

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

The amendment is as follows:

On page 14, strike lines 3 through 7, and insert in lieu thereof:

**“SEC. 7. JUDICIAL REVIEW.**

No determination, finding, action, or omission under this Act shall be subject to judicial review.”

Mr. LEVIN. Mr. President, this amendment addresses the issue of judicial review. It has been agreed to by the managers of the bill, and I thank them for their cooperation and support.

I want to thank the Senator from Ohio also for the tremendous work that he has put in on this amendment and also on the entire bill. I will have something more to say about his comments relative to which rules should be subject to legislative review, because I happen to agree with his comments a few moments ago.

The purpose of this amendment, which I understand has been agreed to by the managers of the bill, is to be more precise on the question of judicial review. The substitute that is before us in two sections specifies that they are not subject to judicial review, and the problem is that there could be an ambiguity raised unintentionally about the reviewability then of other sections which do not have that language.

So the concern that some of us have is the implication relative to other sections of the bill by the specific language in two sections of the bill.

My amendment states that no determination, finding, action or omission under this act shall be subject to judicial review, which clarifies the judicial nonreviewability of this act. I understand that this has been cleared by the managers.

The PRESIDING OFFICER (Mr. GRAMS). Is there further debate on the amendment of the Senator from Michigan?

Mr. NICKLES. Mr. President, I thank my friend and colleague from Michigan. We have no objection to this amendment. This amendment precludes judicial review of determina-

tions, findings, actions, or omissions with respect to this act. However, judicial review of regulations not disapproved by Congress is not affected by this act. Of course, it is expected that the courts will give affect to any disapproval of the regulation.

Moreover, instructions to the courts contained in the act, such as section 3(g) regarding inferences not to be drawn from this inaction are neither determinations, findings, actions or omissions, within the meaning of the amendment; and therefore courts are expected to accept such direction from the Congress. Therefore, we have no objection to this amendment.

Mr. GLENN. Mr. President, I ask unanimous consent that I be permitted to be a cosponsor of the amendment.

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

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

The amendment (No. 416) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 414, AS MODIFIED

Mr. REID. Mr. President, as to amendment No. 414, which was previously accepted, I send a modification to the desk.

The PRESIDING OFFICER. Without objection, the amendment will be so modified.

The amendment, as modified, is as follows:

Page 5 of amendment No. 414 is modified as follows:

(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), and 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. 580f), or other law.

**SEC. 03. 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

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business for 8 minutes.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Iowa?

The Senator from Iowa is recognized.

DEPARTMENT OF DEFENSE  
APPROPRIATIONS

Mr. GRASSLEY. Mr. President, I want to speak for the fifth and probably final time—at least for a few days—on this subject of Department of Defense appropriations and the continuing program budget mismatch.

If Congress rolled back DOD’s spending plans at the height of the cold war in the mid-1980’s—and we did that on May 2, 1985—then why would Congress now move to pump up the defense budget when the cold war is over and the Soviet threat is gone? It makes no sense to me.

Mr. President, the General Accounting Office has prepared an interesting set of tables that portray the evolution of the future years defense program for the Defense Department and the budget mismatch with that future years plan. I ask unanimous consent to have this printed in the RECORD at this point.

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

TOTAL OBLIGATIONAL AUTHORITY REFLECTED IN DOD’S FUTURE YEARS DEFENSE PROGRAMS <sup>a</sup>

[In billions of dollars]

Fiscal Year	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	
1971 <sup>b</sup>	79.4	77.0	73.5	70.1	69.1	69.8	69.0										
1972		76.8	75.3	79.2	82.0	81.3	80.7	81.7									
1973			75.1	78.1	83.2	87.3	86.6	85.6	84.0								
1974				77.7	81.0	85.0	89.0	88.8	87.0	89.1							
1975					80.5	87.1	92.6	96.9	95.2	96.8	98.5						
1976						85.0	89.0	104.7	112.4	116.6	120.4	122.3					
1977							87.9	98.3	112.7	119.7	125.8	129.8	132.1				
1978								97.5	110.2	120.4	139.1	149.4	160.2	169.0			
1979									108.3	116.8	126.0	145.1	154.6	165.2	177.4		
1980										116.5	125.7	135.5	150.4	159.1	169.2	181.5	
1981											124.8	139.3	158.7	183.6	205.6	228.7	
1982												142.2	178.0	222.2	224.9	250.0	
1983													176.1	214.2	258.0	285.5	
1984														211.4	240.5	274.1	
1985															238.7	259.1	
1986																258.2	
1987																	
1988																	
1989																	
1990																	
1991																	
1992																	
1993																	
1994																	
1995																	
1996																	
Difference <sup>d</sup>	n/a	\$18.9	\$15.8	\$24.3	\$27.4	\$26.3	\$19.9	\$44.0	\$42.4	\$61.3	\$76.8						

TOTAL OBLIGATIONAL AUTHORITY REFLECTED IN DOD'S FUTURE YEARS DEFENSE PROGRAMS <sup>a</sup>—Continued

(In billions of dollars)

Fiscal Year	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Percent Change <sup>c</sup>	n/a	n/a	n/a	n/a	n/a	n/a	27.4%	19.4%	29.0%	30.8%	26.7%	16.3%	33.3%	25.1%	34.6%	42.3%

<sup>a</sup> Each column begins with the initial planning estimate for that year. The 2nd through the 5th amounts in each column represent subsequent changes to the initial estimates as the initial estimate ultimately becomes the budget submission. The last amount in each column represents the actual appropriated amounts. The intersection of the same year represents that year's budget proposal.  
<sup>b</sup> Note that each row displays the prior year, the current year, the budget year and 4 or 5 out years.  
<sup>c</sup> DOD did not produce a revised FYDP for FY 1989. The data in the 1989 row is taken from the President's budget submission.  
<sup>d</sup> Dollar difference between initial plan and ultimate appropriation.  
<sup>e</sup> Percentage change between the initial planning estimate and the ultimate appropriation.  
<sup>f</sup> Insufficient data for analysis.

Source: US General Accounting Office Analysis of DOD Data.

TOTAL OBLIGATIONAL AUTHORITY REFLECTED IN DOD'S FUTURE YEARS DEFENSE PROGRAMS <sup>a</sup>—Continued

(In billions of dollars)

Fiscal Year	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
1971 <sup>b</sup>																	
1972																	
1973																	
1974																	
1975																	
1976																	
1977																	
1978																	
1979																	
1980																	
1981	253.8																
1982	278.3	296.2															
1983	331.7	367.6	405.6														
1984	326.8	357.3	386.2	425.2													
1985	305.7	350.3	379.9	412.2	446.8												
1986	265.3	314.4	354.8	402.4	439.7	478.6											
1987	280.1	296.4	312.3	341.3	363.6	397.7	415.7										
1988		280.5	286.3	304.1	324.1	370.4	392.6	416.1									
1989 <sup>c</sup>			279.5	283.2	299.5	316.4	333.7	351.6	370.2								
1990				288.6	292.7	306.6	321.7	336.4	351.5	366.3							
1991					292.2	292.3	297.3	320.9	337.2	350.1	365.0						
1992					293.8	274.3	279.0	278.6	279.0	281.5	283.4	288.2					
1993							309.1	286.1	271.3	268.6	270.7	271.3	275.5				
1994								286.1	272.9	255.0	253.2	242.7	236.1	241.5	264.0		
1995									270.0	251.7	253.5	244.2	241.5	247.5	253.8		
1996											252.6	246.0	242.8	249.7	256.3	266.2	276.6
Difference <sup>d</sup>	\$26.3	(\$17.6)	(\$126.1)	(\$136.6)	(\$154.6)	(\$204.3)	(\$106.6)	(\$130.0)	(\$100.2)	( <sup>f</sup> )							
Percent Change <sup>e</sup>	10.3%	-5.9%	-31.1%	-32.1%	-34.6%	-42.7%	-25.6%	-31.2%	-27.1%	( <sup>f</sup> )							

<sup>a</sup> Each column begins with the initial planning estimate for that year. The 2nd through the 5th amounts in each column represent subsequent changes to the initial estimates as the initial estimate ultimately becomes the budget submission. The last amount in each column represents the actual appropriated amounts. The intersection of the same year represents that year's budget proposal.  
<sup>b</sup> Note that each row displays the prior year, the current year, the budget year and 4 or 5 out years.  
<sup>c</sup> DOD did not produce a revised FYDP for FY 1989. The data in the 1989 row is taken from the President's budget submission.  
<sup>d</sup> Dollar difference between initial plan and ultimate appropriation.  
<sup>e</sup> Percentage change between the initial planning estimate and the ultimate appropriation.  
<sup>f</sup> Insufficient data for analysis.

Source: US General Accounting Office Analysis of DOD Data.

Mr. GRASSLEY. Mr. President, I hope that we can see through all the fog. I hope that the gap between the future years defense plan and the budget does not mean the military has unfunded needs.

A superficial examination shows that the future years defense plan topline matches exactly the topline in the President's budget.

In theory, then, that means that all military requirements are met. That does not happen to be the real world, however.

History teaches us that the cost of the Department of Defense future years defense plan, which is 6 years out, almost always exceeds money in the budget. That is called over-programming.

The projected cost of the future years defense plan exceeds what Congress finally appropriates.

If the Budget Committee sent a resolution to the floor with a Department of Defense-style over-programming, I feel the Parliamentarian would rule it out of order.

So what we are faced with is a lack of truth in budgeting.

First, the leaders in the Pentagon keep us, and perhaps themselves, in the dark with bad information—bad numbers.

Second, the leaders at the Pentagon fail to manage. They avoid the tough decisions. They finance the programs, and they use maneuvers called the "buy in" and "front loading" to get the camel's nose under the tent for a specific program. The tent happens to be the future years' defense plan, 6 years of planning. To get the whole camel in the tent, the tent either has to be made bigger or the camel gets smaller.

DOD knows this, but they will not tell us. They really will not admit it. When Congress balks, the Department of Defense buys half a camel and then blames Congress for the mess, what eventually becomes a stretch out. It is kind of a process of extortion. The camel, which could be any of these defense programs, has to be reconfigured to fit under the tent of the future years' defense plan. So instead of buying a whole camel like we thought and need, we end up buying half a camel.

This is the downside of the plans/reality mismatch, which is all too evident in every defense budget.

This process undermines our force structure. Pretty soon, the military cannot do its assigned missions. The force is just too small.

There is yet another way to look at the problem and that is, once a program gains a solid foothold in the future years' defense program and that

plan gets rolling, its true costs start to ooze out.

As its costs rise, overly optimistic funding levels do not materialize. The topline, then, is pressed downward by us in the Congress because we only have so much money to spend, including borrowing money, including for defense.

Congress is faced with fiscal realities and is forced to lower the topline. Costs are underestimated and available funding is overestimated. That is why the camel will not fit into the tent. The money squeeze keeps making the tent smaller.

The *Seawolf* submarine is an excellent case in point. When it was sold to the Congress, the Navy promised that it would cost no more than \$1 billion a copy. Now the costs are all the way up to \$3 billion, and perhaps even more.

The F-22 fighter is another perfect example of the front-loading operation, where a particular plan will not fit into the budget with the available money that we have to appropriate.

When the *Seawolf* and the F-22 front-loading operations are repeated hundreds or even thousands of times in each future years' defense plan for each separate program, we are staring down the throat of a ravenous monster.

This produces what I call a future years' defense plan blivet. Costs go up,

projected funding comes down, and it is like trying to stuff 10 pounds of manure into a 5-pound bag.

Front loading is a wasteful and destructive practice.

The worst part about it is that the military does not get what it needs to do its job.

With the *Seawolf* and the F-22, the military will never get enough subs and fighters to modernize the force as we know it.

The GAO's ongoing historical studies of procurement programs show that the Department of Defense pays more but gets less.

For example, 130 percent is paid for 80 percent of a program. We must find a way to control this monster. Leadership, integrity, courage, and good information—that is what is needed. With leadership and good information, Pentagon managers might have the courage to make the hard choices needed to squeeze all of the programs into the money sack that we finally approve.

More money cannot be the answer because we all know that the Pentagon has an insatiable appetite for more money and, quite frankly, we cannot appropriate enough money to satisfy the appetite of the Defense to spend. Caspar Weinberger taught us that lesson the hard way.

Mr. President, that famous budget analyst over there at DOD, Chuck Spinney, whom I spoke about a couple speeches ago, the man who got his picture on the front cover of Time magazine, is still cranking out his spaghetti diagrams. He is doing it over there in the bowels of the Pentagon. His new briefing is called "Anatomy in Decline."

Like before, his data is derived from the future year defense plans. It sounds like the same old story to me, but we need to be sure. I believe that Chuck Spinney has a great deal of credibility, but I suppose since so many people in this body might not agree, then we have to do other work to make sure that it is backed up.

Senator ROTH and I have asked the General Accounting Office to conduct an independent analysis and validation of the data and methodology used in this new Spinney study. Hopefully, the General Accounting Office will help put the problem in a very much understandable perspective.

Mr. President, I would now like to wrap up my thoughts on the integrity of the Department of Defense budget. In a nutshell, Mr. President, we have financial chaos at the Pentagon.

We have meaningless accounting numbers. We have meaningless budget numbers. We have meaningless cost estimates. To make matters worse, the numbers are not just meaningless; they are also misleading and they are deceptive. Bad financial information leads to bad decisions. And there is no accountability for fiscal mismanagement.

The top leadership in the building has been aware of the problems for a

long time. Even former Secretary Les Aspin talked about his fiscal horror show. Secretary Perry has also talked about his.

Despite all the hand wringing in the Pentagon, despite all the misleading accounting and the misleading budget information, it still all continues to be tolerated at the top levels.

It is almost a joke. Officials openly laugh about it. The chief financial officer of any company would be fired on the spot for presenting such inaccurate and misleading fiscal data. He or she might even be jailed.

Now I know that the new comptroller over there, Mr. Hamre, is trying to fix the problem. But trying is not enough, although I do give him good marks, marks for being well intentioned and trying to overcome all the obstacles that are over there for the comptroller to do the job that he is charged with doing.

I say "trying is not enough" because he has to do it, and heads will have to roll because this job is done. Bad accounting and budget numbers keep Congress and the American people in the dark. That is an undemocratic process of our constitutional responsibility of control. It is undemocratic because it is unaccountable to the people.

We have a duty and a responsibility to the citizens of this country to give them a complete and a very accurate accounting of how we are spending their money.

Today, we are unable to do that as far as the Defense budget is concerned. We do not know how the money was used last year, and we do not know how the money will be used next year.

My message, Mr. President, is quite simple: If we do not know where we are and we do not know where we have been, we cannot possibly figure out where we are going. In regard to this defense issue, we could be lost. We cannot make good budget decisions until we get some good numbers.

Until the Department of Defense budget shambles is cleaned up, I do not think anyone knows for sure how much is needed for national defense right now.

Yet the President wants to put \$25 billion more in, and people in this body want to put still, on top of that, another \$55 billion. Why would we want to throw more good money after bad? It is beyond me, Mr. President.

I hope some of my colleagues on this side of the aisle will join me in being a frugal hog. That means opposing any increase in the defense budget. Instead, we should work hard for better management, more accurate information, and for sure, accountability. Otherwise, we are all doomed to repeat the mistakes of the 1980's.

Mr. President, I yield the floor, as I have concluded my statements on the integrity, or lack thereof, of the Defense Department budget.

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. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

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

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

#### REGULATORY TRANSITION ACT

The Senate continued with the consideration of the bill.

##### AMENDMENT NO. 415, AS MODIFIED

Mr. NICKLES. Mr. President, I ask unanimous consent that I may modify amendment No. 415, which was previously agreed to.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, No. 415, as modified, is as follows:

On page 13, beginning on line 1, strike all through line 22 and insert in lieu thereof the following:

"(2) SIGNIFICANT RULE.—The term "significant rule"—

(A) means any final rule, issued after November 9, 1994, 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 or 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."

Mr. NICKLES. Mr. President, I might mention, this modification is just changing paragraph and page in the amendment that has already been agreed upon.

Mr. JOHNSTON. I have a question about the effect of the Nickles-Reid substitute on a regulation by the Department of Transportation to reduce the liability limit of deepwater ports like the Louisiana Offshore Oil Port [LOOP]. As the Senator may be aware, the Oil Pollution Act of 1990 established a new Federal regime governing liability for oilspill damages and clean-up. As part of that regime, liability limits were established for different types of vessels and facilities and, in the case of deepwater ports, the liability limit was established at \$350 million. Recognizing that this limit might