH. That is our understanding.

Mr. JOHNSTON. Now, I also understand that under the President's Executive order, this risk analysis which they are getting ready to perform and the cost-benefit analysis which they are getting ready to perform—first of all, has that been done, the risk assessment and cost-benefit analysis? Has it been done or is it a plan to do?

Mr. HATCH. We do not know whether it has been done. Certainly they should plan to do it.

Mr. GLENN. Mr. President, I was going to put in a quorum call because the distinguished Senator from California had to unavoidably be absent for a few minutes, and she asked I put in a quorum call. I did not know whether this was going to go on very long or not. I would like to wait until she comes back. She will return within 10 minutes, I understand. And I hate for all the discussion going on on her amendment without her being in the Chamber. She asked me to put in a quorum call for just a few minutes, and I will do that and delay things for just a few minutes. So I suggest the absence of a quorum.

Mr. ROTH. Will the Senator withhold that request? I had a question or two I would like to ask him.

Mr. GLENN. This is all on the same subject, though.

Mr. ROTH. Regarding the statement the Senator just made, a question referring to that.

Mr. GLENN. It is all on the same subject. I would rather wait until she gets back. I let this go a while in spite of her request. It is going to go on here for quite a while apparently, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. ROTH. Mr. President, I would like to raise two or three questions with my distinguished colleague, the Senator from Ohio. I would like to point out that the legislation of the distinguished Senator from Ohio, S. 1001, of course, contains cost-benefit analysis, the same as does the bill before us. But in contrast to the legislation that we are considering which has an exception to the cost-benefit analysis, I wonder if the distinguished Senator from Ohio could tell me where S. 1001 contains any exception from the cost-benefit analysis where it is impracticable because of an emergency or health or safety threat?

Mr. GLENN. I would reply to my friend from Delaware that I think the major difference that protects the health and safety of the people in this country is that all the rules that are under S. 1001, all the rules in the pipeline stay in effect. We would not knock any of them out. We did not send them back and make them go through another long and lengthy process during which time the people would not have the same protection. And also we have no petition process in S. 1001. These things can be bogged down.

Mr. ROTH. I would point out to the distinguished Senator, what we are talking about is a future rule. And if we are not in the immediate case, there are going to be other situations where there are going to be serious threats to health or safety. My question to you is, where is the exception in your legislation where it is impracticable to be making a cost-benefit analysis?

Mr. GLENN. I am not sure in the future it is any different from this bill at all, as far as in the future. What we are talking about are all these things like E. coli, and cryptosporidium that there could have been a challenge made to them in this interim period after the April 1 cutoff.

Mr. ROTH. Let me point out that in S. 343, it specifically provides that "A major rule may be adopted, 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."

My question to you is, where is there that kind of exception, that kind of waiver in 1001?

Mr. GLENN. Well, let me tell you about E. coli in particular as it applies here. The agency has told us the rule that includes E. coli protection is a general one and cannot legitimately be considered an emergency rule. Accordingly, the emergency provisions of S. 343 do not apply to the regulation in the pipeline concerning E. coli. And the Dole amendment on E. coli does not prevent the USDA proposed regulation on meat and poultry inspections from being sent back to square one again for cost-benefit analysis and risk assessment.

Mr. ROTH. Again, as far as E. coli is concerned, that specifically is covered in our legislation. But again I would like to know the line and page in S. 1001 where there is an exception to the cost-benefit analysis along the same lines contained in S. 343.

Mr. GLENN. I cannot give the line and the page right now. But I will look it up here. We will try to get an answer very shortly.

Mr. HATCH. Will the Senator yield?

Mr. ROTH. Yes.

Mr. HATCH. The fact of the matter is that if there is no emergency, then why not do a cost-benefit analysis?

If there is an emergency, there is nothing in Senator GLENN's bill that takes care of it.

But there is in our bill which is now under consideration on the floor. Under section 622(f) and section 632(c)(1)(A), cost-benefit analysis and risk assessments are not required if "impracticable due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources."

There are no exemptions in the Glenn bill at all for cost-benefit analysis where there is an emergency.

I did not mean to interrupt you, but I wanted to point that out.

Mr. ROTH. I think it is important to understand that, in a case of health or safety threat. It does not have to be an emergency. The legislation provides that an exception can be made in the case of an emergency or health or safety. So there are three different exceptions. So there does not—

Mr. GLENN. I would point out—

Mr. ROTH. Or a threat.

Mr. GLENN. I would point out to my friend from Delaware the exception for that would only be for 180 days. Then it has to go through all the reanalysis and may be held up for years.

Mr. ROTH. That is totally inaccurate. There is nothing in the legislation that says the rule terminates.

Mr. GLENN. But it is judicially challengeable. And there is nothing in there that says it is not challengeable.

Mr. HATCH. We just accepted an amendment this morning to make 1 year.

Mr. GLENN. One year. I am corrected on that. The original language was 180

days in the legislation. And the Senator from Louisiana changed that to 1 year. And that is correct. That has been changed.

Mr. ROTH. I reemphasize a point I made earlier that it can only be challenged in court to have the analysis made. It does not result in the rule itself being terminated. As a matter of fact, this section starts out that a major rule "may be adopted and may become effective without prior compliance with the subchapter."

But a second question I would like to ask the distinguished Senator from Ohio is, he spoke about E. coli and of food poisoning and a number of others. And yet I do not find any of those matters to be listed in the Democratic list of concerns with S. 343. There were presumably 9 major problems with the legislation plus another 17 minor problems. But I do not recall seeing any of these issues being included as part of the problems with the 777 version of the Dole-Johnston substitute.

I have in my hand the document given to us by the Democrats as areas of concern with the legislation before us. At 9:30 this morning, we were supposed to have a discussion of these provisions or concerns. That was not held. But nowhere—but nowhere—do I see the issues raised in this paper that the distinguished Senator raised this afternoon.

Mr. GLENN. Obviously, we missed one. We have one more to add. Put it on. Fine.

Mrs. BOXER addressed the Chair.

Mr. GLENN. I am serious about that. One comment and then I will yield.

Mr. ROTH. I yield to—

Mr. HATCH. May I ask one question?

Mr. ROTH. May I ask who has the floor?

The PRESIDING OFFICER. The Senator from Delaware.

Mr. HATCH. If I may ask one question of my colleague?

Mr. ROTH. I am happy to yield for a question without losing my right to the floor.

Mr. HATCH. If I may ask one question, whether it is 1 year, 180 days or 1 minute, is it not true that the rule will not terminate?

Mr. ROTH. Absolutely. That is exactly the point I have been making.

Mr. HATCH. The rule continues to remain in effect.

Mr. ROTH. Absolutely. There is nothing in the legislation that terminates the rule.

Mr. HATCH. That is true on the rule on mammography, is it not?

Mr. ROTH. Absolutely.

Mr. HATCH. So, what are we arguing about?

One reason we filed this perfecting amendment is because there is no need for this amendment from the distinguished Senator from California, because the bill addresses the issue. There is an interim rule. The fact they do not have a final rule is the fault of the administration and the FDA.

I will say that the amendment of the Senator from California will bring

about a beneficial but unintended effect, because I am quite certain the FDA is going to work hard to get their rule done by October. So that will be a good effect of this amendment, in my opinion, but I still believe there is no reason to keep making these special exemptions for anything. Is that not true?

Mr. ROTH. That is absolutely correct.

Mr. GLENN. No, that is not—

Mr. ROTH. Let me—

Mr. JOHNSTON. Mr. President, will the Senator yield for a question or series of questions, or does he want to finish his statement?

Mr. ROTH. I would rather continue just for the moment. I will be happy to yield in just a few minutes. I think it is extremely important to understand that in the Dole-Johnston legislation, on page 25, we have a specific exception to cover the case of emergency health and safety from the general rule of requiring a cost-benefit analysis.

Again, I find no such exception in S. 1001. As a matter of fact, I look on page 5 of S. 1001 and it says that:

The term "rule" shall not include—

(A) a rule of particular applicability that approves or prescribes for the future rates, wages, prices—

So forth and so forth.

(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 a federally insured depository.

It goes on with various housing, foreign banks, so forth.

(D) a rule issued by the Federal Election Commission or a rule issued by the Federal Communications Commission pursuant to section 203 of the Communications Act of 1934.

Those are the exceptions to the rule, in contrast to our legislation where we specifically provide a generic waiver.

Nor do I find anywhere, and I again ask the distinguished Senator from Ohio, where there is any kind of exception in the case of E. coli or breast cancer in the legislation proposed by him.

Mr. GLENN. I reply to my friend from Delaware, in our legislation, S. 1001, rules in the pipeline are permitted to go ahead and be in effect, where under S. 343, they would have to go back and would have 1 year to comply. If they did not comply, then I do not see anything in here at all that says it could not be judicially challenged, which it could.

Mr. ROTH. What about next year under your legislation?

Mr. GLENN. You cannot guarantee getting these things through. Ours leaves things in the pipeline, and we have no petition process. The rules in the pipeline would stay in effect. That is what we are talking about.

Mr. ROTH. The question I am raising, if you have a situation arise where it is an emergency, a safety threat or a health threat in the future and it is impractical to make a cost-benefit analy-

sis, where is the exception in your legislation?

Mr. GLENN. In the future—if we are talking about in the future, I think both pieces of legislation are pretty much identical to what happens in the future. We are talking about the interim period.

Mr. ROTH. That is the point I am making. Our legislation, S. 343, on page 25 has a specific exception to cover these situations. There is no such exception, no such waiver in S. 1001. If I am wrong, I ask for the page and line number.

Mr. GLENN. I think the difference on this, I reply to my friend, is that you have so many more decisional criteria that have to be complied with in this and all complied with within a year, which is not likely, in most cases, to be completed within a year.

Mr. ROTH. But I think the complaint, I will say, is the time that would take in making the cost-benefit analysis.

Let me ask you this. Does your legislation exempt E. coli? Does it have any exemption covering E. coli?

Mr. GLENN. It would not have to because in the pipeline that is covered, and we have no cutoff threshold that would knock it out of the pipeline, we let things in the pipeline stay in there. So E. coli—incidentally, while we are on the subject of E. coli, here is out of Tennessee right now, July 4, five cases of E. coli being treated. One woman, I think one child has already died, I believe it is. These are the press reports I was just handed a few moments ago, multiple newspaper reports about an E. coli outbreak in Tennessee right now. So these were not theoretical things we were talking about on the floor yesterday.

Mr. ROTH. The point I would like to make is, yes, there are going to be serious health, safety and other problems. But the important difference between the legislation before this committee and the amendment being proposed by the distinguished Senator from Ohio is that there is a waiver that anticipates what might happen in the future. That is a critically important difference.

Today it may be E. coli, tomorrow it may be heart disease, a third day it may be something else. But under our legislation, we have anticipated that situation by having a generic exception that covers those situations. That is the reason it is not necessary to spell out each of these exceptions as being proposed, except for public relations reasons.

Mr. GLENN. Let me ask this, then. Does the Senator from Delaware believe that rules in the pipeline now that deal with health and safety should be permitted to remain in effect without having to go through a whole new series of hoops?

Mr. ROTH. Well, we voted yesterday April 1 to make those effective under the Johnston amendment.

Mr. GLENN. I am talking about things in the pipeline that are not to

be completed until after April 1. That is the whole area of contention right now—E. coli, cryptosporidium, and all the rest.

Mr. ROTH. Here the exception applies. That is the purpose of this exception. It applies to those that are in the pipeline.

Mrs. BOXER. I have a parliamentary inquiry.

Mr. ROTH. It applies in the future.

Mrs. BOXER. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Delaware has the floor.

Mrs. BOXER. I have a parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from Delaware yield?

Mr. ROTH. No, the Senator does not yield.

The PRESIDING OFFICER. The Senator has the floor.

Mr. ROTH. Mr. President, I think it is critically important to understand that the argument made by the proponents of the pending amendment is that a future anticipated regulation on mammograms would be delayed by compliance with S. 343, and that during such delays, lives would be lost.

In order to address such issues, the majority leader last Tuesday offered an amendment, which was adopted by the Senate, that provides that in exactly those circumstances described by proponents, the relevant agency may issue the rule first and allow it to take effect and, thereafter, finish compliance with S. 343.

Through the Johnston amendment, adopted today, the agency would have 1 year to finish its compliance. The language of that amendment says that a rule, such as the mammogram rule, "may become effective without prior compliance"—Let me read that again: "may become effective without prior compliance if the agency, for good cause, finds that conducting cost-benefit analysis is impractical due to a health threat that is likely to result in significant harm to the public."

Mr. GLENN. Will the Senator yield for a question?

Mr. ROTH. Yes, I will be happy to yield for a question.

Mr. GLENN. But in that case, the rule would still have to go back and go through the new requirements of S. 343 on being reanalyzed, and a new rule as an improvement would not be able to go into effect until that had been completed, which may be several years later.

Mr. ROTH. No, no, that is not correct. Again, I will reread what I read twice. It says, "may become effective without prior compliance \* \* \*" That is critically important.

What we are trying to anticipate in the language on page 25 of S. 343 is making certain that where a situation arises because of cancer, because of heart disease, or whatever it may be, the rule can become effective without making the cost-benefit analysis if the agency finds that conducting such analysis is impractical due to a health

threat. Our language is generic. It anticipates that there may be many different situations. That is the reason we do not want to get into spelling out exception by exception.

Mr. GLENN. Might I ask a question? Mr. ROTH. Yes.

Mr. GLENN. I ask this question with specific reference to the mammography proposal. Would it be the opinion of the Senator from Delaware that the mammography proposal and the proposal that will be made in October, and on which a lot of work has already been done, those should be permitted to go through and be in full effect without having to go back and comply with a lot of new rules and regulations, as required in S. 343? In other words, it could go into effect and stay in effect.

Mr. ROTH. The agency has that authority under our legislation, that is correct.

Mr. GLENN. Without any challenge, without having to go back and go through the requirements of S. 343, is that correct?

Mr. ROTH. Basically, that is correct. They are expected to go ahead and make a cost-benefit analysis the year following. They are required to make it. But that, again, in no way terminates the rule. The rule continues so people are protected. That is what the whole point of the exception is.

Mr. GLENN. A point I made a while ago on what is involved in a regulation is that the likelihood of this being completed in a year is probably not very good. It is probably pretty remote. Most rules take several years to finalize. What happens at the end of that 1-year period? It would be judicially challengeable and could be knocked out. That is the uncertainty we do not want to leave people with. That is the construction of the argument right there.

Mr. ROTH. An individual can go into court and ask that the analysis be made. But that will, in no way, terminate the rule.

So the important fact is that we are protecting the American people, the American public. And where there is a health problem, an imminent threat, or whatever, an exception to the rule is allowed. So what we have done in S. 343, in contrast to S. 1001, has anticipated this need.

So, again, the distinguished Senator from Ohio made many complaints that, as I said, seem curious to me. He complains that the emergency is exempted and S. 343 is insufficient. Yet, his bill, S. 1001, has no exemption at all. The question is, why? Is it not needed? Again, he complains that S. 343 has no individual listing on the E. coli or mammography rule. Yet, his bill, S. 1001, has no exemption at all. Why? It is not needed.

Mr. GLENN. Are you asking me a question?

Mr. ROTH. No.

Mr. GLENN. Everything that is in the pipeline stays there. It does not have to go back for reanalysis. That is the reason.

Mrs. MURRAY. Will the Senator from Delaware yield for a question, Mr. President?

Mr. ROTH. My question is—

Mrs. MURRAY. Mr. President, will the Senator from Delaware yield for a question?

Mr. ROTH. In just a moment. Again, I want to point out that, in the future, a situation can arise under S. 1001 where there is a threat to health or safety, or an emergency and, yet, there is no exception, no waiver permitted under S. 1001. The important point, of course, is that this situation has been addressed in S. 343.

Mr. HATCH. Will the Senator yield for another question?

Mr. ROTH. I am happy to yield.

Mr. HATCH. Excuse me. We want to make sure this is understood. Is it true that this interim rule was issued in December of 1993 on mammography?

Mr. ROTH. Yes, that is true.

Mr. HATCH. Is it not also true that it was in the pipeline before April 1 of this year?

Mr. ROTH. Yes.

Mr. HATCH. Which is the date in this bill, and we protect rules in the pipeline, also, do we not?

Mr. ROTH. That is true.

Mr. HATCH. I think what the Senator is trying to explain here is that the Glenn bill has no protection, no exception at all for E. coli, mammography, or any of these other items. And we do. We provide that if there is even a threat, they do not have to do cost-benefit analysis or risk assessment.

Mr. ROTH. That is correct.

Mr. HATCH. If there is a threat, we do not have to do cost-benefit analysis or risk assessment.

Mr. ROTH. That is correct.

Mr. GLENN. No, it is not.

Mr. HATCH. Yes, it is.

Mr. GLENN. What the Senator says is not correct, no matter what you say. Our bill has the Administrative Procedure Act to go along with—

The PRESIDING OFFICER. The Senator from Delaware has the floor.

Mr. GLENN. Will the Senator yield for my statement?

Mr. ROTH. Without losing my right to the floor.

Mr. GLENN. The Administrative Procedure Act says that when the agency, for good cause, finds and incorporates the finding and a brief statement of reasons therefore—

The PRESIDING OFFICER. The Senator can only yield for a question. Does the Senator from Delaware yield for that purpose?

Mr. GLENN. Well, I will ask a question. Would the Senator agree with the Administrative Procedure Act, that it covers our bill, in that when it says, "When the agency for good cause finds and incorporates the finding and a brief statement of reasons there in the rules issued, that notice and public procedure thereon are impracticable and unnecessary and contrary to the public interest," it would also mean that the agency could control what is an emer-

gency and not? In your bill, it goes back for a year's reanalysis. It is required.

Mr. ROTH. I point out that the Senator is making my argument. That legislation applies, obviously, to S. 343. So what you are, in effect, saying is that none of these exceptions that have been discussed in the last 3 days are necessary because they are already covered by the Administrative Procedure Act.

Mr. GLENN. Well—

Mr. ROTH. That is the main point I have been trying to make, that these specific exceptions are not necessary. If you want to put it on the basis of the basic rule, fine. But I will also point out that, in our specific legislation, we have waivers both with respect to cost-benefit and with respect to risk assessment. So that is the reason we do not think any of these special cases are necessary.

Mr. GLENN. Would the Senator agree, then, that we should change S. 343 to just say that rules in the pipeline stay in effect?

Mr. ROTH. Mr. President, I would not.

Mr. GLENN. That means they have to go back through a whole new procedure that will delay them for years and years.

Mr. ROTH. The Administrative Procedure Act exception, as I said, applies to S. 343 equally. But we do have a better exception. The APA exception only applies to notice and comment for the rule. The exception in S. 343 applies to cost-benefit analysis, and that is what is critically important.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Thank you, Mr. President. I ask unanimous consent to have printed in the RECORD a clip regarding E. coli that has been occurring in Tennessee in the last few days.

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

[From the News Sentinel, June 30, 1995]

BACTERIA STUDIED IN ILLNESS OF BOY, 11  
(By Ken Garland)

MARYVILLE.—State health officials hope to know by this afternoon if an 11-year-old Maryville boy—hospitalized since Sunday—is suffering from a severe form of sometimes-fatal E. coli bacteria.

Logan Duckett, son of John and Debbie Duckett, was in fair condition Thursday and is expected to suffer no lasting effects from the illness, said Dr. Charles Raper, his doctor.

The boy was hospitalized after suffering since June 22 with diarrhea, Raper said. Preliminary test results by the hospital laboratory indicated he might be suffering from 0157:H7, the name for the severe form of E. coli.

The state health department is conducting laboratory tests. "We're waiting on confirmation," said Dr. Paul Irwin, East Tennessee director of the Tennessee Department of Public Health. "We know it's E. coli; we just don't know if it is 0157:H7."

E. coli is a bacteria found in meat that has been tainted, usually with feces, Raper said. Proper cooking of the meat will kill the bacteria, officials said.

Mrs. BOXER. Mr. President, I am very pleased to get the floor more than an hour after I introduced a very important amendment. There is a lot of talk about the bill in general. I guess it is time to give a little bit of a wake-up call to some of my colleagues.

This second-degree amendment which would act as a substitute for the Boxer-Murray-Mikulski amendment is the most cynical parliamentary attempt to gut an amendment that I have ever seen.

I have only been here a few years. I have seen a lot of second degrees from both sides. Usually when you second-degree an amendment, it has something to do with the underlying amendment. The underlying amendment that I have put forward would say that the rules regarding mammography shall move forward and they will not be encumbered by this bill.

We have heard three learned Senators squabbling over there for 60 minutes. No one understands anybody else. Ask what is on page 9, page 4, line 1—if these three cannot agree, and they are friends—imagine the field day the lawyers will have.

Should we move this mammography rule forward? Is it stuck? Is it stopped? I want to say I do not want to play Russian roulette with the women of this country.

When I laid down my amendment, it was very clear. I am really glad we can talk about it. It basically said it was very important to keep this rule moving. It is interesting that my friend from Utah complains it has taken so long.

On the one hand, he says there is too much regulation and the bureaucrats cannot wait to regulate; on the other hand, he complains that this regulation is taking too long. We cannot have it both ways. Better they are careful with this rule.

I will go into what this rule does. It is complicated. The fact is, we should not derail it now; 46,000 women every year die of breast cancer, and many of them, tragically, die because the mammogram they took was inaccurate or the technician was not highly trained, or the equipment was not good, it was slipshod.

Then I am told that I am offering a special-interest amendment. I take great offense. What is the special interest? The women of America? Give me a break. The women of America want this amendment.

I have a letter on all Members' desks, supporting this amendment, from the National Breast Cancer Coalition. Is that a special interest? If women who have had breast cancer, who have had loved ones have breast cancer, survivors, if that is a special interest, I do not know what is going on around here.

I will name the special interests—the people who do not want to be regulated, who do not want to upgrade their mammography equipment, who want to get away with hiring people to work for them who are not as well trained

and maybe come at a cheaper price. We should talk the truth around here for a change.

Mrs. MURRAY. Mr. President, will the Senator yield?

Mrs. BOXER. I am happy to yield to the Senator.

Mrs. MURRAY. Mr. President, I ask my colleague from California, her amendment specifically exempts the Mammography Quality Standards Act regulation from the underlying bill, is that correct?

Mrs. BOXER. That is correct.

Mrs. MURRAY. The second-degree amendment placed on the desk by Senator DOLE is simply a sense of the Senate, is that correct?

Mrs. BOXER. That is correct. It is a sense of the Senate that does not even deal with this subject matter. It just says that nothing in this bill will harm anybody.

Mrs. MURRAY. If the Senator from California will let me ask another question, certainly she sat with me throughout the budget debate and listened to our colleagues say sense-of-the-Senate resolutions are not binding, and I assume she feels as I do, and I will ask the Senator, will the Senator be able to go back to her friends diagnosed with breast cancer or to women in her State and say, "Don't worry, we have taken care of you with a sense of the Senate that is not binding?"

Mrs. BOXER. I say that any Senator who went to someone who was worried about breast cancer and said the sense of the Senate was going to do one thing to move forward the rule on mammography would simply not be telling the truth.

Of course, the Senator is correct. We cannot tell anybody who cared about this issue that the Dole substitute does a thing to help move the mammography rule along.

Mrs. MURRAY. I thank my colleague.

Mrs. BOXER. Thank you.

I had the feeling that my Republican colleagues would offer a second-degree amendment like this because they have done it before on other amendments.

They did not tell me they were going to do this, but they wanted a time agreement, and I said absolutely. I would give 15 minutes on my side, 15 on their side if there were no second-degree amendments. They said, "Gee, we have not seen your amendment, Senator, how can I do that?"

I gave my amendment, and miraculously in 30 seconds the majority leader appeared with this sense-of-the-Senate substitute. That was fast work. But it will not work. It will not work. I am telling my friends that 46,000 women die of breast cancer every year, so I will stand on my feet for 46,000 minutes or 46,000 hours or whatever it takes, and I know my friend from Washington is in complete agreement so there are two of us, at least.

And by the way, there are a lot more on this amendment and I will mention who they are.

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

Mrs. BOXER. I am happy to yield to the Senator.

Mr. KENNEDY. The Senator has in a very important way changed this debate from just the questions of regulations of rules into real terms.

What we are talking about as the Senator from California and the Senator from Washington, we are talking about mothers, we are talking about sisters, women in our society for whom the incidence for cancer has grown significantly over the period of recent years with regard to breast cancer.

Does the Senator realize that when the Senate, in the last Congress went on record, it was a unanimous vote, unanimous out of our committee to develop these regulations, unanimous in the U.S. Senate to move ahead, unanimous in the House of Representatives in their committee, and unanimous on the floor to develop the regulations? The need is out there.

Can the Senator possibly explain to any Member why, when it was the result of careful consideration both in terms of the committees and the debate here, the recommendations that were made by the testimony that was given overwhelmingly favorable with a sense of urgency in asking not to delay and to move ahead, and now we have the final regulations just being brought up, that we are asked to follow through some other procedure, some other procedure, some other words, which we find out the meaning of which is still very much left in doubt?

I do not know whether the Senator from California was here when we debated the Civil Rights Act, when we spent months here trying to debate the difference between significant and manifest.

Here we have a change in the food standards into insignificant risk without definition. We will come back to that later during the course of the debate on food standards and food safety.

Can the Senator explain to the American people why, if there was such a sense of urgency that Republicans and Democrats, all Americans, are getting behind and say get about the business of doing it? Does it make any sense to the Senator?

Mrs. BOXER. I say to my friend, who is such a leader in all health issues, including this breast cancer issue—it makes no sense to me. And that is why I committed myself, and I know my colleagues have as well, and I am so appreciative the Senator was able to get to the floor at this time, to focus on this issue.

Mr. KENNEDY. Just finally, is the Senator concerned, as I would be, that there may be manufacturers who are out there, who are producing equipment today, that do not meet the standards, and that would be put in a position to question the standards in the future because their equipment does not meet those standards, and they would be able to delay the implementation of those standards? Or there may be groups out there that are going

to question and challenge it because they do not have the training and they do not want to comply with the various things. We have heard that, as a reality. We have heard of manufacturers. We have heard of corporate interests that want to resist these kinds of standards.

But what we are faced with is why should we side with those interests when we have something which is of such importance to women, not just to women in our society, to mothers in our society, to sisters, to wives, to members of our families—that is so important.

Why should we desist and give in to these special interests, which are the special interests which are the manufacturers that will be able to tie this up, even under the existing standard, with the look-back provisions, and all the other kinds of mechanisms which have been reviewed? I would like to stay away from those. We can get into those in debate, because there are those here in the Senate who would like to just tie us up and talk about procedure when the Senator is talking about the impact on real people. Why should we side with those companies or manufacturers who will delay this rather than with the sound health policy that would implement it?

Mrs. BOXER. Let me say to my friend, he is so right, because he worked so hard on getting the bill through and getting the law passed in 1992. Now the rule is coming to fruition in October. We are going to have the rule.

If the Senator would have been here, I say to my friend from Massachusetts, three friends from the opposite side of the aisle could not even agree on how this new legislation is going to work. What we are saying is, do not put at risk the women of America for this battle over words. The Senator is so right. We get down to this battle over words and lines on pieces of paper. I am just so pleased the Senator from Massachusetts came here because, after all, why do we have rules? Because we pass legislation.

And the Senator reminds me—which I frankly did not remember—that Republicans and Democrats voted unanimously for the legislation that is leading to this rule that is coming forward in October. Why on Earth we are going to get into a delaying tactic here, I do not know.

I say further to my friend, I am worried even about this debate, that people listening to this debate, business people, may think we are losing our will to move forward with safer standards. It is not just the Senator from California, or Massachusetts, or Washington, who are fearful of this. We have the agencies telling us very clearly that if this bill passes without amendment, this rule will be derailed. If we are going to make a mistake—and our colleagues assure us they are wrong—I do not want to make a mistake in this subject

area. Frankly, there are other areas I would not get so upset.

What I find very interesting is the Senator from Utah said we cannot take this anymore. It will be 3 months. It will be exemption after exemption after exemption from this bill.

The bill has a ton of exemptions for business. But when the Democrats offer exemptions for E. coli—which we just heard there is another problem in Tennessee in the last few days on that; and we offer an amendment on cryptosporidium, and today on mammography—oh, we are trying to slow it down. We are standing here for the special interests.

God, I hope the American people are watching this.

The majority leader's sense of the Senate has no force of law. We have already stated that. It has nothing to do with the underlying bill on mammography. It is a general statement which we all can agree with. In nothing that we ever do, do we intend to hurt the fight against disease. But yet, the underlying Boxer amendment, which we are going to get a vote on—because, unlike my Republican friends, I am going to clearly state what I intend to do, so I hope they are listening, I intend to get a vote on the underlying amendment, period. You can second-degree me all night and all day tomorrow and the day after and the day after and the day after—we will have a vote on the underlying amendment.

So I hope sooner rather than later we can come to that agreement. We did come to that agreement on the E. coli amendment, where the Senator from Louisiana had his second-degree voted on separately and then the underlying amendment came after. Sad to say, we got 49 votes.

Everything you could think of is in the second-degree amendment, in the substitute, except that you should not beat your wife. That was not in there. But nothing specifically to do with exempting the mammography rule.

Let me tell my colleagues what they are stopping here, if we do not get to the underlying Boxer amendment: Specifying performance standards for x-ray equipment. I would say that is rather important, because if you get a mammogram and the x-ray equipment does not meet the standard, or a high enough standard, they can miss the cancer.

I had a friend who had her mammogram; they told her it was fine, but thank God she found the lump herself and we hope she will make it. They missed it. How am I going to tell her that, oh, I just decided for convenience I would not press my amendment and we are going to vote for some sense of the Senate? I cannot.

(Mr. GREGG assumed the chair.)

Mr. KENNEDY. Will the Senator yield on that point?

Mrs. BOXER. Yes, I will.

Mr. KENNEDY. I do not know if the Senator is familiar with the 1992 study

by the Physician Insurers Association of America that found that 35 percent of all claimants with breast cancer had a negative mammogram and 14 percent had equivocal mammogram results.

This is prior to the time when we took action to pass this legislation, the rules of which are about to go into effect to protect American women.

Mrs. BOXER. So is my friend saying that half of the mammograms may not have been fully accurate?

Mr. KENNEDY. Mr. President, 35 percent false negative; 14 percent were equivocal—in the 1992 study, which is the most comprehensive study. As compared to the mammography, the most recent studies now, according to the GAO report, find that high-quality mammography can find 85 to 90 percent of breast tumors in women over 50, and discover a tumor up to 2 years before a lump can be felt.

That is in 85 to 90 percent, with the high-quality mammography, with well-trained people, versus the recent study, the 1992 study, that showed 35 percent false negatives with another 14 percent that were equivocal. This is what we are talking about: Real life and death.

I think that the Senator would agree with me that we are not saying that these mammogram standards will solve all of the problems and that all breast cancer is going to be resolved. We are not going to be able say that all of the people who should have those tests and who should receive them will receive them. But it is a beginning.

Final point this: We heard so much that one of the first orders of business by our colleagues on the other side of the aisle was medical malpractice reform. You can do more about medical malpractice reform by implementing these mammogram standards because you are going to get accuracy and you are going to save lives and not have the resulting kinds of challenges that come out.

So I think the point that the Senator was talking about, a friend that experienced these tragic or unfortunate kinds of results, is illustrated by all of the testimony that we had, which, as the Senator from Washington and the Senator from California and others have pointed out, is the reason we got the unanimous results.

So it is important, I think, to understand what is before the U.S. Senate; that is, whether we are going to go forward with a procedure—could we have order, Mr. President?

The PRESIDING OFFICER. Would the Senators please take their conversations to the Cloakroom?

The Senator from Massachusetts?

Mr. KENNEDY. I thank the Chair.

The Senator from California has the floor, but I think the Senator from California and the Senator from Washington will agree that we are talking about a process and a procedure that will be able to really have an impact and save real people's lives. We know that will be the result based on the information that we have, and that under

this legislation we are putting them at risk.

There will be those though say, "Well, we have a new kind of way, a new process and procedure. We do not know how it will be interpreted. But why don't you take your chance and roll the dice?" Would the Senator be willing to do that with her daughter? I certainly am not prepared to do it with mine. And I do not think any American family would be prepared to do it with their wife, daughter, or their mother. Why should we ask the American people to go ahead and take that chance and not address that issue during the course of this debate?

Mrs. BOXER. I want to say to my friend from Massachusetts—and I thank him for bringing those statistics to our attention—that 35 percent of the women are told they are OK, there is nothing wrong, when in fact there was a lump present. The Senator is so right to come to this Chamber to talk about his daughter and to talk about my daughter. One of the things I said is that the first time a Senator's wife has a problem, they will be on this floor saying, "Oh, let us pass the Boxer amendment." You know it hits home.

Mrs. MURRAY. Will the Senator from California yield on that question?

Mrs. BOXER. Yes.

Mrs. MURRAY. I want to make sure I understand the process here because I am very concerned about the 46,000 women every year who die because of breast cancer. Friends of mine, friends of yours, and relatives want to make sure that we have in place the best possible assurance that when those women have a mammogram it will be safe and it will be accurate.

If the current bill passes as written, there is a real concern that the rules and regulations that are going to go into effect can be challenged, that they will not be put into place.

Is that correct?

Mrs. BOXER. The Senator is absolutely correct. As we said, and we saw on this floor arguments over interpretation, this bill is a lawyer's dream. I am not willing to put the women of America at risk so that a bunch of lawyers can go to court and squabble like we just saw happen on the floor of the U.S. Senate.

The Senator is right.

Mrs. MURRAY. So the underlying amendment will assure those regulations will go into place after October and women can have a mammogram and know that there is a degree of assurance of accuracy in it that does not exist today.

Is that correct?

Mrs. BOXER. That is true. The rule is going to specify performance standards for X ray equipment; it is going to expand and standardize requirements for recordkeeping on medical records and reports.

By the way, many times women are not notified in a timely fashion of the results of their mammogram. It sounds strange. But it is true. That is one of the areas this rule will cover.

Lastly, there will be expanded quality assurance to allow flexibility for review based on achievement of objectives.

The fact of the matter is that there will be more specific personnel requirements of the people who take these mammograms to ensure that they know what they are doing and do not miss a lump. They will specify procedures and techniques for mammograms of women with breast implants.

As I know the Senators know, we have worked on this issue. It is a big problem when a woman has a breast implant to figure out what is behind that implant. And it could be breast cancer that is undetected.

All of this will be in the rule. My friends on the other side of the aisle think so little of this amendment and this rule that they are willing to second degree it with a litany of wonderful promises that have absolutely no force and effect and impact of law.

Mrs. MURRAY. On that point, would the Senator from California agree that if the sense of the Senate passes, there is no way to go home and assure our mothers and sisters and our daughters that they are going to have safe, accurate mammograms?

Mrs. BOXER. I would say to my friend that not only is there no way to assure them, but I would warn them that a bill that had unanimous support has essentially been derailed, and a rule that was about to be promulgated was taken off track.

So I think the Senator is exactly right in bringing this home to a person-to-person discussion.

I am happy to yield.

Mr. KENNEDY. Let us come back just for a moment and look at where we are. We have accepted now the NUNN amendment, which provides certain provisions or procedures that are going to affect the small business. Now, we have the response of one of the floor managers which said that since this does not reach the capacity, that you might not even be affected. Under the NUNN provision, this would be affected.

Under the criteria for the examination, one of the matters that they have to look at prior to the implementation is voluntary compliance. That is one of the provisions. We have the voluntary compliance. We have geographical distribution, and other requirements for other provisions which I know others would love to be debating all afternoon about. But there are the voluntary requirements.

There will be those who will say, "Why should we go ahead? Let us see what we can do from a voluntary point of view."

Let us look at what happened when we had the voluntary compliance. Prior to the passage of the law, the American College of Radiology had a voluntary quality assurance program, and 38 percent of the clinics failed. Here they tried to do it voluntarily.

People asked why we need regulations. What we are saying is that those

mothers who went in and got tested, and with inadequate manufacturing, inadequate procedures, and poorly trained people, thought they were free, and then come down with breast cancer when it could have been avoided, or at least their recovery could have been assured.

They say, "Well, you have that heavy hand of Government regulation over there." I certainly would want that heavy hand if it is going to protect any member of my family. And I think most Americans would, because individuals cannot make air clean, they cannot make water clean, and they cannot solve all of their problems in terms of pesticides and other factors.

Let us see, voluntary—what happened in this particular issue affecting so many of the women in our country? We had a voluntary quality assurance program, and 38 percent of the clinics failed and a third did not even participate in the program. They said, We are not even going to participate. We do not know what happened because a third refused to participate in a voluntary program. That is an alternative.

We could go back into those kinds of procedures when we are about to see the implementation of something that is going to give assurance to the American public that we are going to have quality in terms of manufacturing, well trained, with a good kind of enforcement, hopefully, and assurance.

I just am amazed that—I am not really amazed because we go through this on many different issues. But this is really one of just such enormous importance and consequence to the families in this country when they say, "Well, let us just try and not have regulations. Let us just have a voluntary process."

Mrs. BOXER. If I may on my time ask my friend a question, that is, or my friend from Washington, how many times have you been in a community meeting in your home State of Massachusetts or your home State of Washington where a constituent has come over and looked you in the eye and grabbed you by the sleeve, and said, "Please, Senator. Please, Senator, don't regulate mammograms. Don't regulate food and safety. You are doing too much to make the water safe?"

I really do not understand what is behind this bill. I mean, I do. I do. I think there is a lot of speculation behind it. But from the standpoint of the overall issues, has my friend ever been told that the heavy hand of Government is making mammograms too strict? I ask him.

Mr. KENNEDY. Absolutely not.

I think the American people hopefully are beginning to understand what this debate is about. Even with regard to OSHA, with 10,000 rules a year, if you had 99.9, or your child got 99.9, you would say, "Pretty good; pretty good." Well, if you said 99.9 percent of the regulations were not tested, I am not even prepared to say that, and neither is the

head of OSHA. But if you are up to, say, 99.9, you would still have 100 regulations that made no sense, that none of us would support. And we are hearing them every morning, we hear our favorite 10. They are using that to undermine the importance of the protection of mammography or for our food or for our air, for our water. The American people, hopefully, are beginning to understand this.

All of us understand the importance of making progress and reducing the regulation and releasing the energies and expansion and trying to eliminate bureaucracy and duplication and overlap, and the leadership is being provided by Senator GLENN, by Senator LEVIN, and others in a bipartisan manner—Senator ROTH I see in the Chamber at this time. It has been bipartisan efforts that have come out of those committees virtually unanimous, Republican and Democrat. But we are throwing these over, at least not being able to address those kinds of issues and are being asked now to suspend, or effectively emasculate this particular kind of provision on mammography. That makes no sense.

I wish to commend the Senator and ask if she would agree with me that just doing a sense-of-the-Senate is really, I think, trying to raise a false sense of expectation. Would the Senator not agree that we are really doing something when we are not? And for all the lists that are made out there that the majority leader—I mean we will take some time and go through other kinds of diseases that may not have the total numbers of the ones that have been included, but nonetheless, unless they are listed or exempted, otherwise would fall under this process and procedure and put at risk families in this country. That would be unacceptable. Is the Senator troubled by that process as well?

Mrs. BOXER. I am troubled by this process. I think it is a back-door way to undo legislation that, as my friend has pointed out, was unanimous—everyone agreed with the legislation—but when it comes to the rulemaking, they try to stop it.

It is interesting; I do not know if my friends saw the poll which was done that clearly showed that when the American people were asked, "Do you want to cut regulation that has to do with protecting health and safety and the environment?" 62 percent said no.

Well, what does that mean? It means you do not go at the Clean Water Act, you do not go at the Clean Air Act, and you do not go at the Mammography Quality Standards Act, and you do not go at the Safe Drinking Water Act, but you back door it. And this is a clear-cut example of back-door politics. You do not take it on because the American people would be in an uproar. They want clean air. They want clean water. They want protection when they go for a mammogram or another medical procedure. They are fearful without standards.

We already know we have problems. The Senator pointed out that we have problems in this area. Is this a time to turn back when a third of the women get a result which says they are fine, there is no lump found, and in fact it is a false reading? My goodness, I think they would want us to do more, and that is what the rule is all about.

Mr. KENNEDY. Could I just ask one question? And I see others who want to inquire. Does the Senator find it somewhat ironic? Here we have seen in terms of national health policy that women have been effectively shunted aside. That was a tragic reality. It was tragic in terms of the NIH programs and investigation in osteoporosis, breast cancer and ovarian cancer, a wide range of different areas, even though there is basic research that is being done at the NIH in terms of clinical applications. But by and large one could say that women's health issues were not a matter of central importance in terms of the American health agenda. Now we have seen in very recent years, in the last Congress, one of the earliest pieces of legislation was to ensure that there was going to be a fundamental commitment in terms of the NIH for women's health-related issues for research. We are gradually catching up.

I would like to hear in this Chamber why we have the fact that women have half the number of heart attacks as men but only have half the recoveries men do. What is it about that? I mean why? We are putting resources in terms of research into these areas which affect real people and affect our families, and now we have seen that at last, under this administration with the leadership of President Clinton, Mrs. Clinton, BARBARA MIKULSKI, and both of our distinguished Senators who are here, Senator BOXER and Senator MURRAY, we have seen the effort to make sure that we are going to continue that progress. And here we have at the start of this Congress rolling into July a major assault on a major health issue that affects better than half of our population.

Do the Senators find in their own mind, I would ask either the Senator from California or the Senator from Washington, some puzzlement when we have been so far behind on women's health issues—and certainly that has been true in research in these other health policy questions—on one extremely important matter, and that is in terms of breast cancer, which affects so many, and increasingly so, and we know that we can make progress—there are so many areas that still escape us about what we can do in terms of making progress, but we know that in this area we can make a difference in terms of giving some assurance to women that there is a better chance of curing and treating breast cancer with these kinds of standards, that when we do have that opportunity, there are those who want to say no, or let us just go a different way and maybe we will

end up with the same result. We do not know quite what these words mean. But why do the women of this country have to jump through these additional hoops as well?

Does the Senator find that somewhat ironic, that we find ourselves in that position on a Thursday afternoon when we ought to be trying to find out and be debating what more we could do in terms of women's health issues, children's health issues, parents' issues in this Chamber rather than try to put them at greater risk?

Mrs. BOXER. Not only do I find it puzzling, but I have to say to my friend, as he put his question forward, I realized something very interesting, and that is this is the third exemption amendment, as the Senator knows, that we are facing. The first one was E. coli, which is that bacteria that is found in hamburger meat and kills kids mostly and old people, and we have a case now in Tennessee—I do not know if the Senator is aware of it.

Mr. KENNEDY. We had Mrs. Sullivan from Haverhill, MA, who works hard all day—I address the Senate; I will not take much time—works all day, goes to school at night, active life, whose greatest problem was she ate a hamburger and \$300,000 later and in a most painful, excruciatingly painful kind of condition at Mass General Hospital has been able to survive but is still today in a weakened condition. And we had, earlier this morning, her sister, who happens to be a nurse, and obviously because she was a nurse was able to, I think in a family situation perhaps, get somewhat earlier kind of treatment for that extraordinary woman whose life will never be the same—that with regard to food health standards. And then we have, as the Senator pointed out, the machine in here that is rolling over the protection of food safety for the American people. I just wonder why the Senator thinks this is the case.

Mrs. BOXER. I think if you read the Contract With America, there was a guideline in there. But what I wanted to make a point about, I say to my friend from Massachusetts, is this. When he asked the question, is it not interesting whenever an issue of women's health comes up we cannot seem to get any forward movement? What I wanted to point out to my friend from Massachusetts is this. When the E. coli amendment came up, I say to my friend, there was a substitute second-degree amendment that tried to deal with the E. coli problem. So there was a second-degree amendment to deal with the E. coli problem. And unfortunately it passed. It was not an effective way to go. We lost by two votes. Then the cryptosporidium one came up. They defeated that, up or down. But now that the Senators from California, Washington and Massachusetts and the other women in the Senate on the Democratic side, put together an amendment on breast cancer, guess what? What is the second-degree

amendment, I say to my friend? It has nothing to do with breast cancer. It has nothing to do with mammography. What is wrong?

Mrs. MURRAY. Would the Senator yield?

Mrs. BOXER. Yes.

Mrs. MURRAY. Is this the first sense-of-the-Senate that we have dealt with as well?

Mrs. BOXER. Oh, yes. This is the first sense-of-the-Senate. They substitute a very strong amendment to move forward mammography rules with a big fat nothing. A sense-of-the-Senate that does nothing and does not even mention women's health or mammography. It is extraordinary. And that is why I am willing to stand here day after day, and night after night, and morning after morning, with my friends, until we get a vote up or down on the mammography issue, and if my friends want to stay here through the weekend and through next weekend and the weekend after that.

Mr. KENNEDY. Would the Senator yield?

Mrs. BOXER. Yes.

Mr. KENNEDY. I want to commend all those who have been involved with this. But would she not agree with me—I did not want to take the focus off the issue really of the mammography—but basically what we are talking about—I call this the "Polluters and Poisoners Protection Act." We are basically talking about not only in terms of questioning the safety on terms of breast cancer mammography standards, but we are talking about unsafe drinking water that will affect that family, and unsafe meat and the E. coli which you just referenced on that, and we are going to come down here to the change on the unsafe fruits and vegetables, and the unsafe baby foods with the changes in the food standard.

And as the Senator has focused on the E. coli, cryptosporidium debate last night, and now the mammography standards, basically we are talking about these other elements. Would the Senator not agree with me?

Mrs. BOXER. Absolutely. This is part of the process.

Mr. KENNEDY. This is part of the whole process. I want to indicate that the Senator has really brought the focus and attention on this area. We cannot solve all of the problems in these areas of drinking water, and meat and the vegetables and baby foods. We can make them a great deal safer. We think that we are putting at very significant risk all these kinds of protections for the American people. But the Senator from California is saying on the mammography we have specifics. "Do not take this away from protecting the American women. Take your hands off these standards that can make a real difference for the protection of mothers and sisters and daughters." And I just want to commend her and thank her very much.

But I did want to inquire whether the Senator from California or the Senator

from Washington agreed with me that we have parallel threats to these other areas in this legislation. And that the American people ought to understand that as well.

Mrs. BOXER. I certainly hope that the American people are watching this debate. You know, you can get off on these different sections of the bill. The lookback procedures, the petitions, all the rest of it. And that is what I believe the proponents of this bill want us to debate. They want to debate, how many days will it be reviewed? How many months will it be reviewed? The bottom line is this bill, if it passes without substantial amendment, is going to derail an urgent rule that is coming forward in October that will provide standards for those who are in the business of providing mammography, the majority of which are terrific people, but there are always those who cut around the edges. And that is why we need these rules, these national standards, so that a woman in California gets the same quality mammogram as a woman in Massachusetts or Tennessee or New Hampshire or Vermont or Rhode Island or Louisiana or Washington.

Mrs. MURRAY. Will the Senator from California yield?

Mrs. BOXER. Or Minnesota.

Mrs. MURRAY. Will the Senator from California agree with me—because I feel very puzzled and baffled and really concerned—that this amendment which deals very specifically with women, our mothers, our sisters, our daughters, our friends, who have had breast cancer, and who are counting on us as the Nation's leaders to assure them that when they go in for a mammography, that they have strict standards; that this amendment that deals with women, and women alone, has a sense-of-the-Senate second-degree; that I believe, if I am not mistaken, when the Senator spoke to it this morning she was not even able to send her own amendment to the desk. When her amendment was at the desk we were not allowed to speak about breast cancer for over an hour, but we did listen to a long litany about charts and graphs and process and long words and ambiguities. And we are finally here able to speak to the realness of this. But I also heard when this was being discussed before, "Do not worry about this. It is only going to cost \$98 million." Is that what the Senator from California heard as well?

Mrs. BOXER. Oh, yes. Yes. They say, "Oh, the estimate of cost is \$98 million. Since our bill says if you are under \$100 million you do not come under this, do not worry. Do not worry."

Mrs. MURRAY. Would the Senator yield?

Is it not clear that \$98 million is darn close to \$100 million, and could reach \$100 million? And not only that, it is my understanding that in the House bill that has passed the threshold is \$25 million.

Mrs. BOXER. Yes.

Mrs. MURRAY. When it gets to conference we will see somewhere between \$25 and \$100 million. So mammographies will be impacted.

Mrs. BOXER. Absolutely.

Mrs. MURRAY. Would the Senator not agree, in this legislation as currently drafted, it says if there is a significant impact on a substantial number of small entities it will be exempt as well? This amendment will not only be applicable because of the cost but it will also be because a substantial number of mammograms are done by small entities.

Is that not correct?

Mrs. BOXER. My friend is so correct. And I do not like to use—well, I will be as delicate as I can. I think claims on this Senate floor that mammography improvements are safe, without the Boxer-Murray amendment are false claims, because of what my friends have pointed out in this question time.

First, the fact that we know \$98 million is the cost of this regulation. And that is about as close as you can get to \$100 million. And, of course, when this bill goes to conference, with Newt Gingrich and his friends, they have a \$25 million trigger. You do not need to go to Poli Sci 101 to know where the numbers come out. We will be lucky if it is \$50 million. So ipso facto, protection gone.

And the second point that both my friends pointed out, which is important for this debate, is that under some amendments that we passed here, small businesses will be exempted if a substantial number, by the way not defined, talk about a lawyer's dream, substantial number of small businesses are impacted.

We are talking about endangering the lives of women. And when my friend says our sisters, our grandmothers, our daughters, our granddaughters, I think it affects our grandpas and our dads and brothers and our husbands too. When a woman gets breast cancer this is not only her fight. It is a family struggle. And when a family finds out that it was a mammogram that was not read correctly, or an x-ray machinery was defective, imagine the feeling that they lost a member of their family that could have been saved. And that is what we are talking about here. So if they want to talk on the other side about lookbacks and sunsets, and waivers and all the rest—it is new speak. We now have new speak around here. We do not get to the issues. Thank God for the Senator from Massachusetts for coming over here and helping us focus. Thank God for him for all these years fighting these battles, sometimes quite a lonely fight. I hope the American people listen, listen up. I am going to get a vote on the underlying amendment.

Mrs. MURRAY. Will the Senator from California yield?

Mrs. BOXER. Yes.

Mrs. MURRAY. Then I assume the Senator from California feels, as I do at this point, that we will not be dismissed by a sense-of-the-Senate

amendment; that on the underlying amendment, that clearly says to all women in this country that we will continue forward and put in place assurances for them on mammographies, there will be a vote on this floor.

Mrs. BOXER. We both guarantee that, and I know the Senator from Massachusetts joins us in that, as I am sure the Senator from Minnesota does, who is here listening and I am hoping will be asking us some questions in a short time. We are going to have a vote on the underlying amendment, period. Period. There is no recess that is going to stop us, either. You want to push us up against the recess? OK. Forty-six thousand women a year die of breast cancer. We will stay. We will stay through the summer. We will stay through Thanksgiving, Christmas. We will stay. We will stay through Hanukkah, Passover, Easter.

Mrs. MURRAY. The next Congress.

Mrs. BOXER. The next Congress, and none of us wants to have to do that because we have families, too. We have families, too. But we will do that because one in nine women is going to get breast cancer. Count up the women in this Chamber. Somebody is going to get breast cancer.

I will say this, sometimes you cannot help what happens. Sometimes you cannot help what happens. But many times you can, and we know that early detection is the major tool that we have in the fight against breast cancer.

Mr. WELLSTONE. Will the Senator yield for a question?

Mrs. BOXER. I will be glad to yield to my friend.

Mr. WELLSTONE. I will not take but a couple of minutes. I have from my office watched the Senator from California, the Senator from Washington, and the Senator from Massachusetts out on the floor, and I really have been moved by what you have said.

My wife, Sheila, is not here today. But her mom passed away from breast cancer, and we feel very, very strongly about these issues.

The Senator talks about having an up-or-down vote and we will be here for as long as it takes. If I could just ask my colleagues, why do you feel so strongly about this? Let us just forget all the statistics, all the charts, all the numbers. Why do you feel so strongly about this?

Mrs. BOXER. Well, I thank my friend for asking the question. I feel so strongly about this because I think that this bill is a backdoor attack on a very important series of laws that were passed in a bipartisan way to protect the American people. I feel very strongly it is a backdoor war on these laws. That is how I feel, because I do not think there would be support for repealing any of these acts. There are a lot of special interests out there that do not want the Clean Water Act and the Clean Air Act. Why? Because they feel it in their pocketbook.

While we all agree we do not want unnecessary and burdensome regula-

tions, and all of us are willing to vote to end that, we feel deeply committed that we will not reverse years of progress. I do not care if it is in the Contract With America.

So I feel very strongly that when there is an attack on a law that protects the health and safety of the American people, it is an obligation of U.S. Senators to point it out and to stand on their feet and to fight. I think that is what we are doing.

We all know people who have been misdiagnosed.

I talked about a friend of mine who, because the mammogram was not read properly, suffers terribly, and we pray that she will make it. But every day is like a nightmare because she did not catch it early.

Mrs. MURRAY. If the Senator from California will yield.

Mrs. BOXER. Yes.

Mrs. MURRAY. The Senator has asked a critical question, why would somebody be willing to stand out here on their feet and speak over and over until they are given an up-or-down vote on a very simple amendment. It is because of the women we know—personal friends and personal relatives who have died from breast cancer because it was not detected early. One out of nine women today will be diagnosed with breast cancer. Nine out of ten women will survive if it is detected early. I am determined to make sure that on my watch on this floor of this Senate that I will not allow any of those women to go undetected. I think it is incumbent upon all of us to see that that occurs.

Mr. HATCH addressed the Chair.

Mr. KENNEDY. Will the Senator yield?

Mr. HATCH. Will the Senator yield?

Mrs. BOXER. I am not yielding at this time.

The PRESIDING OFFICER. Will the Senator yield to the Senator from Utah?

Mrs. BOXER. No, I will not. When I simply asked for a parliamentary inquiry before, Senators would not yield to me.

Mr. HATCH. I would have yielded to you. You did not ask me.

Mrs. BOXER. I yield to my friend for a parliamentary inquiry without losing my right to the floor.

Mr. HATCH. I appreciate that. I thank you. Let me make a couple comments. There is nobody on this floor that feels more deeply about mammography than I do. Nobody.

Mrs. BOXER. I ask, is this a parliamentary inquiry?

Mr. HATCH. Yes, I am going to ask a question, and I want to make a few statements so I can get to the question.

There is nobody on this floor who has worked harder, as one of the prime co-sponsors of the mammography bill. But is it not true that there is an interim rule in effect on mammography?

Mrs. BOXER. The interim rule does not affect the issues that I read to the

Senate. I will reread them. It does not go to these issues. These issues are of crucial importance. They involve the performance standards for x-ray equipment; expanding and standardizing requirements for recordkeeping; expanding quality assurance; clarifying personnel requirements; and specifying procedures and techniques for mammography for examinees who have breast implants.

Mr. HATCH. Are they not in effect now?

Mrs. BOXER. No, there is no rule. I will be happy to share this with the Senator. This is a description of the rule that is going to go into effect in October.

Mr. KENNEDY. Will the Senator yield?

Mrs. BOXER. Yes; I will be happy to yield.

Mr. KENNEDY. As I understand, if the Senator stated it accurately, the new rules are likely to be significant improvements to the interim rule. They include performance standards for radiological equipment; standards for uniform imaging of women with breast implants; and establishing consumer plate procedures.

None of these areas are addressed in the interim regulations. So the interim rule, although much better than what would have existed, still will be strengthened with the permanent requirements.

I see others who want to speak, but let me mention, I was listening to the exchanges. I was going back into the hearing record and the testimony of Dr. Roper, who was the head of the CDC when we were having those hearings, and pointing out the controlled studies have shown that a 35- or 40-percent reduction in mortality related to breast cancer is possible.

I will make a comment and ask the Senator whether she agrees with this. Does the Senator agree that Dr. Roper's testimony was powerful testimony when he pointed out that controlled studies have shown that a 35- or 40-percent reduction in mortality related to breast cancer is possible? However, in order to achieve this level mammography, clinical examination must be performed, interpreted, and reported as accurately as possible. Subsequent steps, including biopsies and other followthrough procedures, must be timely and of high quality.

We, along with the Public Health Service Agency and relevant professional organizations, provide leadership to aggressively pursue a program designed to ensure the highest standards of excellent and early detection of breast cancer with mammography and assure the maximum benefit for life-saving technology for all Americans.

This is the testimony in favor of this legislation by the head of the Centers for Disease Control, appointed by the previous administration. Controlled studies have shown that a 35- to 40-percent reduction in mortality for cancer is what we are talking about for women.

Let me just ask the Senator whether she would agree with what was a very powerful comment, and that was during the course of our hearing, Mrs. Langor, who is the head of the National Association on Breast Cancer. This is her statement. I ask what is the reaction of the Senator from California.

We hear many sad things at NABCA, but one of the saddest is the story of the woman who has done everything correctly. She scheduled her mammogram, has received a clean bill of health, then she finds she is dying of breast cancer, not always due to negligence, but rather due to inexperience, poor equipment maintenance, or wrong equipment. She was relying on her medical provider to develop quality care. Her life has been destroyed. Her confidence is gone. She has conveyed this message to every woman she knows. A vital element in our attempts to control the breast cancer epidemic is knowing that after our hard work reaching, educating, and reassuring every American woman about mammography, that it is increasingly safe and affordable, mammography is also universally effective. It is the right of American women to receive screening mammography of the highest quality and the responsibility of lawmakers to grant them that right.

You cannot say it any better than that. That is what the mammography standards bill has done. This legislation is putting this at risk. At risk is that very eloquent statement.

I ask the Senator, again, why we should take any risks at all in doing it after we have had all the testimony in the world. We know about the problems we cannot solve. We can make an important impact in terms of the safety and continued life of women in our society. Why should we throw that over and go to some other kind of process and procedure which, for me, is not worth the paper that we have it written on.

Mrs. BOXER. I thank my friend. He is so right. Women are already at risk for breast cancer. Forty-six thousand a year die of it, and now we are going to add to the risk and derail a rule that—no matter how many times the Senator asked me the question, I will come back and tell you, no, there are no final regulations in place for the x-ray machines. There are no regulations. There are regulations in place for accreditation.

Mr. JOHNSTON. Will the Senator yield for a question?

Mrs. BOXER. Yes.

Mr. HATCH. Will the Senator yield for a unanimous-consent request?

Mrs. BOXER. Of course.

UNANIMOUS-CONSENT AGREEMENT

Mr. HATCH. I would like to resolve this.

Mr. President, I ask unanimous consent that amendments numbered 1524 and 1525 be withdrawn.

Mrs. BOXER. Reserving the right to object.

Mr. HATCH. This is agreed to by both sides. We are going to give you a separate vote.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving my right to object.

The PRESIDING OFFICER. Is there objection to the Senator's request?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. BOXER. If the Senator will propound the unanimous-consent request, I think we are ready.

Mr. HATCH. I ask unanimous consent that amendments 1524 and 1525 be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

So, the amendments (Nos. 1524 and 1525) were withdrawn.

UNANIMOUS-CONSENT AGREEMENT

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

I ask unanimous consent that no other amendments be in order, that a vote occur on the amendment at 5:05 p.m., with the time equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object. I want to make sure that before the vote on the Boxer-Murray-Mikulski amendment there be 1 minute on either side.

Mr. HATCH. If we hurry, we have almost 8 minutes.

Mrs. BOXER. I want to make sure that there is a little time on each side.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that following the vote Senator BOXER be recognized to offer an amendment, the text of which is amendment No. 1524, and that no amendments be in order to the Boxer amendment, and a vote occur immediately after 1 minute for Senator BOXER and 1 minute for Senator HATCH, without any intervening action or debate on the Boxer amendment.

Mr. JOHNSTON. Reserving the right to object, and I shall not, I have had a conversation with the Senator from Utah and the Senator from Oklahoma about whether we would be able to accept the other pending amendment, which is the Superfund amendment, accept that by unanimous consent. Do we know whether we can do that at this time?

Mr. HATCH. I am not prepared to do that at this time. But we will certainly look at that.

Mr. JOHNSTON. I say to my colleagues that I think that is in the works. That is, I have requested that we be able to do that. And so I hope

after the vote on the Boxer amendment, we would be able to accept that by unanimous consent. I would assume that no one on our side would object. But I would like to get that notice out just in case.

Mr. HATCH. Certainly.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Without objection, it is so ordered.

AMENDMENT NO. 1531 TO AMENDMENT NO. 1487

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1531 to amendment No. 1487.

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

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

The amendment is as follows:

At the appropriate place in the amendment, add the following: It is the sense of the Senate that nothing in this Act is intended to delay the timely promulgation of any regulations that would meet a human health or safety threat, including any rules that would reduce illness or mortality from the following: heart disease, cancer, stroke, chronic obstructive lung diseases, pneumonia and influenza, diabetes mellitus, human immunodeficiency virus infection, or water or food borne pathogens, polio, tuberculosis, measles, viral hepatitis, syphilis, or all other infectious and parasitic diseases.

Mr. HATCH. Mr. President, I ask unanimous consent that no further amendments re: exemptions for mammography be in order during the pendency of S. 343.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. If I can be clear about the order. The Senator from California has 5 minutes and the Senator from Utah has 5 minutes, is that correct? I want to make that clear. Or is the floor open to whoever seeks recognition?

The PRESIDING OFFICER. The time between now and 5:05 is evenly divided between the two Senators, which means the Senator has about 3½ minutes.

Mrs. BOXER. Thank you very much, Mr. President.

I have no objection to voting for the sense-of-the-Senate resolution offered by Senator DOLE. That is fine. It has nothing to do with my amendment, however, which gets to the issue of mammography. I hope Senators, in a bipartisan spirit, will support both.

There is nothing wrong whatsoever with Senator DOLE's amendment. It is just that, for the last, let us see, about 3 hours he intended for it to substitute for the BOXER-Murray-Mikulski amendment which, to this Senator, made no sense, and to many other Senators, it made no sense.

I am not going to yield to anybody because I only have 2½ minutes. I hope that Senators are listening to this debate. It has been clearly demonstrated via the fact that if we do not pass the Boxer-Murray amendment, we are playing Russian roulette with women's lives. Let me tell you why. In October, a rule is going to go on the books that sets standards for mammography. It is carrying out a law that passed in 1992.

This is not fun and games. This is about breast cancer that is going to strike one out of every nine women in this Chamber. The most painful situation is one where a woman was told her mammogram was fine, only to find out the technician could not read it or the machine was faulty and she has to undergo the most radical kind of therapy.

So my friends can argue about line 6 and line 2 and sunset clauses and all the rest. If Members care about this, Members vote yes. Play it safe for the women of this country and do not gamble. The rule that is about to come out is a rule that will make it far safer. Why on God's green Earth do we want to derail that? To score a political point?

Think again. The American people are catching on to this debate. This is a back-door assault on a bill that was passed in 1992 by Republicans and Democrats alike. But rather than repeal sections of it, we are making it so hard that the rule to carry it out will never go into place.

The first day a Senator's wife comes down with breast cancer and it was missed on a mammogram, we will be on the floor changing this bill.

Mr. President, 46,000 women every year die of this disease. We have talked about our moms, our grandmothers, our sisters, and our daughters. What about the fathers and sons and the grandfathers? It affects each and every American, just as when a man gets prostate cancer and is taken away from the family.

If ever there was a time to pull together as Senators for both parties, this is it. Why do we have to fight over everything around here?

Ms. MIKULSKI. Mr. President, I rise today to join my colleague, Senator BOXER, in offering this amendment that protects the public health by ensuring the continued implementation of mammography quality rules.

As the original coauthor of the Mammography Quality Standards Act, I was especially proud when this act was adopted in 1992. The Mammography Quality Standards Act requires all facilities providing mammography to be accredited and certified. This is extremely important in our efforts to detect breast cancer early when treatment is available and less invasive.

For the past year, the mammography quality standards have been reviewed by a Mammography Advisory Committee. It is my understanding that the FDA is now prepared to move forward with the publishing of these rules in October.

The women of America have waited since October 1992 for these mammography quality standards to be implemented. A delay at this time will result in needless deaths and disability by women who are tested by facilities and equipment not meeting Federal, uniform quality standards for mammography.

We are so close in getting these final rules for mammography quality standards approved. We must ensure that the mammogram women receive is of the highest quality possible.

I urge immediate passage of this amendment.

Mr. COHEN. Mr. President, I am pleased to sponsor this important amendment to ensure that regulations providing for quality standards in mammography screening are fully implemented as swiftly as possible.

Despite promising scientific advances in the treatment and diagnosis of breast cancer, this disease remains a major health threat to millions of American women. Breast cancer is the second leading cause of death among women. Last year alone, it is estimated by the National Cancer Institute that over 182,000 new cases of breast cancer were diagnosed and more than 46,000 women in the United States died as a result of this devastating disease.

This disease often strikes women in the prime of their lives and, as women get older, the odds of developing breast cancer steadily increase. One in eight women will develop breast cancer at some point in their lives. With statistics this sober, nearly every family will be directly affected by this disease.

In 1992, I cosponsored the Mammography Quality Standards Assurance Act because I knew of the critical importance of accurate breast cancer screening. Mammograms are among the most difficult tests to perform. If images are not clear or if tests are improperly read, cancers can be missed, leading to delayed treatment and premature death.

Prior to the adoption of this act, only a patchwork of Federal, State, and voluntary standards existed for mammography. Women could not be assured that their mammograms were properly administered, interpreted or communicated to them or their physicians.

In absence of a cure, mammography and the early detection of breast cancer is still the most effective weapon women have to fight this increasingly common—and often fatal—disease.

Currently, the FDA has in place interim rules for the Mammography Quality Standards Act which establish national standards to ensure the safety and accuracy of breast cancer screening procedures. However, the final proposed regulations are not expected until this October. While the interim regulations are enforceable and have established rules for accreditation, certification and annual inspection, it is crucial that we do not delay in full implementation of final regulations.

I am aware that there are questions as to whether S. 343 would have any ef-

fect on the implementation of these standards, but I believe that it is critically important to be absolutely sure that these regulations are not derailed, or delayed. The mammography standards were passed nearly 3 years ago and we must move forward on this important women's health issue.

The proposed final regulations further ensure the safety of mammography in significant ways. They specify performance standards for x-rays, develop procedures for examining women with breast implants and standardize requirements on medical records and mammography reports. Each of these reforms are essential to ensuring that all mammography done in this country is as reliable as possible.

Early detection of breast cancer will save countless lives. The Mammography Quality Standards Assurance Act ensures that women get the best possible breast cancer screening and that they will have the best chance of treating their cancer once diagnosed.

We owe it to each family touched by this devastating disease that these critical standards be exempted from any additional regulatory delays and that they become effective before more precious lives are lost to breast cancer.

The PRESIDING OFFICER (Mr. ABRAHAM). All time has expired.

Mr. HATCH. Mr. President, I think this is important, and I am glad to have an opportunity to get the points on the record.

I have to say again that interim regulations are by definition final. Perhaps the new, proposed regulations will be here in October; we have been assured by those on the other side that this is so.

But I have to keep point out that these interim regulations do have the full force and effect of law.

This particular debate is filled with misrepresentations. Nevertheless, I still think it is an important debate and I am glad to have an opportunity to get some key points on the record.

Mammography is an important tool in our effort to fight a dread disease which now affects an estimated one in nine women.

I believe we should do all we can to protect against breast cancer. I am one of the original sponsors to help to write one bill that does this. I am the sponsor of a bill last year to require that another breast cancer screening tool, self-examination, be taught at all federally funded health clinics. My record in this area is clear.

But whether or not we want to fight breast cancer is not the point of this debate. Of course, we all want to fight breast cancer, and all other cancers for that matter.

The point is that there are regulations in effect to implement the Mammography Quality Standards Act. They were promulgated in December 1993, 1½ years ago.

Nothing I have heard in this Chamber changes that or has convinced me a new proposed regulation under MQSA,

would make a significant improvement in the health of women who might get breast cancer.

Nevertheless, in the spirit of moving the larger debate along and recognizing that by the administration's own published estimate, it is likely new rules from MQSA would not be subject to the cost-benefit analysis of this bill, I, personally, am willing to accept this amendment.

If this amendment is necessary to give America's women peace of mind, I think it should go forward, even though I, personally, believe it is not needed.

I do have to underscore again that this bill addresses the mammography situation. It addresses the E. coli. If a rulemaking meets the bill's thresholds, there still can be exemptions for health emergencies or even health threats. It is hard to believe that the administration would not consider the possibility of meat contamination or increased exposure to breast cancer threats to public health.

Our bill allows those exemptions as I have cited before.

I personally resent the representations that have been made on the floor in this regard. It is important that members read the language of the bill; perhaps they have not.

The Glenn bill does not allow such exemptions. We put a lot of effort to make sure we take care of these problems.

I am frustrated because we are undergoing untold hours on the floor just, for the most part, so that political points can be made.

I think it is time to start working on the heart of this bill. If there are major problems in this bill that really need to be corrected, we should address them.

I hate to say this, but I have been working in good faith to try to accommodate the other side, to try to work on this problem and get this matter resolved, and make sure that they are happy with these provisions.

I am concerned because I perceive that we are continuing to get amendments which are permutations of issues which have already been resolved, such as the impact of the bill on the ability of Federal agencies to address public health problems.

One has to conclude that the purpose of all this is to drag out the debate. That is fine.

My personal recommendation is that we should vote for both amendments and get this past us and move on from there. We need to start working on the bill, rather than all these amendments that really do not deserve to see the light of day because we have taken care of them in the bill.

I do not see how anybody can disagree with that.

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. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 304 Leg.]

YEAS—99

Abraham	Feinstein	Lugar
Akaka	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boxer	Grams	Murkowski
Bradley	Grassley	Murray
Breaux	Gregg	Nickles
Brown	Harkin	Nunn
Bryan	Hatch	Packwood
Bumpers	Hatfield	Pell
Burns	Heflin	Pressler
Byrd	Helms	Pryor
Campbell	Hollings	Reid
Chafee	Hutchison	Robb
Coats	Inhofe	Rockefeller
Cochran	Inouye	Roth
Cohen	Jeffords	Santorum
Conrad	Johnston	Sarbanes
Coverdell	Kassebaum	Shelby
Craig	Kempthorne	Simon
D'Amato	Kennedy	Simpson
Daschle	Kerrey	Smith
DeWine	Kerry	Snowe
Dodd	Kohl	Specter
Dole	Kyl	Stevens
Domenici	Lautenberg	Thomas
Dorgan	Leahy	Thompson
Exon	Levin	Thurmond
Faircloth	Lieberman	Warner
Feingold	Lott	Wellstone

NOT VOTING—1

Bingaman

So the amendment (No. 1531) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair recognizes the Senator from California.

AMENDMENT NO. 1532 TO AMENDMENT NO. 1487

(Purpose: To protect public health by ensuring the continued implementation of mammography quality rules)

Mrs. BOXER. Mr. President, I call up my amendment which is at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. FEINSTEIN, Mr. DORGAN, Mr. KENNEDY, Mr. REID, Mr. BUMPERS, Mr. BIDEN, Mr. LEAHY, Ms. MOSELEY-BRAUN, and Mr. DASCHLE, proposes an amendment numbered 1532.

On page 19, strike the period and insert the following: "; or (xiii) a rule intended to implement section 354 of the Public Health Service Act (42 U.S.C. 263b) (as added by section 2 of the Mammography Quality Standards Act of 1992).";

Mrs. BOXER. 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.

Mrs. BOXER. Mr. President, I believe under a previous order I have 60 seconds to present the amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. FORD. Mr. President, may we have order? The Senator deserves to be heard.

Mr. President, we are not in order. Mr. President, I make a point of order that the Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

Mrs. BOXER. Mr. President, the amendment that is before the Senate would exempt the new mammogram rules from this bill. When you vote on the Boxer-Murray-Mikulski amendment, I ask you to think about your mother, your sister, your daughter, your granddaughter, and cast a vote that will assure them the best chance to survive breast cancer. And the best chance to survive breast cancer is to have the best equipment run by the best personnel.

That is what these rules are all about. We do not want to derail those rules because, otherwise, the cancer could be missed. And all of us know too many cases where tragedy has ensued. The better standards that are being proposed in the rule that will come out in October will absolutely be derailed because they came out after the April date that is specified in this bill.

So without the Boxer-Murray-Mikulski amendment, and so many other good Senators who are on it, we will derail safe mammograms.

Please vote aye and join with the National Breast Cancer Coalition in support of mammography quality standards.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I am going to recommend that everybody in the Chamber vote for this amendment, but I have to say this is another 3- or 4-hour expenditure of time that did not have to occur.

The administration, by its own official publication, said only 10 weeks ago that the anticipated costs of implementing the Mammography Quality Standards Act of 1993, a bill that I helped to write, would be about \$33 million.

Now we are told up to \$97 million, although the administration has not provided us with any details on that cost estimate or why it has changed so dramatically in 10 short weeks. But in any case, \$97 million is still \$3 million less than the threshold of this bill and could be made even less if the administration so desired.

On the other hand, I do think we should vote for it, because it may give some peace to some people who do not

understand this matter is already covered.

I continue to believe that our bill would not engender the ill effects the other side believes.

However, breast cancer is a serious, serious problem, and I would not want to create any feelings in that community that the Congress does not take the problem seriously. Because we do.

So I think that we should vote for the Boxer amendment, and then move on.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] is necessarily absent.

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 305 Leg.]

YEAS—99

Abraham	Feinstein	Lugar
Akaka	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boxer	Grassley	Murkowski
Bradley	Gregg	Murray
Breaux	Harkin	Nickles
Brown	Hatch	Nunn
Bryan	Hatfield	Packwood
Bumpers	Heflin	Pell
Burns	Helm	Pressler
Byrd	Hollings	Pryor
Campbell	Hutchison	Reid
Chafee	Inhofe	Robb
Coats	Inouye	Rockefeller
Cochran	Jeffords	Roth
Cohen	Johnston	Santorum
Conrad	Kassebaum	Sarbanes
Coverdell	Kempthorne	Shelby
Craig	Kennedy	Simon
D'Amato	Kerrey	Simpson
Daschle	Kerry	Smith
DeWine	Kohl	Snowe
Dodd	Kyl	Specter
Dole	Lautenberg	Stevens
Domenici	Leahy	Thomas
Dorgan	Levin	Thompson
Exon	Lieberman	Thurmond
Faircloth	Lott	Warner
Feingold		Wellstone

NOT VOTING—1

Bingaman

So the amendment (No. 1532) was agreed to.

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

Mrs. BOXER. I move to lay that motion on the table.

So the motion to lay on the table was agreed to.

Mr. JOHNSTON. What is the pending business?

AMENDMENT NO. 1517

The PRESIDING OFFICER. The pending business is the Johnston amendment No. 1517.

Mr. SMITH. Mr. President, as the chairman of the Senate Subcommittee on Superfund Waste Control and Risk Assessment, and as a member of the Governmental Affairs Committee, I have been closely following the progress of the pending regulatory re-

form legislation, S. 343, as it pertains to Superfund. I believe this is an important bill, and I think it makes a significant improvement in modernizing an outdated regulatory system.

I have to admit that I have some concerns about Superfund being specifically targeted for reform in this legislation. Before I outline these concerns, however, I think it is important to recognize how we have gotten to this point.

Everyone in this Chamber can agree that our Nation's system of environmental regulations has had its successes: Americans are breathing cleaner air, and drinking cleaner water today than they did a generation ago. Nonetheless, there is uniform consensus that the Superfund program, however well intended, is not living up to its promises. Over the last 14 years we have spent over \$30 billion dollars on this program, yet today, we have completed the cleanup at only 70 of the more than 1,300 sites on the national priorities list. Clearly we can and must do a better job of cleaning up these sites.

Beginning this past January, I conducted a series of 7 hearings and received testimony from more than 60 witnesses in an effort to formally incorporate a wide variety of views on the issue of Superfund reform. In addition, Congressman MIKE OXLEY, the chairman of the House Subcommittee on Commerce, Trade and Hazardous Materials, and I met with numerous groups in candid, off-the-record meetings. Participants included: environmental groups, potentially responsible parties, representatives of the environmental justice movement, State and local governments, the Environmental Protection Agency, the Department of Defense, the Department of Energy, the Department of Interior, think tanks, and insurance companies.

After taking the time to digest and analyze the information provided by these groups, I released, on June 28, 1995, a Superfund reform outline which is a comprehensive effort to radically reform the Superfund program. At this time, I ask that a copy of my proposal be entered in the RECORD after my statement.

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

(See exhibit 1.)

Based on comments I have received in response to this proposal, I plan on quickly moving to draft a Superfund reauthorization measure that will be available later this summer. I have pledged to the majority leader, Senator DOLE, that this legislation will be available for full Senate consideration and final passage later this year.

This past Monday, I visited a variety of Superfund sites in New Hampshire. One of these sites, the Coakley Landfill in North Hampton, NH, involved the cleanup of a former landfill site. After 10 years of study, the Environmental Protection Agency determined that in addition to capping the site, it wants

to require the construction of a \$10-million-dollar groundwater pump and treat system. The EPA is insisting on this remedy even though there are no pathways to human exposure, and even though the pollutant could be addressed in the same amount of time through natural attention. All of the potentially responsible parties, the State of New Hampshire, and the local communities have agreed that this expensive system is not necessary. Nonetheless, the EPA is continuing to go forward.

I can understand the impatience of my colleagues in dealing with this frequently onerous program, and I can appreciate their desire that Superfund be addressed in this legislation. Frankly, in light of its past record, the Superfund program is the poster child for regulatory reform. Nonetheless, given the fact that my subcommittee has been working diligently to quickly develop legislation on this issue, I believe that this matter should be addressed in the context of a comprehensive Superfund reauthorization bill, rather than in S. 343. For this reason, I am asking my Republican colleagues to join me in supporting the Baucus amendment.

I want to make something perfectly clear. Although I would prefer that these issues be dealt with in the context of a Superfund reauthorization measure, I agree in spirit with the changes included in this legislation. The fact is that all too frequently the Superfund program ignores common sense principles when dealing with toxic waste cleanups.

I believe that risk assessment and benefit-cost analysis should be utilized in determining how and when we will be cleaning up these toxic waste sites. While I think it is appropriate that this language not be included in the regulatory reform legislation, I want to make it very clear that the use of appropriate risk assessment and benefit-cost analysis will be part of a comprehensive Superfund reform measure.

EXHIBIT 1

SUPERFUND REFORM OUTLINE

(Introduction from Senator Bob Smith)

The Superfund program has had its successes. It is not, however, a successful program. When seeking input on the future of hazardous waste cleanup in the United States, I held no preconceived notions about what would or would not work. I believed that every legitimate idea had a place on the table, and was guided by one important premise: the Superfund program is in need of dramatic reform. My goal has been—and will continue to be—to solicit input and support from all interested parties to achieve that reform.

Creation of this document was an open process. The Subcommittee on Superfund, Waste Control, and Risk Assessment, which I chair, held 7 hearings and received testimony from more than 60 witnesses in an effort to formally incorporate a wide variety of views on the issue of Superfund reform. In addition, Congressman Mike Oxley, the Chairman of the House Subcommittee on Commerce, Trade, and Hazardous Materials, and I met with numerous groups in candid, off-

the-record meetings. Participants included: environmental groups, potentially responsible parties, representatives of the environmental justice movement, state and local governments, the Environmental Protection Agency, the Department of Defense, the Department of Energy, the Department of Interior, think tanks, and insurance companies. I also solicited the input of all members of the subcommittee, Chairman John Chafee, Ranking Member Max Baucus, and the Majority Leader.

The release of this Superfund Reform Outline is a natural extension of that process. The purpose of the document is to solicit additional constructive comments, ideas and criticisms that can be used during the bill-drafting process. The document is divided into three parts. Section I provides a brief history of the Superfund program, beginning with its inception in 1980 and continuing through to present day. Section II explains the principles that were used to guide the development of the reform measures. Section III provides a detailed summary of my recommended proposals.

The legislative proposals contained in Section III are intended to serve as the building blocks for a comprehensive reform of the Superfund program. They are not intended to be all inclusive, and no signal, either positive or negative, is intended if any item has been omitted from the outline. It is plausible that the final version of a comprehensive Superfund reform program may not precisely mirror all of the elements contained in this document.

I would appreciate that any specific comments on this plan be provided in writing. These comments should include your name, address and phone number, and should be forwarded no later than July 10, 1995, to:

Jeff Merrifield, Counsel, Subcommittee on Superfund, Waste Control and Risk Assessment, Hart Senate Office Building, Washington, DC 20510.

The Superfund program must be transformed into a more responsive, efficient and fair system for cleaning up hazardous waste sites and returning them to productive use. I believe this document provides a blueprint for reaching that goal. I look forward to receiving your input.

#### SECTION I—BRIEF HISTORY

The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), also known as "Superfund", was passed and signed into law during the post-election session of Congress in 1980. The Superfund program was intended to enhance the federal government's ability to compel parties responsible for causing contamination at sites such as Love Canal, New York, and the "Valley of the Drums" in Kentucky, to either clean up the contamination or reimburse EPA for the costs of doing so.

The cleanup program that Congress enacted was premised on the principle that the "polluter pays," through a system of strict, retroactive, joint and several liability. If those responsible for site contamination (potentially responsible parties or "PRPs") could not be found, or were unable to pay, EPA could use a special Trust Fund (hence the term "Superfund") to pay for the cost of cleaning up these sites. This "Superfund" was funded through taxes on the chemical and petroleum industries. Superfund was further amended in 1986 when Congress enacted the Superfund Amendments and Reauthorization Act of 1986 ("SARA"). SARA extended and expanded the Superfund taxes and authorized expenditures of \$8.5 billion through December 31, 1991.

Although the Superfund program has achieved some successes, there is widespread agreement that the program is troubled.

When CERCLA was enacted, it was expected that only a few hundred sites would need to be cleaned up and that the program would require relatively modest funding. Both of these expectations have proven to be inaccurate. Currently, there are over 1,300 sites on the Superfund list (known as the National Priorities List or "NPL"), and during the last few years, EPA has been adding an average of approximately 30-40 new sites per year to the NPL. To date, the construction of long-term cleanup remedies have been completed at fewer than 300 contaminated sites.

As the magnitude of the problem has increased, the projected cost of the program has risen accordingly. Congress originally set aside \$1.6 billion for NPL cleanups when it created the Trust Fund in 1980. Six years later, Congress increased the amount in the Fund to \$8.5 billion. In 1990, Congress added another \$5.1 billion. Overall, it is estimated that the total amount of money spent on Superfund since 1980, including the settlement costs of PRP's, is in excess of \$25-\$30 billion.

Given these problems, the Superfund program has been widely criticized, primarily on the following four major grounds: (1) the liability system is unfair and has resulted in excessive litigation and other transaction costs, diverting attention and money from site cleanup; (2) the cumbersome and often overly prescriptive remedy selection process has delayed clean up actions and driven up cleanup costs; (3) states and local citizens do not have the ability to fully participate in the selection and implementation of appropriate remedies; and (4) the stigma of being listed as a Superfund site often creates economic disincentives for the redevelopment and reuse of contaminated properties.

#### SECTION II—GUIDING PRINCIPLES

**Community Empowerment.**—The citizens who are most adversely impacted by the cleanup of hazardous waste sites near their homes should be empowered with a greater role in the decisionmaking process and an increased responsibility in helping to select the remedial action that will protect human health and the environment, foster rapid economic redevelopment, and promote expedited restoration of natural resources.

**Enhanced State Role.**—The states have developed an extensive and sophisticated level of expertise in addressing the problems of hazardous waste contamination outside of the Superfund program. Reform of Superfund should recognize this level of expertise, and should endeavor, to the greatest extent possible, to empower the states to assume the lead role in the Superfund process. An enhanced state role recognizes that the states have a much greater day-to-day involvement with their citizenry and are in a better position to respond to the needs and desires of the affected communities.

**Sensible Cleanup Standards.**—The goal of protecting human health and the environment must remain at the forefront of any Superfund reauthorization measure. Nonetheless, sensible Superfund reform efforts recognize that our ability to clean up some sites is constrained by both a technical inability to provide permanent solutions, as well as a limitation on national financial resource. Cleanup decisions should be premised on a careful analysis of the potential risks to human health and the environment, as well as a logical balancing of financial expenditures on remedy selection.

**Establish Fairer Liability Requirements.**—When Superfund was originally adopted in 1980, its primary purpose was to clean up hazardous waste sites that threatened human health and the environment. The adoption of retroactive liability to pay for this program has unfairly penalized a num-

ber of individuals and corporations that disposed of hazardous materials in compliance with then existing federal and state environmental laws. In addition, this liability system created an incentive for litigation which has resulted in slower cleanups and more money going to lawyers. The reform of the Superfund should not only strive to lessen incentives for litigation, but it should also result in a greater percentage of money being dedicated towards cleaning up sites.

**Restoring Natural Resources.**—The sole purpose of natural resource damages is to provide for the rapid restoration and replacement of significant natural resources that have been damaged by contact with hazardous materials. Financial compensation from persons who caused these damages should be used solely for the purpose of restoring or replacing these resources, and should not serve as a means of seeking retribution or punitive damages from potentially responsible parties.

**Expedited Economic Reuse.**—Although the original purpose of Superfund was to provide for the quick cleanup of hazardous waste sites, the Superfund cleanup process has resulted in delayed site cleanups, economic uncertainty for affected communities, and a disincentive for industry to redevelop so called "brownfield sites." Reform of Superfund should provide incentives for the voluntary cleanup of industrial sites and the expedited reutilization of urban areas to promote rapid economic redevelopment and reuse.

**The Future of Superfund.**—Superfund was originally intended to be a temporary program lasting for only a short period of time. A comprehensive reform of Superfund should result in meeting that goal. Over the next few years, this program should be targeted towards completing the cleanup of the Superfund sites remaining on the list, significantly reducing the federal involvement, and allowing states to take the primary role in the cleanup of our nation's hazardous waste sites. While the Environmental Protection Agency should continue to be involved in the emergency removal program and research and development efforts, the eventual elimination of the national priorities list should result in a system where the states, and not the federal government, determine the speed, method and order that hazardous waste sites will be cleaned up.

#### SECTION III—PROPOSED REFORMS

##### 1. Community Response Organizations (CROs)

**A. Creation of CROs.**—Under this title, the Environmental Protection Agency ("EPA") or applicable state (see state role below) will provide for the establishment of community response organizations ("CROs") to provide direct, regular and meaningful consultation throughout the response action process. CROs shall be established whenever: (1) the EPA or the applicable state determines that such a group will be helpful in the cleanup process; (2) when the local government requests such an organization; (3) when 50 citizens, or at least 20 percent of the population of a locality in which the national priorities list ("NPL") facility is located, petition for a CRO; or (4) when a representative group of potentially responsible parties ("PRPs") request establishment of a CRO.

**B. CRO Activities.**—CROs should comprise a broad cross-section of the community, and its duties should include: (1) serving as a forum to assist in gathering and transmitting community concerns to the EPA, states, PRPs and other Agencies on a variety of issues related to facility remediation, including facility health studies, potential remedial alternatives, and the selection and implementation of remedial and removal action and land use; and (2) serve as a resource for

transmitting site information back to the community. CROs shall be the preferred recipients of any technical assistance grant ("TAG"), and in addition, can receive administrative assistance from the EPA and the States.

C. CRO Participants.—A CRO shall have a membership not to exceed 20 persons, who shall serve without pay. The EPA or applicable state will solicit, accept nominations and select the members of the CRO. The makeup of the CRO shall represent a broad cross section of the local community, including persons who are or historically have been adversely affected by facility contamination in their community. Local residents shall comprise no less than 50 percent of the total membership of the CRO. Membership on the CRO will represent the following groups:

1. persons residing or owning residential property near the facility or persons who may be directly affected by releases from the facility. At least one person in this group shall represent the TAG recipient if such a grant has been awarded prior to the formation of a CRO;
2. members of the local community who, although not residing or owning property near the facility, may be potentially affected by releases from the facility;
3. members of the local medical community and/or public health officials;
4. representatives of local Indian tribes or local Indian communities;
5. local representatives of citizen, environmental, or public interest groups with members residing in the community;
6. local government which may include pertinent city or county governments;
7. workers employed at the facility during facility operations;
8. facility owners;
9. representatives of potentially responsible parties, who represent, wherever practicable, a balance of PRP interests; and
10. members of the local business community.

#### 2. Enhancing the Role of States

A. Empowering the States to List and Delist Sites.—Section 105 would be modified to provide the states with sole authority to veto the addition of any site that the EPA proposes to add to the National Priorities List. States would also be given the authority, with the concurrence of the PRPs, to have sites taken off the NPL to be managed under existing Resource Conservation and Recovery Act ("RCRA") authorities.

B. State Delegation for NPL Sites.—States would have the option of receiving delegation for the cleanup of NPL sites on either a site-by-site or statewide basis. Under this provision, states would request the delegation of all NPL sites within their state, or they could select specific sites on a site-by-site basis, or the state could choose to assume delegation of no sites.

States that choose to take NPL sites under this delegation plan, would be required to utilize federal liability and remedy selection procedures.

States that currently have authorization for a corrective action program under RCRA, could submit a self-certificate of competence to the EPA. Such certificate shall specify whether the state seeks site-by-site or statewide delegation. The EPA would be required to grant automatic certification of these state programs.

States that do not have RCRA corrective action authority would certify that they have the financial and personnel resources, organization and expertise for carrying out the implementation of the program. Within 90 days of the submission of the state certification, the EPA would be required to review the certification and determine if the state's

proposal was sufficient to run a delegated program. At the end of 90 days, if the EPA failed to state an objection to the state certification proposal, the delegation would automatically take effect.

C. Sole State Control of Delegated Sites.—Once a state receives its certification from the EPA, the state will have the exclusive authority for implementing and enforcing the federal Superfund program. Delegated states would have the sole authority for implementing the program, including, but not limited to, remedy selection, enforcement, as well as activities under CERCLA sections 104, 106 and 107. The EPA's periodic review of the state programs shall be limited to auditing the state's use of program funds and a narrow ability to decertify states that fail to materially conduct enforcement and cleanup activities.

D. State Remedy Selection.—States that are delegated Superfund authority would be required to apply cleanup standards consistent with the federal Superfund program. Any state with a delegated program could apply cleanup standards more stringent than those required under the federal program, however, the state would be required to bear the additional costs of such remedies rather than the Trust Fund or the PRPs.

E. Non-Superfund Sites.—The states would be authorized to conduct cleanup activities for all facilities that are not on the Superfund list. This would include, with the exception of the 90 sites added under this proposal, all of the sites which are currently on the Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS") list.

F. Voluntary Cleanup Programs.—In addition to delegated authorities outlined above, state could also seek expedited EPA approval of state voluntary response programs. Under this provision, a state would be able to establish voluntary cleanups at hazardous waste sites with the exception of the following: (1) portions of NPL sites for which a ROD has been issued; (2) portions of sites where RCRA subtitle C plans have been submitted and closure requirements have been specified in a plan or permit; (3) portions of sites where corrective action permits or orders have been issued, modified, or amended to require specific corrective measures pursuant to RCRA sections 3004 or 3008; (4) portions of sites controlled by or to be remediated by, a department agency, or instrumentality of the executive branch of the federal government; or (5) portions of a site where assistance for response activities may be obtained pursuant to subtitle I of RCRA from the Leaking Underground Storage Tank Trust Fund.

G. State Assistance Grants.—An appropriate level of assistance grants should be provided to the states over a 3 year period to build and enhance state Superfund program capabilities. Additional block-grant funding shall also be provided for voluntary and non-CERCLA cleanups that are administered and conducted by the states.

#### 3. National Priorities List

A. Flexible Cap.—Amend Section 105 to provide that the EPA would be allowed to add a total of thirty (30) new sites to the NPL each year for three (3) years following passage of the bill. The EPA would be required to determine and prioritize, on a national basis, which 90 sites present the greatest threat to human health and the environment. These sites would be added to the NPL only upon concurrence from the associated state (see State Role below).

B. Sunset Provision.—Three years from the enactment of this legislation, the EPA would not be authorized to add any additional sites to the NPL. At the completion of cleanup at

sites remaining on the capped NPL, the EPA authority shall be limited of providing a national emergency response capability, conducting research and development, providing technical assistance, and conducting oversight of grant programs to the states.

C. Expedited Delisting.—Amend Section 105 to provide that sites shall be delisted once the construction of the selected remedy is certified as complete. An informal rule-making shall be completed 90 days after the passage of the act outlining the process through which expedited delisting shall take place. If the implemented remedy includes institutional or engineering controls, then the EPA or the applicable state should conduct a review of the site every 5 years. Delisting shall in no way relieve the EPA or the applicable state regulators from conducting ongoing cleanup activities, monitoring or post-cleanup operations and maintenance requirements.

#### 4. Remedy Selection

A. Enhanced Cleanup Flexibility.—Amend section 121(b) to eliminate the preferences for permanence and treatment in selecting a remedy at Superfund sites. The EPA shall be directed to consider all options for addressing contamination at a site including, containment, treatment, institutional controls, natural attenuation, or a combination of these alternatives, and select the remedy that protects human health and the environment at the lowest cost. The remedy selected shall recognize the limitations of currently available technology.

Interim containment and remediation shall be used at sites where no current technology is available to remediate sites to the containment levels necessary to protect human health and the environment. Interim remedies shall be preferred where: (1) other treatment remedies are available only at a disproportionate cost; (2) innovative treatment technologies will be available within a "reasonable time" (3-5 years); and (3) the threat can be contained during the interim time period. The EPA or the applicable state shall review the interim containment plan every five years after the date of construction to determine if a continued threat to human health the environment warrants a modification of the interim containment remedy.

B. Revise the ARAR Mandate.—Amend section 121(d) to eliminate the requirement that remedial actions must meet applicable, relevant and appropriate requirements ("ARARs"). Instead, allow the EPA and the applicable states to utilize remedies that are more responsive to the specific site conditions and risks.

C. Protection of Human Health.—Amend section 121 to specify that selective remedies should be protective of human health and the environment. Remedies shall be judged to be protective of the environment if they (1) protect against significant risks to ecological resources which are necessary to the sustainability of a significant or valuable ecosystem and (2) do not interfere with a sustainable functional ecosystem that is consistent with the targeted land use. The objective is protection of human health and the environment from realistic and significant risks through cost-effective and cost-effective remedies.

D. Requiring an Unbiased Risk Based Analysis.—Amend section 121 to require that risk-based decisionmaking be utilized to: (1) identify the principal elements of potential risk posed by the site, and any cumulative effects posed by adjacent NPL sites; (2) analyze the relative health and environmental benefits of alternative remedies and (3) demonstrate that the approved remedy will protect human health and environment in light

of the actual or planned future use of the land and water resources. The tools that the EPA or applicable state would be required to utilize in making this risk assessment would include:

1. actual or plausible exposure pathways based on actual or planned future use of the land and water resources (industrial, commercial, residential, etc.);

2. site-specific data shall be used in preference to default assumptions; and

3. where site-specific data are unavailable, utilize an acceptable range and distribution of realistic and plausible default assumptions regarding actual or likely human exposures and site-specific conditions, instead of high-end or worst case assumptions.

E. Planning for Future Land and Water Use.—Amend section 121(b)(1) to require EPA or the applicable state to quantify the actual or planned future use of the contaminated land and water resources based on a mix of several factors including: (1) previous use of the landholdings; (2) site analysis and surrounding land use patterns; (3) current zoning requirements and projected future land uses; and (4) input from CROs, elected municipal and county officials, local planning and zoning authorities, facility owners and potentially responsible parties. The EPA or the applicable state shall then utilize the balancing factors listed below in selecting a remedy:

F. Reasonable Remedy Selection.—Amend section 121(b)(1) to require the EPA or the applicable state to select the most effective remedy that protects human health and the environment, unless the remedy is technically infeasible or the incremental costs are not reasonably related to the incremental benefits. The following balancing factors should be utilized in determining the most sensible, cost effective remedy:

1. the effectiveness of the remedy to protect human health and the environment;

2. reliability of the remedy to protect human health and the environment over the long-term;

3. any short-term risks posed by implementation of the remedy to the affected community, and to remediation workers;

4. the relative implementability and technical feasibility of the remedy; and

5. acceptability of the remedy to the affected community.

G. Establishing Reasonable Groundwater Cleanup Strategies.—Section 121 should be amended to require that remedy selection for groundwater should include a consideration of the current and future use of the resource, including both the nature and timing of uses. The remedy selection should consider a range of possible remedies including pump and treat, point of use treatment, containment and natural attenuation. The application of the possible remedies shall be weighed against the balancing factors outlined in section F (above) to determine the most cost effective remedy that protects human health and the environment that is not technically infeasible or where the incremental costs are not reasonably related to the incremental benefits. The type and timing of the resource use, technical feasibility and reasonableness of cost shall also be considered where the contamination threatens uncontaminated, usable groundwater.

H. Enhancing Emergency Response.—Amend section 104 to increase the duration of Emergency Response actions to 24 months, and increase the authorized cap to \$4 million per site. Provide increased flexibility to emergency response managers to conduct removal and cleanup activities beyond the currently authorized level, where such action may significantly reduce or eliminate the necessity for further remedial activities at such a site.

I. Reviewing Past Remedy Decisions.—At sites where a record of decision ("ROD") has not been signed, the EPA or the applicable state shall apply the remedy cleanup provisions contained within this bill. At sites where a ROD has been signed, but where construction has not begun, the EPA, the applicable state or the PRP can request a review of the ROD to determine if the remedy reform changes contained within the bill would result in a lower cost remedy that protects human health and the environment than the one being proposed. At sites where construction has begun, or where construction has been completed, the EPA or applicable state may conduct and implement a modification of the ROD where the EPA or applicable state or the RPR can demonstrate that the changes in remedy selection contained in the bill would result in a total life cycle cost reduction of at least 10 percent. Under no circumstances could a review of a ROD result in the selection of more costly remedies, nor would there be any reimbursement for past costs. Appropriate limitations would be placed on this review process to limit the potential for additional litigation.

#### 5. Liability Standards

A. Repeal Retroactive Liability for Pre-1981 Disposal.—Amend section 107 to provide that no person shall be held liable for the removal or response costs related to hazardous substance disposal at non-federal NPL sites that occurred prior to December 11, 1980. Such costs shall be paid from the Hazardous Substance Superfund ("the Fund"). For those sites where disposal occurred both prior to and after December 11, 1980, the fund would utilize an independent allocator who would apportion the liability for this pre- and post-1980 disposal. Such allocator would also determine the proportionate level of liability for post-1980 disposal as is described below. Retroactive liability repeal would not apply to federal liability that occurred at nonfederal facility NPL sites. This retroactive repeal program would include a mechanism to ensure that PRPs remain on the site to conduct the cleanup program.

The fund would also assume the costs of any ongoing operations and maintenance costs ("O&M") for the proportionate level of pre-1981 disposal activities. The independent allocation process mentioned earlier would also determine the level of pre- and post-1980 liability for ongoing O&M for any facilities that were in construction or had completed construction prior to the passage of this act.

The fund would also assume that proportionate level of liability for pre-1981 disposal activities at those facilities where construction was underway at the time of the act, but where the payment for that construction had not been completed. In addition, the fund shall reimburse PRPs for construction payments made after June 15, 1995, where such activity was incurred to address pre-1981 liability. At PRP led sites, the PRP shall remain responsible for conducting cleanup activities, but shall be reimbursed from the fund consistent with the principles outlined above.

B. Proportionate Liability for Post-1980 Disposal.—Section 107 would be amended to create a proportionate liability scheme for removal costs, response costs and NRD at non-federal facilities at which hazardous substances were released. Such proportionate liability system would utilize an independent allocator that would determine the appropriate level of liability of each party currently liable under section 107(a) of the existing law.

No person shall be held liable for more than the share of removal, response or natural resource damage ("NRD") costs attributable to that person's conduct. In determin-

ing the person's proportionate share of liability, the following factors shall be considered: (1) the amount of hazardous substances contributed by each party; (2) the toxicity of the hazardous substances involved; (3) the mobility of the materials; (4) the degree of involvement of each party in the generation, transportation, treatment, storage, or disposal of the hazardous substances; (5) the degree of care exercised, taking into account the hazards posed by the material; (6) the degree of cooperation with federal, state and local officials; and (7) any other equitable factors as the allocator determines are appropriate.

At non-federal sites, the fund shall pay the costs of "orphan shares," which shall be defined to include the shares attributed to bankrupt or dissolved parties, as well as shares that cannot be attributed to any party due to insufficient proof. Any PRP unwilling to pay its allocated share can be sued by EPA for all unrecovered costs at the site, including any orphan shares and de micromis shares. Thus, non-settlers may be held liable for the orphan shares and de micromis shares in addition to their own shares. Settling parties would receive complete contribution protection.

C. De Micromis Disposal Exclusion.—Amend section 107 to provide an exception from liability for certain parties who arranged for, or accepted for, disposal, treatment, or transport of municipal solid waste which contained not more than 110 gallons of liquid materials containing hazardous waste, or not more than 200 pounds of solid materials containing hazardous waste.

D. Lender Liability.—Amend CERCLA to limit the liability of lenders or lessors that: acquire property through foreclosure; hold a security interest in the property; hold property as a lessor pursuant to an extension of credit; or exercise financial control pursuant to the terms of an extension of credit. This section would limit the lenders potential liability to the gain in property value resulting from another party's response action to a release or threatened release. A lender would still be liable if it had caused the damage, release or threat.

1. Fiduciary Activities.—The liability of fiduciaries would be limited to the excess of the assets held in the fiduciary capacity that are available for indemnity. Nonetheless, fiduciaries may be held liable for failure to exercise due care which causes or contributes to the release of hazardous materials. In addition, a fiduciary could be held liable for independent actions taken or ownership of properties unrelated to their fiduciary capacity.

2. Owner Operator Definition.—Amend section 101(20) Superfund to provide that the term owner or operator does not include a person who does not participate in management but holds indicia of ownership to protect the security interests of others, nor does it include a person who does not participate in management of the facility prior to foreclosure.

3. Participation in Management.—Amend section 101(20) of Superfund to provide that "participation in management" means actually participating in the management or operation affairs of a vessel or facility, and does not include merely having the capacity to influence, or the unexercised right to control, vessel of facility operations.

E. Response Action Contractor Liability.—("RACs") Amend section 119 of the Act to provide a negligence standard for activities undertaken by RACs. In addition, amend section 101(2) to provide that "owner and operator" does not include in persons performing on written contracts to provide response activities.

F. Other Small Business Liability.—There are a variety of other CERCLA liability concerns that have been raised by small business that have not been outlined in this legislative specifications paper. Nonetheless, such concerns are intended to be addressed within the context of a comprehensive CERCLA reform measure.

#### 6. Federal Facilities

A. Enhanced State Delegation.—Qualified states could be delegated CERCLA authority at Federally owned or Federally operated facilities, consistent with certification requirements described above.

Delegation would be contingent upon: (1) states applying identical clean up standards and processes at Federal sites as are applied to non-Federal sites, (2) allowing uncontaminated or cleaned up parcels of property to be reused as rapidly as possible, and (3) applying a definition of uncontaminated property that includes property where hazardous materials were stored but not released.

The Department of Energy's Defense Nuclear Facilities where the federal government is the sole PRP would remain under the jurisdiction of the EPA. In addition, a limited number of Department of Defense sites with exceedingly complex environmental contamination would also remain under the jurisdiction of the EPA.

A risk-based prioritization processes, consistent with remedy selection criteria described above, will be utilized to rank proposed actions at federal facility operable units. Existing Federal Facility Compliance Agreements would be renegotiated based on the identified priorities. These agreements would form the basis by which federal facilities would be regulated by the EPA or the applicable states.

B. Clarifying Radionuclide Regulation.—A minimum standard for radionuclides would be established. Such standard would also account for naturally occurring radioactive materials ("NORM").

C. Promoting Innovative Technology.—The use of Federal facilities to encourage and promote innovative cleanup technology that can be used at Superfund sites would be authorized. EPA would be required to develop an expedited permitting process to collect cost and performance data on new characterization, cleanup and waste management approaches.

#### 7. Natural Resource Damages

A. Recoverable Damages.—Amend section 107 to provide that natural resource damages shall only be recoverable for actual injury to measurable, and ecologically significant functions of the environment that were committed to allocated to public use at the time of the conduct giving rise to the damage. The recovery shall be limited to the reasonable cost of restoring, rehabilitating or acquiring a substitute or alternative resource as well as the cost of assessing damages to that resource. With the exception of direct monetary damages resulting from a lost use of the natural resource, there shall be no recovery for lost use or non-use damages.

B. *Liability Cap.*—Amend section 107 to clarify that no natural resource damage liability shall result from activities where the release or releases of hazardous substances occurred prior to 1980. Where the placement of hazardous materials occurred prior to 1980, but where additional releases resulting from that placement occurred after 1980, the PRP shall be liable for post-1980 releases with a total potential liability not to exceed 50 percent of the amount spent on remedial action. Where the placement of materials occurred both before and after 1980, and where the release or releases of hazardous substances occurred after 1980, the total poten-

tial liability of the PRP shall not exceed 75 percent of the amount spent on remedial action. Where the placement and release of the hazardous materials occurred wholly after 1980, the total potential liability of the PRP shall not exceed 100 percent of the amount spent on remedial action.

C. *Evidentiary Standard.*—Amend section 107 to eliminate the rebuttable presumption in favor of trustee assessments for any natural resource damages claim in excess of \$2 million. For all claims in excess of \$2 million, the trustee shall establish all elements of the NRD claim by a preponderance of the evidence, which shall be reviewed de novo by a court, upon petition of any party who is potentially liable for NRD at the site.

D. *Natural Recovery.*—Amend section 107 to require that trustees shall give equal consideration to actions that promote the use of natural recovery as an acceptable alternative to replicating the precise physical, chemical, and biological properties of resources prior to injury.

E. *Cost Considerations.*—Amend section 107 to require that restoration alternatives should include a consideration of the most cost effective method of achieving the restoration objective (i.e., the restoration, replacement or acquisition of ecologically significant resource functions) and not solely the replication of the resource.

F. *Cleanup Consistency.*—Amend section 107 to require that the NRD restoration standards and restoration alternatives selected by a trustee shall not be duplicative of, or inconsistent with, actions undertaken pursuant to sections 104, 106 and 121 of the act. In addition, trustees should be involved early in the remedy selection process to ensure consistency between resource restoration and cleanup activities.

G. *Double Recovery.*—Amend section 107(f) to provide that there shall be no recovery for NRD under Section 107 if compensation has already been provided pursuant to CERCLA or any other federal or state law.

Mr. JOHNSTON addressed the Chair. The PRESIDING OFFICER. The Senator from Louisiana, [Mr. JOHNSTON] is recognized.

Mr. JOHNSTON. I ask unanimous consent that the pending amendment be agreed to and that a motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

The Senator from New Mexico.

Mr. JOHNSTON. Was that reached, Mr. President?

The PRESIDING OFFICER. Does the Senator from New Mexico object?

Mr. DOLE. No.

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

So the amendment (No. 1517) was agreed to.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I ask unanimous consent to address the Senate as in morning business for 10 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. LAUTENBERG. Reserving the right to object.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I would ask the Senator from Arizona how long he would like to take. We have an amendment that is pending.

Mr. McCAIN. If there is a pending amendment and the managers are interested in moving forward, I will withdraw that unanimous-consent request, if it is the will of the Senate.

Mr. DOMENICI. Mr. President, I understand there is no amendment pending; is that correct?

The PRESIDING OFFICER. That is the Chair's understanding.

Mr. LAUTENBERG. The Senator from New Mexico is right.

Mr. DOMENICI. Mr. President, I wonder if the Senator will let me send an amendment to the desk, and then I will be glad to yield 10 minutes to him.

AMENDMENT NO. 1533 TO AMENDMENT NO. 1487  
(Purpose: To facilitate small business involvement in the regulatory development process, and for other purposes)

Mr. DOMENICI. Mr. President, I send an amendment to the desk on behalf of myself, Senator BINGAMAN, and Senator BOND and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, Mr. BOND, and Mr. BINGAMAN, proposes an amendment numbered 1533 to amendment No. 1487.

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

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. JOHNSTON. Will the Senator yield for a unanimous-consent request?

Mr. DOMENICI. Absolutely.

Mr. JOHNSTON. Mr. President, I have cleared this request with Senator LAUTENBERG and with Senator LOTT.

I ask unanimous consent that when an amendment by Senator LAUTENBERG, which deletes the language of the toxic release inventory, is considered, that there be 1 hour evenly divided; that no second-degree amendments be in order; and that there be a vote up or down on the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. I object.

The PRESIDING OFFICER. Objection has been heard.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico still has the floor.

Mr. DOMENICI. I yield to Senator McCAIN 10 minutes, if the Senate will permit me to do that.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. I ask unanimous consent that I be permitted to yield 10 minutes, and when he finishes, the floor be returned to the Senator from New Mexico to debate the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Arizona.

Mr. GLENN. Will the Senator yield?

Mr. MCCAIN. I have the floor. I will be glad to yield.

Mr. GLENN. I want to ask a question of Senator DOMENICI. Would he be willing to enter into a time agreement?

Mr. DOLE. Will there be any second-degree amendments on Domenici?

Mr. DOMENICI. Let me say to Senator LEVIN, this has nothing to do with toxic matters, nothing to do with that part.

Mr. DOLE. Mr. President, if the Senator from Arizona will yield to me a moment, we would like to get a time agreement on the Domenici amendment and then whatever we work out on the Lautenberg amendment. We would like to have a window of opportunity from 7 until 8 where there will be no votes. So if we can have one vote before 7, and then any other votes will be after 8 o'clock. Maybe we can work that out during the 10 minutes.

Mr. BYRD. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. I will be glad to yield to the Senator from West Virginia.

Mr. BYRD. I wanted to ask the distinguished majority leader why we could not just work ahead and not have a window of opportunity?

Mr. DOLE. You mean work right on through?

Mr. BYRD. Yes.

Mr. DOLE. We will both be here. That will be all right with me. I think it is going to work out that way. I do not know how much time the Senator from New Jersey would want. If we reach an agreement, I think it is going to be about an hour on each amendment. I am perfectly willing to continue to operate without any window, but a number of my colleagues have obligations away from the Capitol. Obviously, the important thing is to finish the bill. That is the most important thing.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. MCCAIN. I yield to the Senator.

Mr. BYRD. Without the time being charged to the distinguished Senator from Arizona, without his losing his right to the floor.

I can understand the desire of Senators to have a window, but there are some of us who understand that we have to stay here. We do not have any obligations away from the Hill. I have a wife and my little dog, Billy, at home. I would like to get home a little more often a little earlier. These windows of opportunities keep us here, those of us who are willing to, they keep us here in order to accommodate a few who want to run hither, thither, and yon, perhaps for good reason. But it delays the rest of us from getting the work done and getting home.

At the same time when we have these windows of opportunities, who stays around here and listens to the Senators talk? This is a poor way to do business. I do not say this critically of the majority leader, because I have been the

leader on previous occasions. I just hope we would not fall into a habit here of having these windows of opportunities and keeping others here who are willing to stay here and work and get home and know what is being said by Senators who take the floor for debate.

Mr. DOLE. I appreciate the comments of the Senator from West Virginia, my friend. I think someone said 2 hours would do. I said, no, an hour should be adequate. Maybe that will not happen. Obviously, the important thing is to finish this bill. I think we have made some progress here, hopefully, this afternoon. If we can have time agreements, if they are less than an hour, there will be less than an hour window. I will work with the Senator from West Virginia. My little dog, Leader, misses me and your old dog Billy, we have not gotten them together yet.

Mr. JOHNSTON. Mr. President, if the leader will yield, Senator LAUTENBERG has a request for a 1-hour time agreement. That would be a good 1-hour window right there.

Mr. HATCH. Will Senator DOLE under the same unanimous consent agree to another comment? Will the leader yield? We also have Senator FEINGOLD. I just want to get it out so people know how many possible votes we have. Senator FEINGOLD has an amendment. We have a couple of other Senators who may want to bring up amendments tonight.

Mr. GLENN. Senator PRYOR has one also.

Mr. PRYOR. Mr. President, I have one.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. HATCH. I just want everybody to be aware.

Mr. DOLE. If the Senator from Arizona will yield to me one additional moment.

Mr. GLENN. Could I have 20 seconds here? All of these agreements on who is going to come up with whatever, all the agreements on time are going to be contingent on not having second-degree amendments. I think we can work out time agreements or an agreement not to have second-degree amendments.

Mr. DOLE. I cannot speak for anybody on that. I do not have any amendments. Others on either side may wish to reserve that right. It is my understanding the other side cannot agree to any vote before 7:15. Somebody on that side must already be out the window.

So we would be happy to try to work it out. We can have two votes at 8 o'clock. If we can get agreements on the Domenici and Lautenberg amendments, we can do it at 8 o'clock.

Mr. GLENN. Senator LAUTENBERG can accept a time agreement, but not if there is restriction on second-degrees.

Mr. DOLE. As I understand it, we cannot give that assurance.

Mr. GLENN. OK. So there will not be any time agreement.

Mr. DOLE. What about Domenici, is that subject to second-degree?

Mr. GLENN. We are still going through Domenici to see what is in it.

Mr. DOLE. Why do we not let Senator MCCAIN proceed? I think he has a very important statement.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

#### ATROCITIES IN BOSNIA

Mr. MCCAIN. Mr. President, I do not know how many of my colleagues saw the picture on the front page of the New York Times this morning. It is an unusual and historic picture. When you first look at it, all you see is a group of refugees. If you look a little closer, you will see men in military uniform. Those men are part of what has been called the U.N. Protection Force. They are standing by observing men being taken out of Srebrenica who are suspected, by Bosnian Serb forces of "war crimes," young women being taken out for purposes that I cannot describe, old women and children who are starving to death and being forced to walk unknown distances.

Rather than describe it in my words, let me just read:

In what has been a ritual of previous "ethnic cleansing" campaigns by the Bosnian Serbs to rid territories of Muslim populations, the Serbs who took Srebrenica separated the military-age men from the refugees and said they would be "screened for war crimes," a United Nations spokesman here said. The air was filled with anguished cries as the Bosnian Serbs loaded the first 3,000 women, children and elderly . . .

Mr. President, we have gone from a situation where the Europeans were supposed to be protecting people to now sitting by and watching atrocities and war crimes being perpetrated before their very eyes. And they stand by helpless. What could possibly be the effect throughout the world of scenes such as this?

Mr. President, as Senator DOLE said in his recent statement, it is over. It is over, Mr. President.

"It was quite a horrifying scene," said Steven Oberreit of Doctors Without Borders. "There was screaming and crying and panic. They didn't know where they were being taken to."

The refugees fled to Potocari on Tuesday night after Bosnian Serb troops swept into the town of Srebrenica, the heart of the United Nations safe area . . .

Today, 1,500 Bosnian Serb troops, backed by tanks . . . overran the base with no resistance after they threatened to shell the refugees and kill the Dutch peacekeepers they were holding hostage if NATO warplanes intervened.

Mr. President, we have crossed the line from danger to humiliation. We have crossed the line from attempts to do the right thing to degradation and dishonor.

Mr. President, we cannot allow this to continue. And if events follow unchecked, next will be the enclave of Zepa, and then Gorazde, and next