

public health disaster. There are approximately 16,000 Americans who require lifelong treatment for hemophilia, a genetic condition that impairs the ability of blood to clot effectively.

In the early 1980s, more than 90 percent of the Americans suffering from severe hemophilia were infected by the HIV virus—more than 90 percent, an absolutely unbelievable figure.

That is a major human tragedy. I believe we should look to the IOM report released last Thursday for answers as to the level of Federal Government culpability for this disaster.

Last Wednesday, on this floor, I discussed three questions that I believed were going to be addressed in the IOM report.

First, did the Federal agencies responsible for blood safety show the appropriate level of diligence in screening the blood supply?

Second, did the Federal agencies move as quickly as they should have to approve blood products that were potentially safer?

Third, did the Federal Government warn the hemophilia community, when the Government knew—or should have known—that there were legitimate concerns that the blood supply might not be safe?

Mr. President, if the answer to any of these three key questions is no, it seems to me it should be clear that the Federal Government had not met its responsibilities in this area. As a result, the Federal Government would have a clear duty to provide some measure of relief to the people with hemophilia who have been infected with the HIV virus.

Mr. President, today the report is in.

The answer to each of these questions is, in fact, no.

Question 1. Did the Federal agencies responsible for blood safety show the appropriate level of diligence in screening the blood supply? The report's answer is "No."

In January 1983, scientists from the Centers for Disease Control recommended that blood banks use donor screening and deferral to protect the blood supply. According to this report, "it was reasonable"—based on the scientific evidence available in January 1983—"to require blood banks to implement these two screening procedures."

The report says that "federal authorities consistently chose the least aggressive option that was justifiable" on donor screening and deferral.

The report's conclusion is:

The FDA's failure to require this is evidence that the agency did not adequately use its regulatory authority and therefore missed opportunities to protect the public health."

By January 1983, epidemiological studies by the Centers for Disease Control strongly suggested that blood products transmitted HIV. First of all, it was becoming clear that blood recipients were getting AIDS—even though the recipients were not members of a known high-risk group. Sec-

ond, the epidemiological pattern of AIDS was similar to that of another blood-borne disease—hepatitis.

According to the report, these two facts should have been enough of a tip-off to the public health authorities. As early as December 1982, the report says,

(p)lasma collection agencies had begun screening potential donors and excluding those in any of the known risk groups.

The report says that Federal authorities should have required blood banks to do the same.

Question 2: Did the Federal agencies move as quickly as they should have to approve blood products that were potentially safer? Again, the report's answer is "No."

The report says that certain heat treatment processes—processes that could have prevented many cases of AIDS in the hemophilia community—could have been developed earlier than 1980.

In the interval between the decisions of early 1983 and the availability of a blood test for HIV in 1985, public health and blood industry officials became more certain that AIDS among hemophiliacs and transfused patients grew. As their knowledge grew, these officials had to decide about recall of contaminated blood products and possible implementation of a surrogate test for HIV. Meetings of the FDA's Blood Product Advisory Committee in January, February, July and December 1993 offered major opportunities to discuss, consider, and reconsider the limited tenor of the policies.

I say again, Mr. President: "Major opportunities," major opportunities to change the course of the government's blood-protection policies.

The report continues:

For a variety of reasons, neither physicians . . . nor the Public Health Service agencies actively encouraged the plasma fractionation companies to develop heat treatment measures earlier.

Despite these opportunities and others to review new evidence and to reconsider earlier decisions, blood safety policies changed very little during 1983.

Mr. President, I cannot avoid agreeing with the conclusion of this report: "(T)he unwillingness of the regulatory agencies to take a lead role in the crisis" was one of the key factors that "resulted in a delay of more than 1 year in implementing strategies to screen donors for risk factors associated with AIDS."

Question 3. Did the Federal Government warn the hemophilia community, when the Government knew—or should have known—that there were legitimate concerns that the blood supply might not be safe?

The report's answer is "No."

According to the report, "a failure of (government) leadership may have delayed effective action during the period from 1982 to 1984. This failure led to less than effective donor screening, weak regulatory actions, and"—this is the key, Mr. President—"insufficient communication to patients about the risks of AIDS."

As a result, Mr. President, and I am again quoting from the report: "indi-

viduals with hemophilia and transfusion recipients had little information about risks, benefits, and clinical options for their use of blood and blood products." The response of "policy-makers" was "very cautious and exposed the decision makers and their organizations to a minimum of criticism."

In effect, Mr. President, the inertial reflex of bureaucratic caution led to a serious failure to protect the public health. That really is the bottom line.

The Americans suffering from hemophilia were relying on their government to exercise due care about the safety of the blood supply. It is my view, in light of the very important report released today, that the Government failed to meet its responsibilities to the hemophilia community.

It is therefore my intention to introduce, in the coming days, legislation that will offer some measure of relief to those who have been seriously harmed by this governmental failure.

I have had a discussion with my colleague from Florida, Senator GRAHAM, who has been a leader in this area, who has been working for a long time with the hemophilia community and those who have been impacted by this horrible tragedy. And I would expect to be working with him in the future in regard to legislation to be introduced.

Mr. President, at this time, I yield the floor.

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, as I have listened to the debate and editorializing surrounding the Comprehensive Regulatory Reform Act I am struck by the extreme rhetoric and baseless accusations made by opponents of this legislation. If you were to believe all that has been said, you would be convinced that this bill would undermine all of our health and safety protections. You would also believe that the Clinton administration has dramatically reformed the regulatory process during its 2 years in office. Well, Mr. President, nothing could be further from the truth.

Let us first examine the Clinton administration's record on regulatory reform. Despite rhetoric claiming support for a more reasonable approach to regulation, Federal regulatory activity has significantly increased during the past 2 years. In November 1994, the administration itself identified over 4,300 new rulemakings underway throughout the Federal Government—4,300 new ones working their way through the process.

The Institute for Regulatory Policy recently studied EPA regulations issued by the Clinton administration.

This study examined all EPA proposed and final rules published in the Federal Register during the second 6 months after President Clinton's regulatory reform Executive order took effect. Based on an analysis of 222 rulemakings, the study found that only six rulemakings offered a determination that there was a compelling public need for regulation. That is 6 out of 222 regulations. Only six of them were worth the paper they were printed on. This demonstrates that the benefits justify the cost of the regulations on only six.

To put Federal regulation in historical perspective, during the 1960's, the Federal Register—where regulations are published—devoted approximately 170,000 pages to Federal regulatory requirements for that decade. In the 1970's, this number jumped to approximately 475,000 pages. During the early 1980's, President Reagan achieved a significant reduction in the growth of regulations. Unfortunately, at the end of President Clinton's first year in office, the number of Federal Register pages reached the highest annual level since 1980.

Once you strip away the rhetoric and look at the facts, it is clear who stands on the side of restraining our runaway bureaucracy and who seeks to defend the status quo. And the bureaucracy is and has run away. It is clear who stands on the side of protecting individual liberties and who stands on the side of handing-over unchecked political power to unelected bureaucrats. It is clear who stands on the side of increased economic growth and economic opportunity, and who would allow our economy and our opportunities as a free people to be strangled by redtape.

Although the legislative language of this bill can be complex and confusing, it is really based on a handful of easily-understandable commonsense principles.

First, the bill would require agencies to conduct risk assessment. Risk assessment is a scientific process that requires regulators to evaluate and compare the risks of different activities in order to focus regulations and scarce Federal dollars on those activities posing the greatest threat to consumers. Too often in the past, regulations have been aimed at issues identified through media attention rather than sound science.

Second, this bill would require cost-benefit analysis to ensure that agencies do not impose undue burdens on the public. The premise of cost-benefit analysis is simple. Before an agency issues a regulation, it should be required to systematically measure the benefits of the regulation and compare them to the costs. Such an analysis allows a more accurate understanding of the regulatory burden imposed on consumers by the Federal Government.

Finally, the Dole-Johnston substitute amendment permits judicial and congressional review of various agency determinations. Opponents of

these provisions claim that they will lead to gridlock. I claim that such reviews are essential to hold unelected bureaucrats accountable to the American people for the rules and regulations which they would impose on us. Can you imagine anything more ridiculous than an unelected bureaucrat not being held subject to judicial and legislative review?

I would like to give an example of how Government infringement upon private property rights in the form of uncompensated regulatory takings can have negative environmental impacts. I would like to illustrate this problem by talking about the case of a constituent of mine, Mr. Ben Cone, of Ivanhoe, NC, who has been mentioned previously during debate on this bill.

Mr. Cone owns 8,000 acres of timber land in North Carolina. Over the years, Ben Cone has deliberately managed much of his land in such a way so as to attract wildlife to his property. Mr. Cone has actively and intentionally created wildlife habitat. Through selective logging and long rotation cycles. Mr. Cone has been very successful in his efforts, attracting many species to his land—from wood duck and quail to black bear and deer.

Mr. Cone has also provided habitat for the red-cockaded woodpecker, an endangered species.

In response, the Federal Government has placed a large portion of his land off limits to logging. The value of his land has been reduced by approximately \$2 million. This has taught Mr. Cone a lesson: He should no longer manage his land in such a way that would attract the red-cockaded woodpecker if he wants to be able to use it.

In other words, if he allows the trees to mature, he simply cannot cut them because of the red-cockaded woodpeckers. So what he is doing and can do is cut the trees that they do not inhabit and ultimately they will go away.

I believe the case of Ben Cone and the central issue at stake in this legislation is about preserving fundamental liberties under our constitutional system of checks and balances. In short, our problem is one of limited accountability. It is about who regulates the regulators. And it is about whether the executive branch alone should oversee our massive Federal bureaucracy or whether Congress and the Federal courts should have a greater role in this process.

I firmly believe that the Congress and the courts should have the major role in regulating the bureaucracy.

I believe that one of the lessons of our experiment with big Government in the last half of this century is that agencies tend to take on a life of their own. Despite the efforts of various Presidents to rein in agencies, they have continued to grow in size, cost, and power. We have ceded increasing power and control over our lives to a "fourth branch" of Government which has consistently resisted efforts to be held accountable.

The time is long overdue to increase oversight of agencies by the judicial and legislative branches of Government. Perhaps such oversight will in some instances result in a slowdown in the implementation of some regulations. And if it does, that is exactly what we need and what the country needs.

Some will say that such a slowdown is intolerable. I believe it is absolutely essential to preserve our hard-won constitutional liberties and freedoms to have such review.

I oppose the Glenn-Chafee substitute, which I believe fails to address many of the central issues in regulatory reform. Therefore, I strongly support the Dole-Johnston substitute amendment and urge its adoption.

Mr. President, I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I believe the Domenici amendment has been set aside so that the Senate could consider the Glenn substitute to the whole bill. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. I further understand Senator GLENN on the Democrat side and Senator ROTH on the Republican side have no objection to my getting unanimous consent that my amendment now be in order and the Glenn amendment remain as is but that we dispose of the Domenici amendment tonight.

The PRESIDING OFFICER. The Senator may call for the regular order and that will bring the amendment in order.

Mr. DOMENICI. I call for the regular order.

The PRESIDING OFFICER. The pending question now is the Domenici amendment.

AMENDMENT NO. 1784 TO AMENDMENT NO. 1533

(Purpose: To facilitate small business involvement in the regulatory development process, and for other purposes)

Mr. DOMENICI. Mr. President, I send a substitute to the desk in behalf of myself and Senators BOND, BINGAMAN, ABRAHAM, COHEN, HUTCHISON, and ROTH, and ask for its immediate consideration.

The PRESIDING OFFICER. If there is no objection, the clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, Mr. BOND, Mr. BINGAMAN, Mr. ABRAHAM, Mr. COHEN, Mrs. HUTCHISON, and Mr. ROTH, proposes an amendment numbered 1784 to amendment No. 1533.

Mr. DOMENICI. Mr. President, I ask unanimous consent that 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. DOMENICI. Mr. President, I note that a number of other Senators had

cosponsored the original Domenici small business advocacy bill, but since I have changed it I have not had time to ask them if they want to be cosponsors, and so I am going to send to the desk a list of the cosponsors and ask that overnight Senators' offices decide whether they want to be original cosponsors, in which event tomorrow I would seek unanimous consent that they be made original cosponsors as if I had done it this evening.

Mr. President, I wish to thank Senator BOND, the chairman of the Small Business Committee, for offering a package of amendments to the original Domenici small business advocacy representation amendment, and then I wish to thank Senator GLENN and Senator ROTH for their cooperation and Senator JOHNSTON and his staff. I think we have now crafted a measure that will be accepted this evening by the Senate, and I feel very proud of the amendment because I think ultimately the cry by small business across this land that they ought to be somewhat involved, albeit it in an informal way, in the development of regulations that affect them, both before they are finalized and after they are finalized, will have been accomplished.

Last year, five agencies including Small Business, EPA, and OSHA held small business forums on regulatory reform, and this report is their findings, findings and recommendations of the industry working groups.

In that document, which was put together by the executive branch of Government, the small business people recited over and over again that the inability of small business owners to comprehend overly complex regulations and those that are overlapping and inconsistent and redundant was a major problem. They continued to state over and over the need for agency regulatory officials to understand the nuances of the regulated industry and the compliance constraints of small business. They stated over and over that the need for more small business involvement in the regulatory development process, particularly during the analytic risk assessment and preliminary drafting stages, was imperative if in fact we were going to have common-sense regulations.

So let me once again read the conclusion of this very large group of small business people: The need for more small business involvement in the regulatory development process during analytic risk assessment and preliminary stages is of utmost importance.

What we have done in this compromise measure, which many have participated in drafting, is we have complied with a number of the White House Conference on Small Business final recommendations which are included in this document. I will make those a part of the RECORD. I will just recite a few of the 60 recommendations to the President and the Congress. I am going to cite just four of them and they are in here, in this amendment:

Input from small business representatives should be required in any future legislation, policy development, and regulation making affecting small business.

Congress shall enact legislation . . . to include the following: require all agencies to simplify language and forms required for use by small business . . . and eliminate duplicate regulations from multiple Government agencies.

Require agencies to assemble information through a single source on all business related government programs, regulations, reporting requirements, and key federal contact's names and phone numbers.

Congress shall enact legislation to include the following: Require all agencies provide a cooperative/consulting regulatory environment that follows due process procedures and that they be less punitive and more solution oriented.

These are the highlights concerning regulations from the final 60 recommendations the delegates made to the President. They were among hundreds of grass-roots ideas the delegates voted on.

The delegates felt so strongly about the recommendations I just read, that they received an overwhelming number of votes.

The President's own welcoming letter to the delegates states, "Small businesses are the heart of America. We look to you for our new best ideas * * *" My amendment will implement these ideas.

Mr. President, what we have accomplished in the first part of this amendment, which will then be followed by the ombudsman legislation that Senator BOND, chairman of the Small Business Committee, has put in, small business panels will come into play in each of the States and the small business advocate within Small Business will get them together on an informal basis with five or six of the lead Government officials who work in this area of regulation, and together they will go over the regulatory problems that are coming up on regulations as we define them in this bill.

This means that if this works, for the first time in history as part of our Government we will recognize in each State the need for small business, that is, the Small Business Administration, which some people wonder what do they do for business in general, they will now go out and pick six small business people, men or women, generally from our States, and they will work with them regarding the regulatory activities that are taking place that are approaching finalization. There is plenty of time to get it done because these regulations take a long time. It is not intended to be formal. It is a real bona fide effort to see if cooperation and partnership can be generated by statute law which will bring small business people into direct contact with those who are preparing regulations, all under the auspices of the Small Business Administration and its advocates bringing this together.

There are some technical issues I need not mention but that are part of this which I think will make it work.

Essentially, it will depend on whether the bureaucrats want to listen to small business. But at least they will be given a chance to participate in what is happening in the regulatory process. I look for some good things to come from it, not because they will get their way all the time, because nobody expects that, but I think they will have the kind of input so they will not in a few years be telling us that small business does not know what the regulatory process is all about, what they are doing to them and then the regs are without commonsense.

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

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

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

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

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

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

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

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

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

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

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

Mr. President, a second part of this amendment would greatly aid small

businesses as they deal with these seemingly endless Federal regulations.

Mr. President, I yield the floor to Senator BOND who wants to talk about the second part of the amendment, and then I assume Senator GLENN will speak and we will, hopefully, have the Senate adopt the amendment this evening.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I thank the Chair and my distinguished friend from New Mexico.

Mr. President, I will abide by the suggestion that we keep this short because I do believe, first, thanks are in order to Senator DOMENICI for the concept of this amendment. I was pleased to join with him on adding provisions with respect to the ombudsmen, but sincere thanks to Senator GLENN, Senator LEVIN and their staffs because they made very helpful and constructive suggestions that we think can improve the working of these provisions.

The part of the amendment which I had earlier introduced legislation on provides a means for small businesses who feel that they are being abused by a particular regulator to get some relief without having to risk heightening the animosity of that particular regulator by going through the Small Business Advocacy Council in the Small Business Administration. This, we think, will respond to the many complaints we have heard in hearings we had in New Mexico, in my State, and other places around the country, where they think the enforcement is excessive.

There was a suggestion by the Senator from Michigan that we have the appointment of the regional small business regulatory fairness board by the SBA Administrator so it would not be burdensome, having to go through Presidential and congressional leadership appointment. I think that improves the bill.

I express my appreciation to the managers on both sides for their help in getting this amendment through. I really think this is going to be a significant step forward for small business. As Senator DOMENICI has pointed out, small business has expressed their frustration with regulations. Now they will have an opportunity to sit in on the crafting of the regulations.

They will also have a place to go if they are treated unfairly by particular regulators or the particular agencies. I hope that there will not be a need for the small business ombudsmen. I hope that with the establishment of this procedure, there will be a strong push and a greater effort on behalf of all agencies to become servers of the businesses and the people they regulate and the people of the United States.

Mr. President, I want to speak briefly about the need for the Domenici-Bond-Bingaman amendment. This amendment opens a new front in our fight against oppressive, onerous, and overly meddlesome Government regulations.

This new front will, for the first time, take the fight outside the beltway and attack regulations and agencies where they impact people in their day-to-day lives.

Since the election, there has been tremendous activity in reforming the way Federal agencies develop and issue regulations, and I have been deeply involved in this effort as cochair of the regulatory relief task force. S. 343 is so important because it makes fundamental changes in the way Government regulations are developed. It is vitally important if we are to reduce the flood of runaway regulations. And it is particularly important for small business to add meaningful judicial enforcement provisions to the Regulatory Flexibility Act, and I am very pleased to see the strong reforms of the Reg Flex Act in this bill.

So far, most of our efforts have focused on changing the way agencies enact regulations. The Domenici-Bond-Bingaman amendment begins to reform the way Government officials enforce Federal regulations. After all, most people, most small business people, do not have the time to concern themselves with the process of reviewing and commenting on proposed and final rules in the Federal Register. Small businesses have to deal with regulations when the regulator shows up on the doorstep to inspect their facility or to enforce a new Federal mandate. As I have taken the Senate Small Business Committee around the country, I have heard numerous horror stories about burdensome regulations. But as I have listened and learned from business men and women with real life problems, I have become increasingly convinced that the enforcement of regulations is a problem as troublesome as the regulations themselves.

The Domenici-Bond-Bingaman amendment will begin to make fundamental changes in the way regulatory agencies think about small business. It should be every regulatory agency's mission to encourage compliance by making rules easier to understand and by not enforcing their regulations in a way that unnecessarily frustrates law-abiding small businesses. This is the essence of President Clinton's call for Government regulators to treat small businessmen as clients and not criminals, partners not adversaries. In fact, the administration should support this amendment. It establishes a type of performance-based standard for regulators that the Vice President has talked about in the national performance review. This allows the customers—small business—to rate the regulators.

The Domenici-Bond-Bingaman amendment is designed to give small businesses a place to voice complaints about excessive, unfair, or incompetent enforcement of regulations. It sets up regional Small Business and Agriculture ombudsmen through the Small Business Administration's offices around the country to give small busi-

nesses assurance that their confidential complaints and comments will be recorded and heard. These ombudsmen also will coordinate the activities of volunteer Small Business Regulatory Fairness Boards, made up of small business people from each region. These Boards will be able to report on and make recommendations about troublesome patterns of enforcement activities. Any small business that is subject to an inspection or enforcement action will have the chance to rate and critique the inspectors or lawyers they deal with. In dealing with small businesses today, agencies seem to assume that every one is a violator of their rules, trying to get away with something. Some agencies do a good job of fulfilling their legal mandate while assisting small business, but many agencies seem stuck in an enforcement mentality where everyone is presumed guilty until proven innocent. I think we should let small businesses compare their dealings with one agency to dealing with another so the abusive agencies or agents can be weeded out and exposed. Agencies should be trying to see who can fulfill their statutory mandate in a way that helps and empowers small business.

This is an important amendment. It has the strong support of small business. I believe it will help to bring about a more cooperative relationship between regulators and small business. I urge my colleagues to support the amendment.

In recent weeks, we have heard from the President about all the ways he is going to reduce the burdens of Government regulations. I commend him for recognizing the forces at work in Congress and responding quickly to it. He has found a parade and now is hustling to get in front of it, as a good politician will do. Presidential directives and agency policies can change as often as the weather, though, and I want the comfort of knowing that Congress has passed a law that permanently changes the enforcement attitudes of Federal regulators so small business can get on with what they do best, creating jobs and driving the engine of America's economy.

I appreciate the willingness of the managers to accept the measure.

Mr. ROTH. Mr. President, I rise in support of the Domenici-Bond amendment.

In 1980, Congress enacted the Regulatory Flexibility Act in recognition of the fact that Government regulations have a disproportionate impact on small business. In that act we asked Government agencies to take this fact into account in issuing regulations. Today, some 15 years later, it is generally accepted that the 1980 act has been an ineffective response to a growing problem.

The pending amendment is an effective remedy. It flashes out what two agencies—EPA and OSHA—must do to take the concerns of small business

into account. It formalizes a dialog between small business and those agencies which, I am sure, will be helpful to both. With this amendment, these agencies can no longer brush aside the legitimate concerns of small business. There is a real difference in how regulations impact a conglomerate and a sole proprietor.

Fifteen years ago we notified agencies that they should recognize this difference and gave them discretion. But that discretion has not been exercised as it should have been. So no Congress must respond with more precise direction.

This amendment embodies a second major component. It establishes regional small business ombudsmen to solicit and receive comments from small businesses regarding enforcement activities of Federal agencies and periodically evaluate how responsive agencies have been to small business concerns.

This amendment impresses me as an appropriate solution to the concerns of small business. The requirements of the pending amendment regarding the issuance of rules pertain only to two agencies and, there, only formalize what should now be taking place—a dialog between small business and the agencies.

Mr. President, Government must be made sensitive to the regulatory burden on small business. Small business is the backbone of America—a crucial provider of jobs, a wellspring of entrepreneurial innovation, and a central part of the American dream. I congratulate Senators DOMENICI and BOND for their efforts to help America's millions of small business owners, their employees, and their families.

I urge the adoption of this amendment.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, the small business advocacy review panels that are created by this amendment should make the regulatory processes of OSHA and the Environmental Protection Agency more user friendly and, in a sense, bring small business and those two regulatory agencies into some kind of cooperative spirit where heretofore they seemed to have kind of thrived on being adversarial.

I want to thank Senator HATCH who is managing this bill for helping us get our amendment to this point. I understand he, too, is going to express a willingness to accept it. I thank him for that. I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I want to thank my friend and colleague from New Mexico and compliment him for his amendment. We are prepared to accept this amendment at this point, and I believe the other side is as well.

Mr. GLENN addressed the Chair.

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

Mr. GLENN. Mr. President, I want to comment briefly on the amendment offered by Senator Domenici.

First of all, I do want to recognize his concerns regarding the ability of small businesses to have a role in the regulatory process. Like all other Americans, their voices should be heard.

I also want to acknowledge the charges made by Senators DOMENICI and BOND and their staffs to address concerns raised by myself and others, including Senator LEVIN.

I am pleased that the sponsors have done away with the Federal Advisory Committee Act [FACA] exemption. I will have more to say about the importance of FACA when I offer my amendment to strike the FACA exemption for the risk assessment peer review panels in the underlying Dole-Johnston bill. In fact, we spent a whole day discussing FACA on the floor last August when we eliminated such exemptions in the health care bill.

I am also glad that the role of the small business designated representatives has changed somewhat—they will be primarily to furnish information to the review panel.

Second, I am glad that we were able to straighten out the definition of rules for when these panels come into play, so it mirrors the language in the underlying bill.

Third, I am pleased that we have clarified that any information made available to the small business designated representatives will also be publicly accessible. They will not be privy to any information that other citizens will not be able to access.

Fourth, regarding the surveys which may be ordered, we not only will know the results, but also the cost paid by taxpayers to undertake them.

Having said this, let me also voice my concerns over some of the provisions in the amendment.

Let me be clear: we are giving one special interest—no matter how meritorious their cause—a leg up over all other citizens in the regulatory process.

These small business review panels will come into play even prior to the issuance of a notice of proposed rule-making. That is a marked departure from current practice.

We don't have special review panels to hear from labor interests prior to issuance of regulatory proposals. Workers will have an interest—perhaps their safety or lives depend on it—in presenting their views, also.

We do not have teachers giving their comments prior to the promulgation of a rulemaking notice for an education proposal by the Department of Education.

I understand what the proponents of this amendment are trying to do. It is important to reach out and consult with those of our citizens who will be most affected by a proposed rule. I do not disagree with the principle, and I am a strong supporter of small busi-

ness, but I support workers and teachers too, and we are not giving them equivalent access.

Second, I am concerned about the survey these review panels may order to assess the impact of a final rule. We hear alot about government redtape and the endless burden of paperwork.

But now we are going to have an agency contracting with a private sector firm to do an assessment—from a cross-section of affected small businesses—which, it would seem to me, will add to the burden of paperwork that the Paperwork Reduction Act is supposed to reduce. I hope OMB reviews any such survey proposal carefully.

I understand the sponsor will not request a roll call vote. On that basis, I will not oppose the amendment.

Mr. President, we are going to accept this. It is my intention to do that. I want to recognize the concerns of Senator DOMENICI regarding the ability of small business to have a role in the regulatory process. Their voices should be heard. There were changes made that took care of some of our problems with FACA, in particular, the Federal Advisory Committee Act, which requires a balance on certain committees, and so on.

I will have some more to say about that later on, not in regard to this particular amendment, but to the underlying bill. There are some problems still in that area.

I have expressed some concerns about how this might be applied to other speciality areas that we have some concern about, but that is of no concern in this particular area. We may want to address some of that later.

With that, I will be glad to accept the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to amendment No. 1784 to amendment No. 1533.

So the amendment (No. 1784) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now occurs on agreeing to amendment No. 1533, as amended.

So the amendment (No. 1533), as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1785 TO AMENDMENT NO. 1487 (Purpose: To repeal the Medicare and Medicaid coverage data bank, and for other purposes)

Mr. HATCH. Mr. President, I send an amendment to the desk for and on behalf of Senators MCCAIN and

LIEBERMAN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] for Mr. McCAIN, for himself and Mr. LIEBERMAN, proposes an amendment numbered 1785 to amendment No. 1487.

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

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

The amendment is as follows:

At the end of the amendment, insert the following new section:

SEC. . REPEAL OF MEDICARE AND MEDICAID COVERAGE DATA BANK.

(a) REPEAL.—

(1) IN GENERAL.—Section 13581 of the Omnibus Budget Reconciliation Act of 1993 is hereby repealed.

(2) APPLICATION OF THE SOCIAL SECURITY ACT.—The Social Security Act shall be applied and administered as if section 13581 of the Omnibus Budget Reconciliation Act of 1993 (and the amendments made by such section) had not been enacted.

(b) STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services (hereafter in this subsection referred to as the “Secretary”) shall conduct a study on how to achieve the objectives of the data bank described in section 1144 of the Social Security Act (as in effect on the day before the date of the enactment of this Act) in the most cost-effective manner, taking into account—

(A) the administrative burden of such data bank on private sector entities and governments,

(B) the possible duplicative reporting requirements of the Health Care Financing Administration in effect on such date of enactment, and

(C) the legal ability of such entities and governments to acquire the required information.

(2) REPORT.—The Secretary shall report to the Congress on the results of the study described in paragraph (1) by not later than 180 days after the date of the enactment of this Act.

Mr. McCAIN. Mr. President, this amendment which is cosponsored by Senator LIEBERMAN and Senator KYL would eliminate a large and unjustified administrative burden imposed on employers by an ill-considered piece of legislation passed 2 years ago. Specifically, it would repeal the Medicare and Medicaid Coverage Data Bank, section 13581 of OBRA 1993, a law that is extremely expensive, burdensome, punitive, and in my view, entirely unnecessary.

The data bank law requires every employer who offers health care coverage to provide substantial and often difficult-to-obtain information on current and past employees and their dependents, including names, Social Security numbers, health care plans, and period of coverage. Employers that do not satisfy this considerable reporting obligation are subject to substantial penalties, possibly up to \$250,000 per year or even more if the failure to report is found to be deliberate.

The purported objective of the data bank law is to ensure reimbursement of

costs to Medicare or Medicaid when a third party is the primary payor. This is a legitimate objective. However, if the objective of the data bank is to preserve Medicare and Medicaid funds, why is it necessary to mandate information on all employees, the vast majority of whom have no direct association with either the Medicare or Medicaid Program?

Last year, I introduced S. 1933 to repeal the Medicare and Medicaid Coverage Data Bank. Unfortunately, this bill did not pass in the 103d Congress, in part because of a questionable Congressional Budget Office analysis that estimated that the data bank would save the Federal Government about \$1 billion. In contrast, the General Accounting Office found that “as envisioned, the data bank would have certain inherent problems and likely achieve little or no savings to the Medicare and Medicaid Programs.” Still, due primarily to the fiction that the data bank would save money, S. 1933 was not enacted last year.

The GAO report on the data bank law also found that employers are not certain of their specific reporting obligations, because HCFA has not provided adequate guidance. Much of the information which is required is not typically collected by employers, such as Social Security numbers of dependents and certain health insurance information. Some employers have even questioned whether it is legal for them under various privacy laws to seek to obtain the required information.

The GAO report further found that employers are facing significant costs in complying with the reporting requirements, including the costs of redesigning their payroll and personnel systems. It cites one company with 44,000 employees that would have costs of approximately \$52,000 and another company with 4,000 employees that would have costs of \$12,000. Overall, the American Payroll Association estimated last year that this requirement will cost between \$50,000 and \$100,000 per company.

I would add that the reporting requirement applies only to employers that provide health insurance coverage to their employees. It is unconscionable that we are adding costs and penalties to those who have been most diligent in providing health coverage to their employees. The last thing that the Federal Government should do is impose disincentives to employee health care coverage, which is one of the unintended consequences of the data bank law.

Perhaps the most disturbing aspect of the data bank law is that its enormous costs have little or no corresponding benefit. The GAO report concluded that “The additional information gathering and record keeping required by the data bank appears to provide little benefit to Medicare or Medicaid in recovering mistaken payments.” This is in part because HCFA is already obtaining this information

in a much more efficient manner than that required under OBRA 1993.

For example, OBRA 1989 provides for HCFA to periodically match Medicare beneficiary data with Internal Revenue Service employment information—the data match program. Also, HCFA directly asks beneficiaries about primary payor coverage. To the extent that the data bank duplicates these efforts, any potential savings will not be realized. It is clearly preferable to require HCFA to use the information it already has than to require the private sector to provide duplicative information.

The GAO report found that “the data match not only can provide the same information [as the Data Bank] without raising the potential problems described above, but it can do so at less cost.” It also recognized that both the data match and data bank processes rely too much on an after-the-fact recovery approach, and recommended enhancing up-front identification of other insurance and avoiding erroneous payments. In this regard, it documented that HCFA has already initiated this prospective approach.

For these and other reasons, the Committee on Labor and Human Resources appropriations report last year contained language prohibiting the use of Federal funds for developing or maintaining the data bank. However, this provision by itself did not revoke the requirement that covered entities must still provide the required information on the health coverage of current and former employees and their families. This would have resulted in the bizarre situation in which covered employers would have had to report the information, but there would have been no data bank to process or retrieve it.

Finally, in response to the public outcry about this Federal mandate, the Health Care Financing Administration [HCFA] indicated that it will not be enforcing the data bank’s reporting requirements in fiscal year 1995. It stated that in light of the refusal of Congress to fund the data bank, “we have agreed to stay an administrative action to implement the current requirements, including the promulgation of reporting forms and instructions. Therefore, we will not expect employers to compile the necessary information or file the required reports. Likewise, no sanctions will be imposed for failure to file such reports.”

This was a major step in the right direction. However, the data bank and its reporting requirements are still in the law and are still scheduled to be implemented in the next fiscal year. Consequently, this year I have reintroduced my data bank repeal bill, S. 194. I have recently been informed that the CBO has revised its scoring to recognize that the data bank would not save the Federal Government any money. This removed the only argument in favor of the data bank and the only major impediment to its repeal.

Mr. President, the Federal Government continues to impose substantial financial burdens on the private sector without fully accepting its share of the burden to implement a program. We should once again expect the worst case scenario to occur: employers will provide the required information at substantial administrative burden, there will be no data bank in which to make use of it, and even if a data bank were funded and established, the information stored could not be used efficiently to save Medicare or Medicaid funds.

I do not want this repeal to be construed, in any way, as opposition to HCFA obtaining the information it needs to administer the Medicare and Medicaid Programs efficiently, and obtaining reimbursement from third-party payors when appropriate. To assure that HCFA has the information it needs, the bill also requires the Secretary of HHS to conduct a study and report to Congress on how to achieve the purported objectives of the data bank in the most cost-effective manner possible.

The Secretary's study would have to take into consideration the administrative costs and burden on the private sector and the Government of processing and providing the necessary information versus the benefits and savings that such reporting requirements would produce. It must also consider current HCFA reporting requirements and the ability of entities to obtain the required information legally and efficiently.

Too often, Congress considers only the cost savings to the Federal Government of legislation while ignoring costs to other parties. The Medicare and Medicaid Data Bank is a case in point. Congress required information on millions of employees to save the Federal Government money. Yet, it will cost employers more money to comply than the Government saves. Congress must stop passing laws that impose large, unjustified administrative burdens on other entities. It must consider the impact of its actions on the whole economy and not just on the Government.

In summary, the reporting requirement for the Medicare and Medicaid Data Bank is duplicative, burdensome, ineffective, and unnecessary. The GAO has characterized it as creating "an avalanche of unnecessary paperwork for both HCFA and employers." It penalizes employers who provide health care benefits to their workers—exactly the opposite goal we should be pursuing. The data bank should be repealed and a more cost-effective approach should be found to ensure that Medicare and Medicaid are appropriately reimbursed by primary payors.

Mr. President, I ask unanimous consent that letters of support from the Coalition on Employer Health Coverage Reporting and the Medicare/Medicaid Data Bank, the ERISA Industry Committee [ERIC] and the National

Federation of Independent Business be printed in the RECORD. They represent the numerous associations, organizations, and individual employers that continue to demand repeal of this law. Their message is clear. The Federal Government must stop imposing unjustified burdens on the private sector.

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

THE ERISA INDUSTRY COMMITTEE,
July 11, 1995.

Hon. JOHN MCCAIN,
U.S. Senate, Senate Russell Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: We understand that you are planning to offer a floor amendment to S. 343, the Comprehensive Regulatory Reform Act of 1995, to repeal the requirement that employers report certain health coverage information to the Health Care Financing Administration (HCFA) for use by the Medicare and Medicaid Data Bank. The members of the ERISA Industry Committee (ERIC) strongly support your amendment.

The ERISA Industry Committee is a non-profit employer association committed to the advancement of the employee retirement, health and welfare benefit plans of America's major employers. ERIC represents the employee benefits interests of more than 125 of the nation's largest employers. As sponsors of health, disability, pension, savings, life insurance, and other welfare benefit plans directly covering approximately 25 million plan participants and beneficiaries, ERIC's members provide coverage to about 10 percent of the U.S. population.

The reporting requirement was created by OBRA '93, P.L. 103-66. ERIC's analysis has concluded that the employer reporting requirement neither successfully addresses HCFA's concerns regarding the prevention of mistaken primary payments nor justifies the enormous reporting burdens it imposes on employers. Therefore, its repeal is consistent with the laudable goal of reducing unnecessary and inappropriate regulation.

ERIC is committed to working with you and others to find alternative means to address HCFA's secondary payer enforcement and compliance needs that do not impose disproportionate financial and administrative burdens on employers. In particular, the multiple sources of data and data collection vehicles already available to HCFA should be fully implemented rather than imposing massive new reporting burdens on employers.

In conclusion, we applaud your efforts to repeal this onerous reporting requirement and urge your colleagues in the Senate to support your amendment.

Sincerely,
MARK J. UGORETZ,
President.

THE ERISA INDUSTRY COMMITTEE—MEMBER
COMPANIES

Aetna Life & Casualty, Alexander & Alexander Inc., Allied-Signal Inc., American Express Co., American Home Products Corp., American International Group, American National Can Co., Ameritech, Amoco Corp., Anheuser-Busch Companies Inc., Apache Corp., Ashland Oil Inc., AT&T Corp., Atlantic Richfield Co.,

Bankers Trust Co., Baxter Healthcare Corp., Bell Atlantic Corp., Bell Communications Research, BellSouth Corp., Bethlehem Steel Corp., The Boeing Co., BP America Inc., Bristol-Myers Squibb Co., Buck Consultants Inc.,

Caterpillar Inc., Champion International Corp., Chase Manhattan Bank N.A., Chem-

ical Bank, Chevron Corp., Chrysler Corp., CIBA-GEIGY Corp., CIGNA Corp., Citibank N.A., The Coastal Corp., Coopers & Lybrand, Dana Corp., Deere & Co., Delta Air Lines Inc., Digital Equipment Corp., The Dow Chemical Co., Dresser Industries Inc., duPont Co.,

Eastman Kodak Co., Eli Lilly and Co., Enron Corp., Ernst & Young, Exxon Corp., Federated Department Stores Inc., FMC Corp., Ford Motor Co., A. Foster Higgins & Co. Inc.,

General Electric Co., General Motors Corp., The Goodyear Tire & Rubber Co., W.R. Grace & Co., Grand Metropolitan, GTE Corp., Halliburton Co., Harris Corp., Hazlehurst & Associates Inc., The Hearst Corp., Hewitt Associated LLC, Hewlett-Packard Co.,

IBM Corp., ITT Corp., John Hancock Mutual Life Insurance Co., Johnson & Johnson, Kimberly-Clark Corp.,

The LTV Corp., MCI Communications Corp., McDonnell Douglas Corp., William M. Mercer Incorporated, Merck & Co. Inc., MetraHealth, Metropolitan Life Insurance Co., Michelin North America Inc., Minnesota Mining & Manufacturing Co., Mobil Corp., J. P. Morgan & Co. Inc., Motorola Inc., Mutual of New York,

Nestle USA Inc., NYNEX Corp., Occidental Petroleum Corp., Olin Corp., Owens-Corning Fiberglas Corp.,

Pacific Gas & Electric Co., Pacific Telesis Group, Pathmark Stores Inc., J. C. Penney Co. Inc., Pennzoil Co., PepsiCo Inc., Pfizer Inc., Philip Morris Companies Inc., PPG Industries Inc., Price Waterhouse, The Procter & Gamble Co., The Prudential Insurance Co. of America,

Ralston Purina Co., Rockwell International Corp., Sears Roebuck & Co., Shell Oil Co., The Southland Corp.,

Tenneco Inc., Texaco Inc., Texas Instruments Inc., Textron Inc., Time Warner Inc., Towers Perrin, The Travelers, TRW Inc.,

Unilever United States Inc., Union Camp Corp., Union Pacific Corp., Unisys Corp., United Technologies Corp., Unocal Corp., U S West Inc., USX Corp.,

Westvaco Corp., Weyerhaeuser Co., Whirlpool Corp., The Wyatt Co., Xerox Corp., Zeneca Inc.

COALITION ON EMPLOYER HEALTH
COVERAGE REPORTING AND THE
MEDICARE/MEDICAID DATA BANK

July 11, 1995.

Hon. JOHN MCCAIN,
U.S. Senate, Senate Russell Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: We understand that you are planning to offer a floor amendment to S. 343, the Comprehensive Regulatory Reform Act of 1995, to repeal the requirement that employers report certain health coverage information to the Health Care Financing Administration (HCFA) for use by the Medicare and Medicaid Data Bank. On behalf of the Coalition's members, I would like to express their support for your amendment.

The Coalition on Employer Health Coverage Reporting and the Medicare/Medicaid Data Bank consists of more than 90 associations, organizations and individual employers working together since January 1994 in a joint effort to repeal the reporting requirement.

The reporting requirement was created by OBRA '93, P.L. 103-66. The Coalition's analysis (summary attached) concluded that the employer reporting requirement neither successfully addresses HUCA's concerns regarding the prevention of mistaken primary payments nor justifies the enormous reporting burdens it imposes on employers.

We applaud your efforts to repeal this onerous reporting requirement and urge your colleagues in the Senate to support your amendment.

Sincerely,

ANTHONY J. KNETTEL,
Director, Health Policy, The ERISA
Industry Committee Coalition
Coordinator.

COALITION ON EMPLOYER HEALTH COVERAGE
REPORTING AND THE MEDICARE/MEDICAID
DATA BANK—JULY 11, 1995

COALITION ANALYSIS: REPORTING REQUIREMENT
IMPOSES UNREASONABLE COSTS ON EMPLOYERS
BUT STILL FAILS TO REMEDY HCFA'S SECONDARY
PAYER PROBLEMS

Summary: The Coalition's analysis has concluded that the employer health coverage reporting requirement,¹ which is intended to provide data for the Medicare/Medicaid Data Bank, neither successfully addresses the concerns of the Health Care Financing Administration (HCFA) regarding mistaken primary payments nor justifies the burdens imposed on employers. Therefore, the data bank reporting requirement should be repealed as soon as possible.

Unreasonable costs imposed on employers: The administrative and financial burden imposed on employers by full compliance with the reporting requirement is enormous. A significant portion of the information to be reported to the data bank is not currently maintained by most employers for any business purpose. In many cases this information will have to be compiled manually (*i.e.*, most employers do not have payroll systems and computer data bases that are designed to collect and maintain this required information) at tremendous cost.

GAO determines that the data bank won't work: On May 6, 1994, Leslie Aronovitz testified on behalf of the General Accounting Office (GAO) before the Senate Committee on Governmental Affairs that "the enormous administrative burden the data bank would place on HCFA and the nation's employers. . . likely would do little or nothing to enhance current efforts to identify those beneficiaries who have other health insurance coverages." The basis for GAO's conclusions is discussed in detail in a report, "Medicare/Medicaid Data Bank Unlikely to Increase Collections From Other Insurers," prepared at the request of Senator Joseph Lieberman and released the same day.

Coalition's analysis supports GAO's conclusions: The data bank's employer reporting requirement will not solve HCFA's secondary payer enforcement problems—despite the massive administrative burdens and expenses it imposes on employers—for the following reasons:

In many cases it is impossible for employers to fully comply with the reporting requirement. Collection of such information from employees is even harder for employers than it is for the government to obtain it directly from Medicare and Medicaid beneficiaries. Obtaining information about dependents, in particular, will be very difficult, time consuming, expensive, and in many cases impossible—especially for employers

with high work force turnover. Further, employers' ability to collect certain information (*e.g.*, dependents' social security numbers) may be limited by privacy laws. Collection of information in cases where employers contribute to, but do not administer, Taft-Hartley multi-employer health plans will also be difficult, if not impossible.

Requiring employers to collect the data for HCFA is incredibly inefficient. Only a minute amount of the information employers must collect and report will be of any use to the data bank because only a small fraction (less than 5 percent) of employees and their dependents are Medicare or Medicaid beneficiaries. In effect, more than 95 percent of employers' effort will be wasted because the data collected will be irrelevant to secondary payer enforcement.

The data bank won't improve secondary payer enforcement in any case. The data to be reported by employers was intended to be matched against government records in an effort to identify (after the fact) mistaken reimbursements for health care services by Medicare and Medicaid. But in many cases the data reported by employers will still not be sufficient to enable HCFA (by its own admission) to identify or prevent mistaken payments. Moreover, it is unlikely HCFA would be able to process any relevant information it did receive fast enough to meet applicable claims filing deadlines and recover mistaken payments.

Data bank compounds "Pay-and-chase" inefficiencies: Mistaken primary payments by Medicare and Medicaid most often result from health care providers billing the wrong parties. Yet HCFA's secondary payer enforcement efforts are based on a "pay-and-chase" strategy—reconciling mistaken payments with employers (not providers) years after the fact. The data bank reporting requirement does not alter this "pay-and-chase" strategy significantly because of the time delay implicit in the collection and processing of the information to be reported to the data bank.

Better alternatives are available: To date the federal government has not made effective use of relevant and more timely information it already receives or could obtain from sources other than the data bank in order to prevent mistaken payments before they occur. For example, HCFA already receives or could obtain much of the same information when claims are filed by health care providers. This is because the UB-92 and other claim forms require secondary payer information to be included on the form. In fact, secondary payer information has been sent to HCFA for years, but HCFA has not been successful at fully incorporating this information into its systems. HCFA has also been unable to take full advantage of additional information it receives or could obtain from other sources, such as new beneficiary questionnaires. Rather than overwhelm HCFA with new data that the agency can't effectively utilize, it makes more sense to help HCFA manage the information it already has or could readily obtain.

Compelling arguments for repeal: The preceding analysis suggests several compelling arguments for repealing the data bank reporting requirement, including:

Employers' compliance costs will far outweigh (by orders of magnitude) any potential government savings. For all of the reasons discussed above and in the GAO's 1994 report, the data bank reporting requirement will generate little or no additional savings for the federal government despite tens of millions of dollars in annual employer compliance costs.

The data bank reporting requirement compounds rather than solves the inherent inefficiency of HCFA's "pay-and-chase" enforce-

ment efforts. HCFA's enforcement efforts instead should be focused on preventing mistaken claims before they occur by requiring health care providers to bill the proper parties.

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,

July 12, 1995.

Hon. JOHN MCCAIN,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: On behalf of the over 600,000 members of the National Federation of Independent Business (NFIB), I am writing to strongly support the McCain-Lieberman amendment to repeal the Medicare and Medicaid Data Bank. This data bank is nothing short of another regulatory and paperwork nightmare for America's already overburdened small businesses.

Unless repealed, this provision will require employers to report detailed health insurance coverage information for more than 140 million individuals—including employees, retirees and their dependents. Information from the Health Care Financing Administration (HCFA) suggests these statistics will be useless 98 percent of the time.

Ironically, the government currently receives much of the information the data bank would mandate. Through better management of current resources, and with information gathered through the study your amendment directs the Secretary of Health and Human Services to undertake, we believe the federal bureaucracy can avoid this costly and time consuming burden altogether.

Thanks for your continued leadership on behalf of small business. We look forward to working with you to pass this important anti-paperwork amendment.

Sincerely,

DONALD A. DANNER,
Vice President.

Mr. HATCH. Mr. President, I understand that both sides have approved this amendment and will agree to its adoption.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

So the amendment (No. 1785) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I think we are about ready to shut the Senate down in just a minute or 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. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HATCH. Mr. President, the distinguished Senator from Missouri would like to send an amendment to the desk.

¹Beginning January 1, 1994, current law requires employers to report the health insurance coverage status of employees and their dependents to a data bank to be administered by HCFA. This reporting requirement was created by OBRA '93 (P.L. 103-66). HCFA has indefinitely suspended implementation of the data bank because Congress has not appropriated any funds for that purpose. The coalition strongly supported the Appropriation Committees' decision not to appropriate funds for data bank implementation. Employers remain subject to the statutory obligation to collect and report the data, however, so repeal of the reporting requirement is still urgently needed.

AMENDMENT NO. 1786 TO AMENDMENT NO. 1487

(Purpose: To provide for the designation of distressed areas within qualifying cities as regulatory relief zones and for the selective waiver of Federal regulations within such zones)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Missouri [Mr. ASHCROFT] proposes an amendment numbered 1786 to amendment No. 1487.

Mr. ASHCROFT. 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 end, add the following new title:

"TITLE II—URBAN REGULATORY RELIEF ZONES

SECTION 201. SHORT TITLE.

This Act may be cited as the "Urban Regulatory Relief Zone Act of 1995".

SEC. 202. FINDINGS.

The Congress finds that—

(1) the likelihood that a proposed business site will comply with many government regulations is inversely related to the length of time over which a site has been utilized for commercial and/or industrial purposes in the past, thus rendering older sites in urban areas the sites most unlikely to be chosen for new development and thereby forcing new development away from the areas most in need of economic growth and job creation; and

(2) broad Federal regulations often have unintended social and economic consequences in urban areas where such regulations, among other things—

(A) offend basic notions of common sense, particularly when applied to individual sites;

(B) adversely impact economic stability;

(C) result in the unnecessary loss of existing jobs and businesses;

(D) undermine new economic development, especially in previously used sites;

(E) create undue economic hardships while failing significantly to protect human health, particularly in areas where economic development is urgently needed in order to improve the health and welfare of residents over the long term; and

(F) contribute to social deterioration to such degree that high unemployment, crime, and economic and social problems create the greatest risk to the health and well-being of urban residents.

SEC. 203. PURPOSES.

The purposes of this title are to—

(1) enable qualifying cities to provide for the general well-being, health, safety and security for their residents living in distressed areas by empowering such cities to obtain selective relief from Federal regulations that undermine economic stability and development in distressed areas within the city; and

(2) authorize Federal agencies to waive the application of specific Federal regulations in distressed urban areas designated as Urban Regulatory Relief Zones by an Economic Development Commission—

(A) upon application through the Office of Management and Budget by an Economic Development Commission established by a qualifying city pursuant to section 205; and

(B) upon a determination by the appropriate Federal agency that granting such a waiver will not substantially endanger health or safety.

SEC. 204. ELIGIBILITY FOR WAIVERS

(a) ELIGIBLE CITIES.—The mayor or chief executive officer of a city may establish an Economic Development Commission to carry out the purposes of section 205 if the city has a population greater than 200,000 according to:

(1) the U.S. Census Bureau's 1992 estimate for city populations; or

(2) beginning six months after the enactment of this title, the U.S. Census Bureau's latest estimate for city populations.

(b) DISTRESSED AREA.—Any census tract within a city shall qualify as a distressed area if—

(1) 33 percent or more of the resident population in the census tract is below the poverty line; or

(2) 45 percent or more of out-of-school males aged 16 and over in the census tract worked less than 26 weeks in the preceding year; or

(3) 36 percent or more families with children under age 18 in the census tract have an unmarried parent as head of the household; or

(4) 17 percent or more of the resident families in the census tract received public assistance income in the preceding year.

SEC. 205. ECONOMIC DEVELOPMENT COMMISSIONS.

(a) PURPOSE.—The mayor or chief executive officer of a qualifying city under section 204 may appoint an Economic Development Commission for the purpose of—

(1) designating distressed areas, or a combination of distressed areas with one another or with adjacent industrial or commercial areas, within the city as Urban Regulatory Relief Zones; and

(2) making application through the Office of Management and Budget to waive the application of specific Federal regulations within such Urban Regulatory Relief Zones.

(b) COMPOSITION.—To the greatest extent practicable, an Economic Development Commission shall include—

(1) residents representing a demographic cross section of the city population; and

(2) members of the business community, private civic organizations, employers, employees, elected officials, and State and local regulatory authorities.

(c) LIMITATION.—No more than one Economic Development Commission shall be established or designated within a qualifying city.

SEC. 206. LOCAL PARTICIPATION

(a) PUBLIC HEARINGS.—Before designating an area as an Urban Regulatory Relief Zone, an Economic Development Commission established pursuant to section 205 shall hold a public hearing, after giving adequate public notice, for the purpose of soliciting the opinions and suggestions of those persons who will be affected by such designation.

(b) INDIVIDUAL REQUESTS.—The Economic Development Commission shall establish a process by which individuals may submit requests to the Economic Development Commission to include specific Federal regulations in the Commission's application to the Office of Management and Budget seeking waivers of Federal regulations.

(c) AVAILABILITY OF COMMISSION DECISIONS.—After holding a hearing under paragraph (a) and before submitting any waiver applications to the Office of Management and Budget pursuant to section 207, the Economic Development Commission shall make publicly available—

(1) a list of all areas within the city to be designated as Urban Regulatory Relief Zones, if any;

(2) a list of all regulations for which the Economic Development Commission will request a waiver from a Federal agency; and

(3) the basis for the city's findings that the waiver of a regulation would improve the health and safety and economic well-being of the city's residents and the data supporting such a determination.

SEC. 207. WAIVER OF FEDERAL REGULATIONS.

(a) SELECTION OF REGULATIONS.—An Economic Development Commission may select for waiver, within an Urban Regulatory Relief Zone, Federal regulations that—

(1)(A) are unduly burdensome to business concerns located within an area designated as an Urban Regulatory Relief Zone; or

(B) discourages new economic development within the zone; or

(C) creates undue economic hardships in the zone; or

(D) contributes to the social deterioration of the zone; and

(2) if waived, will not substantially endanger health or safety.

(b) REQUEST FOR WAIVER.—(1) An Economic Development Commission shall submit a request for the waiver of Federal regulations to the Office of Management and Budget.

(2) Such request shall—

(A) identify the area designated as an Urban Regulatory Relief Zone by the Economic Development Commission;

(B) identify all regulations for which the Economic Development Commission seeks a waiver; and

(C) explain the reasons that waiver of the regulations would economically benefit the Urban Regulatory Relief Zone and the data supporting such determination.

(c) REVIEW OF WAIVER REQUEST.—No later than 60 days after receiving the request for waiver, the Office of Management and Budget shall—

(1) review the request for waiver;

(2) determine whether the request for waiver is complete and in compliance with this title, using the most recent census data available at the time each application is submitted; and

(3) after making a determination under paragraph (2)—

(A) submit the request for waiver to the Federal agency that promulgated the regulation and notify the requesting Economic Development Commission of the date on which the request was submitted to such agency; or

(B) notify the requesting Economic Development Commission that the request is not in compliance with this Act with an explanation of the basis for such determination.

(d) MODIFICATION OF WAIVER REQUESTS.—An Economic Development Commission may submit modifications to a waiver request. The provisions of subsection (c) shall apply to a modified waiver as of the date such modification is received by the Office of Management and Budget.

(e) WAIVER DETERMINATION.—(1) No later than 120 days after receiving a request for waiver under subsection (c) from the Office of Management and Budget, a Federal agency shall—

(A) make a determination of whether to waive a regulation in whole or in part; and

(B) provide written notice to the requesting Economic Development Commission of such determination.

(2) Subject to subsection (g), a Federal agency shall deny a request for a waiver only if the waiver substantially endangers health or safety.

(3) If a federal agency grants a waiver under this subsection, the agency shall provide a written statement to the requesting Economic Development Commission that—

(A) describes the extent of the waiver in whole or in part; and

(B) explains the application of the waiver, including guidance for the use of the waiver by business concerns, within the Urban Regulatory Relief Zone.

(4) If a Federal agency denies a waiver under this subsection, the agency shall provide a written statement to the requesting Economic Development Commission that—

(A) explains the reasons the the waiver substantially endangers health or safety; and

(B) provides a scientific basis in writing for such determination.

(f) **AUTOMATIC WAIVER.**—If a Federal agency does not provide the written notice require under subsection (e) within the 120-day period as required under such subsection, the waiver shall be deemed to be granted by the federal agency.

(g) **LIMITATION.**—No provision of this Act shall be constructed to authorize any Federal agency to waive any regulation or Executive order that prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, relation, gender, or national origin.

(h) **APPLICABLE PROCEDURES.**—A waiver of a regulation under subsection (e) shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of title 5, United States Code. The Federal agency shall publish a notice in the Federal Register stating any waiver of a regulation under this section.

(i) **EFFECT OR SUBSEQUENT AMENDMENT OF REGULATIONS.**—If a Federal agency amends a regulation for which a waiver under this section is in effect, the agency shall not change the waiver to impose additional requirements.

(j) **EXPIRATION OF WAIVERS.**—No waiver of a regulation under this section shall expire unless the Federal agency determines that a continuation of the waiver substantially endangers health or safety.

SEC. 208. DEFINITIONS.

For purposes of this Act, the term—

(1) “regulation” means—

(A) any rule as defined under section 551(4) of title 5, United States Code; or

(B) any rulemaking conducted on the record after opportunity for an agency hearing under sections 556 and 557 of such title;

(2) “Urban Regulatory Relief Zone” means an area designated under section 205;

(3) “qualifying city” means a city which is eligible to establish an Economic Development Commission under section 204;

(4) “industrial or commercial area” means any part of a census tract zoned for industrial or commercial use which is adjacent to a census tract which is a distressed area pursuant to section 205(b); and

(5) “poverty line” has the same meaning as such term is defined under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).”.

UNANIMOUS-CONSENT AGREEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that the vote occur on the Glenn amendment at 2:15 p.m. on Tuesday, July 18, and immediately following that vote, the Senate proceed to vote on the motion to invoke cloture on the Dole-Johnston substitute, with mandatory quorum under rule XXII being waived.

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

Mr. HATCH. I further ask unanimous consent that if the Glenn substitute is agreed to, it be considered original text for the purpose of further amendment.

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

Mr. HATCH. Finally, I ask unanimous consent that the first vote at 2:15 p.m. be the standard 15-minute vote, and the second vote in the voting se-

quence be limited to 10 minutes in length.

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

CLOTURE MOTION

Mr. HATCH. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the Dole-Johnston substitute amendment to S. 343, the regulatory reform bill.

Bob Dole, Christopher S. Bond, Bill Roth, Frank H. Murkowski, Rod Grams, John Ashcroft, Spencer Abraham, Craig Thomas, Pete V. Domenici, Bill Frist, Fred Thompson, Mike DeWine, Thad Cochran, Larry E. Craig, Bob Smith, Chuck Grassley.

MORNING BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees and a withdrawal.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1179. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the annual animal welfare enforcement report for fiscal year 1994; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1180. A communication from the Secretary of Agriculture, transmitting a draft of proposed legislation to authorize the Secretary of Agriculture to expand and streamline a Distance Learning and Telemedicine Program by providing for loans and grants and to authorize appropriations for business telecommunication partnerships; to the

Committee on Agriculture, Nutrition, and Forestry.

EC-1181. A communication from the general counsel of the Department of Defense, transmitting a draft of proposed legislation to designate defense acquisition pilot programs in accordance with the National Defense Authorization Act for fiscal year 1991 and for other purposes; to the Committee on Armed Services.

EC-1182. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report on specialized government securities brokers and dealers; to the Committee on Banking, Housing, and Urban Affairs.

EC-1183. A communication from the president and chairman of the Export-Import Bank, transmitting, pursuant to law, a statement with respect to a transaction involving United States exports to Morocco; to the Committee on Banking, Housing, and Urban Affairs.

EC-1184. A communication from the president and chairman of the Export-Import Bank, transmitting, pursuant to law, a statement with respect to a transaction involving United States exports to Japan; to the Committee on Banking, Housing, and Urban Affairs.

EC-1185. A communication from the president and chairman of the Export-Import Bank, transmitting a draft of proposed legislation to amend the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Housing, and Urban Affairs.

EC-1186. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the 1994 annual report of the Government National Mortgage Association; to the Committee on Banking, Housing, and Urban Affairs.

EC-1187. A communication from the director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on direct spending or receipts legislation within 5 days of enactment; to the Committee on the Budget.

EC-1188. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report required under the Antarctic Marine Living Resources Convention Act of 1984; to the Committee on Commerce, Science, and Transportation.

EC-1189. A communication from the Acting Assistant Secretary of the Interior, Territorial and International Affairs, transmitting a draft of proposed legislation to amend the Magnuson Fishery and Conservation Management Act; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ABRAHAM (for himself, Mr. DOLE, Mr. BROWN, Mr. HATCH, Mr. DEWINE, Mr. KYL, and Mr. KEMPTHORNE):

S. 1039. A bill to require Congress to specify the source of authority under the U.S. Constitution for the enactment of laws, and for other purposes; to the Committee on the Judiciary.

By Mr. GORTON:

S. 1040. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Onrust*; to the Committee on Commerce, Science, and Transportation.