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Senate

(Legislative day of Monday, July 10, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

*Commit your way to the Lord, trust also in Him and He shall bring to pass * * * rest in the Lord, wait patiently for Him * * *.*—Psalm 37:5,7.

Lord, as we begin a new week we take these four vital verbs of the psalmist as our strategy for living in the pressure of the busy days ahead. Before the problems pile up and the demands of the day hit us, we deliberately stop to commit our way to You, to trust in You, to rest in You, and wait patiently for You. Nothing is more important than being in an honest, open, receptive relationship with You. Everything we need to be competent leaders comes in fellowship with You. We are stunned by the fact that You know and care about us. We are amazed and humbled that You have chosen to bless this Nation through our leadership. In response, we want to be spiritually fit for the rigorous responsibilities. So, we turn over to Your control our personal lives, our relationships, and all the duties You have entrusted to us. We trust You to guide us. We seek the source of our security and strength in You. We will not run ahead of You or lag behind, but will walk with You in Your timing and pacing toward Your goals. You always are on time and in time for our needs. May the serenity and peace we feel in this time of prayer sustain us throughout this day. We thank You in advance for a great day filled with incredible surprises of sheer joy. In Your all-powerful name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

SCHEDULE

Mr. GRAMS. Mr. President, leader time has been reserved for today. There will be a period for morning business until 10 a.m. At 10 a.m., the Senate will resume consideration of S. 343, that is the regulatory reform bill, with the Glenn substitute amendment pending.

The first votes today will begin at 6 p.m. The first one will be a 15-minute vote on the motion to invoke cloture on the Dole-Johnston substitute amendment to S. 343. That will be followed by any votes ordered on or in relation to amendments considered throughout the session today.

Further votes are also expected beyond those ordered for 6 p.m., and a late night session is possible in order to make progress on the regulatory reform bill.

Also today, Senators are reminded under the rule XXII, second-degree amendments to the Dole-Johnston substitute must be filed by 5 p.m. today in order to qualify postcloture.

Also, a second cloture motion on the Dole-Johnston amendment was filed on Friday, which will ripen tomorrow, if necessary. In connection with that cloture motion, any further first-degree amendments must be filed by 1 p.m. today.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. INHOFE). Mr. President, under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 10 a.m., with Senators permitted to speak for up to 5 minutes each.

The Senator from Minnesota.

GUARDING AGAINST BUREAUCRACY

Mr. GRAMS. Mr. President, any successful entrepreneur who starts out small and gradually builds their business up knows about bureaucracy.

As his or her company grows, so do the piles of paperwork, and the number of employees handling it, and pretty soon projects that used to take a day are taking weeks, or even longer. Lines of communication that used to be clear and open become tangled and confused. What began as a lean machine too often turns into a convoluted, Rube Goldberg contraption.

''In every small business lies the seeds of a bureaucracy.''

I read that line in a recent column in the Minneapolis Star-Tribune—a piece by Mark Stevens entitled ''Action Needed to Guard Against Bureaucracy.''

''Rules begin to sprout,'' wrote Mr. Stevens, ''and procedures start to take hold that do more to complicate life than to achieve objectives. Left unchecked, these enemies of efficiency tend to multiply until they choke the business.''

How many entrepreneurs, do you suppose, have choked on their own enemies of efficiency? How many have been done in by a self-generated bureaucracy that simply ate up resources, devoured precious time, and clouded the original goals outlined in the business' master plan?

Judging by the rate that small businesses come and go in this country, I guess that it is a significant number. Bureaucracy is a lot like hail on a cornfield—a little is not going to hurt, but too much of it can be disastrous.

And nobody knows more about bureaucracy than the folks who work here on Capitol Hill.

Mr. Stevens was writing about small business in his article, but he could just as easily have been describing the

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

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Federal Government—the biggest bureaucracy this world has ever known.

I have said it often: small business and Government actually have a great deal in common. But the bureaucratic problems that can plague a small business are magnified a million times in Washington.

Imagine having so many new regulations that it took 65,000 pages to print them last year alone.

Imagine having so many employees that you are not only far and away the largest employer in the Nation, but your annual receipts put you at the very top of the Fortune 500 list as well.

Imagine having your finger in so many pies that diversified is just too small a word to describe your operation.

Your employees are overseeing thousands of individual little bureaucracies, thousands of programs, projects, and agencies that have taken on lives of their own, and have little accountability to the home office or the folks who ultimately pay the bills—the taxpayers.

That is the Federal Government.

But just as small business owners need to take steps to clear out the cobwebs of bureaucracy and get back to basics to survive, so should Washington.

In fact, the line that originally caught my eye in Mr. Steven s article could easily be turned around to read: ''In every bureaucracy lies the seeds of a small business.''

Re-exposing those seeds to the light of day and refocusing on the basics is the key to what we are now trying to create in Congress—a Federal Government that runs with the same efficiency as an effective small business.

In his column, Mr. Stevens outlined four steps that managers can use to gauge whether a business is drowning in bureaucracy, and suggestions on how to turn things around if it is. His ideas work equally well when applied to the Federal Government.

STEP NO. 1:

Review company rules and procedures, questioning why they were established and, equally important, if they still make sense. [Eliminate] anything that detracts from your company's ability to achieve its business objectives rapidly and productively.

Of course, the National agenda changes with time and circumstances, but we are in a period now where our objectives, as mandated by the voters, seem better focused than ever.

Provide for the Nation's needs, protect the unprotected, and unshackle our job providers, so that they are able to put more Americans to work in new, higher paying jobs.

Mountains of Federal rules and procedures litter the track and keep the objectives out of reach.

Sure, they may create Federal jobs—after all, there are some 128,000 regulators on the Federal payroll—but in reality they are job-killers for the private sector, with a cost to the economy as high as $1.65 trillion each year.

More Government jobs are not the answer.

That is why the efforts in this Congress toward regulatory reform, and the legislation we are considering on the floor, are so critical.

Cutting back the forest of Federal regulations will make Government more efficient. Loosening the bureaucracy will free Government to meet its objectives.

STEP NO. 2:

Take a fresh look at payroll, asking if you really need all of the people who work at your company. Investigate whether some people have been added to back up others—who have little to do themselves—or to enforce the wasteful rules and procedures already in place.

Small business owners often work 80-hour weeks just to barely break even. When they see how the Government wastes their tax dollars, they get furious. They could not run their business the way Congress runs the Government, with reckless overspending and billion dollar deficits. The Government would toss them in jail.

Many businesses, large and small, realized during the past decade that bigger does not necessarily mean better. To help boost their profit margin and cut back on the waste, they began downsizing. It is a move that has saved many businesses from extinction and returned them to profitability, and it is a move being duplicated here in Washington. We call it ''reinventing Government.'' With fewer rules and regulations clogging the pipeline, fewer Federal employees are needed to enforce them, and fewer taxpayer dollars are wasted.

But re-inventing does not just apply to the number of people on the payroll, because bureaucracy is more than just employees—it is also the programs that the employees create, enlarge, and regulate. In the balanced budget resolution we have crafted, this Congress has taken a close look at each and every place we are spending the taxpayers' dollars. If a program or an agency does not meet the test of relevancy, if it is not meeting an important national need during tight economic times, then perhaps this nation can do without it.

Small business makes these tough decisions every day—it is about time Congress makes some tough decisions, too. Writes Mr. Stevens:

Unless you rid your company of this dead wood, you will be building a bloated company that is likely to sink under its own weight.

STEP NO. 3:

Make certain that accountability is built into every job. Every personal function and responsibility should be monitored and evaluated. Be sure that seniority is not the criterion for promotion.

There is a strong correlation to this in Washington. When it comes to spending decisions on the Federal level, the effectiveness of a Government program does not always determine whether it gets funded year after year. Far too often, Government programs get their annual funding simply because they are there. Unmonitored and unevaluated, they are often automatically renewed for decades. And nothing breeds more bureaucracy than an entity which never needs to justify its existence.

If Washington is serious about guarding against bureaucracy, it will build accountability into the budget process by sunsetting Federal spending. Congress needs the opportunity to reexamine what works and what does not. Just because a program has been around for a while does not mean it is a good investment.

STEP NO. 4:

Grant responsible employees the authority to make certain decisions—for which they now need approval—unilaterally. Elaborate approvals do little more than slow the company's response time and make it more difficult to serve customers.

For the Federal Government, that means moving the concentration of power from Washington back to the States, where it belongs. There is more than just a physical distance between Washington and the rest of the country. There are different priorities outside here as well, and nobody on the other side of the Beltway really believes that Congress can spend the taxpayers' dollars better than local officials can.

Our responsibility is to leave the decision making where it can do the most good and speed up the response time to best serve the taxpayers—who are not only the customers of this Government, but its owners as well.

''Keep in mind that no one sets out to create a bureaucracy,'' wrote Mark Stevens. ''But unless you are diligent in protecting it, the bureaucracy will form on its own.''

Of course, that is exactly what happened in Washington. But if we follow the same advice that scores of small businesses have used to pull themselves out of the bureaucratic quagmire—eliminating senseless rules and regulations, downsizing to promote efficiency, evaluating spending decisions, and putting faith, and the dollars to go along with it, in the hands of the States, not Washington—we will shrink the bureaucracy. And while we are doing that, Mr. President, we will expand the people's faith in their Government.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. INHOFE. Mr. President, I ask unanimous consent that I be allowed to speak for whatever time I shall consume during morning business between now and 10 o'clock.

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

REGULATORY REFORM

Mr. INHOFE. Mr. President, on Saturday President Clinton gave his Saturday speech wherein he justified defeating the regulatory reform bill.

I really believe that so many people who are opposed to this regulatory reform bill did not get the message that came from the American people on the 8th of November because, loudly and clearly, they wanted to redefine the role of Government in our lives.

The President talked about how you are going to be poisoned by your hamburgers. He talked about how people are dying in the streets because they are not adequately protected from exposure to the physical elements, and from food, as if Government has a role of taking care of everyone and people's responsibility for themselves is nonexistent. And the theme of all of this was that Government really does things better than people do. That is not what this country is all about.

The other day we were talking about some reforms that were necessary insofar as the EPA is concerned. The EPA is a good example of a regulator that has gone far beyond the intent of what we have always felt a regulator should do.

I remember in my city of Tulsa, OK, there is a lumber company called Mill Creek Lumber Co. owned by the Dunn family. It is a third generation lumber company owned by the family. It is a competitive business. It is a tough business.

I got a call from Jimmy Dunn, the owner and CEO of Mill Creek Lumber Co., that family lumber company on 15th Street in Tulsa, OK. He said, ''The EPA just put me out of business after three generations of family running this business.'' I said, ''What did you do wrong?'' He said, ''I do not think I did anything wrong.'' He said, ''About 10 years ago I sold used crankcase oil to a licensed contractor, and the licensed contractor apparently disposed of it in the wrong place.'' It was called the Double Eagle site.

So this guy 10 years later, after disposing of crankcase oil, long before the law was even in effect, ended up with a letter from the EPA Administrator saying that you are going to be fined $25,000 a day, and you are going to maybe even have criminal sanctions.

Then a year ago Christmas, about 4 or 5 days before Christmas, I got a phone call from a guy named Keith Carter. Keith Carter was a man of very modest means. He had developed a business in Skiatook, OK, which was in my congressional district at that time. He called up one day 4 days before Christmas and he said, ''Congressman INHOFE, I have a serious problem. The EPA just put me out of business, and right before Christmas, I have to fire my six employees.'' I said, ''What happened?'' He said, ''Well, about 2 years ago I moved from the basement in my home three blocks down the street to another location because the business was kind of good and I needed a little bit more room. Apparently they say that I did not advise the EPA that I made my move.'' I said, ''My gosh. You have been operating for 2 years in an area where they did not know where you were?'' He said, ''Oh, no. I told the regional office in Texas. But apparently they did not tell the office in Washington.'' They called up and put him out of business.

It took me about a week to get him back in business. He called up a week later, and he said, ''I have another problem, Congressman.'' He said, ''They let me back in business but I cannot use the number that I had before because they said during that 1 week I was out of business, they assigned it to somebody else. I had $25,000 worth of inventory.''

So we finally got it corrected. But for each one who calls a Congressman or someone to intervene in behalf of decency and honesty and good sense, there are hundreds of them who do not do that. If he had not called, then Keith Carter would have been out of business and his employees would be unemployed today, most likely. That is the kind of abuse that takes place by regulators in our society.

I suggest, Mr. President, the theme of this thing is far greater than we have been talking about. We are talking about freedom. That is what this whole thing is about; freedom, individual freedom. That is what this country is supposed to be all about.

I remember a few years ago when we had the problems down in Nicaragua. And I know, Mr. President, you were serving over in the House at that time and remember it also. At that time, it was, fortunately, driven home to me how we are perceived around the world, that we are the bastion of freedom, that we are the beacon of freedom. If you lose it here, you do not have it anywhere else. That is what this regulation is about, the theme that Government knows better how to take care of our lives than we do.

This is what was happening in Nicaragua at that time, if you will remember the big controversy we had here in both Houses of the U.S. Congress with people saying, ''Well, the freedom fighters are really a bunch of rebels. We should not get involved in this thing.'' Yet, we knew that the Communists at that time were supplying them with the best of armaments, with the best of tanks, and with the best of helicopters. And so you had the freedom fighters risking their lives.

I can remember going down to Honduras. I think we were only about 7 miles from the Nicaraguan border. And I went through a hospital tent down there where they were bringing the freedom fighters in and nursing them back to health. The tent was about the size of these Chambers. It was a very large tent. And all around the periphery they had hospital beds that were in a circle. And then they did their surgical procedures in the center. About all they did was amputations at that time because most of the young people who were in there, the freedom fighters from Nicaragua, were in there because they had stepped on land mines or something like that, so most of them were amputations. The average age of the freedom fighter was 18 at that time, because the older ones had either died or lost their arms or legs.

I remember, I went all the way around—I speak Spanish—and I talked to each one of those individuals. I tried to get in my own mind: What is it that is driving these people? What is it that they risk their lives for that so many of them are dying? And so I asked the question to each of them. The last one was a young girl 19 years old. Her name was Maria Lynn Gonzalez. I will always remember her because she was an ittybitty girl. It was her third visit to the hospital tent; she kept coming back. But she would not go back to fight again because that morning they amputated her left leg and blood was oozing through the bandages.

As she lay there, with her large eyes looking up after having gone through all that terror, I asked her that question. She responded to me, and she said:

> Es porque han tomado nuestras casas, campos, todo lo que tenemos. Pero, de veras, ustedes en los Estados Unidos entienden. Porque ustedes tuvieron qué luchar por su libertad lo mismo que estamos luchando ahora.

What the little girl was saying was well, of course, we are fighting; we are fighting because they have taken our farms and our houses and everything we own. But surely you in the United States do not have to ask that question because you had to fight for your freedom from an abusive government the same as we are fighting for our freedom today.

It occurred to me at that time this little girl, Maria Lynn Gonzalez, who could not read or write, she was not well educated; she had never gone to school; she was brilliant in her knowledge and appreciation of freedom, and she was willing to die for it. She looked at our revolution in this country, that revolution which we could not have won any other way than our reliance upon God and the principles that made this country so great, and she did not know whether we won that revolution 5 years ago or 200 years ago; she did not have any concept of when all this was happening, but to her it was a fight for freedom against all odds, and we were that beacon of freedom that led them to their success down there.

It has been that way for 200 years. The whole world looks at us. And while the world looks at us as the example that people are bigger than government, and that totalitarian government, centralized government that is in charge of people's lives does not perform as people do when they are unleashed and can do as they wish and

have the product of their labors, then that means so much more.

So while we are the beacon of that freedom, the administration is trying to hold on to the old, abusive governmental waste of the past with white knuckles.

And so I say to you, Mr. President—not this Mr. President but Mr. President Clinton—that you are not going to win this battle because there was an election. When that election took place in November 1994, there were a lot of loud messages. They wanted to rebuild a strong national defense at the same time they wanted to balance the budget. We are going to do both.

They wanted to change the role of Government so it no longer has abusive control and power over the citizenry, and that is exactly what is going to happen.

So this is a very important debate that we are in the middle of right now, Mr. President, the debate on the role of Government, how abusive is Government, and for all those people around the world who look to us as that beacon of freedom we are going to keep that beacon very bright and shiny for them.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TRIBUTE TO SENATOR PRYOR

Mr. JOHNSTON. Mr. President, Senator DAVID PRYOR is a man of many accomplishments. In his distinguished career, he has been a journalist and founder of a newspaper, a member of the Arkansas House of Representatives and a two-term Governor of his State. In Arkansas, they still talk about his achievements as Governor during the 70's recession. Carefully and caringly, he cut spending without cutting the programs that people depended on.

He is also a lawyer who served three terms as the Representative of the Fourth Congressional District of Arkansas. He has served three terms in this body as a U.S. Senator and the last time he ran, he was so popular that nobody bothered to run against him. As a member of the Agriculture Committee, he has actively shaped innovative programs and policies which have helped the farmers of Arkansas while furthering the leadership position of the United States in the world agricultural community.

More than anything else, what has distinguished Senator PRYOR's legislative work in the U.S. Congress has been his sensitivity to the needs of private citizens. As a member of the Senate Finance Committee, he wrote a ''Taxpayer Bill of Rights'' which guaranteed—for the first time in 40 years—the rights of individual citizens in their dealings with the IRS.

Senator PRYOR is known as an advocate for senior citizens. His advocacy is based on an extensive acquaintance with their situation, a compassionate understanding of their needs and a thorough knowledge of the existing support systems for the elderly. As a Member of the House of Representatives, he at one point worked incognito to gain first-hand experience of conditions in the nursing home industry. He served for 6 years as chairman of the Senate Special Committee on Aging, and, as ranking member, is continuing the fight to save Social Security and bring down prescription drug prices.

Senators, and I was one of them, heard his announcement that he did not plan to run again in 1996 with both relief and great regret. Relief, because he works too hard. If by leaving the Senate he can stop working too hard, then that is the right thing to do, for his health and for his wonderful wife and family. But I do feel sincere regret, for the Senate and for the Nation, that in 1996 we will lose his legislative skills and his compassion for the individual. And speaking for myself, I feel genuine regret that our working relationship will be ending. It has been a warm, collegial, productive relationship for 17 years, most notably on the Aging Committee. I have appreciated both the astuteness of his insights and the pleasure of his company, and hope to do so for the remainder of our terms.

THE NUCLEAR AGE'S BLINDING DAWN

Mr. DOMENICI. Mr. President, 50 years ago yesterday, July 16, 1945, the course of human history was changed forever.

President Harry Truman, Winston Churchill, and Joseph Stalin were preparing for the European peace conference to end the war with Hitler and the Axis. There were major questions to be answered. Where would the conference by held? The war in the Pacific was still raging; would Russia enter into the war against Japan?

And, then, we learned about the events at Los Alamos, NM. We did not know that we had just succeeded in the greatest scientific race of all time, let alone the unquestionable magnitude of this achievement that would end the Second World War. Until this time, the activities at Los Alamos were shrouded in complete secrecy.

As recounted in several superb articles in New Mexico newspapers, the activities at Los Alamos changed the lives of New Mexicans as much as they impacted upon the rest of the world.

During the early morning of July 16, 1945, some of the citizens in New Mexico witnessed a sudden illumination in the sky. A friend of mine Rowena Baca, was quoted as saying that her ''grandmother thought it was the end of the world.'' This shocking irradiation incited Mrs. Baca's grandmother to shove her, as well as her cousin, under the bed. From underneath the bed, the two children saw the walls and ceiling reflect a red color. They were 35 miles from the Trinity sight, where the explosion occurred.

Dolly Oscuro's ranch used to include the land that became the Trinity sight. Where the cattle grazed, Mrs. Oscuro remembers looking out her window and seeing a rising mushroom cloud.

Helen and William Wrye, also ranchers, were returning home from a long and exhausting trip. They live in the same house that is 20 miles from the Trinity sight. They slept through the explosion. The radiation, according to Mr. Wrye, caused his beard to quit growing for a while. Of course, we are not sure that was the case, but at least that is what he perceives.

Mr. friend, Larry Calloway, who writes for the Albuquerque Journal, wrote what is in my opinion an articulate, well-documented, and human perspective of the first successfully tested atomic bomb. The article, ''The Nuclear Age's Blinding Dawn,'' describes in detail the events of the night and morning leading up to this first display of atomic power.

Mr. Calloway's article portrays the human side of this historic day: about people such as Joe McKibben who wired the instruments that set off the implosion bomb; Berlyn Brizner who served as chief photographer; and Jack Aeby, a civilian technician who assisted in placing the radiation detectors—just to name a few.

''The Nuclear Age's Blinding Dawn'' is worthy reading for all Americans. Many times, the specific event in history overshadows the individuals who made the event possible. Mr. Calloway tells us about the people in New Mexico who made this historic achievement happen.

Fifty years later, in hindsight, debate continues on the issue of whether development and deployment of the atomic bomb was the right thing to do. For example, a Smithsonian exhibit featuring the *Enola Gay*, the plane that dropped ''Little Boy'' on Hiroshima, becomes controversial. It is probably fair to suggest that the debate will rage for another 50 years. However, many believe that their work associated with this effort was right.

On this anniversary, let's turn to other aspects of this event. Our entrance into the Nuclear Age is as much about people as it is about science. It is the well known people: J. Robert Oppenheimer, Enrico Fermi, I.I. Rabi, Niels Bohr, Hans Bethe, Luis Alvarez, Emilio Segre, Norman Ramsey, Val Fitch, Aage Bohr, A.H. Compton, E.O. Lawrence, and James Chadwick, and Maj. Gen. Leslie R. Groves, to mention a few.

It is about the citizens of New Mexico who witnessed the Trinity test.

And, it is about the unsung workers and scientists at Los Alamos who were

important players in this enormous discovery. They were not alone. They were joined by many thousands in the State of Tennessee at Oak Ridge and other scientific locations around America. Together they performed their duties for a cause they believed in. The employees of New Mexico's national laboratories continue this legacy today.

In honor of these men and women, let us acknowledge their countless contributions since that time. Let us give appreciation for their dedication and commitment. These are the people who changed the course of human history.

I respectfully ask unanimous consent that the text of Mr. Calloway's ''The Nuclear Age's Blinding Dawn,'' Fritz Thompson's article ''Locals Had Ringside Seat to History,'' and Patrick Armijo's article, ''A-Bomb Scientists Bear No Regrets'' be printed in the RECORD.

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

THE NUCLEAR AGE'S BLINDING DAWN

(A half-century ago on July 16, the United States detonated the first atomic bomb. The test, code named Trinity, was the conclusion of the Manhattan Project to build the bomb in a frantic race with Adolf Hitler's scientists. The explosion ushered in the nuclear age, gave rise to New Mexico's modern economy, led to Japan's surrender and set off 50 years of debate about the morality of using such awesome force.)

(By Larry Calloway)

For Joe McKibben, the Nuclear Age came in the back door without knocking. For Jack Aeby, it slipped blindingly through a crack in his welder's goggles. For Berlyn Brixner, it rose in dead silence like an awesome new desert sun.

After 50 years, they are among the few who remain to tell about the test of the first atomic bomb, made in the secret wartime city of Los Alamos and code named Trinity by lab director J. Robert Oppenheimer. The survivors are among the dwindling few on Earth who have seen any nuclear explosion. It's been 32 years since the last U.S. atmospheric test.

On that Monday, July 16, 1945, at 5:10 a.m., the senatorial voice of physicist Sam Allison began what's now called a countdown. ''Minus 20 minutes'' boomed over the loudspeakers and shortwave radios in the dark Jornada del Muerto in New Mexico's dry Tularosa Basin.

By space-age standards, it was a very short countdown, but it was probably the first in the about-to-be-born world of big science. ''Sam seemed to think it was,'' McKibben says. ''He told me, 'I think I'm the first person to count backward.' ''

Just as Allison is remembered for the Trinity countdown, McKibben will probably be remembered as the guy who pushed the button. ''That kind of annoys me,'' says McKibben, 82, folding himself down on a couch in his cluttered study in White Rock. ''I consider it a minor part of my work.''

EXHAUSTIVE PREPARATION

It wasn't minor at the time, of course. McKibben, a lanky Missouri farm boy-turned-Ph.D physicist, sat at the Trinity control panel. For three months, he had been wiring instruments across 360 square miles of desert around a 100-foot steel tower. The fat implosion bomb, 5 feet round, 5 tons heavy, squatted in a harness of cables on a platform on top. And the desert floor was scattered with instruments.

McKibben, of the University of Wisconsin, had spent the night at the tower on guard duty with two Harvard physicists, Trinity director Kenneth Bainbridge and Russian explosives wizard George Kistiakowsky, a former Cossack.

This was the second night of uneasy thunderstorms with close strikes of lightning in the Jornada.

McKibben fell asleep under some tarps on the clean linoleum floor at the tower base where the final assembly team had done its job carefully, very carefully.

And McKibben had a dream. It was simple, peaceful. ''I started dreaming Kistiakowsky had gotten a garden hose and was sprinkling the bomb. Then I woke up and realized there was rain in my face.''

EVERYTHING IN PLACE

Soon the rain paused, and Bainbridge rescheduled the shot for 5:30 a.m. After closing the last open circuits, the three physicists drove south in a jeep as fast as they could on the straight blacktop road.

They were the last men out of the zone of lethal heat, blast and radiation. The nearest humans were in bunkers called North 10,000, West 10,000 and South 10,000 because they were 10,000 meters (6.2 miles) from Ground Zero.

''We got to South 10,000 (the control bunker) at 5:10, and that was the time I needed to throw the first switch,'' McKibben recalls. Allison took up the microphone in the countdown booth. A quick young Harvard physicist named Donald Hornig, who would become President Johnson's science adviser 18 years later, took his place near McKibben at an abort switch. Hornig's job was to stop everything if the detonation circuit faltered, in order to save the first precious production of the Hanford, Wash., plutonium plant.

Kistiakowsky, who would become President Eisenhower's science adviser, was in and out of the crowded room. An 18-year-old soldier named Val Fitch was attending British scientist Ernest Titterton at a set of vacuum tubes that would deliver the detonating voltage 6 miles of cable. Fitch would win the 1980 Nobel Prize in physics. Also there was Navy Cmdr. Norris Bradbury, who would become director of the Los Alamos lab from 1945–70.

McKibben recalls these men but says, ''I didn't see Oppenheimer. I was told that he came in the door and observed me at the controls and went away. Just to see that I was sane.'' And he laughs.

Hundreds turned their expectant eyes to the unforgiving New Mexico desert; it was a who's who of the scientific world.

At North 10,000, Berlyn Brixner was in the open on top of the bunker at the controls of a fast movie camera with a blackened viewfinder. ''I was one of the few people given permission to look directly at the bomb at zero time,'' says Brixner, an amiable man of 84 sitting alertly in his minimalist living room in a ponderosa-shaded Los Alamos neighborhood.

Brixner's assignment as chief photographer was this: Shoot movies in 16-millimeter black-and-white, from every angle and distance and at every speed, of an unknown event beginning with the brightest flash ever produced on Earth.

''The theoretical people had calculated a . . . 10-sun brightness. So that was easy,'' Brixner says. ''All I had to do was go out and point my camera at the sun and take some pictures. Ten times that was easy to calculate.''

The theoretical people also knew a little about radiation, which fogs film, and Brixner consequently shielded two of his near-tower cameras behind 12-inch-thick leaded glass. Some of his cameras were so fast they shot 100 feet of film in a second. Some were 20 miles away and ran for 10 minutes.

And now he waited on top of the bunker, gripping the panning mechanism of his movie camera, which like all the others would be turned on by signals from McKibben's control panel.

SNEAKING A CAMERA IN

At Base Camp, the old David McDonald ranch house 10 miles south of the tower, the box-seat audience included Maj. Gen. Leslie Groves, the hard-driving director of the whole Manhattan Project, and its presidential overseers—Carnegie Institute president Vannevar Bush and Harvard president James Bryant Conant. Among the physicists at Base Camp were I.I. Rabi, a New Yorker who would go on to win a Nobel Prize, and the revered Italian Enrico Fermi, who had led the research on the first nuclear chain reaction. Among the 250 lab workers and 125 soldiers was a young civilian technician named Jack Aeby who was exempt from the draft because he'd suffered from tuberculosis.

Now 72 and retired from a Los Alamos career in health physics, Aeby sits in his solar home near Española and recalls how his job in the weeks leading to the test was to help the Italian physicist Emilio Segré set radiation detectors near the tower. Some of the instruments were hung on barrage balloons tethered 800 yards from the tower. They'd be vaporized in a millisecond after they transmitted their nuclear data.

Aeby carried his personal 35 millimeter still camera, which Segré got through security, and as the countdown started, he was planning to take a new Anscochrome color transparency picture of the bomb. Aeby had carried a chair out into the darkness and was sitting there with the camera propped on the back and pointed north. He put on his government-issue welding goggles, not noticing in the dark that there was a crack in one lens. And he listened to the countdown on the Base Camp loudspeakers.

PREPARING FOR THE BEST

At the VIP viewing area called Compania Hill, 20 miles northwest of the tower and about 10 miles southeast of the village of San Antonio, N.M., two refugee physicists put on sunscreen in the dark. They were Edward Teller of Hungary and Hans Bethe of Germany. Teller would become famous as an advocate of the hydrogen bomb, and Bethe would win the 1967 Nobel Prize in physics.

Teller put on gloves to protect his hands and sunglasses under his welder's goggles, for extra protection. ''I expected it to work,'' Teller, now 87 and bent, said in a June interview.

Not far away was German Communist refugee Klaus Fuchs, who would be uncovered as a Russian spy five years later.

Outside the Jornada, of course, New Mexico had eyes and ears. Teller said that many Los Alamos employees, including his secretary Mary Argo, clipped away to Sandia Crest for a direct 100-mile view of the shot that morning.

And in Potsdam, just outside the rubble of bombed-out Berlin, President Truman waited for coded messages so he could tell Josef Stalin what the Russians already knew.

But the rest of the world didn't have a clue. Not the B–29 pilots who had hit Tokyo, again, with 3,000 conventional bombs that Friday. Not the 750,000 American troops that would be needed in the planned Nov. 1 invasion of Japan.

A countdown. A bellow of ''Zero!'' Silence. A flash of light brighter than the rising of the sun. Then the shock wave hit, and the blast's roar echoed off the mountains.

At minus 45 seconds, McKibben cut in an automatic timing drum he and Clarence Turner had made to generate the final 20 relay signals, including the big one. The drum turned once a second, and McKibben says he had attached a chime that struck once each revolution. So there were 44 chimes before Allison bellowed: ''Zero!''

It was 5:29.45 a.m. Mountain War Time, the same as Mountain Daylight Time.

McKibben's bunker was under dirt on the north, and there was a small open door on the south, facing away from the shot.

''Suddenly, I realized there was a hell of a lot more light coming in the back door,'' McKibben says. ''A very brilliant light. It outdid the light I had on the control panel many times over. I looked out the back door and I could see everything brighter than daylight.''

Aeby had put his Perfex 44 camera on ''bulb'' and in the dark before ''Zero'' opened up the shutter, figuring that way he'd get a good image of the flash. Suddenly, the light cut a sharp white line across his vision. ''I could see that crack for some time afterward,'' he says. It was daylight, and Aeby flung off the goggles to reset his camera. ''I released the shutter, cranked the diaphragm down, changed the shutter speed and fired three times in succession,'' he says. ''I quit at three because I was out of film.''

Brixner, at North 10,000, was stunned. ''The whole filter seemed to light up as bright as the sun. I was temporarily blinded. I looked to the side. The Oscura Mountains were as bright as day. I saw this tremendous ball of fire, and it was rising. I was just spellbound! I followed it as it rose. Then it dawned on me. I'm the photographer! I've gotta get that ball of fire.'' He jerked the camera up.

One thing more, he says: ''There was no sound! It all took place in absolute silence.''

UNIQUE SIGHTS AND SOUNDS

By the time the blast hit, 30 seconds after the flash, most of Brixner's 55 cameras in the desert were finished. Some had done their work in a second. There would be 100,000 frames to develop in black and white and a few in temperamental Kodachrome.

In the silence, McKibben stepped out the back door of South 10,000 and looked north over the bunker. ''It was quite a pretty sight. Colored. Purplish. No doubt from the iron in the tower and a lot of soil off the ground that had been vaporized. I was surprised at the enormity of it and immediately felt it had gone big.''

McKibben ducked behind the bunker just as the shock wave hit. ''Then an amazing thing: It was followed by echoes from the mountains. There was one echo after another. A real symphony of echoes.''

As the shock wave hit Base Camp, Aeby saw Enrico Fermi with a handful of torn paper. ''He was dribbling it in the air. When the shock wave came it moved the confetti.''

Fermi had just estimated the yield of the first nuclear explosion at the equivalent of 10,000 tons of TNT. Later measures put the yield nearly twice as much, at 18.6 kilotons. And this terrible new energy came from a plutonium ball weighing 13.6 pounds.

Thes test's success brought elation yet was tempered for many by the knowledge that the world had suddenly taken a hazardous turn.

Robert Van Gemert of Albuquerque, now 79, who was at Base Camp after the shot, says, ''I'm just amazed how those scientists whipped out so many bottles of gin or whatever they could find. And it was rapidly consumed, I can tell you that.''

Writer Lansing Lamont in 1965 recorded secondhand some GI exclamations: ''Buddy, you just saw the end of the war!'' ''Now we've got the world by the tail!''

At South 10,000, Frank Oppenheimer recalled, his brother probably said, ''It worked!'' Kistiakowsky is supposed to have said to Robert Oppenheimer, ''You owe me 10 dollars'' because of a bet they had. Bainbridge is supposed to have told Oppie, ''Now we are all sons of bitches.''

At Compania Hill, Teller remembers, ''I was impressed.''

Hans Bethe, now 89, remembers his first thought was, ''We've done it!'' and his second was, ''What a terrible weapon have we fashioned.''

FLEEING THE RADIATION

At North 10,000, Brixner and the others were thinking suddenly only of a kind of hazard the world had never known. ''I was looking up, and I noticed there was a red haze up there, and it seemed to be coming down on us,'' he says.

''Pretty soon the radiation monitors said, 'The radiation is rising! We've got to evacuate!' I said, 'That's fine, but not until I get all the film from my cameras.' '' In the midst of the world's first fallout, somebody helped Brixner throw his last three cameras in an Army car, and they all got out of there fast. Film badges later showed they got low doses—by the standards of the time.

About 160 men were waiting secretly north of the Jornada with enough vehicles to evacuate the small communities in the probable fallout path. Gen. Groves had phoned Gov. John Dempsey before the test to warn him that he might be asked to declare martial law in southwest New Mexico.

But the radiation readings from people secretly stationed all over New Mexico stayed safe—again by the standards of the time.

The test was shrouded in secrecy, but, within weeks, the world would know what science had wrought in a lonely stretch of New Mexico desert.

When Teller returned to his Los Alamos office, he says, Mary Argo ran to him, breaking all the secrecy rules, '' 'Mr. Teller! Mr. Teller! Did you ever see such a thing in your life?' I laughed. And she laughed,'' he says with joy in his voice. ''Does that tell you something?''

At community radio station KRS in Los Alamos, Bob Porton, a GI, was about to rebroadcast the noon news, courtesy of KOB. ''Suddenly, about 30 or 40 scientists all came in and stood around,'' he says. ''We knew something was up.''

The lead story, Porton says, was this: ''The commanding officer of Alamogordo Air Base announced this morning a huge ammunition dump had blown up, but there were no injuries.''

''All these scientists jumped up and down and slapped each other on the back,'' Porton says. ''I was familiar with secrecy. I never asked any questions. But I knew it was something big.''

It was something big. What they'd heard was the coverup story for the first atomic bomb blast.

COUNTING BACKWARD AGAIN

Brixner was on his way to Hollywood to get his film developed in secrecy at a studio lab. One reel showed his jerk of the camera.

Aeby developed his color film that night in Los Alamos, using the complex system of a half dozen Ansco chemicals. The first shot of the bomb was overexposed off the scale, but one of the next three became the only good color picture known of the first atomic explosion.

Weeks later, Ellen Wilder Bradbury of Santa Fe recalls, the Wilder family tuned in the only radio they had, in their car, to hear a wire recording broadcast over KRS. Ellen was about five and hadn't understood about Hiroshima. And now she was hearing a recording made in the cockpit of Bocks Car, the B–29 that dropped ''Fat Man,'' identical in design to the Trinity bomb, on Nagasaki.

Ellen, who would marry Norris Bradbury's son, recalls the now-lost recording clearly: ''They said, 'We've got an opening in the clouds. OK. We're going ahead.' And then they counted down to drop it. And they did say, 'Bombs away!' But I had just learned to count, and I was most impressed by the fact that they could count backwards.''

LOCALS HAD RINGSIDE SEAT TO HISTORY

(By Fritz Thompson)

Sparkey Harkey and his son, Richard, were standing in the gloom before dawn, waiting for a train at Ancho, N.M., when the bomb went off.

''Everything suddenly got brighter than daylight,'' Richard Harkey remembers today. ''My dad thought for sure the steam locomotive had blown up.''.

Ir was 5:29.45 a.m. on July 16, 1945. Harkey and his father didn't know it then, but they had just witnessed, in that instant 50 years ago, an event that came to change the course of history and to thereafter touch the lives of everyone in the world.

It was mankind's first detonation of an atomic bomb—at Ground Zero on the empty, foreboding sweep of some of the most desolate land in New Mexico; Jornada del Muerto, it is called, the Journey of Death.

Awesomely thunderous, the explosion transformed the sand in the desert to green glass, hurled dust and smoke thousands of feet into the sky and startled the bejabbers out of early morning risers in central New Mexico.

The place where the bomb exploded is called Trinity Site, and it was 50 miles and a mountain range away from the Harkeys, standing as they were on the tracks, mouths agape, bathed in the glow from man's most fearsome and terrible weapon. That they could see a manmade light brighter than the sun from their far vantage point attests to the incredible power unleashed that morning.

Ancho was not even a whistle-stop then. Sparkey, the stationmaster, was out on the tracks, ready to wave a red flag to stop the train so Richard, then 18, could board and ride to his job in Tucumcari.

''It was a blinding flash and it lasted at least a full minute,'' Richard says. ''We didn't know what it was.''

Was he curious?

''Yeah. But when you see something like that you're so flabbergasted that you just let it go.''

THE SUN WAS COMING UP

Ranchers and other residents on both sides of the Oscura Mountains had a ringside seat to the explosion but didn't know it. In one of the best-kept secrets before or since, civilians had no warning.

The lone exception was the late José Miera, proprietor of the Owl Bar in San Antonio, a mere 35 unobstructed miles northwest from Trinity and a popular hangout for the site's scientists and soldiers. Rowena Baca, who runs the family establishment these days, says friendly MPs that night went to her grandfather's house, woke him up, ''and told him to stand in the street out front because he was going to see something he had never seen before.''

Sure enough.

Baca remembers that the sky suddenly turned red. It illuminated the inside of the house she was in, reflecting red off the walls and the ceiling.

''My grandmother shoved me and my cousin under a bed,'' Baca remembers, ''because she thought it was the end of the world.''.

At the same moment, a U.S. Navy aviator named John R. Lugo, now of Scottsdale,

Ariz., was flying a naval transport plane at 10,000 feet some 30 miles east of Albuquerque, en route to the West Coast.

''I saw this tremendous explosion to the south of me, roughly 55 miles from my position,'' Lugo recalls. ''My first impression was, like, the sun was coming up in the south. What a ball of fire! It was so bright it lit up the cockpit of the plane.''

Lugo radioed Albuquerque. He got no explanation for the blast, but was told ''don't fly south.''

As the sun itself finally rose, rancher Dolly Onsrud of Oscuro woke up, looked out her window and saw a mushroom cloud rising from the other side of the mountains—right about where her cattle-grazing land had been before the U.S. Army took it over three years earlier.

She had been none too happy about giving up her 36 sections, and now it looked as if the government was blowing it up.

Like Onsrud, most ranchers who witnessed some aspect of the blast are the same ones who were moved off what became White Sands Missile Range. They are still bitter—bitter that the Army never returned the land, bitter that they weren't more generously compensated for giving up their ranches for what they believed was a patriotic duty. And, these days, they would much rather talk about their lost lands than about the first atomic bomb.

With the passage of half a century, these same people also find it remarkable that the government never warned them about an event that some scientists thought might set off a chain reaction and destroy all humanity.

The fact was, not many workers at Trinity knew for sure what they were working on. Retired teacher Grace Lucero of San Antonio said soldiers who came to the bar that her husband operated told him they were building a tower. ''They said they didn't know what it was for,'' Lucero says. The tower, everyone later learned, steadied the bomb before it was detonated.

''No one knew what was going on out there,'' says Evelyn Fite Tune, who lives on a family ranch 24 miles west of Trinity. ''And of course none of us ever heard of Los Alamos or the atomic bomb.''

She and her late husband, Dean Fite, were away in Nevada when the blast went off. They couldn't tell from the news accounts of those days exactly where it happened.

''Finally, on the way back we went to a movie house in Denver and watched the newsreel,'' she says. ''When they showed the hills around the blast area, my husband said 'Hell, that's our ranch!' ''

Pat Withers lives south of Carrizozo. He is 86 now and has been a rancher all his life. His house is 300 yards from the black and hardened lava flow that's sometimes called the malpais.

''The explosion was loud enough that I jumped out of bed,'' he says. ''I thought the malpais had blowed up. It wasn't on fire, so I went back to bed.''

Few ranchers had an experience to match that of William Wrye, whose house then and now is 20 miles northeast of Trinity.

Wrye and his wife, Helen, had been returning from a tiring trip to Amarillo the night before the explosion. ''We got to Bingham (on U.S. 380) and there were eight or 10 vehicles and all kinds of lights shining up on the clouds. We were stopped by an MP and a flashing red light. After we told them who we were, they let us go on to the ranch. We were so tired we must have slept right through the blast.

''Next morning, we were eating breakfast when we saw a couple of soldiers with a little black box out by the stock tank, I went out there and asked what they were doing, and they said they were looking for radioactivity. Well, we had no idea what radioactivity was back then. I told them we didn't even have the radio on.

''For four or five days after that, a white substance like flour settled on everything. it got on the posts of the corral and you couldn't see it real well in the daylight, but at night it would glow.''

Before long, Wrye's whiskers stopped growing. Three or four months later, they came back, but they were white, then later, black.

Cattle in the area sprouted white hair along the side that had been exposed to the blast. Half the coat on Wrye's black cat turned white.

END OF INNOCENCE

Out at the north end of the Oscura range, 30 miles from Trinity, rancher Bill Gallacher was 15 years old. He remembers the blast, that it lighted up the sky and the rooms in his house, much brighter than a bolt of lightning. His father, evidently man of few words who was just getting out of bed, simply said ''Damm.''

''It was a sort-of-sudden deal,'' Gallacher says, ''especially before you've had your morning coffee.''

Several ranchers say they never believed the Army cover story that an ammunition dump had blown up. But they didn't guess what it was until the devastation of bombs at Hiroshima and Nagasaki weeks later. Even then, they didn't guess the import of what had been wrought in their backyard.

Evelyn Fite Tune and her friends and neighbors visited the site soon after. ''We found the hole, we picked up the glass, we climbed the twisted and melted parts of the tower,'' she says.

''All those people,'' she says, ''grew up and got married and had kids. Nobody that I know of ever turned up sterile.''

Back at the Wrye Ranch, Helen Wrye goes to the front door, gazing at the sweep of prairie and desert, the Oscuras looming to the south, 20 miles from here to Trinity. She speaks of this dawn of the atomic age, and she sounds wistful. ''People weren't afraid of the government then,'' she says. ''It was a time of innocence. People were trusting. We had never heard of an atomic bomb.''

She is silhouetted against the sunlight of a bright spring day.

''It was a happy time to live,'' she says. ''It was a happy time to live.''

A-BOMB SCIENTISTS BEAR NO REGRETS

(By Patrick Armijo)

LOS ALAMOS.—The view from three Manhattan Project scientists was unanimous Thursday.

Questioned by Japanese journalists who wanted to know what they felt upon hearing about Hiroshima and Nagasaki, the three couldn't hide the pride they have in the work they did 50 years ago.

The retired scientists said their work on the bomb was vital to ending World War II—that bombing Hiroshima and Nagasaki was necessary to end prolonged fighting.

''It looked like very quickly it would be the end of the war, which otherwise who knew how long it would drag on?'' Manhattan Project chemist John Balagna told Hiromasa Konishi of Japan America Television.

Konishi was at the Bradbury Science Museum with several other reporters from Japan, Britain and Australia to hear the Manhattan Project recollections of Balagna, L.D.P. ''Perc'' King and Joseph McKibben.

Balagna said the A-bombing of Hiroshima and Nagasaki kept someone from using the even more destructive hydrogen bomb in later years.

''The demonstration was so graphic, it put the fear of the Lord in everyone,'' he said. ''That's what kept the Cold War cold.''

He said he believes invading Japan would have resulted in more loss of life than the bombings.

The Japanese reporters' perspective differed.

''The director Steven Spielberg asked me why the cities were rebuilt and not kept as a memorial to genocide. It was like a genocide. The two bombs killed 200,000 people instantly,'' Konishi said.

Japan America Television was in Los Alamos working on stories for the 50th anniversary of the bombings.

Konishi said the bombing of Nagasaki, in particular, was ''a difficult thing for the Japanese people to understand.''

The Japanese still question the thinking behind the bombings, Konishi said, but his country for the past several years also has been coming to grips with its wartime ''atrocities.''

Itsuki Iwata, Los Angeles bureau chief for The Yomiuri Shibun, a Japanese newspaper, said he has conducted numerous interviews with the Manhattan scientists, and virtually all report they had few moral qualms about using the A-bomb.

''The view of the scientists is very much like the point of view you hear today. I think this is a very difficult thing for the scientists to talk about,'' Iwata said.

For King the problems people face today can't be superimposed onto 1945.

''We were terribly worried that Hitler had it (the bomb). It was the inspiration to work very long hours, six days a week,'' he said.

Balagna, who lost a brother in France about a month after D-Day, said, ''My only regret is that we didn't finish in time to use it on Hitler.''

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, the incredibly enormous Federal debt is like the temperature outside—rising rapidly. As for the rising Federal debt, Congress had better get cracking—time is a-wasting and the debt is mushrooming and approaching the $5 trillion level.

In the past, a lot of politicians talked a good game, when they were back home with the voters, about bringing Federal deficits and the Federal debt under control. But many of them regularly voted in support of bloated spending bills that rolled through the Senate like Tennyson's brook. So look at what has happened:

As of Friday, July 14, at the close of business, the Federal debt stood—down to the penny—at exactly $4,933,039,330,339.52. This debt, remember, was run up by the Congress of the United States.

Mr. President, most citizens cannot conceive of a billion of anything, let alone a trillion. It may provide a bit of perspective to bear in mind that a billion seconds ago, the Cuban Missile Crisis was in progress. A billion minutes ago, the crucifixion of Jesus Christ had occurred not long before.

Which sort of puts it in perspective, does it not, that Congress has run up an incredible Federal debt totaling 4,808 of those billions—of dollars. In other words, the Federal debt, as I said earlier, stood this morning at opening time at four trillion, 933 billion, 39 million, 330 thousand, 339 dollars and 52

cents. It'll be even greater at closing time today.

STATE DEPARTMENT'S REFORM IS HISTORIC OPPORTUNITY

Mr. HELMS. Mr. President, the majority leader announced today his intentions to bring S. 908, the State Department Authorization Bill, to the Senate floor before the August recess.

As my colleagues are well aware, this bill proposes to reorganize the agencies of the executive branch charged with the conduct of America's foreign policy, saving needed Federal tax dollars in the process.

Before my colleagues rush to judgment on the efforts to restructure the State Department, I recommend they read John Bolton's June 25 op-ed piece in the Washington Times, ''Quest for a Stronger Foreign Policy Hand.''

Mr. President, John Bolton writes with authority on the purpose and past performance of the State Department because of his having served as Assistant Administrator of the Agency for International Development in the Reagan administration and as assistant Secretary of State in the Bush administration. Currently, John Bolton serves as the president of the National Policy Forum.

I urge Senators to take note of John Bolton's counsel. His advice regarding strengthening America's foreign policy hand is both sound and sorely needed.

Mr. President, I ask unanimous consent that the June 25 op-ed piece in the Washington Times, ''Quest for a Stronger Foreign Policy Hand'', be printed in the RECORD.

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

[From the Washington Times, June 25, 1995]

QUEST FOR A STRONGER FOREIGN POLICY HAND

(By John Bolton)

The House of Representatives has just adopted sweeping organizational changes in formulating American foreign policy. The Clinton administration has argued that the restructuring under debate—merging the Agency for International Development, the U.S. Information Agency and the Arms Control and Disarmament Agency into the State Department—are isolationist and unnecessary. Comparable legislation is now pending in the Senate.

Lost in the swirling and sometimes confusing arguments about reorganization is the principal point: How to strengthen the hand of the president in the conduct of foreign policy. Constitutionally, only the president can and should speak authoritatively for the United States in international matters.

The paramountcy of executive branch leadership in these affairs, however, has been repeatedly compromised by splitting, again and again, the president's authority among a multiplicity of agencies. Each agency develops its own ''mission,'' its own political constituencies, and its own set of priorities, many or all of which may have little or no congruence with the wishes of the sitting president. The result, too often, has been interagency disagreements that retard if not entirely paralyze effective decision-making and policy implementation.

Over the years, therefore, the president's has been weakened, and his ability to act firmly and decisively hampered. Now, in the early days of a post-Cold War era, it is precisely the right time to sweep away the bureaucratic remnants of the past, and the ossified ''old thinking'' they have come to embody. It is simply wrong to argue that the proponents of change are attempting to shift power between the branches. To the contrary, the proposals are intended to enhance presidential authority within his own often-unruly family.

Advocates of USIA's continued independence, for example, argue that its news and other functions should remain rigorously independent from the tainting touch of foreign policy considerations. AID's defenders assert that providing foreign economic assistance should serve as a poverty program rather than a support for vital U.S. interests. ACDA's champions believe that only its separateness will protect the Holy Grail of arms control. In fact, the secret agenda in all three cases is to insulate the sub-Cabinet agencies from effective control by the secretary of state, for fear that their respective missions will be ''politicized.'' In this context, ''politicized'' means becoming consonant with U.S. national interests, which most Americans would simply take as a given, not as a problem.

Many who wish to preserve AID's separateness, such as Vice President Al Gore, do so because they support increased spending on international population control and environmental matters rather than fundamental economic policy reforms in developing countries. The vice president's preference for condoms and trees instead of markets notwithstanding, these policies will receive long-term political support in Congress only if they are tied to enhancing demonstrable U.S. foreign policy interests.

Changes in bureaucratic structures, however, do not require or even imply changes in budget levels or program priorities. Any such changes in these areas must stand or fall on their own merits, independently of which department or agency actually implements policies and programs. Disagreements on funding and program matters can be handled through the legislative amendment process, and will change over time in any event. Anyone who has actually served in the federal government knows that one of the few effective ways to capture the bureaucracy's attention is to threaten massive changes in its budget. Even so, efforts by opponents of reorganization to confuse structure and policy are simply obscurantist at best.

These are the tired arguments of inside-the-Beltway turf warriors. They deserve exactly as much weight as the voters gave to similar arguments on the domestic front in November. In fact, most breathtaking here is the opposition to reform agencies created up to 35 years ago, a pace that would imply roughly three bureaucratic reorganizations every century.

Nonetheless it is the centrality of enhancing the president's foreign policy authority that provides the inspiring vision to the reform proposals crafted by Rep. Benjamin Gilman, New York Republican, and Sens. Jesse Helms, North Carolina Republican, and Mitch McConnell, Kentucky Republican. Rising above the narrow political temptations occasioned by the split in control between democrats in the executive and Republicans in the legislative branches, they have crafted reorganization plans that transcend today's particular partisan wrangling. They have gained widespread support—including from distinguished career Foreign Service officers like former Secretary of State Larry Eagleberger. These may be sweeping proposals, but they are not extreme.

The reforms' directions, more-over, are decidedly internationalist in their implications. Reorganization opponents have repeatedly attempted to paint efforts to achieve sound policy-making and management as isolationist, but their ad hominem rhetoric is off the mark. By attempting to evoke dark memories of pre-World War II policies, they demonstrate that they are simply unable to appreciate why new international realities require new American structures.

It is precisely to make the United States more forceful, more dynamic and more adaptable that restructuring is so necessary. Thus, the real internationalists today in foreign affairs follow the lead of predecessors who were also not afraid of massive change in process and structure. Those internationalists who were ''present at the creation'' of U.S. policy and institutions in the aftermath of World War II would undoubtedly be cheerleaders for the reorganizations under discussion.

How the reorganizations are actually implemented and in what period of time they must be made operational are subjects for reasonable debate, as is the degree of flexibility the president and the secretary of state should be provided in reordering the combined agencies. Important as these questions may be, however, they are simply details in the larger vision of Messrs. Gilman, Helms and McConnell.

Moreover, no one should be confused that the proposals to fold USIA, AID and ACDA into the Department of State are preferred because of any illusion that the State Department is the unique repository of superior skill or efficiency. Phase two of the reorganization process should encompass a major re-examination of attitudinal, press and management issues within the department itself.

To step back now from the reform proposals out of timidity or indecision would be to miss an historic opportunity. Soon, the House of Representatives will complete consideration of the Gilman version of reorganization, where it deserves overwhelming approval, followed by immediate action by the Senate. What President Clinton ultimately does with the legislation when it reaches him will speak volumes about whether his ''reinventing government'' initiative is just one more disposable promise.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

COMPREHENSIVE REGULATORY REFORM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 343, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 343) to reform the regulatory process, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Dole amendment No. 1487, in the nature of a substitute.

Domenici amendment No. 1533 (to amendment No. 1487), to facilitate small business involvement in the regulatory development process.

Levin (for Glenn) amendment No. 1581 (to amendment No. 1487), in the nature of a substitute.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, we are already in the second full week of this bill. It is an important bill and it does deserve the type of consideration that we have been giving to it, but we are, hopefully, coming to closure on it.

This is a very, very important bill to our society. I do not think there is anybody in this body that will not admit that our society is overregulated. In fact, some people think we are being regulated to death, that it will be the end of a great society, the end of the greatest country in the world if we keep going the way we are, if we have bureaucrats back here, who do not understand the problems out there, issuing ridiculous, silly regulations.

This bill is about common sense. It is putting common sense into the regulatory process. It does not mean doing away with regulations. This bill means we are going to have to use common sense in coming up with regulations. I think most Americans would agree the Federal Government is out of control, certainly in terms of the burdens that it places upon them and their small businesses in particular.

What this bill does is it requires governmental agencies to abide by rules and regulations that they issue that help rather than hurt our people. It will require the Federal bureaucracy to live by the same rules that Americans live by in their day-to-day lives.

Those rules are that the benefits of what you are telling people to do have to be justified by the costs of those benefits, the cost imposed because of the regulations.

The notion of common sense and accountability in rulemaking sounds like a radical idea inside the beltway, but it is really something people want outside the Washington beltway.

Americans are smothered, inundated. They are drowning in redtape in all aspects of their lives, and they are getting tired of it. They have asked us to get rid of the status quo and to get some reason into this system. This bill certainly does not mean the end of health concerns or safety concerns and it certainly does not mean the end of health and safety regulations. It just means they have to be regulations that make sense. They just cannot be imposed ad infinitum on top of American citizens without some justification for the regulations themselves.

We have seen on the floor of the Senate a lot of effort to maintain the status quo. That is at the same time that everybody prefaces their remarks with ''the status quo is unacceptable.'' The debate this week is going to determine whether we stick with the status quo or whether we do some things that will really help our country and resolve some of these difficulties. We simply have to get rid of the silly, ridiculous regulations.

In that regard, let me give you my top 10 list of silly regulations. This will be list No. 7. I might add that all of these are from Utah constituents this time, but they apply across the country. I think you will find some similarities in each and every one of our States.

Silly regulation No. 10: Requiring a company, if they spill just 1 pint of antifreeze, to call the Coast Guard in Washington, DC, to alert them. That is silly.

Silly regulation No. 9: Purposefully releasing more water from a dam to create a flood-stage flow in order to help endangered fish, regardless of the farmland that was flooded as a consequence.

Silly regulation No. 8: Requiring a person who is on a 6-foot scaffold to be tethered to a fall protection device which is also 6 feet high.

I cannot help laughing at some of these. Some are so bad. This is what our people go through out there. The problem is, if you think about it, that the person with that 6-foot tether would already hit the ground before the device could save him.

Silly regulation No. 7: Requiring a company to hire an outside contractor to check emissions, in spite of the fact the company does it themselves every 8 hours.

Silly regulation No. 6: Refusing to approve a plan to divert a portion of a flow of water for stock watering, in spite of the fact that it would drain into the same basin. Further, the Bureau of Land Management, U.S. Forest Service, State engineer and Utah Department of Water Resources all approve of the plan.

Silly regulation No. 5: Requiring buildings built after the asbestos ban took effect to be inspected for asbestos, despite the fact they contain no asbestos. That is just typical of what is happening all the time. These are specific cases, but it is typical to require stupid, idiotic things just because the people back here are not willing to do what is right or use common sense.

Silly regulation No. 4: Requiring a company to use only hand tools if they want to replace a concrete ditch with an underground pipeline, despite warnings that the ditch may fail. This spring, the ditch did fail and flooded the whole surrounding area.

Silly regulation No. 3: Requiring a contractor to pay a person $55 an hour to walk in front of a back hoe to look out for the desert tortoise. People in southern Utah are just beside themselves. Can you imagine paying a person $55 an hour to walk in front of a back hoe to look out for the desert tortoise? Well, I admit, desert tortoises are wonderful creatures that ought to be preserved, but there is a limit, it seems to me, to this type of stupid action.

Silly regulation No. 2: Diverting water to aid the ''Lady's Ute tress orchid,'' in spite of the fact that this will reduce the flow to a family farm with a decreed right to the water. No prior notice of the plan diversion was given to the family, nor were they made aware of the issuance of a wetlands permit for the plan.

I have to acknowledge that the Lady's Ute tress orchid, I am sure, is a beautiful flower, but I also think that that family farm is important, too. That just shows how ridiculous some of these rules and interpretations of the rules are.

Now let us turn to silly regulation No. 1: Requiring that a company submit a list to the fire department of all the ingredients in their fire proof bricks, sand, gravel, mortar, and steel. This semiannual report containing the list of the fire department of all of the ingredients of fire proof bricks, gravel, mortar and steel is about six inches thick. You wonder why people do not want to go into business today or put up with this. This is a perfectly good explanation why.

Well, to make a long story short, it is easy to see why Federal regulators—even the good ones—are held in disdain by our people out there. And there are good regulators, we know that. We know there is a need for good regulation. We know there is a need to have Washington operate in a careful fashion to protect health and safety and other things.

On the other hand, these types of interpretations of regulations and these types of regulations, I think, bring condemnation upon the people, on everybody, even those who are sincere and who do a good job.

Now, Mr. President, finally, I want to once again address the relative merits of S. 343 and the Glenn amendment. Last Friday, I stated that the Glenn amendment could be termed ''reg lite,'' because it was a somewhat weaker version of S. 291, which was itself a product of compromise and, for that reason, unanimously voted out of the Governmental Affairs Committee under my good friend, Senator BILL ROTH. I noted that Chairman ROTH explained that S. 343 is a superior vehicle for achieving meaningful and effective regulatory reform that neither S. 291 or the Glenn substitute does. I also critiqued in some detail the Glenn bill's provisions and concluded that S. 343 is a far more effective mechanism for regulatory reform—that is, if you really want to do something about regulatory reform.

Last Friday, a modified Glenn amendment was introduced. This is a little bit stronger and moves a little bit closer to the Dole-Johnston bill by adopting a little more of S. 343's reform measures. The gap is narrowing. We appear to be moving closer together. Nonetheless, while imitation is the sincerest form of flattery, my original conclusion remains the same: S. 343 is a far superior vehicle for regulatory reform.

Let me first say that the Dole-Johnston bill is not a bill that simply requires agencies to perform cost-benefit analysis or risk assessment. It is a comprehensive regulatory reform measure that, for the first time in

about a half century, reforms the Administrative Procedure Act.

These reforms, many of which were recommended by the Administrative Conference of the United States and the American Bar Association, are commonsense proposals that make the notice and comment requirements of the Administrative Procedure Act more productive. These reforms guarantee effective public participation in the promulgation of rules and assure that judicial review will be more effective. They provide fairness to the administrative process. And most are missing in the Glenn substitute.

More specifically, Dole-Johnston, amends section 553 of the Administrative Procedure Act by requiring, among other things, in the notice of proposed rulemaking in the rule's statement of basis and purpose:

First, a succinct explanation of the need for and specific objectives of the rule.

Second, a succinct explanation of the statutory basis for the rule, including whether the agency's interpretation is clearly required by the text of the statute and, if not, an explanation that the interpretation selected by the agency is within the range of permissible interpretations identified by the agency, and an explanation of why the interpretation selected by the agency is the preferred interpretation.

Third, a summary of the cost-benefit analysis required to be prepared pursuant to chapter 6 of this bill.

Fourth, a statement in the proposed stage of the rule that the agency will seek proposals from the public and local governments for alternative methods of accomplishing the objectives of the rulemaking.

Fifth, in the statement of basis and purpose, a discussion and response to any factual and legal issues raised by the comments to the proposed rule, including a description of all reasonable alternatives to the rule raised by the agency and the commenters, and the reason why such alternatives were rejected.

All of these statements and explanations must be part of the rulemaking file and, along with factual and methodological material supporting the basis of the rule, made available to the public for inspection and copy.

These requirements are absolutely essential for regulatory reform. They assure that the public has the needed information to cogently comment on—or challenge—the rule. They also assured that the courts have the needed information to effectively review the factual and legal underpinnings of the rule.

To be sure, without these requirements—and the requirements of section 622 that all reasonable alternatives facing the agency in rulemaking be identified—judicial review of cost-benefit analysis is effectively impossible.

How can there be review of whether cost justify benefits if all the relevant factors facing the agency are not fully disclosed? The absence of such requirements are a fatal weakness of the Glenn substitute.

I also want to point out that these requirements are hardly controversial. These rulemaking requirements were all endorsed by the American Bar Association, and the American Bar Association has correctly criticized the Glenn bill for not containing these needed reforms.

The fairness provisions of Dole-Johnston also constitute significant reformation of the administrative process. They include section 707, the reform of consent decree provision.

This section assures that consent decrees are not construed in such a way as to limit agency discretion to protect the rights of innocent third parties or to respond to changing circumstances. All too often, particularly in environmental enforcement actions, sweetheart consent decrees are entered into by agencies and special interest environmental groups that impinge on the rights of innocent third parties and implement the political agenda of those special interests. The Glenn bill contains no equivalent provision.

Section 708 is another one of these fairness provisions. This provision prevents impaling the regulated public on the horns of a dilemma. An affirmative defense is provided in any enforcement action where a regulated party faces compliance with contradictory or inconsistent regulations. Who can argue with this fairness provision? I guess the sponsors of the Glenn substitute can because it is, again, absent from their substitute, from their bill.

The sponsors of the Glenn bill are also AWOL in not including the final of these fairness provisions—section 709. This provision was originally in the Judiciary Committee version of S. 343 and was unanimously restored to the bill, 80 to 0, by amendment introduced by Senator HUTCHISON last Friday. It prevents the imposition of criminal penalties or civil fines in a situation where parties reasonably relied on a longstanding position of an agency, and the agency tries to retroactively enforce a new interpretation of law or policy. This administrative ex post facto provision is a codification of a fundamental precept of justice dating back to Magna Carta; yet, it is missing from the Glenn substitute.

Besides Administrative Procedure Act reform, the Glenn substitute does not contain certain critical elements of regulatory reform. Perhaps the most important missing element is Dole-Johnston's ''decisional criteria'' section 624. This section is the heart of Dole-Johnston and constitutes a far more sophisticated and efficacious approach to assuring the compliance with cost-benefit analysis and risk assessment requirements than does the Glenn approach.

First of all, this decisional criteria section mandates that no rule shall be promulgated unless the rule complies with this section—624. That requirement will act as a hammer to assure agency compliance with the standards set forth in the decisional criteria section 624 of S. 343.

Some will say this is overkill, that agencies will abide by cost-benefit standards without section 624's hammer. Yet, every President since President Ford, including President Ford, right up to the current President, President Clinton, have issued Executive orders on regulations. And President Clinton's Executive order on regulations contains a hammerless cost-benefit analysis requirement, which is why it is routinely ignored by all of his Federal agencies and OMB, the Office of Management and Budget.

According to an April 1995 study by the Institute for Regulatory Policy, of the 222 major EPA rules issued from April to September 1994, only six passed cost-benefit analysis muster.

The rest were promulgated anyway. So we see there is a need to assure agency compliance, because when they will not listen to their own President, or their own Presidents through the years, imagine how they will not listen to us if we do not go into a compliance process together.

Of the 510 regulatory actions published during this period, this period of April to September of 1994, 465 were not even reviewed by the Office of Management and Budget; and of the 45 rules that were reviewed, not one—not one, not a single one—was returned to the agency for having failed the obligatory cost-benefit analysis. They call this regulatory reform?

Moreover, section 624 not only requires, like the Glenn substitute, that ''benefits of the rule justify the costs of the rule,'' but unlike the Glenn substitute, it also requires that the rule must achieve the ''least cost alternative'' of any of the reasonable alternatives facing the agency, or if the ''public interest'' requires it, the lowest cost alternative taking into consideration scientific or economic uncertainty or unquantifiable benefits.

Now, this does two things. No. 1, it assures that the least burdensome rule will be promulgated; No. 2, that agencies are not straitjacketed, when facing scientific or economic uncertainties or benefits that cannot be quantified, into promulgating a rule based on an option that is only the least costly in the short-term. In the latter situation, agencies may explicitly take these factors into account when considering the least cost alternative when promulgating a rule.

What about the effect on existing law? Section 624 of 343 provides that its cost-benefit decisional criteria ''supplement'' the decisional criteria for rulemaking applicable under the statute granting the rulemaking authority.

This supplement requirement is applicable except when an underlying statute mandates that a rule to protect health, safety, or the environment be

promulgated, and the agency rule cannot, applying in the standard in the text of the statute, satisfy the cost-benefit criteria of section 624.

In such a case, the agency taking action may promulgate the rule but must choose the regulatory alternative meeting the requirements of the underlying statute that imposes the lowest cost. In this way, agencies are given great latitude in promulgating cost-effective rules. Thus, S. 343 strongly supplements existing law but does not embody a supermandate.

This was made absolutely clear in a bipartisan amendment adopted last week. In contrast, the Glenn amendment only requires agencies to justify costs in those situations where such requirement is not expressly or implicitly ''inconsistent with'' the underlying statute. This allows agencies to select any costly or burdensome option allowable under the underlying statute.

What about judicial review? Could it not be argued that while Glenn does not contain a decisional criteria section, forcing agencies to abide by cost-benefit analysis and risk assessment criteria, its judicial review provision assures that agencies will comply with that bill's albeit weak cost-benefit analysis requirement. The answer is, unfortunately, no.

While both S. 343 and the Glenn bill basically only allow for administrative procedure action ''arbitrary and capricious'' review of the final, and not independent review of a cost-benefit analysis and a risk assessment, the Glenn judicial review section contains a provision that perhaps inadvertently could be construed to prohibit a court from considering a faulty cost-benefit analysis or risk assessment in determining if a rule passes arbitrary and capricious muster.

That provision expressly states that ''if an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conform to the particular requirements of this chapter.''

This means that a poorly or sloppily done cost-benefit analysis or risk assessment could avoid judicial scrutiny even if material to the outcome of a rule, because the Glenn judicial review section literally states that the bill's ''requirements'' for analysis and assessment are not reviewable.

Now, that is serious. That is a critical difference on the judicial review aspects of these two approaches, S. 343 and the Glenn substitute amendment.

Another significant reform contained in S. 343 but missing in the Glenn bill is the petition process. While critics of S. 343 contend that the bill's petition processes are too many and overlapping, I believe that the bill's petition provisions are workable, not at all burdensome, and empower that part of the American public affected by existing burdensome regulations to challenge rules that have not been subject to S. 343's cost-benefit analysis and risk assessment requirements.

For instance, in section 623, the requirement for agency review of existing rules, the petition provision allows for either placing the rule on the agency schedule for review, or in effect to accelerate agency review of rules already on the agency's schedule for review. The petitioner has a significant burden to justify that the requested relief is necessary. I might add that this provision was a product of negotiations between Senators KERRY, LEVIN, BIDEN, JOHNSTON, ROTH, NICKLES, MURKOWSKI, BOND, DOLE, and myself.

One other petition provision that I want to mention is section 629, which allows for the petitioner to seek an alternative means to comply with the requirements of a rule. This allows for needed flexibility that will save industry untold amounts of money and having to comply with sometimes irrational requirements, without weakening the protection of health, safety, or the environment.

In this way, agencies are given great latitude in promulgating cost-effective rules. In this way, agencies can do a better job.

Moreover, the following provisions of S. 343 are much better than their counterpart provisions in Senator GLENN's.

Risk assessment provisions: S. 343 applies its risk assessment and risk characterization principles to all agency major rules. The Glenn amendment, by sharp contrast, limits even the applicability of the risk assessment and risk characterization principles to major rules promulgated by certain listed agencies and it contains no decisional requirements for risk assessments.

Emergency provisions: The Dole-Johnston bill contains exemptions for imposition of the notice and comment, cost-benefit analysis, and risk assessment requirements. When an emergency arises where a threat to public health and safety arises, these provisions would allow for a rule that addresses these concerns to promptly go into effect. There is absolutely no delay. The government can protect our health and safety in all of these cases, including the red herring of E. coli. The Glenn substitute, on the other hand, only contains one exemption, and that is for risk assessments.

As I pointed out last Friday, this contains an element of irony. The supporters of the Glenn measure have complained endlessly how S. 343 would prevent the agencies from protecting the public from E. coli bacteria present in bad meat, or cryptosporidium in drinking water, and have screamed that rules addressing these problems be exempt from S. 343.

Of course, S. 343's emergency provisions adequately deal with the problem. But Glenn does not. There is not even similar language.

Where are the equivalent provisions in the Glenn substitute? Does the Glenn substitute exempt these types of rules from cost-benefit analysis? No. It is apparent, Mr. President, that the Dole-Johnston measure is a superior vehicle for regulatory reform. I ask my colleagues to vote against the Glenn ''reg lite'' bill and support the real thing. I yield the floor.

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

Mr. GLENN. Mr. President, last week I took the floor to reply to some of the top 10 silly regulations that the Senator from Utah had brought up last week. We found, upon investigation, that of some of those silly regulations last week there were, probably a good half of them, I do not know the exact number, but probably half of them I gave responses to that showed that the so-called silly regulations were not regulations at all and were, in some cases, municipal or State regulations that were being somehow tossed over into the Federal bailiwick of responsibility. And I gave real details on that, and it caused considerable concern on the other side of the aisle, I understand.

I do not know the regulations that were cited this morning, how they originated or what their backgrounds are, but I hope we have better substantiation for the ones given this morning than we did for the ones last week. If we wish to take up our time here going through those, we can do that again like the ones that were put in last week. But we found in many of the cases mentioned they were not Federal regulations at all. There was no requirement in Federal law for some of the things that Federal regulators were being credited with doing.

So what we are trying to do is bring some common sense to this regulatory process. I have said many times during this debate, regulatory reform is probably the most important issue we will take up this year, outside of the actual appropriations bills, because it affects every person in this Chamber today, whether on the floor, in the gallery, every person outside, every man, woman, child, every business, every organization across the whole United States of America. So regulatory reform is one of the most important items.

The American people want regulatory reform. I want regulatory reform. I believe the vast majority of Members of Congress do. I do not know of anybody who does not want regulatory reform. When we go back to our States, the horror stories we hear every time are about some of the rules and regulations that are too heavy-handed and too intrusive, so we need to correct those things. The question is, how will we correct them? If we are drowning in red tape, how do we correct it?

I have made no effort to retain the status quo, in spite of what was said this morning. Quite the opposite. I do not want to retain the status quo. That is the reason why we worked 2½ years on the Governmental Affairs Committee to try to get responsible regulatory reform legislation ready. We have

heard a lot of talk about specific instances of regulatory excess. And, as I have pointed out, many of these stories are just factually not true. But even for those that may be true, let us make sure that the medicine we prescribe is not worse than the illness we want to cure. Individual instances of excess do not justify bogging down our Government with equally excessive bureaucratic procedures and litigation, and that is what I fear the proponents of S. 343 are giving us.

Instead of making Government more cumbersome, more bureaucratic, and more expensive, we should be working to make the regulatory process more effective, more efficient, and less burdensome. Regardless of our debates about process, about how Federal agencies should make decisions, we must not forget what the process is all about. The regulatory process is about protecting the public interest. It is about implementing the laws that we in Congress pass. It is about providing for the common good, protecting public health and safety, preserving the environment, and making this country a land of opportunity for all and, at the same time, correcting regulatory excesses to make sure that those just do not happen. That is a balance. It is a balance that we have to seek and it is a balance that I think we have addressed in S. 1001, which was laid down last Friday afternoon.

That is why, as we debate how to reform the regulatory process, we must ask ourselves two essential questions—basically what I stated a moment ago. First, does the bill before us provide for reasonable and appropriate changes to regulatory procedures to eliminate unnecessary burdens on businesses and individuals and organizations and everyone all over this country? And, second, does the bill maintain our ability to protect the environment and the health and the safety of our people? In other words, does the legislation strike an appropriate balance? That is what we have to find in this debate—is the balance.

If we find the proper balance, there will be broad support for this effort. However, if we produce a bill that relieves regulatory burdens but threatens protections for the American people in health and in safety or the environment, the legislation should be opposed.

Today we will focus our debate on two bills, the Dole-Johnston substitute and the Glenn-Chafee substitute to that substitute. Both will transform the regulatory process, but I am convinced that the Dole-Johnston substitute goes too far. I believe that only the Glenn-Chafee substitute will reform the regulatory process in a way that meets my tests just outlined. The Glenn-Chafee bill will relieve burdens and maintain an efficient and effective process to protect public health and safety and the environment.

Before I discuss the differences between the two bills, I want to review the debate of last week, because I believe that this past week's debate alone, just standing by itself, makes the case for the Glenn-Chafee substitute.

Proponents of the Dole-Johnston substitute have repeatedly stated that their bill is a good bill, that their bill went through a long process of improvement before coming to the floor, and that it is ready for enactment. But I believe our activities on the Senate floor last week proved otherwise. When confronted with the challenge that their bill would threaten important health and safety rules—impending rules, now, not just something thought about for the future, but important pending health and safety rules such as those for food safety, drinking water, mammograms—the proponents of Dole-Johnston first denied that their bill would compromise those regulations. Then they tried to add general and symbolic exemptions just in case, like the sense-of-the-Senate resolution that was supposed to be a substitute for the Boxer amendment protecting mammogram rules. But when all the votes were done, we see that they voted against meat and poultry inspection rules, putting the American people at risk due to the dangers of E. coli and other foodborne diseases; and that they voted against drinking water safety rules. But we see that they voted for mammogram rules and for child poisoning protection rules.

I do not think my colleagues value food and drinking water safety less than women's or children's health. What I really think is that the proponents of the Dole-Johnston bill have yet to come to terms with the fact that their bill fails my test. It may reduce regulatory burdens—it will do that—but it will also jeopardize public health and safety and the environment. In other words, it does not hit the balance that I spoke about earlier.

They say their bill will not harm the public but they are not really sure. I am sure that the Glenn-Chafee substitute will protect the public and reduce regulatory burdens, and I say we should support that Glenn-Chafee substitute.

When it came time last week to discuss the effect of their bill on the implementation of current laws, again we saw confusion and uncertainty. Throughout the negotiations, prior to coming to the floor, and during the first hours of debate, the proponents again and again denied that their bill contained a supermandate—that is, a prevision that would have economic cost-benefit analyses override other statutory requirements if there was any conflict between the two.

Those other statutory requirements are things like clean air, clean water, and worker safety. Even so, they refused to add language to clearly state that assertion, that in a case of a conflict between the cost-benefit test and the statutory requirement, the underlying statute would prevail. In other words, there would not be a supermandate that said: If there is a conflict, that the earlier law would be knocked out. Their provision would have provided that, if there was a conflict between the rule that came up and a previous law passed by the Congress, signed by the President, and in effect all over this country, the underlying statute could be knocked out by a regulation.

Finally, on the floor an amendment appears from the proponents to do just that, to say that if there is a conflict between the cost-benefit test and the statutory requirement, that the underlying statute would prevail. Again, I have to ask why was the Dole-Johnston bill brought to the floor in the form it was? The proponents insisted it was in fine shape and provided just the right amount of reform, but when pressed on the floor, their arguments went both ways and the weaknesses of the bill, their bill, were revealed.

When it came time to discuss what their bill covers, again we saw confusion and inconsistency. Their bill provided the proper threshold, they said—a major rule should be a rule with an annual effect of $50 million or more. On Monday, the first day of debate, that threshold was, however, lowered even further with the addition of significant, what are called significant rules, under the Regulatory Flexibility Act. This will add between 500 and 800 rules to the agency cost-benefit process. This was an incredible expansion of coverage. It could quadruple the number of rules that agencies have to put through detailed analysis.

The very next day an amendment was passed, which I supported, to raise the threshold from the $50 million figure to $100 million. But the problem is that the amendments are inconsistent. It makes no sense to say that we have restricted the scope of the bill to a more reasonable threshold—$100 million overall economic impact on the country—when the threshold at the same time had just been lowered to include hundreds and hundreds and hundreds of more rules.

I simply do not understand how my colleagues can think that agencies in a time of falling budgets and full-time employees—FTE's—will be able to effectively perform the duties that we give them. Yes, you have to remember that we in Congress passed the laws that require agency action. I add that some 80 percent of the regulations written are required in the laws that we sent over to the agencies to have the regulations written.

Now those agencies will have to spend scarce resources on analyzing rules that do not have a significant impact on the Nation as a whole. This is simply a mistake. They cannot do something with nothing. We are cutting their budgets with fewer full-time employees and at same time loading them up with new policies that must be done, new analyses—that I favor but not the expansion that was done on the

floor—in the numbers of overall reviews that have to be made. We need to stick with the higher threshold, and that is it. That is manageable.

Agencies need to be more sensitive to the burdens that Government places on small business. I also add that is what the Regulatory Flexibility Act is all about. Thinking that businesses somehow are being overregulated is not something new. We passed the Regulatory Flexibility Act I believe back in 1972 or 1973. It was supposed to address some of this problem.

Let me repeat that agencies need to be more sensitive to the burdens that Government places on small business. That is what the Regulatory Flexibility Act is all about. But requiring agencies to go through lengthy analyses for nearly every rule that comes under that act is just too much. We will end up with a Government that spends more money and more time, and has less and less to show for it.

If the proponents of Dole-Johnston are trying to make it much harder to issue regulations, regulations that we in Congress often require—require as much as 80 percent of the time—then this is the way to do it. If they want to make it harder to issue rules that protect the health and safety of the American people, this is the way to do it.

Let me just observe that two major supporters of the Dole-Johnston substitute, Senator JOHNSTON and Senator ROTH, did not support the expansion of the bill to cover regulatory flexibility rules. So I hope we can still address this problem in a reasonable way and maybe work out something on that before we come to a final vote on this legislation.

Finally, let me mention the issue of sunshine. On Thursday, my amendment to the Dole-Johnston substitute to provide for sunshine in the OMB regulatory review process was accepted. I was very happy that amendment was accepted. It was not just passed by a vote. It was accepted unanimously. That was very good because it shows support for an important component of reasonable regulatory reform. This sunshine provision came from the bipartisan Governmental Affairs Committee bill, the bill sponsored by my good friend from Delaware, Senator ROTH. The provision is also contained in the Glenn-Chafee bill.

The problem is that for the last 2 months we have repeatedly urged those Senators involved in crafting the Dole-Johnston substitute to incorporate that sunshine provision. Despite our requests we were turned down at every turn. The latest rejection came last Wednesday, July 12, when we finally got a response to our June 28 list of 9 major and 23 minor issues with the Dole-Johnston bill. We were told then that we would have an answer. We do not have a full answer yet. But we did get a response to our June 28 list of 9 major and 23 minor issues with the Dole-Johnston bill. But then the next day, on Thursday, July 13, when confronted with the sunshine provision as an actual amendment, suddenly it was fine. Suddenly it was acceptable.

I have a lot of respect for the intelligence and good faith and legislative abilities of the proponents of the Dole-Johnston substitute. I must admit I do not understand the thinking that goes into developing a legislative proposal of such great complexity and far reaching impact in a closed room dismissing compromise proposals out of hand and insisting that the bill should be passed, and then on the floor accepting some of the very proposals that were earlier rejected all the while maintaining that no changes are needed.

I have not changed the stand I took, along with Senator ROTH and our other colleagues in the Governmental Affairs Committee 3 months ago. I believe we had a tough but workable regulatory reform bill in S. 291. That bill provides the basis for the Glenn-Chafee substitute that I think should be supported now. So my position has not changed. Of course, there is always room for improvement in any bill. We modified Glenn-Chafee to reflect improvements that we have seen over the last several weeks. But on the basic provisions of the bill, my position is clear. It has been consistent.

With the proponents of the Dole-Johnston substitute I think the story is different. I believe the truth is they are finally realizing that their bill is flawed, weighted with ill-thought-through provisions that will frustrate the very reform that they say they want to accomplish.

I believe my colleague from Louisiana, Senator JOHNSTON, has accomplished significant changes in S. 343 in the month or so that he has been working with the majority leader and the Senator from Utah, Senator HATCH. I also believe Senator JOHNSTON deserves a great deal of credit for his commitment to regulatory reform, and for his tireless efforts to improve S. 343. He has been involved in regulatory reform for a number of years, and that has had pieces of legislation passed here on the Senate floor before. But if nothing else, his constant presence on the floor over the last week, and the detailed personal knowledge he has of the bill, shows his commitment and expertise. I certainly commend him for his effort. I believe the product, though, is still flawed, too unwieldy, too unworkable to provide the reform that we all believe is necessary and needed for the regulatory process. I think last week's debate highlighted a number of these differences.

To bring the debate to the present, I would like to describe the major differences that I see between the Dole-Johnston bill, as modified this past Friday, and the Glenn-Chafee substitute.

The Dole-Johnston substitute is based on the Judiciary Committee's bill that emerged from a divisive committee proceeding that was cut short before the bill could be fully debated. The Glenn-Chafee substitute is based on the Governmental Affairs Committee's unanimous bipartisan legislation. S. 291 which was sponsored by Senator ROTH, the chairman of our committee, and fully debated in committee. Nothing was cut short there. It was fully debated before it was voted out with eight Republican votes and seven Democrat votes. It was a unanimous committee vote.

An examination of the two committee reports shows the differences between those two bills. The Governmental Affairs report had a unanimous bipartisan discussion of a tough but workable approach to regulatory reform. The Judiciary report is divided and filled with divergent views, and they have never been reconciled yet.

I believe that these two reports tell us why we are in the posture we are in today. Instead of choosing the path of bipartisan dialog and cooperation, the proponents of S. 343 chose to push ahead with what I view as an extreme bill. All the effort of Senator JOHNSTON to moderate that bill—and again he has accomplished much—has not altered the fundamental nature of that bill. As I have said previously during this debate, the result is a bill tailored to special interests, and is a lawyer's dream. It does not, in my view, meet the goals of at the same time protecting health and safety or of having a more effective and efficient Government.

Yes, we want agencies to have more thoughtful and less burdensome rules, but we also want agencies to be effective. The American public does not want the Federal Government to be more inefficient or to have important public protections delayed or bogged down in red tape, delay and courtroom argument. That is why Senator CHAFEE, myself and several others offered an alternative bill just before the last recess, and it was laid down here before the Senate last Friday as a substitute.

Our substitute bill, S. 1001, is based on that same Governmental Affairs Committee bill, S. 291, that was reported out with full bipartisan support. It provides for tough but fair reform. It will require agencies to do cost-benefit analyses and risk assessments, but it will not tie up all their resources unnecessarily. It does not provide for special interest fixes, and it does not create a lawyer's dream. It provides for reasonable, fair, and tough reform.

Since introducing the bill, we have incorporated additional changes to reflect agreed upon improvements arrived at during negotiations and debate on the underlying bill.

This is a very complex matter. We do not necessarily claim we have the very last word on every detail, and we look forward to suggestions for improvement. We do think our approach is much more workable than the Dole-Johnston substitute and that our substitute provides the better approach for reform.

Now, that is a little bit on the background, and that brings us to today. After a week of debate and amendments as well as the negotiations that preceded floor action, the Dole-Johnston substitute has been modified in a number of ways. There are, however, major issues that still distinguish the two bills and recommend support for the Glenn-Chafee substitute.

In my mind, there are five major areas of difference remaining. First is the issue of how agencies should use regulatory analysis. We believe that agencies should be required to perform risk assessments and cost-benefit analyses for all major rules. These analyses should inform agency decisionmaking —inform agency decisionmaking. They should not unilaterally control those decisions and impose least-cost solutions to every problem. Let us put some common sense into this process. We should not unilaterally control those decisions and impose least-cost solutions to every problem.

Second is the question of look back. We believe that agencies should review existing rules, those that have been in effect, some for a long time, but their reviews should not be dictated by special interests or lead to wasteful litigation.

Third is a matter of judicial review. The courts should be used to ensure that final agency rules are based on adequate analysis. Regulatory reform should not be a lawyer's dream with unending ways for special interests to bog down agencies in litigation.

Fourth is the concern about special interests. Regulatory reform should provide a new, across-the-board process for Federal agency decisionmaking. It should not provide program fixes for special interests.

Fifth is the implementation of the new reforms. In a nutshell, this is the issue of effective date. More broadly, however, it involves the question of whether we want to implement reforms in a way that improves Government decisions or whether we want to impose new requirements in order to frustrate decisions, create more delay, waste resources, introduce uncertainty and open up new avenues for litigation. I believe that implementation of the Glenn-Chafee substitute will improve decisionmaking and reduce burdens on the American public. The Dole-Johnston substitute, on the other hand, has the potential to create problems, cost money, and harm the public interest.

If we could resolve these five sets of issues, we could establish for the first time a governmentwide comprehensive regulatory reform process. This process would produce better, less burdensome and fewer regulations. It would also provide the protections for the public interest that the American people demand of their Government and that they have a right to expect from their Government.

S. 343 does not follow these principles. Instead, it does special favors for a special few. In so doing, it creates a process that will delay important decisions, waste taxpayer dollars, enrich lawyers and lobbyists, undermine protections for health, safety, and the environment and further erode public confidence in government.

Now, let me talk about each one of these five major issue areas. The first issue is the question of the use of regulatory analysis. We believe that agencies should perform risk assessment and cost-benefit analyses for all major rules. As I have already said, the threshold for a major rule should be a $100 million economic impact. If it includes more rules, as the Dole-Johnston substitute now does, it will fail its own cost-benefit test, and we will just waste Government resources instead of reforming Government. Once undertaken, the cost-benefit analyses and risk assessments should be used to inform agency decisionmaking.

We all agree that regulatory decisions will be improved if Federal agencies routinely use consistent economic and scientific analysis to test their proposals. The question is, should that analysis control agency decisions, as under the Dole-Johnston approach, by requiring that the agency choose the least-cost solution to every problem—the least-cost solution to every problem.

We had examples last week in the Chamber. If something costs $2 more but saves 200 lives, would it be worth that excess cost? Yes, it would. Right now, you could not do that, as this is worded, as I understand it. You have to have a least-cost solution.

I simply do not believe we always want the agencies to take the cheapest path to implement our laws. What if that alternative that costs $2 extra saves 200 lives? Do we say pick the cheapest; do not look at the benefits of the alternatives before you? That is what S. 343 does.

What if the cheapest alternative imposes more costs on State and local governments? Or what if it imposes more costs on small business, or a specific region of our country, a certain section of our Nation? Do we want to stop agencies from considering such distributional effects?

I think we have to let agencies use common sense. We keep saying that is what regulatory reform is all about. If so, then agencies should be able to choose the most cost-effective approach—the cost-effective approach we use in the Glenn-Chafee bill, looking not just at cost but also at the benefits. Remember, if for some reason we in Congress do not agree with the agency's solution, the congressional review provisions of both bills, S. 343 and S. 1001, allow us to rescind that rule by bringing it back to Congress for further action. That is something that has not been done in the past. We have that provision in both of these bills. So should we not create a process that allows for good decisions and a way to catch the bad ones rather than to create a process that ensures there probably will be bad decisions in the first place?

The Glenn-Chafee substitute requires the analysis of costs and benefits. It requires agencies to certify whether benefits justify the costs and to explain if those benefits do not justify the costs. In other words, Glenn-Chafee uses cost-benefit analysis to improve decisions, but it does not give important decisions over to a mechanical economic analysis. Too much is at stake with Government decisions to simply rely on a least-cost approach to protecting the public interest.

Let me point out here that the Dole-Johnston substitute also creates confusion with its Regulatory Flexibility Act decisional criteria. Section 604 is amended by adding a requirement that agencies not issue a rule unless it minimizes the economic impact ''to the maximum extent possible'' on small entities; that is, small businesses, State and local governments, and other small organizations.

The least-cost-alternative test in this minimal impact test will probably conflict quite often. Least cost overall may often involve more than the lowest cost possible for small entities. As brought to the floor, the Dole-Johnston substitute simply did not address this inherent contradiction. As now amended, there is something of a fix. Agencies are to explain whenever the tests are in conflict but can go forward. My personal opinion is this is still not enough.

To create a standard for government-wide rulemaking that says, ''Choose the alternative that is the absolute cheapest for small business and other small entities,'' is to me to turn away from common sense, away from traditional notions of administrative law and reasoned decisionmaking and to create a lengthy analytic process that, again, is geared to the cheapest solution, not the most cost-effective solution.

The Regulatory Flexibility Act was designed to ensure that agencies consider more flexible and less burdensome alternatives for small entities. The Dole-Johnston substitute would turn that important purpose around and let it govern decisionmaking. I am all for looking out for the interest of small business and State and local governments, but American public interest is broader than that. Protecting public health and safety and the environment, for example, requires a broad view of what works best for the Nation as a whole, not just for some.

That brings us back, once again, to the issue of balance that we are looking for.

The second major issue is the question of lookback. We believe that agencies should review existing rules, but their reviews should not be dictated by special interests or lead to wasteful litigation. Regulatory reform is not just about improving new rules. It must also look back and help existing

rules, existing laws that currently govern so many activities in our country. So we all agree that agencies should use cost-benefit analysis and risk assessment to look back and review existing regulations to eliminate outdated, duplicative and unnecessary rules and to reform and streamline others.

This process should be fair and open with plenty of opportunity for public comment, so that those who are interested in particular rules can make their concerns known to the agency. But this review should not be dictated by special interests, and I believe this is what would happen should the Dole-Johnston substitute become law. It would create a number of petition processes. That is an innocuous sounding phrase, ''petition processes.'' It would create a number of petition processes that has the potential of gridlocking agencies and putting special interests and the courts, not the agencies and the executive branch, in charge of the review.

The Dole-Johnston substitute uses a petition process to put rules on a schedule for review, and if the agency grants the petition, it has to review the rule in 3 years, which is a very short timeframe for such matters. If it fails to review the rule in that time, the rule automatically sunsets, goes out of existence. It just automatically sunsets. This process, it seems to me, puts the petitioner in the driver's seat, not the agency or the Congress who passed the law in the first place. It also creates a process more prone to just killing regulation than creating a thoughtful, balanced review of regulations.

In addition to the review petitions, the Dole-Johnston substitute has several other petitions for ''any interested party'' to challenge an agency on any rule, not just major rules. This is another example of the lawyer's-dream approach taken under this bill.

People could petition for the issuance, amendment, or repeal of any rule. They could petition for the amendment or repeal of an interpretive rule or general statement of policy or guidance, and they could petition for the interpretation of the meaning of a rule, interpretive rule, general statement of policy or guidance. That is a mighty big list of things that could be petitioned under S. 343.

Just to add to the confusion, the bill also has a separate section, section 629, for petitions for alternative compliance. Any person subject to a major rule can petition an agency to modify or waive the specific requirements of a major rule and to allow the person to demonstrate compliance through alternative means not permitted by the rule. In addition, it adds yet another petition process in section 634 so that interested persons may petition an agency to conduct a scientific review of a risk assessment.

Each agency decision on every one of these petitions, except that petition for alternative compliance, is judicially reviewable. What a dream for lawyers. At any step along the way, in other words, they can bring a suit for any one of the list of things I mentioned. All of these petitions and reviews add up to one of the worst parts of this bill. It is a formula for true gridlock. Agencies will have to spend enormous resources responding to each other and every petition. Then they can be dragged to court if they turn down a petition.

So I do not feel this comes close to being real regulatory reform. This is regulatory and judicial gridlock, and this is the way to keep the agencies from doing their jobs and to keep lawyers happy and, I would add, extremely prosperous. This bill would make all the rhetoric about tort reform a big joke, except in this case judicial gridlock means the health and safety of the American people would be jeopardized.

Mr. President, I think sometimes people think that a regulation is put out by the agencies with a little bit of effort and very few people involved. They do not understand why the delay and why they are so complex. We gave an example on the floor the other day.

Just one regulation pursuant to the Clean Water Act that dealt with some of the metal fabricating areas, just one regulation covers, now that it is in place and it has been finalized, covers 123 feet of shelf space. That is a pile of documents from the well, right here in the Senate, to the ceiling, which is 42½ feet, we found out from the Capitol Architect. That is three piles of documents from the well to the ceiling. Three piles of documents to implement one regulation, and under the Clean Water Act there are hundreds of regulations like that.

So we are not talking about something that is just a little thing—well, we can just throw that over at the agencies and they can handle that OK, they can grind these out OK. That was one regulation written to a small part of what was addressed in the Clean Water Act.

So these are not small things. When we talk about upping the cost for each regulation that would have to be written by some $500,000 to $800,000, I think is what the estimate was made last week on the floor, and we had testimony before the committee at one time that each regulation averages out, or can average out, around $700,000 per regulation to get it implemented.

We begin to see that this is no small matter. Now, these petitions that we were addressing here—each agency decision on every one of these petitions, except that petition for alternative compliance I mentioned, is judicially reviewable. That is an absolute dream for the lawyers. All of these petitions and reviews add up to one of the worst parts of the bill—that is, it is a formula for true gridlock. Agencies are going to have to spend enormous resources responding to each petition. They can be dragged to court if they turn down a petition—just a petition. It does not come close to being real regulatory reform. It is regulatory and judicial gridlock. It opens up to those who would thwart a particular piece of regulation that might be in the public good. They can thwart it and stop it dead in its tracks by keeping it in court. So this is a way to keep agencies from doing their jobs and to keep lawyers happy and prosperous. So all this tort reform becomes a big joke if this type of thing goes into effect.

Now, while the Dole-Johnston substitute creates a recipe for gridlock, the Glenn-Chafee approach provides a workable process of review. Every 5 years, agencies will have to produce a 10-year schedule of rules to be reviewed. Opportunities for public comment will identify rules that the agency may not think is pressing. While there is no petition process or judicial review, our process allows Congress to add rules to the agency schedule. In other words, if we think their priority review of existing rules and regulations is not what it should be, Congress can add rules to that agency's schedule.

Now, I must admit that I am not 100 percent happy with using the annual appropriations process, as we are proposing, to amend these schedules. I would be happy to consider alternatives. But the critical point is that we provide for amendments to the review schedules without bogging down agencies into the lengthy petition and judicial proceedings created under Dole-Johnston.

I think that is the key point. We want review. We want a review that is sensitive to the complaints of people covered by the rules, but we do not want gridlock. We want Government to keep working so that we can have more effective and more efficient protections of public health and safety and the environment.

The third major issue that distinguishes the Dole-Johnston substitute from the Glenn-Chafee substitute involves judicial review. The courts should be used to ensure that final agency rules are based on adequate analysis. Regulatory reform should not be a lawyer's dream, with unending ways for special interests to bog down agencies in litigation. We firmly believe in the courts' role in determining whether a rule is arbitrary or capricious. The Glenn-Chafee substitute authorizes judicial review of determinations of two things—whether a rule is major and therefore subject to the requirements of the legislation. Also, it allows review of the whole rulemaking record, which would include any cost-benefit and risk assessment documents.

In other words, it allows review of the final rules at the final stage before that can be taken to court to see whether all of the requirements of cost-benefit and risk assessment have been provided. We should not, however, provide unnecessary, new avenues for technical or procedural challenges that

can be used solely as impediments by affected parties to stop a rule. Courts should not, for example, be asked to review the sufficiency of an agency's preliminary cost-benefit analysis, or the use of particular units of measurement for costs and benefits.

While courts have a vital role to play, they should not become the arbiters of the adequacy of highly technical cost-benefit analysis or risk assessment, independent of the rule itself. Thus, Glenn-Chafee clearly states that ''if an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter, section 623(D).''

I believe the way the Dole-Johnston substitute is currently drafted that lawyers and the courts will get into the details of a risk assessment or cost-benefit analysis. I think that is a mistake. From what I understand, there has been a great deal of discussion about this issue, and I believe many of us want the same result. The question is how to get there from here. Leaving the language as ambiguous as it is now is unacceptable. That is just an invitation to litigation.

With all of the attention to the question of to what extent might the courts get into the details of cost-benefit analysis and risk assessment, we have not discussed enough the amendments that the Dole-Johnston substitute makes to the Administrative Procedure Act. I am not a lawyer, but I know that with every statute we pass, the courts slowly, over the years, develop a body of case law that interprets each statute. The APA is no exception. It was enacted in 1946 and, to a great extent, it has been given more meaning by the courts in the intervening 50 years than Congress was able to squeeze into its relatively brief sections in 1946. While judicial interpretation of administrative procedures continues, I am not aware of any major criticisms of the APA. Certainly, the Administrative Conference has not proposed any major overhaul. But that is what will happen should the Dole-Johnston substitute be enacted into law. Its amendments to the APA, innocuous though they may seem to some, will usher in a whole new generation of lawsuits that will use the new legislative language to attack the case law that has developed around the 1946 statutory language.

Adding more petition processes, requiring new details in rulemaking notices, adding the phrase ''substantial support in the RECORD'' to the traditional formulation of arbitrary and capricious, these will invariably be used by lawyers to go after rules not on substantive grounds but on these procedural grounds. This is not reform. This will recreate a litigation explosion that will give deeper gridlock than we could ever imagine.

Let me just add that this is one of the reasons that I believe such important pending rules as the USDA meat inspection rules—the rules that are needed to protect the American people from foodborne illnesses, such as E. coli—should be exempted from Dole-Johnston. Independent of its cost-benefit analysis, all the supporting evidence, procedural steps, rulemaking notices, and more will all be open to challenge in the courts under these APA amendments.

Again, this is not reform. This is a lawyer's dream and a potential nightmare for the American people. I am sure my colleagues, Senator LEVIN and Senator BIDEN, both excellent lawyers, will go into this issue. But it seems to me that these unneeded amendments to the APA alone are reason enough to oppose the Dole-Johnston substitute.

The fourth major difference between the two bills is the concern about special interest. Regulatory reform should provide a new across-the-board process for Federal agency decisionmaking. It should not provide program fixes for special interests.

From the beginning, S. 343 has included a number of provisions that are not about Government-wide regulatory reform. Quite the contrary, they are about giving specific relief to specific interests or stalling particular programs. Frankly, I do not think these provisions have any place in a regulatory reform bill that should be meant to establish a fair process, fair and equal to all.

Unlike S. 343, and unlike its revised alternative, the Dole-Johnston substitute, our bill, the Glenn-Chafee substitute, like its predecessor, Senator Roth's S. 291, has no such special fixes. Let me say that I sympathize with those who would like to fix particular problems. I know of examples where regulations go too far and where agencies go too far. But as testimony before our committee showed, 80 percent of the rules are required by Congress. It is not up to the agencies. We require them in the legislation that we send over. So it is not just the regulatory process that needs fixing. We in Congress are also responsible for a lot of these problems. In other words, if we have a problem, we ought to look in the mirror a good part of the time.

Let us focus on making the regulatory process better as a whole and not affix for special interest. Let me give some examples. This is not just idle talk. The original S. 343 tried to rewrite the Delaney clause. Now, I happen to think the Delaney clause needs some modification, but they went too far in rewriting the Delaney clause. They also shut down the EPA toxic release inventory, providing enforcement relief for companies and so on.

Now, while I agree that some of these legitimate problems deserve our attention, this is not the place. A regulatory reform bill should address regulatory issues. It should not become a Christmas tree for lobbyists to hang solutions to whatever problems they may have.

Over the last week, the Senate's resolution of amendments on several of these special fixes shows that they are divisive, unrelated to the basic process reforms proposed in the legislation, and simply an attempt to avoid going through the appropriate legislative channels.

For example, the section that would delay an increased cost for environmental cleanups was stricken on the grounds that it was a specific program fix unrelated to the larger process reforms, and that Superfund reform is currently under consideration by the committee of jurisdiction.

When it came time to consider a similar amendment to strike a section that would restrict EPA's toxic release inventory, the same arguments were rejected. Outside the scope of general regulatory reform—no matter. More properly considered by the committee of jurisdiction—no matter. Special interests want the TRI gutted—you got it.

This is not how we should be reforming the regulatory process. We say we are creating a new, fair, and reasonable process. What we are really showing the American people is that if they are a big enough company, they use enough high-priced lawyers, you can fill the halls of power and get relief.

It is unfortunately clear how a majority of the body weigh the community's right to know about the release of toxics into the environment against companies who apparently do not want companies around the plant to know what they are drinking and breathing.

The irony for me is that the TRI is perhaps the most notable example of a rule that is relatively inexpensive and really not that burdensome. It is a so-called risk communication rule. Unlike a command and control rule that would prohibit the use of such toxic materials, TRI merely requires industry to inform the communities of the release of such chemicals.

Now, do you know who cares about the TRI as much as anyone? It is local fire departments. People probably would not have thought of that, but they are the men and women who have to fight the local chemical plant fires and clean up chemical spills, and they want to know what they will face. They do not want a Bhopal, the tragedy that took place in India, to take place in their city or town.

But no matter to the proponents of S. 343. Powerful business interests and their lawyers have sent the word around they do not want to have to comply with TRI. So it will be reworked, it will be revised, it will be restricted. I know what that means. I do not think the American public comes out on top in that particular consideration.

These and other fixes are found in the Dole-Johnston substitute. They are not found in the Glenn-Chafee substitute. We stuck with the process of how the Government should go about regulatory reform. This is reason enough to support our bill.

The fifth and final major difference between our two bills involves the implementation of the new reforms. In simple terms, this is a question of the statute's effective date. Last week, several questions arose about the effect of reform legislation on pending rules, on expected rules, and on avenues for increased litigation. I have already talked at some length about these in this statement.

I believe if we are serious about changing the way Federal agencies make regulatory decisions, if we are serious about improving those decisions, about reducing burdens and improving commonsense solutions to pressing issues involving public health and safety and the environment, then we must have a sensible approach to implement the reforms.

The Dole-Johnston substitute, as it now stands, reaches back and covers health and safety rules whose notice of proposed rulemaking occurred as early as April of this year. While that is supposed to let some rules off the hook, it also means that should that bill become law, rules in the pipeline between April and the date of enactment could be challenged in court and would have to go back to square one to comply with the many requirements of the new law.

Now, I want to improve rulemaking. But I see no value in wasting resources already expended to promulgate a rule. If the rule is so bad, a court can overturn it under current law. There is no need to reach back and waste Government resources. The Dole-Johnston immediate effective date for all other rules simply adds to this bad picture. Challenges will flood the courts the very next day to go after rules developed under current law—current until the day Dole-Johnston S. 343 is enacted.

During our debate last week, proponents of the S. 343 substitute argued that because the Glenn-Chafee substitute does not have a broad exemption for health and safety rules, it is more restrictive than Dole-Johnston in its effect on pending rules. This argument is based on a misunderstanding of our bill.

We apply our reform legislation to rules that are proposed 6 months after enactment. This delay gives agencies a reasonable amount of time to develop new procedures, bring new regulatory proposals up to the new standards before they are published as proposed rules. Again, Dole-Johnston applies all requirements immediately.

Once promulgated and coming under Glenn-Chafee, rules will face analytic requirements that are tough, but they are also fair and they are not unreasonable. Remember, we do not have the least-cost alternative. We do not have the least-cost alternative test or the minimal impact reg flex test of Dole-Johnston. We are not afraid to have important rules go through our process. They will face a tough test. But if they are needed, the rules will survive.

What they will not face are the challenges that rules under Dole-Johnston would face such as the new APA challenges that would be created for rulemaking procedures and substantial evidence requirements.

The basic question is whether we want government to work better for the American people or whether we want to impose new requirements in order to frustrate decisions, create more delay, waste resources, introduce uncertainty, and open up new avenues for litigation.

I believe that implementation of the Glenn-Chafee substitutes will improve decisionmaking and will reduce burdens on the American public.

The Dole-Johnston substitute, on the other hand, will create problems, cost money—we do not know how much yet—and harm the public interest.

In conclusion, I want to state again, I want regulatory reform. We have worked on this in the Governmental Affairs Committee for the last several years. It is not something that came up just recently.

I believe that S. 343 does not provide the balanced regulatory reform we should have. I believe the Glenn-Chafee S. 1001, the substitute that we are proposing today, does that job.

In the coming hours of debate, we will focus more closely on these two alternatives. I welcome suggestions for improvement to our bill. I am sure there are details that can be revised. I am also sure our bill provides a better approach. I urge our colleagues to support our substitute.

Mr. President, I reiterate, once again, these areas: The Glenn-Chafee substitute focuses on truly major rules. Glenn-Chafee substitute requires cost-benefit analysis for all major rules. It does not take the least-cost approach that the Dole-Johnston bill does.

The Glenn-Chafee substitute provides for review of current rule but with no automatic sunset. If we run out to a time period and the agency has not taken adequate action in the prescribed time period, then they must issue a notice of proposed rulemaking to repeal the rule. In other words, either approve it or put the forces in motion to repeal it, but allowing public comments on the rule.

Also, the Glenn-Chafee substitute is not a lawyer's dream. We allow for judicial review of the determination of a major rule and whether the final rule is arbitrary and capricious in light of the whole rulemaking file.

The Dole-Johnston bill provides procedures, petition, multitudinous places where suits can be filed to stop even the best of legislation.

Also, the Glenn-Chafee substitute does not create brand-new petitions by private persons that will eat up agency resources and let special interests—not the agency or Congress—guide priorities.

Lastly, Glenn-Chafee substitute has no special interest provision. We did not put a section in here that deals with things like the Delaney clause or toxic release inventory or things like that, that have a special interest to a special few.

For all the reasons given this morning, Mr. President, I urge support of the Glenn-Chafee substitute which was laid down Friday evening before we left. I yield the floor.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, the lines in this debate are becoming very, very clear. If you are for risk assessment, if you are for regulatory reform, you should be for the Dole-Johnston bill which is pending. If you are against that reform, you should be for the Glenn-Chafee substitute because, Mr. President, the Glenn-Chafee substitute is sham reform. Make no mistake about it, it is totally consensual. There are no requirements to it. If the agency head wants to do it, it will be done.

We are told that this is an outgrowth of the Roth bill which came out of committee unanimously, with both Democrats and Republicans supporting it, and so it did. And it had some teeth in it. All of those teeth have now been removed, so now it is totally consensual.

We do not need a bill for consensual reform. We now have that. That is the problem. Right now there is a risk assessment rulemaking which applies to Federal agencies, but it is consensual and they do not do it—and that is the problem. We have been told there are all these lists of these rules, the top 10 list we have been talking about here on the floor, and that some of those were not Federal rules, they were State rules or whatever. But what really is the problem? The problem is that Federal agencies today are not doing the risk assessment, are not doing the cost-benefit analysis, are not using good science, and their regulations are a disaster.

Who says so? EPA says so. In their own studies they have determined that the risks which they have rules against are risks perceived by the public rather than real risks. So anyone who says there is no problem with rulemaking, let them go on like they are doing, let them be consensual; we can trust these bureaucrats, they have done a great job—those who say that are not reading EPA's own documents.

I say this is a consensual bill. It has no teeth. What is the basis of saying that? If you look at section 625 of the Glenn-Chafee substitute, it says that the agency head picks the rules to be reviewed ''in the sole discretion of the head of the agency.'' Let me repeat that. According to the Glenn-Chafee substitute, the only rules to be reviewed are those which the agency head picks at the sole discretion of the agency head.

If there was any chance of any court reversing that discretion, that also is totally removed by section 625, which says on judicial review that ''judicial

review of agency action taken pursuant to the requirements of this section shall be limited to review of compliance or noncompliance with the requirements of this section.''

What does that mean? It means when you judicially review, you look at that phrase ''sole discretion of the head of the agency,'' and it disappears. There is no judicial review. There is sole discretion of the agency. There is nothing enforceable. So if Carol Browner, the head of the EPA, decides she wants to review a rule she can do so. And if she does not want to, guess what, Mr. President? Nobody can force her to do that. She can do that today. She can do that today. So why do we have all these pages of bills if we are going to adopt the Glenn-Chafee substitute? What is the point of all that, if it is all going to be consensual? If we think these bureaucrats are doing a great job?

How about new rules? First of all, let me compare that with the Roth bill. Under the original Roth bill, which came out unanimously, all rules had to be reviewed by every agency head, every single rule had to be reviewed—every single major rule, $100 million, had to be reviewed. And at the end of 10 years they were sunsetted, boom, unless they were continued or modified, which, in turn, would have been a major Federal action or final agency action subject to judicial review.

So under the original Roth bill, it had sharp teeth. In fact, I think its teeth were maybe even a little too sharp because they had to review all the rules. But the fact of the matter is, all those rules were there to be reviewed and they were there, there was judicial review of the agency action.

So if you were an aggrieved party and there was one of these bad rules, either it was sunsetted or you had your right to come in and have your say. Under the Glenn-Chafee bill, all of those rules out there, which again EPA, in its own documents, says do not realistically reflect risk—some of them imposing hundreds of millions of dollars, hundreds of billions of dollars in some instances, costs on the taxpayers and on citizens—you cannot get to them. You have no right to be heard. You have no ability to review those rules.

Oh, you can call it special interest. You can say special interests should not be able to come in and be heard on these rules. I can tell you who pays for those rules. It is the American taxpayer. It is the American citizen who pays for those rules.

How about the new rules under the Glenn-Chafee amendment? We have a new provision here that says you do not have to do a cost-benefit analysis if a cost-benefit analysis is ''expressly or implicitly inconsistent with the statute''—''expressly or implicitly inconsistent with the statute.''

And do not forget the agency head is able to interpret the statute and that judgment is reversed only if it is arbitrary and capricious. So a new rule comes along and the head of the agency says, ''I think this is not expressly inconsistent.'' There is nothing in this new statute that comes along that says you should not do a cost-benefit analysis. There is nothing here that prohibits it. There is no language on it. But I, agency head, think it is implicitly inconsistent with the statute.

If there was ever a subjective rule, beauty in the eye of the beholder, unfettered discretion in an agency head, it is found in this word ''implicitly'' inconsistent. Implicitly inconsistent—Mr. President, it is a hole wide enough to drive three M–1 tanks side by side through and never touch the sides. It does not pass the straight-face test. Really, ''implicitly inconsistent''? If that is not enough, they have taken out the rule about the benefits justifying the costs.

I have told my colleagues, when we initially came up almost 2 years ago with the first risk assessment amendment—which passed overwhelmingly here in the Senate—of the example of the carbon 14 rule which EPA came up with which set these limits at 0.063 of the amount of carbon 14 contained in the body naturally, and they set that limit at that amount. Yet, it was going to cost $2.3 billion to comply with the rule.

If there was ever an example of something that needed to be done—I mean you needed—they did not know what it was going to cost, and it was clearly not a risk. In other words, this was over 6,000 times the risk of dancing with your wife than was allowed in this carbon 14 provision. But it was going to cost $2.3 billion to comply with it.

Why should you not have that kind of information? Why should not that be there? Under this new language you do not have to certify that the benefits justify the cost. All you have to do is indicate whether the benefits justify the costs.

In other words, rather than a rigorous test that says the benefits ought to justify the cost, all you have to do is sort of give the information whether it is or whether it is not. It does not matter in the bill.

So, Mr. President, we have consensual legislation that does not make any requirements on anybody to do anything. And it is, as I say, sham reform.

Now, if you are against risk assessment, if you are against cost-benefit analysis, vote for this amendment because you can feel very confident that you are not going to change anything in the Federal Government, that it is going to be business as usual, that we are going to let the bureaucrats continue to waste the money of American taxpayers and American citizens as they have in the past by the hundreds of billions of dollars.

Mr. President, there really are two bills being debated; two Dole-Johnston bills. One is the bill that is before the Senate. The other is this fictitious bill that is misdescribed, mischaracterized, factually misquoted. And let me tell you what I mean.

My friend from Ohio, Senator GLENN, just said that the Dole-Johnston bill requires the cheapest solution. He went on to say you could not get an alternative that cost a little more and saves 200 lives. He just said that, Mr. President.

Mr. President, here is the decisional criterion. It says you adopt the ''least cost.'' Or ''if scientific, technical, or economic uncertainties are nonquantifiable benefits to health, safety, or the environment, identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head * * *'' explains that, then you may adopt the ''more costly alternative.''

What are ''nonquantifiable benefits to health, safety, or the environment?'' Mr. President, the value of 200 lives is first of all a benefit defined as a benefit in the bill.

Second, it explicitly states that you can have a more costly alternative; not only that, but ''scientific, technical, or economic uncertainties'' because the science is frequently uncertain.

Mr. President, it escapes me how people can continue to say that we require the ''least cost alternative'' when the plain language of the bill states otherwise. I mean, why can people not understand the English language? Why can they not understand this, Mr. President? It is clear. And we have continually stated what that English language is.

The fact of the matter is that the agency head under this has enormous discretion. And the agency head ought to have enormous discretion. But it requires this rigorous analysis so that if there is uncertain science the agency head has to make an explanation of those considerations. And if it is nonquantifiable benefits to health, safety, or the environment, you have to make an explanation of those things. It is designed to focus the logic of the thinking of the agency process to make them focus on what it is they are trying to achieve because in the past that has not been done. We do not know. With that carbon 14 regulation, we just did not know what the thinking was because they had ignored their own scientists, did not know what it was going to cost, and trotted out the regulation without any idea of what they were doing.

Mr. President, let me turn to judicial review. The judicial review provisions of the Roth amendment have changed at least twice since Senator Roth reported that legislation. It was changed again this morning.

Mr. President, the fact of the matter is that the Glenn-Chafee substitute has the faults which they accuse the Dole-Johnston bill of having—which we do not have and which they do have. May I explain?

First of all, let me say what the problem is here. What we wanted to achieve all along was to have a review of the final agency action; that is, in most cases that will be the major rule. We wanted that to be approved, to be tested according to the standard of whether or not it is arbitrary and capricious or an abuse of discretion. Those are the old standards in the Administrative Procedure Act. We wanted those standards to govern the final agency action. We did not want the cost-benefit analysis, or the risk assessment provisions to be independently reviewed so as to test them for the procedures, for the adequacy of the procedures.

The reason we wanted the risk assessment and the cost-benefit analysis to be made part of the record is because only by making them part of the record and considering that can you understand whether the final agency action is arbitrary and capricious. In effect, it would be a rule of common sense.

Let me tell my colleagues how it might work on three rules which may come up in the future. They are not proposed now. But it will give you a good indication of what is at stake here.

One possible rule is electromagnetic fields, so-called EMF. EMF regulations could cost literally hundreds of billions of dollars because it could require the relocation of electric lines, high power tension lines all over this country. We have ongoing studies now, scientific studies, as to whether or not EMF causes cancer, and if so, at what levels, and to what extent. I might tell my colleagues that we do that under the Energy Committee. We have been funding those studies. I do not want to prejudge all of them. But the preliminary studies indicate that the level at which people receive EMF does not cause cancer. But again, that will await bringing in all of the science.

Let us suppose you have an EMF rule here, and let us suppose that the scientists that they pick for peer review violates section 627 on conflict of interest. Let us say, for example, that all of the scientists, if it is EPA who is doing the rule, are from the electric power industry. They come up with a rule that says no problem; it does not cause cancer.

Why, Mr. President, in that kind of situation, with the importance of that rule, the huge amount of expense involved, the centrality of the question of science, then I believe, if I were in the Court—and that is the record we had under this language—I would reverse it and send it back and say you have to get this science right, because the science is very important. On the other hand, if you had a rule where the science is fairly well understood and is not central to the issue, I think you could leave out a risk assessment altogether, and the final agency action might not be arbitrary and capricious.

The point is that the risk assessment might or might not, depending on the circumstances, be grounds for reversal.

Let us take another one: radon. We have had various radon legislation and some rules up on radon. Radon could be very expensive as well. And the scientific judgments there are very well known. We know radon causes cancer, but at what levels does it cause cancer, and in what sections of the country is it a risk, and what efforts ought to be made to deal with radon.

If you picked scientists who are, say, with the home building industry and are not impartial, I can imagine a reversal on that ground. If you did not have a cost-benefit analysis on something like radon, which could cost a huge amount of money, I can imagine a reversal on that ground.

Or suppose we have a regulation on second-hand tobacco smoke, to name one of our biggest areas now. Suppose you had a regulation on that, and all the scientists came from the tobacco companies. You mean to tell me you could not reverse on that ground? Because the science is so critical to that particular issue. On the other hand, if you were going to be setting a hunting season—I think, by the way, hunting seasons have been expressly exempted. In earlier versions of the act, they were not. But I can imagine that you might leave out the cost-benefit analysis altogether in setting a hunting season, and it would not affect the final agency action. So it is a rule of reason, and under this language:

> Failure to comply with this subchapter—

This subchapter, of course, deals with risk assessment and cost-benefit analysis.

> and subchapter III may be considered by the Court solely—

s-o-l-e-l-y, which means solely.

> for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion.

Mr. President, we are continually told by the opponents of risk assessment that ''solely'' does not mean solely. ''Solely'' means something else. ''Solely'' means solely part of the time and means something else some other part of the time.

Mr. President, it is as clear as the noonday Sun on a cloudless day that ''solely'' means solely and only for the purpose of determining whether that final agency action is arbitrary and capricious, which is exactly what we want to achieve.

Now, Mr. President, let us look at this new iteration of the Glenn-Chafee judicial review language. It says:

> When an action for judicial review of an agency action is instituted—

In other words, when you get to appeal.

> any analysis or assessment of such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action.

''For the purpose of judicial review of the agency action.''

Now, what is the guiding rule of review of agency action? Under the Administrative Procedure Act, particularly section 706 of the Administrative Procedure Act, it provides for review of all agency action—all final agency action.

So I assume that section 706 is the guiding rule for appellate review. I tell my friend from Ohio that I am going to ask him some questions about it if he is willing to answer when I finish these remarks because I would like to know what in his opinion the standard of that review is.

When you say, ''judicial review of the agency action,'' what is the standard? Now, if it is section 706, section 706 has two pertinent provisions. One is the same standard we have here, that is, arbitrary and capricious or an abuse of discretion. But it also has subsection (d) that says ''without observance of procedure required by law.''

Now, if I am correct that it is section 706 under which this is reviewed, then under the Glenn-Chafee amendment by that last phrase you can review both the arbitrary and capricious nature of the final agency action, the abuse of discretion of the final agency action, and you can review with the phrase ''without observance of procedure required by law.''

Now, there is another provision, though, of the Glenn-Chafee judicial review provision upon which they rely which says this:

> If an analysis or assessment has been performed, the Court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.

Now, the operative phrase here, Mr. President, is ''particular.'' One of the oldest rules of statutory construction is that when two provisions are in pari materia; that is, when they are on the same subject and particularly when they are in the same section, you read those two together so as to give life to both of them, so that you do not nullify one at the expense of the other.

Now, I will tell you what this means to me. ''Shall not review to determine whether the analysis or the assessment conformed to the particular requirements of this chapter.'' The word ''particular'' must have some meaning, and I believe that meaning is to institute a de minimis test; that is to say, you do not reverse for procedural errors of small degree, but you may reduce for procedural errors of greater degree.

If that is the not the meaning, then what is the meaning of the word ''particular''? They could have said conform to the requirements of this subchapter as opposed to the particular requirements of this subchapter. And if, Mr. President, I am wrong on that, then you still have a review under the other provisions of section 706, which leads you to the same conclusion we have here.

So either the Glenn-Chafee amendment goes beyond what our amendment goes to by at least implicitly allowing a procedural review, or it at

least provides for a review of the final agency action and to the same extent that ours does.

So now, Mr. President, if the distinguished Senator from Ohio would yield for a few questions, if I may ask him, when you say ''purpose of judicial review of the agency action,'' by what rule is that? Is that not under section 706 of the APA and, if not, then under what standard?

Mr. GLENN. I think we are referring to—you are talking about section 706?

Mr. JOHNSTON. In your amendment, this is section 623(e), providing for judicial review, the last sentence of which says, ''When an action for judicial review of an agency action is instituted, any analysis or assessment for such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action.''

My question is, Is that review not under section 706 of the Administrative Procedure Act, and if that is not the applicable section, what is the applicable section?

(Mr. KYL assumed the Chair.)

Mr. GLENN. I reply to my colleague from Louisiana, we maintain the current status under the APA, the standard being arbitrary and capricious, which has been the case for a long time.

Mr. JOHNSTON. That is section 706.

Mr. GLENN. Section 706. It is my understanding, under Dole-Johnston, it expands 706 for scope of review. It allows a court to set aside an agency action if findings are ''without substantial support.'' That is a new and higher standard of review than APA has acknowledged in the past.

Mr. JOHNSTON. That is a different section. For the purpose of compliance with this subchapter, subchapter II, and subchapter III, that is risk assessment and cost-benefit analysis, that review shall be solely on the basis of what is arbitrary and capricious or an abuse of discretion.

Mr. GLENN. Then we disagree on the meaning of——

Mr. JOHNSTON. ''Solely''?

Mr. GLENN. Arbitrary and capricious.

Mr. JOHNSTON. That language is excerpted—it is the same standard that you have. That is section 706.

Mr. GLENN. No, it is my understanding Dole-Johnston goes beyond that and establishes ''without substantial support'' as a new and higher standard of review, where we stick with the Administrative Procedure Act that has been in effect, acknowledged under law, a whole body of law developed under that, and we stick with that so there can be no misunderstanding of it. Dole-Johnston goes well beyond that and establishes a whole new procedure.

Mr. JOHNSTON. I say to my friend, that is a different question. That is a different section. We are talking about the review of cost-benefit analysis and risk assessment which, under our language, specifically states that it is solely for the purpose of determining whether the final agency action is arbitrary and capricious.

My question to you is, under your language which says—you allow risk assessments—''analysis or assessment shall constitute part of the whole administrative record for the purpose of judicial review of the agency action,'' is that review not under section 706?

Mr. GLENN. The difference here being, what we provide is that final review, just before the rule or reg would go into effect, then it would be challengeable in the court. There would be judicial review at that point. They could consider everything that has happened up to that point. It would not be judicially reviewable at all the multitudinous steps along the way that would still be permitted under Dole-Johnston.

Mr. JOHNSTON. I do not even know what you are talking about, multitudinous. Name one place.

Mr. GLENN. I will get the detail on that a little later on today.

Mr. JOHNSTON. I suggest to my friend from Ohio that there is only one review, explicitly only one review, under our proposal, and that is final agency action.

Mr. GLENN. Will the Senator yield so I can read some of the areas——

Mr. JOHNSTON. I want to clear this up, because we say specifically that there is—all right, let me read this, from section 625 of Dole-Johnston:

> Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall be subject to judicial review only in accordance with this section.
>
> (b) except as provided in subsection (e) and subject to subchapter II each court with jurisdiction under a statute to review final agency action to which this title applies has jurisdiction to review any claims of noncompliance with this subchapter and subchapter III. . . .

And then next:

> Except as provided in subsection (e), no claims of noncompliance with this chapter or subchapter III shall be reviewed separate or apart from judicial review of the final agency action to which they relate.

And then we state here that that is a review of final agency action.

It is as clear as it can be. Now tell me where else you were going to be able to review this? It says ''compliance or noncompliance shall be subject to judicial review only in accordance with this section,'' and there is the section. It is final agency action. Now is that not clear, I ask my friend?

Mr. GLENN. No, I do not think it is. EPA has given a list of things where they feel this could be challenged, where litigation could come out of this. I was asked a moment ago, I believe the gist of it was, what possible litigation could come out of this?

Mr. JOHNSTON. Right.

Mr. GLENN. We have here—I do not know whether it is necessary to read all of these or not—but there are 144 items that could be litigated under S. 343 as counsel to EPA interprets this. Let me go through some of these.

No. 1: Did the agency sufficiently explain the need for and objectives of a rule?

No. 2——

Mr. JOHNSTON. On that first one——

Mr. GLENN. Is the Senator going to let me read these?

Mr. JOHNSTON. Not 144.

Mr. GLENN. I am not the counsel for EPA. I am saying this is their interpretation of exactly what you are referring to here.

Mr. JOHNSTON. But you said you would have a separate review, even under what counsel for EPA says, that would come only at the final review and solely for the purpose of determining whether or not the final agency action was arbitrary and capricious; is that not correct? It is clear.

Mr. GLENN. We stick with the arbitrary-and-capricious rule. We do not expand that as Dole-Johnston does.

Mr. JOHNSTON. There is the standard right there. It is plain English. It is as plain as it can be. It is ''arbitrary and capricious or abuse of discretion,'' that is the sole and only basis for review of the cost-benefit analysis or of the risk assessment. That is it. Look, read the language.

Mr. GLENN. I say to my friend from Louisiana, there is a difference of opinion here on what is meant by the language. I know we have had a number of discussions back and forth, and with the Senator from Louisiana and Senator LEVIN on the Senate floor.

The interpretation counsel at EPA is giving on this is the one I was about to read, and there are 144 different questions where they feel litigation can come up under this.

Mr. JOHNSTON. Those may be requirements of risk assessment or cost-benefit analysis which, to the extent they are relevant, can be used to challenge the final agency action. Maybe so. But those are only arguments you make. The first one there is notice. Do you really think you are going to throw out a final agency action as being arbitrary and capricious because they did not give notice?

Mr. GLENN. This was not notice. I read this. ''Did agencies sufficiently explain the need for and objectives of a rule?''

They feel, under S. 343, this language under your proposal could be challenged in litigation.

Mr. JOHNSTON. You can challenge anything.

Mr. GLENN. No, not under Glenn-Chafee, you cannot challenge anything. We have the final rule that can be challengeable, or whether it is a major rule or not. We specify that.

Mr. JOHNSTON. If you ever got a cost-benefit analysis done under Glenn-Chafee, all that is consensual. If you want to do it, if you feel like it, if it feels good, do it. Otherwise, do not do it because you do not have to. It is business as usual. Am I not right that it is all consensual on the lookback process under Glenn-Chafee; is that correct?

Mr. GLENN. No, that is not correct. I will tell you the difference. What we provided in both pieces of legislation is the right for Congress to get in the act and review anything that we want to that could come back to Congress. So if there is any question about it, it comes back to Congress. That is provided in both pieces of legislation.

Mr. JOHNSTON. Oh, well, sure. Congress can always pass a law. The Constitution provides that. This bill does not provide that. But save Congress enacting a law, it is consensual, is it not?

Mr. GLENN. I say to my friend that we provide specifically for a procedure for any rule to come back to Congress for further consideration. And in both bills, we give a time period that is required for Congress to review whatever it is that was brought back. One is 60 days, the other is 45 days—not a huge difference. So it seems to me that protects whatever may be required or whatever may come up over there, as far as whether something has had adequate review or not before it was put into a rule.

Mr. JOHNSTON. Well, let us say that the director of EPA or another agency looks back and says, ''We have done a heck of a good job, we have great bureaucrats in this agency, and we do not think anything needs to be reviewed.'' So the slate is clean, it is a tabula rasa, it is a devoid of any rules to be reviewed. I am an aggrieved party and what is my remedy? To come to Congress and ask them to pass an act? That is it, is it not?

Mr. GLENN. I will reply. The standard of review is arbitrary and capricious under Dole-Johnston, but that issue itself is what can be reviewed. Now, these 144 items here—

I ask unanimous consent that these 144 items be printed in the RECORD.

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

ONE HUNDRED FORTY-FOUR ITEMS TO LITIGATE UNDER S. 343 (VERSION 783)

1. Did agency sufficiently explain the need for and objectives of a rule?
2. Did agency identify and sufficiently discuss all significant legal and factual issues presented by a rule?
3. Did agency identify and adequately describe all reasonable alternatives to a rule?
4. Did agency adequately explain why all reasonable alternatives to rule were rejected?
5. Did agency sufficiently explain whether a rule is expressly required by the text of a statute?
6. Did agency identify and sufficiently explain all the statutory interpretations upon which a rule is based?
7. Did agency identify all alternative statutory interpretations and sufficiently explain why all such alternatives were rejected?
8. Did agency identify each factual conclusion upon which a rule is based and adequately explain how each such conclusion is substantially supported in the rulemaking file?
9. Did agency respond to rulemaking petition under § 553(1) within 18 months?
10. Did agency appropriately deny a rulemaking petition under § 553(1)?
11. Does a rule cost more than $50 million?
12. Is rule closely related to other rules that aggregate into major rule?
13. Did initial cost-benefit analysis contain a sufficient description of the benefits of a proposed rule?
14. Did initial cost-benefit analysis include a sufficient description of how the benefits would be achieved?
15. Did initial cost-benefit analysis contain a sufficient description of the persons or classes of persons likely to receive such benefits?
16. Did initial cost-benefit analysis contain a sufficient description of the costs of a proposed rule?
17. Did initial cost-benefit analysis include a sufficient description of how the costs would result from the rule?
18. Did initial cost-benefit analysis contain a sufficient description of the persons or classes of persons likely to bear such costs?
19. Did initial cost-benefit analysis adequately identify alternatives that require no government action?
20. Did initial cost-benefit analysis adequately assess costs/benefits of no-action alternatives?
21. Did initial cost-benefit analysis adequately identify alternatives that accommodate differences among geographic regions?
22. Did initial cost-benefit analysis adequately assess costs/benefits of geographic alternatives?
23. Did initial cost-benefit analysis adequately identify alternatives that accommodate different compliance resources?
24. Did initial cost-benefit analysis adequately assess costs/benefits of different compliance resource alternatives?
25. Did initial cost-benefit analysis adequately identify performance-based, market-based alternatives, or other flexible alternatives?
26. Did initial cost-benefit analysis adequately assess costs/benefits of performance-based, market-based, or flexible alternatives?
27. Did initial cost-benefit analysis adequately assess costs-benefits of all other reasonable alternatives?
28. Did agency in proposed rule adequately verify quality, reliability, and relevance of science?
29. Did final cost-benefit analysis contain a sufficient description of the benefits of a proposed rule?
30. Did final cost-benefit analysis include a sufficient description of how the benefits would be achieved?
31. Did final cost-benefit analysis contain a sufficient description of the persons or classes of persons likely to receive such benefits?
32. Did final cost-benefit analysis contain a sufficient description of the costs of a proposed rule?
33. Did final cost-benefit analysis include a sufficient description of how the costs would result from the rule?
34. Did final cost-benefit analysis contain a sufficient description of the persons or classes of persons likely to bear such costs?
35. Did final cost-benefit analysis adequately assess costs/benefits of performance-based, market-based, or flexible alternatives?
36. Did final cost-benefit analysis adequately assess costs/benefits of all other alternatives?
37. Did agency adequately consider benefits and costs incurred by all affected persons or classes of persons, including specially affected subgroups?
38. Did agency adequately determine whether benefits of rule justify costs?
39. Did agency adequately determine whether the rule employs flexible alternatives to the extent practicable?
40. Did agency adequately determine whether rule adopts the least cost alternative of the reasonable alternatives?
41. Did agency correctly identify and sufficiently describe scientific, technical, or economic uncertainties or nonquantifiable benefits that make a more costly alternative appropriate and in the public interest?
42. Did agency sufficiently describe why such alternatives are appropriate and in the public interest?
43. Did agency sufficiently explain why any such alternative is the least cost alternative of the reasonable alternatives necessary to take into account uncertainties or nonquantifiable benefits?
44. Did agency correctly determine that rule is likely to significantly reduce risks addressed?
45. If uncertainties preclude such a finding, did agency adequately justify the issuance of the rule?
46. Did agency correctly determine that a rule could not satisfy the cost-benefit decisional criterion applying the statutory requirements upon which the rule is based?
47. Did agency quantify costs and benefits to extent feasible?
48. Did quantification adequately specify ranges of predictions?
49. Did quantification adequately explain margins of error?
50. Did quantification adequately address the uncertainties and variabilities in the estimates used?
51. Did agency adequately describe nature and extent of nonquantifiable costs and benefits?
52. Did agency clearly articulate relationship of benefits to costs?
53. Is understanding of industry-by-industry effects of central importance to a rulemaking?
54. If so, were costs and benefits broken down appropriately on industry-by-industry basis?
55. Did agency correctly determine that conducting a cost-benefit analysis would have been impracticable due to an emergency or threat likely to result in significant harm to the public or natural resources?
56. In developing a preliminary schedule for regulatory review, did the agency appropriately consider whether a rule is unnecessary and may be repealed?
57. In developing a preliminary schedule for regulatory review, did the agency appropriately consider whether a rule would meet the decisional criteria of § 624?
58. In developing a preliminary schedule for regulatory review, did the agency appropriately consider whether the rule could be amended to substantially decrease costs, increase benefits, or provide greater flexibility for regulatory entities?
59. In developing a final schedule for regulatory review, did the agency appropriately consider whether a rule is unnecessary and may be repealed?
60. In developing a final schedule for regulatory review, did the agency appropriately consider whether a rule would meet the decisional criteria of § 624?
61. In developing a final schedule for regulatory review, did the agency appropriately consider whether the rule could be amended to substantially decrease costs, increase benefits, or provide greater flexibility for regulated entities?
62. In developing a final schedule for regulatory review, did the agency appropriately consider the importance of each rule relative to other rules being reviewed under the section?
63. In developing a final schedule for regulatory review, did the agency appropriately consider the resources expected to be available to the agency for the review?

64. Did petition establish substantial likelihood that future impact of rule would be equivalent of major rule?

65. Did petition on its face establish substantial likelihood that head of agency would not be able to make the findings required by § 624?

66. Did agency correctly conclude that petition did not show substantial likelihood that guidance would have effect of a major rule?

67. Did agency correctly conclude that petition did not show substantial likelihood that agency would not be able to find that guidance document meets criteria of § 624?

68. Did agency complete rulemaking within two years of determination to amend a rule pursuant to § 623?

69. Did agency develop adequate regulatory flexibility analysis?

70. Is a cleanup a ''major environmental activity'' (will it exceed $10 million in costs, expenses, and damages)?

71. Did agency correctly conclude that construction had commenced on a significant portion of the cleanup activity?

72. Did the agency correctly conclude that it would have been more cost-effective to complete cleanup construction than perform a cost-benefit analysis and risk assessment?

73. Did agency correctly conclude that cleanup delays associated with development of cost-benefit analysis and risk assessment would have resulted in actual and immediate risk to human health or welfare?

74. Did agency prepare risk assessment for major environmental management activity in accordance with risk assessment provisions of S. 343?

75. Did agency prepare appropriate cost-benefit analysis for major environmental management activity in accordance with cost-benefit provisions of S. 343?

76. Did agency appropriately identify the reasonably anticipated probable future use of land and its surroundings affected by a major environmental management activity?

77. Did agency appropriately incorporate such reasonably anticipated probable future use of land and its surroundings in conducting a cost-benefit analysis of a major environmental management activity?

78. Did agency appropriately incorporate such reasonably anticipated probable future use of land and its surroundings in conducting a risk assessment of a major environmental management activity?

79. For actions pending or proposed within one year of enactment of bill, did agency use an appropriate alternative analysis to assess the costs and benefits and risks associated with a major environmental management activity?

80. Did agency adequately determine whether benefits of major environmental management activity justify costs?

81. Did agency adequately determine whether the activity employs flexible alternatives to the extent practicable?

82. Did agency adequately determine whether the activity adopts the least cost alternative of the reasonable alternatives?

83. Did agency correctly identify and sufficiently describe scientific, technical, or economic uncertainties or nonquantifiable benefits that make a more costly alternative cleanup activity appropriate and in the public interest?

84. Did agency sufficiently describe why such alternatives are appropriate and in the public interest?

85. Did agency sufficiently explain why any such alternative is the least cost alternative of the reasonable alternatives necessary to take into account uncertainties or nonquantifiable benefits?

86. Did agency correctly determine that cleanup activity is likely to significantly reduce risks addressed?

87. If uncertainties preclude such a finding, did agency adequately justify the cleanup activity?

88. Did agency correctly determine that a cleanup activity could not satisfy the cost-benefit decisional criterion applying the statutory requirements upon which the activity is based?

89. Did the agency correctly conclude that a risk assessment would not likely have an effect on the U.S. economy equivalent greater than $50 million/year?

90. Did the agency correctly conclude that a risk assessment for the issuance or modification of a permit meets the requirements of § 633.

91. Did the agency correctly conclude that conducting a risk assessment would have been impracticable due to an emergency or health and safety threat likely to result in significant harm to the public or natural resources?

92. Is risk assessment related to rule authorizing a product's introduction into commerce?

93. Is risk assessment an exempt screening analysis?

94. Is screening analysis used as the basis for imposing restriction on previously authorized any activities?

95. Is screening analysis used to as the basis for a formal determination of significant risk from a substance or activity?

96. Does agency conduct risk assessments in manner that promotes informed public input into decision-making process?

97. Does the agency maintain appropriate distinction between risk assessment and risk management?

98. Did agency apply appropriate level of detail and rigor to risk assessment?

99. Did agency develop an appropriate iterative process for risk assessments?

100. Did agency correctly determine that additional data would significantly change the estimate of risk and the resulting agency action?

101. Is risk assessment based on best reasonably available scientific data and understanding?

102. Did agency appropriately analyze the quality and relevance of data used in risk assessment?

103. Did agency appropriately describe the analysis of the quality and relevance of the data used?

104. Did agency appropriately consider whether data were appropriately peer-reviewed or developed in accordance with good laboratory practices?

105. Does risk assessment adequately discuss conflicts among scientific data?

106. Does risk assessment include adequate discussion of likelihood of alternative interpretations of data?

107. Does risk assessment appropriately emphasize postulates representing the most reasonable inferences from supporting scientific data?

108. Does risk assessment appropriately emphasize data indicating greatest scientific basis of support for resulting harm to affected individuals?

109. Does agency appropriately assess whether foreign determinations of health effects values should be utilized in agency decisions?

110. Does risk assessment use site-specific information to maximum extent practicable?

111. Does risk assessment inappropriately rely on policy judgments or default assumptions?

112. Does risk assessment appropriately identify policy judgments used?

113. Does risk assessment appropriately describe scientific or policy judgments used?

114. Does risk assessment adequately explain the extent policy judgments have been validated by data?

115. Does risk assessment adequately explain the basis for choosing particular policy judgments?

116. Does risk assessment adequately identify and explain all reasonable alternative policy judgments that were not selected by agency for use in risk assessment?

117. Does risk assessment adequately explain sensitivity of conclusions to such alternative policy judgments?

118. Does risk assessment adequately explain rationale for not using such alternative policy judgments?

119. Does risk assessment inappropriately combine or compound multiple policy judgments?

120. Does risk characterization appropriately describe hazard of concern?

121. Does risk characterization appropriately describe populations or natural resources at risk?

122. Does risk characterization appropriately explain the exposure scenarios used in risk assessment?

123. Does risk characterization appropriately estimate population at risk?

124. Does risk characterization appropriately describe likelihood of different exposure scenarios?

125. Does risk characterization appropriately describe the nature and severity of harm that could plausibly occur?

126. Does risk characterization appropriately identify major uncertainties in each component of risk assessment?

127. Does risk characterization appropriately address the influence of each uncertainty on the results of the risk assessment?

128. Does risk assessment conclusion appropriately express overall estimate of risk as a range of probability distribution reflecting variabilities, uncertainties, and data gaps in analysis?

129. Does conclusion appropriately provide range and distribution of risks and corresponding exposure scenarios?

130. Does conclusion appropriately identify reasonably expected risk to general population?

131. Does conclusion appropriately identify risk to more highly exposed or sensitive subpopulations?

132. Does conclusion appropriately describe qualitative factors influencing range of possible risks?

133. Do scientific data and understanding permit relevant comparisons of risk?

134. If so, did agency appropriately place nature and magnitude of risks to human health, safety, and the environment in context?

135. Did agency appropriately describe substitution risks?

136. In reviewing petition for review of free-standing risk assessment, did agency correctly conclude that risk assessment or entry was consistent with risk assessment and characterization principles in S. 343?

137. In reviewing petition for review of risk assessment, did agency correctly conclude that risk assessment does not fail to take into account material new scientific information?

138. In reviewing petition for review of risk assessment, did agency correctly conclude that risk assessment would not have contained significantly different results if properly conducted pursuant to provisions of S. 343?

139. In reviewing petition for review of risk assessment, did agency correctly conclude that revised risk assessment would not provide basis for reevaluating an agency determination of risk that currently has an effect on the U.S. economy of $50 million/year?

140. Does consent decree imposing rulemaking obligations divest agency of disrection to respond to changing circumstances, make policy or managerial changes, or protect rights of third parties?

141. Did the agency appropriately apply a rule of reason in determining whether to add or delete a chemical from the Toxics Release Inventory?

142. In determining whether to add or delete a chemical from TRI, did the agency appropriately consider the levels of the chemical in the environment that might result from reasonably anticipated releases?

143. In an enforcement proceeding, did a defendant reasonably rely on and comply with a rule, regulation, adjudication, directive or order?

144. Was such reliance and compliance incompatible, contradictory, or otherwise irreconcilable with the rule, regulation or directive for which enforcement is sought?

Mr. GLENN. Mr. President, this is a list of 144 bases upon which a rule can be challenged using the arbitrary and capricious standard that you are talking about.

Mr. JOHNSTON. Well——

Mr. GLENN. These can still be challenged.

Mr. JOHNSTON. Let me ask my friend to answer this question: EPA does not do anything. It puts no rule up for review. What is your remedy if you are an aggrieved party, if you are outraged citizens, if you are millions of American citizens, what is your remedy? To come to Congress?

Mr. GLENN. Yes, that is the ultimate protection, Congress, where 80 percent of these things start to begin with, where the requirements are put in.

Mr. JOHNSTON. I tell my friend that the American public has come to Congress. That is what we are doing here today. That is what this is all about. EPA has reviewed its own rules and says they are not based on real risks, they are based on public perceptions of risk and we need to do something about it. Everybody says let us do something about it. And now that is where we are.

There was a 1987 study called ''Unfinished Business'' where EPA systematically ranked the seriousness of the various risks that it was addressing or could address. The report found that there was little correlation between the risk that the EPA staff judged as most threatening and EPA's program priorities. Instead, EPA found a correlation between EPA's priorities and public opinion on the seriousness of the various environmental threats. ''Overall, EPA's priorities appear more closely aligned with public opinion than with our estimated risk.''

Mr. President, these conclusions were confirmed in 1990 by EPA's Science Advisory Board, in its report entitled ''Reducing Risks.'' The report urged EPA to target its environmental protection efforts on the basis of opportunities for the greatest risk reduction.

So, Mr. President, I think we now have the picture. The Glenn-Chafee amendment allows aggrieved parties to come to Congress, and that is it. Other than trusting in the judgment—to use the words of the statute, ''the sole discretion of the head of the agency,'' that is it. You have the sole discretion of the head of the agency, and that is exactly what we have right now.

Mr. President, right now, we have the sole discretion of the head of the EPA. We have the sole discretion of OSHA and all these other places that are run amok. Listen to what EPA says about its own rules. This is not some right-wing interest group talking about how badly EPA is assessing its rules. This is EPA saying it. Its own Science Advisory Board confirmed it in 1990, and we are told, well, trust them. Let us continue to go with unfettered discretion, with ''sole discretion.'' Now, that is what Glenn-Chafee says—''sole discretion.''

Now, Mr. President, we have been on the floor for 6 days. This is the 6th day on this legislation, the 6th straight day going through all of these provisions and arguing about these provisions and all that. And we are told, well, leave it to the sole discretion of the agency head. And then, as for new rules, if it is implicitly—whatever that means, and I think it means whatever in the sole discretion of the agency head they want it to mean—you do not have to do for a new rule the cost-benefit analysis. By the way, you do not even have to justify the cost—that benefits justify the cost.

Mr. GLENN. If the Senator will yield, the Senator defends the petition process in the Dole-Johnston bill. On March 14, the Senator from Louisiana responded to a letter that Senators LEVIN, LIEBERMAN, and I had sent to him asking his opinion on these, because he has had a lot of experience in these areas. We asked him to comment on S. 291 and S. 343. He sent us back a very thoughtful and well-reasoned-out letter response of his views at that time. I say that within that letter—and I will not read the whole letter because it was rather lengthy—but in talking about the petition process, the Senator from Louisiana stated the following:

To help set priorities for the review, I prefer some sort of advisory committee to assist the agency head. I am very skeptical of the petition process, which is likely to skew the priorities, and I am strongly opposed to any judicial review of actions taken under a lookback provision.

It seems to me that is pretty clear as to what the thinking was in March. Further on down in another paragraph, it says:

The Dole bill, however, allows any person to petition for a cost-benefit analysis of an existing regulation. If the analysis shows that the regulation does not satisfy the decisional criteria of the bill (that is, that the benefits of the regulation outweigh the cost) the agency must either revoke the regulation or amend it to conform to the decisional criteria. Denial of the petition by an agency head is subject to judicial review.

Needless to say, I strongly disagree with this approach. Unless I am reading something wrong, the Senator from Louisiana is stating one thing in March and a different thing on the floor here today.

Mr. JOHNSTON. Mr. President, I appreciate that question.

This is the very provision that we accepted, the advice of Sally Katzen, who is head of OIRA, and other Democrats.

Frankly, I think we ought to have advisory boards. But the advisory boards were objected to by the Senator from Ohio, the Senator from Michigan, Senator LEVIN, and others, who said we should not have this advisory board, and it would clog up the thing.

I think advisory boards would be useful.

Mr. GLENN. Could the Senator tell me when he objected to that? I do not believe there was an objection to that.

Mr. JOHNSTON. I thought it was in our negotiating session. Does the Senator wish to get advisory boards back in?

Mr. GLENN. I do not know what happened in our session. There were so many things that occurred in those sessions. It would be hard to go back and recall everything that occurred.

Mr. JOHNSTON. The advisory boards, in my judgment, are useful, and I tried to sell advisory boards. I do not think they are central to the process, but if the Senator from Ohio thinks they are important, I will come back——

Mr. GLENN. I would be happy to talk about advisory boards. We might be able to get some wording here that would be proposed as an amendment here, and we would be glad to consider that if that is possible.

Mr. JOHNSTON. Under the original Dole amendment, people would be able to petition as often as they wished to. They would have an automatic judicial review of that.

Sally Katzen suggested—I think it was an excellent idea. I think the Senator carried forward some of the ideas with that, which was we have 180 days after the publication of the initial list within which to petition with a very high threshold. That is, we have to show a substantial likelihood that the existing rule does not meet the test. If you do not make the application during the 180 days, you cannot apply again for 5 years. This is only an every 5-year process.

The appeals from that are consolidated so that there is only one appeal, so that the very problems that I was talking about in my bill, that Sally Katzen was talking about in our negotiating session, were accepted on terms suggested by her.

It deals with that problem of agency overload and court overload. We did that. I think it was an ingenious suggestion that she made. We accepted it hook, line, and sinker. We said, ''Yes.'' That is the problem with this bill. It is hard to accept ''yes'' for an answer.

Mr. President, this bill, virtually everything, virtually all the major areas of opposition to this bill as suggested have been dealt with, and dealt with successfully.

Supermandate—that is, does this statute override any other underlying statutes? We, first of all, made it clear in the Dole-Johnston original bill and Senators came back and said it is not clear. Well, we made it absolutely clear by stating it again on terms agreed to

by both the left and the right of this Chamber. Supermandate is solved.

Judicial review, I submit, is solved. The language is clear.

The $100 million threshold, that is a big thing. We had the amendment here and we passed it. It is now part of the process.

The petition process, we accepted the Katzen suggestion, wholly and completely, and it is now incorporated. Now, they may want more. Was it Samuel Gompers, the labor leader, when they asked, ''What does labor want?'' and he said, ''More, more, more.'' Whoever said it, they should have said it for this bill. Because they come in and ask for things, and we do them, and somehow it is not enough.

Effective day—we dealt with the effective date. The problem was we have all the ongoing rules that have to be redone. We say, OK, if you have a notice of proposed rulemaking out by April 1 of this year, you do not have to go back and redo any cost-benefit or risk assessment. You are home free.

Now, I think that solves the problem because if you just started with a notice of proposed rulemaking since April 1, you got plenty of time to incorporate that in your bill.

Superfund—Mr. President, one of the toughest issues in this bill as to which there was a huge amount of disagreement, I very strongly sided with the Senator from Ohio in thinking that all of this environmental cleanup, all of these Superfund provisions ought to be out of here. And we accepted. As a matter of fact, we did it by unanimous consent. We probably should have had a vote to have seared that into the memory of our colleagues, but at least we did it. Superfund is gone. Sayonara.

The sunshine amendment—the Senator from Ohio suggested it. We accepted it. It is done. Now, it is, I am sure, not enough. I am sure that there is not enough we can do to satisfy some people, other than to make this bill solely in the discretion of the agency heads, because that in effect is what Glenn-Chafee does. Solely in the discretion, not reviewable by the court, do it if you want to, but if you did not want to, do not bother.

And you have plenty of redress by coming to the Congress.

Mr. GLENN. Would the Senator yield? That is what the Senator argued for in his letter.

Mr. JOHNSTON. Not that, no, indeed.

Mr. GLENN. Yes. I read it into the letter a little while ago. I will ask anybody to reread that to see if this is not a change in position.

Mr. JOHNSTON. I have never said this ought to be consensual, that it ought to be solely in the discretion of the agency head. Never have said that. Never believed that. It simply is not so.

I think we have delivered very, very well on this letter of mine.

Mr. GLENN. This position, I submit to my friend from Louisiana, is 180 degrees opposed. ''To help set priorities for the review, I prefer some sort of advisory committee to assist the agency head. I am very skeptical of a petition process which is likely to skew the priorities, and am strongly opposed to any judicial review of actions taken under a lookback provision.''

Now, that is diametrically opposed to what the Senator is talking about here today. Further, if I might continue just for a second here, I think in all of our best recollection of those here who were in some of those negotiating sessions, Miss Katzen never supported the petitioner a right to have a major rule reviewed in 3 years. That is way too short and forces an agency to set priorities by petition and not by what is most important or what is most pressing.

In addition, Dole-Johnston also allows for interlocutory appeal of three different issues. No. 1, a major rule. No. 2, does it require risk assessment? No. 3, does it require regulatory flexibility analysis? It allows judicial review in the middle of the rulemaking.

Mr. JOHNSTON. If the Senator would allow me to answer that, first of all, on the reg flex, I did not support the reg flex. A big bipartisan vote of 58 votes approved reg flex.

I really do not think it is workable. But the two Senators from Georgia, NUNN and COVERDELL, have indicated that they would work on this and try to relieve the burden.

Let me tell the Senator from Ohio, that is not the fault of this Senator. I suspect that if by any chance the Glenn-Chafee amendment got adopted, that it would have the Nunn-Coverdell amendment bit. Do not criticize Dole-Johnston for having Nunn-Coverdell. I was not for it, and the Senator would get it if he had it.

With respect to the interlocutory appeal on the size of the rule, whether it is a $100-million rule or whether it is one that requires a risk assessment because it pertains to health, safety, and the environment, I had said all along that was a proposal which I put in. It was not in the original Dole amendment. It was meant to give agency heads flexibility and help. And if that is a real problem, it can come out. I think those who criticize the interlocutory appeal do not understand it. I mean, it is meant so agency heads will know at the end of 60 days whether they are going to have a challenge on whether it is a major rule.

The problem you have now—for example, we had hearings on NEPA. If the Senator would follow through with me on this, we had hearings on NEPA and we found that EPA is spending $100 million a year on NEPA studies. As the Senator knows, an environmental impact statement is much more detailed and, in turn, much more expensive than an environmental impact assessment. But they always do an environmental impact statement rather than an assessment because they do not want to wait until the end of all this study and rulemaking and what have you and have to go back and redo it.

That was, frankly, the idea of the interlocutory appeal. So that, if you do not complain about the size of the rule in the first 60 days, then that is forever sealed in. And if they do complain and do make the appeal, the agency head can moot the appeal by simply going back and agreeing to do the risk assessment and cost-benefit analysis. It is simply meant to help them.

But if that is a problem, the whole thing can come out. Let me just make a remark or two and then I will yield the floor.

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

Mr. JOHNSTON. Yes, of course.

Mr. ROTH. Am I correct in understanding that I believe every President since President Ford has required a cost-benefit analysis to be made, but, despite that general requirement through Executive order and otherwise, it has not been adhered to? Is that correct?

Mr. JOHNSTON. There has been a risk assessment rulemaking rule out there—Executive order I should say—under every President since President Ford.

By the way, I have a copy of it here. The problem is that it is consensual as well, and it is generally ignored, as my friend suggests.

Mr. ROTH. That is the point I am trying to make. It is consensual under current conditions, and the Glenn-Chafee would make no change, it would continue to be consensual. Is that correct?

Mr. JOHNSTON. It would even more clearly be consensual under those because they make sure, and they say, ''in sole discretion of the agency head,'' and then they go back, under section 625, and ensure that there is no appeal from the exercise of sole discretion. I do not know how you could otherwise have an appeal from the exercise of sole discretion, but they make sure that there is no appeal. It is nonenforceable. It is sort of the honor system, or I should say the buddy system, the bureaucratic buddy system.

Mr. ROTH. So, in a very real way, the adoption of the Glenn-Chafee legislation would mean no significant change, at least as far as cost-benefit is concerned?

Mr. JOHNSTON. The Senator has put it very, very well. No significant change. And your recourse, according to the Senator from Ohio, is to come to Congress.

Mr. ROTH. As the distinguished Senator from Louisiana already pointed out, that is what we are doing now. It is a fact—is it not a fact that the Vice President, the head of OIRA, and others, have said that there are bad rules on the books and something needs to be done? Is that not correct?

Mr. JOHNSTON. That is exactly correct. But they say, trust us, we will do them in our sole discretion.

Mr. ROTH. But that is the problem; it has not been done. Is that not correct?

Mr. JOHNSTON. That is, even according to EPA's own studies. They had one study in 1987 that determined that risks conformed—the EPA study in 1987 entitled, ''Unfinished Business'' says that they ''systematically failed to properly rank risks.'' They ranked them according to public opinion rather than science.

Then they came back 3 years later, in 1990, had another study from EPA's Science Advisory Board, and said they were continuing to do the same thing.

I submit they are continuing to do the same thing today. And this same crowd is coming in and saying, trust us, we are doing it right, and no change needs to be made.

Mr. ROTH. As I understand it, and of course none of us have had a chance to review that carefully, the new language of the Glenn-Chafee bill—but essentially what they have done is taken the teeth out of the legislation that was reported out by the Governmental Affairs Committee?

Mr. JOHNSTON. That is exactly right. The Roth bill, which came out unanimously, out of Governmental Affairs, had a lot of teeth. The Senator and I have talked about that. My own view was I liked some of the teeth. I thought some of the other teeth were too sharp.

Mr. ROTH. The Senator is partly right.

Mr. JOHNSTON. But no need to worry, all of those teeth are gone. You do not even have false teeth here.

Mr. ROTH. So this, in a sense, would be an exercise in futility.

Mr. JOHNSTON. This is a waste of time. If you want to kill this bill, enact this Glenn-Chafee amendment, beat your chest, feel good about it. It has risk assessment in the title of the bill, but it amounts to nothing, zero.

Mr. ROTH. I congratulate the distinguished Senator from Louisiana for his very penetrating analysis.

Mr. JOHNSTON. I thank my colleague and yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, this was an interesting discussion. It shows the complexities of this legislation and why we should not be rushed on the floor of the Senate putting it into effect. We should be considering all these things and all the legal ramifications of it in every respect.

I come back, though, that if the Agency passes something that is considered to be not OK, or tries to put something into effect, that anyone can petition the Agency and say, ''We think this should go back to Congress,'' or notify their Congressman, notify their Senator, we can call it back.

I do not see yet why that is not—that is where the responsibility lies, is right here. We are the ones who passed the original legislation. What we have done is, for the first time, put into play a specific arrangement. We are detailing it in legislation. We are inviting people to watch what goes on in the agencies and say we will bring it back.

The Senator from Louisiana is absolutely correct. We always have the right in Congress to do something like this if we want to pass separate legislation. But that takes a lot of time. It is time consuming, it could go on for a whole session of Congress. It could go on for another year. What we did is provide, in both pieces of legislation, time restraints by which Congress has to complete its action. In other words, any authorizing committee can call back a rule or regulation for reconsideration before it goes into effect. I really do not see how there could be a better protection than that. I do not know what else there is that would be needed.

Let me read some things into the RECORD that apply to this judicial review:

JUDICIAL REVIEW PROVISIONS IN GLENN-CHAFEE AND DOLE-JOHNSTON VERSIONS OF S. 343—A COMPARATIVE APPROACH

1. RULEMAKING FILE REQUIREMENTS AND REVIEW

The Dole-Johnston bill amends the A.P.A. to add elaborate rulemaking file requirements to all notice-and-comment rulemaking; these sections contain their own confusing judicial review provision [553(m), p. 12] and would encourage lawsuits over the adequacy of the file and whether items were placed in the file as quickly as possible. Additionally, the Dole-Johnston bill would change the standards of review for rules issued under notice-and-comment; it would add 5 U.S.C. §706(a)(2)(F) to require that the factual basis for a rule have ''substantial support'' in the rulemaking file. See discussion below.

The Glenn-Chafee bill does not include these troublesome provisions.

2. JUDICIAL REVIEW OF SCHEDULING REVIEW/LOOKBACK

Section 623(e) (p. 30) of the Dole-Johnston bill provides for judicial review of agency non-compliance with the process for scheduling of review of existing rules. However, the section does not clearly limit judicial review to only the reasonableness of the schedule. The scope of review is broad—i.e., ''agency compliance or noncompliance with the requirements of this section'' and review exists ''notwithstanding section 625.'' Review is limited to the D.C. Circuit Court of Appeals. Review of final agency action must be filed within 60 days of publication of the final rule. However, the section does not preclude interlocutory review.

Section 625(c) of the Glenn-Chafee bill (p. 18) provides for judicial review of the agency regulatory review but precludes review of agency decisions whether to place a rule on the schedule and the deadlines for completion.

3. REVIEW OF DECISION TO ''SUNSET'' RULE

Section 623(g)(3) (p. 33–34) of the Dole-Johnston bill grants interested parties the right to petition the D.C. Circuit Count of Appeals to extend the period for review of a rule up to two years and to grant equitable relief to prevent termination where, inter alia, termination of the rule would not be in the public interest.

The last sentence of section 623(h) provides that the decision of an agency to not modify a major rule ''shall constitute final agency action for the purposes of judicial review.'' Section 623(j)(2) similarly states that failure to promulgate an amended major rule or to make decisions by the date required shall be considered final agency action.

Under the Glenn-Chafee bill, rules would not automatically ''sunset.'' Instead, the agency would be required to publish a notice of rulemaking to terminate a rule. §625(e)(1)(C)(iv).

4. JURISDICTION AND JUDICIAL REVIEW

Clarity of limitation on judicial review.—Section 625(a) and (b) of the Dole-Johnston bill (p. 38) affirmatively grant jurisdiction to review ''any claims of noncompliance with this subchapter and subchapter III.'' While compliance is subject to judicial review ''only in accordance with this section,'' subsection 625(d) arguably permits broad judicial review.

By contrast, the Glenn-Chafee bill clearly states there is no judicial review except as provided therein. §623(a), p. 13. Section 623 of the Glenn-Chafee bill is very clear concerning what is reviewable and what is not.

Procedural errors.—Section 625 of the Dole-Johnston bill is unclear as to whether procedural errors are reviewable. It states that ''failure to comply'' may be considered by the court solely to determine ''whether the final agency action is arbitrary and capricious or an abuse of discretion (or unsupported by substantial evidence where that standard is otherwise required by law.'' 625(d), p. 39

The use of the words ''failure to comply'' in at least three places in section 625 suggests procedural errors are reviewable.

The limitation of review to the ''arbitrary and capricious'' or ''abuse of discretion'' test may not be sufficient to keep courts from reviewing alleged agency non-compliance just as they otherwise would under the A.P.A. That was the view of one court in a case where Congress limited review of agency procedural error to those which rendered the agency action arbitrary and capricious. That court had difficulty understanding the limitation as violation of procedure is often regarded as rendering the action arbitrary and capricious. *Small Refiner Lead Phase-Down Task Force* v. *U.S. E.P.A.*, 705 F.2d, 521 (D.C. Cir. 1983). See also, *Motor Vehicle Mfrs. Assn. of U.S.* v. *E.P.A.*, 768 F. 2d 385 (D.C. Cir. 1985) (statutory test of action in excess of statutory authority same standard as arbitrary and capricious).

The Glenn-Chafee bill, by contrast, makes it clear that courts are not to review the underlying steps and procedures leading up to the cost-benefit analysis and risk assessment. Section 623(d) expressly states that ''. . . the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.'' §623(d), p. 14. The Glenn-Chafee bill would permit the court to consider the actual documents produced by the agency to evaluate cost-benefit analysis and risk assessment in determining the reasonableness of the agency action but not to permit review of the underlying steps to development of the risk assessment or cost-benefit analysis.

Judicial ''second-guessing'' of agency judgment and scientific expertise The Dole-Johnston bill creates great risk that courts will second guess agency judgments and scientific determinations which go into the cost-benefit analysis, risk assessment, and application of the prescriptive decisional criteria.

The Dole-Johnston bill contains many prescriptive requirements which tell agencies what they must consider and what they cannot. However, many of these factors are very difficult in application. Yet consideration of factors Congress has decided are not to be considered has been cited as a basis for reversal under arbitrary and capricious review.

Citizens to Preserve Overton Park v. *Volpe*, 401 U.S. 402, 416 91 S. Ct. 814, 823, 28 L. Ed. 2d 136 (1971).

S. 343 turns administrative law on its head if it takes away agency's ability to make policy choices and to have those upheld so long as they are reasonable and consistent with the statute being applied. See cases cited in *Small Refiner Lead Phase-Down Task Force*, 705 F. 2d at 520. If Congress takes away an agency's discretion to make policy choices, then special interests challenging a rule will argue that an abuse of discretion standard permits the court to second-guess the agency's decision as to what is a ''policy judgment'' and what is ''scientific understanding.''

Courts are not situated to ''second-guess'' the prescriptive requirements of the Dole-Johnston bill. Courts are not well situated to review the underlying basis of cost-benefit analyses and risk assessments against the prescriptive standards of the bill.

''. . . the crowded states of judicial dockets offers a highly practical reason why judges will not, and probably should not, devote the considerable time and effort needed to review a several-thousand-page agency record, informed by a thorough understanding of the substance of risk-related regulatory problems, in order to see whether or not that agency determination was arbitrary.''

Justice Breyer, Breaking the Vicious Circle: Toward Effective Risk Regulation (Cambridge, Mass.: Harvard University Press 1973), pp. 58–59 (describing why courts are not institutionally suited to resolve risk issues).

Prejudicial error [Note: Neither bill contains a prejudicial error provision in this section. However, Senator Johnston says concerns with the decisional criteria and judicial review provisions are solved by the prejudicial error test in 5 U.S.C. 706. This is not an adequate protection.]

The problems with judicial review of the many prescriptive requirements of the Dole-Johnston bill are also not cured by the ''prejudicial error'' test in 5 U.S.C. §706. That test, which is unchanged from the current APA, has been described as requiring remand if the court ''cannot be sure that under the correct procedures the Agency would have reached the same conclusion . . .'' *Weyerhaeuser Co.* v. *Costle*, 590 F.2d 1011, 1031 (D.C. Cir. 1978). That case invalidated a pollution emission limitation rule for failure to provide adequate notice for comment on agency data even though petitioner could not show that recomputation of the data would have made the process so costly as to invalidate the limitation as an abuse of discretion.

Clogging the Courts.—The language of section 625 will encourage years of litigation before even the question of what is reviewable is resolved. This bill gives regulated industry many hooks to delay rulemaking and then to challenge the final result. If those steps are subject to judicial review, there will be every incentive to stop regulation through complex and lengthy judicial review proceeding. When this is combined with the increased time and cost of rulemaking under this bill, the result may be gridlock. This frustration of law is not a desirable goal.

Judicial review of whether the agency chose the ''least cost alternative,'' given the great differences in underlying data, will generate challenges.—The Dole-Johnston bill takes away agency discretion and mandates that all costs and benefits be turned into one number and that the agency select the ''least cost alternative'' of those available under 624 (b) or (c). Yet some say that cost-benefit analyses may be off by a magnitude of hundreds. This makes it difficult for agencies to achieve any certainty concerning application of cost-benefit analyses. If agencies must constantly be looking over their shoulder at the possibility of judicial review, it is clear this will provide many opportunities for challenges to rules by the regulated industry.

By contrast, the Glenn-Chafee bill provides a range of discretion to the agency decision-maker in section 622(f) and is much more clear that the decisional criteria do not alter statutory criteria for rulemaking.

5. INTERLOCUTORY REVIEW OF DETERMINATION OF ''MAJOR RULE''

The Dole-Johnston bill permits interlocutory appeal of an agency decision that a rule is not a major rule or is not subject to risk assessment requirements. §625(e) p. 39.

The Glenn-Chafee bill requires ''a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time the agency made the determination. §623(c). It does not authorize interlocutory review.

6. DOLE-JOHNSTON AMENDS THE APA STANDARDS OF JUDICIAL REVIEW FOR ALL AGENCY RULES—GLENN-CHAFEE DOES NOT

Factual basis for rules—5 U.S.C. §706(a)(2)(F)

The Dole—Johnston bill amends 5 U.S.C. 706(a)(2) by adding (F) which requires courts to set aside agency action, findings and conclusions found to be ''without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, as distinguished from the policy or legal basis, of a rule adopted in a proceeding subject to section 553. . .''

The Dole-Johnston version of S. 343 also requires the final notice of rulemaking to explain how the factual conclusions upon which the rule is based are substantially supported in the rulemaking file. 5 U.S.C. §553(g)(4), p. 8). The ''rulemaking file'' must identify factual and methodological material that pertains directly to the rulemaking and was considered by the agency or submitted to or prepared by or for the agency in connection with the rulemaking. §553(j)(3)(d), p. 10.

Position: The standards for judicial review in the APA should not be changed. Agencies should be able to rely on their knowledge and expertise in informal notice-and-comment rulemaking. Review should be on an arbitrary and capricious standard, not require that the factual basis have ''substantial support'' on a limited record. This new standard will create much litigation in an established area of the law.

This standard may encourage judicial intrusion into agency's scientific determinations. In *Corrosion Pipe Fittings* v. *E.P.A.*, 947 F.2d 1201, 1213–1214 (5th Cir. 1991), the court held that the ''substantial evidence'' test used in the Toxic Substances Control Act for notice-and-comment rulemaking was a more rigorous standard than the ''arbitrary and capricious'' standard applied now to informal rulemaking and showed that Congress wanted the courts to scrutinize the agency's actions more closely. The Court then proceeded to apply close scrutiny to the agency's cost-benefit calculations and invalidated the asbestos rule that had taken ten years to develop. 947 F. 2d at 1223–1230.

New section 706(a)(2)(F) requires the agency to amass a record for potential litigation in every case. It calls into question the principle that an agency can utilize its knowledge and expertise.

It gives well-healed parties the opportunity to skew the results on judicial review by salting the rulemaking file with comments and materials which support their position. Even in cases where the agency position has an adequate factual basis in scientific literature, this standard might require the agency to list all sources in the file or not be able to later rely on them if a challenge is raised on judicial review.

7. MULTIPLE OPPORTUNITIES FOR REVIEW

Dole Johnston contains other provisions permitting judicial review. Glenn-Chafee contains other provisions making it clear that judicial review is not available. See, §636(d), p. 40, no judicial review of risk assessment guidelines' development, issuance, or publication; §646 (p. 48), no judicial review of executive oversight authority; §6(f), p. 70, no judicial review of study of comparative risk; §6(f), p. 78, no judicial review of regulatory accounting.

8. GLENN-CHAFEE REDUCES UNCERTAINTY AND INCREASES DISCRETION AND THEREBY REDUCES OPPORTUNITIES FOR SUCCESSFUL CHALLENGES TO AGENCY RULES

An example where Glenn-Chafee gets rid of a problem is the effective date provision, §8, p. 70. By making it clear that the section does not apply to pending rules and by providing a reasonable grace period, this eliminates a troublesome problem for pending rules.

9. REGULATORY FLEXIBILITY

Glenn-Chafee eliminates some of the problems with regulatory flexibility under the Dole-Johnston bill. Section 611 (p. 48) avoids inconsistent statutes of limitation where that for the underlying rule is less than 1 year. It provides that court may stay the rule if a failure is not corrected within 90 days but does not automatically terminate a rule if not corrected in that period. Its judicial review standard is more limited, and it does not contain the decisional criteria of the Dole-Johnston bill.

Mr. President, I think this indicates to all who might be paying attention to this debate in the Chamber today how very, very complex and how far-reaching some of these decisions are. It is not something we can rush through. I know it has been stated we want to move forward as rapidly as possible, and I agree with that. But I also want to make sure that while we are setting up a new regulatory review process, we at the same time make every protection for whatever existing law deserves that kind of protection, and before we make changes that we make very certain we do it in a way which protects the health and benefit and safety of the American people.

Mr. President, I would go further in talking a little bit more about the cost-benefit analysis and the decisional criteria.

Glenn-Chafee has no ''decisional criteria requiring agencies to pass cost-benefit tests before issuing a rule.''

Our response to some of the charges under that are, No. 1: Both the Glenn-Chafee and Dole-Johnston substitutes require agencies to do the same type of cost-benefit analysis. We believe in making agencies do such analyses to better understand what the costs and benefits are of a rule. There is no problem with that with either bill. The differences, though, between our substitutes is how they use cost-benefit analysis.

Glenn-Chafee uses cost-benefit analysis as a tool and not just as a final decisional criteria. There is no language in the Glenn-Chafee substitute that states, ''An agency shall not promulgate a rule,'' unless it passes a

cost-benefit test. Glenn-Chafee requires agencies to provide an explanation and certification of whether, one, benefits of the rule justify the cost and, two, the rule achieves the objectives of the rulemaking in a more cost-effective manner than the alternatives.

If it cannot make such a determination, it has to explain why not. The Dole-Johnston substitute has decisional criteria that prohibit using a rule unless, one, the benefits justify the costs, the rule uses flexible alternatives to the extent practicable, the rule is the ''least-cost alternative'' that satisfies the objectives of the statute, and if a risk assessment is required, the rule is likely to ''significantly reduce the risks addressed by the rule.''

Why the decisional criteria are problematic: No. 1, cost-benefit analysis is an imprecise science. Cost and benefits are hard to quantify and are loaded with assumptions, and some economists might even say, tell me what answer you want and I will give you the right numbers for costs and benefits.

Agencies should not be required to decide whether or not to promulgate a rule based just on a cost-benefit test.

No. 2, another reason why decisional criteria are problematic: Agencies would have to choose the least-cost alternative. We should require agencies to choose the most cost-effective rule, not just the cheapest. The distinguished Senator from Louisiana has pointed to the out for agencies. They can choose something other than a least-cost solution in the event of ''scientific, technical or economic uncertainties or nonquantifiable benefits to health, safety or the environment.''

But what if there are certain quantifiable benefits? Agencies would still have to put out the least-cost rule, and that just makes no sense. Even if something is more cost-effective, beneficial to the people of this country, we still have to go with whatever the alternative was that was solely least cost. That makes no sense.

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

Mr. GLENN. I am almost finished. Another minute or two and I will be glad to yield.

No. 3, agencies must prove that a rule significantly reduces risk. The FAA tells us, however, that some of their safety rules, while quite important and quite effective, may not pass the ''significant'' test.

No. 4, if agencies determine that the benefits of a rule do not justify its costs, that rule should come back to Congress. And that is a key element of this; that rule should come back to Congress if the agency determines that the benefits do not justify its costs. Agencies should not be the ones to decide whether to issue a rule based on a cost-benefit test. That rule should come back to Congress to decide whether a rule should go forward or not, and that is provided. Congressional veto, as it is called, makes more sense than decisional criteria. It does not hand over Congress' responsibilities to the agencies.

Mr. President, I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). The Senator from Delaware.

Mr. ROTH. Mr. President, I say to my distinguished friend and colleague from Ohio that I have been in negotiations and discussions with representatives of his side of the aisle in an effort to revise the decisional criteria with respect to the least cost. I am sympathetic to the concept of utilizing a test of cost-effectiveness or greater net benefit to avoid some of the problems raised in his discussion of this section.

I wonder if the distinguished Senator is willing to proceed along those lines at this time in developing such an amendment?

Mr. GLENN. Yes. As I understand it, what the Senator was proposing was that there are some negotiations going on in this regard, and we would be willing to proceed with further negotiations with regard to cost effective as opposed to least cost; is that correct?

Mr. ROTH. That is correct.

Mr. GLENN. Certainly, I always want to negotiate on these things and see what we can come out with.

Mr. ROTH. I think it important we proceed on this matter, because it is an important one, and that we proceed as rapidly as possible. To be candid, I am disappointed that we have not been able to address this problem on the floor.

Mr. GLENN. I think what the distinguished Senator from Delaware is addressing is one of the most important items in all of this legislative package. I think it is important that we get that one ironed out, because it is a major issue in how we deal with regulatory reform. I agree with him.

Mr. ROTH. I thank the distinguished Senator for his comments.

Mr. President, I rise to call upon my colleagues to support meaningful regulatory reform. I want to explain why I believe that the Dole-Johnston compromise, S. 343, is the key to changing the status quo, and why the Glenn substitute is not the solution to reforming the regulatory process.

I believe that regulatory reform is one of the most important issues we face. The reason is that, overall, Government regulation has an enormous impact on our lives—for better or for worse. If regulations are well-designed and implemented, they can do a lot of good—by making a cleaner environment, safer workplaces, and safer products. But, at the same time, regulations can be very costly, and, if poorly designed, too costly—by raising prices, taxes, and paperwork; diminishing wages; eating up time; and wasting opportunities to do better things with our limited resources. The cumulative regulatory burden costs about $600 billion per year. I believe that, if this massive regulatory machine were retooled, it could do much more good at less cost.

Most experts who have examined the regulatory process, regardless of background or political bent, have concluded that the regulatory process is seriously out of whack and must be reformed. Few if any of my colleagues would dare to say publicly that we should be happy with the status quo.

So the question is, why is there so much controversy about the S. 343? The answer is simple—it is very hard to change the status quo in a significant way. It is a Herculean task to reform one of the most untamed frontiers of big Government—a massive regulatory machine that costs the average American family about $6,000 per year.

That explains why an earlier attempt at regulatory reform, S. 1080, which passed the Senate 94–0 in 1982, was killed in the House. And that explains why people are accusing supporters of S. 343 of wanting to expose the public to tainted meat, breast cancer, and contaminated drinking water. None of this is remotely true, and it does not belong on the Senate floor.

We wasted days last week on meritless arguments that S. 343 needs specific exemptions for meat inspection rules, mammography rules, and so on. The fact is, these arguments got a lot of press, but such exemptions were not needed. The Dole-Johnston compromise has a clear exemption for threats to human health and safety, as well as other emergencies.

In fact, the Glenn bill itself does not have such exemptions, because, as anyone recognizes who knows how these bills work, such exceptions are not needed.

The truth is, if you compare the Dole bill and the Glenn bill section by section, they look a lot alike. At bottom, there are only a few key differences. But these few differences are critical to effective regulatory reform.

First, meaningful regulatory reform must change future rules. The key to ensuring that new rules will be efficient and cost-effective is to have an effective cost-benefit test.

The Dole bill has a focused cost-benefit test. The decisional criteria in section 624 ensures that the benefits of a rule will justify its cost, unless prohibited by the underlying law authorizing the rule. Section 624 is not a supermandate; it does not trump existing law. It simply tells the agency, if possible and allowed by law, to issue regulations whose benefits justify their costs. That is plain common sense.

In contrast, the Glenn bill has no cost-benefit decisional criteria. The bill requires that a cost-benefit analysis be done, but the bill does not require that the cost-benefit analysis be used or that the rule will be affected by the cost-benefit analysis.

The agency only has to publish a determination whether the benefits of a rule will justify its costs and whether the regulation is cost-effective. But the Glenn bill does not push regulators to issue rules whose benefits actually do

justify their costs. I have always believed that an effective regulatory reform bill should have a stronger cost-benefit test.

Some of my colleagues, including Senators GLENN and LEVIN, have complained repeatedly about the least cost component of the decisional criteria. Section 624 of S. 343 says, whether or not the benefits of a rule can justify its costs, the agency should select the least cost alternative the achieves the objectives of the statute.

I think there is some merit to the concern that the least cost standard is too limited. If a rule costs a little more than the least cost alternative but provides much greater benefits, I believe that the agency should pick the much more beneficial rule—even if the benefits are quantifiable or are not environmental, health or safety benefits. Why not? Why not spend a little more to get much greater benefits for the public?

Yet, while I share the concerns of many of my colleagues, I have not been able to work out a solution. For weeks, I have tried to work out two solutions—a most cost-effective test or a greater net benefits test—with my other colleagues. I believe that either test is far better than the least cost test with its vague exception for certain nonquantifiable benefits. Yet, we have made no progress, even though proponents of the substitute continue to complain about the least cost standard. I think it is time we worked this out in a bipartisan fashion.

Now, I want to return to a second point about regulatory reform: effective regulatory reform cannot be prospective only; it must look back to reform old rules already on the books. The Dole-Johnston compromise contains a balanced, workable, and fair resolution of how agencies should review existing rules. Agencies may select for themselves any particular rules that they think need reexamination, while allowing interested parties to petition the agency to add an overlooked rule. To ensure that only a limited number of petitions will be filed, S. 343 limits petitions to major rules and sets a high burden of proof—petitioners must show a substantial likelihood that the rule could not satisfy the cost-benefit decisional criteria of section 624.

This is an efficient and workable method to review problematic rules.

The Glenn substitute, on the other hand, makes the review of agency rules a voluntary undertaking. There are no firm requirements for action—no set rules to be reviewed, no binding standards, no meaningful deadlines. The Glenn substitute simply asks that, every 5 years, the agencies issue a schedule of rules that each agency in its sole discretion thinks merits review. It does not require any particular number of rules to be reviewed. And, if someone asks the agency to review a particular rule, there is no judicial review of a decision declining to place the rule on the schedule.

Moreover, there is no judicial review of deadlines for completing the review of any rules. No matter how irrational a rule is, no matter how many people it is burdening, an agency does not have to review it. If the agency happens to put the rule on the schedule, nothing prevents the agency from procrastinating for 11 years. Again, the only deadline is a modest 11-year deadline for reviewing the rule.

The third point I want to emphasize is that effective regulatory reform must be enforceable to be effective. That means there has to be some opportunity for judicial review of the requirements of the legislation, just as there is with almost any law Congress passes. S. 343 strikes a balance by allowing limited, but effective, judicial review. I should note at the outset that S. 343 has been mischaracterized as a lawyer's dream and a litigation morass. In fact, S. 343 provides less judicial review than is normally provided for any law that Congress passes.

S. 343 carves away from the standard level of judicial review provided by the Administrative Procedure Act, which has existed for almost 50 years. The limited judicial review provided by S. 343 will help discourage frivolous lawsuits, and that is why S. 343 has limited judicial review. At the same time, it does allow an agency to be held accountable for complying with the major requirements of the bill.

An agency's compliance or noncompliance with the provisions of S. 343 can be considered by a court to some degree. The court can, based on the whole rulemaking record, determine whether the agency sufficiently complied with the cost-benefit analysis and risk assessment requirements of S. 343 so that the rule passes muster under the arbitrary and capricious standard. The arbitrary and capricious standard is very deferential to the agency. A court would uphold the rule unless that agency's cost-benefit analysis or risk assessment was so flawed that the rule itself was arbitrary and capricious. The court would not strike down a rule merely because there were some minor procedural missteps in the cost-benefit analysis or risk assessment.

In contrast, the Glenn substitute, as now redrafted, does not permit meaningful judicial review of the risk assessment or cost-benefit analysis. The Glenn substitute only requires a court to invalidate a rule if the cost-benefit analysis or risk assessment was not done at all. But the Glenn substitute does not really allow the court to consider whether the cost-benefit analysis or risk assessment was done properly. Indeed, Senator GLENN has weakened the language originally in his bill so that now substantial portions of his bill are irrelevant to the extent that a court could not require the agency to perform the cost-benefit analysis, risk assessment, or peer review in the manner prescribed by the bill.

Compliance with cost-benefit analysis and risk assessment requirements of the bill would be optional by the agency, the same way it is optional for them to comply with the Executive order that now requires these analyses.

Senator GLENN has claimed that his bill is essentially the same as S. 291—the regulatory reform bill I introduced in January and which received the bipartisan support of the Committee on Governmental Affairs. Although the original Glenn bill was similar to the Roth bill, the current Glenn substitute seriously differs from the Roth bill. For example, Senator GLENN has seriously weakened the review of rules provision.

The Roth bill required agencies to review all major rules in a 10-year period, with a possible 5-year extension, or the rules would sunset, or terminate. The revised Glenn substitute lacks any firm requirement about the number of rules to be reviewed.

Worse still, Senator GLENN has weakened the judicial review provision that was in the Roth bill and that originally appeared in the Glenn bill. Section 623(e) of the Roth bill and the original Glenn bill stated that the cost-benefit analysis and risk assessment ''shall, to the extent relevant, be considered by a court in determining the legality of the agency action.''

That meant that the court should focus on the cost-benefit analysis and risk assessment in determining whether the rule was arbitrary and capricious. Now, the Glenn substitute strikes that language. The Glenn substitute merely asks the agency do the cost-benefit analysis and risk assessment, but the agency can do a sloppy job. The agency also does not have to act upon the analyses and issue a rule whose benefits justify its costs. In fact, the agency simply can ignore the cost-benefit analysis. And nobody can do much about an agency that is doing a bad job. For a reviewing court, the analyses are just some more pieces of paper among the many thousands of pieces of paper in the rulemaking record.

The court does not have to focus on the cost-benefit analysis in determining whether the rule makes sense. Mr. President, that is not real regulatory reform. That is protecting the bureaucracy at the expense of the public.

I should also mention that the Glenn bill seriously weakens the risk assessment provisions of the Roth bill. The Glenn substitute significantly carves back on the number of agencies and programs that would have to comply with the risk assessment requirements. Moreover, the risk assessment language itself is weakened. As just one example, section 634(c)(1) of the Glenn language reverses the standard interpretation of how defaults should be used. The substitute relies on a minority comment in the National Academy of Science report, Science and Judgment. That is, the Glenn substitute

prefers default assumption when relevant data is available. That is not what good scientists would do. And that is not what the majority of the National Academy would recommend.

Finally, Senator GLENN has weakened the definition of ''major rule.'' There are no narrative provisions under which OMB could list certain problematic rules as major rules subject to full analysis.

Now, as I mentioned, if you compare S. 343 with the Glenn substitute, you would see that, section-by-section, they look similar. Both have provisions for cost-benefit analysis, risk assessment, review of existing rules, comparative risk analysis, market mechanisms and performance standards, reform of the Regulatory Flexibility Act, congressional review of rules, and regulatory accounting.

But without a focused and effective cost-benefit test, there is nothing to require future rules to be justifiable and cost-effective. And without an effective lookback provision with real requirements, there is nothing to ensure that old rules already on the books will be reformed. Finally, without effective judicial review, we may as well not have a statute at all—we could keep the existing Executive order 12866 that governs regulatory planning and review.

But the whole reason for regulatory reform legislation is that the Executive orders for regulatory review, issued by every President since President Ford, have not been working well enough. There is widespread consensus that the regulatory process is broken and that firm action is needed. There is widespread agreement that many rules have been issued in violation of the requirements of the Executive orders. Many rules could not be justified if scrutinized under a cost-benefit test. Yet, Executive orders since President Ford have required cost-benefit analysis. The current Executive order of President Clinton, No. 12866, similarly requires cost-benefit analysis, but again, there is nothing to ensure that the agencies will comply. There is no effective judicial review in Senator GLENN's substitute to solve this problem.

I also should add that many of the objections that Senator GLENN and others have raised are off the mark or have already been addressed. First, we agree agencies should be required to perform risk assessment and cost-benefit analysis. Second, S. 343 clearly does not override existing statutory criteria. Moreover, S. 343 is not a special interest bill. It does add a petition process to review rules so that the work does get done. I should also note that we did add Senator GLENN's sunshine provision verbatim. Finally, as I have detailed, we agree with Senator GLENN that ''judicial review should be available to ensure that final agency rules are based on adequate analysis.'' The Dole-Johnston compromise meets these principles.

The Dole-Johnston compromise merely directs regulators to issue regulations whose benefits justify their costs. But the bill does not override existing law. This should not be a radical idea in the White House or on Capitol Hill. I do not believe that the American people think it is radical to ask that the benefits of regulations justify their costs.

Similarly, review of existing rules has been required for almost 15 years under Executive order. Yet, there is a lot of evidence that getting agencies to review existing rules is a lot easier said than done. In the first annual report on President Clinton's Executive Order 12866, OIRA Administrator Sally Katzen admitted that bureaucratic incentives make reviewing rules a difficult undertaking. In discussing the ''lookback'' requirement of Executive Order 12866, Administrator Katzen said:

> It had proven more difficult to institute than we had anticipated. . . . [A]gencies are focused on meeting obligations for new rules, often under statutory or court deadlines, at a time when staff and budgets are being reduced; under these circumstances, it is hard to muster resources for the generally thankless task of rethinking and rewriting current regulatory programs.

After extensive review of the regulatory process, Vice President GORE concluded that ''thousands upon thousands of outdated, overlapping regulations remain in place.'' The long but disappointing record of executive branch review efforts necessitates a legislative mandate. But this must be a real mandate, with real requirements. As redrafted, the Glenn substitute does not adequately address this pressing problem. The Dole bill will bring real change.

The Dole compromise reflects many comments and suggestions from numerous Senators of both parties, the Clinton administration, the American Bar Association, and many scholars and legal experts.

In sum, the Dole-Johnston compromise strikes a balance between reform that is strong but workable. I urge my colleagues to set aside partisan politics and support the effort to restore common sense to the regulatory process.

Mr. President, I yield back the floor.

Mr. JOHNSTON. Did the Senator have a question for me?

Mr. ROTH. No.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, getting back to this question of the scope of review under section 706 of the Administrative Procedure Act, which is contained in our bill, there is a subsection (e), about which there has been some comment and argument. Subsection (e) adds new language as follows, that:

> The reviewing court shall . . . hold unlawful and set aside an agency action if it is:
>
> (e) . . . substantial evidence in a case subject to section 556 and 557 . . . and otherwise reviewed on the record.

Excuse me, it is not subsection (e). It is subsection (f). It says it shall hold unlawful an action:

> Without substantial support in the rulemaking file viewed as a whole, for the asserted or necessary factual basis.

This, as I understand it, is a principle of law which is about a century old. And this codifies that view. It was first proposed by Senator BUMPERS, and I hope Senator BUMPERS will come over and defend this provision.

From my own point of view, it adds, really, very little. It has very little to do with risk assessment. It has nothing to do with risk assessment or cost-benefit analysis because that provision does not relate to risk assessment or cost-benefit analysis. That relates to the Administrative Procedure Act appeals, which are outside of cost-benefit analysis or risk assessment.

So it is really, in my view, not a very important issue in this bill. I hope and believe that Senators will be able to get together on that issue.

Mr. President, I believe that we have accommodated virtually every complaint with this bill, save some of those which we have debated. We have not yet satisfied everybody on toxic relief inventory. But I believe that is also in the total scheme of things, not a terribly important provision of this bill.

But we have satisfied the critics of the bill on the question of supermandate. That was always the hot button in this bill. The House bill has a supermandate; that is, under the House bill, you can change existing standards under existing law. Expressly, they override existing law.

Mr. President, we have made it clear—expressly, explicitly clear—that there is no supermandate in this bill. We have straightened out the judicial review provisions, so there is no independent review of the procedures as opposed to the final agency action.

We have passed the threshold of $100 million, the threshold that Senators so insisted upon. It is done. It is in the bill. It is passed.

We have straightened out the petition process so that there is one opportunity to get on the list for review, if you were left off. It is 180 days in length. And, if you miss that 180-day window, then you are foreclosed for a full 5 years.

The appeal from that provision is consolidated. So that the former criticism of the Dole bill, the original Dole bill, which was that there would be this multiplicity of appeals, is simply not here on this bill. There is one consolidated appeal. It will not overload agencies or their legal staffs. There will be simply one appeal and one rulemaking action with respect to the schedule.

We have dealt with the effective date, so that those ongoing rules, which have been in the making for, in some cases, 2 and 3 years, will not be subject to either cost-benefit or to risk assessment. They do not have to do it. They are exempted totally. In fact, all rules are exempted from cost-benefit or

from risk assessment, if the original notice of proposed rulemaking was filed on or before April 1st, 1995. If it was filed after that, they have ample opportunity to do what the law requires.

Mr. President, we won the fight on Superfund. Superfund environmental activities are now out of this bill. And we have passed the Glenn sunshine amendment.

What we have not done is to go along with what the Glenn-Chafee amendment now requires, which is to throw out any requirements and to make this bill completely consensual, because the Glenn-Chafee substitute is sham reform. If you do not want to have cost-benefit analysis, if you do not want to have risk assessment, then vote for the Glenn-Chafee amendment because it is all consensual. If an agency head wants to do it in his or her sole discretion, then vote to put it in their sole discretion. There is no judicial review. There is no requirement. And you can be sure it will not be done.

It will be business as usual if you vote for the Glenn-Chafee amendment. There is no requirement of meeting a test that the benefits justify the cost. Oh, to be sure, you must state whether the benefits justify the costs, but you do not have to meet that test. You just give the information and go merrily on your way and nobody can question you.

Mr. President, the Dole-Johnston amendment is a workable, logical, scientifically sound set of requirements that will put agencies of this Federal Government to a rigorous set of logical steps so that we can avoid what we have under the present law, which is regulations not based on science, not based on real risks, but, as EPA said in 1987 in their own study, that systematically they rate risk according to what the public thinks about those risks as opposed to what the scientists think about those risks. That is a 1987 study by EPA, not some industry group, not some right-wing think tank, but EPA's own study, which said in 1987 in their publication entitled ''Unfinished Business,'' that their estimations of risk were wrong.

In 1990, EPA's own Science Advisory Board made a new study of the old study. They made a new study to determine whether the old study was correct. And they stated that the 1987 study was correct; that is, EPA has not been using science or the proper estimation of risks.

To bring science into the proposition is not to erode health standards. It is not to allow E. coli in meat. It is not to make people less safe. To the contrary, the way we determine whether someone is at risk in the health, safety, or the environment is by a scientific evaluation. You do not decide what to do on a health standard by consulting some soothsayer or some pollster or some political operative. You determine what meets a standard of health by looking at the best science available. That is what we do in this bill. We require the best science available—not the best politics, not the best bureaucrat, not the pressure group with the most members, not the one that can make the most noise, not the one that can meet the most people at a public meeting, but the best science available. And we require them to justify the cost—not to get the cheapest, not to get the least cost, but to get that which satisfies the requirement of health, safety, or the environment, and satisfies the uncertainties of science or data.

Mr. President, the Dole-Johnston bill is a tightly drawn bill which serves the public well. I hope my colleagues will endorse that bill today and vote cloture.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I have listened for some long while to this debate and participated during previous days in this debate on regulatory reform.

I must say that in the early stages of this debate, it was beyond boring. I mean there are boring debates and then there are boring debates that are well beyond the definition of boring. I suppose the reason for that is because the language of this legislation—and also, in some respects, the language of the debate itself—is technical and so arcane and so terribly difficult to understand. I suspect for that reason it has not been very interesting.

Yet the debate itself about regulatory reform, or what kind of regulations we ought to have in this country, is a debate that will affect every single American. It is very important, especially this debate as it relates to the safety of what we eat and drink and breathe. It relates to the controversy that we have had now for a couple of decades over how we do things in this country.

It was not too many years ago that we did not care much about environmentalism or about environmental concerns. The issue was if you are going to produce widgets or you are going to manufacture widgets, you get yourself a manufacturing plant and you start manufacturing widgets, whatever they are, and you can dump the pollution into the airshed; you can drop your raw chemicals into the waters and streams and lakes. It just did not matter because you were providing jobs and producing widgets. And, of course, what you were doing was passing the costs of this manufacturing down the road to someone else who someday would be required to clean up the air and those streams and rivers and lakes.

About 20 or 30 years ago, the people in this country started asking a question: Would it not make more sense for us to stop spoiling this place in which we live by requiring those who produce and those who do certain things to do it without despoiling the air or the water? Would that not make more sense? And, of course, those who were producing, those who wanted to dump chemicals and effluents and pollution into the air, and those who dumped chemicals into the water, did not want to change the way they did business. Frankly, it was costly to change the way they did business.

I have told my colleagues before; I grew up in a town of about 300 to 400 people, which is a small town, in North Dakota. When I was a young boy, my father ran a service station and farm implement dealership, and part of what was done in that service station was people would drive in and we would change the oil in their cars. After we had changed the oil—we would take the nut out of the crankcase and drain their crankcase of the used oil—it would go into a barrel, and when the barrel was full, the barrel was poured into a large tank. And when the tank was full of all of this used oil, we would hook the tank up to a little co-op tractor and drive up and down Main Street of Regent, ND. We had a pipe on the back of that tank with little drip valves on it, and we would drip that used oil all up and down the Main Street of my hometown.

Why did we do that? Because my hometown did not have paved streets, and it was a wonderful thing that the Farmers Union Oil Co. did for Regent. And for that matter, it was a wonderful thing the Regent Garage did for Regent. Every so often, when they had enough used oil in their tank, they hooked it behind the tractor and drove up and down Main Street and dripped that oil on Main Street to keep the dust down.

That was an old-time version of blacktop, I guess, just drip used oil on Main Street to keep the dust down. Of course, if you caught someone today riding a little co-op tractor dripping a barrel of used oil on Main Street of Regent, ND, someone would soon have them on the way to a penitentiary someplace because that is a very serious violation of Federal law and State law. You cannot decide to drop oil on the main street of a town in order to hold the dust down as we did because we understand now, many decades later, we were contaminating and polluting and ruining our water supply. It was not the right thing to do. We did not know it at the time; we thought we were doing a good thing at the time. The people of my hometown thought it was wonderful. But we were polluting the water supply, contaminating groundwater.

So we have rules and regulations that say you cannot do that. If you are going to take used oil out of cars, you are going to have to figure out a way of disposing of that used oil without ruining our water supply—a fairly simple requirement except it costs money. It is a pain for somebody who is changing oil in cars to have to figure out what to do with that used oil. It costs money to

deal with that used oil in the right way.

Well, is it reasonable to require that we not dump that on the streets or dump it in a ditch someplace? Yes, that is reasonable. And it is a cost that then is passed on with the cost of doing business.

In a much larger way, we have had that same debate with respect to air pollution. In the 1970's in North Dakota, there was a decision that we were going to use a lot more lignite coal. We are part of the Fort Union Basin, which has the largest lignite coal deposits in the world. In order to produce electricity to fuel Minneapolis, using lignite coal from North Dakota out there in the prairies, they wanted to build large coal-fired generators to burn that coal and produce electricity. The problem with that was that North Dakota was to host this lignite coal burning. If you are going to burn lignite coal to ship electricity to Minneapolis-St. Paul, for example, so they can have heat in the winter and air conditioning in the summer, do we want air pollution in our airshed in North Dakota as a result of doing that? The answer is no.

So in the 1970's, I and two or three other fellows led at the time a fight in North Dakota to say if you are going to build coal generating plants in North Dakota, you are going to do it right. In other words, you are going to be required to use the latest available technology with respect to your stacks, and the effluence or emissions that come from those coal-fired generating plants have to be reduced by using the latest available technology; in other words, wet scrubbers on those stacks to clean the air. Expensive? You bet. Very expensive. Was it the right thing? Well, 20 years later, I can tell you I am proud of having been involved in that fight and proud of having been in a group that won that fight in North Dakota because, yes, we burn a lot of lignite coal. I am pleased that we do. But it is burned in plants that have wet scrubbers and the latest available technology to prevent the kind of pollution we would have had.

The result is that North Dakota met the clean air standards. We still have a good airshed, largely because we fought the fight and said you are required to do this the right way. That was a regulation, a requirement. Was it a pain for somebody? Was it costly? Yes, it was. But it was the right thing, as well. Had we not done that, we would have produced power and sent it east somewhere and we would have been stuck with dirty air in North Dakota. It is not the right way to do things.

Now, the issue with respect to this matter in this Chamber is an issue, it seems to me, of what is reasonable. Some call this regulatory reform. Others call it regulatory rollback. I happen to believe there are a lot of silly, unnecessary, and unreasonable Federal rules and regulations, and we ought to get rid of them and the people who write them. There is no excuse for that. But we ought to deal with facts, not fiction.

It is interesting, in the book The ''Death of Common Sense,'' among other things, it is said a dentist is now prevented from extracting a tooth, a child's tooth, and giving the tooth to the child. I thought to myself when I read that, what on Earth is happening? Who would write a rule like that? Well, I looked into it. It turns out it is not true—a great story, but it just is not true.

There is a host of those kinds of myths that gain life because someone said it in an anecdote that turns out to be just not true. In fact, there are a dozen or so that have been used in the Chamber, which I am going to come and describe, and most of those dozen are not true either. I will do that in a subsequent presentation. It is one thing if we are dealing with fact. It is another thing if we are not dealing with the truth.

One of the issues that has been raised in the Chamber as silly regulations, we are told, is that a worker cannot wear a beard. In fact, I think it was on Senator HATCH's top 10 list, No. 9. It says forcing a man to choose between his religion and his job because rules do not allow workers to wear a mask over a beard. A stupid rule, Senator HATCH alleged.

Well, I looked into that to try to understand: Is that the case? The Government, at least to the extent that I have been able to find—and maybe someone will correct this—never forces workers to choose between their safety and their religious beliefs about wearing beards.

There are some businesses that do that, that require their male employees to be clean shaven. This actually deals with the question of respirators, which prevent workers from breathing in harmful substances such as asbestos, lead, or toxic chemicals, and apparently about 2.6 million American workers do wear respirators. One kind of respirator does not work if you wear a beard, because you do not get a good seal around your mouth.

But a better respirator can work even if you wear a beard. And if you use environmental engineering controls, to stop workers from breathing in these toxic substances in the first place, you do not need to wear a respirator at all.

So the fact is the Government does not force workers to choose between their safety and their religious beliefs about wearing beards.

Here is another one. An elderly woman cannot plant a rose garden. No. 3 on the top 10 list of silly regulations. We do not have any idea where that comes from. The suggestion, I guess, is that section 404 of the Clean Water Act is preventing someone from gardening as they wished. As we understand it, the story turns out to be almost entirely apocryphal. A number of people have tried to get the facts on this silly regulation, or alleged regulation.

It first appeared in 1991, I understand. It was alleged it happened to a woman in Louisiana. And then when retold, apparently it happened to a woman in South Carolina. And then retold again, it turns out it was probably a woman in Georgia. The Heritage Foundation said that this was a woman in Wyoming. Well, the Army Corps of Engineers has never been able to determine where this story might have come from.

Perhaps if Senator HATCH, or others, might tell us who this happened to and give us some details, we can verify whether this is actually the case. At least those who have tried to verify this say the allegation that an elderly woman was prevented from planting a bed of roses on her own land is simply not the case, simply not true. There are no facts to support it.

There are a whole series of these myths.

No. 4 that was offered in a chart, Senator HATCH's list of top 10 silly regulations, was failing to approve a potentially lifesaving drug, thus forcing a terminal cancer patient to go across the border to Mexico to have it administered.

Now, I want to note that we have provisions of the Federal Food, Drug and Cosmetic Act in this country that do relate to the question of what drugs patients who are terminally ill may use.

First, since 1968, the FDA has had what is called a ''compassionate use policy,'' to permit the use of a drug that is still being tested if there is no other drug available for the condition. Second, the FDA may make promising drugs that are still under investigation available to terminally ill patients before the drugs go on the general market. Third, FDA now has a new fast-track procedure to speed approval of new drugs for serious or life-threatening illnesses.

I understand that there are some concerns about the speed or the pace with which the FDA acts. It seems to me that the Congress and the FDA have tried to address this issue.

You know, the FDA has had an interesting history in this country. They have been careful, it is true. A recent study showed that 56 drugs have been removed from the market in the United States, Great Britain, France, and Germany since 1970. In other words, drugs have been removed from the market 56 times. Of these, only nine removals occurred in the United States. Why? Because the drugs that were removed from British, French and German markets were not approved by the FDA.

Mr. JOHNSTON. I wonder if the Senator will yield.

Mr. DORGAN. I will be happy to yield.

Mr. JOHNSTON. The Senator has been talking about the list of the top 10 worst regulations. Frankly, I have not paid too much attention to those anecdotal sort of things. Is the Senator aware that EPA did a study of its own

regulations in 1987 called ''Unfinished Business: A Comparative Assessment of Environmental Problems,'' and that they concluded that their own estimation of risk did not comport with scientific risk, but rather with the public opinion about those risks? Is the Senator aware that was EPA's own evaluation of its own regulations?

Mr. DORGAN. I am familiar with the study, but I have not had the opportunity to review it in detail.

Mr. JOHNSTON. I have a copy of it here. I wonder if the Senator is aware that in 1990, the Science Advisory Board did a study of that and, in effect, concluded that the first study was correct; that is, that it did not comport with scientific evaluation of those risks, but rather with public perception of those risks. The Senator was not aware of that?

Mr. DORGAN. Again, I have not examined the results of that study in depth.

However, I do not think the Senator would use either study to demonstrate a conclusion that the central thesis of what I am talking about, the Clean Air Act, the Clean Water Act and a whole range of other health, safety and environmental standards, are somehow not grounded in science or not grounded in fact. I think the Senator would not be correct if he says the bulk of what we do to make sure our water is safe, to make sure our air is clean, to make sure drugs are tested and safe, the bulk of what we do is inappropriate. The Senator would not be making that case, would he?

Mr. JOHNSTON. Absolutely not. As a matter of fact, we have specifically stated that all of those laws to which the Senator refers will not be changed in any way, will not be overridden. I thought it was clear in the original Dole-Johnston bill, and we have had a lot of debate here, as the Senator knows, about the question of whether it was clear. We accepted the amendment that made it doubly clear; that is, that each one of those laws will remain in full force and effect, all the standards will be there.

What we are dealing with here is rules. When you take those laws and translate them into rules, what we are saying is that you must look at those laws through the lens of sound science and proper risk assessment, rather than public opinion, politics, emotion, prejudice, superstition—whatever. We are saying translate those good laws, which protect public health and safety, but do it in a rigorously logical and scientifically appropriate way. Would you agree with that?

Mr. DORGAN. Well, as the Senator states that principle, I have no substantial disagreement with him. However, the Senator understands very well what is at work with respect to this body of change and reform. The Senator is perhaps familiar with the stories of the bill that is similar to this one—though not identical—the regulatory reform bill that went through the House of Representatives?

Mr. JOHNSTON. It differs with this bill as night does day.

Mr. DORGAN. Perhaps. My point is with respect to the regulatory reform agenda, I know the Senator has read the accounts and probably verified them in discussing them with our colleagues that the bill in the House of Representatives was actually written by a bunch of lobbyists sitting in a room saying, ''This is what we need to have happen.''

I guarantee you this—I just guarantee because I have been in these fights in North Dakota for a long time, with respect to air pollution and other matters. The corporate system is interested in profit, and they should be because they are responsible to their stockholders. When they sit around and propose regulatory reform legislation, they are designing to find ways to weaken the Clear Air Act, the Clean Water Act and a whole series of regulatory standards. That is simply the way it works. I think that is unfortunate, but they have every right to try to do that. I want to make sure we get rid of the silly and the outrageous regulations—and there are some—but I want to keep the foundation of what we have done.

Is the Senator aware of this: I wonder if the Senator is aware—likely, because I think he is one of the best in the Senate on the issue of energy and related issues—that in the last 20 years, we have nearly doubled the amount of energy we use, and yet the airshed in America is cleaner than it was 20 years ago?

Mr. JOHNSTON. Absolutely.

Mr. DORGAN. If the Senator is aware of that, the Senator, I think, would agree with me that is not because the captains of American industry said, ''We ought to invest our money to clean the air.'' It is because Congress decided to do something. We decided to say to people, ''When you produce, part of the cost of the production is the requirement not to pollute America's air.''

Mr. JOHNSTON. And that is why we have every single provision of that Clean Air Act unchanged, not overridden, and the full force and effect if this bill passes.

Did the Senator know the original risk assessment was proposed by a Democrat, namely me, and passed overwhelmingly here?

Mr. DORGAN. In the last session of Congress, absolutely.

Mr. JOHNSTON. I do not know what happened in the House, whether or not lobbyists were involved in it. That is irrelevant to this bill. We took the original Dole bill which came out of committee, which, in turn, differed from the House bill, and made over 100 changes, including all of those I talked about. So I do not know how it started or how it changed or how the House did it or what the Louisiana Legislature did. I am telling you what is before the Senate now, which is the relevant thing, and what is before the Senate now is a tough bill which incorporates all of those good provisions for clean air and water that the Senator speaks about.

Mr. DORGAN. I appreciate the Senator's participation. I have great respect for Senator JOHNSTON.

Let me finish what I was trying to say.

Mr. LEVIN. While the Senator is yielding, if the Senator will yield for an additional question.

Mr. DORGAN. Yes, I yield.

Mr. LEVIN. The Senator from Louisiana asked if the Senator was familiar with a number of documents, and there is a third document I would like to refer to, which is the March 1995 report, later than the two documents to which the Senator from Louisiana referred.

In the 1994 report of the National Academy of Sciences—that report entitled ''Science and Judgment in Risk Assessment''—they made a number of specific recommendations to the EPA where they might improve policies, practices, and methods of risk assessment, but also concluded the following:

> EPA's approach to assessing risks is fundamentally sound, despite often-heard criticisms.

I ask this question of my friend—as to when the Senator was reviewing the two earlier documents of the Senator from Louisiana—whether he might also add to that reading list the 1994 report of the National Academy of Sciences?

Mr. DORGAN. I would be happy to add that report to the list of reports I should review. I have heard the Senator from Louisiana refer to his two in previous debate. I doubt whether the conclusion one can reach from them is that you have a bunch of folks proposing regulations on unscientific basis. Let us think about the facts here.

The fact is we use twice as much energy now and have cleaner air. Why is that? Because we have clean air regulations that do not work? Of course not. They have succeeded. One of the things we at least ought to take credit for is having marched in the right direction. I think the Senator from Louisiana would not contest that. He is making the case, yes, that is probably true, but we are not interfering with that.

So let us understand that what has been done in the name of regulation, in many instances, has been awfully good for this country. We now have started to clean up America's airshed. I think a lot of the kids and families would say thanks for that. That is the right thing. We want to live in a healthier place. My sense is that if you ask folks out there: Do you think that the food safety standards in this country make sense? Would you sooner go into a restaurant and order a side of beef—not that the Senator from Louisiana would eat a whole side of beef at one sitting—but would you like to see on that side of beef one of those big stamps that says ''USDA inspected,'' or would you

like to see that it has a little stamp that says, ''This side of beef was inspected by Sid and Arnie's Meatpackers Co.''?

Well, look, I think what we have done for food safety has made a lot of sense in this country. I will not tell the stories about bread and rat poison and meat going down the same holes in the 1900's before we decided to have meat safety standards.

Mr. JOHNSTON. The answer is, of course, I want that ''USDA inspected'' label on there, and I want scientists to make that inspection based on scientific standards and not on some public opinion poll or some prejudice or some superstition. Put good science in the picture. That is all we are saying. I want the inspections to continue, but with good science. That is what we are about. You know, it is the scientists who discovered E. coli, not some pollster out there reading the results of the last election.

Mr. DORGAN. The Senator knows what has happened with E. coli in the last couple of days. He has read the reports about outbreaks in three or five States in recent days. We are now going to be talking, one of these days—I hope seriously—about inspection of fish and seafood. That is now voluntary in this country, and it ought not be. When we get to that point, I wonder whether we will be as aggressive and interested in making sure that that inspection is the equivalent of other flesh food and that we will have the same kind of assurance for the American consumer that they are buying fish and seafood that is healthy and wholesome.

I happen to think that in some areas regulations make sense. I do not think the Senator from Louisiana disagrees with that. But we have been in this circle here where if somebody holds up a silly regulation, I guarantee you—and I know we are not debating the House bill—that that bill was written by the people who want to get out from under the cost of regulations. People used silly examples then to demonstrate the rule. Well, even if the exception is true, it does not demonstrate the rule.

We are always debating things the Government is spending. Somebody might say, gee, ''Did you know somebody in a research is studying the sex life of a screw worm?'' Yes, they study that with public dollars. Why? They did that to save the beef industry in this country. And they did. I cannot even describe to you the cost-benefit ratio of that work. But someone can make fun of that, I suppose, or the fact that somebody was sitting in a laboratory with dark glasses studying molds and discovered penicillin. You can go on forever.

With respect to regulations, we go through the same kind of situation. Someone holds up a silly one—and there are some—and says, ''This demonstrates the rule.''

I am going to support the Glenn-Chafee regulatory reform substitute because I think it moves in the right direction. It is substantial reform. It requires agencies to show that benefits justify the costs, but it does not allow the cost estimates to control, just singularly——

Mr. JOHNSTON. If the Senator will yield, I submit to the Senator the Glenn-Chafee bill does not make such a requirement. It makes a requirement of stating whether the benefits justify the cost. But it is no longer a decisional criterion. You state it, but you do not have to comply with it. That is the point.

Mr. DORGAN. I will yield soon, but I say that my understanding of the Glenn-Chafee substitute is that it requires that the agency use a cost-effectiveness standard, and the cost effectiveness standard, in looking at which regulatory scheme or approach to use, is substantially different than what I believe your proposal would require, which is the least-cost standard. You might find a standard that is the least cost but is less appropriate than the most cost-effective standard. That is how I view the differences in these proposals.

I yield to the Senator from Michigan.

Mr. LEVIN. The Senator has pointed exactly to one of the major differences in the two bills, which is the requirement in the Johnston bill that you go with least cost, unless there is a certain nonquantifiable benefit. But if the benefits are quantifiable—which they are in many instances—you are forced to go with the least cost, even though a slightly larger cost would produce a major additional benefit.

So the Senator is exactly right on that. On the question of whether or not cost-benefit analyses were required in the Glenn-Chafee substitute, it is required. It is right here on page 29, line 14. I am going to read the language because it is required, but if it cannot be given, then the agency must say why, in fact, the certification that the benefits justify the cost cannot be made, because there are instances where an agency cannot make that certification. This is the language:

> The agency must certify that the rule will produce benefits that will justify the cost to the Government and to the public of implementation of and compliance with the rule, or an explanation of why such certification cannot be made.

And in addition to requiring that that certification be given, the Glenn-Chafee approach is that Congress is then put in the position where, if such a certification is not or cannot be made, then it will or can veto such a regulation. We are put in the position, because of the expedited process here, for Congress to review regulations, and where the benefits do not justify the costs or any other regulation, we are accountable.

Finally, there is some accountability in the elected officials of this land for the regulations which people might think are burdensome. We are not going to be able to hide behind the regulators under Glenn-Chafee. We have here legislative veto.

So in the event an agency cannot certify that the benefits justify the cost, someone can come to us—a constituent can come to us and say, hey, look at this cost-benefit analysis. They are producing here something which costs $1 billion and only produced one-half billion dollars in benefits. We want you to veto that because it does not make sense. We are not going to have any excuses—no more excuses, no more hiding behind regulatory agencies. So there are significant differences between the two bills, but they are not both regulatory reform, and cost-benefit is required in both bills. The difference is what happens when an agency cannot certify, or should certify, that the benefits justify the cost under Glenn-Chafee. We then take the position as to what should happen.

Mr. DORGAN. Mr. President, I know that others want to speak. Let me make two final points on this subject. I appreciate the comments of the Senator from Michigan.

It is very hard, it seems to me, for anyone to talk much about success. Failure is what sells. Scandal sells. Success is largely boring.

You know, Gregg Easterbrook has recently published a book about the circumstances we face in this country with our air and our water. He points out something most Americans probably do not know, that our air is cleaner now than 20 years ago. Is it perfect? No. Are we moving in the right direction? Yes. Our water is cleaner now than it was 20 years ago. Our lakes, rivers, and streams are cleaner than 20, 25 years ago.

Think back 20 or 25 years ago. Most people foresaw an era ahead of gloom and doom. That seemed to be where we were headed—more pollution, more use of energy, and more pollution of our air, of our water. And they figured that we were consigned to do that. It was inevitable, they thought, because we could not control it.

Congress decided we wanted to do something about it, and we passed legislation and said we have to change the way we do business. Yes, it is costly. Yes, it is probably a pain to do that. But we insist it is a cost of doing business, to keep America's airshed clean, to clean up our rivers and streams.

Mr. President, 20 years later we can stand on the floor of the Senate and debate regulations and talk about the fact that we changed the direction this country was headed in. How? By regulations, by laws that say we demand this country change the way it is moving.

Now, I happen to think that is wonderful. We should claim a little success in areas where we have made progress.

Those who are elected to Congress under a regime of reform or change, who come here thinking they ought to change what is successful, in my judgment, jumped on the wrong wagon on the way to town.

We ought not be reforming something that is working and moving us in

the right direction. If anyone believes that the direction of the regulatory reform bills in the House and some that have been proposed here would weaken the fundamental structure of our attempt to clean our air and clean our water and keep our food safe, it seems to me the choice is pretty clear. The choice is to support the Glenn-Chafee bill, which does reform our scheme of regulations in a sound and a practical way but does not jeopardize what we have accomplished in this country.

When I began this presentation, to those who took umbrage when I said this debate is beyond boring, and for those who have participated in it, I do not mean this personally. I say it is beyond boring because most of it is so fundamentally arcane and technical and hard to understand, but it will affect the life of every American citizen. It might be boring, but it is critically important.

If we strip the peeling off, we are talking at the roots, yes, about E. coli; yes, about mammograms. We are talking about health, safety, clean air, clean water, and that affects every single American. That is why this debate is important. It is why it is important we get it right.

Finally, it is why it is important we not decide to be champions of change in areas where we are successful. That makes no sense.

That is why I come here supporting the Glenn-Chafee bill, the substitute, and hope that we will not invoke cloture late today, and instead decide to embrace the Glenn-Chafee regulatory reform substitute. I yield the floor.

Mr. BOND. Mr. President, I thank the Chair. I rise to support S. 343, the Comprehensive Regulatory Reform Act of 1995, and in strong opposition to the amendment offered by our friends, the Senators from Ohio and Rhode Island.

Let Members know at the outset that the Dole-Johnston substitute is not a regulatory repeal act. It is not a regulatory prohibition act. It is, in fact, a strong, regulatory reform act.

It reforms the way Government regulations are issued, with three goals in mind: First, to bring accountability to the bureaucrats writing the regulation and, just as importantly, to those in Congress, who, after all, write the laws that generate those regulations; second, it attempts to bring a little common sense to the regulations that are issued; third, it brings a little more honesty to the way we talk about what we are regulating and why some truth in regulating is necessary.

I am afraid that the Glenn-Chafee amendment comes up short when measured by these criteria. This is an effort to go back to the status quo. It will ensure we stay where we are. It would fail to ensure that Government agencies obey the law and follow common sense like the rest of Americans have to do.

If the Glenn-Chafee amendment were to be adopted, we might as well do nothing—for that is, in fact, what will happen. There will be no change. Same old 6's and 7's, the same old way we have been doing things.

It is my contention that we simply cannot afford to do nothing. We cannot accept the status quo. Regulations are like water: Too little and you cannot live; too much and you drown. In our crowded society, there is no question that regulations are needed to help make our communities a better place.

As has been pointed out at length in the recent discussions on this floor, over the last 25 years, environmental regulations have helped ensure that the air we breathe is cleaner, the water we drink is safer, and the rivers we fish and play in are increasingly less polluted.

Workplace regulations have made our jobs safer. One would think from listening to the recent debate that we were going to change all that. That is not the point.

Those who argue for 25 years are not being contested. But the argument is about here, today, and where we go from here. That is the point that has been missed in some of the discussions we have just heard.

In recent years, the fact is that government regulation has risen to the level where it is choking off the growth of jobs, the growth of economic opportunity and the betterment of the way of life of everyone.

Just like the waters of the Missouri River that recently rose to flood part of my home State of Missouri, we are suffering a flood tide of regulation. The Comprehensive Regulatory Reform Act of 1995 will go a long way to stop the rising tide of overregulation. When the President signs this legislation, as I believe he eventually will, because he must, we are going to reduce the burden of government regulations below the flood stage so that regulations continue to enhance the quality of life, not interfere.

Now, opponents of this legislation have taken the approach that there is no problem with overregulation; regulation is only good. We have heard stated how many good things regulation has done. They say, Do not worry, be happy; regulatory burdens are all in your imagination. To that I say, respectfully, Bunk. Get outside the beltway, ask the people who live and work in the rest of America what they think. Ask the people who have to comply with the regulations. Ask small businesses.

I have had the opportunity as chairman of the Small Business Committee and as cochair of the Regulatory Relief Task Force to hear plenty from people in small business. Last week, I spoke on this floor about a series of field hearings the Small Business Committee has held around the country. I can say that the Senators who attended those hearings had our eyes open to what is going on with small business and the cumulative burden of regulations.

As the Chair well knows, we heard in Memphis from people from all different areas of small business how the burdens of government regulation were making it impossible for them to continue to bring the jobs, to provide the products that were essential, not only to the economy, but to the well-being of the people in that area.

Just last month, I heard the same message from delegates to the White House Conference on Small Business. They made it very clear to anyone who was willing to listen that excessive overreaching regulations and outrageous enforcement zeal are a top priority for the Nation's small entrepreneurs who create large numbers of new jobs.

These delegates came to Washington, took time away from their business, spent their money, and devoted resources and effort of extraordinary magnitude to speak on behalf of small business.

They voted on the biggest concerns to small business from a list of several hundred proposals, from judicial review of the Regulatory Flexibility Act to cost-benefit analysis, to protection for self-audits, to sunsetting old regulations, to reform of OSHA—the delegates sent a clear message to us and to the President. Maybe some people stuck inside the beltway do not know that regulations are a big problem. But small business knows that it is drowning in a floodtide of regulations.

Mr. President, I ask unanimous consent to have printed at the end of my remarks the list of the top 30 concerns as voted on by the delegates to the White House Conference on Small Business, so everyone can see how important this legislation is to small business.

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

(See Exhibit 1.)

Mr. BOND. I do not believe the delegates to the White House conference would want to see this bill weakened by the Glenn-Chafee amendment.

Let us look at environmental regulations as an example of the rising cost of regulation. In the past, environmental regulations were based on common sense and they have been responsible for giving us a much improved quality of life. But increasingly they are now choking off American entrepreneurship and producing fewer and fewer benefits.

I think I understand why this is happening. Because, to me, solving our environmental problems is a little like harvesting a Missouri soybean field. You can get most of the soybeans quickly and efficiently with a modern combine. It is an expensive machine but it is worth the cost because it is fast, efficient, gets the soybeans that provides a vital food source supply, and it does so in an economical way. We could build a superefficient combine, designed to harvest almost every single soybean, leaving almost none behind, but it would sure be a lot slower and it would undoubtedly be far more expensive. And very few farmers in Audrain

County, MO, where I am from, could afford it because it would only get a few more soybeans. You could even take that one step farther. You could get every last bean, perhaps, if you hired an army of people to crawl through the fields on their hands and knees, looking for any single bean the machine has missed.

The point of all this is, simply, there is a diminishing return on investment at some point. Sooner or later, you have to say enough is enough and move on to another field. When is it that you say enough is enough? You say enough is enough when science says that it is enough. If there is something truly dangerous, if the gathering of that last soybean out of the field has to be done for critically important human health, welfare and environmental needs, then yes, let us talk about getting that last bean. But when there is no real danger to the environment, or to human health, what good is there to pursue perfection?

Environmental regulations work just like that. Initially, our regulations were based on common sense and well worth the money we spent to reduce pollution. Nobody wants to go back—and nobody is talking about going back—to the days of dirty water, dirty air, dirty food. We have made great gains in environmental quality and significantly reduced pollution at moderate costs.

But in the last few years, I will tell you, something has gotten out of whack. In many areas of environmental protection we have found the costs to get those last few molecules of pollution skyrocketed. Achieving additional gains is exorbitantly expensive, with more and more money being spent on fewer and fewer results. In these areas we have reached the point of dramatically diminishing returns.

If we cannot achieve zero risk—and most scientists I talk to tell me that nature and this world is not a zero risk environment—does this mean we should stop writing regulations to protect our health and environment? No. Not at all. It simply means we cannot afford to regulate unwisely, as if we were going to achieve a zero risk, absolute perfection ideal, without regard to costs.

The current effort before us today in this body is to pass regulatory reform. Foremost, it is to ensure that regulation is done wisely. Those of us who are pushing for reform believe that knowledge, scientific knowledge and common sense, are important parts of wisdom. If we are going to spend $160 billion on the environment, we think everyone should get a better understanding of what kinds of risks we are protecting against, the benefits of specific regulations and the cost of those regulations.

The real tragedy of this is that our desire for perfection will bankrupt us and divert our efforts away from more significant risks. Every day of every year, real people die because we have misallocated our resources. One study conducted at the Harvard Center for Risk Analysis has shown that if EPA did a better job of prioritizing the resources consumed by a sample of 90 average regulations, 1,200 needless deaths would be avoided. That is just 90 rules at just 1 agency.

Across the Government, this same study showed that by using common sense and getting the most bang for the buck, we could save tens of thousands of additional people every year without imposing any additional cost on our cities or businesses. These are the real victims of the status quo. The complaints of how this bill might lead to someone being exposed to some increased theoretical risk pale in comparison to the deaths that occur every day because we have spent our resources responding to the latest media scare instead of basing our decisions on sound science and cost-benefit analysis.

Those on the other side who are exposed to regulatory reform—there are some who are opposed to any kind of regulatory reform, they like it just the way it is—like to trout out the phoney scare stories of the victims of E. coli food poisoning. They know that this bill contains clear safeguards for regulations that protect us from food poisoning. But the other side does not say much about those who are inquired or killed every year because we waste resources on trival risks, instead of focusing on the real health and safety risks. These are the victims who are left with no hope if the Glenn-Chafee amendment passes.

The Dole-Johnston substitute has three simple goals: we want Government regulators and the Congress to be more accountable for their actions. We want Government regulators to be honest. And we want them to use a little common sense.

Central to increased accountability are the congressional review and tailored judicial review provisions of this bill.

Judicial review of the Regulatory Flexibility Act was the third highest vote-getter at a recent White House conference. Let me take just a moment to explain why this is important.

The Regulatory Flexibility Act, for those who are not familiar with the terminology, refers to a measure passed in 1980 by Congress. It was supposed to give a break to small business by telling agencies that they had to be flexible in passing regulations that deal with small business. They were supposed to conduct a regulatory flexibility analysis to see if there are other ways of getting the same job done if it affected small business.

Unfortunately, the problem was that Congress in its wisdom—and I apologize for the oxymoron—struck any kind of judicial enforcement out of the Regulatory Flexibility Act. So what happened? Every time the Advocacy Council and the SBA went to another agency and said, ''You did not comply with the Reg Flex Act,'' or a small business went in and said ''You did not comply with the Reg Flex Act,'' the answer in too many cases was, ''Tough. There is nothing you can do about it.''

There we see the provisions of the Glenn-Chafee amendment making judicial review almost ineffective, totally ineffective in many instances, if there is only a show of cost-benefit analysis. We do not want to make that same mistake again. We put in an appropriate judicial review for reg flex, and on decisions such as cost-benefit analysis.

The judicial review provisions of S. 343 will provide a much-needed check on the actions of agencies, without subjecting rules to judicial scrutiny of minute procedural steps. This provision strikes the right balance between accountability and a desire not to clog up Federal courts.

The bill provides for greater congressional accountability by including the provisions of the Nickles-Reid Congressional Review Act passed by the Senate 100 to 0. There are two important changes. First, the period for congressional review is extended from 45 to 60 days. Second, the threshold for rules whose effectiveness is delayed during the congressional review period is tied to the overall definition of a major rule.

The second goal of the bill is more honesty in the pronouncements of the Federal Government. S. 343 would for the first time require Federal agencies, not only to tell us what they know, but also to tell us what they do not know, when it comes to assessing risks. EPA would no longer be able to hide the ball from the public in their analysis of regulations. From now on, Federal agencies will have to come clean on the assumptions they make and the quality of the science they use in making regulatory decisions. This is a provision that ought to be called truth in regulating legislation. I expect and hope that as a result of this legislation, many so-called risks that EPA tries to regulate will turn out—like the alar scare—to be based more on fear than fact. After passage of this legislation, if sound science indicates that a significant risk needs to be addressed, then, of course, we must support sensible and cost-effective regulations. That is what this is all about, making sure that we get regulations focused on the design to get rid of those risks.

This bill is also about a return to common sense in regulating. Federal agencies spend too much time focusing on the small risks and not enough time on the big risks. This legislation would go a long way toward fixing that. This bill directs agencies to set priorities with the goal of achieving the greatest net reduction in risk with the public and private sector resource expended, and to incorporate those priorities in the agency budget, regulatory agenda, and enforcement and research activities. As I mentioned last week, over the last several years in the Appropriations Committee, the ranking member

on the HUD–VA Subcommittee, Senator MIKULSKI, and I, have been pushing agencies to use comparative risk assessments to prioritize their budgets to focus on the biggest risks. The National Academy of Public Administration recently released a report to the Committee on the EPA entitled ''Setting Priorities and Getting Results.'' One of its top recommendations was to ''Use comparative risk analysis to inform the selection of priorities and the development of specific program strategies.'' It only makes sense that agencies use their resources to tackle the worst problems facing the country. Sound like common sense, but the sad fact is that is not what's happening today.

The bill includes an additional way to bring some common sense to regulatory decisions—cost-benefit analysis. The basic idea is a simple one. We should spend more resources and effort on big problems and less on small problems—that is cost-benefit analysis, that is what is so scary to the opponents of this bill. We say that in meeting the requirements of existing laws, Government agencies should pick a regulatory solution with costs that are justified by the benefits. It seems astounding to me—and I think it would to most people in America—that today Government regulators write rules for the rest of us without an established procedure to evaluate costs and benefits, but frankly that is what is happening. And it is even more astounding that some people have been using emotional appeals to generate irrational fears of this commonsense approach that all of us use in our everyday lives.

Finally, the bill repeals the Delaney clause, one of the worst examples of regulation with no basis in sound sciences. Public health protections are maintained with a replacement provision that allows regulation unless there is only a negligible or insignificant foreseeable risk to human health. American farmers will no longer be hamstrung from using safe and effective crop protection products simply because our technology lets us measure parts per trillion or parts per quadrillion.

We have had testimony before our committee from scientists, including the President's own Science Advisory Board, saying the Delaney amendment is no longer good science. The Delaney amendment cannot be justified in a time and day when we are able to measure the most minute parts, parts per trillion or even quadrillion. This is not sound science they have told us. It is time to get the Delaney amendment off the books.

Mr. President, the Dole/Johnston substitute will help small business that are hamstrung by Government redtape. That is why it has the overwhelming support of the small business community, including the National Federation of Independent Business, the Small Business Legislative Council, National Small Business United, and other small business groups.

I would ask unanimous consent to have printed in the RECORD at the end of my remarks, several letters of support for the bill from these small businesses.

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

(See exhibit 2.)

Mr. BOND. Mr. President, small business is not alone in its support of this bill. The Dole/Johnston substitute will also help the farmer who cannot use products that good science shows have no risk to health. Small towns will have less to fear from arbitrary pronouncements from Washington. I have a letter from the National Association of Towns and Townships that has written me in particular support of the language in the bill pertaining to the judicial review of the Regulatory Flexibility Act. You see, these towns know that for too long, Government agencies have ignored the impact of regulations on small and rural communities. They are counting on this legislation to force Government agencies to obey the law and minimize the impact of regulations on small communities.

The Dole/Johnston substitute will bring some much needed accountability to the faceless regulators sitting in their Washington office buildings cranking out the stream of new rules. It will also bring accountability to Congress, where some of the blame lies for those regulations. It brings sunshine and openness to the way the Government analyzes and talks about health risk, to give us a more honest discussion of the problems facing us.

Finally, it brings some common sense to the decisions that the bureaucrats make. Just like every family in America who looks at the costs and benefits of going on vacation or buying a smoke detector, Government regulators are going to have to take a hard look at the cost and benefits of their actions.

The claims made by some of the extremist pressure groups that this legislation will harm the environment are simply false. By grounding our health and safety rules on sound science we can avoid wasting our money on phantom risks. By dealing with the worst problems first, and spending our resources wisely, this bill will help afford a safer and cleaner environment for us and our children.

In contrast, the Glenn/Chafee amendment ensures that we will continue on our present course, the flood waters of regulations will rise ever higher and more and more small and large businesses will drown in the flood. Make no mistake, a vote for this amendment is a vote against small business, a vote against common sense, and ultimately a vote against the environment—because unless we reform the way we do business we will continue to waste our resources on trivial risks, and have nothing left over for the very real health, safety, and environmental problems that call for commonsense solutions.

Mr. President, I yield the floor.

EXHIBIT 1

FINAL RECOMMENDATIONS—1995 WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Rank	No./Issue	Votes
1	224 Independent Contractors	1471
2	214 Meals & Entertainment Expense	1444
3	183 Regulatory Flexibility Act	1398
4	218 Estate Tax Repeal	1385
5	87 Health Care Reform	1371
	*63 Superfund Reform	1371*
7	91 Pension Reform	1369
8	265 NII/Intellectual Property/SIC Code	1358
9	51 Environmental Enforcement	1342
10	200 Tort Reform	1332
11	121 Association Export Programs	1329
12	194 Agency Enforcement Reform	1328
13	406 SBIR/Patient Capital	1292
14	144 Unfair Competition	1285
15	78 100% Health Care Deduction	1283
16	5 Pension Investments	1279
17	9 Bank Lending Incentives	1275
18	385 Tax Equity	1258
19	286 SBA Survival	1249
20	34 Home Office Deduction	1239
21	129 Export/Import Bank Financing	1181
22	57 Regulatory Takings/Brown Fields	1118
23	115 Intellectual Property Protection	1080
24	242 Capital Gains	1054
25	164 Davis-Bacon/Service Contract Act	1046
	188 Paperwork & Regulatory Reform	1046
27	41 Entrepreneurial Education	1035
28	369 OSHA Reform	1030
29	24 SCOR	1027
30	14 Secondary Market for S.B. Investments	1009

EXHIBIT 2

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, June 28, 1995.

Hon. CHRISTOPHER BOND,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOND: I am writing to support your efforts to insure that the strongest possible judicial review language is included in the Comprehensive Regulatory Reform bill. The promise of regulatory reform will not be fulfilled if the council of the self appointed guardians of bureaucratic baloney is followed regarding amendments to ''reg flex''. Many of those who have criticized the direction you are headed with the Regulatory Flexibility Act and with your reading of how it interacts with the Administrative Procedures Act are only vaguely aware of the purposes or processes of either law. I urge you to hold fast to the course you have set—a course laid out in clear language by the Regulatory Flexibility Act to fit regulations to the ability of small entities to comply with them.

Sincerely,

MICHAEL O. ROUSH,
Director of Federal Governmental Relations—Senate.

SMALL BUSINESS LEGISLATIVE COUNCIL,
Washington, DC, June 26, 1995.

Hon. CHRISTOPHER BOND,
Chairman, Committee on Small Business, Russell Senate Office Building, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Small Business Legislative Council (SBLC), I wish to express our strong support for the ''compromise version'' of regulatory relief legislation. We believe it is an important step forward on behalf of the small business community.

At the recent White House Conference for Small Business, several of the top 10 recommendations included suggestions to improve the regulatory process. We note that several of those recommendations are addressed within the compromise version of the regulatory relief legislation.

While the delegates to the conference did not rank the proposals, the number three

vote-getter at the conference was a call to amend the Regulatory Flexibility Act to add judicial review. We note that the compromise version of the regulatory relief legislation includes strong language to provide the judicial review necessary to ensure that agencies comply fully with the Regulatory Flexibility Act.

The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, tourism, and agriculture. For your information, a list of our members is enclosed.

We at the Small Business Legislative Council look forward to working with you to see this legislation passed and ultimately enacted into law.

Sincerely,

JOHN S. SATAGAJ,
President.

Enclosure.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Air Conditioning Contractors of America.
Alliance for Affordable Health Care.
Alliance of Independent Store Owners and Professionals.
American Animal Hospital Association.
American Association of Equine Practitioners.
American Association of Nurserymen.
American Bus Association.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Gear Manufacturers Association.
American Machine Tool Distributors Association.
American Road & Transportation Builders Association.
American Society of Interior Designers.
American Society of Travel Agents, Inc.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
American Warehouse Association.
AMT—The Association for Manufacturing Technology.
Architectural Precast Association.
Associated Builders & Contractors.
Associated Equipment Distributors.
Associated Landscape Contractors of America.
Association of Small Business Development Centers.
Automotive Service Association.
Automotive Recyclers Association.
Automotive Warehouse Distributors Association.
Bowling Proprietors Association of America.
Building Service Contractors Association International.
Christian Booksellers Association.
Cincinnati Sigh Supplies/Lamb and Co.
Council of Fleet Specialists.
Council of Growing Companies.
Direct Selling Association.
Electronics Representatives Association.
Florists' Transworld Delivery Association.
Health Industry Representatives Association.
Helicopter Association International.
Independent Bankers Association of America.
Independent Medical Distributors Association.
International Association of Refrigerated Warehouses.
International Communications Industries Association.
International Formalwear Association.
International Television Association.
Machinery Dealers National Association.
Manufacturers Agents National Association.
Manufacturers Representatives of America, Inc.
Mechanical Contractors Association of America, Inc.
National Association for the Self-Employed.
National Association of Catalog Showroom Merchandisers.
National Association of Home Builders.
National Association of Investment Companies.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Private Enterprise.
National Association of Realtors.
National Association of Retail Druggists.
National Association of RV Parks and Campgrounds.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Chimney Sweep Guild.
National Electrical Contractors Association.
National Electrical Manufacturers Representatives Association.
National Food Brokers Association.
National Independent Flag Dealers Association.
National Knitwear & Sportswear Association.
National Lumber & Building Material Dealers Association.
National Moving and Storage Association.
National Ornamental & Miscellaneous Metals Association.
National Paperbox Association.
National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Wood Flooring Association.
NATSO, Inc.
Opticians Association of America.
Organization for the Protection and Advancement of Small Telephone Companies.
Petroleum Marketers Association of America.
Power Transmission Representatives Association.
Printing Industries of America, Inc.
Professional Lawn Care Association of America.
Promotional Products Association International.
Retail Bakers of America.
Small Business Council of America, Inc.
Small Business Exporters Association.
SMC/Pennsylvania Small Business.
Society of American Florists.
Turfgrass Producers International.

NATIONAL SMALL BUSINESS UNITED
Washington, DC., June 28, 1995.

Senator CHRISTOPHER BOND,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR BOND: National Small Business United is extremely pleased with your efforts to pass into law S.B. 343. Ever since the original passage of the Regulatory Flexibility Act, small businesses have expected the federal government to offer more flexibility when imposing federal regulations on small businesses. Unfortunately, agencies have not been held accountable to this act. It did not provide for judicial review which is so essential to its implementation.

The language which you have submitted to this bill will be most beneficial to small businesses across the United States. It is high time that Congress and the President act to provide small businesses with the opportunity to hold our federal government accountable for the regulations they impose on small business. Your leadership on this issue is most helpful and NSBU is grateful for your efforts.

Having just participated in the 1995 White House Conference on Small Business, I am aware that this issue was number three (3) on the final list of recommendations to the President and to Congress. Small business owners who were delegates to that conference want real reform. Your language will deliver a pragmatic response to their recommendation.

Now is not a time to compromise on this issue. It is too important to job creation and the growth of the small business community.

Thank you for your leadership. NSBU will do all it can to support your efforts.

Sincerely,

JOHN PAUL GALLES,
President.

NATIONAL ROOFING CONTRACTORS ASSOCIATION,
Washington, DC, July 5, 1995.

Hon. CHRISTOPHER S. BOND,
Chairman, Committee on Small Business, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BOND: The National Roofing Contractors Association (NRCA) applauds your excellent language providing judicial review for the Regulatory Flexibility Act of 1980 (Reg Flex) in the Comprehensive Regulatory Reform Act of 1995, S. 343.

NRCA is an association of roofing, roof deck and waterproofing contractors. Founded in 1886, it is one of the oldest associations in the construction industry and has over 3,500 members represented in all 50 states. NRCA contractors are small, privately held companies, and our average member employs 35 people with annual sales of $3 million.

Reg Flex requires that federal agencies analyze the impact their regulations would have on small business before they go into effect and minimize that impact. But with no judicial review, agencies disregard it. If an agency head certifies that a regulation will have no significant economic impact on small business, the agency can ignore Reg Flex.

For example, OSHA's new Fall Protection Standard, Subpart M, requires all persons working above six feet to have either a safety harness on, safety nets, or scaffolding with a walkway and a guardrail. We estimate its impact to be at least $250 million annually; OSHA's estimate is $40 million annually, and the agency goes on to state that the standard will not have a significant impact upon a substantial number of small entities.

Your judicial review language for Reg Flex would put a stop to this kind of agency noncompliance, and NRCA would oppose any effort to weaken it.

Sincerely,

CRAIG S. BRIGHTUP,
Director of Government Relations.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from California.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, I have not had an opportunity yet to speak on the bills before us, most specifically S. 343. For many days now I have listened as the Senate has been debating what are two

major regulatory reform bills. They are complex and detailed and some have said boring. But one way or another they will touch the life of virtually every American citizen.

The fact is that regulations serve an important purpose in our society. But as with all laws, they have to be balanced against other competing needs, and reexamined from time to time in order to remain effective.

I happen to be a great fan of the Senator from Louisiana. I believe he is a sound thinker. He is an effective leader, and he has played a major role in the debate on these issues. I respect him. I also respect the majority leader, whose bill this is, as a seasoned, experienced Senator who understands the impact of regulations upon the community regulated.

As we address the issue of regulatory reform, I think certain considerations should guide us in the process.

First and foremost, public health and safety must be the paramount concern. And we have heard that concern voiced over and over in the debate over breast cancer, over E. coli, and over a myriad of other regulatory programs.

Second, Government regulations should not strangle business and commerce but should seek to encourage economic growth as much as possible. That is often easier said than done, particularly in the largest State in the Union where problems are severe and often businesses will seek to choose an easier way and leave the State.

But the bottom line is: regulations have to make sense. Finding the right balance will be the determining factor as to whether we are successful in this effort.

California has a huge stake in this bill both from a public safety perspective and an economic perspective.

We have the biggest air pollution problem in the Nation. Children today, born in the Los Angeles basin, suffer from a 10 to 15 percent decrease in lung function compared with children in other areas as a result of air quality.

California has 96 Superfund sites, the second largest number in the country—that is almost two major toxic waste dumps for every county in our State. In 1990, I had occasion to visit one of them. It is a place called Iron Mountain mine, near Redding, that had been owned by a chemical company and had been mined for various minerals. There were holes in this mountain, some the size of 30-story office buildings. When it rained, water interspersed with the chemicals producing sulfuric acid which then drained out onto the banks of the Trinity River actually metallizing some of the banks. This Superfund site is now in the process of being cleaned up. So I am very pleased that the portion of the legislation impacting Superfund sites has been removed from the bill.

Santa Monica Bay, one of the most beautiful areas in the country and a premier tourist attraction in my State, has been contaminated with heavy metals and DDT to such an extent that the public is often warned not to eat fish caught there. I remember when I first went to live in Los Angeles, I went into a restaurant and ordered sand dabs and the waiter said, ''Don't order sand dabs; they are bottom-feeding fish and they are caught in the Santa Monica Bay, and the bay is polluted.''

Economically, California's unemployment rate, though beginning to improve, is still two percentage points above the national average. We are still struggling to climb out of the recession and cope with continued defense downsizing.

So the last thing California businesses need is unnecessary or cumbersome regulations that drive up costs and drive out jobs.

So I have listened with great care to this debate, and I have had the privilege of discussing certain of my concerns with the Senator from Louisiana. But the bottom line and the one that I have reached is that the Glenn-Chafee bill contains the best and most balanced approach to regulatory reform.

I would like to address what I believe are the primary weaknesses in the Dole-Johnston legislation.

In the area of cost-benefit, I believe the Dole-Johnston legislation, in a sense, throws the baby out with the bathwater. Cost-benefit analyses are supposed to weigh cost and benefit and then allow for the best alternative to be chosen.

The Dole-Johnston bill does not do that—it simply requires choosing the least-cost alternative. That does not always make sense, and it could have unfortunate results.

Let me give you some examples.

Seatbelts in the front seat. If the standards in the Dole-Johnston bill were applied to seatbelts, I am told by the National Highway Traffic Safety Administration that they would probably not be able to require both lap and shoulder belts in cars.

That is because, even though having both lap and shoulder belts save lives, the lap belt alone is the least-cost alternative.

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

Mrs. FEINSTEIN. The Senator is going to have a number of points to respond to. He might want to listen to them all first. If I could finish, I would appreciate it.

Mr. JOHNSTON. Sure.

Mrs. FEINSTEIN. I thank the Senator very much.

Seatbelts in the back seat. They would also not be able to require seatbelts in the back seat.

Because 90 percent of those killed in automobiles are people in the front seat, rear-seat fatalities are not likely to meet the statistical threshold that would allow the agency to require seatbelts in the back. My source for this information is the Department of Transportation's general counsel's office.

Airbags. If airbags were not already required by law, which they are, it is unclear under Dole-Johnston whether airbags could be required.

Again, this is because airbags, even though they are much safer, are also more costly than manual seatbelts or lap and shoulder belts. And again, the least cost alternative would have to be chosen.

Airline flight data recorders. This is the black box that we all read about when a plane goes down. If the standards of the Dole-Johnston bill were applied to airline flight data recorders, the FAA tells me that it might not be able to require flight data recorders on airlines.

This is because flight data recorders do not necessarily reduce immediate risks. Instead, they provide valuable information which can greatly enhance airline safety in the future.

The Glenn-Chafee bill, I believe, is far preferable. Unlike the Dole-Johnston bill, the Glenn-Chafee bill requires a rigorous cost-benefit analysis and permits both costs and benefits to be weighed intelligently, with public health and safety given its full and proper weight in the equation.

Now let me talk about petitions. The Dole-Johnston bill's petition process would allow special interests to challenge new rules and reopen existing rules, giving them unprecedented power to jam up the process.

By some estimates, the Dole-Johnston bill would allow 80 to 100 new reasons for challenging an agency rule. My source is attorneys who deal with these matters. With 80 to 100 new reasons for challenging an agency rule, agencies will be forced to divert their resources—their time, their staff, their dollars—to respond to these petitions.

Dole-Johnston would open the door to hundreds of additional lawsuits, increasing the volume and complexity of Federal litigation—some want that—and further clogging the court system.

This is one of the main reasons why the Justice Department strongly opposes this bill.

Let me give an example of some possible results.

Commuter airline safety. In recent months, there have been three crashes of commuter airlines in which a total of 40 people have been killed. Following a fatal commuter airline accident in December 1994, the Secretary of Transportation proposed new commuter airline safety regulations.

More and more people are flying commuter airlines. Having completed their own cost-benefit and risk-analysis assessment, the FAA is close to finalizing these new, urgently needed safety standards.

Again, the general counsel of the Department of Transportation informs us that they will be faced with a Hobson's choice. Let me give you an example. They are nearly ready to finalize. The language in Dole-Johnston would derail these efforts and force the FAA to either start over in order to comply with the specific least-cost and risk-assessment criteria in S. 343, or proceed

with the new regulations, knowing they will likely be challenged and held up in court for years.

So, in other words, the FAA would be challenged that they do not meet the specific new cost-benefit requirements or they could delay and redo the cost-benefit and the risk assessment. But if they move ahead, as under the present legislation, as they are prepared to do, they run this jeopardy.

Let me talk for a moment about an automatic sunset. My understanding of the legislation is that once a petition is accepted, the agency has a 3-year review period to review the rule. If an agency is unable to complete this review, a sunset of the rule would result. So the arbitrary deadline of 3 years is a trigger for sunsetting some of these regulations.

This could result in an automatic sunset of important health and safety rules. Let me give you some examples.

Automobile fuel efficiency standards.

Food labeling regulations—which have served to educate consumers.

Does every Member in this body remember food labeling regulations were very much contested by the industries affected, but they are now part of every product? People respect them, use them, and I think they are effective.

Regulations to ensure the safety of children's toys, cribs, bed clothing.

The Glenn-Chafee bill, on the other hand, accomplishes regulatory review of existing rules without creating regulatory gridlock. It requires agencies to review existing rules every 10 years, without allowing special interests to dictate the workload of Federal agencies whose mission is to protect public health and safety.

One of the major criticisms of the Dole-Johnston bill is that it is too ambiguous. Let me tell you what I mean by this.

Let us take the issue of the supermandate.

From the language of Dole-Johnston and a recent amendment, it is still unclear what will happen when the bill's requirements conflict with requirements in existing statutes.

Although the new amendment states that Dole-Johnston's requirements should not override existing statutory requirements, which will be given more weight? What legally does the word ''override'' actually mean?

Would the least-cost requirement trump the health-based standards of the Clean Air Act?

What is the impact on annual farm programs? Because the Department of Agriculture currently uses greatest-net-benefit criteria and not the least-cost alternative required under Dole-Johnston, it throws open the question of who can participate, what the terms of participation are, and what the costs will be.

The Dole-Johnston bill leaves these questions up to the courts.

Let us take the issue of judicial review.

According to the Justice Department, eight different sections of the bill provide separate statutory grounds for judicial review. The Justice Department in its letter to Senator DOLE lists the sections. Even the Justice Department is unsure about how these provisions would relate to each other.

Moreover, the ambiguous language could mean that the courts will be called upon to evaluate scientific and technical steps in cost-benefit analyses and risk assessments, issues outside of the realm of expertise of judges.

Let us take the issue of emergeney exemptions.

Another problem with ambiguity in Dole-Johnston is its definition of an emergency.

For example, the bill refers to actions to protect public health and safety or natural resources, but the Department of Agriculture has raised with us questions about how Dole-Johnston would affect an emergency such as infestation of the Mediterranean fruit fly.

Let me explain why. The Department of Agriculture believes the emergency provisions are sufficiently ambiguous and relate to health and safety, not to economic emergency.

Now, the Medfly in California is a major problem. Parts of the State have been quarantined because of the Medfly. But it is really an economic emergency because the farmers lose their entire crop when a Medfly is found. And emergency actions periodically have to be taken, such as tree stripping, aerial spraying, and so on. It is unclear under Dole-Johnston whether the Animal and Plant Health Inspection Service could act quickly enough to take the necessary steps to protect the economic interests of agriculture from pest infestations.

The inability to act quickly could cost agriculture millions of dollars in destruction of crops and loss of export markets.

Let me conclude.

I support regulatory reform that solves problems that have been identified in the regulatory system, not one that creates more problems.

I support reform that puts public health and safety first.

And I support reform that makes the Federal Government more efficient and effective.

I do not believe the Dole-Johnston bill meets that test. I do not believe it is really regulatory reform. It does not simplify the process. Instead, I believe it will burden the agencies so that they cannot do their job. And as the Justice Department has warned, it will burden the courts significantly. I simply cannot support it.

Many regulations are essential to protect public health, safety, and the environment.

I remember when we had the worst air in Los Angeles. I lived in southern California for 5 years, and I remember when I went outside, my eyes burned and teared. The air quality is better now, and that is because of clean air regulations. They have been hard on hundreds of businesses, no question about it. But you have to consider, what is the cost of 15 to 20 percent of youngsters born in the Los Angeles Basin having reduced lung capacity and, therefore, a shortened span of life. How do you measure that cost?

The San Francisco Bay area is now the largest metropolitan area of the country that complies with the clean air standards. In the early 1970's, I served on the air board. Even major oil companies have told me that the air regulations have worked.

Nobody should think that Glenn-Chafee is a copout, a soft bill, or that it will not do the job. The Glenn-Chafee bill is a very tough bill.

It represents real regulatory reform, without unjustifiably burdening the agencies or clogging the court system.

The Glenn-Chafee bill requires cost-benefit analysis for all major rules, just where we should be. It requires risk assessments for all major rules related to environment, health, and safety, just where we should be.

It requires peer review of cost-benefit analysis and risk assessments, just where we should be.

It accounts for the special needs of small businesses, allowing small entities to petition for judicial review of compliance with the Regulatory Flexibility Act.

It requires public disclosure and openness in the regulatory process.

And it limits judicial review to determine: First, whether a rule is major; and, second, whether a final rule is arbitrary or capricious.

Most importantly, the Glenn-Chafee bill cuts redtape while retaining the role of Government in protecting public health, safety, and the environment.

I believe the Glenn-Chafee substitute is a good bill, and I intend to support it.

I yield the floor.

Mr. JOHNSTON. Mr. President, the distinguished Senator from California has raised eight different points. There is a full, complete, definitive and, I believe, unassailable answer to each of these. If the Senator will allow me, I will tell her why in each of these instances, the information she has been given is dead, flat wrong.

You know, Mr. President, there is a saying that ''There is none that is so blind as he who will not see.'' I think we have, on behalf of some of these agencies that have been advising my friend from California, a terminal blindness.

Let us start with No. 1. We are told again that the Dole-Johnston bill requires the least-cost alternative. Mr. President, here is the language.

> Least cost alternative, or if scientific, technical, or economic uncertainties, or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative * * * appropriate or in the public interest * * * they can do so.

Mr. President, what could fit more perfectly into these kinds of benefits

than shoulder belts, back-seat seatbelts, and airbags? As my friend from California says, an airbag is ''much safer but more costly.''

Now, I ask my friend, what is ambiguous about that? It is just as plain as the nose on your face. If it is good for safety, even though it is not quantifiable—because the value of a human life is, by its nature, nonquantifiable—you can do it.

Black boxes on airplanes. Mr. President, the same thing.

Now, how do my colleagues continue to say that this language requires the least-cost alternative?

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

Mr. JOHNSTON. Yes.

Mr. LEVIN. Since the Senator asked and my colleagues continue to ask that question, let me try to answer that question: It is because we have repeatedly, over and over again, said that if the benefits to health and safety or the environment are quantifiable, your exception does not apply.

Now, what sense does it make to say that if the benefits to health, safety, and the environment can be quantified, that then we have to go with least cost, even though a slight additional cost would give much greater benefits?

Now, I have never understood why the Senator from Louisiana insists on the word ''nonquantifiable benefits.'' We have gone over and over that issue.

That is the answer to the question.

Mr. JOHNSTON. It is because, Mr. President, the definitions in section 621 state clearly that the term ''benefit'' means the reasonably identifiable significant, favorable effects, quantifiable and nonquantifiable.

Mr. LEVIN. Except that is limited by the Senator's language in subsection (b). When it comes to the least costly alternative, the Senator does not say ''benefit'' which is, in fact, defined somewhere else. It is limited to nonquantifiable benefit.

That is a question which has been raised for the last week, and for the life of me, I do not understand why the word ''benefit'' means quantifiable or nonquantifiable for the purposes of the act generally, but when it comes to the least-cost requirement, it is only the nonquantifiable benefits which are going to be an exception. That is the answer to the Senator's question.

Mr. JOHNSTON. Mr. President, let me ask my friend from Michigan, it is right there in the definition of section 621. If we took that word ''nonquantifiable'' out, would the Senator then agree with me that it does not require least cost, that this discretion is there? Or is this just another one of the ghosts, once we get out of here there are more ghosts to be found?

Will this solve the provision?

Mr. LEVIN. It solves one of three decisional criteria raised by my good friend from Louisiana. It addresses one of the remaining decisional criteria issues. These have been described, I think, in fairness. I think my friend would say that we have set forth in a document the difficulties with the definition ''decisional criteria,'' and this is one, I believe, if my memory is correct, one of three which have been very precisely specified. I think it does address the one specific one of the three we have raised.

For instance, another exception, if my friend——

Mr. JOHNSTON. Mr. President I want to keep this discussion to a question, and not a speech.

Again, the question is, what is the value of a human life? It is, in my view, very clearly by nature nonquantifiable. That is the reason for putting in the language.

Mrs. FEINSTEIN. Would the Senator yield the floor?

Mr. JOHNSTON. Yes.

Mrs. FEINSTEIN. The point I was trying to make is the back seat seatbelts are quantifiable. Therefore, it would not apply.

Mr. JOHNSTON. This is for health, for life.

Mrs. FEINSTEIN. But it is quantified in that only 10 percent of the people die in the back seat. The problem is in the front seat.

Mr. JOHNSTON. There are thousands of people who die in automobile accidents and many whose death could be prevented by back seat seatbelts. That is a nonquantifiable value.

We do not have to get least cost. The very idea that we say we have a rule that would save a lot of lives, that we have to go to the least cost which is front seat instead of back seat, I submit to my friend, is patently absurd.

Mr. BOND. Will the Senator yield the floor?

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

Mr. BOND. I wonder if the Senator is aware that Prof. John Graham, of the Harvard Center for Risk Analysis, who is an expert on risk assessment, started off his analysis by finding that a regulation requiring airbags, for example, was precisely the kind of regulation that was worth the cost, and that Professor Graham is currently or has just concluded a session with the media next door to the Chamber, pointing out that the Dole-Johnston bill precisely does meet the criteria which he developed in the Harvard Center for Risk Assessment as developed for determining what are reasonable regulations and, in fact, has stated that the Dole-Johnston substitute does permit the kind of analysis which would lead to the kind of life-saving regulations such as the requirement for airbags.

Mr. JOHNSTON. It is absolutely true. Professor Graham has testified before our committee. Of course it allows for that.

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

Mr. JOHNSTON. Briefly.

Mr. LEVIN. The Senator raises a question. If there are 823 lives saved, according to a cost-benefit analysis, for the cost of $1 million, is that quantified or not quantified?

Mr. JOHNSTON. Generally for the life, for the 20th or 30th time, the value of the life is not quantifiable by its nature.

Mr. LEVIN. The definition in the bill says that ''if the nonquantifiable benefits to health, safety, or the environment identified by the agency,'' et cetera.

The number of lives in my hypothetical is very, very precise and is quantified. Now, since the agencies are likely to read that cost-benefit analysis and they have said that the number of lives saved is quantified in my hypothetical, therefore, it would not be eligible for this exception. Again, for the life of me, I do not understand why the Senator from Louisiana in his bill insists on the word ''nonquantifiable benefit'' when the word ''benefits'' as defined generally, is both quantifiable and nonquantifiable, and where if, in fact, benefits are quantified, it would seem to me it would be essential we allow the same exemption as when they are nonquantified.

Mr. JOHNSTON. Mr. President, I have given the answer to that question. I will give it again.

It is because the definition of section 621 includes both quantifiable and nonquantifiable and because life is, by its very nature, not quantifiable in value, although we may count up the number of lives.

Point No. 2, my friend from California says the petition process would open up 80 to 100 new reasons why attorneys could challenge rules.

Not so, Mr. President. There is one single standard, which is that you must show a substantial likelihood that the existing rule does not meet the standards of this bill, which means that the benefits do not justify the cost. It is one standard. You have one chance to do it in the 180-day period. It is just as clear as it can be. I do not know where the 80 to 100 new reasons—I suspect that there are some lawyers who were told that they are against this bill, and go make up reasons, and they did not do a very good job of making them up.

Point No. 3—I hope my friend from California is listening—commuter airlines, 40 people killed, they are ready to finalize the order, and they would have to start over.

Now, Mr. President, last week we put in an amendment specifically to deal with this question. If the notice of proposed ruling making was out by April 1, they are not covered by these requirements—not covered by these requirements. We had a long debate, and we accepted the amendment.

Now, Mr. President, these commuter airline proposals were out long, long before April 1. Now, does my friend from California understand that? Did someone say that amendment does not cover this?

Mrs. FEINSTEIN. If the Senator was asking me a question, let me answer it with this question back to the Senator.

Are they still subject to the petition process?

Mr. JOHNSTON. They are subject to a petition process, but that does not—the Senator said that they are ready to finalize, and they have to start over again, the rule would go into effect.

Mrs. FEINSTEIN. But they would have to face the challenge, because the cost-benefit risk assessment that they were doing is different from the one that would be required.

Mr. JOHNSTON. No, they do not have to do a cost-benefit or a risk assessment if their notice of proposed rulemaking was out before April 1. It is just as clear as it can be.

Let me finish answering these questions from the Senator from California.

My friend from California says there is an automatic sunset. If she would look at the section on page 33, that is section 623, it provides that, if a rule is likely to terminate and the agency needs additional time, and terminating the rule is not in the public interest, and the agency has not expeditiously completed its review, you not only can get up to an additional 2 years, but you can get a court order to tell them to complete the rule or to do other needful things.

I do not know where this automatic sunset comes from. It is not an automatic sunset. It is just not. And the words are clear.

Mr. GLENN. Will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. GLENN. But if the time came for the rule to expire? Let us say we are reviewing the rule, the existing rule, and the time came and went past for the review of that rule. It could sunset at that point unless you asked for this extension.

Then, if you ask for the extension, let us say it was granted; let us say it was extended. Then, when you run out of that time period, it would in fact sunset.

Mr. JOHNSTON. If everybody wants the rule to sunset it can sunset. You can terminate a rule today.

Mr. GLENN. Here is what we do on Glenn-Chafee. We say at the end of that time period the agency has to either approve the rule or start the rulemaking process to repeal it. And that lets all public comment come in, which is a much fairer process than just running out a couple of extensions and guillotining the whole thing.

Mr. JOHNSTON. There is virtually no difference between this 2-year extension provision of the Dole-Johnston amendment and in the Glenn-Chafee substitute.

Mr. GLENN. No, I disagree with that.

Mr. JOHNSTON. You provide for the court to use section 706 of the Administrative Procedure Act in order to give the needful review. We provide that the court of appeals grant such equitable relief as is appropriate. If anything, ours is broader than yours.

The point is, it is not an automatic sunset. It is just not. It may sunset, that is if everybody wants it to sunset. But if anybody cares, they can petition the court.

Mrs. FEINSTEIN. May I just read the section on its face? Will the Senator yield for a moment?

Mr. JOHNSTON. Yes.

Mrs. FEINSTEIN. Termination of the rules, page 34:

> If the head of an agency has not completed the review of a rule by the deadline established in the schedule published or modified pursuant to subsection (b) and (c), the head of the agency shall not enforce the rule and the rule shall terminate by operation of law as of such date.

Mr. JOHNSTON. But now if the Senator will look over on the previous page, subsection (3),

> An interested party may petition the U.S. Court of Appeals for the District of Columbia to extend the period for review of a rule on the schedule for up to 2 years, and to grant such equitable relief as is appropriate.

To be sure, if nobody cares, if the agency head wants the rule to terminate and the whole world wants it to terminate and nobody cares, nobody files a petition—yes. But that is a whole lot different from saying that this thing automatically sunsets.

Mr. LEVIN. If the Senator will yield on that point? Is the Senator then willing to amend his bill to say if anybody petitions a court at any time opposing sunset, that then it will not sunset? Just the act of petitioning a court? Because the Senator said ''if nobody cares.''

It seems to me that is quite, quite different from what is in the bill, which says: Sure, if you go to a court and get an order that says it does not sunset it will not sunset.

But that is not the obvious meaning of the word sunset.

Mr. JOHNSTON. It is quite clear. It is a low barrier. You have to show the rule is likely to terminate, the agency needs additional time, that terminating the rule would not be in the public interest, and that the agency has not expeditiously completed its review.

Mr. LEVIN. That is for the extension. I am not referring to the extension. I am talking about after the 2 years runs out, if a court has not ordered that rule to continue it expires.

Mrs. FEINSTEIN. Right.

Mr. JOHNSTON. The court has had a chance to review this and has given such orders as are necessary, which might be—I guess what the court would order is a schedule. Public comments to be completed by such and such a time. Final rule by such and such a time. They have full and complete discretion.

There may be some rules that, upon review by the court, should terminate. But it is not automatic. You have a chance to go to court to get that rule extended.

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

Mr. JOHNSTON. I think I have answered that. Let me move on.

Mr. LEVIN. This is a different question. Can the court extend the period for review beyond 2 years?

Mr. JOHNSTON. No. They have already had—first of all, they have had 1 year after the expiration—I mean after the effective date of the act. They have had 3 years minimum initially, plus they have had these 2 years—that is 6 years. They cannot extend it beyond 6 years. But they can make such orders to continue the rule as is necessary.

Now, my friend from California says the supermandate language is ambiguous. For the life of me, Mr. President, the supermandate language we said was unnecessary in the first place because the bill is clear and I believe it is. But at the behest of all the people who said we have to have supermandate language, we adopted the language using their word. ''Override'' was not our word, it was the word of others.

It says, now, ''nothing in this section shall be construed to override any statutory requirements including health, safety and environmental requirements.''

For the life of me I do not know what you do to please the opponents of this provision. We first accept the principle and put it in the bill, and it is clear. But, oh, no, they find an ambiguity.

We come back and put in the precise language, the override language that they want, and it is still not good enough.

Mr. President, what can we do to satisfy the opponents of this bill? If that language is not good enough—tell me what is. It is incredible.

Judicial review language, Mr. President—my friend from California says that you ought to have review of the final agency action to determine whether it is arbitrary and capricious and that is the only purpose for which risk assessment and cost-benefit can be considered.

I invite my friend from California to look at the language. That is exactly—exactly what it says. If you can find an ambiguity in these words we will change them, because there is no ambiguity in those words.

There is a lot of ambiguity in the Glenn substitute and I can show you exactly where that ambiguity is. But there is no ambiguity in that. It adopts exactly and precisely what the Senator says. Those studies can be used solely—''solely for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion.''

Where is the ambiguity in that language? I am at a loss to understand.

I can show the Senator where the ambiguity in the Glenn-Chafee language is, but there is clearly not any here.

Mr. LEVIN. I wonder if the Senator will yield on that question?

Mr. JOHNSTON. I will.

Mr. LEVIN. Because the Justice Department has set forth the ambiguity in the words ''failure to comply.''

The question is whether or not those words refer to the procedural irregularities which could occur in the cost-benefit analysis or in the risk assessment.

Their letter dated July 11, 1995, is a pretty serious source, the Justice Department. They say on page 2 in a letter to Senator DOLE that there remain two basic problems which create the potential for litigation under section 625.

First, section 625 provides that failure to comply—they underline the words ''with the.'' They now substitute the words ''the rules pertaining to cost-benefit and risk analysis.''

If, in fact, that is not what the Senator's language——

Mr. JOHNSTON. That is correct.

Mr. LEVIN. ''Failure to comply with the rules pertaining to the cost-benefit and risk analysis.'' Again, they insert as to what they believe you are intending, that failure may be considered by the court solely for the purpose of determining whether the final agency action is arbitrary or capricious or an abuse of discretion.

When this section is read in conjunction with the extraordinarily detailed and proscriptive requirements for risk assessment and cost-benefit analyses contained elsewhere in the bill, it is clear that the alleged failure to comply with any of those requirements will be the subject of litigation. Petitioners will surely argue that failure to comply with the extensive procedural requirements is itself arbitrary and capricious.

That is the Justice Department. That is a pretty solid source of a question. Since the Senator asked, ''Where is the question?'' There it is.

Mr. JOHNSTON. They do not say why it is. I must say that this letter from the Justice Department gives me real pause to consider what the quality of our people in the Justice Department is because there is no ambiguity here. They simply say it. They make an unsupported statement and anybody can say anything. But you cannot read out this the word ''solely.'' They just read it out. They go on to say—you will notice that the letters says not that ''solely'' is not there but that it will be the subject of litigation.

It is like when I used to practice law, Mr. President. Somebody would come in and say, ''Can I sue somebody about such and such?'' And I would say, ''Sure. You can sue. But the courts are not going to grant the subject of your suit.'' You know, you can summons up the witches from the briny deep. But will they come? No. They will not come. They will not. Alleging something that is clear in the four corners of the statute does not mean it has any substance. If they are going to sue on that, let me tell you. They are going to sue on Glenn-Chafee because Glenn-Chafee is ambiguous.

Let me finish these two other points, and then I want to ask a question.

Mr. LEVIN. May I ask a narrow question of my friend?

Mr. JOHNSTON. Let me return to this in just a moment. I will engage you when I finish these two other things.

My friend from California says that the emergency regulations here are not clear, that they are ambiguous. The first time I heard that raised—honestly, to say that you cannot deal with the medfly, that somehow that escapes health, safety, or the environment, Mr. President, if medfly is not included in the environment, I do not know what is; or under health. I mean we are talking about something that could destroy all the fruit in California. And that does not have anything to do with health? Who are these people over in the Agriculture Department telling you that fruit does not have anything to do with health? I mean what kind of contorted, convoluted logic, to say that fruit does not have anything to do with health? I mean it is clear, Mr. President. I mean these people who oppose risk assessment are looking for ghosts, and finding them everywhere. And you find one ghost, you say what does it take to fix that ghost? You are given the language they want, and they come back and say, ''Ah ha. But that language is ambiguous.'' The supermandate language which was unnecessary in the first place which said for a second time in words that the opponents suggested and know it is somehow ambiguous, I mean this is a no-win situation. We have to face the fact that some people are opposed to risk assessment.

Now my friend from Michigan finds ambiguity in this. I now have the Glenn-Chafee language here. I would like to ask him how this last language differs from our language when our language says that you may consider final agency action to determine whether it is arbitrary and capricious. You did, by the way, have in the RECORD the risk analysis and cost-benefit, did you not? Is that required?

Mr. LEVIN. Yes.

Mr. JOHNSTON. All right. How does this differ from what we have said?

Mr. LEVIN. I think the difference is in the preceding language. The difference is in the preceding language in Glenn-Chafee which, if an analysis assessment had been performed, the courts shall review to determine whether the analysis or assessment conformed to the ''particular requirements.'' I am wondering whether or not my friend from Louisiana might be willing to add that same language into his bill.

Mr. JOHNSTON. In the first place, I think it is ambiguous. What are ''particular requirements''? That to me means a de minimis test. Words are supposed to mean something. It means something different than ''conformed to the requirements of this chapter.''

So when it says ''particular requirements,'' I would assume that means that you need not deal with the technical——

Mr. LEVIN. ''Specific.''

Mr. JOHNSTON. ''Individual,'' but you look at the requirements of the chapter.

Would not that be fair?

Mr. LEVIN. Look at the ''specific requirements.'' But my question is since that is a narrowing language that is intended—I do not believe my friend from Louisiana has too much objection to it—assuming that one little issue can be addressed, does the Senator from Louisiana have a problem with adding that narrowing language to his bill?

Mr. JOHNSTON. I think it does not narrow.

These two proposals, I believe—you have to read them In pari materia. What I get from this last sentence is that this is a review. You have ''judicial review of the agency action.''

I submit to you that review is under section 706 of the Administrative Procedures Act. If it is not, tell me under what standard it is reviewed.

Mr. LEVIN. I think that is correct.

Mr. JOHNSTON. That is correct.

Mr. LEVIN. I believe that is correct.

Under that section, the courts have adopted the following standard, that the procedural errors ''were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.''

So that has been the interpretation under 706 by the courts, that the procedural errors ''were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.''

That interpretation is a narrowing interpretation where the new language——

Mr. JOHNSTON. There may be a court interpretation of that. But you have under your amendment a review of subsection (d), ''without observance of the procedure required by law.'' According to what you have said, you are going to review the procedure because that is what subsection (d) says. We do limit under our amendment. Our amendment is limited specifically to whether the final agency action is ''arbitrary and capricious.'' That is much narrower than that which you state. It is at least ambiguous.

Mr. LEVIN. I am wondering, relevant to the answer that I gave the Senator, whether or not the Senator is willing to incorporate that narrowing language?

Mr. JOHNSTON. No. I say the answer is no for the third time. And the reason is that it is not narrowing. It is expanding, and it is ambiguous.

Mr. LEVIN. I am referring here though now to the interpretation of section 706. You see, that has been interpreted. It has been interpreted as I just read. The language of the Senator from Louisiana has not so been interpreted yet, and is open to a much more expansive interpretation.

Mr. JOHNSTON. Look. That is precisely the same. That is an additional interpretation. ''Arbitrary, capricious, an abuse of discretion.'' That is the standard that we bring forward. We leave out ''otherwise not in accordance with law'' because we wanted to leave out the procedural review.

That is one of the most litigated and judicially interpreted phrases in all of the annals of judicial review. And it is the same precise and exact standard which you claim is provided in your review.

You see the only difference between yours and ours, we both use ''arbitrary, capricious, an abuse of discretion.'' But you have ''observance of procedure required by law.'' But you claim that either that is meaningless or that your language takes it away. So I say it adds nothing to it other than ambiguous.

Mr. LEVIN. The difference though again is that the Senator's bill has new language which has not interpreted failure to comply whereas the language, as the Senator points to in our bill, has been interpreted in a way which is significantly narrower than—may I say—what the Justice Department feels is likely or could be interpreted into the words ''failure to comply.''

That is the difference, that there is a new test, failure to comply, in the Senator's language and has not been made the subject of the kind of review under the Administrative Procedures Act.

Mr. JOHNSTON. We say, ''Failure to comply may be used solely for the purpose of determining whether that is arbitrary and capricious,'' and that differs not at all from what you have said. You allow for a review of procedures. What does it mean in subsection (d) when you state ''without observance of the procedure required by law''?

Mr. LEVIN. Would the Senator agree that the words ''failure to comply with'' intend to refer to the rules pertaining to cost-benefit and to risk analysis? That is the intention of the Senate?

Mr. JOHNSTON. Look, we have a whole big section there that speaks for itself, of course, that means the risk analysis and cost-benefit, and it means peer review. And, as I said earlier, there will be times when procedural defects, if someone calls them that, might throw the whole rule out.

Suppose it is a regulation on secondhand smoke. If all the scientists were from the tobacco industry, it would be fundamentally unfair and the scientific judgment would be important. And if I were the judge I would throw it out, even though that is a failure to comply because it would render the whole thing as an abusive discretion and arbitrary and capricious.

Mrs. FEINSTEIN. Will the Senator yield for just a moment?

The Senator had one question he asked, his first question for the list of 80 to 100 reasons. I have 144, some of which have been remedied. I would like to enter this into the RECORD, if I may.

Mr. JOHNSTON. Sure. I think that may have been put into the RECORD earlier. I think that was put into the RECORD earlier this morning.

I believe we might check with Mr. Weiss.

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

Mr. JOHNSTON. Yes, I will yield for a question.

Mr. THOMPSON. I ask the Senator, is it accurate that section 625 has to do with jurisdiction and judicial review?

Mr. JOHNSTON. Section 625. The answer is yes.

Mr. THOMPSON. And with regard to any question such as the one that the Senator from Michigan raised pertaining to jurisdiction and judicial review, would that section apply?

Mr. JOHNSTON. Would it apply?

Mr. THOMPSON. With regard to the questions of to what judicial review will pertain, would that be the governing section, section 625?

Mr. JOHNSTON. You mean judicial review under titles II and III of cost-benefit analysis?

Mr. THOMPSON. Yes.

Mr. JOHNSTON. The answer is yes.

Mr. THOMPSON. The question has arisen as to the language ''failure to comply'' and how that might relate to some other section. I share the concern of the Senator from Louisiana and bemusement really as to why our friends refuse to read the rest of that sentence. Instead of reading the rest of the sentence in which that phrase is contained, other sections are referred to.

Is it not true that it is ''failure to comply with this subsection may be considered by the Court solely for the purpose of determining whether or not the final agency action is arbitrary and capricious,'' et cetera?

Mr. JOHNSTON. The Senator is correct. And the critics read out of that statute the word ''solely,'' and they find ghosts everywhere. But ''solely'' means solely, and it is right there in the language. For the life of me, I cannot understand where people find ambiguity in it other than they are looking for it.

Mr. THOMPSON. I compliment the Senator in his attempt to deal with this issue. It is as if someone would say that the Senator's desk is yellow, and you can argue that it is not, and someone else can argue that it is. But there comes a point at which you want to throw up your hands, I am sure, because you are dealing with clear language, and I fail to see how anyone could misinterpret this. It has only to do with final agency action. Is that correct?

Mr. JOHNSTON. That is absolutely correct.

Mr. THOMPSON. And if there is a phrase or a couple of words within that provision that our friends think may in some way be ambiguous in interpreting another section or another phrase in another section of the statute, would still not section 625 be the ruling section as far as what judicial review is? It is a judicial review question we are concerned with here, is it not?

Mr. JOHNSTON. That is exactly right.

Mr. THOMPSON. I share the Senator's real perplexity as to what the confusion is with regard to the review in that section. It is clear that it cannot be considered independently, that you cannot take—you can look at a cost-benefit analysis or a risk assessment independently and provide your own independent judgment on that, but it can only go into the final rule in making a determination as to whether or not the final rule is arbitrary and capricious, et cetera. Is that correct?

Mr. JOHNSTON. Exactly and precisely. My friend from Tennessee puts it very well.

Mr. THOMPSON. I thank the Senator.

Mr. JOHNSTON. I am reminded, I tell my friend from Tennessee, of the old quotation from Groucho Marx, who said, ''Politics is the art of looking for trouble, finding it everywhere, and applying to it the wrong solutions.''

Mr. THOMPSON. And most of it finds its way into legislation, I venture to say.

Mr. JOHNSTON. With this bill, the opponents look for ghosts and trouble everywhere, they find it everywhere, and they apply to it the wrong solutions.

Mr. President, this language is clear, and I do not care who says otherwise. Show me where that is unclear. As I say to my friend from Michigan, his interpretation of his judicial review provision is exactly what ours says. His gives with the left hand a procedural review, takes it away with the right hand in ambiguous language, and interprets that with court cases which he says are clear. But we obviate the problem for any of that by simply saying there is no procedural review. He has a procedural review in his proposal. We do not have that in ours. That is why ours is preferable. It is clearer. It is free of all ambiguity.

I yield the floor.

Mr. DODD. Mr. President, I rise today in strong support of the bipartisan regulatory reform bill introduced by Senators GLENN and CHAFEE. Unlike the more radical Dole-Johnston proposal, this legislation would make much-needed reforms to the regulatory process without jeopardizing the health and safety of American families.

There is widespread agreement about the need for regulatory reform. Nobody wants to see American businesses, our engine of economic growth, hampered by unnecessary regulations. We must constantly monitor Federal agencies to ensure that the rules they issue are narrowly tailored and rationally enforced.

In some instances today, this is unfortunately not the case. Many residents of my home State of Connecticut have told me about regulations that are not working well. And we have all heard stories about regulations that seem to defy commonsense. The answer, however, is to change nonsensical regulations and implement some common sense reforms. We should not overreact by bringing the Government's ability to protect American families and workers to a grinding halt.

In my view, President Clinton has done an outstanding job in this area. As part of their ongoing effort to reinvent government, he and the Vice President ordered all Government agencies to carefully examine their regulatory processes and put all the regulations they have issued under the microscope. Their instructions have been to keep what works and eliminate or fix what does not.

In February, the President announced the first benefits from this effort. The administration dramatically changed the Federal Government's approach to small businesses. Paperwork requirements were cut in half, and regulators were told to take a more practical approach to enforcement by stressing compliance over punishment.

As part of this effort, the Food and Drug Administration has implemented some major reforms. The FDA eliminated 600 pages of burdensome regulations. The agency also made changes to its review process to help consumers get high-quality drugs and medical devices more quickly and more cheaply. These results are impressive, and soon other agencies will be announcing much-needed reforms.

Of course, there is a limit to what the Administration can do on its own. Since many regulations result from statutes passed by Congress, Congress must also act. Earlier this year, we made a good bipartisan start by passing the Regulatory Transition Act. It would provide a 45-day period during which Congress could review new regulations and potentially reject rules through a resolution of disapproval.

Once that process is in place, Congress would better be able to fulfill its mission of regulatory oversight. But we also need to make improvements to ensure that the regulatory process works properly before rules are issued. That is why I have cosponsored the Glenn-Chafee bill. In my view, the bill does a much better job of rationalizing regulations while protecting American families than the more drastic proposals by Senators DOLE and JOHNSTON.

The Glenn-Chafee substitute is a tough, fair regulatory reform bill. It is not a catch-all for special interests. It would give agencies the responsibility to determine a schedule to review all major rules in a timely manner, and there would be no automatic sunset. Finally, judicial review would be more limited in scope, therefore preventing an inundation of frivolous challenges from overwhelming the courts.

Many Senators have taken to the floor to highlight burdensome and ridiculous regulations. The Senator from Utah has even given us a top ten list.

I would suggest that it is always easier to ridicule what does not work than it is to point out what does. It is a simple, and often effective, rhetorical tool to string together isolated abuses to give the impression that they are the rule, rather than the exception.

I want to break from this practice, however, and speak about some of the success stories. American lives are strengthened and saved every day by good, sound regulations. ''Regulation'' has become a dirty word in some quarters, but we should remember what a regulation is: the means by which the law is implemented and enforced. Regulation is the tool the government uses to execute the people's will, as expressed through their elected representatives in Congress.

Sound regulations have saved countless lives and prevented numerous injuries in the workplace, on the highways, in the air, and in the home. These regulation have also saved millions of dollars saved in medical costs, lost wages and reduced productivity from injury. They have also immeasurably improved our quality of life.

I can speak to one example in particular. Since the passage of the Clean Water Act in 1972, water pollution control programs have been able to greatly improve our water quality everywhere, including in the Long Island Sound. The current water quality of the sound is directly attributable to these pollution control programs, which have been effective in the face of increasing population and activities in and around the sound.

Environmental cleanup in the sound has led to increased tourism, increased property values, new industry and a better economy. However, the Long Island Sound cleanup is not finished. In fact, today it faces new challenges from residential, commercial, and recreational development. It is crucial that pollution control programs remain in force for the sake of the sound and those who live around it.

I fear that continued attempts to clean up the sound would be undermined by the Dole-Johnston bill. In fact, the legislation could actually turn the clock back and reverse years of progress.

I am also troubled by other provisions and their impact on Americans' health and safety. The Dole-Johnston bill is still ambiguous about what would become of rules currently in the pipeline—those that have been issued but have not yet taken effect. The bill is also unclear as to whether agencies would have to go back and redo risk assessment to comply with the complicated risk assessment provision.

I also worry about the impact of this bill on the Occupational Safety and Health Administration's ability to prevent workplace injuries and deaths. OSHA is already unable to fulfil its mandate in a timely fashion. It took the agency 10 years, for example, to issue rules ensuring that workers would know about the dangers of the toxic chemicals in their workplace. These delays would grow immeasurably worse if, under this bill's provisions, we build even more bureaucratic delay into the system. In the meantime, countless workers could be hurt unnecessarily.

While, I appreciated some changes made to the Dole-Johnston bill, I was equally disappointed that other amendments to strengthen meat safety, OSHA and safe drinking water standards failed. No one should have to live in fear of illness or death from the E. coli bacteria or tainted water. In 1993, Milwaukee drinking water became tainted and more than 100 people were killed and 400,000 people became sick. We do not want to do anything here that would limit our ability to prevent such tragedies in the future.

I hope that in the coming days we can achieve a bipartisan consensus on regulatory reform. I believe that the Glenn-Chafee bill provides the best framework for these efforts, and I urge my colleagues to support its intent.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I ask unanimous consent to set aside temporarily the Glenn-Chafee amendment to offer an amendment by myself, Senator HATFIELD, and Senator REID.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, what is the subject of this amendment?

Mr. SIMON. We are talking about regulations that we have passed that do not make much sense. We passed a law that among other things prohibited Members of Congress from writing recommendations. If you have a member of your staff who wants to get a civil service job, it is against the law for you to write a letter of recommendation. If we see a page here doing a great job, we cannot write a letter of recommendation. This simply permits us to do that, and I hope it could be disposed of without great debate.

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

Mr. SIMON. I will be pleased to yield to my colleague.

Mr. JOHNSTON. Mr. President, I am familiar with the general problem. Of course, all of us have run into this. I am less familiar with the solution, and I am totally ignorant of whether the committees of jurisdiction have had a chance to look at it and whether they approve or disapprove. I wonder if the Senator could withhold to a later status in this bill and see if this can be cleared. I see Senator ROTH. I do not know whether that is within his committee of jurisdiction. Perhaps he can speak to it.

Mr. ROTH. Reserving the right to object, Mr. President, I respectfully request that the Senator from Illinois withdraw his request.

First of all, the amendment he is proposing is not germane to the legislation before us. It does represent a very considerable change in our civil service rules that are worthy of review. But I hope that rather than bringing it up at this time, this is a matter that could be reviewed by the Governmental Affairs Committee which has jurisdiction over the matter.

Mr. SIMON. Mr. President, with all due respect, I do not think the Governmental Affairs Committee, which created this law, is likely to repeal it. But I have talked to a number of my colleagues, and I think the sentiment in this body is overwhelming that we made a mistake.

Let me tell you how I happened to get into this. This is a letter I wrote to Donna Shalala about a person who lives in an apartment building where we live:

DEAR DONNA: I am enclosing a resume for Dennis Gowie who was a hospital administrator in Washington, DC until the new administration here took over.

I do not know him well, but he lives in the same apartment building that Jeanne and I live in, and he makes an excellent impression and has a superior background.

I don't know where or if you are able to use someone with his background in your administration, but I think his background is so rich in the health care administration field that he is worthy of consideration.

Cordially.

I got the letter back with a letter saying I violated the law. A lobbyist, any lobbyist, can send a letter of recommendation for anyone, but if you have somebody working on your staff who is doing a good job and you want to send a letter of recommendation for a civil service job for that person, that is a violation of the law. We are in the process of talking about regulations that are ridiculous. This is a law that is ridiculous that is a regulation on us. I think we ought to get rid of it. I think this is a good time to do it. I am not trying to impose myself in the middle of this particular amendment, and I might say to my colleague from Ohio, I strongly support his amendment. But if I may ask my colleague from Delaware, if I were to ask unanimous consent to have this up on the floor of the Senate after the Glenn-Chafee amendment is disposed of, would that be satisfactory?

Mr. ROTH. Let me answer the distinguished Senator this way. As he knows, we are having a very serious, a very important discussion on judicial review. So I think it would be unhelpful to suddenly turn to a matter that is not even directly related to the legislation before us.

Second, I think we all agree this legislation on regulatory reform is among the most important legislation that shall come before us this year. For that reason, it concerns me if we begin to add amendments—this would be the first—that are not related.

I would be happy to assure the distinguished Senator from Illinois that we would be happy to take a hard look at this in committee. I have had a number of people mention the problems, the concern it causes them, but I think if we are going to change it—and perhaps we should—then it should be done in a manner that is most constructive under the circumstances, rather than being done on an unrelated piece of legislation.

Mr. SIMON. Mr. President, frankly, it is not satisfactory to me to have the committee take a hard look at it. I want to get a vote on it. We have crafted this very carefully, I want to assure my colleagues. In terms of it not being germane, the Senator from Delaware and I have voted for a thousand amendments that are not germane to legislation that is up. It is in a peripheral way germane.

I will change my unanimous consent request, Mr. President. I ask unanimous consent that when the Chafee amendment is disposed of, the Simon-Hatfield-Reid amendment be up for consideration at that point.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Mr. President, why does the Senator not give us a little time to work this issue? I personally have no objection to this. Rather than seal in a nongermane amendment at this point—that may be tonight—we may be able to make some progress on some other amendments tonight. If my friend will withhold, he will have a right to bring up his amendment at some other time.

(Mr. GRAMS assumed the chair.)

Mr. SIMON. Mr. President, because I am interested in adopting this, and I am not trying to cause problems on the floor, I will withhold my request at this point. But I want to assure my colleagues on the floor, I am going to bring this amendment up one way or another on this bill before it passes.

If I may add one other point, Mr. President, and I say to my colleague from Delaware, as well as Senator GLENN from Ohio, if there is some wording here that needs improvement, I am not wedded to this wording. We think we have drawn it very carefully. But if there is something that is not prudent here, what we say is that where there is on the basis of personal knowledge or records of the person furnishing we can make an evaluation of the work performance, ability, aptitude, general qualifications, valuation of character, loyalty, or suitability of such individual. I think those are the kind of things that should not present a problem. I hope we will do this.

Let me just add, I am leaving this body. This is going to have a lot more to do with the future of Senator ROTH and Senator Thompson and the distinguished junior Senator from Minnesota than it will for Paul SIMON. But I want to be free if I have a good staff person or I know someone would be good for a job, to write a letter of recommendation. My experience is those letters do not mean that much, but at least I can get it off my chest. I want to have the right to write that letter and not just leave that right to lobbyists and others.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I would like to address the subject of judicial review which my colleagues have been so eloquently discussing this morning. I think this, first of all, goes to the very heart of this legislation, because we can pass all of the requirements and all of the commonsense proposals that we want, but if it is left totally in the hands of the bureaucracy to decide whether or not they want to comply with it or how they want to comply with it, then it is meaningless. In other words, if there is not some semblance of judicial review, even for the most egregious conduct and outrageous decisions, it is, indeed, meaningless.

Mr. President, this is a nation of laws, not of men and women, the bedrock of our country. Legislation gives tremendous authority to the executive branch. That is what this body, that is what the Congress of the United States does on a daily basis: It gives great authority to the executive branch to implement the laws that are passed.

The bureaucracy, the administrative agencies—and I do not use that term derogatorily—but the bureaucracy works in that regard in adopting regulations to implement the laws that we pass. This is an awesome authority that we give to the executive branch.

We have seen in times past in this country, and other nations, that power does tend to corrupt. Executive branch authority has to be looked at carefully; it has to be looked at constantly. Goodness knows, this body, in my brief observation, seldom has the opportunity for effective oversight.

The Senator from Ohio made a very impressive statement on more than one occasion concerning the regulations of one particular regulation pertaining to the Clean Water Act—I believe, effluent emissions—where he said that from the well to the ceiling of this Chamber is 42½ feet, and those documents would go all the way from the well to the ceiling three times—three stacks of documents for one regulation.

I am not sure the Senator would share the same conclusion that I would share from that. But, obviously, we do not have the time nor the inclination to go back and revisit the laws and revisit the regulations, certainly, that have been passed up until this time. What we can do is establish some rules of the road, interject some commonsense ways for the agencies to justify future rules, future regulations.

Now, this authority that we give the executive branch is proper and appropriate in our constitutional scheme. That is what it is all about. We are supposed to have oversight of that. I think anyone who has spent any time here at all must acknowledge that that is a very tenuous situation at best in terms of effective oversight. We must look prospectively.

So we have a system where citizens who are affected by this legislation, not just depending on Congress, but citizens affected by this legislation can come into court and say basically, ''We are not being treated right.'' That is all judicial review means. They come into the third branch of Government,

an independent branch of Government—the judiciary—to make a determination as to whether or not the citizen, the private concern, is being treated right.

We can talk about special interests and all of that in a pejorative way, but there are a lot of small businesses out there, a lot of individuals, there are a lot of public interest groups who take advantage of judicial review on a daily basis. It is not just the corporate fat cats who are sitting back out there to be labeled as special interest to whom this is important. It is important to everybody. It is important to every citizen. And it is really strange and inappropriate, I think, if we carve out one or two little pieces in this entire administrative framework that we are dealing with here and say everyone has the opportunity to come into court except these particular individuals, or except in these particular circumstances, because we place so much confidence in the nameless, faceless administrators who come up with these analyses, or these rules, that we really effectively do not want any judicial review in this particular area.

Mr. President, I do not share the confidence that the opponents of Dole-Johnston seem to have in the agencies. They do a lot of good work on many occasions. But we cannot give that kind of authority, unchecked, unreviewed, to anybody, including them.

We hear a lot of talk about a ''lawyer's dream.'' We are concerned now that we are going to create new causes of action, we are going to provide a new access for somebody coming into court. I share that concern across the board. I think that in times past we have not paid enough attention to that fact. But it is a strange occurrence for us to all of a sudden be concerned about that in the middle of this debate, when we are trying to bring some commonsense reform to this regulatory maze that is costing every American family $6,000 a year, because this body, the Congress of the United States, as a whole, are the reasons for the litigation explosion in the Federal system.

It is the laws that we create, giving judicial review almost on every occasion, that create all of the litigation and all of the new regs, and we could not fill in this Chamber with all of the legislation that we have passed that give people new causes of action and new motivation to come to court, and new ways to burden the Federal court system. If you have a civil case anymore in the Federal court system, and many places in this country, you may as well forget about it for a good long while. Under the speedy justice acts, criminal cases take precedence. And that is because of what we have done here in this body. Not only do we constantly create new causes of action in this body, but on many occasions we finance it ourselves. We not only say you can come into court and get judicial review, which effectively is being denied, I submit, by the Glenn-Chafee amendment, but we have created all sorts of legislation where the Government will either pay the attorney's fees, or there are attorney's fees shifting. In other words, what could be more of an inducement to people to bring lawsuits and to come with new litigation than to say you are going to get your attorney's fees paid for? Yet, we do that time and time again. We are the cause of all of that.

There are the civil rights cases, which we are familiar with; Fair Housing Act, Fair Labor Standards Act; Age Discrimination in Employment Act of 1967; Equal Credit Opportunity Act; Civil Service Rehabilitation Act; Individuals With Disabilities Act; Religious Freedom Restoration Act; Violence Against Women Act. There are awards for attorney's fees in tax cases that we give to citizens if they prevail in certain tax cases. Awards for attorney's fees we give in certain lawsuits against the States, and in certain lawsuits against judges. We not only give them a cause of action, and we not only give them judicial review, we see that their attorney's fees are paid.

There was the Federal Contested Elections Act; Government Employees Rights Act of 1991; Equal Access to Justice Act; Freedom of Information Act and Privacy Act; Government in the Sunshine Act; Whistleblower Protection Act of 1989; Civil Service Reform Act of 1978; NEPA; Commodity Exchange Act; Packers and Stock Yards Act; Perishable Agricultural Commodity Act; Federal Crop Insurance Act, Animal Welfare Act; Agricultural Unfair Trade Practices Act; Plant Variety; Immigration and Naturalization Act; National Aeronautics and Space Administration Act; National Defense Authorization Act; Bankruptcy Act; Federal Home Loan Bank Act; Home Owners Loan Act; Housing Act of 1959.

These are all acts not only where we are creating new causes of action and giving people access to the court, in addition giving them judicial review, but we are seeing that their attorney's fees get paid if they prevail. That is a very loose definition.

I will continue: National Housing Act; Federal Credit Union Act; Federal Deposit Insurance Act; Bank Holding Company Act; Bank Tying Act—whatever that is—Farm Credit Amendments Act; Real Estate Settlement Procedures Act; International Banking Act; Expedited Funds Availability Act.

Mr. President, there are hundreds. I will not take the Senate's time with reading all of them. But there are literally hundreds of pieces of legislation that this body has created where not only do we create new causes of action and provide judicial review; no question is usually ever raised about full judicial review. All of these are important subjects. I am not saying they were bad legislation in every case; certainly not. I am just saying that it is mighty strange that in the middle of all of this, when we want to say let us supply a little common sense to the regulatory process, let us require a cost-benefit analysis, just put down on paper whether the benefits justify the costs—as we have seen here, we are not talking about a money situation here. Benefits are defined as social benefits, as well as economic benefits. Costs are defined as social costs—social costs, as well as economic costs; not only direct benefits and direct costs, but indirect benefits and indirect costs. What could give an agency more discretion than dealing with something that might be described as an indirect social benefit? That is great leeway.

Yet, we want to limit judicial review when they make these commonsense assessments that we say since we cannot and will not go back to the 3-foot stack of regulations and deal with them, which is what we really ought to do, we are going to at least try to apply some commonsense standards as far as we go forward. That is all this is about. Judicial review is the norm. It is the way it ought to be. The Administrative Procedures Act provides broad, broad discretion and judicial review. We keep talking about this explosive litigation situation that is going to develop from all of this. Not so. We create no new causes of action with the Dole-Johnston bill.

The judicial review is already contained in the substantive legislation. I must say, it seems in times past when we gave authority to an agency, we have readily granted judicial review. But when we are putting certain restrictions on an agency and making them justify what they do, some seem to want no judicial review.

The opponents say not only too much litigation; second-guessing scientific opinions, the rulemakers will be tied up in knots. Well, the Senator from Louisiana, I think, has very, very effectively addressed most of those. I share his concern that if something is repeated long enough, saying that it will cause an explosion in litigation and that will tie the courts up in knots, some people will get to believe it. It is just not true. Repeating it does not make it true.

Section 625, no new causes of action. Final agency action is the only thing that can be looked at. Cost-benefit analysis will be included in the directive. Only if the final agency action is arbitrary or capricious will it be overturned. In other words, no independent second-guessing or analysis of the cost-benefit analysis. It is just a part of the picture. It is part of the overall picture, and it can be considered. It can be looked at.

Mr. President, I submit that this provision is narrower than the law is now. Traditionally, any procedure defect can be appealed and be a ground for upsetting the agency action. Here it is only if it is a part of an overall review, if the final agency action is arbitrary and capricious. It cannot be considered independently. Under the old law if something was faulty, if the cost-benefit analysis was faulty, that kind of a

defect would be reviewable and enough to overturn the opinion.

Actually, it seems to me that as far as this new cost-benefit is concerned, we have a narrower scope review than we traditionally have for other defects in the process. Of course, 706 is just the same as under the Administrative Procedure Act that we have been dealing with for so many years, except with section (F).

As I understand it, we have to look at (E) in conjunction with that. It is a substantial evidence test in (E), substantial support test in (F). Substantial evidence test, as I understand it, where there is a record administrative law judge, substantial evidence test is something that has been applied now for years and years on the record, and I think the thinking with (F) is apply that to the rulemaking process, the same kind of review, substantial support test, and do we want a rule that does not have support in the record in the rulemaking, substantial support? It is not a de novo review by any stretch of the imagination. The court must show deference to what the agency has done under that kind of scheme.

Will there be more litigation? I submit certainly not. I submit nobody knows, certainly. Nobody knows. There is always litigation. There always will be litigation. Trying to pinpoint the cause for a particular lawsuit cause of action is a fruitless process.

I submit a very good case could be made for the proposition that it will result in less litigation, Mr. President, instead of more, because now at least the courts have some fairly objective criteria to look at.

Cost-benefit analysis: Do the benefits justify the costs? Are the costs justified by the benefits? I think it could go to make better rules. I think the agencies have been engaging in this process all along, anyway, in some rough form.

Any rule that we put down, certainly, I hope that agencies would consider how much benefit are we going to get out of this and what will it cost? By putting it down somewhere—with the tremendous prejudice in favor of the agency action going in, the tremendous hurdles a petitioner has to overcome—putting it down somewhere and having developed some case law on the subject, and it becoming more objective, I submit that people would be less likely to attack it because it is less nebulous than it has been in times past.

Will there be more litigation? There is very limited interlocutory review. Now, if an agency decides that something is not a major rule, it does not meet the $100 million threshold, then there is review under those circumstances. But I think the Senator from Louisiana hit it on the head. It looks to me to be in the interests of both sides, if the determination is made that it is not a major rule, to go ahead and get that resolved.

Otherwise, we go on through the process, all the way to the end, get to the final rulemaking, get there, then an appeal is taken. Then if it is determined it was, in fact, a major rule, have to go all the way back, and it affects everything that has been done, and you have to start back from scratch.

This is not a problem, interlocutory situation, that gives the petitioner some great advantage.

What about second-guessing scientific study and that sort of thing? I submit, Mr. President, that right now we have courts in a position under the arbitrary and capricious standard and all the other standards under 702 that courts are making some kind of rough determination on scientific principles of some kind, scientific analysis, totally unequipped in many cases, I am sure, to do it. But under the Dole-Johnston bill, we have peer review. We actually have an opportunity for the experts to come in and interject their analysis into the process.

Again, my understanding is that this is nothing new in the well-crafted rules and procedures that are done now under current law. Peer review is not a stranger—National Academy of Science—and the agencies are well equipped to do this peer review. They are well equipped to do the cost-benefit analysis. There is nothing new with regard to that. Now they must do it in every instance where we have a major rule.

So the courts now are having to deal with this scientific evidence test. Actually, this legislation will assist the court because of the additional peer review. The courts will not be second-guessing the agency's actions here. I share with the proponents of the Glenn-Chafee substitute that we do not want to be able to have people come in and tie up legitimate rulemaking functions at the drop of a hat and stop everything in its tracks. Nobody is propounding that.

What is being done here, it looks to me, the problem with it, it is such a modest proposal, it is such a modest first step to interject an element of common sense into a process that I think just about everybody in this country has concluded has gone too far. Every once in a while things gets out of hand. We have to get back toward the middle of the road a little bit. I think that is what this legislation does in a very modest way.

Increased delay, tie the court in knots—it is simply not in the legislation. These objections cannot be identified and pinpointed with regard to any particular section in this legislation in the Dole-Johnston amendment. Under ordinary circumstances, you cannot get a stay, you cannot come in, you cannot file a lawsuit and stop the proceedings. That simply does not happen except in rare circumstances.

What are those circumstances? Same old, traditional circumstances that we have already had in other situations. That is, if a petitioner can overcome the very high burden of proving that he is likely to prevail ultimately in the case, if the petitioner can show that he will suffer irreparable injury, not just injury but irreparable injury, if he can show it is in the public interest, if he can do all of those things, he might stay the proceedings for a while. Would we not want him to?

If petitioners can show that they are likely to prevail, that they are going to suffer irreparable injury, is there anything wrong, within that limited circumstance, with being able to have a stay? It is a very, very rare situation, indeed, where that would come into play. So there is no tying up of the courts. There is no stopping of the courts. There is no keeping the forward move of the rule from making progress.

What are the hurdles? Look at a situation that a petitioner has. Look at what a petitioner has to go through in order to challenge a rule.

First of all, you have the definition of benefit and the definition of costs that we referred to a little bit earlier. I think we need to go back to that, because I think we get away from that. The definition applies throughout for both subchapter 2 and 3. The definitions are ruling. The definitions are standard, and apply every time these terms are used anywhere in the act. It says:

> The term ''benefit'' means the reasonable, identifiable, significant favorable effects including social, environmental, health and economic effects that are expected to result directly or indirectly from implementation of a rule or other agency action.

So, when people talk about seatbelts, or people talk about food, and people talk about all those things that are vital concerns to all of us—certainly you can consider the noneconomic benefits. You can consider the social benefits. You can consider the environmental benefits. You can consider all of the health benefits. And, if an agency does a halfway decent job of addressing that and putting it down on paper, look at the hurdles that a petitioner has to overcome in order to challenge that. Consider the court's natural hesitancy to second guess an agency under those circumstances; a natural hesitancy to second guess technical evaluations.

Then you have the harmless error rule. Suppose you go through all that. OK, the agency messed up. OK, even by the loosest definition of benefit or cost, the benefits did not outweigh the costs so the petitioner has crossed that first hurdle. Then he has to get by the harmless error rule, and that is no mean feat. That has been with us for a long time. It has made a lot of agency actions prevail in circumstances they otherwise would not.

So, those are the hurdles that a petitioner has. Now, under the Glenn substitute, first of all, for something that has to do with judicial review I am struck by the consistency of what is not subject to judicial review. I think we have five sections here and in four of them the emphasis is on what is not subject.

Section 623(a): ''Shall not be subject to judicial review in connection with,'' et cetera.

''(b) shall not be subject to judicial review in any manner''

''(d) court shall not review to determine whether,'' et cetera.

''(e) shall not be subject to judicial consideration separate and apart,'' et cetera.

I will go into the details of all this later. But is it not strange that in something that is supposed to deal with judicial review, that the entire emphasis seems to be on what is not subject to judicial review? It looks like we are leaving a very, very narrow window indeed.

Let us look at the provisions of the Glenn-Chafee substitute. In the first place you have (b), ''any determination by designee of the President or the director that a rule is or is not a major rule shall not be subject to judicial review in any manner.'' It just stops in its tracks, if I understand it correctly. That can just stop everything in its tracks right there.

It says in (e) that ''a determination by an agency that it is not a major rule shall be set aside by a reviewing court on clear and convincing evidence.'' But who gets to decide last? If an agency made this determination and the President or the director made a subsequent determination, or contemporaneous determination, would that not be the end of it?

In other words, the executive branch has total discretion, it looks to me like, in determining whether or not the process goes forward in terms of cost-benefit analysis, risk assessment or whatever, because they can decide, no matter how clear it is to most people that it meets the $100 million threshold—they could just say that it does not and nobody can review that. Nobody can question that.

Indeed, ''If a cost-benefit analysis or risk assessment required under this chapter has been wholly omitted for any major rule, a court shall vacate the rule and remand the case for further consideration.''

In other words, if you have what has been decided and what has been determined is a major rule, therefore under the law requiring the agency to make the cost-benefit analysis, but the agency just says I am not going to do it, they suffer the severe penalty of having the court simply remand it back to them for further consideration. I do not know what happens if they do the same thing again and the court remands it back again, and again and again.

The rest of it I think the Senator from Louisiana has addressed. It is essentially very similar to the Dole-Johnston bill in that basically it is still an arbitrary and capricious test. I did not even mention that in the hurdles that a petitioner has to overcome, which is a very, very tough test for a petitioner to have to overcome to prove that something is arbitrary and capricious.

So, Mr. President, I think it just comes down to whether or not you want to do anything about this problem. I think it comes down to whether or not you want risk assessment, you want to have a cost-benefit analysis. Because, if you do, it cannot possibly mean anything. It would be totally meaningless unless you have more of a redress for people who are aggrieved.

I might point out, in this legislation business, it seems to me we often go off on the basis of whose ox is being gored at the moment. What if you had a President who did not like any rules? Should we cut off people, public interest groups, whatever, from judicial review and petitioning and doing what they would want to do in order to get effective rules passed and make sure they are not just dismissed out of hand and erroneous determinations as to whether or not something is a major rule? Some President could decide everything is going to be a major rule, no matter how minuscule it is. If he was really an enemy of rules and regulations, he could just decide everything is going to go be a rule and make everyone go through the process.

It is a two-way street if we look at it that way, and I urge the Dole-Johnston amendment does that. It is a modest proposal to try to get our arms around, in some way, and make some progress towards interjecting some simple, some commonsense principles into this regulatory mess that we have gotten ourselves into and do not seem to know how to get out of that is costing the American taxpayers' $6,000 per year per family and going up. And then get on about the business of passing laws that will be subject to real oversight. I think that is one of the most important provisions of this bill. I think it gives us another look at these rules that are going to be passed, now, and give us really an opportunity to focus on our oversight responsibility.

We do pretty good at turning these laws out but it seems to me like we wake up a few years down the road and get a deluge of citizens coming in here saying you did not know it at the time but look what you have done to us. And then it is too late to do anything about the regulatory mess we have created.

We have an opportunity here to do something about that and I urge the defeat of the Glenn-Chafee amendment and the adoption of the Dole-Johnston amendment.

I yield the floor.

Mr. COCHRAN. Mr. President, we finally have, as the distinguished Senator from Tennessee said, the opportunity to legislate an end to the unnecessarily costly consequences of Federal Government regulations.

This legislation that has been introduced by the Majority Leader, which I am cosponsoring, will make it necessary to consider the cost effectiveness of regulations that seek to manage the risks to health, safety, and our environment. In short, it will help ensure that the benefits derived from Federal regulatory actions justify their cost.

The Federal regulatory burden has become too heavy and too expensive. There are several recent studies that confirm this. One is a March 1995 publication of the Harvard School of Public Health which analyzed 200 Federal programs and revealed that many highly cost-effective programs were not fully implemented, while other highly cost-ineffective programs were widely implemented. It suggested that a reallocation of resources to more cost-effective programs could save an additional 60,000 lives per year at no increased cost to taxpayers or to the private sector. The conclusion was that we could save the same number of lives, but with a $31 billion annual savings to the American people.

In an American Enterprise Institute policy paper, Christopher DeMuth has described Federal regulations this way, and I quote:

> They are much more costly than all the domestic discretionary spending programs of the Federal Government combined. Regulatory agencies can tax and spend freely in pursuit of environmental quality, product safety, and other regulatory goals, and the costs they impose are free of the budget and appropriations controls that constrain spending programs.

That is the end of the quote.

The Heritage Foundation's ''A Citizens Guide to Federal Regulation'' estimates that the cost of Federal regulation to the economy exceeds $500 billion, or about $5,000 per household each year. EPA has estimated that environmental regulations alone in 1990 cost the U.S. economy about $115 billion. As a result of the Clean Air Act amendments and other new requirements, spending by business on environmental protection is expected to exceed $200 billion annually within 5 years.

In 1993, the President's National Performance Review estimated that complying with Federal regulations cost the private sector $430 billion per year. This is almost 10 percent of the gross national product.

One of the more frequently cited economists on the costs of regulation, Thomas Hopkins of the Rochester Institute, has estimated the direct Federal regulatory burden for 1994 to be approximately $630 billion.

So whatever estimate you choose, it is a big one. The burden is enormous and, without action on our part, it is only going to get bigger.

One sector of our economy that has come under special pressure from environmental and related Federal regulations is American agriculture. Excessive regulation of agriculture has become in some instances counterproductive to our efforts to maintain the safety and integrity of the U.S. food supply.

Some Federal regulations not only impose unnecessary and burdensome costs on farmers, but they make our farm and food products less competitive in world markets. The Delaney clause, for example, enacted in 1958,

has been strictly interpreted and enforced in such a way that it has imposed enormous expenses and burdens while providing very little benefit to the public. In many instances, the Delaney clause has become an obstacle to the implementation of sensible food safety policy because it has prohibited the use of production efficiencies that pose little or no risk to the public.

This problem was compounded by the 1992 Ninth Circuit Court of Appeals ruling which invalidated the EPA's negligible risk interpretation of the Delaney clause and required a zero risk interpretation that threatens to restrict the use of up to 80 widely used crop protection tools. These tools are important in the production of a safer, abundant, and affordable U.S. food supply.

EPA Administrator Carol Browner has acknowledged that the pesticides affected by this recent court decision pose no risk to public health. Lynn Goldman, Assistant Administrator of the EPA, has admitted that the Delaney clause is an outdated approach for protecting consumers from pesticide residues and that the loss of selected pesticide uses may affect the price or seasonal availability of particular commodities.

Furthermore, in 1993, the EPA stated that the potential economic impact of a strict interpretation of the Delaney clause could reach $1 billion per year.

In rice-producing States, like my State of Mississippi, uncontrolled rice plant diseases can lower crop yields by 75 to 80 percent. The fungicide benomyl, which is used to control rice blast on 15 to 30 percent of the rice acres in the southeastern States, is the only fungicide registered for that purpose. Under a strict interpretation of the Delaney clause, EPA intends to prohibit the use of benomyl on rice. This will result in higher costs to farmers and consumers and will provide no real improvement in food safety.

Mr. President, the outdated Delaney clause rests on a flawed premise. It assumes that a carcinogen at any level of exposure can cause cancer. Because of recent advances in research, we know that premise is wrong. With current technologies that allow the detection of minute quantities of potential carcinogens that were previously undetectable, the number of substances subject to the Delaney clause expands with every advance in analytical chemistry. We are now able to discover in food previously undetectable trace levels of materials used in production and distribution that are not added to food in any conventional sense, yet are food additives under the law.

Reform of the Delaney clause, as provided for in this legislation, is essential to preserving a safe, abundant, and affordable U.S. food supply. And it is long overdue.

Numerous other excessive and costly regulatory burdens imposed on American agriculture will also be relieved by this legislation. In a recent Washington Times op-ed article, I described several examples where the Department of Agriculture, the Department of Interior, and other Federal agencies have gone beyond the intent of Congress in the regulatory requirements imposed on agriculture.

The Farm Bureau Federation estimates that U.S. agricultural interests spend between $18 and $20 billion per year complying with Federal regulations. This amounts to roughly 35 percent of total net farm income in our country.

The Delaney clause, and all the other Federal regulations, that are squeezing the American farmer and food industries must be subjected to a reasonable, fair, and sound science-based assessment of the real risks to safety, health and the environment.

While such reform will help the entire economy, it will help U.S. agriculture in particular, and it will reduce costs to consumers without endangering their health or our environment.

Mr. President, the American people want reasonable reform of the current regulatory system. This legislation provides such reform, and I urge my colleagues to support it.

I also ask, Mr. President, unanimous consent that the op-ed article I mentioned be printed in the RECORD.

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

[From the Washington Times, April 4, 1995]

(By Thad Cochran)

REGULATORY RELIEF FOR FARMERS

The regulators have run amok in America and nowhere have things gotten more out of control than on the farm.

As long as the two key ingredients in food production remain land and water, agriculture will be in the eye of the environmental storm. But it is not—and has never been—a struggle between pro- and anti-environmental forces. As entrepreneurs whose very livelihood rests on the careful stewardship of an ecological system, farmers have long supported measures to protect our natural resources. But those same farmers, who are already up against the uncertainties of the weather and heavy foreign government subsidies, now increasingly have to "do battle" with regulators in Washington.

The reason? Because in too many cases, regulators at the Environmental Protection Agency, the U.S. Department of Agriculture, the Interior Department and other agencies have gone far beyond the intent of Congress.

In an effort to produce a better coordinated approach, EPA has combined, or "clustered," certain air and water standards. The goal of avoiding incompatible and contradictory rules is laudable. But the result is another case of regulatory overkill.

EPA's "cluster rule" for the pulp and paper industry is the most costly environmental rulemaking ever proposed for a single industry. It is estimated that compliance with this rule will cost more than $11 billion despite the solid progress already made by forest and paper companies. The industry, for example, without the cluster rule has reduced dioxin in effluent by 92 percent since 1988.

The treatment of wetlands is another case in point. Despite a recent Memorandum of Agreement among several federal agencies, the process of defining a wetland and delineating sites remains confusing and contentious. Farmers now dutifully file requests for permits to make modifications to portions of their own property that have been designated wetlands. Almost half of the applications filed for a permit involve an impact on less than one acre.

Bob Floyd of Muncie, Ind., had a "wetland" mysteriously appear on his property when a local business accidentally cut a drainage pipe. Federal regulators swooped in to protect this "wetland" and forced the 80-year-old farmer to stop farming. Because of this wetland area (which has since dried up), Mr. Floyd may have to sell the land his family had farmed for a half-century.

This might be funny if it were an isolated incident. But it is not. At a Senate Agriculture Committee hearing in February, witness after witness came forward with examples of farmers tangled in red tape, thousands of dollars incurred in filling out forms and family farms being threatened by the Endangered Species Act or the Clean Water Act or some other regulatory requirement.

The American Farm Bureau Federation estimates that U.S. agricultural interests spend between $18 billion and $20 billion per year complying with federal regulations. To put things in perspective, that figure is roughly 35 percent of total net farm income in the United States. If this estimate is correct, and if anything it is probably low, farmers spend $2 complying with government mandated regulations for every $1 they receive in price supports.

Clearly, things have gotten seriously out of hand. Fortunately, the utter frustration with this and other problems manufactured in Washington was powerfully communicated through the elections last November.

Congress is now under new management—and a wide range of issues, including the need for regulatory relief, are being addressed. Last month the Senate Government Affairs Committee reported two bills (S343 and S291) which would require federal regulatory agencies to prepare a cost-benefit analysis (for major regulations) and incorporate that analysis into the rulemaking process. Before new rules could take effect, federal agencies would have to (1) determine that the benefits outweigh the costs, and (2) determine that the proposed rule will provide a greater benefit to society than any other alternatives.

If this all sounds like plain old common sense, the similarity is intentional. We have gotten to the point in this country where farm and landowners are almost considered guilty until they can prove their innocence. The burden of proof should be on the regulator and the place to start is to require the regulators to prove that the rules are necessary, that they benefit the public at large and generally pass the common-sense test.

All this is compounded by overlapping, and in some cases competing, jurisdictions among federal agencies. It is common for a farm enterprise or agriculture business to have to deal simultaneously with the EPA, the Army Corps of Engineers, the Transportation Department, the Agriculture Department, the Occupational Safety and Health Administration, and others.

There is a groundswell of support in Congress to slow the regulatory machine until Washington can "get its act together." The House of Representatives has already passed a bill to place a moratorium on significant regulations, retroactive to November of last year. A week ago, the Senate passed legislation giving Congress 45 days to review proposed major regulations. The Senate bill establishes a "fast track" review process and provides that any regulation can be blocked if both the House and Senate disapprove it

within the 45-day time frame. The congressional review would apply not only to any future rulemaking but retroactively to any significant regulation issued since Nov. 20, 1994.

Obviously, the differing House and Senate bills will have to be reconciled in conference; but it is clear we are going to restrain the regulators.

Even though commodity prices generally were solid last year, net farm income is at its lowest point in a decade. If American agriculture is to prosper, it will have to increase productivity and capture new foreign markets. That is a challenge under normal circumstances. But it will be almost impossible if the American farmer, increasingly tangled in a destructive web of red tape, is forced to spend a third of his net income complying with government rules. Unfortunately, that is the track we are on in this country. It is a course that I and many others in Congress are determined to reverse.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

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

It is a pleasure to rise today to discuss with you an opportunity to provide relief from many of the threats to the safety, security, and well-being of those individuals who populate our urban centers. Our cities today, especially our inner cities, have become areas of hopelessness and decay and despair.

Consider these facts:

America's urban areas suffer a murder every 22 minutes, a robbery every 49 seconds, an aggravated assault every 30 seconds. In a survey of first and second graders in Washington, DC, the Nation's capital, 31 percent reported having witnessed a shooting; 39 percent said they had seen dead bodies; 40 percent of low-income parents worry a lot about their children being shot, compared to 10 percent of all parents who worry about their children being shot; 1 out of every 24 black males in this Nation, 1 out of every 24 black males in America, will have his life ended by a homicide.

A report in the New England Journal of Medicine stated that a young black man living in Harlem is less likely to live until the age of 40 than a young man in Bangladesh, perhaps the poorest country on Earth.

The roots of these pathologies are various. They are at least partly cultural, partly economic, and partly social. These challenges, these problems, are about values. They are about knowing right from wrong. But they also have something to do with hope and meaning. For too many of our inner city residents today, hope and meaning and opportunity, are unknown words of uncertain origins. Many people are born, live, and die without ever knowing what it is like to have a job, to feed a family, and to fulfill their dreams.

In a number of the high schools in central cities, for example, the dropout rate rises as high as 80 percent. In 1990, 81 percent of young high school dropouts living in distressed urban areas were unemployed. In that same year, more than 40 percent of all adult men in the distressed inner cities of America did not work, while a significant number worked only sporadically or part time. Today, half of all residents of distressed neighborhoods live below the federally defined poverty threshold. In 1993, that was $14,763 for a family of four.

Why do we have these problems in our inner cities? Well, as I have indicated, there are a variety of reasons. But I submit that one of the significant reasons for all of these facts is what I would call a regulatory redlining of our urban centers, a series of pervasive regulations promulgated by a variety of agencies that have literally driven jobs from the center of America's urban environments. As a matter of fact, the older the site is, the longer there has been industry, the longer there has been manufacturing, and the longer there has been industrial activity, the less likely the site is to qualify with and escape from the kind of onerous regulations which drive away jobs in those settings.

As well meaning as many regulations may have been, the reality is that they have been incredibly destructive of opportunity in our inner cities.

Now, there is a great debate about regulation and the regulatory burden in America. But the people who live in our inner cities bear not only their portion of the $600 billion in regulatory costs that are built into our products, they also experience and sustain a cost of regulation which is substantially higher in many circumstances. It is a cost of lost opportunity. It is a cost of poor health. It is a cost of the lack of personal security and safety. It is truly a major challenge.

This last year, I had the opportunity to spend days during the year working in different settings around the country. I was delighted to work in one manufacturing concern in the city of St. Louis. It was called the Anpaul Window Co. They make windows for home construction, for remodeling as well as new construction. It is a thriving business, about 40 employees, one of those small business Horatio Alger stories that inspire us all.

I noted when I went to spend my day there making windows with its work force, that well over half the employees are minorities. It was a good work force, very productive. The business was thriving. As a matter of fact, it was growing. And it became clear that the success of the business was going to be a part of its downfall, because they needed to expand. And they could not expand on their site in St. Louis because of regulations. There were four EPA test wells around the facility, and the owner said he would not take that facility on a bet. He simply could not expand on that site.

So in order to expand—and I should also mention that the building had been designated as historic and the doorways were not wide enough—the owner of the business had to move from the city, in the urban center of St. Louis, where the challenges are strong and the pathologies are very pervasive, where we have all the problems that attend the urban core of America's cities. And in order to grow and in order to be what they wanted the business to be, they had to move the business to a suburban setting 50 miles from St. Louis.

I thought to myself, here is the Federal Government, which should be finding a way for the people in the very heart of our cities, who have families in need of the income and support, who have young minds that need the example of working parents, who have the potential but do not have the productivity, actually working against economic stability. And I thought the reason we do not have the productivity is too frequently the onerous rules and regulations that have finally accumulated at the core of our urban centers. Regulations that were designed to promote health and safety and well-being, have redlined development out of our urban centers and have sent development and jobs packing to the green fields of suburbia. They have left an empty, hollow core in the urban centers of America and have defined a circumstance where 1 in 24 black males will probably be shot at some time during his life, according to the statistics we read.

I thought to myself, these are well-intentioned regulations, the regulations about cleanup and the fact that you should be able to eat the dirt in order to avoid being poisoned by contamination. But the truth of the matter is that the regulations in these older parts of Missouri's cities and of America's cities drive development out of the place where we need development most.

They do so with very interesting and laudable concerns about the environment and about health and safety. But, frankly, the statistics tell us that the individuals who are poor and inhabitants of our urban centers have a lot more to worry about in lead poisoning from a .38 than they do from other contaminating sources. And the truth of the matter is we have to find a way to bring jobs back into our cities. The risks associated with unemployment are very substantial, they are much greater than the risks associated with a door that may be 36 instead of 38 inches wide, or do not comply with a particular statute. The risk of being shot in a drive-by shooting is much more pressing and demanding and challenging than the risk of being contaminated by dirt beneath the parking lot, especially dirt which was contaminated in some previous industrial experiment.

Under the guise of noise abatement, we have merely exchanged the sounds of productivity for the sounds of silent factories. The crack of cocaine has been the sound of productivity in our cities' centers. The wail of a family in the wake of a siren, the echoing clang

of a cell door—those are the sounds that have abated the noise of factories, and I think we need to look carefully at what the comparative risks are in these cases.

We literally have a substantial group of people in this country at the core of our urban centers and in our cities, whose opportunities have been diminished, whose safety has been impaired, whose health has been undermined, whose security has been threatened, and whose longevity has been shortened because of well-meaning but misapplied regulations.

Our challenge is to find a way to make our urban centers places where people can thrive again. But inappropriate, or excessive regulation, without understanding the real risks that exist in the center of our cities, make that a very serious challenge.

That is why I am going to be proposing an amendment to this Regulatory Reform Act which I will entitle ''The Urban Regulatory Relief Zone'' amendment. This amendment will provide an opportunity for the mayor of a city, any city over 200,000, to appoint an Economic Development Commission. This commission would have the chance to assess regulations which impair the health, safety, and well-being of the citizens by keeping jobs out of the zone; and to weigh whether or not abatement and waiver of those regulations could give rise to an influx of opportunity which would provide an improvement in the health, an improvement in the security, an improvement in the education, and an improvement in the longevity of the individuals in that zone.

I very seriously hope that these commissions of economic development would have a view toward mobilizing the resources, not just as it relates to the Federal Government and Federal regulations, but as they would relate to State and local regulations as well.

It is time for us to understand that regulations, sometimes misapplied, have effectively redlined development out of our inner cities and subjected our inner-city population to a set of risks that are far greater than the risks which the regulations sought to abate. It is time to empower cities to apply for such waivers. It is time to say to the cities, ''We will let you help make a decision here about what the real well-being of your citizenry is.''

Then the commission would send that waiver application to the Federal Government and ask that the approval from an appropriate agency be made in order to protect the city from further harm. In my judgment, this is a chance for us to change the way in which regulation has literally created a crisis, or participated in the creation of a crisis, at the center of American cities. We can no longer afford regulations which redline American cities away from development.

We have to give cities a chance to say to individuals: ''You can come in here, you don't have to be responsible for all the past sins of prior incarnations of industry here; you don't have to make sure the dirt under your parking lot could be eaten by an individual for his or her entire 70 years of existence. We want to have you here because we know that an employed person is safer than an unemployed person; an employed person, the statistics tell us, is healthier than an unemployed person; that employed people are far less likely to be killed in drive-by shootings than unemployed individuals; that where there is economic vitality and industry, there is a far greater chance that the young people will persist in their education, avoiding the dropout situation; and that we will upgrade what happens in our very inner cities.''

I believe that it is time for us to look at those regulatory concerns as it relates to the well-being of the individuals in the areas in which those regulations are imposed. Where there are impositions of regulations which actually undermine the safety, undermine the security, undermine the employability of individuals, where the imposition of a regulation does not enhance safety or security or health or well-being or longevity, it should be an option that the Economic Development Commission of that particular urban center could submit an application to the Federal Government and say, ''Why don't we abate this particular requirement, because in so doing, it will elevate the opportunity of our citizens to be productive, to be healthy, to be secure and safe, to be examples in their community for the kind of industry and productivity which will inspire young people to stay in school and inspire individuals to have hope and to understand the meaning which can change the destiny of the inner cities of America.''

Mr. President, I thank you for this opportunity. I look forward to submitting the urban regulatory relief zone amendment to this legislation in the hours ahead, and I hope that we will have the good judgment to share with the people of the United States the opportunity to make sound decisions about improving the standing of those who are at peril in our inner cities, the core of our largest urban centers. And I hope that we will give them the opportunity to get relief when that relief will increase their likelihood for safety, for health, for security, for productivity and for longevity.

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

The PRESIDING OFFICER (Mr. ABRAHAM). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GLENN. 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. GLENN. Mr. President, we have talked about other costs, we have talked about complexities, we have talked about the costs of business, we have talked about costs of everything except costs to the Federal Government of this legislation. It seems to me that in any consideration of this legislation, that has to be taken into account.

I do not know exactly what it will cost the taxpayers for the Dole-Johnston bill to be carried out by the agencies as it stands right now. But I would like to read a letter to the chairman of the Judiciary Committee, Senator HATCH, from the Executive Office of the President, Office of Management and Budget on July 7. It applies to the original Dole bill. There have been some changes made since this letter was written, but I think the changes that were made make it even more expensive. But I would like to read this letter in its entirety, because I think it is extremely important that everyone understand exactly what it is we are getting into.

Alice Rivlin, Director of the Office of Management and Budget, writes as follows:

DEAR MR. CHAIRMAN: On April 26, 1995, the Senate Judiciary Committee reported S. 343, the ''Comprehensive Regulatory Reform Act of 1995,'' for floor consideration. The Congressional Budget Office estimated that the bill, if enacted, would impose additional discretionary costs of at least $180 million annually. We have worked over the last several weeks with both the program and the budget offices of agencies with major regulatory programs, in order to arrive at our own estimate of the potential costs of the bill as reported by the Judiciary Committee.

CBO indicated in its analysis that few of the agencies had sufficient time to determine the additional costs that the bill would impose. Further, it assumed that the sole feature of S. 343 that would make issuing new regulations more costly was the lowering of the threshold for cost-benefit analysis to $50 million. Our request to the agencies, however, asked them to consider not only the lowering of the threshold but also the many additional analytic steps, such as risk assessment and peer review, that S. 343 would require agencies to undertake in situations where they are not now carried out. In addition, our analysis, unlike CBO's, contemplated the additional costs that S. 343 would impose, both by significantly expanding existing litigation opportunities and by substantially expanding the coverage and the requirements of the Administrative Procedures Act. Our analysis, unlike CBO's, also included the costs involved in implementing the many new petition processes that S. 343 would create for reviewing existing regulations.

Based on our more extensive analysis, we have arrived at a cost figure that is significantly larger than CBO's. Our preliminary estimate is that S. 343, as reported by the Judiciary Committee, could impose discretionary costs of approximately $1.3 billion annually and consume the time of approximately 4,500 full-time employees. Although there have been some modifications made to the bill since it was reported by the Judiciary Committee, we believe this information remains useful in light of CBO's estimate.

I hope this information is useful to you as S. 343 approaches the floor.

Sincerely,

ALICE RIVLIN,
Director.

I ask unanimous consent that a copy of this letter be printed in the RECORD.

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

DEAR MR. CHAIRMAN: On April 26, 1995, the Senate Judiciary Committee reported S. 343, the ''Comprehensive Regulatory Reform Act of 1995,'' for floor consideration. The Congressional Budget Office estimated that the bill, if enacted, would impose additional discretionary costs of at least $180 million annually. We have worked over the last several weeks with both the program and the budget offices of agencies with major regulatory programs, in order to arrive at our own estimate of the potential costs of the bill as reported by the Judiciary Committee.

CBO indicated in its analysis that few of the agencies had sufficient time to determine the additional costs that the bill would impose. Further, it assumed that the sole feature of S. 343 that would make issuing new regulations more costly was the lowering of the threshold for cost-benefit analysis to $50 million. Our request to the agencies, however, asked them to consider not only the lowering of the threshold, but also the many additional analytic steps—such as risk assessment and peer review—that S. 343 would require agencies to undertake in situations where they are not now carried out. In addition, our analysis, unlike CBO's, contemplated the additional costs that S. 343 would impose both by significantly expanding existing litigation opportunities and by substantially expanding the coverage and the requirements of the Administrative Procedure Act. Our analysis, unlike CBO's, also included the costs involved in implementing the many new petition processes that S. 343 would create for reviewing existing regulations.

Based on our more extensive analysis, we have arrived at a cost figure that is significantly larger than CBO's. Our preliminary estimate is that S. 343, as reported by the Judiciary Committee, could impose discretionary costs of approximately $1.3 billion annually and consume the time or approximately 4,500 FTEs. Although there have been some modifications made to the bill since it was reported by the Judiciary Committee, we believe that this information remains useful in light of CBO's estimate.

I hope this information is useful to you as S. 343 approaches the floor.

Sincerely,

ALICE M. RIVLIN,
Director.

Mr. GLENN. Mr. President, let me further comment on this. In the bill as it originally came out, CBO estimated $180 million. OMB analyzes what would occur here with the additional petition processes and so on, and after canvassing some of the agencies, as Director Rivlin says, as much information as they could get, estimates that it would cost about $1.3 billion and with 4,500 full-time employees.

Let me point something out. Their analysis was based on the $50 million base, and since that time, the Nunn amendment, which was added to this, adds a substantial number of regulations that would have to be reviewed. In the original legislation that was addressed by Director Rivlin, major rules would probably have been somewhere between 200 and 500, something like that. We do not know exactly, of course.

Now, under Glenn-Chafee, the major rules are estimated to be between 100 and 200. With the Nunn amendment addition, the estimate is to go up to between 500 and 800 rules that would have to be reviewed. The Rivlin estimate from CBO of $1.3 billion in annual costs and the time of approximately 4,500 full-time employees to comply with S. 343 was made before the Nunn amendment on small business was passed. So that at least doubles the number of rules that would have to go back for reconsideration, with all the analysis that goes along with that.

I know that just the number of rules cannot be equated directly to a specific budget figure. But I think it is fair to say that the cost of the bill will be similar to the cost of the Dole bill, as it emerged from the Judiciary Committee, which is $1.3 billion. You have to add onto that the estimate of approximately doubling the number of rules and regulations that would have to be reviewed again, if you add the additional requirement of review put forward by the Nunn amendment. I am not saying it would double that $1.3 billion, but it certainly it is going to add a considerable amount onto it. I think it would probably add at least half to it. I do not base that on anything except to say that if you double the number of rules, we should add another $400 or $500 million onto that $1.3 billion. It seems that would be logical.

The point I am making is that we do not get this for free. We want regulatory reform. But at the same time, a vote for the Dole-Johnston bill is a vote to spend a minimum of $1.3 billion, by OMB estimates, in additional Government paperwork. What reform. That is not much of a reform, it seems to me.

So I think we have to think about this. We have not provided anywhere in this legislation for that $1.3 billion annually that would be required, nor for the 4,500 full-time employees. We are in the process, as a result of the President's national performance review, of reducing the civil service rolls in this country, and doing pretty well with that reduction, also. They are trying to cut down 272,000 civil service positions over a 4-year period. The last count I had, as of about 30 days ago, we had actually reduced around 110,000 and are on schedule to probably accomplish that full 272,900 reduction by the end of this year. That comes at a time when, at least in these departments, we are going to have some 4,500 additional FTE's just to carry out the analysis that would be required by the Dole-Johnston bill, at a cost of about $1.3 billion, and that was before the Nunn amendment took the threshold way down, and probably, as near as we can estimate, doubled the number of reviews that would have to be made.

So I think, as we consider this, we want to consider whether we are also going to up the appropriation, whether that would be required, whether we are going to up the number of FTE's to do the job that would be required on this legislation.

I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, I would just observe that the additional cost identified by the distinguished Senator from Ohio as applying to the Dole amendment would also apply to the Glenn-Chafee amendment. My reason for stating that is that the threshold for a major rule in the Dole-Johnston amendment has been increased to $100 million. That, of course, is exactly the same as the threshold for the Glenn-Chafee bill.

I also point out that there is no question, at least in my judgment, that the Nunn-Coverdell amendment—the amendment offered by the distinguished Democrat from Georgia—would also be offered to amend the Glenn-Chafee bill if it were believed that that legislation was going to successfully move forward.

So, in large part, either proposal will face some increased cost. As I say, in my judgment, it would be in somewhat the same ballpark. But I think the important point to understand is the cost of the current regulatory maze of the private sector and local government. It is estimated that the current regulatory requirements cost this country something like $600 billion a year, a very substantial amount.

It is further estimated that this roughly breaks down to a cost of $6,000 per American family. Again, a very substantial cost to the typical American family.

One of the goals of the legislation that we all on both sides of the aisle are in support of in either amendment, agree that regulatory reform is critically important. One of the principal purposes of our legislation is to get a better bang for the buck.

Hopefully, we can do even a better job in providing clean air and clean water, at a lesser cost, because of the regulatory reforms we are proposing.

While it may be there may be some additional cost on the Federal Government, that should be more than substantially offset by the benefits and lesser costs that will be experienced by the private sector.

For that reason, while it is true that regulatory reform may result in some additional cost to the Federal Government, that is substantially true of both proposals, whether one is supporting the Dole-Johnston amendment or the Glenn-Chafee.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call.

Mr. LIEBERMAN. 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. LIEBERMAN. Mr. President, I rise to speak about the bill before the Senate, S. 343, and the vote that will

occur at 6 o'clock p.m., a little more than half an hour from now, asking that we invoke cloture on this bill.

Mr. President, the last week has seen an intensive debate and a very thorough debate on not just the bill but on the values and ideals and processes that underlie our whole regulatory process.

While I feel from my perspective that we have made some progress, at least by my standards, have improved the bill, I intend to vote against cloture because I still believe that this bill, as amended, so fundamentally alters the regulatory process and increases the obstacles and hurdles within that process, that it does damage to the laws—the public health, consumer protection, environmental protection laws—that underlay those regulations.

Mr. President, this has been, I think, a very important debate in which, in general terms, all Members here in the Chamber have expressed our support of two basic goals. One is to acknowledge that the regulatory process in many ways has grown top heavy.

Senator HATCH has given the list of the bottom 10 regulations which often seem silly and off the mark. Senators GLENN and KERRY and others have occasionally set the record straight on some of those bottom 10.

The underlying point of Senator HATCH's list, I think, is agreed to by everyone here, which is that in some sense our regulatory process has become too complicated. It takes too long to render decisions. It often costs more than it should cost.

I think we also have another set of values that we share. This is where we part company. Some think the reforms of the regulatory process get in the way of the protective goals of the underlying environmental protection, consumer protection, public health and safety laws that generate those regulations.

Remember, the regulations do not arise out of nowhere. They arise, for the most part, out of laws that we adopt. We adopt those laws because we are responding to problems. We are, in the best exercise of governmental authority, making judgments about certain threats to the well-being of people in this country that they cannot protect themselves from.

In some measure, in our increasingly complicated world—much more complicated than when this country was founded—we have extended what we lawyers like to call the police power of the State to encompass not just the traditional prohibitions of criminal acts and punishment for commission of those acts, but to protect people from being assaulted, for instance, by toxic chemicals in the air or in the water, substances that, if you listen to the public health experts—and they are credible ones—can do as much damage to people as criminals can.

So we have adopted this law to protect people, whether it was against food poisoning or protecting children from iron toxicity, whether it is to ensure that mammography done in this country is safe and reliable, whether it is to protect us against the now legendary cryptosporidium, a microscopic parasite found in drinking water. This is why we adopt regulations. I hope this debate has reminded us of those underlying purposes.

It seems to me S. 343, as amended, continues to present serious obstacles to the realization of those protective goals. I must say that, as I go around the State of Connecticut, I find that one of the aspects of our Government that people I speak to most support, even though they are upset about much else that we do here, is the work we do to protect the environment, to conserve the great natural resources that the good Lord has given this country and, in fact, this world, to protect them from threats that they cannot see in the water they drink, in the food they eat.

They want us to continue to do this. And I am convinced that in the layers of hurdles—in the petition process set up within S. 343, as amended, in the decisional criteria, these four very high hurdles that regulations, protective regulations will have to jump over in order to stay valid, in the judicial review process, and so much else that is in this bill—that though the bill has been improved, it still needs to be improved more, or we will inadvertently, I believe—I hope unintentionally—have made it much more difficult for Government to protect people from threats to their health and safety and well-being that they cannot protect themselves from.

The best way to describe and explain all this is with concrete examples, and let me give a few. The Clean Air Act requires that the standards for air quality be set at a level to provide protection of public health with an adequate margin of safety. I would guess, if we asked constituents in our district whether they want us, when it comes to protecting public health, their health, from pollution in the air—whether they want us to do that with an adequate margin of safety, they would say yes. Sure, people are cost conscious. Obviously, they are cost conscious. But when it comes to their health, their parents' health, their children's health, I think they would want us to err on the side of that health, not on the side of the cost to the source of the pollution.

Acting on guidance from Congress, the Environmental Protection Agency has set the standards for air quality, public health, at levels which err on the side of caution, at levels which do protect not just average people but also sensitive subgroups of the public such as the elderly, who are less able, because their bodies are older, to withstand pollution in the air; persons who have more respiratory problems; or children; or such as subgroups in the population who already are ill for one reason or another—they may have asthma, they may have heart disease. They are particularly vulnerable to dirty, polluted, toxic air.

Although the statute on its face, the Clean Air Act, does not prohibit consideration of costs, EPA, for 25 years, has implemented the statute based on health protection and health protection alone. And the courts have upheld EPA's approach.

For example, one of the pollutants that EPA regulates is sulfur dioxide, which comes from coal-burning utilities and smelters primarily. EPA long ago determined that its standard for sulfur dioxide emissions in the air should be set, not just to protect the average group of healthy Americans, but to protect asthmatics as well.

There has been a 40 percent increase in asthma in our country in the last decade. That is a topic for another discussion as to why that has happened. My internists at home in New Haven said to me that he sees what he is calling an epidemic of asthma, particularly among kids. The standard EPA sets is at a level to protect asthmatics. The Clean Air Act requires that EPA periodically review this standard. And, under the bill before us, S. 343, as amended, industry—that is source of pollution who feel they are adversely affected by this sulfur dioxide standard—can petition to have the standard reviewed under the new decisional criteria, those four high hurdles that I have talked about.

I respectfully suggest that the likely result, under this series of decisional criteria, would be that despite the long history I have talked about and the court decisions, EPA could no longer set the standard for sulfur dioxide at the level to protect as much public health and as many people in our country, including those with asthma and respiratory problems, as they do now.

Instead, it would be required to look at the benefits from avoiding medical treatment for asthmatics and weigh those against the compliance costs imposed on the sources of the pollution, the smelters and other facilities.

Inevitably, this will mean that the standard will not be set at a level that will protect the asthmatics who are protected now. And that is a lot of people. That is millions of people. It is our kids. It is our spouses. It is our parents. For the first time, the degree to which EPA is permitted to set these standards for air quality based on health protection would be compromised. And even if EPA could avoid this strict cost-benefit weighing part of the test that I have just described, one of the other sections of the decisional criteria is the least-cost section, which says that you have to do what you are supposed to do at the least cost possible, would require a weighing of costs which, again, would compromise the health-based standard but, more to the point, compromise the health of a lot of people in this country.

Finally, because I see other colleagues on the floor, let me give a specific example of why the second decisional criteria, the least-cost alternative, could significantly reduce protection of public health and the environment.

In 1991 EPA conducted a comprehensive cost-benefit analysis of options for the rule it was issuing that dealt with lead in drinking water—lead in drinking water. When you open the tap and drink the water, what about the lead in it? Several options had been suggested ranging from simply telling people to run their water before drinking it, which reduces the problem in some but not all cases, and depends on assuring that, for instance, children and others will run the water for a couple of minutes before drinking.

Mr. President, I do not know about your kids—they are younger than mine—but I do not think mine will run a tap for a few minutes before drinking.

Other alternatives for dealing with lead in water, drinking water, would require universal use of a corrosion-inhibiting chemical and the replacement of all lead-contaminated pipes or setting an ''at-the-tap'' standard for lead. So there were three or four alternatives available to EPA for dealing with this problem, the real public health problem of lead in drinking water.

EPA conducted a detailed cost-benefit analysis for three alternative rules, all of which had benefits greater than costs. EPA chose the middle-of-the-road option, requiring some but not all water utilities, water companies, to use a corrosion-inhibiting chemical and requiring replacement of the worst lead pipes, but over a 22-year schedule to phase it in.

It is very likely that under S. 343, if it is adopted as amended, the least-cost alternative would have been to issue a much more limited chemical treatment rule.

Under the alternative selected by EPA, the benefits have been enormous. For a little more expenditure, we have received and obtained much greater health benefits, assuring, according to public health experts, that thousands of children would not have elevated blood lead levels and others with vulnerability to lead because of heart conditions would be saved, quite literally, from heart attacks.

That EPA middle of the road rule had far, far greater benefits than the least-cost alternative that would be driven by S. 343, as amended, in terms of public health—and that means children have higher blood lead levels, they lower IQ's. It is pretty hard to calculate the cost of that, but in my opinion it is incalculable.

EPA would simply not have been able to adopt the sensible midcourse alternative it selected if we adopted the bill as amended. That would not have made good common sense and obviously it would not have made good public health.

Mr. President, I see other colleagues on the floor. I will yield the floor. But to say again what I said, at the beginning, we have made some progress on this bill. But there is a way to go before we accomplish both real regulatory reform and cut down the red tape, which all of us want to do, and the Glenn-Chafee bill does very sensibly. But what we have not done yet is assure that the public health, environmental protection, and consumer protection, which generated the adoption of the laws that gave birth to these regulations, are going to continue to be adequately protected. And until that is so, I will vote as I will in a short while against cloture on this bill.

I thank the Chair. I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I see the Senator from Rhode Island wants to go forward for a few minutes. I ask unanimous consent that he proceed for 4 minutes, and that I then be recognized for 5 minutes.

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

The Senator from Rhode Island.

Mr. CHAFEE. Thank you. I want to thank the distinguished Senator from Massachusetts for permitting me to go for 2 minutes.

I would like to make a couple of points. One of the major objections to the Johnston bill is the so-called judicial review. We have dealt with the language of the Johnston bill and judicial review before. What is the language that is so objectionable? It is in section F. It says, ''The reviewing court shall hold unlawful and set aside agency action findings or conclusions found to be without substantial support in the rulemaking file viewed as a whole.''

That is complicated. But it is a very high standard to meet. It is very, very difficult. And what it means for those who are implementing the rule—any of the agencies, whether it is EPA or whatever it is—it is very hard for them to have a rule that cannot be thrown out by the courts under this definition. We have done this before.

In 1982, Senator BUMPERS had an amendment that came out of the committee when we were doing regulatory reform in that year, which had exactly the same language that we—I and others on this side—are objecting to, and that Senator HATCH and others put into this bill.

So we had a Republican administration. We had a Republican Senate, and that group—the administration and the Republican Senate—vigorously objected to the language that was in that bill, the so-called ''Bumpers language,'' which is exactly the same as the Hatch language today.

So Senator BUMPERS came up with an amendment. He changed that objectionable language. And the Vice President of the United States, on February 23, 1982, George Bush, wrote the letter.

DEAR DALE: We have received your proposed amendments to S. 1080 and the explanation of those amendments. We believe that these changes, as explained by what would be legislative history, are significant improvements.

On and on he goes.

So the language that I am objecting to, and others who will not support cloture tonight, is the exact same language that a Republican administration, that a Republican Senate, objected to in 1982. It was objectionable then, it is just as objectionable now.

I do hope that cloture will not prevail.

I thank the Chair. I thank the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. HATCH. Will the Senator yield for a request?

Mr. KERRY. I yield for a request.

Mr. HATCH. I ask unanimous consent that following the remarks of the distinguished Senator from Massachusetts that I be permitted to speak a few words on this before cloture.

The PRESIDING OFFICER. Is there objection?

Mr. GLENN. Reserving the right to object, Mr. President, would we still have the vote at 6 o'clock?

Mr. HATCH. Oh, yes.

Mr. GLENN. We have both leaders who wish to speak.

Mr. HATCH. That is right. I will be short. We want to allow enough time for both Senators to have a few remarks.

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

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I congratulate my colleague from Rhode Island for his comments, and also the Senator from Connecticut, who in a detailed fashion has summarized why this bill is not prepared to be passed on by the Senate, and why colleagues sought to oppose cloture at this point.

Mr. President, this bill flies directly contrary in its current form to the principles espoused by Philip Howard in ''The Death of Common Sense,'' and to the whole concept of reform. Reform is supposed to create simplicity. It is supposed to create fairness. It is supposed to reduce the paperwork and reduce the opportunities for litigation.

This bill in its current form is a lawyer's and an accountant's dream.

Mr. President, here is list of 88 new opportunities for litigation in the Dole-Johnston bill before us. This bill is supposed to simplify. We keep hearing in the U.S. Senate about how there is too much litigation. However, there is no such opportunity for litigation in the current law for these items. But under this bill, here are the opportunities for litigation—88 new opportunities—for lawyers to dream up ways they can come into court. This is not speculative. This is by the very language written in this bill.

For instance, section 622, (c)(2)(C)(1), ''Did the agency adequately identify alternatives that require no government acts?''

If somebody wants to sue suggesting that they did not, all they have to do is make the claim, come into court, and that review will take place.

''Did the agency adequately describe attempts to verify quality, reliability and relevance of science?'' Section 622, (d)(2)(A)?

I can go through the entire bill where, because they are opening up procedure to review—not just substance but procedure—you are going to tie up an agency in court.

Mr. President, they will come back and say, ''No, no, no, we do not want the procedure to be reviewed.'' And they will suggest that there is language here that precludes that.

I respectfully say that is not the case; there is sufficient ambiguity that lawyer-legislators on both sides are arguing about it. And the question is, therefore, if their intent is not to create that avenue of judicial review, if their intent is to do as they say, to preclude it, then why do we not make it clear in this legislation? Every attempt to try to make it clear has been rebuffed.

So I respectfully suggest that, just as in the area of least cost alternative where they suggest that there is not a rigid rule precluding judgment and discretion by the agency head, there will be sort of discretion. We are saying no. The language of this bill provides a rigidity, and we do not want that rigidity in this particular legislation.

In addition, I would like to point out that in today's Washington Post, there was an article that talked about being buried by paperwork. It had the amounts of money, and how the regulatory paper trail leads nowhere. But interestingly enough, almost every dollar in this article was in the SEC and the IRS, both of which are exempted under the Dole-Johnston bill.

So the very place where you find the problem, they have exempted it. Then they come in and say, well, there is $500 billion worth of cost to our economy. Yet the GAO has shown that study is totally faulty, that in point of fact there is only about $225 billion total cost to a $1.6 trillion economy. All the additional costs that they throw into their pot are costs that are related to what we call transfer payments and process costs that have nothing to do with the regulatory process itself.

So, Mr. President, if we want to simplify, which we do, you have an alternative. It is the Glenn-Chafee, or Chafee-Glenn bill. It is similar to a bill that came out of committee 15 to nothing in a bipartisan form. That is a bill which has review. It is a bill which has a cost-benefit analysis. It is a bill that has risk assessment. But it does not create a rigid rule that denies discretion or judgment to the agency heads who deal with these issues.

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

Mr. KERRY. I am happy to yield for a question.

Mr. JOHNSTON. Is the Senator aware that the original Roth bill that came out of committee unanimously, as the Senator says, required a review of rules?

Mr. KERRY. Yes.

Mr. JOHNSTON. This is the exception. There is no rule that needs to be reviewed, unless the agency head wishes to in his sole discretion, and that is not reviewable.

Mr. KERRY. The Senator is not only aware of it, but that is the standard which we would embrace in this bill. But because of the judicial review standard that the Senator from Louisiana is pressing and because of the petition process which the Senator from Louisiana is pressing, we totally inundate the agencies.

What is going to happen here, Mr. President, is that a process that is supposed to simplify is going to swamp the agencies. The EPA currently has a very clear graph that shows how many hours go into rulemaking from business. Business currently spends about 70,000 hours putting together the reports for the process of rulemaking. Under this process, you are going to triple or quadruple the amount of industry input. You are going to at least double the governmental input, and there will be no commensurate increase in resources or budget.

The effect will be they will be swamped, because there is a clever little clause in here that says if you do not get your review done in 3 years, we are going to throw the rule out. So first they swamp the agency. Then they provide a whole bunch of opportunities for litigation. And they say if you have not performed your responsibility within that span of time, which is impossible, we throw the rule out anyway. That is stripping America of 25 years of effort to try to have a reasonable process of regulation.

I wish to give all colleagues time here, but I just say, Mr. President, I am prepared to vote for a reasonable reform bill that has a reasonable judicial review standard, a reasonable cost-benefit analysis and risk-assessment approach, but that does not tie the Government in knots and that does not take the current 1-page Administrative Procedure Act approach to rulemaking and add an additional 64 new pages from the Dole-Johnston bill.

That is not simplification. That is not reform. That is an opportunity for lawyers to have a field day in court and to prevent us from ever having a rule that addresses the public safety and health needs and environmental needs of this country.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, what 343 requires is that when there is a major rule, if there is going to be litigation, it has to be the whole rule. It cannot be nit-picked to death as has been suggested under the language there. And every major rule is litigated now. So there is nothing to those arguments that have been argued here.

With regard to what Senator CHAFEE said, Senator JOHNSTON does, indeed, amend section 706 of the Administrative Procedure Act to apply the ''substantial evidence test'' to informal—notice and comment—rulemaking.

I wish to point out that this test is hardly novel. It has been codified in the Administrative Procedure Act for almost 50 years—section 706(2)(E)—as the standard to apply in adjudicatory rulemakings.

Moreover, Congress has in specific statutes required the substantial evidence test for informal rulemakings since the late 1960's. Just some examples include the Occupational Health and Safety Act of 1970 and the Magnuson-Moss FTC Improvement Act of 1975.

In 1981, the Administrative Conference of the United States recommended that section 706 of the APA be amended to include a substantial evidence test for informal rulemakings. That was recommendation No. 81–2. The Administrative Law Section of the American Bar Association made a similar recommendation in 1986.

Also, in 1981, the Senate approved the Bumpers amendment to S. 1080, the precursor to present S. 343 that passed the Senate 94 to 0 in 1982. That amendment's language applying the substantial evidence test to informal rulemakings is virtually similar to the language of Dole-Johnston. I might add that the American Bar Association strongly recommended including the substantial evidence test for informal rulemakings in S. 343.

The substantial evidence test is the appropriate standard for judicial review when examining whether the factual basis of the rule justifies the rulemaking. Contrary to assertions made by some of my colleagues, the substantial evidence test is not so stringent as to impede the implementation of rules.

It is now recognized that the substantial evidence test is the functional equivalent of the standard arbitrary and capricious test. Indeed, a number of courts and legal commentators have concluded that, when applied to court review of factual conclusions made by agencies, the distinction between the substantial evidence test and the arbitrary and capricious standard is largely semantic.—*Association of Data Processing Service Organizations* v. *Board of Governors*, 745 F.2d 677, 684 (1984) (and cases cited therein).

Nonetheless, adoption of this test is important because it is the appropriate standard for courts to employ when reviewing factual determinations. In other words, the substantial evidence standard aids the court in determining whether an agency abused its discretion in promulgating a rule.

I notice the distinguished majority leader is here.

Mr. President, just let me say this. Despite all of the hysterical rhetoric

that we have heard on this bill, this bill is simply a commonsense bill. It is a reasonable effort to rationalize the regulatory process. Meaningful regulations in the areas of health, safety, and environment are important and necessary. This bill does nothing to repeal or change needed and reasonable regulations. All this bill does is require a reasonable process whereby we ensure that the benefits from these regulations justify the costs. We have a Government out of control. This is a modest attempt to try to get it back into control, and I hope everybody will vote for cloture on this bill.

I yield the floor.

Mr. DASCHLE. Mr. President, I know that we are about ready to cast the vote. I will be very brief.

As we have said over and over throughout the debate today and over the course of the last several days, the fact is that there has been a very good debate about a number of extraordinarily complex issues, issues that ought to be aired, issues that ought to be raised in the context of both regulatory reform and public safety.

We have done that. We have offered amendments. We have had a good debate. There have been very few quorum calls. There is no filibuster. I hope all colleagues consider this vote very carefully and vote against cloture this afternoon.

Let me remind my colleagues that 38 amendments, so far, have been offered—38 amendments over the last 7 days or so. Of the 38 amendments that were offered, 24 of those amendments were offered by proponents—24 of them. Only 14 of the 38 amendments which have been offered have been offered by those who are not supporters of the legislation. Of those, 7 were adopted, 3 were rejected by a 2-vote margin, 2 were withdrawn, 1 was the only one to lose by more than 10 votes, and 1 is pending right now, the Glenn-Chafee substitute.

So if you take the substitute away, 13 amendments are all the amendments that have been offered on our side to date. And of those, very few were rejected—in fact, only one was rejected—by more than 10 votes.

I think the point of all this is very clear. We are making a good-faith effort to try to work through this issue in a meaningful way. Even if the substitute is declared germane, as I understand it has been, there are a number of additional relevant amendments, amendments that we have been waiting to offer, amendments that we hope to be able to propose at some point in the not-too-distant future, most likely even with time agreements. We are willing to do that, but if we are going to be able to offer those amendments, invoking cloture now would preclude a lot of Members from having the right to do so.

So I urge our colleagues to oppose cloture, recognize that we are not filibustering, we are not extending debate unnecessarily, recognize that the amendments that have been offered in large measure have been offered by those on the other side, and recognize as well that as complicated as this is, it is imperative we continue to try to work through the bill, as difficult as it may be.

I believe we can do it. I am still optimistic that we can accommodate all Senators in trying to achieve our objective of reaching some ultimate compromise on this legislation and vote in a bipartisan manner. But we cannot do that today; we cannot do that by cutting off debate. We cannot do that by precluding Senators' rights to offer amendments as they have been doing now for about a week.

I yield the floor.

Mr. DOLE. Mr. President, tonight we take the first step toward bringing this important debate to a close.

Despite all the horror stories, despite all the distortions, despite the desperate attempts to shift the focus of this debate, I want to make very clear that I intend to fulfill the mandate given to us by the American people—and bring some common sense to the regulatory process and get the Government off our backs.

On one side of this debate stand the defenders of the status quo. Regulatory reform is a direct threat to their smug assumption that Washington knows best and that it cannot do any better. The defenders of the status quo can only win by delay and distortion.

On the other side of this debate stand those Senators—and I must point out that we have Republicans and Democrats—who understand that we have to provide relief to American families and small businesses who bear the burden of overregulation. We understand we can do so in ways that protect health and safety.

Though I do not really expect to close off debate tonight, it is important to understand that we intend to win, and that it is our obligation to pass meaningful regulatory relief, not just some watered down version that accomplishes nothing.

Therefore, if cloture is not invoked tonight, we will vote again on cloture tomorrow. And if we do not succeed at that time, we will vote again to close debate on Wednesday.

The issues at stake are too important. Unfortunately, those issues have often been obscured by those like Ralph Nader and President Clinton who repeatedly make basic factual errors about this bill.

The reality is not so hard to understand:

This bill has been amended over 100 times, incorporating comments and suggestions from the Clinton administration and Democrat and Republican Members;

This bill largely codifies President Clinton's Executive order on the regulatory process;

This bill incorporates whole sections of S. 1080, a bill passed unanimously in the Senate in 1982;

And perhaps most important, this bill includes close to 20 different protections for health, safety, and the environment.

These are the facts. Those facts—as opposed to the twisted version reported by the media—suggest that those who oppose our reforms have some explaining to do. Those who seek to stall reform will have to answer to the American people.

And in the end, I am confident that we can pass this bill with broad bipartisan support.

Mr. President, I would be very willing to sit down with the Democratic leader and figure out how we could bring this matter to a conclusion tomorrow or even on Wednesday. But this is the seventh or eighth day we have been on this bill. It is a very important bill. Many of the amendments offered by proponents were in response to requests from those who opposed the bill—this would make it better, this is a compromise, work it out. There have been a number of amendments. In fact, we took a major amendment of the Senator from Ohio, who was prepared to debate it for 2 hours. We said we will take it. It is the sunshine amendment, a major amendment.

We have taken a number of amendments. We have addressed the 180 days problem. We have addressed a number of major problems, as I understand it.

So now there are 267 amendments pending at the desk, first- and second-degree amendments—267 or 260-some. How do you finish a bill with that many amendments? In fact, it is worse than the tax bill where sometimes you have 80 or 100 amendments. And I must say some of those amendments are on this side so they are not just coming from that side. I do not want to leave that impression. Most are coming from that side but some are coming from this side.

We thought last week, or last Thursday or Friday, according to our list—not everybody would tell us what their amendments were—there were probably two or three on this side and five or six on the other side, including the major substitute which we are on right now.

I do not want to shut off anybody. If we cannot get cloture, we cannot get cloture, we will not have regulatory reform. That is not a threat, but if you just take out the calendar—there are already people complaining about not getting a full August recess and there are probably going to be more and more complaints as we get closer to August 4. I would like to accommodate most people to get out at least a part of August. But if we want to spend more time on this bill than we should, do not be coming around to the majority leader saying, ''Oh, you can't take away our August recess.''

I do not want to take away anything. I have a lot of places I can go in August, would like to go in August, other than Iowa and New Hampshire.

[Laughter.]

We are not going to get cloture. We have four or five absentees. We have two or three who have not seen the light on this side yet, maybe four. But despite all the horror stories, despite all the distortions and despite the desperate attempt to shift the focus of this debate—in fact, the President said on Saturday on the radio show if you adopt this bill, there are going to be more air crashes. And this is the same President a week ago who said we should be more civil, we should not make statements like this, we should treat everybody with civility. And he charges Republicans, on a bill like this, with air crashes, dirty meat, dirty water, dirty air, two or three other things. He did not have much time on the air. He mentioned three or four ridiculous, ludicrous, exaggerated statements like that.

We think we have made a lot of progress. We think this is a bipartisan effort. If I have missed something somewhere along the line, then I think we should try to address it. I am willing at any time to set down a schedule of amendments to finish this bill. I am ready to vote tomorrow morning, tomorrow noon on the big substitute. Maybe that is one way. Once we determine how that is going to come out, maybe that will move the debate.

I think we may as well vote. We do not have the votes. Those who are not ready for regulatory reform will vote ''no.'' Those who are will vote ''aye.''

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 6 p.m. having arrived, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

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 pending substitute amendment to S. 343, the regulatory reform bill.

Bob Dole, Bill Roth, Fred Thompson, Spencer Abraham, Kay Bailey Hutchison, Jon Kyl, Chuck Grassley, Craig Thomas, Orrin Hatch, Larry E. Craig, Mitch McConnell, Conrad Burns, Bob Smith, Jesse Helms, Jim Inhofe, Judd Gregg.

CALL OF THE ROLL

The PRESIDING OFFICER. Under the previous order, the mandatory quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on amendment No. 1487 to S. 343, the regulatory reform bill, shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Utah [Mr. BENNETT], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Arizona [Mr. MCCAIN], and the Senator from South Dakota [Mr. PRESSLER], are necessarily absent.

Mr. FORD. I announce that the Senator from Alabama [Mr. HEFLIN] and the Senator from Nebraska [Mr. KERREY], are necessarily absent.

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

The yeas and nays resulted—yeas 48, nays 46, as follows:

[Rollcall Vote No. 309 Leg.]

YEAS—48

Abraham	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bond	Gramm	Nickles
Breaux	Grams	Packwood
Brown	Grassley	Pell
Burns	Gregg	Roth
Campbell	Hatch	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Simpson
Coverdell	Inhofe	Smith
Craig	Johnston	Snowe
D'Amato	Kassebaum	Stevens
DeWine	Kyl	Thomas
Dole	Lott	Thompson
Domenici	Lugar	Thurmond
Faircloth	Mack	Warner

NAYS—46

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

NOT VOTING—6

Bennett	Kempthorne	McCain
Heflin	Kerrey	Pressler

The PRESIDING OFFICER. On this vote, the yeas are 48, the nays are 46. Three-fifths of those duly chosen and sworn not having voted in the affirmative, the motion is rejected.

EXPLANATION OF ABSENCE

Mr. DOLE. Mr. President, the distinguished Senator from South Dakota, Senator PRESSLER, was necessarily absent during the cloture vote on the Dole-Johnston substitute amendment to S. 343, the regulatory reform bill.

Senator PRESSLER was on his way back to Washington from Sioux Falls, SD, but has experienced a number of flight delays due to mechanical difficulties and weather surveillance. Had Senator PRESSLER been here for the vote, he would have voted to invoke cloture.

(At the request of Mr. DOLE, the following statements were ordered to be printed in the RECORD.)

EXPLANATION OF ABSENCE

● Mr. PRESSLER. Mr. President, I was necessarily absent during rollcall vote No. 309 on the motion to invoke cloture on the Dole-Johnston substitute amendment to S. 343, the comprehensive regulatory reform bill. Had I been present for the vote, I would have voted in the affirmative.

I was unable to be here for the vote due to a number of travel problems that occurred on my flights from Sioux Falls to Washington, DC. Specifically, the aircraft that was to have taken me from Sioux Falls to Minneapolis was kept on the ground due to mechanical problems. The delay, in fact, forced me to take a later flight on another plane. I was further delayed at Minneapolis due to weather surveillance. I regret this series of flight delays prevented me from being present during the cloture vote earlier this evening.●

● Mr. KEMPTHORNE. Mr. President, I rise today to explain my absence from the floor during Senate vote No. 309 to invoke cloture on S. 343. I was necessarily detained on my return flight to Washington, DC, due to severe weather conditions causing flight delays. Had I been present for vote No. 309, I would have voted ''aye.''●

Mr. WARNER. Mr. President, as an original cosponsor of Majority Leader DOLE's regulatory reform package, I am delighted to have this opportunity to discuss the many benefits to be gained from its enactment. For perhaps the first time, we are confronting the astoundingly sensible idea that the regulations we impose at the Federal level should reflect risk-assessment and cost-benefit analyses. These important tools will ensure that limited dollars are spent on solving our most serious problems and in turn will return the greatest results.

Throughout this debate, we have been treated to a barrage of rhetoric from naysayers, the opponents of common-sense regulating. Those in favor of realistic balance have been portrayed as coldhearted calculators determined to destroy the environment, eradicate the safe workplace, and jeopardize the health of every American.

Mr. President, that simply is not true.

Regulations imposed by the Federal Government should bear a direct relationship to the potential risk to public health, safety, and the environment. They should also reflect a significant benefit for the costs incurred.

Those dual considerations form the centerpiece of the Dole-Johnson substitute.

The measure directs Federal agencies to conduct a cost-benefit analysis for major regulations, defined as having a gross annual economic impact of $50 million in reasonably quantifiable direct and indirect costs. Where appropriate, standardized risk assessments reflecting the best available science also would be conducted, with public participation and peer review. Since many speakers have preceded me, I will not belabor the specific provisions of this package.

Earlier this year, the Environment and Public Works Committee, on which I have served for 9 years, held a hearing on the impact of regulatory reform

proposals on environmental and other statutes. That hearing confirmed a glaring certainty: Federal agencies are not using the discretion at their disposal to adequately consider or appropriately weigh costs and benefits. Burdensome Government regulations are imposing significant costs on our national economy, our productivity, and our ability to compete in the global marketplace. To reverse that trend, we must include cost-containment features and regulatory impact analyses whenever any new Federal regulation is considered. Agencies should be required to include sound science before they promulgate rules and regulations anew; the public should be allowed to petition for the review of risk assessments made by agencies.

Mr. President, less regulation will not result in less protection for the public if our dollars are used efficiently. On the contrary, the net effect of using sound science and real risk assessment to prioritize regulations would be more real protection. Best of all, that enhanced protection of health and safety would be cost-effective.

We are all aware that life will always involve some risk—we cannot and should not attempt to protect everyone from every possible degree of risk. Instead, we must prioritize on the basis of definitive risk factors. Each rule must be carefully scrutinized; choices must be based on relative risks and associated costs.

My interest in regulatory reform has been honed further by my membership on another committee—Agriculture.

I am deeply concerned with the economic health of the agriculture community, especially that of the family farmer. One of the most debated issues concerning agriculture and agricultural chemicals today is the so-called Delaney clause. Under its restrictions, pesticide residues found in processed foods are considered food additives. The Delaney clause prohibits the inclusion of any chemicals or additives in processed foods, including pesticides and inert ingredients, which have been found to be carcinogenic in humans or animals.

Ironically, the very good intention of the Delaney clause—to protect consumers from unsafe exposure to chemicals which might induce cancer—is being subverted. Technological advances which make it possible to detect trace compounds in parts per trillion and greater have made the zero risk standard of the Delaney clause unreasonable. The very scientific advancements which should be enhancing consumer safety are instead hindering. It would be far more reasonable to institute a negligible risk standard. For carcinogens, such a standard would represent an upper-bound risk of 1 in 1 million over a lifetime, calculated using conservative risk assessment methods. Again, we are talking about a matter of sensible risk assessment.

Mr. President, listening to this debate, I have had to ask myself why anyone would not want to see beneficial rules and regulations, which protect from real risk while outweighing their costs. At a time when budgetary constraints are a serious priority, we should—we must—spend those scarce dollars wisely. Regulations associated with high levels of risk undoubtedly may be expensive to comply with, but if they are deemed necessary to protect the national health, safety, and the environment, the compliance costs will be money well spent.

However, excessive rules and regulations associated with minimal public risk amounts to hunting fleas with an elephant gun. It is neither fair nor reasonable to ask the taxpayers to bear such expense.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I hope we can now agree on a time to vote on the substitute. We have had a lot of debate on the substitute. I hope we can reach an agreement before we depart, with the managers, on when we can vote on the Glenn substitute—hopefully tomorrow morning or by noon tomorrow.

There will be no more votes tonight. I think the first thing we want to do is have a vote on the substitute and perhaps we can reach some agreement on that.

Mr. STEVENS. I ask unanimous consent that I may have a few moments to speak as in morning business to introduce a bill and make a few remarks.

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

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

(The remarks of Mr. STEVENS pertaining to the introduction of S. 1043 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

U.S. POSTAL SERVICE

Mr. STEVENS. Mr. President, there has been much discussion lately about the future of the U.S. Postal Service. Should the Postal Service be freed from current statutory restrictions in order to become more competitive? Should the Postal Service be privatized?

Many observers believe there are problems which need to be resolved in order for the Postal Service to continue into the next century. Unfortunately, there is not a consensus on the solutions to the problems—and, indeed, not everyone agrees that there are problems which require changes in current law.

As part of the ongoing review of the Postal Service, I received a paper written by Murray Comarow. Mr. Comarow served as the Executive Director of President Johnson's Commission on Postal Reorganization in the late 1960's and was a Senior Assistant Postmaster General.

In the paper he urges the appointment of a nonpartisan commission to analyze the root causes of the Postal Service's problems and recommend changes. He suggests that perhaps the Postal Rate Commission and the requirement for binding arbitration with employee unions be eliminated, and that the Postal Service should have the ability to close small, unprofitable post offices if service could be maintained through other means such as leasing space in local businesses.

In addition, Mr. Comarow observes that the monopoly on first-class letters as well as universal service at a uniform price should be maintained. However, the Postal Service should be able to compete for large contracts and offer experimental services, and he does not believe that employees should be given the right to strike—a right not possessed by any other Federal employees.

Mr. President, I do not here pass judgment on the conclusions reached by Mr. Comarow, but he provides an historical reference and raises some issues which ought to be considered during any debate on the future of the Postal Service. In the interest of reducing costs, I will not ask unanimous consent that the text of Mr. Comarow's paper be reprinted in the Congressional RECORD. Copies of the complete paper can be obtained by contacting Mr. Comarow directly at 4990 Sentinel Drive, No. 203, Bethesda, MD, 20816–3582.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DEWINE. 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. DEWINE. Mr. President, I ask unanimous consent to proceed as in morning business.

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

Mr. STEVENS. Again, Mr. President, I do not think the Senate is in order for my friend to speak, any more than it was when I was speaking.

The PRESIDING OFFICER. The Senator is correct. The Senate will come to order.

The Senator from Ohio.

HEMOPHILIA AND HIV

Mr. DEWINE. Mr. President, the Institute of Medicine—or IOM—last Thursday released the findings of a major investigation into how America's hemophilia community came to be decimated by the HIV virus. It is a very sad and compelling story.

In the early 1980's, America's blood supply was contaminated with HIV. Many Americans have become HIV-positive by transfusions of the HIV-tainted blood.

One particular group of Americans has been extremely hard-hit by this

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. Second, 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: ''individuals 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 ''policymakers'' 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 commonsense 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 businesses 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 rulemaking. 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 business, 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.

Foe 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 nonprofit 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., Chemical 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., du-Pont 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 assocations, 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 HUFA'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'' enforcement 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.

[1] Beginning 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.

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.

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 cites 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 sequence 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.

S. 1041. 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 *Explorer*; to the Committee on Commerce, Science, and Transportation.

By Mr. MACK:

S. 1042. A bill to designate a route as the ''POW/MIA Memorial Highway,'' and for other purposes; to the Committee on Environment and Public Works.

By Mr. STEVENS (for himself, Mr. INOUYE, Mr. MURKOWSKI, Mr. SIMON, Mr. INHOFE, Mr. DODD, Mr. SIMPSON, Mr. AKAKA, Mr. SANTORUM, and Mrs. FEINSTEIN):

S. 1043. A bill to amend the Earthquake Hazards Reduction Act of 1977 to provide for an expanded Federal program of hazard mitigation, relief, and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. KASSEBAUM (for herself, Mr. KENNEDY, Mr. JEFFORDS, Mr. PELL, and Mr. SIMON):

S. 1044. A bill to amend title III of the Public Health Service Act to consolidate and reauthorize provisions relating to health centers, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. ABRAHAM (for himself and Mr. COATS):

S. 1045. A bill to amend the National Foundation on the Arts and the Humanities Act of 1965, the Museum Services Act, and the Arts and Artifacts Indemnity Act to privatize the National Foundation on the Arts and the Humanities and to transfer certain related functions, and for other purposes; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MACK (for himself and Mr. LIEBERMAN):

S. Res. 151. A resolution to designate May 14, 1996, and May 14, 1997, as ''National Speak No Evil Day'', and for other purposes; to the Committee on the Judiciary.

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

S. Res. 152. A resolution to amend the Standing Rules of the Senate to require a clause in each bill and resolution to specify the constitutional authority of the Congress for enactment, and for other purposes; to the Committee on Rules and Administration.

By Mr. DOLE (for himself and Mr. DASCHLE):

S. Res. 153. A resolution to make certain technical corrections to Senate Resolution 120; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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.

LEGISLATION REQUIRING SPECIFICATION OF CONSTITUTIONAL AUTHORITY

Mr. ABRAHAM. Mr. President, I rise today to introduce two pieces of legislation. One is a bill and the other is a resolution. The effect of each is to require that every law that passes through this Chamber explicitly state the constitutional authority pursuant to which it is being enacted.

I believe this requirement will help this body by giving us occasion to pause and reflect on whether the legislation we are considering is in fact within the province of the national government.

It will also help the American people evaluate our work, keeping in mind the question of constitutionality as well as the immediate policy questions presented by the bill.

And it may discourage us, at least at the margin, from adopting legislation outside our proper sphere of authority and responsibility.

All these factors would enhance our citizenry's freedom and make it easier for them to exercise their self-governing authority at the State and local level—the level closest to the people.

Mr. President, it has become commonplace to observe that the elections of 1994 showed the voters' frustration with big government. It seems clear to me that the American people feel that the Federal Government is interfering too much in their lives.

Whether through costly and ineffective Federal programs fraught with micro-managing mandates, business regulations that increase prices and cost jobs, environmental controls that forbid farmers to use their own land in a reasonable fashion, or workplace rules that forbid workers from saving fellow workers from danger, the people have had enough of Washington-knows-best programs.

And I believe the people are right to be concerned about a government that considers everything in life to be a proper subject for Federal legislation. We are in danger in this country of instituting a kind of soft despotism that will crush our democratic liberty under the weight of well-intentioned but overzealous regulations and programs. Intended to serve the people, these laws may enslave them by taking away too much of their natural freedom of action.

That is not the National Government that our Framers envisioned. Clearly there are areas where the Federal Government should intervene to protect people's health, safety and rights. But there must likewise be areas in which the Federal Government cannot intervene in regulating the peoples' lives.

The Framers of our Constitution believed they had devised a system that would separate these areas from each other. They thought that one of the powerful limitations on the National Government would be the principle that the Congress could exercise only the limited, enumerated powers granted it by the people and set out in the Constitution.

That principle was made clear in the original Constitution, which gave Congress not general legislative authority but only ''all legislative powers herein granted.'' And it was emphasized by the adoption of the 10th amendment in the Bill of Rights, which states that ''The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.''

Until this last term the Supreme Court for decades had not struck down a law as outside Congress's powers. As a result many people claimed that the principle that Congress has only limited enumerated powers is a dead letter. But our everyday experience shows otherwise. Everybody knows that we do not turn to the National Government for help with most problems in our everyday lives. We turn to family members, friends, doctors, community or volunteer organizations, and churches; or to local government officials, such as school teachers, police men and women, and others.

The 1994 congressional elections were in large measure about the size of government. And in my view, Mr. President, those elections made one thing very clear: The belief that our National Government should have only limited powers remains alive in the hearts of the people.

The most important efforts of this Congress have been undertaken to respond to the people's demand for prompt and serious action to return the National Government to its proper functions.

The budget that we have been debating for the past few days is the first in many years to take that responsibility very seriously.

The regulatory reform legislation currently on the floor is similarly an effort to impose reasonable and meaningful restrictions on the interventions of regulatory bureaucracies in our lives.

The proposals to abolish Cabinet Departments will likewise get the National Government out of areas where it does not belong.

It is in this context that we should consider the Supreme Court's decision a few months ago in United States versus Lopez and the rather modest legislative proposals I am introducing today. In Lopez, the Supreme Court for the first time in 60 years struck down an act of Congress as exceeding the powers granted it in the Constitution. The Court ruled that a Federal law about guns in schools was beyond Congress' powers because its connection to commerce was too remote.

Now I think there are few higher priorities than reversing the accelerating decline of our schools into armed camps. But, not surprisingly, so do the States, which is why almost all of them already have laws addressing this problem.

Thus this important case is not about whether we should have guns in schools, but about whether policing the schools is principally the responsibility of parents, local governments and States, or the responsibility of Congress. The Court correctly found that the Framers did not assign us that responsibility—which is just as well, since I have no idea how we could possibly be in a position to figure out what is needed in every locality in the country.

The Court's opinion does signal something of a change in approach by the Court to issues of this type. But it is always dangerous to read too much into an individual Supreme Court decision. Moreover, the Court did not give much indication, other than something of a change in attitude, about how it would be approaching future cases.

I do not think we should be disappointed about this. After all, we in Congress's new majority should not leave it to the Supreme Court to do all of the thinking on this subject. The courts, Congress, and the President working together expanded government to its present dimensions. A similar cooperative effort by all three branches will likely be needed to re-establish our central government's status as a government of limited powers.

This will be no easy task. But it is our duty to make limited government as much of a reality in the lives of Americans and American culture 30 years from now as the notion of inexorable expansion was until Ronald Reagan's election as President and the election of the current Congress.

We have begun the difficult task of restoring ordered liberty in a number of ways in this Congress. Our efforts toward a balanced budget promise to return our Government to fiscal responsibility; to make us recognize our duty to pay our bills and refrain from burdening our children with massive debts.

Our regulatory reform measures promise to rein in government agencies by forcing them to conduct real cost-benefit analyses, based on sound science. In this way regulation will be reduced and limited to those that actually will promote the public good.

Our steps toward elimination of unnecessary Cabinet Departments promise to reduce government's interference with our daily lives. By eliminating unneeded Departments we will eliminate bureaucrats' drive to justify their jobs by finding new areas to regulate.

I do not for a minute equate the proposals I am introducing today with these other efforts. I do believe however, that a requirement that we include a statement of what power, granted it by the Constitution, Congress is using in enacting every piece of legislation, will play a modest role in assisting our ongoing reexamination of the role and limits of the National Government.

This requirement will perform three important functions.

First, it will encourage us to pause and reflect about where the law we are considering enacting fits within the constitutional allocation of powers between the Federal Government and the States.

As Justices Kennedy and O'Connor noted in their concurrence in Lopez, that is one of our important responsibilities:

> It would be mistaken and mischievous for the political branches to forget that the sworn obligation to preserve and protect the Constitution in maintaining the federal balance is their own in the first and primary instance.

A statement of constitutional authority also will put Congress' view of its constitutional authority on the record for the people to judge. This will spur further useful reflection on our part and open up the possibility of conversation with the people on the subject of Federal powers.

Finally, such a statement also will help the courts evaluate the legislation's constitutionality. Legislation that falls within our enumerated powers will more likely be upheld if it contains an explicit statement of its constitutional authority. As important, we will be less likely to allow laws or regulations that overstep proper constitutional bounds to pass out of this Chamber.

In this way we will protect the liberties of our people, the prerogatives of our States and local communities, and the structure of limited government bequeathed to us by our Founders. We will, then, defend that constitutional structure designed to foster virtue in the people, discipline in the government and peace and prosperity in the nation.

I urge your support of this legislation.

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

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

S. 1039

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

SECTION 1. SPECIFICATION OF CONSTITUTIONAL AUTHORITY FOR ENACTMENT OF LAW.

(a) CONSTITUTIONAL AUTHORITY.—This Act is enacted pursuant to the power granted Congress under Article I, section 8, clause 18, of the United States Constitution.

(b) IN GENERAL.—Chapter 2 of title 1, United States Code, is amended by inserting after section 102 the following new section:

"§ 102a. Constitutional authority clause

"(a) A constitutional authority clause shall follow the enacting clause of any Act of Congress or the resolving clause of any joint resolution. The constitutional authority clause shall be in the following form (with appropriate modifications and appropriate matter inserted in the blanks):

" 'This Act (or resolution) is enacted pursuant to the power(s) granted to the Congress under Article(s) section(s) , clause(s) of the United States Constitution.' "

"(b) A similar clause shall precede the first title, section, subsection or paragraph, and each following title, section, subsection or paragraph to the extent the later title, section, subsection or paragraph relies on a different article, section, or clause of the Constitution from the one pursuant to which the first title, section, subsection or paragraph is enacted.".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 2 of title 1, United States Code, is amended by inserting after the item relating to section 102 the following:

"102a. Constitutional authority clause.".

By Mr. STEVENS (for himself, Mr. INOUYE, Mr. MURKOWSKI, Mr. SIMON, Mr. INHOFE, Mr. DODD, Mr. SIMPSON, Mr. AKAKA, Mr. SANTORUM, and Mrs. FEINSTEIN):

S. 1043. A bill to amend the Earthquake Hazards Reduction Act of 1977 to provide for an expanded Federal program of hazard mitigation, relief, and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATURAL DISASTER PROTECTION ACT

Mr. STEVENS. Mr. President, Alaska has three times more earthquakes than California. Since 1938, Alaska has had at least nine quakes of 7.4 magnitude or more on the Richter scale. Alaska's 1965 Good Friday earthquake was one of the world's most powerful, at the magnitude of 9.2 on the Richter scale.

Senator INOUYE and I have been studying this matter. We find that over the last two decades Federal taxpayers have paid out over $140 billion in aid following earthquakes.

Before 1989, the United States had never experienced a disaster costing more than $1 billion in insured losses. Since then, we have had nine disasters that have cost more than $1 billion.

Today, Senator INOUYE and I introduced a bill to try and reduce the cost to the Federal Government of earthquakes, hurricanes, and floods.

First, the bill will reduce Federal costs by expanding the use and availability of private insurance. The bill also disqualifies those who do not buy private insurance from long-term Federal disaster assistance.

Second, the bill will provide incentives to improve the ability of buildings to withstand disasters and, in doing so, will reduce the risk of injury to people. As one expert put it: "It is buildings, not earthquakes, that kill people."

And, third, the bill will create a national, privately funded catastrophic insurance pool to shoulder the risk of very large disasters.

Mr. President, the more private insurance individuals buy, the less disaster relief Federal taxpayers must pay. For instance, if this bill had been in place before Hurricane Andrew and California's Northridge earthquake, it would have reduced Federal costs by at least $5 billion.

Not only will the bill help reduce the costs to the Federal taxpayer, it will

make insurance more available for those in States with higher risk of disaster.

Alaska has three times more quakes than California. Since 1938, Alaska has had at least nine quakes of 7.4 magnitude or more on the Richter scale. Alaska's 1964 Good Friday quake was one of the world's most powerful at a magnitude of 9.2. I lived through that quake. The earth shook for 7 minutes. Most quakes last under 2 minutes. For example, California's Northridge quake lasted about 30 seconds.

The Alaska quake destroyed the economic bases of entire communities. Whole fishing fleets, harbors, and canneries were lost. The shaking generated catastrophic tidal waves. Petroleum storage tanks ruptured and the contents caught fire. Burning oil ran into the bay and was carried to the waterfront by the large waves. These waves of fire destroyed docks, piers, and small-boat harbors. The effects of the 1964 quake were felt as far away as San Diego and Hawaii. Total property damage was $311 million in 1964 dollars. Experts predict that a quake this size in the lower 48 would kill thousands and cost up to $100 billion.

About 100 miles off Alaska's coast and 10,000 feet below the sea, the ocean floor is moving eastward. This drifting floor meets the North American seabed at what is called the Yakataga seismic gap. Scientists predict that during our lifetimes, it is likely the seabed will move, generating a major quake and a huge tsunami.

Today, seismic instruments detect between 90 and 120 earthquakes per week in Alaska. Of these, 1 to 3 quakes per week can be felt by people. In May, the citizens of Anchorage awoke in the middle of the night to an earthquake that measured 5.5 on the Richter scale.

It is a mistake, however, to believe that the threat of a major quake is confined to California or Alaska.

Some of America's largest earthquakes have occurred in Tennessee and Missouri along the New Madrid fault. In the last century, four quakes, measuring up to 8.6 on the Richter Scale, struck that area. The shaking rang church bells in Boston 1,000 miles away.

Should a quake of that size hit this area today, FEMA estimates the damage at $52 billion. One expert noted that the impact of a major quake in the central United States. today would only be exceeded in devastation by a general nuclear attack on the Central Mississippi Valley.

This bill is also important for areas prone to hurricanes and floods.

Only 20 percent of the homes in flood plains today have the flood insurance required by current law.

Damage in Florida from Hurricane Andrew was 30 to 40 percent higher because building codes were not properly enforced. The bill will increase the use of private insurance coverage for hurricanes and floods. It will also improve the structures we live in to reduce damage from these hazards before they occur.

I hope we can move quickly on this bill this year.

Thank you, Mr. President.

Mr. INOUYE. Mr. President, I am pleased to announce the reintroduction of the Natural Disaster Protection Act [NDPA] in an effort to create a comprehensive Federal strategy for disaster preparation and planning. I hope that many of my colleagues will join Senator STEVENS and me as cosponsors, so that we can ensure that this bill is considered by the full Senate at the earliest possible opportunity. Time, however, is working against us.

Since our original legislation was introduced in the last Congress, we have experienced time and time again why the bill is so urgently needed. The earthquake which struck Los Angeles in January 1994 is now rated the second most costly disaster in United States history, adding more than $11 billion to the Federal debt and saddling its victims, most of whom were uninsured, with even greater losses. The tragic earthquake in Kobe, Japan, and the recent California and Midwest floods are just two further examples of nature's unpredictability.

This issue is very important to me particularly since Hurricane Iniki struck my State in 1992, causing several billion dollars in damage and widespread economic disruption. Unfortunately, there are millions of Americans who know firsthand about the destruction and suffering caused by these terrible events.

What troubles me most is that the worst could still be ahead of us. The U.S. Weather Service predicts that this year's hurricane season, which began a few weeks ago, could be worse than 1992, the year of Hurricanes Andrew and Iniki. I am deeply concerned that we are not prepared for another major natural disaster. That is why we are renewing our effort to enact major disaster policy reform.

We simply must insist that all segments of Government, not to mention insurers and homeowners, are doing all that is prudently possible to prevent losses before they occur and to reduce the long term costs of disasters to Federal taxpayers. We need better enforcement of building codes, more thorough mitigation plans, and a funding mechanism that is both predictable and adequate. We must make sure our citizens are protected with adequate insurance so that those at greatest risk from hurricanes, earthquakes, and floods do not end up totally dependent on disaster relief. We must also be certain that such an insurance system is capable of withstanding the worst-possible catastrophes. The NDPA accomplishes these aims and does so with a program that is totally self-funding.

This bill advocates private insurance as an alternative to costly Federal relief. It also creates a national disaster fund to assure the availability of private insurance before and after a major disaster and promotes better building practices and increased planning for catastrophes. This legislation would encourage States and local governments to adopt building codes and the type of mitigation strategies I mentioned, and it would provide them with funds derived from private industry, not the Federal Government, to implement those measures. The bill would substantially increase participation in insurance programs for the perils homeowners face and provide for a Federal backstop of the private insurance market in the event of a mega-catastrophe which could result in extreme devastation and economic disruption.

The new bill improves upon last year's legislation by relying primarily on the private sector to address insurance availability issues and by modifying Federal disaster assistance programs to reduce the share of disaster relief borne by U.S. taxpayers.

The NDPA enjoys the support of numerous State and local government officials, and organizations representing homeowners, consumers, emergency management and response personnel, realtors, lenders, and the insurance industry. It is clear that Members of Congress are beginning to recognize the problem we face in dealing with these catastrophic events and want to do something about it.

Must we wait until another disaster on the scale of the Japanese earthquake strikes here in America before we do something? We are committed to bringing this important matter before the entire Senate at the earliest possible opportunity. We need to act now, before it is too late. Accordingly, I urge my colleagues to join Senator STEVENS and me in cosponsoring this bill.

By Mrs. KASSEBAUM (for herself, Mr. KENNEDY, Mr. JEFFORDS, Mr. PELL, and Mr. SIMON):

S. 1044. A bill to amend title III of the Public Health Service Act to consolidate and reauthorize provisions relating to health centers, and for other purposes; to the Committee on Labor and Human Resources.

THE HEALTH CENTERS CONSOLIDATION ACT OF 1995

Mrs. KASSEBAUM. Mr. President, I am pleased to introduce with Senators KENNEDY, JEFFORDS, PELL, and SIMON, the Health Centers Consolidation Act of 1995. This legislation consolidates and reauthorizes the community and migrant health center programs, the health care for the homeless program and the health services for residents of public housing program as one streamlined, flexible program authority.

These programs play a vital role in ensuring access to health care services for millions of medically-underserved Americans. Consolidating the current, often duplicative authorities will simplify grant application and recordkeeping requirements, freeing up time and money better spent on expanding

access to care. The legislation provides the enhanced program flexibility necessary to respond to the unique challenges of providing health care services to medically underserved populations.

This legislation also substantially strengthens the ability of health centers to respond to our nation's changing health care environment through the development of provider networks and health plans to improve access to better-coordinated, more cost-effective services. The ability to form networks and health plans, including managed care plans, is particularly important as states are increasingly moving their Medicaid beneficiaries into managed care plans.

Finally, the Health Centers Consolidation Act responds to the unique challenges of delivering health care services in rural areas. The legislation authorizes and focuses the current rural health outreach grant program on the formation of provider networks, including telemedicine networks, to strengthen the rural health care delivery system, encourage the consolidation and coordination of services on a local and regional basis, and bring access to specialized services to remote rural areas.

By Mr. ABRAHAM (for himself and Mr. COATS):

S. 1045. A bill to amend the National Foundation on the Arts and the Humanities Act of 1965, the Museum Services Act, and the Arts and Artifacts Indemnity Act to privatize the National Foundation on the Arts and the Humanities and to transfer certain related functions, and for other purposes; to the Committee on Labor and Human Resources.

THE NEA AND NEH PRIVATIZATION ACT

Mr. ABRAHAM. Mr. President, today I introduce my bill to privatize the National Foundation for the Arts and the Humanities. I have sent a detailed memo to all my colleagues regarding this bill, which I would like to enter into the RECORD. The memo sets forth my reasons for designing a privatization plan, how it will work, and why I believe it will work.

Here's a quick summary: Controversy and anger have swirled around the Endowments virtually since their creation. On one side we have constituents who are upset that their tax dollars are subsidizing work that they find aggressively offensive. This includes the work of Mapplethorpe, funded by the NEA, as well as the National History Standards, funded by the NEH. On the other side we have artists and writers who believe the Government is engaging in censorship when their grant proposals are denied or their projects are edited.

The Endowments' troubles are not recent phenomena and they show no sign of dissipating anytime soon.

If we cannot re-create the NEA and NEH in a way that gets the Government out of the vortex of this maelstrom, at some point, the NEA or the NEH are going to fund one more project so objectionable that the American people are going to take the matter out of our hands. And then the endowments are going to be re-created right out of existence.

My bill provides for the gradual privatization of the endowments over a 5-year period. It will reduce the budgets of the Endowments by 20 percent each year during that period, and also specifically allows the Endowments to use a portion of their budgets for the express purpose of promoting private fundraising activities during the phase-out period. At the end of the 5 years, the Endowment's charter with the Federal Government will end. Finally, as a further inducement to private-fundraising, my bill includes a sense-of-the-Senate resolution endorsing changes in the Tax Code to spur charitable giving to the arts and humanities.

The ''Endowments''—or, as I envision, the ''American Endowment for the Arts and Humanities''—will then be free of Government control either as censors or as tax collectors for controversial artists.

I am confident that private national foundations in support of the arts and humanities can succeed. The people we have heard from in support of the NEA and NEH—art enthusiasts, philanthropists, actors, and singers—will want to contribute to private arts and humanities foundations. Assuming their belief in a national organization supporting the arts and humanities is as ardent as they claim when they lobby Congress, there will be a wellspring of support for private endowments.

I ask unanimous consent that my ''Dear Colleague'' be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, July 14, 1995.

Re Privatizing the NEA and NEH: The right way to get government out of arts.

DEAR COLLEAGUE: I invite you to cosponsor my legislation to privatize the National Endowment for the Arts and the National Endowment for the Humanities.

It is beyond dispute that the arts and humanities are of unparalleled importance to a civilized nation. Unfortunately, the federal government's current method of ''supporting'' the arts is neither substantial nor fair. Amid all the critical accounts on both sides of the debate over the Endowments, it seems to have been lost that these agencies actually contributed surprisingly little to the arts or the humanities in this country.

However sincere is Mary Chapin Carpenter's suggestion that the ''Arts are as important as school lunches . . .,'' a majority of citizens simply do not agree with this view. In a time of extreme pressures on the federal budget, the NEA and NEH's appropriations simply cannot be a priority expenditure. For this reason alone (putting the Mapplethorpe and the national history standards controversies et. al. aside) there needs to be a plan to reduce the taxpayer's role in these national endowments.

This attached memorandum outlines the Abraham legislation to privatize the national endowments for the arts and humanities.

If you would like to cosponsor this legislation, please contact Ann Coulter at 4–3807.

Sincerely,

SPENCER ABRAHAM.

I. THE NATIONAL ENDOWMENT FOR THE ARTS AND THE NATIONAL ENDOWMENT FOR THE HUMANITIES: CURRENT PROBLEMS

A. THE NATIONAL ENDOWMENT FOR THE ARTS AND THE NATIONAL ENDOWMENT FOR THE HUMANITIES ARE ORGANIZATIONS IN TROUBLE

It is clear that the NEA and NEH are in trouble. They are in trouble because many people question the need to spend the taxpayers' money on such non-vital programs. Further, in this era of budget austerity where funding for many social programs is being significantly reduced, it is difficult to rationalize full funding for the NEA and NEH. Finally, the activities of the NEA and NEH run against the sensitivities of many American taxpayers who are opposed to seeing their dollars fund projects that they find objectionable. It is this latter concern that has come into focus in recent weeks.

Shortly before the first scheduled Labor Committee mark-up of the NEA and NEH, there were several critical news accounts of the summer schedule at ''Highways,'' an NEA-funded performance art center in California. The theater's brochure listed acts intended ''to push the right wing into spiritual contortions.'' Performances included ''Dyke Night,'' described as ''our series of hot nights with hot dykes,'' and ''Boys 'R' Us,'' similarly billed as ''our continuing series of hot summer nights with hot fags.'' Another number, titled ''Not For Republicans,'' included a comedienne's discourse on ''sex with Newt Gingrich's mother.''

The NEA's response to public criticism of this NEA grant? ''[Highways] is consistent with the Endowment's Congressionally-mandated mission of fostering 'mutual respect for the diverse beliefs and values of all persons and groups,'" wrote the current NEA Chairperson, Jane Alexander, in a letter to various Senators dated June 26, 1995. Alexander went on to describe her alarm, not at Highways' ''Ecco Lesbo-Ecco Homo'' summer program, but at criticisms leveled at these NEA-funded performances: ''I am concerned that once again the Endowment is being criticized for supporting an institution that serves its community well—this time, one that supports the work of homosexual and minority artists . . . .'' She dismissed criticisms of the ''sex with Newt Gingrich's mother'' routine as being politically motivated: ''I am also concerned that we are being criticized for Highways having presented comedienne Marga Gomez because her stand-up routine pokes fun at the current Congressional leadership.''

While much of the public objects to taxpayer-supported performances like these, that is not the only quarter from which opposition to federal funding of the NEA has come. The Progressive Policy Institute, for example, (an offshoot of the Democratic Leadership Council) stated in its 1993 ''Mandate for Change'' that there should be ''no federal role'' in the arts. In a Lou Harris poll taken in January, 1995, the NEA was at the top of the list of federal programs Americans would like abolished—ahead of the Department of Housing and Urban Development, Public Broadcasting Service, and the Energy Department. (43% of respondents wanted the Endowment eliminated.)

Long before the ''Ecco Lesbo-Ecco Homo'' summer program at Highways, there was Mapplethorpe and ''Piss Christ'' and the performance art of Karen Finley and Ron Athey, to name just a few of the more notorious NEA-funded projects. Provocations like these may be a small percentage overall,

but each such sensational affront adds to the growing list of people irrevocably opposed to the Endowment. Citizens who are offended by having their tax revenues supporting the likes of Mapplethorpe do not forget that offense just because the Endowment manages to avoid funding another offensive project for a short while. And Chairman Alexander's reaction to this latest public outcry demonstrates pretty clearly that the NEA is out of touch with the public's concerns.

The NEH is no less out of touch with the public whose tax dollars it consumes. Through less outrageous—and less suitable for sound-bites—the NEH's projects may well have a longer lasting impact than the NEA's, because they infect American education rather than only its art museums and theaters. The national history standards released last January by a group at UCLA were the product of an NEH grant. Though intended to improve the education of all United States students, so objectionable were the standards that, before the ink was dry, 99 Senators voted in favor of a Sense of the Senate resolution denouncing the standards.

Perhaps there are still enough votes in the Congress to save the NEA and the NEH in their present form for a few more years. But that will not end the disquietude and rancor surrounding the agencies. And that will do nothing to prevent any new NEA or NEH-funded affronts, each one adding to the growing list of citizens opposed to the Endowments. Sooner or later the Endowments are going to fund one more project so offensive that the public will rise up and demand their elimination. And then, there will be no time to assemble an alternative mechanism to fund the arts and humanities on a national level. Many of our States have arts and humanities institutions that are not going to be able to survive a withdrawal of federal funds cold turkey.

We shirk our obligation to the arts and humanities as well as our obligation to the people if we refuse to acknowledge that these are federal programs teetering toward abolition. Now is the time to reconfigure the agencies in a way that is built to last. The following proposal does just that. The proposed bill combines a gradual phase-out of direct federal funding with inducements to privatization, such as earmarking a portion of the funds for private fundraising and proposing additional tax incentives for charitable gifts to the arts and humanities.

B. HALFWAY MEASURES WON'T WORK

One thing that the history of the endowments proves is that no matter who runs the organizations, maddening government grants to the arts will continue to be made. Virtually since the Endowment's first grant in 1965, the organization has inspired opposition. In 1967, Congressional hearings were held in response to public outcry over NEA-funded projects. More recently, controversies in the late eighties begot not quietude, but the Ron Athey performance[1] in 1994—long after ''Piss Christ.'' Endowment supporters are whistling past the Endowments' graveyards if they operate on the assumption that the affronts can be entirely eliminated with a series of statutory restrictions. There will be more controversies. Those interested in the NEA have considered a variety of modifications to the Endowment's granting authority intended to circumvent the problems. Across the board and without question, these are doomed to failure.

1. Eliminating Individual Grants, For Example, Will Not Stem Offensive Projects. A number of the more notorious Endowment-supported projects have, in fact, been made possible by Endowment grants to museums and other institutions, rather than directly to the offending artists themselves. These include NEA grants to the Walker Art Center in Minneapolis and to P.S. 122, a theater in New York City, both of which used NEA grant money to fund Ron Athey's performance. In addition, the Whitney Museum of Art in New York used a portion of its $200,000 NEA grant to sponsor ''Abject Art: Repulsion and Desire in Art,'' which exhibited excrement, dead animals, and similar objects to make the artistic statement of: degrading the purity of an art museum. These exhibits and others will not be affected by a ban on individual grants.

2. Block Granting Endowment Money To The States Also Fails To Prevent The Use Of Federal Dollars On Dubious Or Potentially Objectionable Art. Indeed, many of the institutions which have taken part in controversial projects are also recipients of monies allocated by state arts councils. Thus, for example, both the Walker and Whitney Museums have been the beneficiaries of state and municipal arts funding, the latter receiving $134,952 from the New York State government and $5,000 from the city government in 1994. Since New York will undoubtedly continue to receive a disproportionate amount of Endowment money, taxpayers in Tennessee, Ohio, and Illinois will essentially be subsidizing art in New York. There is no reason to think New York State arts panels will suddenly begin to use Endowment money only to fund that which will play in Peoria.

3. An Across-The-Board Reduction In The NEA and NEH's Budgets Doesn't Make Sense. Some have suggested punishing the NEA and NEH for their irresponsible funding projects by cutting the Endowments' budgets by some arbitrary percentage. But the NEA and NEH are either beneficial in their current structures or they aren't. The better solution is to attempt to preserve both a national arts foundation and a national humanities foundation at appropriate funding levels, but without requiring the taxpayers' involuntary contributions.

4. Direct Federal Funding Of The Arts Forces The Federal Government Into The Thankless Role Of Playing Either Censor On One Hand Or Obscenity-Promoter On The Other. Since the actual monetary value of NEA funding is virtually negligible compared to private giving to the arts, the principal argument for Endowment grants is their tremendous influence. This, however, is a risky role. On one side we have constituents who are upset that its tax dollars are subsidizing work that they find aggressively offensive. And it bears repeating that since 1967—two years after the NEA's creation—its grants have been inciting controversy.

On the other side we have artists who believe the government is engaging in censorship. One recipient of NEA grants, Leonard Koscianski, has written that the NEA ''excludes whole categories of art . . . from serious consideration,'' citing watercolors as one of the categories that has received very few NEA grants. Moreover, the NEA was recently forced to settle a case for $252,000 brought by four performance artists—Karen Finley, John Fleck, Holly Hughes, and Tim Miller—who claimed they had been denied Endowment grants on political grounds. Many other artists will not even apply for an NEA grant because of the paperwork involved. Reed Zitting, an instructor of theater arts and design at the Interlochen School at Michigan, has observed that the bureaucratic necessities of governments are antithetical to the creative processes of art.

5. The More The Congress Tries To Respond To Taxpayer Complaints About Their Money Funding Obscene Art—By Imposing A Variety Of Restrictions On Endowment Grants—The More Artists Will Have Legitimate Grounds To Complain About Federal Government Censorship. Rules such as requiring theaters to submit a complete and immutable schedule of the entire season's events are unworkable, excessive and intrusive. Another proposal has been to jettison seasonal grants altogether. While that measure would provide the federal government with a needed measure of control over government grant money, it would also deprive an important segment of the arts community of any grant money whatsoever. It is simply impossible for the federal government to design an organization to fund the arts staffed with federal bureaucrats that does not in some sense engage in censorship through its regulation. It doesn't help that the NEA has a tin ear with respect to the public's concerns with projects such as Highways' ''Ecco Lesbo-Ecco Homo'' summer program. Furthermore, the much vaunted power of an NEA grant places the federal government in a highly questionable role: Why should the federal government be the arbiter of what is and is not art and which artists will be famously successful and which will wait tables?

C. THE FEDERAL GOVERNMENT'S DIRECT FUNDING OF THE NEA AND NEH ALSO SUBJECTS IT TO CLAIMS OF DISCRIMINATION BY CERTAIN STATES AND AREAS OF THE COUNTRY

Some states' citizens are clearly short-changed by the federal government's current distribution of NEA and NEH grant money. In 1994, for example, New York City alone received about 15% of the NEA's total budget, about 10–20 times the amount the NEA gave certain states. Further, many believe that rural areas are short changed by the Endowments. Privately-funded Endowments remove the government as the decision-maker—and the federal taxpayer as the funding source—from a selection process that inevitably strikes some as unfair.

II. HOW THE ABRAHAM BILL WOULD WORK

A. MOVING TOWARD PRIVATELY FUNDED ENDOWMENTS FOR THE ARTS

Private Endowments awarding grantees money from private donors will preserve the good things about the Endowment such as the imprimatur of a national organization and the financial support for the arts and humanities. Meanwhile, though, the government will be out of the business of using taxpayer money either to support obscenity or to censor artists.

The Abraham bill would reduce the budgets of the Endowments gradually over a five year period and also would allow the Endowments to use a portion of their budgets for the express purpose of promoting private fundraising activities during the phase-out period.

At the end of five years, the Endowments' charter with the federal government would end. The ''Endowments''—or as we suggest, ''the American Arts and Humanities Endowment''—would then be free of government bureaucrats either as censors or as tax collectors for the arts. The newly free arts and humanities organizations could reconfigure themselves as a single tax deductible organization, as two separate organizations, or in any manner their private boards of directors deem desirable.

B. A PROGRESSIVE DECREASE IN THE NEA AND NEH'S FEDERAL BUDGETS

Using the 1995 fiscal year appropriations as the base line, the Endowment's budgets

[1] Athey's performance consisted of slicing the back of another man with razors, blotting the blood, and sending the bloodied towels over audience members' heads. This caused some consternation among the audience members, many of whom fled the room. Athey and, it was assumed, his artistic companion, are HIV-positive.

would be reduced by twenty percent each year over a five year period. This approach permits a gradual, orderly transition from government-sponsored organs to private entities.

1. A Specific Set-Aside For Fundraising. In addition to these absolute decreases, the Endowments will be authorized to use an amount of their appropriations equal to 10% of the cut amount for fundraising purposes alone. This amounts to 2% of each Endowment's 1995 appropriation the first year, 4% the second year, and so on. Thus, for example, in the first year the NEH will be permitted over $3.5 million (2% of $175 million) federal dollars for the sole purpose of encouraging private fundraising on behalf of the humanities endowment.

2. Tax Incentives For Donations To The Arts and Humanities. Finally, the bill would include a Sense-of-the-Senate resolution proposing a return to tax deductions for nonitemizers, elimination of the cap on deductions for charitable contributions, and other tax benefits for charitable donations. Since amending the Tax Code to encourage charitable giving is not within the purview of the Labor Committee, the Sense-of-the-Senate resolution appended to the Endowment Privatization bill would simply make the point that the Committee favors creating additional tax incentives for charitable giving to the arts and humanities (and all 501(c)(3)s), in lieu of direct government funding of the NEA and NEH.

III. THE ABRAHAM PROPOSAL CAN WORK

A. ALTHOUGH RAISING MONEY IS ALWAYS HARD, THE NEA AND NEH BUDGETS ARE A VERY SMALL PART OF THE NATION'S TOTAL ARTS AND HUMANITIES BUDGET

Some have expressed doubt that private donations can take up the slack in government funding. It bears mentioning at the outset then, that the NEA and NEH do not, in fact, constitute a significant proportion of funding for the arts and humanities in this country. It is difficult to isolate ''the humanities'' for calculating private donations because it encompasses such a wide range of prospective philanthropies—museums, colleges and universities, music academics, writing workshops, to name a few. Private donations to the arts, however, are easily quantifiable.

In 1993, private giving to the arts totalled $9.57 billion. Meanwhile, the NEA's total budget for 1995 is $167.4 million. Thus, private giving to the arts in this country dwarfs the NEA's contribution 50 times over. Not only does the NEA's total annual funding of the arts amount to less than 1.7% of private donations to the arts, but it is also less than the states' contributions to the arts. In 1994, state legislatures gave $265 million to the arts. Perhaps the more striking comparison is to the annual operating budget of the Lincoln Center for the Performing Arts in New York City. Its budget for 1995 is almost twice that of the NEA's: $316 million. Moreover, looked at from the perspective of the recipient arts organization, the NEA's contributions are still relatively insignificant. Thus, for example, the sources of income for all the country's nonprofit theaters breaks down as follows:

B. LEAVING THE TAXPAYER OUT OF THE EQUATION DOES NOT REDUCE A NATIONAL ENDOWMENT'S PRESTIGE.

Since the actual monetary value of arts and humanities funding provided by the NEA and NEH is very small compared to private giving to the arts, the principal argument for NEA and NEH grants is their glamour—the imprimatur of excellence an Endowment grant provides. According to NEA Chairman Jane Alexander, ''[T]he prestige of getting a grant from the Endowment is often critical in leveraging legislatures to provide additional funding.'' The prestige associated with a grant from a national arts organization will not be lost under a privately-funded Endowment. Indeed, the glamour of an NEA grant will most likely expand because of the private interests involved: Corporate sponsors will want to publicize the results of their philanthropy—as will the privately-funded Endowment itself, in order to attract more private dollars.

C. WAYS TO PRIVATELY FUND A NATIONAL ENDOWMENT . . .

1. The Federal Government Can Still Play An Important Role. There are several ways the federal government can help private endowments succeed without direct contributions. These include:

(a.) Tax Code Revisions Designed To Generally Stimulate Charitable Giving Or Specifically Aid The New Foundations. A variety of possible tax code changes could greatly enhance private giving to the new foundations. Possible approaches are:

Reinstituting tax deductions for nonitemizers, as was permitted until the Tax Reform Act of 1986;

Elimination of the caps on charitable deductions; and

Instituting a tax credit of $50—$100 for charitable donations to the newly-created private endowments.

(b.) Government Leaders' Involvement In National Fundraising Efforts. Even if the government is not directly funding the NEA and NEH, government officials can play a role in helping the new endowments succeed. For example, a series of Washington fundraising events featuring the President or other highranking government officials can serve as a spur to donations by major donors. Another option would be fundraising appeal letters from prominent arts supporters in government. Finally, government leaders who back the arts can play a very helpful role recruiting major benefactors for the Endowments.

2. Other Private Fundraising Efforts Have Unlimited Potential. Besides the things the government can do to support private Endowments, there is a role for private organizations, individuals and corporations as well. Many organizations will be able to raise money for a private NEA and NEH through a wide array of activities. It also includes several innovative ideas devised as potential unique sources of funding for the endowments by those seeking a solution to this situation.

Below are some ideas to be explored. This list is by no means exclusive but it nonetheless illustrates the private fundraising opportunities that have been used by other charitable causes and which could be employed effectively for the benefit of a private arts and humanities national endowment.

(a.) Fundraising Events.—The actors, artists and musicians who have publicly declared their avid commitment to the NEA and NEH could conduct special concerts or benefits to support the private endowments. Individual entertainers as well as groups of entertainers routinely hold such benefits for various charities and causes. Such star-supported events certainly seem plausible when the beneficiaries are the arts and humanities. Moreover, now that cable television and pay-per-view has penetrated such a substantial percentage of America's households, the potential income from a televised pay-per-view benefit concert featuring some of the greats who have campaigned on behalf of the NEA (Garth Brooks, Kenny G., Michael Bolton, etc.) is phenomenal. Consider this: pay-per-view sports events such as Wrestlemania and heavyweight championship boxing matches bring in receipts of over $50 million.

(b.) Special Event Revenues.—Each year, during various televised award ceremonies celebrating the arts such as the Oscars, Emmys, Tonys, and so on, one hears a great deal of support expressed for the NEA and NEH. These programs, which are built around the appearance of entertainers who frequently use these opportunities on camera to promote funding for the endowments, are hugely profitable and generate sizeable revenues for the networks that broadcast them. In light of this—the question is, why not let the Endowments receive some of the profits from these shows? If the artists and entities who make these shows feasible want to help the endowments, these shows constitute a great vehicle.

As an alternative to the endowments receiving a share of the profits from these programs, the artists who appear on them and the academies who support such events could simply turn the shows into pay-per-view programs from which the endowments could receive virtually all of the net profits. This year, for example, the Academy Awards show drew a world-wide audience of over 500 million. If only 5% of that audience was still willing to pay to watch the Oscars in the amount that households across America pay to watch a second-run movie on pay-per-view ($4.95 in the Washington metro area) the Endowments could generate gross revenue of over $100 million from the Oscars show alone! Add to that similar revenues from such shows as the Emmy Awards, the Tony Awards, the Country and Western Music Awards and the Grammys and we're talking about total revenue greater than the current funding for the NEA or the NEH.

(c.) Other Collaborative Efforts.—In addition to benefit concerts and awards programs, there are other collaborative efforts through which those who care deeply about the arts—the artists themselves—can make privately funded endowments work. The ''We Are The World'' recording is a good example of the collaborative good that charitable causes can engender. That recording brought together 45 music superstars to record a single song; the resulting single, album, video, television and radio specials, merchandise and associated enterprises raised over $60 million for ''U.S.A. For Africa.'' In that so many recording artists are supporters of the National Arts and Humanities Endowments, private entities supporting the arts and humanities would seem to be a natural beneficiary of such collective philanthropy. Certainly, if the musicians who have appeared before Congress to promote the Endowments (the aforementioned Garth Brooks, Kenny G. Michael Bolton etc.) were themselves to collaborate and recruit others for a single recording each year or two, the private Endowments' fundraising events would be hugely successful.

(d.) Paybacks for Commercially Successful Grants/Events.—On occasion, the NEA and NEH have funded projects that become great commercial successes, earning the grantee far more than the amount of the original grant. When this happens, the grantee could be required to reinvest some portion of the proceeds back in the Endowment in return for the original grant money. NEH-sponsored tourism events, for example, have allowed grant recipients to reap financial benefits. According to the NEH's own review, an endowment-sponsored exhibit called ''The Age of Rubens'' at the Toledo Museum of Art brought in approximately 226,000 visitors benefiting the whole geographic region. Similarly, individual NEA and NEH grantee who are able to bring their creative works to lucrative markets like Broadway have some

moral debt to make the catalyst of their success—NEA and NEH support—more widely available to other artists.

(e.) Traditional Major Donor Fund Raising.—In addition to the ideas listed above, the new private endowments would also be the beneficiaries of traditional philanthropic efforts that other major institutions receive. Certainly, a national organization charged with supporting the nation's arts and humanities would attract large corporate and individual donors who will want to be part of such prestigious organizations. Since private giving to the arts in this country already exceeds $9 billion a year, an increase of just 1% in this base of support would establish a strong funding foundation for the private endowments.

IV. CONCLUSION

Through a five-year privatization of the NEA and NEH, the Abraham bill permits the growth of private giving to the arts (with government-supported fundraising during the transition). The Abraham approach also proposes tax incentives for charitable donations to create broad-based opportunity for private giving; reinstatement of tax deductions for non-itemizers may very well engender increased funding of the arts.

More importantly though, privatization has the distinct advantage of allowing the citizenry to direct those funds more efficiently and without controversy. Simply decreasing federal funding of the Endowments or providing for increased block grants to the states fails to resolve the fundamental problem associated with today's NEA and NEH. By contrast, privatization removes the government from the unwinnable task of balancing censorship and obscenity, once and for all.

Federal bureaucracies on every level are being scaled back or eliminated entirely. Government programs, particularly non-essential ones like the NEA and NEH, that can be replaced with privately-run entities, must be. The manifest support from an array of celebrities and arts patrons for the arts and humanities makes clear that a reconstituted NEA and NEH will thrive. In short, a privately-funded ''American Endowment for the Arts'' and an ''American Endowment for the Humanities'' can provide as much support for artists and writers without the attendant, ongoing disputes faced by a government-managed entity.

The people we have heard from in support of the NEA and NEH—art enthusiasts, philanthropists, actors, and singers—will want to contribute to private arts and humanities foundations. Assuming their belief in a national organization supporting the arts and humanities is an ardent as they claim when they lobby Congress, there will be a wellspring of support for private endowments.

ADDITIONAL COSPONSORS

S. 295

At the request of Mrs. KASSEBAUM, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 295, a bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 304

At the request of Mr. SANTORUM, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 457

At the request of Mr. DASCHLE, his name was added as a cosponsor of S. 457, a bill to amend the Immigration and Nationality Act to update references in the classification of children for purposes of United States immigration laws.

At the request of Mr. SIMON, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 457, supra.

S. 789

At the request of Mr. CHAFEE, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 789, a bill to amend the Internal Revenue Code of 1986 to make permanent the section 170(e)(5) rules pertaining to gifts of publicly-traded stock to certain private foundations, and for other purposes.

S. 920

At the request of Mr. PRESSLER, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 920, a bill to assist the preservation of rail infrastructure, and for other purposes.

S. 959

At the request of Mr. HATCH, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 959, a bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes.

S. 968

At the request of Mr. MCCONNELL, the names of the Senator from New Hampshire [Mr. SMITH], the Senator from Arizona [Mr. MCCAIN], and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of S. 968, a bill to require the Secretary of the Interior to prohibit the import, export, sale, purchase, and possession of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 1009

At the request of Mr. D'AMATO, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 1009, a bill to prohibit the fraudulent production, sale, transportation, or possession of fictitious items purporting to be valid financial instruments of the United States, foreign governments, States, political subdivisions, or private organizations, to increase the penalties for counterfeiting violations, and for other purposes.

S. 1028

At the request of Mrs. KASSEBAUM, the names of the Senator from Maine [Mr. COHEN], the Senator from Wyoming [Mr. SIMPSON], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from Nebraska [Mr. KERREY] were added as cosponsors of S. 1028, a bill to provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.

AMENDMENT NO. 1533

At the request of Mr. D'AMATO his name was added as a cosponsor of amendment No. 1533 proposed to S. 343, a bill to reform the regulatory process, and for other purposes.

SENATE RESOLUTION 152—STATEMENT OF CONSTITUTIONALITY REQUIREMENT

Mr. ABRAHAM submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 152

Resolved,

SECTION. 1. CONSTITUTIONAL AUTHORITY.

This resolution is approved pursuant to the powers granted to the Senate under Article I, section 5, clause 2 of the United States Constitution.

SEC. 2. CONSTITUTIONAL AUTHORITY CLAUSE IN LEGISLATION.

The Standing Rules of the Senate are amended by adding at the end thereof the following:

''RULE XLIV

''CONSTITUTIONAL AUTHORITY CLAUSE IN LEGISLATION

''1. (a) A constitutional authority clause shall follow the enacting clause of any bill or the resolving clause of any joint resolution. The constitutional authority clause shall be in the following form (with appropriate modifications and appropriate matter inserted in the blanks):

'' 'This Act (or resolution) is enacted pursuant to the power(s) granted to the Congress under Article(s) section(s) , clause(s) of the United States Constitution.' ''.

''(b) A similar clause shall precede the first title, section, subsection, or paragraph and each following title, section, subsection, or paragraph relies on a different article, section, or clause of the Constitution from the one pursuant to which the first title, section, subsection or paragraph is enacted.

''2. It shall not be in order for the Senate to consider any bill, joint resolution, amendment, motion, or conference report that does not comply with the provisions of paragraph (1), on the objection of any Senator.''.

SENATE RESOLUTION 153—MAKING TECHNICAL CORRECTIONS TO SENATE RESOLUTION 120

Mr. DOLE (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 153

Resolved, That Senate Resolution 120, agreed to May 17, 1995 (104th Congress, 1st Session), is amended—

(1) in section 2(a)(1)(A) by inserting '', except that Senator Frank H. Murkowski shall substitute for Senator Phil Gramm'' before the semicolon;

(2) in section 5(b)—

(A) in paragraph (11) by inserting ''with the approval of the Committee on Rules and Administration'' before the period; and

(B) in paragraph (12) by inserting ''and the Committee on Rules and Administration'' after ''concerned''; and

(3) in section 8 by adding at the end the following. ''There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the Special Committee from May 17, 1995 through February 29, 1996, to be paid from the appropriations account for 'Expenses of Inquiries and Investigations' of the Senate.''.

AMENDMENTS SUBMITTED

THE COMPREHENSIVE REGULATORY REFORM ACT OF 1995

(Amendment No. 1719 is reproduced for the RECORD of July 14, 1995.)

PACKWOOD AMENDMENT NO. 1719

(Ordered to lie on the table.)

Mr. PACKWOOD submitted an amendment intended to be proposed by him to the bill (S. 343) to reform the regulatory process, and for other purposes; as follows:

Strike page 2, line 15 through page 3, line 7 and add at page 2, line 15, the following:

''(a) APPLICABILITY.—

''(1) IN GENERAL.—This section applies to every rulemaking, according to the provisions thereof, except to the extent there is involved—

''(i) a matter pertaining to a military or foreign affairs function of the United States;

''(ii) a matter relating to the management or personnel practices of the agency;

''(iii) an interpretive rule, general statement of policy, guidance, or rule of agency organization, procedure or practice, unless such rule, statement, or guidance has general applicability and substantially alters or creates rights or obligations of persons outside the agency;

''(iv) a rule relating to the acquisition, management, or disposal by an agency of real or personal property, or of services, that is promulgated in compliance with otherwise applicable criteria and procedures.

''(2) APPLICATION TO THE DEPARTMENT OF THE TREASURY.—In the case of rulemaking of the Department of the Treasury, this section applies to Treasury Regulations.

HARKIN AMENDMENTS NOS. 1726–1727

(Ordered to lie on the table.)

Mr. HARKIN submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill (S. 343) to reform the regulatory process, and for other purposes; as follows:

AMENDMENT NO. 1726

On page 36, line 3, insert after ''environment'' the following: ''or to the achievement of statutory rights that prohibit discrimination''.

AMENDMENT NO. 1727

On page 37, line 11, insert after ''environment'' the following: ''or to the achievement of statutory rights that prohibit discrimination''.

BOXER AMENDMENTS NOS. 1728–1729

(Ordered to lie on the table.)

Mrs. BOXER submitted two amendments intended to be proposed by her to amendment No. 1487, supra; as follows:

AMENDMENT NO. 1728

At the end of Section 622(e)(1) add the following new paragraph:

''(G) In conducting a cost-benefit analysis, the agency shall include an analysis of how the proposed rule or subject of the analysis will affect vulnerable subpopulations including: infants, children, pregnant women, the frail elderly, immunocompromised and other vulnerable groups; and shall consider, address and describe the persons or classes of persons likely to receive benefits under (c)(2)(A) of this section or likely to bear costs under (c)(2)(B) of this section.''

AMENDMENT NO. 1729

At the end of Section 633(f) add the following new paragraph:

''(4) The head of an agency in presenting risk assessment conclusions shall describe how the agency will address the risk to health or safety which is the subject of the rule, on vulnerable subpopulations including: infants, children, pregnant women, the frail elderly, immunocompromised and other vulnerable groups.''

CRAIG (AND HEFLIN) AMENDMENT NO. 1730

(Ordered to lie on the table.)

Mr. CRAIG (for himself and Mr. HEFLIN) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 96, between lines 20 and 21, insert the following:

SEC. . REGULATORY AGREEMENTS.

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

''§ 557a. Regulatory agreements

''(a) DEFINITION.—In this section, the term 'regulatory agreement' means an agreement entered into under this section.

''(b) GENERAL AUTHORITY.—An agency that is authorized or directed by law to issue a rule (with or without a hearing on the record) that would govern an activity of any person, may, prior to commencing a proceeding to issue such a rule or an amendment to such a rule under the rulemaking procedure that would otherwise apply under that law or this subchapter—

''(1) enter into a regulatory agreement with a person or group of persons engaged in those activities; or

''(2) enter into separate regulatory agreements with different persons or groups of persons engaged in the activity if the agency determines that separate agreements are appropriate in view of different circumstances that apply to different persons or groups of persons.

''(c) REQUEST FOR NEGOTIATIONS.—Negotiations for a regulatory agreement may be commenced at the instance of a person or group of persons engaged in the activity to be regulated, by the submission to the agency by such a person or group of persons of a request for negotiations, which may be accompanied by a proposed form of regulatory agreement or by a general description of the proposed terms of a regulatory agreement.

''(d) DETERMINATION WHETHER TO PROCEED WITH NEGOTIATIONS.—

''(1) IN GENERAL.—Not later than 60 days after receiving a request for negotiations under subsection (c)(1), an agency shall publish in the Federal Register a determination whether to conduct negotiations for a regulatory agreement, accompanied by a statement of reasons for the determination.

''(2) CRITERIA.—An agency may determine not to conduct negotiations for a regulatory agreement under this section—

''(A) if the agency finds that the number of persons that have expressed willingness to participate in negotiations, as a proportion of the number of persons whose activity would be governed by the rule, is not sufficient to justify negotiation of a regulatory agreement; or

''(B) for any other reason, within the sole discretion of the agency.

''(3) NO JUDICIAL REVIEW.—A determination under paragraph (1) shall not be subject to judicial review by any court.

''(e) TERMS AND CONDITIONS.—A regulatory agreement shall contain terms and conditions that—

''(1) in the judgment of the agency, accomplish a degree of control, protection, and regulation of the activity to be regulated that is equivalent to the degree that would be accomplished under a rule issued under the rulemaking procedure that would otherwise apply;

''(2) provide for the addition as parties to the regulatory agreement, with or without a reopening of negotiations, of persons that did not participate in the negotiations;

''(3) provide for renegotiation of the regulatory agreement, at a stated date or from time to time, as renegotiation may become appropriate in view of changed circumstances or for any other reason; and

''(4) specify the provisions of law for the purposes of which the regulatory agreement shall, or shall not, be treated as a rule issued under section 553 or sections 556 and 557, as the case may be.

''(f) ENFORCEMENT.—A regulatory agreement shall provide for injunctive relief and penalties for noncompliance that, in the judgment of the agency, are adequate to deter parties from noncompliance.

''(g) CONSIDERATION OF COMMENT BY THE GENERAL PUBLIC.—

''(1) NOTICE.—Before executing a regulatory agreement, an agency shall publish a notice of the terms of the agreement in the Federal Register and solicit comments on the regulatory agreement for a period of not less than 60 days.

''(2) DECISION.—Not later than 120 days after the close of the comment period, an agency shall publish in the Federal Register a decision that includes—

''(1) a response to all comments received; and

''(2) an explanation of the agency's decision to—

''(A) enter into the regulatory agreement as agreed on in negotiations or as modified in response to public comment; or

''(B) decline to enter into the regulatory agreement.

''(h) CONTINUING AGENCY AUTHORITY AND RESPONSIBILITY.—The making by an agency of a determination not to proceed with negotiations or the entry by an agency into a regulatory agreement with fewer than all of the persons that are engaged in the activity regulated by the agreement shall not relieve the agency of its statutory authority or responsibility with respect to the activity or persons engaged in the activity.

''(i) JURISDICTION.—The United States district courts shall have jurisdiction to enforce a regulatory agreement in accordance with the terms of the regulatory agreement.''.

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 5 of title 5, United States Code, is amended by inserting after the item for section 557 the following:

''Sec. 557a. Regulatory agreements.''.

REID AMENDMENT NO. 1731

(Ordered to lie on the table.)

Mr. REID submitted an amendment intended to be proposed by him to amendment No. 1487, supra; as follows:

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

TITLE I—REGULATORY TRANSITION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Regulatory Transition Act of 1995''.

SEC. 102. FINDING.

The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the effectiveness of certain significant final rules is imposed in order to provide Congress an opportunity for review.

SEC. 103. MORATORIUM ON REGULATIONS; CONGRESSIONAL REVIEW.

(a) REPORTING AND REVIEW OF REGULATIONS.—

(1) REPORTING TO CONGRESS AND THE COMPTROLLER GENERAL.—

(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule; and

(iii) the proposed effective date of the rule.

(B) The Federal agency promulgating the rule shall make available to each House of Congress and the Comptroller General, upon request—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to section 603, section 604, section 605, section 607, and section 609 of Public Law 96–354;

(iii) the agency's actions relevant to title II, section 202, section 203, section 204, and section 205 of Public Law 104–4; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive Orders, such as Executive Order 12866.

(C) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each committee with jurisdiction.

(2) REPORTING BY THE COMPTROLLER GENERAL.—

(A) The Comptroller General shall provide a report on each significant rule to the committees of jurisdiction to each House of the Congress by the end of 12 calendar days after the submission or publication date as provided in section 104(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by subparagraph (B) (i) through (iv).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under paragraph (2)(A) of this section.

(3) EFFECTIVE DATE OF SIGNIFICANT RULES.—A significant rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

(A) the later of the date occurring 45 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register;

(B) if the Congress passes a joint resolution of disapproval described under section 104 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 104 is enacted).

(4) EFFECTIVE DATE FOR OTHER RULES.—Except for a significant rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) FAILURE OF JOINT RESOLUTION OF DISAPPROVAL.—Notwithstanding the provisions of paragraph (3), the effective date of a rule shall not be delayed by operation of this title beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 104.

(b) TERMINATION OF DISAPPROVED RULEMAKING.—A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 104.

(c) PRESIDENTIAL WAIVER AUTHORITY.—

(1) PRESIDENTIAL DETERMINATIONS.—Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this title may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) GROUNDS FOR DETERMINATIONS.—Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws; or

(C) necessary for national security.

(3) WAIVER NOT TO AFFECT CONGRESSIONAL DISAPPROVALS.—An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 104 or the effect of a joint resolution of disapproval under this section.

(d) TREATMENT OF RULES ISSUED AT END OF CONGRESS.—

(1) ADDITIONAL OPPORTUNITY FOR REVIEW.—In addition to the opportunity for review otherwise provided under this title, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, section 104 shall apply to such rule in the succeeding Congress.

(2) TREATMENT UNDER SECTION 104.—

(A) In applying section 104 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report must be submitted to Congress before a final rule can take effect.

(3) ACTUAL EFFECTIVE DATE NOT AFFECTED.—A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

(e) TREATMENT OF RULES ISSUED BEFORE THIS ACT.—

(1) OPPORTUNITY FOR CONGRESSIONAL REVIEW.—The provisions of section 104 shall apply to any significant rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on November 20, 1994, through the date on which this Act takes effect.

(2) TREATMENT UNDER SECTION 104.—In applying section 104 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of the enactment of this Act; and

(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(3) ACTUAL EFFECTIVE DATE NOT AFFECTED.—The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 104.

(f) NULLIFICATION OF RULES DISAPPROVED BY CONGRESS.—Any rule that takes effect and later is made of no force or effect by the enactment of a joint resolution under section 104 shall be treated as though such rule had never taken effect.

(g) NO INFERENCE TO BE DRAWN WHERE RULES NOT DISAPPROVED.—If the Congress does not enact a joint resolution of disapproval under section 104, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

SEC. 104. CONGRESSIONAL DISAPPROVAL PROCEDURE.

(a) JOINT RESOLUTION DEFINED.—For purposes of this section, the term ''joint resolution'' means only a joint resolution introduced during the period beginning on the date on which the report referred to in section 103(a) is received by Congress and ending 45 days thereafter, the matter after the resolving clause of which is as follows: ''That Congress disapproves the rule submitted by the ____ relating to ____, and such rule shall have no force or effect.''. (The blank spaces being appropriately filled in.)

(b) REFERRAL.—

(1) IN GENERAL.—A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

(2) SUBMISSION DATE.—For purposes of this subsection the term ''submission or publication date'' means the later of the date on which—

(A) the Congress receives the report submitted under section 103(a)(1); or

(B) the rule is published in the Federal Register.

(c) DISCHARGE.—If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such resolution in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) FLOOR CONSIDERATION.—

(1) IN GENERAL.—When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has

been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

(3) FINAL PASSAGE.—Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) TREATMENT IF OTHER HOUSE HAS ACTED.—If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(1) NONREFERRAL.—The resolution of the other House shall not be referred to a committee.

(2) FINAL PASSAGE.—With respect to a resolution described in subsection (a) of the House receiving the resolution—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

(f) CONSTITUTIONAL AUTHORITY.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 105. SPECIAL RULE ON STATUTORY, REGULATORY AND JUDICIAL DEADLINES.

(a) IN GENERAL.—In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of the enactment of a joint resolution under section 104, that deadline is extended until the date 12 months after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 103(a).

(b) DEADLINE DEFINED.—The term ''deadline'' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

SEC. 106. DEFINITIONS.

For purposes of this title—

(1) FEDERAL AGENCY.—The term ''Federal agency'' means any ''agency'' as that term is defined in section 551(1) of title 5, United States Code (relating to administrative procedure).

(2) SIGNIFICANT RULE.—The term ''significant rule''—

(A) means any final rule that the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget finds—

(i) has an annual effect on the economy of $100,000,000 or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

(iii) materially alters the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(iv) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866;

(B) does not include any agency action that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity relating to hunting, fishing, or camping.

(3) FINAL RULE.—The term ''final rule'' means any final rule or interim final rule. As used in this paragraph, ''rule'' has the meaning given such term by section 551 of title 5, United States Code, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

SEC. 107. JUDICIAL REVIEW.

No determination, finding, action, or omission under this title shall be subject to judicial review.

SEC. 108. APPLICABILITY; SEVERABILITY.

(a) APPLICABILITY.—This title shall apply notwithstanding any other provision of law.

(b) SEVERABILITY.—If any provision of this title, or the application of any provision of this title to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this title, shall not be affected thereby.

SEC. 109. EXEMPTION FOR MONETARY POLICY.

Nothing in this title shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

SEC. 110. EFFECTIVE DATE.

This title shall take effect on the date of the enactment of this Act and shall apply to any rule that takes effect as a final rule on or after such effective date.

TITLE II—TERM GRAZING PERMITS

SEC. 201. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Secretary of Agriculture (referred to in this title as the ''Secretary'') administers the 191,000,000-acre National Forest System for multiple uses in accordance with Federal law;

(2) where suitable, one of the recognized multiple uses for National Forest System land is grazing by livestock;

(3) the Secretary authorizes grazing through the issuance of term grazing permits that have terms of not to exceed 10 years and that include terms and conditions necessary for the proper administration of National Forest System land and resources;

(4) as of the date of enactment of this Act, the Secretary has issued approximately 9,000 term grazing permits authorizing grazing on approximately 90,000,000 acres of National Forest System land;

(5) of the approximately 9,000 term grazing permits issued by the Secretary, approximately one-half have expired or will expire by the end of 1996;

(6) if the holder of an expiring term grazing permit has complied with the terms and conditions of the permit and remains eligible and qualified, that individual is considered to be a preferred applicant for a new term grazing permit in the event that the Secretary determines that grazing remains an appropriate use of the affected National Forest System land;

(7) in addition to the approximately 9,000 term grazing permits issued by the Secretary, it is estimated that as many as 1,600 term grazing permits may be waived by permit holders to the Secretary in favor of a purchaser of the permit holder's permitted livestock or base property by the end of 1996;

(8) to issue new term grazing permits, the Secretary must comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other laws;

(9) for a large percentage of the grazing permits that will expire or be waived to the Secretary by the end of 1996, the Secretary has devised a strategy that will result in compliance with the National Environmental Policy Act of 1969 and other applicable laws (including regulations) in a timely and efficient manner and enable the Secretary to issue new term grazing permits, where appropriate;

(10) for a small percentage of the grazing permits that will expire or be waived to the Secretary by the end of 1996, the strategy will not provide for the timely issuance of new term grazing permits; and

(11) in cases in which ranching operations involve the use of a term grazing permit issued by the Secretary, it is essential for new term grazing permits to be issued in a timely manner for financial and other reasons.

(b) PURPOSE.—The purpose of this title is to ensure that grazing continues without interruption on National Forest System land in a manner that provides long-term protection of the environment and improvement of National Forest System rangeland resources while also providing short-term certainty to holders of expiring term grazing permits and purchasers of a permit holder's permitted livestock or base property.

SEC. 202. DEFINITIONS.

In this title:

(1) EXPIRING TERM GRAZING PERMIT.—The term ''expiring term grazing permit'' means a term grazing permit—

(A) that expires in 1995 or 1996; or

(B) that expired in 1994 and was not replaced with a new term grazing permit solely because the analysis required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable laws has not been completed.

(2) FINAL AGENCY ACTION.—The term ''final agency action'' means agency action with respect to which all available administrative remedies have been exhausted.

(3) TERM GRAZING PERMIT.—The term ''term grazing permit means a term grazing permit or grazing agreement issued by the Secretary under section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), section 19 of the Act entitled ''An Act to facilitate and simplify the work of the Forest Service, and for other purposes'', approved April 24, 1950 (commonly known as the ''Granger-Thye Act'') (16 U.S.C. 580*l*), or other law.

SEC. 203. ISSUANCE OF NEW TERM GRAZING PERMITS.

(a) IN GENERAL.—Notwithstanding any other provision of law, regulation, policy, court order, or court sanctioned settlement agreement, the Secretary shall issue a new term grazing permit without regard to whether the analysis required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable laws has been completed, or final agency action respecting the analysis has been taken—

(1) to the holder of an expiring term grazing permit; or

(2) to the purchaser of a term grazing permit holder's permitted livestock or base property if—

(A) between January 1, 1995, and December 1, 1996, the holder has waived the term grazing permit to the Secretary pursuant to section 222.3(c)(1)(iv) of title 36, Code of Federal Regulations; and

(B) the purchaser of the term grazing permit holder's permitted livestock or base property is eligible and qualified to hold a term grazing permit.

(b) TERMS AND CONDITIONS.—Except as provided in subsection (c)—

(1) a new term grazing permit under subsection (a)(1) shall contain the same terms and conditions as the expired term grazing permit; and

(2) a new term grazing permit under subsection (a)(2) shall contain the same terms and conditions as the waived permit.

(c) DURATION.—

(1) IN GENERAL.—A new term grazing permit under subsection (a) shall expire on the earlier of—

(A) the date that is 3 years after the date on which it is issued; or

(B) the date on which final agency action is taken with respect to the analysis required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable laws.

(2) FINAL ACTION IN LESS THAN 3 YEARS.—If final agency action is taken with respect to the analysis required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable laws before the date that is 3 years after the date on which a new term grazing permit is issued under subsection (a), the Secretary shall—

(A) cancel the new term grazing permit; and

(B) if appropriate, issue a term grazing permit for a term not to exceed 10 years under terms and conditions as are necessary for the proper administration of National Forest System rangeland resources.

(d) DATE OF ISSUANCE.—

(1) EXPIRATION ON OR BEFORE DATE OF ENACTMENT.—In the case of an expiring term grazing permit that has expired on or before the date of enactment of this Act, the Secretary shall issue a new term grazing permit under subsection (a)(1) not later than 15 days after the date of enactment of this Act.

(2) EXPIRATION AFTER DATE OF ENACTMENT.—In the case of an expiring term grazing permit that expires after the date of enactment of this Act, the Secretary shall issue a new term grazing permit under subsection (a)(1) on expiration of the expiring term grazing permit.

(3) WAIVED PERMITS.—In the case of a term grazing permit waived to the Secretary pursuant to section 222.3(c)(1)(iv) of title 36, Code of Federal Regulations, between January 1, 1995, and December 31, 1996, the Secretary shall issue a new term grazing permit under subsection (a)(2) not later than 60 days after the date on which the holder waives a term grazing permit to the Secretary.

SEC. 204. ADMINISTRATIVE APPEAL AND JUDICIAL REVIEW.

The issuance of a new term grazing permit under section 203(a) shall not be subject to administrative appeal or judicial review.

SEC. 205. REPEAL.

This title is repealed effective as of January 1, 2001.

KENNEDY AMENDMENTS NOS. 1732–1741

(Ordered to lie on the table.)

Mr. KENNEDY submitted 10 amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1732

On page 71, strike out lines 13 through 23 and insert in lieu thereof the following new subsection:

(c) SENSE OF THE SENATE REGARDING REFORM OF THE DELANEY CLAUSE.—It is the sense of the Senate that—

(1) the Delaney Clause in the Federal Food, Drug, and Cosmetic Act governing carcinogens in foods must be reformed;

(2) any such reform of the Delaney Clause—

(A) should reflect the care and deliberativeness due to a subject as important as whether and to what extent infants and children shall be exposed to carcinogens through the food they consume; and

(B) should not undermine other safety standards.

(3) advances in science and technology since the Delaney Clause was originally enacted in 1958 have prompted the need to refine the standards in current law with respect to pesticide residues, and may have limited the appropriateness of such standards with respect to food additives and animal drugs;

(4) the Delaney Clause should be replaced by a contemporary health-based standard that takes into account—

(A) the right of the American people to safe food;

(B) the conclusions of the National Academy of Sciences concerning the special susceptibility of infants and children to the effects of pesticide chemicals and the cumulative effect of the residues of such pesticide chemicals on human health;

(C) the importance of a stable food supply and a sound agricultural economy; and

(D) the interests of consumers, farmers, food manufacturers, and other interested parties; and

(5) prior to the end of the first session of the 104th Congress, after appropriate consideration by the committees of jurisdiction, the Senate should enact legislation to reform the Delaney Clause.

AMENDMENT NO. 1733

On page 71, strike out lines 13 through 23, and redesignate the remaining subsections and cross references thereto accordingly.

AMENDMENT NO. 1734

On page 71, strike out lines 15 through 16, and insert the following: ''TESTING.—In applying the proviso in section 409(c)(3)(A), or in applying section 512(d)(1) or 721(b)(5)(B), of the Federal Food, Drug, and Cosmetic''.

AMENDMENT NO. 1735

On page 71, strike out lines 15 through 17, and insert the following: ''TESTING.—In applying section 409(c)(3)(A) or 512(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A) and 360b(d)(1)),''.

AMENDMENT NO. 1736

On page 71, strike out lines 15 through 17, and insert the following: ''TESTING.—In applying the proviso in section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A)),''.

AMENDMENT NO. 1737

On page 71, strike out lines 15 through 17, and insert the following: ''TESTING.—In applying the proviso in section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A)) with respect to pesticides,''.

AMENDMENT NO. 1738

On page 71, line 23, insert before the period the following: '': *Provided*, That this subsection shall not take effect until the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency have certified that the implementation of this subsection will not place at risk the long-term health of infants and children''.

AMENDMENT NO. 1739

On page 71, line 23, insert before the period the following: '': *Provided*, That this subsection shall not take effect until the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency have certified that the implementation of this subsection will not increase the incidence of cancer in the United States''.

AMENDMENT NO. 1740

On page 71, line 23, insert before the period the following: '': *Provided*, That this subsection shall not take effect until the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency have certified that the implementation of this subsection will not expose infants and children to cancer-causing chemicals through the food such infants and children consume''.

AMENDMENT NO. 1741

On page 71, line 23, insert before the period the following: '': *Provided*, That this subsection shall not take effect until the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency have certified that the implementation of this subsection will not place at risk the long-term health of infants and children as a result of exposure to cancer-causing chemicals added to the food such infants and children consume''.

LIEBERMAN AMENDMENT NO. 1742

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 44, beginning with line 14, strike out all through line 4 on page 46 and insert in lieu thereof the following:

"§ 629. Petition for alternative method of compliance

''(a) Except as provided in subsection (j) or unless prohibited by the statute authorizing a rule, any person subject to a rule may petition the relevant agency implementing the rule to modify or waive the specific requirements of a rule and to authorize an alternative compliance strategy satisfying the criteria of subsection (b).

''(b) Any petition submitted under subsection (a) shall—

''(1) identify with reasonable specificity the requirements for which the modification or waiver is sought and the alternative compliance strategy being proposed;

''(2) identify the facility to which the modification or waiver would pertain;

''(3) considering all the significant applicable human health, safety, and environmental benefits intended to be achieved by the rule, demonstrate that the alternative compliance strategy, from the standpoint of the applicable human health, safety, and environmental benefits, taking into account all cross-media impacts, will achieve—

''(A) a significantly better result than would be achieved through compliance with the rule; or

''(B) an equivalent result at significantly lower compliance costs than would be achieved through compliance with the rule; and

''(4) demonstrate that the proposed alternative compliance strategy provides a degree of accountability, enforceability, and public and agency access to information at least equal to that of the rule.

''(c) No later than the date on which the petitioner submits the petition to the agency, the petitioner shall inform the public of the submission of such petition (including a brief description of the petition) through publication of a notice in newspapers of general circulation in the area in which the facility is located. The agency may authorize or require petitioners to use additional or alternative means of informing the public of the submission of such petitions. If the agency proposes to grant the petition, the agency shall provide public notice and opportunity to comment.

''(d) The agency may approve the petition upon determining that the proposed alternative compliance strategy—

''(1) considering all the significant applicable human health, safety, and environmental benefits intended to be achieved by the rule, from the standpoint of the applicable human health, safety, and environmental benefits, taking into account all cross-media impacts, will achieve—

''(A) a significantly better result than would be achieved through compliance with the rule; or

''(B) an equivalent result at significantly lower compliance costs than would be achieved through compliance with the rule;

''(2) will provide a degree of accountability, enforceability, and public and agency access to information at least equal to that provided by the rule;

''(3) will not impose an undue burden on the agency that would be responsible for administering and enforcing such alternative compliance strategy; and

''(4) satisfies any other relevant factors.

''(e) Where relevant, the agency shall give priority to petitions with alternative compliance strategies using pollution prevention approaches.

''(f) In making determinations under subsection (d), the agency shall take into account whether the proposed alternative compliance strategy would transfer any significant health, safety, or environmental effects to other geographic locations, future generations, or classes of people.

''(g) Any alternative compliance strategy for which a petition is granted under this section shall be enforceable as if it were a provision of the rule being modified or waived.

''(h) The grant of a petition under this section shall be judicially reviewable as if it were the issuance of an amendment to the rule being modified or waived. The denial of a petition shall not be subject to judicial review.

''(i) No agency may grant more than 30 petitions per year under this section.

''(j) If the statute authorizing the rule that is the subject of the petition provides procedures or standards for an alternative method of compliance, the petition shall be reviewed solely under the terms of the statute.

ASHCROFT AMENDMENT NO. 1743

(Ordered to lie on the table.)

Mr. ASHCROFT submitted an amendment intended to be proposed by him to the bill S. 343; 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 a 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 a such degree that high unemployment, crime, and other 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) empower qualifying 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—

(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 of 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 major of 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) an explanation of the reasons that the waiver of a regulation would economically benefit the city 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 that 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 required 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 construed 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, religion, 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 OF 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)).''.

PACKWOOD AMENDMENTS NOS. 1744–1747

(Ordered to lie on the table.)

Mr. PACKWOOD submitted four amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1744

Beginning on page 2, line 15, strike all through page 3, line 7, and insert the following:

''(a) APPLICABILITY.—(1) This section applies to every rulemaking, according to the provisions thereof, except to the extent that there is involved—

''(A) a matter pertaining to a military or foreign affairs function of the United States;

''(B) a matter relating to the management or personnel practices of an agency;

''(C) an interpretive rule, general statement of policy, guidance, or rule of agency organization, procedure, or practice, unless such rule, statement, or guidance has general applicability and substantially alters or creates rights or obligations of persons outside the agency; or

''(D) a rule relating to the acquisition, management, or disposal by an agency of real or personal property, or of services, that is promulgated in compliance with otherwise applicable criteria and procedures.

''(2) In the case of rulemaking involving the internal revenue laws of the United States, this section applies only to rules subject to section 7805(f) of the Internal Revenue Code of 1986 of general applicability that substantially alter or create rights or obligations of persons outside the agency.

AMENDMENT NO. 1745

On page 9, line 5, strike ''rule.'' and insert ''rule. This subsection shall not apply to rules subject to section 7805(f) of the Internal Revenue Code of 1986.''

AMENDMENT NO. 1746

On page 12, line 10, insert ''(other than a decision relating to a rule subject to section 7805(f) of the Internal Revenue Code of 1986)'' after ''(*l*)''.

AMENDMENT NO. 1747

On page 69, line 10, strike ''petition.'' and insert ''petition. In the case of a certification, analysis, or failure to prepare an analysis of a rule involving the internal revenue laws of the United States, a petition for judicial review shall be submitted to the Administrator of the Small Business Administration and shall not be in order if the Administrator certifies within 30 days that such petition—

''(I) involves a certification, analysis, or failure to prepare an analysis that does not involve a material issue warranting judicial review, or

''(II) is made for a purpose described in section 6702(a)(2)(B) of the Internal Revenue Code of 1986 (without regard to the filing of a return).

LEVIN AMENDMENTS NOS. 1748–1769

(Ordered to lie on the table.)

Mr. LEVIN submitted 22 amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1748

On page 22, line 24, after ''scientific evaluation,'' insert ''cost estimates,''.

AMENDMENT NO. 1749

On page 22, line 19, after ''scientific evaluations,'' insert ''cost estimates,''.

AMENDMENT NO. 1750

On page 3, line 7, strike the period and insert the following: ''; or

''(5) a rule relating to government loans, grants or benefits.''

AMENDMENT NO. 1751

On page 11, strike line 5 through line 19.

AMENDMENT NO. 1752

On page 12, strike line 9 through line 12.

AMENDMENT NO. 1753

On page 59, strike line 10 and all that follows through page 60, line 23.

AMENDMENT NO. 1754

On page 44, strike line 14 and all that follows through page 46, line 4.

AMENDMENT NO. 1755

On page 16, lines 15 and 16, strike ''a rule or agency action that authorizes the introduction into'' and substitute ''the introduction into or removal from.''

AMENDMENT NO. 1756

On page 16, line 25, strike ''or that provides relief, in whole or in part, from a statutory prohibition,'' and all that follows through page 17, line 4.

AMENDMENT NO. 1757

On page 49, line 11, strike ''a rule or agency action that authorizes the introduction into'' and substitute ''the introduction into or removal from''.

AMENDMENT NO. 1758

On page 37, line 19, strike paragraph (3).

AMENDMENT NO. 1759

On page 33, at the end of line 13, insert ''or repeal''.

AMENDMENT NO. 1760

On page 37, line 18, strike ''; and'' and insert ''.''.

AMENDMENT NO. 1761

On page 37, at the end of line 5, insert ''and''.

AMENDMENT NO. 1762

On page 37, line 10, strike ''nonquantifiable''.

AMENDMENT NO. 1763

On page 36, line 11, strike paragraph (4).

AMENDMENT NO. 1764

On page 36, line 10, strike ''; and'' and substitute ''.''.

AMENDMENT NO. 1765

On page 36, line 2, strike ''nonquantifiable''.

AMENDMENT NO. 1766

On page 34, line 24, strike ''the head of the agency'' and all that follows through the end of the sentence and insert in lieu thereof the following: ''the rule shall be subject to the congressional disapproval procedure under section 802 as of the date of the deadline, and shall terminate by operation of law upon the enactment of a joint resolution of disapproval pursuant to such section.''

AMENDMENT NO. 1767

On page 34, line 17, after ''modify'' insert ''or repeal''.

AMENDMENT NO. 1768

On page 34, line 11, after ''to amend'', insert ''or repeal''.

AMENDMENT NO. 1769

On page 33, line 17, strike ''or repeal''.

ROTH AMENDMENT NO. 1770

(Ordered to lie on the table.)

Mr. ROTH submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

Insert after section 637 the following:

''§ 638. Research and training in risk assessment

''(a) The head of each covered agency shall regularly and systematically evaluate risk assessment research and training needs of the agency, including, where relevant and appropriate, the following:

''(1) Research to reduce generic data gaps, to address modelling needs (including improved model sensitivity), and to validate default options, particularly those common to multiple risk assessments.

''(2) Research leading to improvement of methods to quantify and communicate uncertainty and variability among individuals, species, populations, and, in the case of ecological risk assessment, ecological communities.

''(3) Emerging and future areas of research, including research on comparative risk analysis, exposure to multiple chemicals and other stressors, noncancer endpoints, biological markers of exposure and effect, mechanisms of action in both mammalian and nonmammalian species, dynamics and probabilities of physiological and ecosystem exposures, and prediction of ecosystem-level responses.

''(4) Long-term needs to adequately train individuals in risk assessment and risk assessment application. Evaluations under this paragraph shall include an estimate of the resources needed to provide necessary training.

''(b) The head of each covered agency shall develop a strategy and schedule for carrying out research and training to meet the needs identified in subsection (a).

GRAHAM AMENDMENT NO. 1771

(Ordered to lie on the table.)

Mr. GRAHAM submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 94, insert after line 11, ''(C) an analysis of the potential of flexible regulatory options, including performance-based standards, to provide greater efficiency in the use of national economic resources for regulation.''

GRAHAM AMENDMENT NO. 1772

(Ordered to lie on the table.)

Mr. GRAHAM submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 4, line 18, insert before the semicolon the following: '', including, where practicable, performance-based standards''.

LEVIN AMENDMENT NO. 1773

(Ordered to lie on the table.)

Mr. LEVIN submitted an amendment intended to be proposed by him to an amendment to the bill, S. 343, supra; as follows:

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

SEC. . SMALL BUSINESS COMPLIANCE INCENTIVES.

(A) SHORT TITLE.—This section may be cited as the ''Small Business Compliance Incentive Act''.

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

''SUBCHAPTER VI—SMALL BUSINESS COMPLIANCE INCENTIVES

''§ 597. Definition

''For purposes of this subchapter, the term 'small business' means a person, corporation, partnership, or other entity that employs 100 or fewer individuals on a company-wide basis.

''§ 597a. Small business compliance assistance

''Each regulatory agency shall establish a comprehensive compliance assistance strategy consisting of such elements as the provision of information, consultation, technical assistance, and educational guidance. The strategy shall be well publicized and disseminated to small businesses.

''§ 597b. Penalty waivers for small businesses

''(a) Except as provided in section 597c, each agency shall ensure that its regulatory enforcement program includes—

''(1) a full waiver of administrative or civil judicial penalties against a small business for violations that are disclosed to the agency for the first time through compliance assistance or other self-disclosure mechanism established by the agency if—

''(A) the small business has made a good faith attempt to comply with the law;

''(B) the small business is not in violation of a regulatory requirement for which the small business has received a warning letter, notice of violation, field citation, enforcement action, or other notification from the agency within the 5 years preceding the request for compliance assistance;

''(C) the small business has not been subject to 2 or more Federal or State enforcement actions for violations of the same statute in the 5 years preceding the request for compliance assistance;

''(D) the small business corrects the violations within 60 days or within an alternative compliance period not to exceed 180 days specified by the agency under which the small business compliance assistance program operates, subject to the condition that any agreement between the agency and the small business to establish a compliance period of more than 60 days shall be in writing and shall set forth the steps to be undertaken by the small business to achieve compliance; and

''(E) the small business meets all other conditions for waiver of penalties established under this paragraph; and

''(2) a partial waiver of administrative or civil judicial penalties against a small business for violations that are disclosed to the agency for the first time through a compliance assistance program or other self-disclosure mechanism established by the agency when a small business has made a good faith effort to comply with all applicable regulatory requirements.

''(b) Nothing contained in this section shall be construed to—

''(1) require or prohibit imposition of a penalty for a violation where a penalty may not be waived for a violator under subsection (a) (1) or (2); or

''(2) discourage the development of other agency programs to assist small businesses to achieve regulatory compliance.

''§ 597c. Exceptions and limitation

''(a) The penalty waivers in section 597b shall not apply to—

''(1) violations—

''(A) that involve criminal conduct or the detection thereof;

''(B) that have caused actual harm, or a significant threat of future harm, to public health or safety, private property, or the environment;

''(C) of a rule that involves the internal revenue laws of the United States, or the assessment or collection of taxes, duties, or other revenues or receipts;

''(D) of a rule that implements an international agreement, including trade agreements, to which the United States is a party;

''(E) of the Federal acquisition regulations;

''(F) that involve national security or foreign affairs functions;

''(G) that are first disclosed through Federal, State, or local enforcement inspections;

''(H) that are first disclosed to Federal, State, or local officials by third parties;

''(I) that are reported to Federal, State, or local officials as required by applicable regulations or permits; or

''(J) that are not within the scope of eligible violations for these incentives under regulations promulgated pursuant to section 597b; and

''(2) any injunctive, remedial, corrective, or forfeiture action, or criminal enforcement authorities of any Federal agency to which this subchapter applies.

''(b) A small business shall not be entitled to a penalty waiver under section 597b regarding a particular enforcement issue for 60 days after the entity has had an agency-initiated contact regarding such issue.''.

(c) TECHNICAL AMENDMENT.—The analysis for chapter 5 of title 5, United States Code, is amended by adding at the end the following:

''SUBCHAPTER VI—SMALL BUSINESS COMPLIANCE INCENTIVES

''Sec.
''597. Definition.
''597a. Small business compliance assistance.
''597b. Penalty waivers for small businesses.
''597c. Exceptions and limitation.''.

LIEBERMAN AMENDMENT NO. 1774

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted an amendment intended to be proposed by him to amendment No. 1523 proposed by Mr. CAMPBELL to the bill S. 343, supra; as follows:

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

''(6) the term 'major rule' does not include a rule that approves, in whole or in part, a plan or program adopted by a State that provides for the implementation, maintenance, or enforcement of Federal standards or requirements. This paragraph shall take effect one day after the date of the enactment of this subchapter;

LIEBERMAN AMENDMENT NO. 1774

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted an amendment intended to be proposed by him to amendment No. 1530 proposed by Mr. CAMPBELL to the bill S. 343, supra; as follows:

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

''(6) the term 'major rule' does not include a rule that approves, in whole or in part, a plan or program adopted by a State that provides for the implementation, maintenance, or enforcement of Federal standards or requirements;

LIEBERMAN AMENDMENT NO. 1776

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted an amendment intended to be proposed by him to amendment No. 1544 proposed by Mr. CAMPBELL to the bill S. 343, supra; as follows:

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

''or

''(xiii) a rule that approves, in whole or in part, a plan or program adopted by a State that provides for the implementation, maintenance, or enforcement of Federal standards or requirements. This clause shall take effect 1 day after the date of the enactment of this subchapter.

KYL AMENDMENT NO. 1777

(Ordered to lie on the table.)

Mr. KYL submitted an amendment intended to be proposed by him to amendment No. 1513 proposed by Mr. BUMPERS to the bill S. 343, supra; as follows:

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

''(c) In reviewing an agency construction of a statute made in a rulemaking or an adjudication, the court shall independently review the interpretation without giving the agency any deference and shall—

''(1) hold erroneous and unlawful an agency interpretation that fails to give effect to the intent of Congress; or

''(2) if the statute is silent or ambiguous with respect to a specific issue, hold arbitrary and capricious or an abuse of discretion an agency action for which the agency has refused to consider a permissible construction of the statute or has failed to explain in a reasoned analysis why the agency selected the interpretation it chose and why it rejected other permissible interpretations of the statute.

''(d) Notwithstanding any other provision of law, the provisions of subsection (c) shall apply to, and supplement, the requirements contained in any statute for the review of final agency action that is not otherwise subject to this section.

MOYNIHAN AMENDMENTS NOS. 1778–1779

(Ordered to lie on the table.)

Mr. MOYNIHAN submitted two amendments intended to be proposed by him to an amendment to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1778

At the end of the pending amendment insert the following:

Notwithstanding any other provision of this act the procedure for reviewing existing risk assessments will be as follows:

PLAN FOR THE REVIEW OF RISK ASSESSMENTS.—

(a) No later than 18 months after the effective date of this section, the head of each covered agency shall publish, after notice and public comment, a plan to review and revise any risk assessment published before the expiration of such 18-month period if the covered agency determines that significant new information of methodologies are available that could significantly alter the results of the prior risk assessment.

(b) A plan under subsection (a) shall—

(1) provide procedures for receiving and considering new information and risk assessments from the public; and

(2) set priorities and criteria for review and revision of risk assessments based on such factors as the agency head considers appropriate.

(3) provide a schedule for the review of risk assessments. This schedule shall be revised as appropriate based on new information received under (b)(1) and reviewed under criteria developed in accordance with paragraph (b)(2).

(c) The head of each covered agency shall review risk assessments according to the schedule published by the agency under paragraph (a).

AMENDMENT NO. 1779

Notwithstanding any other provision of this act the procedure for reviewing existing risk assessment well be as follows:

PLAN FOR THE REVIEW OF RISK ASSESSMENTS.—

(a) No later than 18 months after the effective date of this section, the head of each covered agency shall publish, after notice and public comment, a plan to review and revise any risk assessment published before the expiration of such 18-month period if the covered agency determines that significant new information or methodologies are available that could significantly alter the results of the prior risk assessment.

(b) A plan under subsection (a) shall—

(1) provide procedures for receiving and considering new information and risk assessments from the public; and

(2) set priorities and criteria for review and revision of risk assessments based on such factors as the agency head considers appropriate.

(3) provide a schedule for the review of risk assessments. This schedule shall be revised as appropriate based on new information received under (b)(1) and reviewed under criteria developed in accordance with paragraph (b)(2).

(c) The head of each covered agency shall review risk assessments according to the schedule published by the agency under paragraph (a).

STEVENS AMENDMENTS NOS. 1780–1783

(Ordered to lie on the table.)

Mr. STEVENS submitted four amendments intended to be proposed by him to an amendment to the bill S. 343, supra; as follows:

AMENDMENT NO. 1780

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

78aaa et seq.);

''(xii) a rule that involves the international trade laws of the United States;

''(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); or

''(xiv) a rule that involves hunting under the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) or fishing under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

AMENDMENT NO. 1781

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

''(1) whether the rule is or is not a major rule within the meaning of section 621(5)(A) or 621(5)(C), or has been designated a major rule under subsection (b); and

''(2) if the agency determines that the rule is a major rule, whether the rule requires or does not require the preparation of a risk assessment under section 632(a).

''(b) DESIGNATION.—(1) If an agency has determined that a rule is not a major rule within the meaning of section 621(5)(A) or 621(5)(C), the President or a person to whom the President has delegated authority under section 642 (hereinafter the 'President's designee') may determine that the rule is a major rule or designate''.

AMENDMENT NO. 1782

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

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

AMENDMENT NO. 1783

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

plexity of the decision and any need for expedition;

''(5) the term 'major rule' means—

''(A) a rule or set of closely related rules that the agency proposing the rule or the President determines is likely to have a gross annual effect on the economy of $100,000,000 or more in reasonably quantifiable increased costs (and this limit may be adjusted periodically by the Director, at the Director's sole discretion, to account for inflation);

''(B) a rule that is otherwise designated a major rule by the President or the President's designee under section 622(b) (and designation or failure to designate under this clause shall not be subject to judicial review); or

''(C) any rule or set of closely related rules, not determined to be a major rule pursuant to subparagraph (A) or (B), that the agency proposing the rule determines will have a significant economic impact on a substantial number of small businesses, pursuant to subchapter I;

''(6) the term 'market-based mechanism' means—

DOMENICI (AND OTHERS) AMENDMENT NO. 1784

Mr. DOMENICI (for himself, Mr. BOND, Mr. BINGAMAN, Mr. COHEN, Mrs. HUTCHISON, and Mr. ROTH) proposed an amendment to amendment No. 1533 proposed by Mr. DOMENICI to the bill, S. 343, supra; as follows:

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

TITLE II—AGENCY RESPONSIVENESS TO SMALL BUSINESSES

SUBTITLE A—SMALL BUSINESS ADVOCACY REVIEW

SEC. 201. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) AGENCY.—The term ''agency'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the Environmental Protection Agency (EPA); and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the Occupational Safety and Health Administration of the Department of Labor (OSHA).

(2) AGENCY HEAD.—The term ''agency head'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the Administrator of the Environmental Protection Agency; and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the Assistant Secretary for Occupational Safety and Health of the Department of Labor.

(3) CHAIRPERSON.—The term ''chairperson'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the chairperson of such review panel designated under section 202(a); and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the chairperson of such review panel designated under section 202(b).

(4) CHIEF COUNSEL FOR ADVOCACY.—The term ''Chief Counsel for Advocacy'' means the Chief Counsel for Advocacy of the Small Business Administration.

(5) FINAL RULE.—The term ''final rule'' means any final rule or interim final rule issued by an agency for which a review panel has been established under section 202(e)(1).

(6) OFFICE.—The term ''Office'' means the Office of Advocacy of the Small Business Administration.

(7) REVIEW PANEL.—The term ''review panel'' means—

(A) with respect to a significant rule of the Environmental Protection Agency, an Environmental Small Business Advocacy Review Panel established under section 202(e)(1); and

(B) with respect to a significant rule of the Occupational Safety and Health Administration of the Department of Labor, an Occupational Safety and Health Small Business Advocacy Review Panel established under section 202(e)(1).

(8) DESIGNATED REPRESENTATIVES.—The term ''designated representatives'' means individuals selected by the Chief Counsel for Advocacy to make presentations to, and to engage in discussions with, a review panel on behalf of small entities with a common interest in the subject rulemaking, including entities that are—

(A) small businesses that would be impacted by the significant rule;

(B) small business sectors or industries that would be especially impacted by the significant rule; or

(C) organizations whose memberships are comprised of a cross-section of small businesses.

(9) RULE.—The term ''rule''—

(A) means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of the agency; and

(B) does not include any rule that is limited to agency organization, management, or personnel matters.

(10) SIGNIFICANT RULE.—The term ''significant rule'' has the same meaning as the term ''major rule'' as defined in sec. 621(5) of title 5.

(11) SMALL BUSINESS.—The term ''small business'' has the same meaning as the term ''small business concern'' in section 3 of the Small Business Act.

SEC. 202. SMALL BUSINESS ADVOCACY CHAIRPERSONS AND ESTABLISHMENT OF REVIEW PANELS.

(c) CHAIRPERSON OF ENVIRONMENTAL REVIEW PANELS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall designate an employee of the Environmental Protection Agency, who is a member of the Senior Executive Service (as that term is defined in section 2101a of title 5, United States Code) and whose immediate supervisor is appointed by the President, to serve as the chairperson of each Environmental Small Business Advocacy Review Panel and to carry out this subtitle with respect to the Environmental Protection Agency.

(2) DISABILITY OR ABSENCE.—If the employee designated to serve as chairperson under paragraph (1) is unable to serve as chairperson because of disability or absence, the Administrator of the Environmental Protection Agency shall designate another employee who meets the qualifications of paragraph (1) to serve as chairperson.

(b) CHAIRPERSON OF OSHA REVIEW PANEL.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Assistant Secretary for Occupational Safety and Health of the Department of Labor shall designate an employee of the Occupational Safety and Health Administration of the Department of Labor, who is a member of the Senior Executive Service (as that term is defined in section 2101a of title 5, United States Code) and whose immediate supervisor is appointed by the President, to serve as the chairperson of each Occupational Safety and Health Small Business Advocacy Review Panel and to carry out the purposes of this subtitle with respect to the Occupational Safety and Health Administration.

(2) DISABILITY OR ABSENCE.—If the employee designated to serve as chairperson under paragraph (1) is unable to serve as chairperson because of disability or absence, the Assistant Secretary for Occupational Safety and Health of the Department of Labor shall designate another employee who meets the qualifications of paragraph (1) to serve as chairperson.

(c) INITIAL DETERMINATION AND NOTIFICATION.—

(1) TIMING.—The chairperson shall take the actions described in paragraph (2) not later than 45 days before the date of publication in the Federal Register by an agency of a general notice of proposed rulemaking under section 553(b) of title 5, United States Code, or any other provision of law.

(2) ACTIONS.—With respect to a proposed rule that is the subject of a publication described in subparagraph (A) or (B) of paragraph (1), the chairperson shall—

(A) determine whether the subject proposed rule constitutes a significant rule, as defined in section 201(10); and

(B) if the proposed rule is determined to constitute a significant rule, notify the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget and the Chief Counsel for Advocacy to appoint review panel members for evaluation of the subject significant rule, and for the Chief Counsel for Advocacy to identify and select designated representatives.

(C) provide the Chief Counsel for Advocacy with materials related to the subject proposed rule. Information made available to the designated representatives shall be made available to the public upon request and at the cost of reproduction.

(d) DUTIES OF THE CHIEF COUNSEL FOR ADVOCACY.—

(1) Not later than 15 days after receiving notice under subsection (c)(2)(B), or such longer period as the chairperson may allow, the Chief Counsel for Advocacy shall identify and select not less than 2 and not more than 6 designated representatives for review of the subject significant rule.

(2) Not later than 45 days before the issuance of a significant final rule, the Chief Counsel for Advocacy shall identify and select not less than 2 and not more than 6 previously selected, or new, designated representatives for review of the subject significant final rule.

(e) ESTABLISHMENT OF REVIEW PANELS.—

(1) IN GENERAL.—Not later than 15 days after receiving notice under subsection (c)(2)(B), or such longer period as the chairperson may allow, review panel members shall be appointed by the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, the Chief Counsel for Advocacy, and the chairperson in accordance with section 203(b).

(2) EXCEPTIONS.—A review panel shall be established in accordance with paragraph (1) unless the chairperson, in consultation with the Chief Counsel for Advocacy, determines (and notifies the agency in writing of such determination) that

(A) a good faith effort to identify and select designated representatives with respect to the subject significant rule was unsuccessful; and

(B) compliance with this subtitle is not required with respect to the subject significant rule due to a lack of availability of designated representatives.

(f) DUTIES REGARDING FINAL RULE.—

(1) IN GENERAL.—Not later than 45 days before the issuance of a significant final rule, the chairperson shall—

(A) notify panel members of the intent of the agency to issue a final rule;

(B) provide panel members with a dated draft of the final rule to be issued;

(C) solicit comments from panel members in connection with the issues described in section 203(a);

(D) provide the Chief Counsel for Advocacy with materials related to the subject final rule. Information made available to the designated representatives shall be made available to the public upon request and at the cost of reproduction.

(E) solicit comments from designated representatives in connection with the issues described in section 203(a); and

(F) if the chairperson determines that such action is necessary, call one or more meetings of the review panel and, if a quorum is present, direct the review panel to review, discuss, or clarify any issue related to the subject final rule or the preparation of the report under paragraph (2).

(2) REPORT.—Except as provided in section 204(b), not later than 5 days before the issuance of a final rule, the chairperson shall submit a report in accordance with section 204(a).

SEC. 203. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) GENERAL DUTIES.—Before any publication described in subparagraph (A) or (B) of section 202(c)(1) of a proposed significant rule, and again before the issuance of such rule as a final rule, the review panel shall, in accordance with this subtitle provide technical guidance to the agency, including guidance relating to the following issues—

(1) the applicability of the proposed rule to small businesses;

(2) compliance with the rule by small businesses;

(3) the consistency or redundancy of the proposed rule with respect to other Federal, State, and local laws or regulations and recordkeeping requirement imposed on small businesses; and

(4) any other concerns posed by the proposed rule that may impact significantly upon small businesses.

(b) MEMBERSHIP.—Each review panel shall be composed wholly of full-time officers or employees of the Federal Government, and shall include—

(1) the chairperson;

(2) not less than 1 nor more than 3 members appointed by the chairperson from among employees of the agency who would be responsible for carrying out the subject significant rule;

(3) 1 member appointed by the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget from among the employees of that office who have specific knowledge of or responsibilities of the agency that would be responsible for carrying out the subject significant rule; and

(4) 1 member appointed by the Chief Counsel for Advocacy from among the employees of the Office.

(c) PERIOD OF APPOINTMENT; VACANCIES.—

(1) PERIOD OF APPOINTMENT.—Each review panel member, other than the chairperson, shall be appointed for a term beginning on the date on which the appointment is made and ending on the date on which the report or written record is submitted under section 204.

(2) VACANCIES.—Any vacancy on a review panel shall not affect the powers of the review panel, but shall be filled in the same manner as the original appointment.

(d) QUORUM.—A quorum for the conduct of business by a review panel shall consist of 1 member appointed from each of paragraphs (2) through (4) of subsection (b).

(e) MEETINGS.—

(1) IN GENERAL.—Subject to paragraph (2), the meetings of the review panel shall be at the call of the chairperson.

(2) INITIAL MEETING.—Not later than 15 days after all review panel members necessary to constitute a quorum have been appointed under section (b), the chairperson shall conduct the initial meeting of the review panel.

(f) POWERS OF REVIEW PANEL.—

(1) INFORMATION FROM FEDERAL AGENCIES.—A review panel may secure, directly from any Federal department or agency, such information as the review panel considers necessary to carry out this subtitle, other than any material described in section 552(b) of title 5. Upon request of the chairperson, the head of such department or agency shall furnish such information to the review panel.

(2) POSTAL SERVICES.—A review panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(g) NONCOMPENSATION OF MEMBERS.—Members of the review panel shall serve without compensation in addition to that received for their services as officers or employees of the Federal Government.

(h) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to a review panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(i) CONSULTATION WITH OTHER ENTITIES.—In carrying out this subtitle, the chairperson shall consult and coordinate, to the maximum extent practicable, the activities of the review panel with each office of the agency that is responsible for the provision of data or technical advice concerning a significant rule.

SEC. 204. REPORT.

(a) IN GENERAL.—Except as provided in subsection (b), the chairperson shall, in accordance with section 202(f)(2), submit to the appropriate employees of the agency who would be responsible for carrying out the subject significant rule and to the appropriate committees of the Senate and the House of Representatives a report, which shall include—

(1) the findings and recommendations of the review panel with respect to the significant rule, including both the majority and minority views of the review panel members, regardless of the consensus of opinions that may derive from the meetings of the review panel;

(2) a summary of the views and recommendations of each individual designated representative with respect to the significant rule, including each individual designated representative's recommendation with respect to whether a survey should be conducted under section 205; and

(3) recommendations of the review panel regarding whether a survey with respect to the subject significant rule should be conducted under section 205, and—

(A) If so—

(i) a timeframe during which the survey should be conducted, taking into account the time required to implement the rule and to gather appropriate data; and

(ii) any recommendations of the review panel regarding the contents of the survey; and

(B) if not, the reasons why the survey is not recommended.

(b) FAILURE TO SUBMIT REPORT.—If the chairperson fails to submit a report under subsection (a), not later than the date on which the final rule is issued, the chairperson shall—

(1) prepare a written record of such failure detailing the reasons therefore; and

(2) submit a copy of such written record to the head of the agency and to the appropriate committees of the Congress.

SEC. 205. SURVEY.

(a) IN GENERAL.—If a review panel makes a recommendation in any report submitted under section 204(a) that a survey should be conducted with respect to a significant rule, the agency shall contract for an independent private sector survey of a cross-section of the small businesses affected by the rule.

(b) CONTENTS OF SURVEY.—Each survey conducted under this section shall address the impact of the significant rule on small businesses, including—

(1) the applicability of the rule to various small businesses;

(2) the degree to which the rule is easy to read and comprehend;

(3) the costs to implement the rule;

(4) any recordkeeping requirements imposed by the rule; and

(5) any other technical or general issues related to the rule.

(c) AVAILABILITY OF SURVEY RESULTS.—The results and costs of each survey conducted under this section shall be made available—

(1) to each interested Federal agency; and

(2) upon request, to any other interested party, including organizations, individuals, State and local governments, and the Congress.

SEC. 206. JUDICIAL REVIEW.

No action or inaction of a review panel, including any recommendations or advice of a review panel or any procedure or process of a review panel may be subject to judicial review by a court of the United States under chapter 7 of title 5, United States Code, or any other provision of law.

SUBTITLE B—REGULATORY OMBUDSMEN

SEC. 211. SMALL BUSINESS AND AGRICULTURE OMBUDSMEN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) BOARD.—The term 'Board' means a Small Business Regulatory Fairness Board established under subsection (c).

''(2) OMBUDSMAN.—The term 'ombudsman' means a Regional Small Business and Agriculture Ombudsman designated under subsection (b).

''(3) REGION.—The term 'region' means any area for which the Administrator has established a regional office of the Administration pursuant to section 4(a).

''(4) RULE.—The term 'rule' has the same meaning as in section 601(2) of title 5, United States Code.

''(b) OMBUDSMAN.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Administrator shall designate Regional Small Business and Agriculture Ombudsmen in accordance with this subsection.

''(2) DUTIES.—Each ombudsman designated under paragraph (1) shall—

''(A) solicit and receive comments from small business concerns regarding the enforcement activities of federal agencies and maintain such comments on a confidential basis;

''(B) based on comments received under subparagraph (A), annually assign and publish a small business responsiveness rating to each federal agency as appropriate;

''(C) publish periodic reports compiling the comments received under subparagraph (A);

''(D) coordinate the activities of the Small Business Regulatory Fairness Board established under subsection (c); and

''(E) establish a toll-free telephone number to receive comments from small business concerns under subparagraph (A).''.

SEC. 212. SMALL BUSINESS REGULATORY FAIRNESS BOARDS.

Section 30 of the Small Business Act (as added by section 211 of this Act) is amended by adding at the end the following new subsection:

''(c) SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Administrator shall establish in each region a Small Business Regulatory Fairness Board in accordance with this subsection.

''(2) DUTIES.—Each Board established under paragraph (1) shall—

''(A) advise the ombudsman on matters of concern to small business concerns relating to the enforcement activities of covered agencies;

''(B) issue advisory findings and recommendations with respect to small business concerns;

''(C) review and comment on, prior to publication—

''(i) each small business responsiveness rating assigned under subsection (b)(2)(B); and

''(ii) each periodic report prepared under subsection (b)(2)(C); and

''(D) prepare written opinions regarding the reasonableness and understandability of rules issued by covered agencies.

''(3) MEMBERSHIP.—Each Board shall consist of five members appointed by the Administrator for terms of three years.

''(4) VACANCIES.—Any vacancy on the Board—

''(i) shall not affect the powers of the Board; and

''(ii) shall be filled in the same manner and under the same terms and conditions as the original appointment.

''(5) CHAIRPERSON.—The Board shall select a Chairperson from among the members of the Board.

''(6) MEETINGS.—

''(A) IN GENERAL.—The Board shall meet at the call of the Chairperson.

''(B) INITIAL MEETING.—Not later than 90 days after the date on which all members of the Board have been appointed, the Board shall hold its first meeting.

''(7) QUORUM.—A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

''(8) POWERS OF THE BOARD.—

''(A) HEARINGS.—The Board may, for the purpose of carrying out the provisions of this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board determines to be appropriate.

''(B) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested to appear at any hearing of the Board. The per diem and mileage allowances for any witness shall be paid from funds available to pay the expenses of the Board.

''(C) INFORMATION FROM FEDERAL AGENCIES.—Upon the request of the Chairperson, the Board may secure directly from the head of any Federal department or agency such information as the Board considers necessary to carry out this section, other than any material described in section 552(b) of title 5, United States Code.

''(D) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(E) DONATIONS.—The Board may accept, use, and dispose of donations of services or property.

''(9) BOARD PERSONNEL MATTERS.—

''(A) COMPENSATION.—Members of the Board shall serve without compensation.

''(B) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.''.

SEC. 213. JUDICIAL REVIEW.

(a) PROHIBITION.—No action or inaction of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board, including any recommendation or advice of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board or any procedure or process of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board, may be subject to judicial review by a court of the United States under chapter 7 of title 5, United States Code, or any other provision of law.

(b) DEFINITION.—For purposes of this section—

(1) the term ''Regional Small Business and Agriculture Ombudsman'' means any ombudsman designated under section 30(b) of the Small Business Act, as added by section 211 of this Act.

(2) the term ''Small Business Regulatory Fairness Board'' means any board established under section 30(c) of the Small Business Act, as added by section 212 of this Act.

McCAIN (AND LIEBERMAN) AMENDMENT NO. 1785

Mr. HATCH (for Mr. McCAIN, for himself and Mr. LIEBERMAN) proposed an amendment to amendment No. 1487, proposed by Mr. DOLE, the bill. S. 343, supra; as follows:

At the end of the amendment and 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.

ASHCROFT AMENDMENT NO. 1786

Mr. ASHCROFT proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; 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 thing—

(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 a degree that high unemployment, crime, and other 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 DECISION.—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 Officer 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 that 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 required 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 construed 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, religion, 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 OF 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)).''.

PORTRAIT MONUMENT RESTORATION ACT

STEVENS AMENDMENT NO. 1787

Mr. HATCH (for Mr. STEVENS) proposed an amendment to the concurrent resolution (S. Con. Res. 21) directing that the ''Portrait Monument'' carved in the likeness of Lucretia Mott, Susan B. Anthony, and Elizabeth Cady Stanton, now in the Crypt of the Capitol, be restored to its original state and be placed in the Capitol rotunda; as follows:

Strike all after the resolving clause and insert: ''That the Architect of the Capitol shall—

''(1) restore the ''Portrait Monument'' to its original state and place it in the Rotunda of the United States Capitol; and

''(2) make all necessary arrangements for the rededication ceremony of such statue in the Capitol Rotunda and procession connected therewith, in cooperation with the 75th Anniversary of Woman Suffrage Task Force.

''SEC. 2. The Rotunda of the Capitol is authorized to be used from 7 o'clock ante meridiem until 4 o'clock post meridiem on August 26, 1995, for such ceremony.''

FEDERAL REPORTS ELIMINATION AND SUNSET ACT OF 1995

McCAIN (AND LEVIN) AMENDMENT NO. 1788

Mr. HATCH (for Mr. McCAIN, for himself and Mr. LEVIN) proposed an amendment to the bill (S. 790) to provide for the modification or elimination of Federal reporting requirements; as follows:

1. Section 1011(d): After the word ''repealed,'' insert the following: ''and section 1559 and 1560 of such Act are redesignated as sections 1558 and 1559, respectively.''.

2. Section 1011(h): After the word ''repealed,'' insert the following: ''and sections 2518 and 2519 of such Act are redesignated as sections 2517 and 2518, respectively.''.

3. Section 1011(o): Strike this section entirely.

4. Section 1011(r): After the word ''repealed,'' insert the following: ''and sections 1507, 1508, 1509, and 1511 of such Act are redesignated as sections 1506, 1507, 1508, and 1509, respectively.''.

5. Section 1012(e): Strike this section entirely.

6. Section 1012(i): Strike lines 5 through 14. Insert the following:

''(b) An analysis and determination shall be made, and a report on the Secretary's findings and conclusions regarding such analysis and determination under subsection (a) shall be transmitted within 90 days after the end of each of the following periods:

''(1) The period beginning on the date of the enactment of the Federal Reports Elimination and Sunset Act of 1995 and ending on December 31, 1995.

''(2) Each 10-year period thereafter.''.

7. Section 1041(e): Strike out the phrase ''(20 USC 2303(d)),'' and replace it with the following: ''(20 USC 28)''.

8. Section 1041: Insert the following:

REPORT ON ANNUAL UPWARD MOBILITY PROGRAM ACTIVITY.—Section 2(a)(6)(A) of this Act of June 20, 1936 (20 U.S.C. 107a(a)(6)(A)), is amended by striking ''and annually submit to the appropriate committees of Congress a report based on such evaluations,''.

9. Section 1051: Insert the following:

REPORT ON CURRENT STATUS OF COMPREHENSIVE MANAGEMENT FOR NUCLEAR SAFETY RESEARCH, DEVELOPMENT, AND DEMONSTRATION.—Section 8(c) of the Nuclear Safety Research, Development, and Demonstration Act of 1980 (42 U.S.C. 9707(c)) is repealed.

REPORT ON ACTIVITIES OF THE GEOTHERMAL ENERGY COORDINATION AND MANAGEMENT PROJECT.—Section 302(a) of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1162(a)) is repealed.4Report on activities under the magnetic fusion energy engineering act of 1980.—Section 12 of the Magnetic Fusion Energy Engineering Act of 1980 (42 U.S.C. 9311) is repealed.

REPORT ON ACTIVITIES UNDER THE ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1976.—Section 14 of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2513) is repealed.

REPORT ON ACTIVITIES UNDER THE METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1980.—Section 9 of the Methane Transportation Research, Development, and Demonstration Act of 1980 (15 U.S.C. 3808) is repealed.

10. Section 1071(e): Strike this section entirely. Insert the following in its place:

COLLECTION OF AND ANNUAL REPORT ON RACIAL AND ETHNIC DATA.—Section 562 of the Housing and Community Development Act of 1987 (42 U.S.C. 3608a) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by striking ''the Secretary of Housing and Urban Development and''; and

(ii) by striking ''each'', the first place it appears; and

(B) in the second sentence, by striking ''involved''; and

(2) in subsection (b)—

(A) by striking ''The Secretary of Housing and Urban Development and the'' and inserting ''The''; and

(B) by striking ''each''.

11. Section 1091(a): Strike this section entirely.

12. Section 1122(a): Strike this section entirely.

13. Sections 1141(a) and (d): Strike these sections entirely.

14. Section 2121: Strike lines 6 through 12 and insert the following:

''(g) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AND REGIONAL TECHNOLOGY TRANSFER CENTERS.—The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.''.

15. Section 3001(f): Strike this section entirely.

16. Section 3003(a)(2)(A): Strike out the phrase ''Public Law 95–452.''

17. Section 3003(c): Strike out the phrase ''(Report No. 103–7)'' and insert ''(House Document No. 103–7).''

18. Title IV—Effective Date: Strike this section entirely.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. ROTH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Monday, July 17, 1995, at 2 p.m.

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

ADDITIONAL STATEMENTS

FLOYD CECEL COUGIL

• Mr. SIMON. Mr. President, I rise today to commemorate Floyd Cecel Cougil, a distinguished Illinoisan who passed away recently. Mr. Cougil's strong sense of community service, especially his involvement with local union activities was a great asset to labor relations in Illinois.

At age 13, Floyd Cougil started work at the Metropolis Box Factory in southern Illinois. In 1951, he became a charter member of local 1301 of the Laborers Union of North America and he later founded the Construction and General Laborers Local 1320 of the AFL.

Floyd served as trustee for the construction area conference in Cairo, IL. He served with distinction on a panel created by the Southern Illinois University to improve labor-management relations. Floyd was awarded his 50-year gold pin and membership card in 1989 for his continued service with local 1320.

Floyd maintained a farm in Massac County, IL, and was a member of the Massac County Farm Bureau. His strong sense of community pride and involvement was demonstrated by the integral role he played in bringing both the EEI and the Allied Chemical plants to Massac County. He is also credited with helping solidify the Government contract with F.H. McGraw and Co. for the construction of the Atomic Energy Commission project in McCracken County, KY.

Floyd Cougil had unquestionable personal integrity with a genuine concern for the well-being of his fellow man. His passing leaves a great void that will be felt not only by his family and his many friends and colleagues, but by the whole State of Illinois as well.•

DIRECTING THAT THE ''PORTRAIT MONUMENT'' BE RESTORED AND PLACED IN THE CAPITOL ROTUNDA

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Senate Concurrent Resolution 21, now being held at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 21) directing that the ''Portrait Monument'' carved in the likeness of Lucretia Mott, Susan B. Anthony and Elizabeth Cady Stanton, now in the Crypt of the Capitol, be restored to its original state and be placed in the Capitol Rotunda.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

AMENDMENT NO. 1787

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], for Mr. STEVENS, proposes an amendment numbered 1787.

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:

Strike all after the resolving clause and insert: ''That the Architect of the Capitol shall—

''(1) restore the ''Portrait Monument'' to its original state and place it in the Rotunda of the United States Capitol; and

''(2) make all necessary arrangements for the rededication ceremony of such statue in the Capitol Rotunda and procession connected therewith, in cooperation with the 75th Anniversary of Woman Suffrage Task Force.

''SEC. 2. The Rotunda of the Capitol is authorized to be used from 7 o'clock ante meridian until 4 o'clock post meridian on August 26, 1995, for such ceremony.''

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

The amendment (No. 1787) was agreed to.

Mr. HATCH. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

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

So the concurrent resolution (S. Con. Res. 21), as amended, was agreed to.

The preamble was agreed to.

The concurrent resolution, as amended, with its preamble, is as follows:

CON. RES. 21

Whereas in 1995, women of America are celebrating the 75th anniversary of their right to participate in our government through suffrage;

Whereas Lucretia Mott, Elizabeth Cady Stanton, and Susan B. Anthony were pioneers in the movement for women suffrage and the pursuit of equal rights; and

Whereas, the relocation of the ''Portrait Monument'' to a place of prominence and esteem in the Capitol Rotunda would serve to honor and revere the contribution of thousands of women: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring) That the Architect of the Capitol shall—

(1) restore the ''Portrait Monument'' to its original state and place it in the Rotunda of the United States Capitol; and

(2) make all necessary arrangements for the rededication ceremony of such statue in the Capitol Rotunda and procession connected therewith, in cooperation with the 75th Anniversary of Women Suffrage Task Force.

SEC. 2. The Rotunda of the Capitol is authorized to be used from 7 o'clock ante meridian until 4 o'clock post meridian on August 26, 1995, for such ceremony.

FEDERAL REPORTS ELIMINATION AND SUNSET ACT

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 108, S. 790, the Federal Reports Elimination and Sunset Act.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 790) to provide for modification or elimination of Federal reporting requirements.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1788

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], for Mr. MCCAIN, for himself and Mr. LEVIN, proposes an amendment numbered 1788.

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:

1. Section 1011(d): After the word ''repealed,'' insert the following: ''and sections 1559 and 1560 of such Act are redesignated as sections 1558 and 1559, respectively.''

2. Section 1011(h): After the word ''repealed,'' insert the following: ''and sections 2518 and 2519 of such Act are redesignated as sections 2517 and 2518, respectively.''

3. Section 1011(o): Strike this section entirely.

4. Section 1011(r): After the word ''repealed,'' insert the following: ''and sections 1507, 1508, 1509, and 1511 of such Act are redesignated as sections 1506, 1507, 1508, and 1509, respectively.''

5. Section 1012(e): Strike this section entirely.

6. Section 1012(i): Strike lines 5 through 14. Insert the following:

''(b) An analysis and determination shall be made, and a report on the Secretary's findings and conclusions regarding such analysis and determination under subsection (a) shall be transmitted within 90 days after the end of each of the following periods:

''(1) The period beginning on the date of the enactment of the Federal Reports Elimination and Sunset Act of 1995 and ending on December 31, 1995.

''(2) Each 10-year period thereafter.''.

7. Section 1041(e): Strike out the phrase ''(20 USC 2303(d)),'' and replace it with the following: ''(20 USC 28)''.

8. Section 1041: Insert the following:

REPORT ON ANNUAL UPWARD MOBILITY PROGRAM ACTIVITY.—Section 2(a)(6)(A) of this Act of June 20, 1936 (20 U.S.C. 107a(a)(6)(A)), is amended by striking ''and annually submit to the appropriate committees of Congress a report based on such evaluations,''.

9. Section 1051: Insert the following:

REPORT ON CURRENT STATUS OF COMPREHENSIVE MANAGEMENT FOR NUCLEAR SAFETY RESEARCH, DEVELOPMENT, AND DEMONSTRATION.—Section 8(c) of the Nuclear Safety Research, Development, and Demonstration Act of 1980 (42 U.S.C. 9707(c)) is repealed.

REPORT ON ACTIVITIES OF THE GEOTHERMAL ENERGY COORDINATION AND MANAGEMENT PROJECT.—Section 302(a) of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1162(a)) is repealed.

REPORT ON ACTIVITIES UNDER THE MAGNETIC FUSION ENERGY ENGINEERING ACT OF 1980.—Section 12 of the Magnetic Fusion Energy Engineering Act of 1980 (42 U.S.C. 9311) is repealed.

REPORT ON ACTIVITIES UNDER THE ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1976.—Section 14 of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2513) is repealed.

REPORT ON ACTIVITIES UNDER THE METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1980.—Section 9 of the Methane Transportation Research, Development, and Demonstration Act of 1980 (15 U.S.C. 3808) is repealed.

10. Section 1071(e): Strike this section entirely. Insert the following in its place:

COLLECTION OF AND ANNUAL REPORT ON RACIAL AND ETHNIC DATA.—Section 562 of the Housing and Community Development Act of 1987 (42 U.S.C. 3608a) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by striking ''the Secretary of Housing and Urban Development and''; and

(ii) by striking ''each'', the first place it appears; and

(B) in the second sentence, by striking involved''; and

(2) in subsection (b)—

(A) by striking ''The Secretary of Housing and Urban Development and the'' and inserting ''The''; and

(B) by striking ''each''.

11. Section 1091(a): Strike this section entirely.

12. Section 1122(a): Strike this section entirely.

13. Sections 1141 (a) and (d): Strike these sections entirely.

14. Section 2121: Strike lines 6 through 12 and insert the following:

''(g) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AND REGIONAL TECHNOLOGY TRANSFER CENTERS.—The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.''.

15. Section 3001(f): Strike this section entirely.

16. Section 3003(a)(2)(A): Strike out the phrase ''Public Law 95–452.''

17. Section 3003(c): Strike out the phrase ''(Report No. 103–7)'' and insert ''(House Document No. 103–7).''

18. Title IV—Effective Date: Strike this section entirely.

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

The amendment (No. 1788) was agreed to.

Mr. LEVIN. Mr. President, today, the Senate will be voting on the passage of the Federal Reports Elimination and Sunset Act of 1995 which will eliminate and modify over 200 outdated or unnecessary congressionally mandated reporting requirements and will also place a sunset on those reports with an annual, semiannual, or other regular periodic reporting requirement 4 years after the bill's enactment. The passage of this piece of legislation will help to improve the efficiency of agency operations by reducing staff time in and resources spent on producing unnecessary reports to Congress.

The Congressional Budget Office estimates that enactment of this legislation could result in savings of up to $5 to $10 million even without factoring in the savings from the sunset provision.

The legislation that we will be voting on today is similar to the bill Senator COHEN and I introduced last year, S. 2156. That bill contained nearly 300 recommendations for eliminations or modifications, and was the product of an extensive process that started with recommendations from executive and independent agencies. Senator COHEN and I wrote to all 89 executive and independent agencies and asked that they identify reports required by law that they believe are no longer necessary or useful and, therefore, that could be eliminated or modified. We stressed the importance of a clear and substantiated justification for each recommendation made.

S. 2156 was unanimously approved by the Governmental Affairs Committee on August 2, 1994. Senators GLENN, ROTH, STEVENS, and MCCAIN cosponsored the bill. Unfortunately, the Senate was unable to act on the bill before

the close of the 103d Congress. But I am more hopeful that both Houses of Congress will pass this very timely piece of legislation this year.

In March 1995, the Senate agreed to include the language for S. 2156 in the form of two separate amendments to S. 244, the Paperwork Reduction Act of 1995. The amendments, however, were struck in conference. But the chairman of the House Committee on Government Reform and Oversight—Representative WILLIAM CLINGER—proposed to combine and introduce the amendments as a free-standing piece of legislation in the House of Representatives. The Senate also decided to combine the amendments into our piece of legislation—S. 790—and placed directly onto the Senate Calendar for immediate consideration since the language had previously been approved as amendments.

S. 790 will eliminate 157 reports and modify 59 reports. The legislation also includes a modified version of Senator MCCAIN'S sunset provision which will eliminate those reports with an annual, semi-annual, or regular periodic reporting basis 4 years after the bill's enactment, while allowing Members of Congress to reauthorize those reports it deems necessary in carrying out effective Congressional oversight. the sunset provision does not apply to any reports required under the Inspector General Act of 1978 or the Chief Financial Officers Act of 1990.

The House of Representatives circulated its reports elimination and sunset companion bill to all of its appropriate committees in order to receive their input on the items slated for elimination and modification. Since that time, the House has requested several minor changes—the overwhelming majority of which are technical, having no effect whatsoever on those items being eliminated and modified. For example, a certain legal cite had to be corrected. In other cases, the House requested that certain reports selected for elimination be kept in order to conduct proper oversight functions. The House has also requested the elimination of five additional Department of Energy reports beyond those listed in S. 790. The Senate Committee on Energy and Natural Resources—both the majority and minority sides—concurred with the House on this matter. On the Senate side, one report slated for elimination was reinstated. As of this moment, the language for the Senate and House bills are identical.

Both the Senate and House of Representatives are ready to eliminate those reports that are never or are simply dropped into file cabinets and wastebaskets, never to be seen again. In this era, we must ensure that our scarce resources are utilized efficiently toward productive activities. I urge my colleagues to support this bipartisan piece of legislation.

The PRESIDING OFFICER. If there is no objection, the bill is deemed read the third time, and passed.

So the bill (S. 790), as amended, was passed, as follows:

S. 790

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Reports Elimination and Sunset Act of 1995''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
TITLE I—DEPARTMENTS
Subtitle A—Department of Agriculture
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Sec. 1012. Reports modified.
Subtitle B—Department of Commerce
Sec. 1021. Reports eliminated.
Sec. 1022. Reports modified.
Subtitle C—Department of Defense
Sec. 1031. Reports eliminated.
Subtitle D—Department of Education
Sec. 1041. Reports eliminated.
Sec. 1042. Reports modified.
Subtitle E—Department of Energy
Sec. 1051. Reports eliminated.
Sec. 1052. Reports modified.
Subtitle F—Department of Health and Human Services
Sec. 1061. Reports eliminated.
Sec. 1062. Reports modified.
Subtitle G—Department of Housing and Urban Development
Sec. 1071. Reports eliminated.
Sec. 1072. Reports modified.
Subtitle H—Department of the Interior
Sec. 1081. Reports eliminated.
Sec. 1082. Reports modified.
Subtitle I—Department of Justice
Sec. 1091. Reports eliminated.
Subtitle J—Department of Labor
Sec. 1101. Reports eliminated.
Sec. 1102. Reports modified.
Subtitle K—Department of State
Sec. 1111. Reports eliminated.
Subtitle L—Department of Transportation
Sec. 1121. Reports eliminated.
Sec. 1122. Reports modified.
Subtitle M—Department of the Treasury
Sec. 1131. Reports eliminated.
Sec. 1132. Reports modified.
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TITLE II—INDEPENDENT AGENCIES
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Subtitle B—Environmental Protection Agency
Sec. 2021. Reports eliminated.
Subtitle C—Equal Employment Opportunity Commission
Sec. 2031. Reports modified.
Subtitle D—Federal Aviation Administration
Sec. 2041. Reports eliminated.
Subtitle E—Federal Communications Commission
Sec. 2051. Reports eliminated.
Subtitle F—Federal Deposit Insurance Corporation
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Subtitle G—Federal Emergency Management Agency
Sec. 2071. Reports eliminated.
Subtitle H—Federal Retirement Thrift Investment Board
Sec. 2081. Reports eliminated.
Subtitle I—General Services Administration
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Subtitle J—Interstate Commerce Commission
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Subtitle K—Legal Services Corporation
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Subtitle L—National Aeronautics and Space Administration
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Subtitle M—National Council on Disability
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Subtitle N—National Science Foundation
Sec. 2141. Reports eliminated.
Subtitle O—National Transportation Safety Board
Sec. 2151. Reports modified.
Subtitle P—Neighborhood Reinvestment Corporation
Sec. 2161. Reports eliminated.
Subtitle Q—Nuclear Regulatory Commission
Sec. 2171. Reports modified.
Subtitle R—Office of Personnel Management
Sec. 2181. Reports eliminated.
Sec. 2182. Reports modified.
Subtitle S—Office of Thrift Supervision
Sec. 2191. Reports modified.
Subtitle T—Panama Canal Commission
Sec. 2201. Reports eliminated.
Subtitle U—Postal Service
Sec. 2211. Reports modified.
Subtitle V—Railroad Retirement Board
Sec. 2221. Reports modified.
Subtitle W—Thrift Depositor Protection Oversight Board
Sec. 2231. Reports modified.
Subtitle X—United States Information Agency
Sec. 2241. Reports eliminated.
TITLE III—REPORTS BY ALL DEPARTMENTS AND AGENCIES
Sec. 3001. Reports eliminated.
Sec. 3002. Reports modified.
Sec. 3003. Termination of reporting requirements.

TITLE I—DEPARTMENTS

Subtitle A—Department of Agriculture

SEC. 1011. REPORTS ELIMINATED.

(a) REPORT ON MONITORING AND EVALUATION.—Section 1246 of the Food Security Act of 1985 (16 U.S.C. 3846) is repealed.

(b) REPORT ON RETURN ON ASSETS.—Section 2512 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421b) is amended—

(1) in subsection (a), by striking ''(a) IMPROVING'' and all that follows through ''FORECASTS.—''; and

(2) by striking subsection (b).

(c) REPORT ON FARM VALUE OF AGRICULTURAL PRODUCTS.—Section 2513 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421c) is repealed.

(d) REPORT ON ORIGIN OF EXPORTS OF PEANUTS.—Section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958) is repealed and sections 1559 and 1560 of such Act are redesignated as sections 1558 and 1559, respectively.

(e) REPORT ON REPORTING OF IMPORTING FEES.—Section 407 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736a) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c) through (h) as subsections (b) through (g), respectively.

(f) REPORT ON AGRICULTURAL INFORMATION EXCHANGE WITH IRELAND.—Section 1420 of the Food Security Act of 1985 (Public Law 99–198; 99 Stat. 1551) is amended—

(1) in subsection (a), by striking ''(a)''; and

(2) by striking subsection (b).

(g) REPORT ON POTATO INSPECTION.—Section 1704 of the Food Security Act of 1985 (Public Law 99–198; 7 U.S.C. 499n note) is amended by striking the second sentence.

(h) REPORT ON TRANSPORTATION OF FERTILIZER AND AGRICULTURAL CHEMICALS.—Section 2517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 104 Stat. 4077) is repealed and sections 2518 and 2519 of such Act are redesignated as sections 2517 and 2518, respectively.

(i) REPORT ON UNIFORM END-USE VALUE TESTS.—Section 307 of the Futures Trading Act of 1986 (Public Law 99–641; 7 U.S.C. 76 note) is amended by striking subsection (c).

(j) REPORT ON PROJECT AREAS WITH HIGH FOOD STAMP PAYMENT ERROR RATES.—Section 16(i) of the Food Stamp Act of 1977 (7 U.S.C. 2025(i)) is amended by striking paragraph (3).

(k) REPORT ON EFFECT OF EFAP DISPLACEMENT ON COMMERCIAL SALES.—Section 203C(a) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by striking the last sentence.

(l) REPORT ON WIC EXPENDITURES AND PARTICIPATION LEVELS.—Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)) is amended—

(1) by striking paragraphs (8) and (9); and

(2) by redesignating paragraphs (10) and (11) as paragraphs (8) and (9), respectively.

(m) REPORT ON WIC MIGRANT SERVICES.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended by striking subsection (j).

(n) REPORT ON DEMONSTRATIONS INVOLVING INNOVATIVE HOUSING UNITS.—Section 506(b) of the Housing Act of 1949 (42 U.S.C. 1476(b)) is amended by striking the last sentence.

(o) REPORT ON LAND EXCHANGES IN COLUMBIA RIVER GORGE NATIONAL SCENIC AREA.—Section 9(d)(3) of the Columbia River Gorge National Scenic Area Act (16 U.S.C. 544g(d)(3)) is amended by striking the second sentence.

(p) REPORT ON INCOME AND EXPENDITURES OF CERTAIN LAND ACQUISITIONS.—Section 2(e) of Public Law 96–586 (94 Stat. 3382) is amended by striking the second sentence.

(q) REPORT ON SPECIAL AREA DESIGNATIONS.—Section 1506 of the Agriculture and Food Act of 1981 (16 U.S.C. 3415) is repealed and sections 1507, 1508, 1509, and 1511 of such Act are redesignated as sections 1506, 1507, 1508, and 1509, respectively.

(r) REPORT ON EVALUATION OF SPECIAL AREA DESIGNATIONS.—Section 1510 of the Agriculture and Food Act of 1981 (16 U.S.C. 3419) is repealed.

(s) REPORT ON AGRICULTURAL PRACTICES AND WATER RESOURCES DATABASE DEVELOPMENT.—Section 1485 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5505) is amended—

(1) in subsection (a), by striking ''(a) REPOSITORY.—''; and

(2) by striking subsection (b).

(t) REPORT ON PLANT GENOME MAPPING.—Section 1671 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5924) is amended—

(1) by striking subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

(u) REPORT ON APPRAISAL OF PROPOSED BUDGET FOR FOOD AND AGRICULTURAL SCIENCES.—Section 1408(g) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123(g)) is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraph (3) as paragraph (2).

(v) REPORT ON ECONOMIC IMPACT OF ANIMAL DAMAGE ON AQUACULTURE INDUSTRY.—Section 1475(e) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3322(e)) is amended—

(1) in paragraph (1), by striking ''(1)''; and

(2) by striking paragraph (2).

(w) REPORT ON AWARDS MADE BY THE NATIONAL RESEARCH INITIATIVE AND SPECIAL GRANTS.—Section 2 of the Act of August 4, 1965 (7 U.S.C. 450i), is amended—

(1) by striking subsection (l); and

(2) by redesignating subsection (m) as subsection (l).

(x) REPORT ON PAYMENTS MADE UNDER RESEARCH FACILITIES ACT.—Section 8 of the Research Facilities Act (7 U.S.C. 390i) is repealed.

(y) REPORT ON FINANCIAL AUDIT REVIEWS OF STATES WITH HIGH FOOD STAMP PARTICIPATION.—The first sentence of section 11(l) of the Food Stamp Act of 1977 (7 U.S.C. 2020(l)) is amended by striking '', and shall, upon completion of the audit, provide a report to Congress of its findings and recommendations within one hundred and eighty days''.

(z) REPORT ON RURAL TELEPHONE BANK.—Section 408(b)(3) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(3)) is amended by striking out subparagraph (I) and redesignating subparagraph (J) as subparagraph (I).

SEC. 1012. REPORTS MODIFIED.

(a) REPORT ON ANIMAL WELFARE ENFORCEMENT.—The first sentence of section 25 of the Animal Welfare Act (7 U.S.C. 2155) is amended—

(1) by striking ''and'' at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(5) the information and recommendations described in section 11 of the Horse Protection Act of 1970 (15 U.S.C. 1830).''.

(b) REPORT ON HORSE PROTECTION ENFORCEMENT.—Section 11 of the Horse Protection Act of 1970 (15 U.S.C. 1830) is amended by striking ''On or before the expiration of thirty calendar months following the date of enactment of this Act, and every twelve calendar months thereafter, the Secretary shall submit to the Congress a report upon'' and inserting the following: ''As part of the report submitted by the Secretary under section 25 of the Animal Welfare Act (7 U.S.C. 2155), the Secretary shall include information on''.

(c) REPORT ON AGRICULTURAL QUARANTINE INSPECTION FUND.—The Secretary of Agriculture shall not be required to submit a report to the appropriate committees of Congress on the status of the Agricultural Quarantine Inspection fund more frequently than annually.

(d) REPORT ON ESTIMATED EXPENDITURES UNDER FOOD STAMP PROGRAM.—The third sentence of section 18(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2027(a)(1)) is amended—

(1) by striking ''by the fifteenth day of each month'' and inserting ''for each quarter or other appropriate period''; and

(2) by striking ''the second preceding month's expenditure'' and inserting ''the expenditure for the quarter or other period''.

(e) REPORT ON PRIORITIES FOR RESEARCH, EXTENSION, AND TEACHING.—Section 1407(f)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3122(f)(1)) is amended—

(1) in the paragraph heading, by striking ''ANNUAL REPORT'' and inserting ''REPORT''; and

(2) by striking ''Not later than June 30 of each year'' and inserting ''At such times as the Joint Council determines appropriate''.

(f) 5-YEAR PLAN FOR FOOD AND AGRICULTURAL SCIENCES.—Section 1407(f)(2) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3122(f)(2)) is amended by striking the second sentence.

(g) REPORT ON EXAMINATION OF FEDERALLY SUPPORTED AGRICULTURAL RESEARCH AND EXTENSION PROGRAMS.—Section 1408(g)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123(g)(1)) is amended by inserting ''may provide'' before ''a written report''.

(h) REPORT ON EFFECTS OF FOREIGN OWNERSHIP OF AGRICULTURAL LAND.—Section 5(b) of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504(b)) is amended to read as follows:

''(b) An analysis and determination shall be made, and a report on the Secretary's findings and conclusions regarding such analysis and determination under subsection (a) shall be transmitted within 90 days after the end of each of the following periods:

''(1) The period beginning on the date of the enactment of the Federal Reports Elimination and Sunset Act of 1995 and ending on December 31, 1995.

''(2) Each 10-year period thereafter.''.

Subtitle B—Department of Commerce

SEC. 1021. REPORTS ELIMINATED.

(a) REPORT ON VOTING REGISTRATION.—Section 207 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–5) is repealed.

(b) REPORT ON ESTIMATE OF SPECIAL AGRICULTURAL WORKERS.—Section 210A(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1161(b)(3)) is repealed.

(c) REPORT ON LONG RANGE PLAN FOR PUBLIC BROADCASTING.—Section 393A(b) of the Communications Act of 1934 (47 U.S.C. 393a(b)) is repealed.

(d) REPORT ON STATUS, ACTIVITIES, AND EFFECTIVENESS OF UNITED STATES COMMERCIAL CENTERS IN ASIA, LATIN AMERICA, AND AFRICA AND PROGRAM RECOMMENDATIONS.—Section 401(j) of the Jobs Through Exports Act of 1992 (15 U.S.C. 4723a(j)) is repealed.

(e) REPORT ON KUWAIT RECONSTRUCTION CONTRACTS.—Section 606(f) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 is repealed.

(f) REPORT ON UNITED STATES-CANADA FREE-TRADE AGREEMENT.—Section 409(a)(3)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended to read as follows:

''(3) The United States members of the working group established under article 1907 of the Agreement shall consult regularly with the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and advisory committees established under section 135 of the Trade Act of 1974 regarding—

''(A) the issues being considered by the working group; and

''(B) as appropriate, the objectives and strategy of the United States in the negotiations.''.

(g) REPORT ON ESTABLISHMENT OF AMERICAN BUSINESS CENTERS AND ON ACTIVITIES OF THE INDEPENDENT STATES BUSINESS AND AGRICULTURE ADVISORY COUNCIL.—Section 305 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5825) is repealed.

(h) REPORT ON FISHERMAN'S CONTINGENCY FUND REPORT.—Section 406 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1846) is repealed.

(i) REPORT ON USER FEES ON SHIPPERS.—Section 208 of the Water Resources Development Act of 1986 (33 U.S.C. 2236) is amended by—

(1) striking subsection (b); and

(2) redesignating subsections (c), (d), (e), and (f) as subsections (b), (c), (d), and (e), respectively.

SEC. 1022. REPORTS MODIFIED.

(a) REPORT ON FEDERAL TRADE PROMOTION STRATEGIC PLAN.—Section 2312(f) of the Export Enhancement Act of 1988 (15 U.S.C. 4727(f) is amended to read as follows:

''(f) REPORT TO THE CONGRESS.—The chairperson of the TPCC shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs of the House of Representatives, not later than September 30, 1995, and annually thereafter, a report describing—

''(1) the strategic plan developed by the TPCC pursuant to subsection (c), the implementation of such plan, and any revisions thereto; and

''(2) the implementation of sections 303 and 304 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5823 and 5824) concerning funding for export promotion activities and the interagency working groups on energy of the TPCC.''.

(b) REPORT ON EXPORT POLICY.—Section 2314(b)(1) of the Export Enhancement Act of 1988 (15 U.S.C. 4729(b)(1)) is amended—

(1) in subparagraph (E) by striking out ''and'' after the semicolon;

(2) in subparagraph (F) by striking out the period and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new subparagraphs:

''(G) the status, activities, and effectiveness of the United States commercial centers established under section 401 of the Jobs Through Exports Act of 1992 (15 U.S.C. 4723a);

''(H) the implementation of sections 301 and 302 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5821 and 5822) concerning American Business Centers and the Independent States Business and Agriculture Advisory Council;

''(I) the programs of other industrialized nations to assist their companies with their efforts to transact business in the independent states of the former Soviet Union; and

''(J) the trading practices of other Organization for Economic Cooperation and Development nations, as well as the pricing practices of transitional economies in the independent states, that may disadvantage United States companies.''.

Subtitle C—Department of Defense

SEC. 1031. REPORTS ELIMINATED.

(a) REPORT ON SEMATECH.—Section 274 of The National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 101 Stat. 1071) is amended—

(1) in section 6 by striking out the item relating to section 274; and

(2) by striking out section 274.

(b) REPORT ON REVIEW OF DOCUMENTATION IN SUPPORT OF WAIVERS FOR PEOPLE ENGAGED IN ACQUISITION ACTIVITIES.—

(1) IN GENERAL.—Section 1208 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 1701 note) is repealed.

(2) CLERICAL AMENDMENT TO TABLE OF CONTENTS.—Section 2(b) of such Act is amended by striking out the item relating to section 1208.

Subtitle D—Department of Education

SEC. 1041. REPORTS ELIMINATED.

(a) REPORT ON PERSONNEL REDUCTION AND ANNUAL LIMITATIONS.—Subsection (a) of section 403 of the Department of Education Organization Act (20 U.S.C. 3463(a)) is amended in paragraph (2), by striking all beginning with ''and shall,'' through the end thereof and inserting a period.

(b) REPORT ON SUPPORTED EMPLOYMENT ACTIVITIES.—Subsection (c) of section 311 of the Rehabilitation Act of 1973 (29 U.S.C. 777a(c)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(c) REPORT ON THE CLIENT ASSISTANCE PROGRAM.—Subsection (g) of section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732(g)) is amended—

(1) by striking paragraphs (4) and (5); and

(2) in paragraph (6), by striking ''such report or for any other'' and inserting ''any''.

(d) REPORT ON THE SUMMARY OF LOCAL EVALUATIONS OF COMMUNITY EDUCATION EMPLOYMENT CENTERS.—Section 370 of the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2396h) is amended—

(1) in the section heading, by striking ''**AND REPORT**'';

(2) in subsection (a), by striking ''(a) LOCAL EVALUATION.—''; and

(3) by striking subsection (b).

(e) REPORT ON THE ADMINISTRATION OF THE VOCATIONAL EDUCATION ACT OF 1917.—Section 18 of the Vocational Education Act of 1917 (20 U.S.C. 28) is repealed.

(f) REPORT BY THE INTERDEPARTMENTAL TASK FORCE ON COORDINATING VOCATIONAL EDUCATION AND RELATED PROGRAMS.—Subsection (d) of section 4 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (20 U.S.C. 2303(d)) is repealed.

(g) REPORT ON THE EVALUATION OF THE GATEWAY GRANTS PROGRAM.—Subparagraph (B) of section 322(a)(3) of the Adult Education Act (20 U.S.C. 1203a(a)(3)(B)) is amended by striking ''and report the results of such evaluation to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate''.

(h) REPORT ON THE BILINGUAL VOCATIONAL TRAINING PROGRAM.—Paragraph (3) of section 441(e) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2441(e)(3)) is amended by striking the last sentence thereof.

(i) REPORT ON ANNUAL UPWARD MOBILITY PROGRAM ACTIVITY.—Section 2(a)(6)(A) of the Act of June 20, 1936 (20 U.S.C. 107a(a)(6)(A)), is amended by striking ''and annually submit to the appropriate committees of Congress a report based on such evaluations,''.

SEC. 1042. REPORTS MODIFIED.

(a) REPORT ON THE CONDITION OF BILINGUAL EDUCATION IN THE NATION.—Section 6213 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 3303 note) is amended—

(1) in the section heading, by striking ''**report on**'' and inserting ''**information regarding**''; and

(2) by striking the matter preceding paragraph (1) and inserting ''The Secretary shall collect data for program management and accountability purposes regarding—''.

(b) REPORT TO CONGRESS ON THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT.—Subsection (b) of section 724 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11434(b)) is amended by striking paragraph (4) and the first paragraph (5) and inserting the following:

''(4) The Secretary shall prepare and submit a report to the appropriate committees of the Congress at the end of every other fiscal year. Such report shall—

''(A) evaluate the programs and activities assisted under this part; and

''(B) contain the information received from the States pursuant to section 722(d)(3).''.

(c) REPORT TO GIVE NOTICE TO CONGRESS.—Subsection (d) of section 482 of the Higher Education Act of 1965 (20 U.S.C. 1089(d)) is amended—

(1) in the first sentence by striking ''the items specified in the calendar have been completed and provide all relevant forms, rules, and instructions with such notice'' and inserting ''a deadline included in the calendar described in subsection (a) is not met''; and

(2) by striking the second sentence.

(d) ANNUAL REPORT ON ACTIVITIES UNDER THE REHABILITATION ACT OF 1973.—Section 13 of the Rehabilitation Act of 1973 (29 U.S.C. 712) is amended by striking ''twenty'' and inserting ''eighty''.

(e) REPORT TO THE CONGRESS REGARDING REHABILITATION TRAINING PROGRAMS.—The second sentence of section 302(c) of the Rehabilitation Act of 1973 (29 U.S.C. 774(c)) is amended by striking ''simultaneously with the budget submission for the succeeding fiscal year for the Rehabilitation Services Administration'' and inserting ''by September 30 of each fiscal year''.

(f) ANNUAL AUDIT OF STUDENT LOAN INSURANCE FUND.—Section 432(b) of the Higher Education Act of 1965 (20 U.S.C. 1082(b)) is amended to read as follows:

''(b) FINANCIAL OPERATIONS RESPONSIBILITIES.—The Secretary shall, with respect to the financial operations arising by reason of this part prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31, United States Code. The transactions of the Secretary, including the settlement of insurance claims and of claims for payments pursuant to section 1078 of this title, and transactions related thereto and vouchers approved by the Secretary in connection with such transactions, shall be final and conclusive upon all accounting and other officers of the Government.''.

Subtitle E—Department of Energy

SEC. 1051. REPORTS ELIMINATED.

(a) REPORTS ON PERFORMANCE AND DISPOSAL OF ALTERNATIVE FUELED HEAVY DUTY VEHICLES.—Paragraphs (3) and (4) of section 400AA(b) of the Energy Policy and Conservation Act (42 U.S.C. 6374(b)(3), 6374(b)(4)) are repealed.

(b) REPORT ON WIND ENERGY SYSTEMS.—Section 9(a)(3) of the Wind Energy Systems Act of 1980 (42 U.S.C. 9208(a)(3)) is repealed.

(c) REPORT ON COMPREHENSIVE PROGRAM MANAGEMENT PLAN FOR OCEAN THERMAL ENERGY CONVERSION.—Section 3(d) of the Ocean Thermal Energy Conversion Research, Development, and Demonstration Act (42 U.S.C. 9002(d)) is repealed.

(d) REPORTS ON SUBSEABED DISPOSAL OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE.—Subsections (a) and (b)(5) of section 224 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10204(a), 10204(b)(5)) are repealed.

(e) REPORT ON FUEL USE ACT.—Sections 711(c)(2) and 806 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8421(c)(2), 8482) are repealed.

(f) REPORT ON TEST PROGRAM OF STORAGE OF REFINED PETROLEUM PRODUCTS WITHIN THE STRATEGIC PETROLEUM RESERVE.—Section 160(g)(7) of the Energy Policy and Conservation Act (42 U.S.C. 6240(g)(7)) is repealed.

(g) REPORT ON NAVAL PETROLEUM AND OIL SHALE RESERVES PRODUCTION.—Section 7434 of title 10, United States Code, is repealed.

(h) REPORT ON EFFECTS OF PRESIDENTIAL MESSAGE ESTABLISHING A NUCLEAR NONPROLIFERATION POLICY ON NUCLEAR RESEARCH AND DEVELOPMENT COOPERATIVE AGREEMENTS.—Section 203 of the Department of Energy Act of 1978—Civilian Applications (22 U.S.C. 2429 note) is repealed.

(i) REPORT ON WRITTEN AGREEMENTS REGARDING NUCLEAR WASTE REPOSITORY

SITES.—Section 117(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10137(c)) is amended by striking the following: ''If such written agreement is not completed prior to the expiration of such period, the Secretary shall report to the Congress in writing not later than 30 days after the expiration of such period on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress.''.

(j) QUARTERLY REPORT ON STRATEGIC PETROLEUM RESERVES.—Section 165(b) of the Energy Policy and Conservation Act (42 U.S.C. 6245(b)) is repealed.

(k) REPORT ON THE DEPARTMENT OF ENERGY.—The Federal Energy Administration Act of 1974 (15 U.S.C. 790d), is amended by striking out section 55.

(l) REPORT ON CURRENT STATUS OF COMPREHENSIVE MANAGEMENT FOR NUCLEAR SAFETY RESEARCH, DEVELOPMENT, AND DEMONSTRATION.—Section 8(c) of the Nuclear Safety Research, Development, and Demonstration Act of 1980 (42 U.S.C. 9707(c)) is repealed.

(m) REPORT ON ACTIVITIES OF THE GEOTHERMAL ENERGY COORDINATION AND MANAGEMENT PROJECT.—Section 302(a) of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1162(a)) is repealed.

(n) REPORT ON ACTIVITIES UNDER THE MAGNETIC FUSION ENERGY ENGINEERING ACT OF 1980.—Section 12 of the Magnetic Fusion Energy Engineering Act of 1980 (42 U.S.C. 9311) is repealed.

(o) REPORT ON ACTIVITIES UNDER THE ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1976.—Section 14 of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2513) is repealed.

(p) REPORT ON ACTIVITIES UNDER THE METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1980.—Section 9 of the Methane Transportation Research, Development, and Demonstration Act of 1980 (15 U.S.C. 3808) is repealed.

SEC. 1052. REPORTS MODIFIED.

(a) REPORTS ON PROCESS-ORIENTED INDUSTRIAL ENERGY EFFICIENCY AND INDUSTRIAL INSULATION AUDIT GUIDELINES.—

(1) Section 132(d) of the Energy Policy Act of 1992 (42 U.S.C. 6349(d)) is amended—

(A) in the language preceding paragraph (1), by striking ''Not later than 2 years after October 24, 1992, and annually thereafter'' and inserting ''Not later than October 24, 1995, and biennially thereafter'';

(B) in paragraph (4), by striking ''and'' at the end;

(C) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following new paragraph:

''(6) the information required under section 133(c).''.

(2) Section 133(c) of the Energy Policy Act of 1992 (42 U.S.C. 6350(c)) is amended—

(A) by striking, ''October 24, 1992'' and inserting ''October 24, 1995''; and

(B) by inserting ''as part of the report required under section 132(d),'' after ''and biennially thereafter,''.

(b) REPORT ON AGENCY REQUESTS FOR WAIVER FROM FEDERAL ENERGY MANAGEMENT REQUIREMENTS.—Section 543(b)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8253(b)(2)) is amended—

(1) by inserting '', as part of the report required under section 548(b),'' after ''the Secretary shall''; and

(2) by striking ''promptly''.

(c) REPORT ON THE PROGRESS, STATUS, ACTIVITIES, AND RESULTS OF PROGRAMS REGARDING THE PROCUREMENT AND IDENTIFICATION OF ENERGY EFFICIENT PRODUCTS.—Section 161(d) of the Energy Policy Act of 1992 (42 U.S.C. 8262g(d)) is amended by striking ''of each year thereafter,''; and inserting ''thereafter as part of the report required under section 548(b) of the National Energy Conservation Policy Act,''.

(d) REPORT ON THE FEDERAL GOVERNMENT ENERGY MANAGEMENT PROGRAM.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking ''and'' after the semicolon;

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following new subparagraph:

''(B) the information required under section 543(b)(2); and'';

(2) in paragraph (2), by striking ''and'' after the semicolon;

(3) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following new paragraph:

''(4) the information required under section 161(d) of the Energy Policy Act of 1992.''.

(e) REPORT ON ALTERNATIVE FUEL USE BY SELECTED FEDERAL VEHICLES.—Section 400AA(b)(1)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6374(b)(1)(B)) is amended by striking ''and annually thereafter''.

(f) REPORT ON THE OPERATION OF STATE ENERGY CONSERVATION PLANS.—Section 365(c) of the Energy Policy and Conservation Act (42 U.S.C. 6325(c)) is amended by striking ''report annually'' and inserting '', as part of the report required under section 657 of the Department of Energy Organization Act, report''.

(g) REPORT ON THE DEPARTMENT OF ENERGY.—Section 657 of the Department of Energy Organization Act (42 U.S.C. 7267) is amended by inserting after ''section 15 of the Federal Energy Administration Act of 1974,'' the following: ''section 365(c) of the Energy Policy and Conservation Act, section 304(c) of the Nuclear Waste Policy Act of 1982,''.

(h) REPORT ON COST-EFFECTIVE WAYS TO INCREASE HYDROPOWER PRODUCTION AT FEDERAL WATER FACILITIES.—Section 2404 of the Energy Policy Act of 1992 (16 U.S.C. 797 note) is amended—

(1) in subsection (a), by striking ''The Secretary, in consultation with the Secretary of the Interior and the Secretary of the Army,'' and inserting ''The Secretary of the Interior and the Secretary of the Army, in consultation with the Secretary,''; and

(2) in subsection (b), by striking ''the Secretary'' and inserting ''the Secretary of the Interior, or the Secretary of the Army,''.

(i) REPORT ON PROGRESS MEETING FUSION ENERGY PROGRAM OBJECTIVES.—Section 2114(c)(5) of the Energy Policy Act of 1992 (42 U.S.C. 13474(c)(5)) is amended by striking out the first sentence and inserting in lieu thereof ''The President shall include in the budget submitted to the Congress each year under section 1105 of title 31, United States Code, a report prepared by the Secretary describing the progress made in meeting the program objectives, milestones, and schedules established in the management plan.''.

(j) REPORT ON HIGH-PERFORMANCE COMPUTING ACTIVITIES.—Section 203(d) of the High-Performance Computing Act of 1991 (15 U.S.C. 5523(d)) is amended to read as follows:

''(d) REPORTS.—Not later than 1 year after the date of enactment of this subsection, and thereafter as part of the report required under section 101(a)(3)(A), the Secretary of Energy shall report on activities taken to carry out this Act.''.

(k) REPORT ON NATIONAL HIGH-PERFORMANCE COMPUTING PROGRAM.—Section 101(a)(4) of the High-Performance Computing Act of 1991 (15 U.S.C. 5511(a)(4)) is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following new subparagraph:

''(E) include the report of the Secretary of Energy required by section 203(d); and''.

(l) REPORT ON NUCLEAR WASTE DISPOSAL PROGRAM.—Section 304(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10224(d)) is amended to read as follows:

''(d) AUDIT BY GAO.—If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the General Accounting Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.''.

Subtitle F—Department of Health and Human Services

SEC. 1061. REPORTS ELIMINATED.

(a) REPORT ON THE EFFECTS OF TOXIC SUBSTANCES.—Subsection (c) of section 27 of the Toxic Substance Control Act (15 U.S.C. 2626(c)) is repealed.

(b) REPORT ON COMPLIANCE WITH THE CONSUMER-PATIENT RADIATION HEALTH AND SAFETY ACT.—Subsection (d) of section 981 of the Consumer-Patient Radiation Health and Safety Act of 1981 (42 U.S.C. 10006(d)) is repealed.

(c) REPORT ON EVALUATION OF TITLE VIII PROGRAMS.—Section 859 of the Public Health Service Act (42 U.S.C. 298b–6) is repealed.

(d) REPORT ON MODEL SYSTEM FOR PAYMENT FOR OUTPATIENT HOSPITAL SERVICES.—Paragraph (6) of section 1135(d) of the Social Security Act (42 U.S.C. 1320b–5(d)(6)) is repealed.

(e) REPORT ON MEDICARE TREATMENT OF UNCOMPENSATED CARE.—Paragraph (2) of section 603(a) of the Social Security Amendments of 1983 (42 U.S.C. 1395ww note) is repealed.

(f) REPORT ON PROGRAM TO ASSIST HOMELESS INDIVIDUALS.—Subsection (d) of section 9117 of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 1383 note) is repealed.

SEC. 1062. REPORTS MODIFIED.

(a) REPORT OF THE SURGEON GENERAL.—Section 239 of the Public Health Service Act (42 U.S.C. 238h) is amended to read as follows:

''BIANNUAL REPORT

''SEC. 239. The Surgeon General shall transmit to the Secretary, for submission to the Congress, on January 1, 1995, and on January 1, every 2 years thereafter, a full report of the administration of the functions of the Service under this Act, including a detailed statement of receipts and disbursements.''.

(b) REPORT ON HEALTH SERVICE RESEARCH ACTIVITIES.—Subsection (b) of section 494A of the Public Health Service Act (42 U.S.C. 289c–1(b)) is amended by striking ''September 30, 1993, and annually thereafter'' and inserting ''December 30, 1993, and each December 30 thereafter''.

(c) REPORT ON FAMILY PLANNING.—Section 1009(a) of the Public Health Service Act (42

U.S.C. 300a–7(a)) is amended by striking ''each fiscal year'' and inserting ''fiscal year 1995, and each second fiscal year thereafter,''.

(d) REPORT ON THE STATUS OF HEALTH INFORMATION AND HEALTH PROMOTION.—Section 1705(a) of the Public Health Service Act (42 U.S.C. 300u–4) is amended in the first sentence by striking out ''annually'' and inserting in lieu thereof ''biannually''.

Subtitle G—Department of Housing and Urban Development

SEC. 1071. REPORTS ELIMINATED.

(a) REPORTS ON PUBLIC HOUSING HOMEOWNERSHIP AND MANAGEMENT OPPORTUNITIES.—Section 21(f) of the United States Housing Act of 1937 (42 U.S.C. 1437s(f)) is repealed.

(b) INTERIM REPORT ON PUBLIC HOUSING MIXED INCOME NEW COMMUNITIES STRATEGY DEMONSTRATION.—Section 522(k)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437f note) is repealed.

(c) BIENNIAL REPORT ON INTERSTATE LAND SALES REGISTRATION PROGRAM.—Section 1421 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1719a) is repealed.

(d) QUARTERLY REPORT ON ACTIVITIES UNDER THE FAIR HOUSING INITIATIVES PROGRAM.—Section 561(e)(2) of the Housing and Community Development Act of 1987 (42 U.S.C. 3616a(e)(2)) is repealed.

(e) COLLECTION OF AND ANNUAL REPORT ON RACIAL AND ETHNIC DATA.—Section 562 of the Housing and Community Development Act of 1987 (42 U.S.C. 3608a) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by striking ''the Secretary of Housing and Urban Development and''; and

(ii) by striking ''each'', the first place it appears; and

(B) in the second sentence, by striking ''involved''; and

(2) in subsection (b)—

(A) by striking ''The Secretary of Housing and Urban Development and the'' and inserting ''The''; and

(B) by striking ''each''.

SEC. 1072. REPORTS MODIFIED.

(a) REPORT ON HOMEOWNERSHIP OF MULTIFAMILY UNITS PROGRAM.—Section 431 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12880) is amended—

(1) in the section heading, by striking ''**ANNUAL**''; and

(2) by striking ''The Secretary shall annually'' and inserting ''The Secretary shall no later than December 31, 1995,''.

(b) TRIENNIAL AUDIT OF TRANSACTIONS OF NATIONAL HOMEOWNERSHIP FOUNDATION.—Section 107(g)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701y(g)(1)) is amended by striking the last sentence.

(c) REPORT ON LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.—Section 2605(h) of the Low-Income Home Energy Assistance Act of 1981 (Public Law 97–35; 42 U.S.C. 8624(h)), is amended by striking out ''(but not less frequently than every three years),''.

Subtitle H—Department of the Interior

SEC. 1081. REPORTS ELIMINATED.

(a) REPORT ON AUDITS IN FEDERAL ROYALTY MANAGEMENT SYSTEM.—Section 17(j) of the Mineral Leasing Act (30 U.S.C. 226(j)) is amended by striking the last sentence.

(b) REPORT ON DOMESTIC MINING, MINERALS, AND MINERAL RECLAMATION INDUSTRIES.—Section 2 of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) is amended by striking the last sentence.

(c) REPORT ON PHASE I OF THE HIGH PLAINS STATES GROUNDWATER DEMONSTRATION PROJECT.—Section 3(d) of the High Plains States Groundwater Demonstration Program Act of 1983 (43 U.S.C. 390g–1(d)) is repealed.

(d) REPORT ON RECLAMATION REFORM ACT COMPLIANCE.—Section 224(g) of the Reclamation Reform Act of 1982 (43 U.S.C. 390ww(g)) is amended by striking the last 2 sentences.

(e) REPORT ON GEOLOGICAL SURVEYS CONDUCTED OUTSIDE THE DOMAIN OF THE UNITED STATES.—Section 2 of Public Law 87–626 (43 U.S.C. 31(c)) is repealed.

(f) REPORT ON RECREATION USE FEES.—Section 4(h) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(h)) is repealed.

(g) REPORT ON FEDERAL SURPLUS REAL PROPERTY PUBLIC BENEFIT DISCOUNT PROGRAM FOR PARKS AND RECREATION.—Section 203(o)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(o)(1)) is amended by striking ''subsection (k) of this section and''.

SEC. 1082. REPORTS MODIFIED.

(a) REPORT ON LEVELS OF THE OGALLALA AQUIFER.—Title III of the Water Resources Research Act of 1984 (42 U.S.C. 10301 note) is amended—

(1) in section 306, by striking ''annually'' and inserting ''biennially''; and

(2) in section 308, by striking ''intervals of one year'' and inserting ''intervals of 2 years''.

(b) REPORT ON EFFECTS OF OUTER CONTINENTAL SHELF LEASING ACTIVITIES ON HUMAN, MARINE, AND COASTAL ENVIRONMENTS.—Section 20(e) of the Outer Continental Shelf Lands Act (43 U.S.C. 1346(e)) is amended by striking ''each fiscal year'' and inserting ''every 3 fiscal years''.

Subtitle I—Department of Justice

SEC. 1091. REPORTS ELIMINATED.

(a) REPORT ON DRUG INTERDICTION TASK FORCE.—Section 3301(a)(1)(C) of the National Drug Interdiction Act of 1986 (21 U.S.C. 801 note; Public Law 99–570; 100 Stat. 3207–98) is repealed.

(b) REPORT ON EQUAL ACCESS TO JUSTICE.—Section 2412(d)(5) of title 28, United States Code, is repealed.

(c) REPORT ON FEDERAL OFFENDER CHARACTERISTICS.—Section 3624(f)(6) of title 18, United States Code, is repealed.

(d) REPORT ON COSTS OF DEATH PENALTY.—The Anti-Drug Abuse Act of 1988 (Public Law 100–690; 102 Stat. 4395; 21 U.S.C. 848 note) is amended by striking out section 7002.

(e) MINERAL LANDS LEASING ACT.—Section 8B of the Mineral Lands Leasing Act (30 U.S.C. 208–2) is repealed.

(f) SMALL BUSINESS ACT.—Subsection (c) of section 10 of the Small Business Act (15 U.S.C. 639(c)) is repealed.

(g) ENERGY POLICY AND CONSERVATION ACT.—Section 252(i) of the Energy Policy Conservation Act (42 U.S.C. 6272(i)) is amended by striking '', at least once every 6 months, a report'' and inserting '', at such intervals as are appropriate based on significant developments and issues, reports''.

(h) REPORT ON FORFEITURE FUND.—Section 524(c) of title 28, United States Code, is amended—

(1) by striking out paragraph (7); and

(2) by redesignating paragraphs (8) through (12) as paragraphs (7) through (11), respectively.

Subtitle J—Department of Labor

SEC. 1101. REPORTS ELIMINATED.

Section 408(d) of the Veterans Education and Employment Amendments of 1989 (38 U.S.C. 4100 note) is repealed.

SEC. 1102. REPORTS MODIFIED.

(a) REPORT ON THE ACTIVITIES CONDUCTED UNDER THE FAIR LABOR STANDARDS ACT OF 1938.—Section 4(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 204(d)(1)) is amended—

(1) by striking ''annually'' and inserting ''biannually''; and

(2) by striking ''preceding year'' and inserting ''preceding two years''.

(b) ANNUAL REPORT OF THE OFFICE OF WORKERS' COMPENSATION.—

(1) REPORT ON THE ADMINISTRATION OF THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.—Section 42 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 942) is amended—

(A) by striking ''beginning of each'' and all that follows through ''Amendments of 1984'' and inserting ''end of each fiscal year''; and

(B) by adding the following new sentence at the end: ''Such report shall include the annual reports required under section 426(b) of the Black Lung Benefits Act (30 U.S.C. 936(b)) and section 8194 of title 5, United States Code, and shall be identified as the Annual Report of the Office of Workers' Compensation Programs.''.

(2) REPORT ON THE ADMINISTRATION OF THE BLACK LUNG BENEFITS PROGRAM.—Section 426(b) of the ''Black Lung Benefits Act (30 U.S.C. 936(b)) is amended—

(A) by striking ''Within'' and all that follows through ''Congress the'' and inserting ''At the end of each fiscal year, the''; and

(B) by adding the following new sentence at the end: ''Each such report shall be prepared and submitted to Congress in accordance with the requirement with respect to submission under section 42 of the Longshore Harbor Workers' Compensation Act (33 U.S.C. 942).''.

(3) REPORT ON THE ADMINISTRATION OF THE FEDERAL EMPLOYEES' COMPENSATION ACT.—(A) Subchapter I of chapter 81 of title 5, United States Code, is amended by adding at the end thereof the following new section:

''§ 8152. Annual report

''The Secretary of Labor shall, at the end of each fiscal year, prepare a report with respect to the administration of this chapter. Such report shall be submitted to Congress in accordance with the requirement with respect to submission under section 42 of the Longshore Harbor Workers' Compensation Act (33 U.S.C. 942).''.

(B) The table of sections for chapter 81 of title 5, United States Code, is amended by inserting after the item relating to section 8151 the following:

''8152. Annual report.''.

(c) ANNUAL REPORT ON THE DEPARTMENT OF LABOR.—Section 9 of an Act entitled ''An Act to create a Department of Labor'', approved March 4, 1913 (29 U.S.C. 560) is amended by striking ''make a report'' and all that follows through ''the department'' and inserting ''prepare and submit to Congress the financial statements of the Department that have been audited''.

Subtitle K—Department of State

SEC. 1111. REPORTS ELIMINATED.

Section 8 of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2606) is amended by striking subsection (b), and redesignating subsection (c) as subsection (b).

Subtitle L—Department of Transportation

SEC. 1121. REPORTS ELIMINATED.

(a) REPORT ON DEEPWATER PORT ACT OF 1974.—Section 20 of the Deepwater Port Act of 1974 (33 U.S.C. 1519) is repealed.

(b) REPORT ON COAST GUARD LOGISTICS CAPABILITIES CRITICAL TO MISSION PERFORMANCE.—Sections 5(a)(2) and 5(b) of the Coast Guard Authorization Act of 1988 (10 U.S.C. 2304 note) are repealed.

(c) REPORT ON MARINE PLASTIC POLLUTION RESEARCH AND CONTROL ACT OF 1987.—Section 2201(a) of the Marine Plastic Pollution Research and Control Act of 1987 (33 U.S.C. 1902 note) is amended by striking ''biennially'' and inserting ''triennially''.

(d) REPORT ON APPLIED RESEARCH AND TECHNOLOGY PROGRAM.—Section 307(e)(11) of title 23, United States Code, is repealed.

(e) REPORTS ON HIGHWAY SAFETY IMPROVEMENT PROGRAMS.—

(1) REPORT ON RAILWAY-HIGHWAY CROSSINGS PROGRAM.—Section 130(g) of title 23, United States Code, is amended by striking the last 3 sentences.

(2) REPORT ON HAZARD ELIMINATION PROGRAM.—Section 152(g) of title 23, United States Code, is amended by striking the last 3 sentences.

(f) REPORT ON HIGHWAY SAFETY PERFORMANCE—FATAL AND INJURY ACCIDENT RATES ON PUBLIC ROADS IN THE UNITED STATES.—Section 207 of the Highway Safety Act of 1982 (23 U.S.C. 401 note) is repealed.

(g) REPORT ON HIGHWAY SAFETY PROGRAM STANDARDS.—Section 402(a) of title 23, United States Code, is amended by striking the fifth sentence.

(h) REPORT ON RAILROAD-HIGHWAY DEMONSTRATION PROJECTS.—Section 163(o) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 130 note) is repealed.

(i) REPORT ON UNIFORM RELOCATION ACT AMENDMENTS OF 1987.—Section 103(b)(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4604(b)(2)) is repealed.

(j) REPORT ON FEDERAL RAILROAD SAFETY ACT OF 1970.—Section 211 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440) is repealed.

(k) REPORT ON RAILROAD FINANCIAL ASSISTANCE.—Section 308(d) of title 49, United States Code, is repealed.

(l) REPORT ON USE OF ADVANCED TECHNOLOGY BY THE AUTOMOBILE INDUSTRY.—Section 305 of the Automotive Propulsion Research and Development Act of 1978 (15 U.S.C. 2704) is amended by striking the last sentence.

(m) REPORT ON OBLIGATIONS.—Section 4(b) of the Federal Transit Act (49 U.S.C. App. 1603(b)) is repealed.

(n) REPORT ON SUSPENDED LIGHT RAIL SYSTEM TECHNOLOGY PILOT PROJECT.—Section 26(c)(11) of the Federal Transit Act (49 U.S.C. App. 1622(c)(11)) is repealed.

(o) REPORT ON SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION.—Section 10(a) of the Act of May 13, 1954 (68 Stat. 96, chapter 201; 33 U.S.C. 989(a)) is repealed.

(p) REPORTS ON PIPELINES ON FEDERAL LANDS.—Section 28(w)(4) of the Mineral Leasing Act (30 U.S.C. 185(w)(4)) is repealed.

(q) REPORTS ON PIPELINE SAFETY.—

(1) REPORT ON NATURAL GAS PIPELINE SAFETY ACT OF 1968.—Section 16(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1683(a)) is amended in the first sentence by striking ''of each year'' and inserting ''of each odd-numbered year''.

(2) REPORT ON HAZARDOUS LIQUID PIPELINE SAFETY ACT OF 1979.—Section 213 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2012) is amended in the first sentence by striking ''of each year'' and inserting ''of each odd-numbered year''.

SEC. 1122. REPORTS MODIFIED.

(a) REPORT ON OIL SPILL LIABILITY TRUST FUND.—The quarterly report regarding the Oil Spill Liability Trust Fund required to be submitted to the House and Senate Committees on Appropriations under House Report 101–892, accompanying the appropriations for the Coast Guard in the Department of Transportation and Related Agencies Appropriations Act, 1991, shall be submitted not later than 30 days after the end of the fiscal year in which this Act is enacted and annually thereafter.

(b) REPORT ON JOINT FEDERAL AND STATE MOTOR FUEL TAX COMPLIANCE PROJECT.—Section 1040(d)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 101 note) is amended by striking ''September 30 and''.

(c) REPORT ON PUBLIC TRANSPORTATION.—Section 308(e)(1) of title 49, United States Code, is amended by striking ''January of each even-numbered year'' and inserting ''March 1995, March 1996, and March of each odd-numbered year thereafter''.

(d) REPORT ON NATION'S HIGHWAYS AND BRIDGES.—Section 307(h) of title 23, United States Code, is amended by striking ''January 1983, and in January of every second year thereafter'' and inserting ''March 1995, March 1996, and March of each odd-numbered year thereafter''.

Subtitle M—Department of the Treasury

SEC. 1131. REPORTS ELIMINATED.

(a) REPORT ON THE OPERATION AND STATUS OF STATE AND LOCAL GOVERNMENT FISCAL ASSISTANCE TRUST FUND.—Paragraph (8) of section 14001(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (31 U.S.C. 6701 note) is repealed.

(b) REPORT ON THE ANTIRECESSION PROVISIONS OF THE PUBLIC WORKS EMPLOYMENT ACT OF 1976.—Section 213 of the Public Works Employment Act of 1976 (42 U.S.C. 6733) is repealed.

(c) REPORT ON THE ASBESTOS TRUST FUND.—Paragraph (2) of section 5(c) of the Asbestos Hazard Emergency Response Act of 1986 (20 U.S.C. 4022(c)) is repealed.

SEC. 1132. REPORTS MODIFIED.

(a) REPORT ON THE WORLD CUP USA 1994 COMMEMORATIVE COIN ACT.—Subsection (g) of section 205 of the World Cup USA 1994 Commemorative Coin Act (31 U.S.C. 5112 note) is amended by striking ''month'' and inserting ''calendar quarter''.

(b) REPORTS ON VARIOUS FUNDS.—Subsection (b) of section 321 of title 31, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (5),

(2) by striking the period at the end of paragraph (6) and inserting ''; and'', and

(3) by adding after paragraph (6) the following new paragraph:

''(7) notwithstanding any other provision of law, fulfill any requirement to issue a report on the financial condition of any fund on the books of the Treasury by including the required information in a consolidated report, except that information with respect to a specific fund shall be separately reported if the Secretary determines that the consolidation of such information would result in an unwarranted delay in the availability of such information.''.

(c) REPORT ON THE JAMES MADISON-BILL OF RIGHTS COMMEMORATIVE COIN ACT.—Subsection (c) of section 506 of the James Madison-Bill of Rights Commemorative Coin Act (31 U.S.C. 5112 note) is amended by striking out ''month'' and inserting in lieu thereof ''calendar quarter''.

Subtitle N—Department of Veterans Affairs

SEC. 1141. REPORTS ELIMINATED.

(a) REPORT ON ADEQUACY OF RATES FOR STATE HOME CARE.—Section 1741 of such title is amended—

(1) by striking out subsection (c); and

(2) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(b) REPORT ON LOANS TO PURCHASE MANUFACTURED HOMES.—Section 3712 of such title is amended—

(1) by striking out subsection (l); and

(2) by redesignating subsection (m) as subsection (l).

(c) REPORT ON COMPLIANCE WITH FUNDED PERSONNEL CODING.—

(1) REPEAL OF REPORT REQUIREMENT.—Section 8110(a)(4) of title 38, United States Code, is amended by striking out subparagraph (C).

(2) CONFORMING AMENDMENTS.—Section 8110(a)(4) of title 38, United States Code, is amended by—

(A) redesignating subparagraph (C) as subparagraph (D);

(B) in subparagraph (A), by striking out ''subparagraph (D)'' and inserting in lieu thereof ''subparagraph (C)''; and

(C) in subparagraph (B), by striking out ''subparagraph (D)'' and inserting in lieu thereof ''subparagraph (C)''.

TITLE II—INDEPENDENT AGENCIES

Subtitle A—Action

SEC. 2011. REPORTS ELIMINATED.

Section 226 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5026) is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (2), by striking ''(2)'' and inserting ''(b)''; and

(B) in paragraph (1)—

(i) by striking ''(1)(A)'' and inserting ''(1)''; and

(ii) in subparagraph (B)—

(I) by striking ''(B)'' and inserting ''(2)''; and

(II) by striking ''subparagraph (A)'' and inserting ''paragraph (1)''.

Subtitle B—Environmental Protection Agency

SEC. 2021. REPORTS ELIMINATED.

(a) REPORT ON ALLOCATION OF WATER.—Section 102 of the Federal Water Pollution Control Act (33 U.S.C. 1252) is amended by striking subsection (d).

(b) REPORT ON VARIANCE REQUESTS.—Section 301(n) of the Federal Water Pollution Control Act (33 U.S.C. 1311(n)) is amended by striking paragraph (8).

(c) REPORT ON IMPLEMENTATION OF CLEAN LAKES PROJECTS.—Section 314(d) of the Federal Water Pollution Control Act (33 U.S.C. 1324(d)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(d) REPORT ON USE OF MUNICIPAL SECONDARY EFFLUENT AND SLUDGE.—Section 516 of the Federal Water Pollution Control Act (33 U.S.C. 1375) (as amended by subsection (g)) is further amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(e) REPORT ON CERTAIN WATER QUALITY STANDARDS AND PERMITS.—Section 404 of the Water Quality Act of 1987 (Public Law 100–4; 33 U.S.C. 1375 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(f) REPORT ON CLASS V WELLS.—Section 1426 of title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act'') (42 U.S.C. 300h–5) is amended—

(1) in subsection (a), by striking ''(a) MONITORING METHODS.—''; and

(2) by striking subsection (b).

(g) REPORT ON SOLE SOURCE AQUIFER DEMONSTRATION PROGRAM.—Section 1427 of title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act'') (42 U.S.C. 300h–6) is amended—

(1) by striking subsection (l); and

(2) by redesignating subsections (m) and (n) as subsections (l) and (m), respectively.

(h) REPORT ON SUPPLY OF SAFE DRINKING WATER.—Section 1442 of title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act'') (42 U.S.C. 300h–6) is amended—

(1) by striking subsection (c);

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

(3) by redesignating subsections (f) and (g) as subsections (d) and (e), respectively.

(i) REPORT ON NONNUCLEAR ENERGY AND TECHNOLOGIES.—Section 11 of the Federal

Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5910) is repealed.

(j) REPORT ON EMISSIONS AT COAL-BURNING POWERPLANTS.—

(1) Section 745 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8455) is repealed.

(2) The table of contents in section 101(b) of such Act (42 U.S.C. prec. 8301) is amended by striking the item relating to section 745.

(k) 5-YEAR PLAN FOR ENVIRONMENTAL RESEARCH, DEVELOPMENT, AND DEMONSTRATION.—

(1) Section 5 of the Environmental Research, Development, and Demonstration Authorization Act of 1976 (42 U.S.C. 4361) is repealed.

(2) Section 4 of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (42 U.S.C. 4361a) is repealed.

(3) Section 8 of such Act (42 U.S.C. 4365) is amended—

(A) by striking subsection (c); and

(B) by redesignating subsections (d) through (i) as subsections (c) through (h), respectively.

(l) PLAN ON ASSISTANCE TO STATES FOR RADON PROGRAMS.—Section 305 of the Toxic Substances Control Act (15 U.S.C. 2665) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

Subtitle C—Equal Employment Opportunity Commission

SEC. 2031. REPORTS MODIFIED.

Section 705(k)(2)(C) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(k)(2)(C)) is amended—

(1) in the matter preceding clause (i), by striking ''including'' and inserting ''including information, presented in the aggregate, relating to'';

(2) in clause (i), by striking ''the identity of each person or entity'' and inserting ''the number of persons and entities'';

(3) in clause (ii), by striking ''such person or entity'' and inserting ''such persons and entities''; and

(4) in clause (iii)—

(A) by striking ''fee'' and inserting ''fees''; and

(B) by striking ''such person or entity'' and inserting ''such persons and entities''.

Subtitle D—Federal Aviation Administration

SEC. 2041. REPORTS ELIMINATED.

Section 7207(c)(4) of the Anti-Drug Abuse Act of 1988 (Public Law 100–690; 102 Stat. 4428; 49 U.S.C. App. 1354 note) is amended—

(1) by striking out ''GAO''; and

(2) by striking out ''the Comptroller General'' and inserting in lieu thereof ''the Department of Transportation Inspector General''.

Subtitle E—Federal Communications Commission

SEC. 2051. REPORTS ELIMINATED.

(a) REPORT TO THE CONGRESS UNDER THE COMMUNICATIONS SATELLITE ACT OF 1962.—Section 404(c) of the Communications Satellite Act of 1962 (47 U.S.C. 744(c)) is repealed.

(b) REIMBURSEMENT FOR AMATEUR EXAMINATION EXPENSES.—Section 4(f)(4)(J) of the Communications Act of 1934 (47 U.S.C. 154(f)(4)(J)) is amended by striking out the last sentence.

Subtitle F—Federal Deposit Insurance Corporation

SEC. 2061. REPORTS ELIMINATED.

Section 102(b)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102–242; 105 Stat. 2237; 12 U.S.C. 1825 note) is amended to read as follows:

''(1) QUARTERLY REPORTING.—Not later than 90 days after the end of any calendar quarter in which the Federal Deposit Insurance Corporation (hereafter in this section referred to as the 'Corporation') has any obligations pursuant to section 14 of the Federal Deposit Insurance Act outstanding, the Comptroller General of the United States shall submit a report on the Corporation's compliance at the end of that quarter with section 15(c) of the Federal Deposit Insurance Act to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Such a report shall be included in the Comptroller General's audit report for that year, as required by section 17 of the Federal Deposit Insurance Act.''.

Subtitle G—Federal Emergency Management Agency

SEC. 2071. REPORTS ELIMINATED.

Section 201(h) of the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(h)) is amended by striking the second proviso.

Subtitle H—Federal Retirement Thrift Investment Board

SEC. 2081. REPORTS ELIMINATED.

Section 9503 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

''(c) The requirements of this section are satisfied with respect to the Thrift Savings Plan described under subchapter III of chapter 84 of title 5, by preparation and transmission of the report described under section 8439(b) of such title.''.

Subtitle I—General Services Administration

SEC. 2091. REPORTS ELIMINATED.

(a) REPORT ON PROPERTIES CONVEYED FOR HISTORIC MONUMENTS AND CORRECTIONAL FACILITIES.—Section 203(o) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(o)) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(3) in paragraph (2) (as so redesignated) by striking out ''paragraph (2)'' and inserting in lieu thereof ''paragraph (3)''.

(b) REPORT ON PROPOSED SALE OF SURPLUS REAL PROPERTY AND REPORT ON NEGOTIATED SALES.—Section 203(e)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(e)(6)) is repealed.

(c) REPORT ON PROPERTIES CONVEYED FOR WILDLIFE CONSERVATION.—Section 3 of the Act entitled ''An Act authorizing the transfer of certain real property for wildlife, or other purposes.'', approved May 19, 1948 (16 U.S.C. 667d; 62 Stat. 241) is amended by striking out ''and shall be included in the annual budget transmitted to the Congress''.

Subtitle J—Interstate Commerce Commission

SEC. 2101. REPORTS ELIMINATED.

Section 10327(k) of title 49, United States Code, is amended to read as follows:

''(k) If an extension granted under subsection (j) is not sufficient to allow for completion of necessary proceedings, the Commission may grant a further extension in an extraordinary situation if a majority of the Commissioners agree to the further extension by public vote.''.

Subtitle K—Legal Services Corporation

SEC. 2111. REPORTS MODIFIED.

Section 1009(c)(2) of the Legal Services Corporation Act (42 U.S.C. 2996h(c)(2)) is amended by striking out ''The'' and inserting in lieu thereof ''Upon request, the''.

Subtitle L—National Aeronautics and Space Administration

SEC. 2121. REPORTS ELIMINATED.

Section 21(g) of the Small Business Act (15 U.S.C. 648(g)) is amended to read as follows:

''(g) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AND REGIONAL TECHNOLOGY TRANSFER CENTERS.—The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.''.

Subtitle M—National Council on Disability

SEC. 2131. REPORTS ELIMINATED.

Section 401(a) of the Rehabilitation Act of 1973 (29 U.S.C. 781(a)) is amended—

(1) by striking paragraph (9); and

(2) by redesignating paragraphs (10) and (11) as paragraphs (9) and (10), respectively.

Subtitle N—National Science Foundation

SEC. 2141. REPORTS ELIMINATED.

(a) STRATEGIC PLAN FOR SCIENCE AND ENGINEERING EDUCATION.—Section 107 of the Education for Economic Security Act (20 U.S.C. 3917) is repealed.

(b) BUDGET ESTIMATE.—Section 14 of the National Science Foundation Act of 1950 (42 U.S.C. 1873) is amended by striking subsection (j).

Subtitle O—National Transportation Safety Board

SEC. 2151. REPORTS MODIFIED.

Section 305 of the Independent Safety Board Act of 1974 (49 U.S.C. 1904) is amended—

(1) in paragraph (2) by adding ''and'' after the semicolon;

(2) in paragraph (3) by striking out ''; and'' and inserting in lieu thereof a period; and

(3) by striking out paragraph (4).

Subtitle P—Neighborhood Reinvestment Corporation

SEC. 2161. REPORTS ELIMINATED.

Section 607(c) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8106(c)) is amended by striking the second sentence.

Subtitle Q—Nuclear Regulatory Commission

SEC. 2171. REPORTS MODIFIED.

Section 208 of the Energy Reorganization Act of 1974 (42 U.S.C. 5848) is amended by striking ''each quarter a report listing for that period'' and inserting ''an annual report listing for the previous fiscal year''.

Subtitle R—Office of Personnel Management

SEC. 2181. REPORTS ELIMINATED.

(a) REPORT ON SENIOR EXECUTIVE SERVICE.—(1) Section 3135 of title 5, United States Code, is repealed.

(2) The table of sections for chapter 31 of title 5, United States Code, is amended by striking out the item relating to section 3135.

(b) REPORT ON PERFORMANCE AWARDS.—Section 4314(d) of title 5, United States Code, is repealed.

(c) REPORT ON TRAINING PROGRAMS.—(1) Section 4113 of title 5, United States Code, is repealed.

(2) The table of sections for chapter 41 of title 5, United States Code, is amended by striking out the item relating to section 4113.

(d) REPORT ON PREVAILING RATE SYSTEM.—Section 5347(e) of title 5, United States Code, is amended by striking out the fourth and fifth sentences.

(e) REPORT ON ACTIVITIES OF THE MERIT SYSTEMS PROTECTION BOARD AND THE OFFICE OF PERSONNEL MANAGEMENT.—Section 2304 of title 5, United States Code, is amended—

(1) in subsection (a) by striking out ''(a)''; and

(2) by striking subsection (b).

SEC. 2182. REPORTS MODIFIED.

(a) REPORT ON DISTRICT OF COLUMBIA RETIREMENT FUND.—Section 145 of the District of Columbia Retirement Reform Act (Public Law 96–122; 93 Stat. 882) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking out ''(1)'';

(ii) by striking out ''and the Comptroller General shall each'' and inserting in lieu thereof ''shall''; and

(iii) by striking out ''each''; and

(B) by striking out paragraph (2); and

(2) in subsection (d), by striking out ''the Comptroller General and'' each place it appears.

(b) REPORT ON REVOLVING FUND.—Section 1304(e)(6) of title 5, United States Code, is amended by striking out ''at least once every three years''.

Subtitle S—Office of Thrift Supervision

SEC. 2191. REPORTS MODIFIED.

Section 18(c)(6)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)(6)(B)) is amended—

(1) by striking out ''annually'';

(2) by striking out ''audit, settlement,'' and inserting in lieu thereof ''settlement''; and

(3) by striking out '', and the first audit'' and all that follows through ''enacted''.

Subtitle T—Panama Canal Commission

SEC. 2201. REPORTS ELIMINATED.

(a) REPORTS ON PANAMA CANAL.—Section 1312 of the Panama Canal Act of 1979 (Public Law 96–70; 22 U.S.C. 3722) is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by striking out the item relating to section 1312.

Subtitle U—Postal Service

SEC. 2211. REPORTS MODIFIED.

(a) REPORT ON CONSUMER EDUCATION PROGRAMS.—Section 4(b) of the mail Order Consumer Protection Amendments of 1983 (39 U.S.C. 3001 note; Public Law 98–186; 97 Stat. 1318) is amended to read as follows:

''(b) A summary of the activities carried out under subsection (a) shall be included in the first semiannual report submitted each year as required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).''.

(b) REPORT ON INVESTIGATIVE ACTIVITIES.—Section 3013 of title 39, United States Code, is amended in the last sentence by striking out ''the Board shall transmit such report to the Congress'' and inserting in lieu thereof ''the information in such report shall be included in the next semiannual report required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.)''.

Subtitle V—Railroad Retirement Board

SEC. 2221. REPORTS MODIFIED.

Section 502 of the Railroad Retirement Solvency Act of 1983 (45 U.S.C. 231f–1) is amended by striking ''On or before July 1, 1985, and each calendar year thereafter'' and inserting ''As part of the annual report required under section 22(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231u(a))''.

Subtitle W—Thrift Depositor Protection Oversight Board

SEC. 2231. REPORTS MODIFIED.

Section 21A(k)(9) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(k)(9)) is amended by striking out ''the end of each calendar quarter'' and inserting in lieu thereof ''June 30 and December 31 of each calendar year''.

Subtitle X—United States Information Agency

SEC. 2241. REPORTS ELIMINATED.

Notwithstanding section 601(c)(4) of the Foreign Service Act of 1980 (22 U.S.C. 4001(c)(4)), the reports otherwise required under such section shall not cover the activities of the United States Information Agency.

TITLE III—REPORTS BY ALL DEPARTMENTS AND AGENCIES

SEC. 3001. REPORTS ELIMINATED.

(a) REPORT ON PART-TIME EMPLOYMENT.—(1) Section 3407 of title 5, United States Code, is repealed.

(2) The table of sections for chapter 34 of title 5, United States Code, is amended by striking out the item relating to section 3407.

(b) BUDGET INFORMATION ON CONSULTING SERVICES.—(1) Section 1114 of title 31, United States Code, is repealed.

(2) The table of sections for chapter 11 of title 31, United States Code, is amended by striking out the item relating to section 1114.

(c) SEMIANNUAL REPORT ON LOBBYING.—Section 1352 of title 31, United States Code, is amended by—

(1) striking out subsection (d); and

(2) redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.

(d) REPORTS ON PROGRAM FRAUD AND CIVIL REMEDIES.—(1) Section 3810 of title 31, United States Code, is repealed.

(2) The table of sections for chapter 38 of title 31, United States Code, is amended by striking out the item relating to section 3810.

(e) REPORT ON RIGHT TO FINANCIAL PRIVACY ACT.—Section 1121 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3421) is repealed.

(f) REPORT ON PLANS TO CONVERT TO THE METRIC SYSTEM.—Section 12 of the Metric Conversion Act of 1975 (15 U.S.C. 205j–1) is repealed.

(g) REPORT ON TECHNOLOGY UTILIZATION AND INTELLECTUAL PROPERTY RIGHTS.—Section 11(f) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(f)) is repealed.

(h) REPORT ON EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE.—Section 4(a) of the Act entitled ''An Act to authorize the making, amendment, and modification of contracts to facilitate the national defense'', approved August 28, 1958 (50 U.S.C. 1434(a)), is amended by striking out ''all such actions taken'' and inserting in lieu thereof ''if any such action has been taken''.

(i) REPORTS ON DETAILING EMPLOYEES.—Section 619 of the Treasury, Postal Service, and General Government Appropriations Act, 1993 (Public Law 102–393; 106 Stat. 1769), is repealed.

SEC. 3002. REPORTS MODIFIED.

Section 552b(j) of title 5, United States Code, is amended to read as follows:

''(j) Each agency subject to the requirements of this section shall annually report to the Congress regarding the following:

''(1) The changes in the policies and procedures of the agency under this section that have occurred during the preceding 1-year period.

''(2) A tabulation of the number of meetings held, the exemptions applied to close meetings, and the days of public notice provided to close meetings.

''(3) A brief description of litigation or formal complaints concerning the implementation of this section by the agency.

''(4) A brief explanation of any changes in law that have affected the responsibilities of the agency under this section.''.

SEC. 3003. TERMINATION OF REPORTING REQUIREMENTS.

(a) TERMINATION.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any annual, semiannual, or other regular periodic report specified on the list described under subsection (c) shall cease to be effective, with respect to that requirement, 4 years after the date of the enactment of this Act.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to any report required under—

(A) the Inspector General Act of 1978 (5 U.S.C. App.); or

(B) the Chief Financial Officers Act of 1990 (Public Law 101–576), including provisions enacted by the amendments made by that Act.

(b) IDENTIFICATION OF WASTEFUL REPORTS.—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

(c) LIST OF REPORTS.—The list referred to under subsection (a) is the list prepared by the Clerk of the House of Representatives for the first session of the 103d Congress under clause 2 of rule III of the Rules of the House of Representatives (House Document No. 103–7).

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

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

The motion to lay on the table is agreed to.

MAKING TECHNICAL CORRECTIONS TO SENATE RESOLUTION 120

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 153, submitted earlier today by Senators DOLE and DASCHLE.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (Senate Resolution 153) to make certain technical corrections to Senate Resolution 120.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. HATCH. I ask unanimous consent that the resolution be considered and agreed to, and the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

So the resolution (S. Res. 153) was considered and agreed to.

The resolution is as follows:

S. RES. 153

Resolved, That Senate Resolution 120, agreed to May 17, 1995 (104th Congress, 1st Session), is amended—(1) in section 2(a)(1)(A) by inserting '', except that Senator Frank H. Murkowski shall substitute for Senator Phil Gramm'' before the semicolon;

(2) in section 5(b)—

(A) in paragraph (11) by inserting ''with the approval of the Committee on Rules and Administration'' before the period; and

(B) in paragraph (12) by inserting ''and the Committee on Rules and Administration'' after ''concerned''; and

(3) in section 8 by adding at the end the following: ''There are authorized such sums as

may be necessary for agency contributions related to the compensation of employees of the Special Committee from May 17, 1995 through February 29, 1996, to be paid from the appropriations account for 'Expenses of Inquiries and Investigations' of the Senate.''.

IMMIGRATION AND NATIONALITY ACT AMENDMMENT

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 130, S. 457, a bill to amend the Immigration and Nationality Act to update references in the classification of children for purposes of U.S. immigration laws.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 457) to amend the Immigration and Nationality Act to update references in the classification of children for purposes of U.S. immigration laws.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. HATCH. Mr. President, I ask unanimous consent that the bill be considered deemed read a third time, passed, that the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So the bill (S. 457) was deemed read for the third time, and passed as follows:

S.457

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

SECTION 1. DEFINITION OF CHILD.

Section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking ''legitimate child'' and inserting ''child born in wedlock''; and

(B) in subparagraph (D), by striking ''an illegitimate child'' and inserting ''a child born out of wedlock''; and

(2) in paragraph (2), by striking ''an illegitimate child'' and inserting ''a child born out of wedlock''.

ORDERS FOR TUESDAY, JULY 18, 1995

Mr. HATCH. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 a.m., on Tuesday, July 18, 1995; that following the prayer, the Journal of Proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period for morning business until the hour of 10 a.m., with Senators permitted to speak for up to 5 minutes each; with the following exceptions: Senator NUNN, 30 minutes; Senator GORTON, 5 minutes; Senator MURRAY, 5 minutes; Senator PRESSLER, 10 minutes; and Senator THURMOND, 10 minutes.

Further, that at the hour of 10:00, the Senate immediately resume consideration of S. 343, the Regulatory Reform bill.

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

Mr. HATCH. I now ask unanimous consent that the Senate stand in recess on Tuesday between the hours of 12:30 p.m. and 2:15 p.m. in order to accommodate respective party luncheons.

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

PROGRAM

Mr. HATCH. Mr. President, for the information of all Senators, the Senate will resume consideration of the Regulatory Reform bill at 10 a.m. on Tuesday. Pending to the bill is the Glenn substitute amendment to the Dole/Johnston substitute amendment. Under the previous order, there will be a vote on the Glenn substitute at 2:15 p.m. and a cloture vote on the Dole/Johnston substitute amendment immediately following the Glenn vote. As a reminder to all Senators, under the provisions of rule XII, any second degree amendment must be filed by 12:30 p.m. on Tuesday. Further, the majority leader has filed a third cloture motion today on the Dole/Johnston substitute, therefore Members may file first degree amendments with respect to that third cloture motion until 12:30 p.m. on Tuesday.

RECESS UNTIL 9 A.M. TOMORROW

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 7:18 p.m., recessed until Tuesday, July 18, 1995, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate July 17, 1995:

DEPARTMENT OF STATE

EILEEN B. CLAUSSEN, OF THE DISTRICT OF COLUMBIA, TO BE ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, VICE ELINOR G. CONSTABLE.

NUCLEAR REGULATORY COMMISSION

GRETA JOY DICUS, OF ARKANSAS, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF 5 YEARS EXPIRING JUNE 30, 1998, VICE JAMES R. CURTISS, TERM EXPIRED.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

LEE F. JACKSON, OF MASSACHUSETTS, TO BE U.S. DIRECTOR OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, VICE JAMES H. SCHEUER, RESIGNED.

DEPARTMENT OF THE INTERIOR

ELUID LEVI MARTINEZ, OF NEW MEXICO, TO BE COMMISSIONER OF RECLAMATION, VICE DANIEL P. BEARD, RESIGNED.

EXECUTIVE OFFICE OF THE PRESIDENT

ERNEST J. MONIZ, OF MASSACHUSETTS, TO BE AN ASSOCIATE DIRECTOR OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY, VICE MARY RITA COOKE GREENWOOD, RESIGNED.

FEDERAL LABOR RELATIONS AUTHORITY

DONALD S. WASSERMAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF 5 YEARS EXPIRING JULY 1, 2000, VICE PAMELA TALKIN, TERM EXPIRED.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

HARRIS WOFFORD, OF PENNSYLVANIA, TO BE CHIEF EXECUTIVE OFFICER OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE, VICE ELI J. SEGAL.

IN THE NAVY

THE FOLLOWING-NAMED OFFICER FOR PROMOTION IN THE NAVY OF THE UNITED STATES TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

SENIOR HEALTH CARE EXECUTIVE

To be rear admiral

REAR ADM. (LH) S. TODD FISHER, 000–00–0000.

WITHDRAWAL

Executive message transmitted by the President to the Senate on July 17, 1995, withdrawing from further Senate consideration the following nomination:

NUCLEAR REGULATORY COMMISSION

ROBERT M. SUSMAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR A TERM OF 5 YEARS EXPIRING JUNE 30, 1998, VICE JAMES R. CURTISS, TERM EXPIRED, WHICH WAS SENT TO THE SENATE ON JANUARY 5, 1995.