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Senate

(Legislative day of Monday, July 10, 1995)

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

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Rabbi Daniel Fried.

PRAYER

The guest Chaplain, Rabbi Daniel Fried, Congregation Anshe Emeth, Hudson, NY, offered the following prayer:

Almighty God, we ask for Your divine guidance and inspiration for those who are charged with the great responsibility of directing the affairs of our Nation. May Your Holy Spirit dwell richly within them as they manifest abiding courage and sincere faith, in the cherished traditions of our Founding Fathers, to work for freedom, justice, and peace. Grant them loving kindness and patience, understanding and insight.

Bless all of the inhabitants of our country. In our relations with one another, may we ever feel our common humanity and our common duties of justice and truth. Bring us together into an indissoluble bond of friendship and peoplehood in order that we may promote the welfare of our beloved country and increase the happiness of our fellow human beings.

May the Biblical ideals of freedom and fraternity, of justice and equality, enshrined in the American Constitution, become the heritage of all the peoples of the Earth.

We ask it in Your name, O Lord. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. SANTORUM. Thank you, Mr. President.

SCHEDULE

Mr. SANTORUM. Mr. President, this morning the leader time is reserved and there will be a period of morning business until 9:45 a.m. At 9:45 the Senate will resume consideration of S. 343, the regulatory reform bill. Rollcall votes can be expected throughout today's session of the Senate and into the evening in order to make progress on the bill.

Mr. DASCHLE addressed the Chair.

The PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. DASCHLE. I thank the President pro tempore. I understand the leader time is reserved. I will use some of my leader time this morning.

UNITED STATES-VIETNAM RELATIONS: LOOKING FORWARD

Mr. DASCHLE. Mr. President, yesterday President Clinton announced that the United States would establish diplomatic ties with the Government of Vietnam. I want to commend the President for having the courage and the vision to begin a new chapter with a nation that was once our enemy.

It has been 20 years since the last U.S. helicopter lifted off the roof of the American Embassy in Saigon, a tragic ending to a long and painful war. For years afterward, relations between our two nations have remained hostile and the question of what happened to the American soldiers missing in action in Southeast Asia remained unanswered.

But times have changed. The Vietnamese leaders who viewed the United States with suspicion and distrust have been replaced by a new generation of leaders, one that has demonstrated a desire to cooperate on the POW/MIA issue and a number of other questions having to do with relations between our two countries. With their help, we have been able to make much progress toward our goal of a full and accurate accounting of our soldiers who did not come home when the war was over.

I understand that the prospect of restoring diplomatic ties with Vietnam is painful to many Americans, particularly those who have friends and family members among those who remain unaccounted for in Vietnam. But experience has shown us that it is precisely by expanding our ties with Vietnam that we are most likely to learn what happened to the soldiers who never returned.

Consider the President's decision on February 3, 1994, to lift the trade embargo against Vietnam. At the time, some Members of Congress and some in the veterans community expressed concern that lifting the embargo would reward Vietnam prematurely and discourage their further cooperation on the POW/MIA issue.

Instead, as we all now know, just the opposite has occurred. Just 2 months ago, officials from the Departments of State, Defense, and Veterans Affairs traveled to Asia for high-level talks with their counterparts in both Vietnam and Laos. During that trip they were presented with more than 100 documents, which the Defense Department has called the most detailed and informative turned over to date. Moreover, our officials characterize the cooperation they had received from the Vietnamese as excellent.

Well, this progress has not gone unnoticed by those who remain committed to a full accounting of our POW's and MIA's. For example, the Veterans of Foreign Wars, one of the Nation's most influential veterans groups and an organization whose membership includes 600,000 Vietnam veterans, released a statement on June 13 regarding the issue of normalizing relations with Vietnam. In that statement, the VFW announced it will support the establishment of diplomatic ties with

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

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Vietnam, provided such ties would enable the United States to make even further progress toward a full accounting of the missing.

It is also telling that normalization of relations with Vietnam is strongly supported by three of my colleagues who are distinguished veterans of the Vietnam war and who served with me on the Senate Select Committee on POW/MIA Affairs: Senator JOHN KERRY, the chairman of the committee; Senator JOHN MCCAIN, a prisoner of war in Vietnam for 6 years; and Senator BOB KERREY, the recipient of the Congressional Medal of Honor for heroism in Vietnam. Having devoted countless hours to this issue, all three concluded establishing diplomatic ties with the Vietnamese will lead to greater cooperation in resolving our remaining POW/MIA cases.

Normalizing relations with Vietnam does serve our national interest in another very important respect. Other nations have already created a diplomatic presence in Vietnam, and some have even entered into trade agreements with the Vietnamese Government. This puts U.S. businesses at a competitive disadvantage in one of the fastest growing markets in all of Asia. Establishing a formal presence in Vietnam will help this country even out the playing field with their international competitors, leading to greater exports and greater job creation.

The President has recognized that our relationship with Vietnam should be based on today's national interests, not yesterday's animosities. I fully expect his bold decision will help us find the answers about our missing servicemen that their families and we have long awaited.

Madam President, I yield the floor.

MORNING BUSINESS

The PRESIDING OFFICER (Mrs. HUTCHISON). Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 9:45 a.m. with Senators permitted to speak therein for not to exceed 5 minutes each, with some exceptions.

Mr. SANTORUM addressed the Chair.

The PRESIDENT pro tempore. Under the previous order, the Senator from Pennsylvania [Mr. SANTORUM] is recognized to speak for up to 10 minutes.

The Senator from Pennsylvania.

Mr. SANTORUM. Thank you, Madam President.

SEEKING JUSTICE

Mr. SANTORUM. Madam President, I rise today to talk about two men; one is a Nazi doctor, the other is his pursuer. Before I get into that, I want to thank my father-in-law and my mother-in-law, Dr. Ken Garber and Betty Lee Garber, for bringing this matter to my attention.

This is a painful subject to talk about for many, particularly as we look at what is going on in Bosnia and some of the ethnic cleansing that is happening there. We talk about Vietnam and our missing in action. Looking at history and digging up the past is not always a pleasant experience but one which I believe is absolutely necessary in this case and one that I come to the floor to talk about and will be on notice to come back to if it is necessary to talk about it again.

The Nazi doctor I am going to talk about this morning is Dr. Hans Sewering. He is just not a normal doctor in Germany. This is a doctor who was the head of the German Medical Society for 17 years—17 years. He was a State senator in the State of Bavaria for 20 years, a very well-known person in Germany.

How this came to the attention of his pursuer 2 years ago, Dr. Michael Franzblau from Marin County in California, was that Dr. Sewering was nominated, in fact elected, to become the president of the World Medical Association, the affiliate of the American Medical Association in the United States.

It came to the attention of Dr. Franzblau that Dr. Sewering was accused of crimes during the Nazi reign.

And who is Dr. Sewering? Dr. Sewering joined the SS in 1933. Nine months later, he joined the Nazi Party. When he graduated from medical school, he went to work in Munich at the tubercular clinic of Schoenbrunn near Dachau in 1932.

During that time, under his administration, Dr. Franzblau, and other medical historians, are suggesting that he sent over 900 disabled children to a ''healing center''—a healing center—6 to 10 kilometers away, not far down the road, from the tubercular clinic that he ran. Over 900 children were sent to a healing center.

What was this healing center? It was a euphemism for a ''killing center,'' where disabled children were deliberately starved and given barbiturates to kill them ''efficiently,'' with little cost to the state.

The center was run by a Dr. Helmut Pramueller. Dr. Pramueller in 1949 was convicted by a German court. They found him guilty of murdering 6,000 children who were ''unfit'' because of their disabilities, which ranged from epilepsy to mild mental illnesses to physical disabilities. By the way, Dr. Pramueller, for killing 6,000 children in this ''healing center,'' was sentenced to 6 years in prison. He got 1 year off for good behavior.

But Dr. Sewering was never prosecuted. The reason for that is that the evidence was not made available. In fact, the only evidence we have been able to ascertain through the work of Dr. Franzblau, and others, is one documented case of which Dr. Sewering sent a 12-year-old girl, Babette Frowiss, to the ''healing center'' from his tubercular clinic at the Schoenbrunn. We have the document, with his signature on it. It says:

> She is no longer suitable for Schoenbrunn. She will be sent to Egfling-Haar—
>
> The name of this killing center—
>
> the healing center.

It was well known in Dachau, the vicinity of where these centers were, that this ''healing center'' was, in fact, a place where children were starved and killed ''efficiently.''

But nevertheless, we have that document, the origins of which we do not know. It has been authenticated as a real document, but we cannot find any other documents. In fact, the German Government will not make available any of these documents. Some even insist that they are not available or that they do not exist or, if they do, they just cannot find them. But in any case, they are not around, and the prosecutors in Munich that Dr. Franzblau is trying to get to prosecute this case refuse to look into it.

Another curious angle to this question is four nuns. The tubercular clinic at Schoenbrunn where Dr. Sewering worked was run by Franciscan nuns, the Franciscan order. There were four nuns as of 2 years ago, when Dr. Sewering was nominated to presidency of the World Medical Association, who were there at the time. When Dr. Sewering was elected, and then withdrew his nomination in election, these four nuns issued a statement basically indicting Dr. Sewering and what went on at the clinic and at Egfling-Haar, at the healing center, the killing center.

You might think that if you were the prosecutor in Munich who was concerned about sending children to their death by such a horrendous means that you would take the time to interview these nuns who released this statement. Well, the prosecutor has not done so. Despite protestations from Dr. Franzblau, and others, he has refused to interview them. He has refused to pursue the documents that can ultimately convict Dr. Sewering of his crimes. And Dr. Franzblau persists in his trips over there to get them to pay attention to this, but this is an uncomfortable thing to talk about, and this is a very powerful man in Germany. Seventeen years the head of the medical society and they have refused to go after him.

Dr. Franzblau is taking matters into his own hands. On Friday, this will be published in the New York Times. The Friday morning New York Times will have this full-page advertisement. It says:

> We accuse the German State of Bavaria of harboring and protecting a war criminal.
>
> The German State of Bavaria has protected Dr. Hans Joachim Sewering for 50 years.
>
> Dr. Hans Joachim Sewering is accused of participating in the transfer of 900 German Catholic children from Schoenbrunn Sanitarium to a ''Healing Center'' at Egfling-Haar, where they died.
>
> Four nuns made this allegation in January 1993.
>
> They were eyewitnesses to these crimes and broke their vow of silence 50 years after the fact at the suggestion of the Bishop of Munich.

Yes, they remained silent for 50 years, but after this man was elected to the World Medical Association presidency, they spoke up at the urging of the Bishop of Munich.

Dr. Sewering, age 78, still practices medicine in Dachau.

Dr. Sewering must be brought to the bar of justice now.

The relatives of the murdered children ask for justice.

The German people will be cleansed of this stain on their honor by the successful prosecution and conviction of Dr. Hans Joachim Sewering for murder and crimes against humanity.

And they ask:

If you believe, as we do, that Dr. Sewering should be brought to justice, please act now by faxing or writing to the German Consulate. . .

At their number.

I hope that Senators listening to this, if they believe as I believe that the German Government owes more diligence in pursuing this, that they sign on to a letter that I will be sending to the German Government asking them to find these documents and to interview these nuns so we can pursue this case. It is the least they can do. It is the least they can do for 900 children starved to death because of their disabilities.

I come here to the U.S. Senate not casually. I know this is a very important place to make these kinds of statements, but this is an abomination. The children who were murdered deserve justice, their families deserve a full accounting, and Dr. Franzblau, 25 of whose relatives were incinerated in a synagogue in Poland, deserves the satisfaction of knowing that his efforts were not in vain.

Madam President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska [Mr. MURKOWSKI] is recognized to speak for up to 10 minutes.

THE SUPERFUND

Mr. MURKOWSKI. Madam President, I rise to discuss that portion of S. 343 covering the Superfund. As we know, Senate bill 343 establishes requirements to do risk assessment and cost-benefit analysis and includes Superfund cleanups that exceed $10 million in total costs.

The administration, however, and some Senators, want this section removed from the bill on the grounds that the application of cost-benefit analysis to Superfund through the regulatory reform process is somehow inappropriate. I think it is fair to say there is also a question of jurisdiction relative to the various committee references that this bill would ordinarily go to that portion—at least under Superfund. I am speaking of the Environment and Public Works Committee.

However, laying that aside, because of the statutory requirements in the Superfund requirements itself, risk and cost-benefit analysis, in my opinion, are precisely the right tools that the Government should be using to carry out the requirements of that law.

Provisions in the Superfund law specifically require cost-benefit and risk analysis. Superfund requires that the President select appropriate remedial actions that ''provide for cost effective responses'' and to consider both the short-term and the long-term cost of the actions.

Superfund requires the President to publish a regulation called the national contingency plan [NCP], to carry out the requirements of the statute.

Now, the NCP must contain, one, methods for analysis of relative costs for remedial action; two, means for assuring that remedial actions are cost-effective over time; three, criteria ''based on relative risk or danger'' for determining priorities among releases of hazardous substances for the purposes of taking remedial action.

Now, the national contingency plan also requires a baseline risk assessment to be performed for every remedial action. This means that for every Superfund cleanup, a risk assessment is done right now.

Superfund requires the President to identify priority sites that require remedial action through a hazard ranking system that must ''assess the relative degree of risk.''

Unlike other environmental statutes, the Congress explicitly wrote provisions into this law that cost and risk were to be taken into account. Yet, the same entrenched bureaucracies that have been running up the costs of these remedial actions for years now say we simply cannot have reform.

But that is what we hear publicly. Within the administration there is a clear recognition that cost-benefit and risk analysis, however, do belong in the Superfund Program.

I refer to a memorandum prepared by the Council on Environmental Quality. In that memo, the administration correctly pointed out the blatant inconsistencies between its posture regarding this section of S. 343 and its position on regulatory reform, as well as reform of the cleanup statutes.

The memo states that opposition to the intent of the cleanup provisions of S. 343 is ''inconsistent with several administrative policies.''

Further, ''The administration has repeatedly testified that cost-benefit analysis is a 'useful tool' in making cleanup decisions.''

It also says, ''EPA, DOD, and DOE, have made well-publicized commitments to more realistic risk analysis in cleanup activity.''

Executive Order 12866 requires cost-benefit analysis for regulations over $100 billion. Many cleanups exceed that amount and the total cost of cleanup activities approaches or exceeds $400 billion.

Quoting, ''It will be hard, politically and logically, to defend application of the cost-benefit comparison to the former decisions and not the latter.''

The administration also incorrectly states in that memo that supplementing existing decision criteria with cost and risk considerations allows an illegal departure from statutory standards in developing more reasonable alternatives.

As indicated before, remediation under Superfund is currently required to base its decisions on risk and cost considerations. Senate bill 343 has been amended to clarify that statutory provisions cannot be superseded.

Critics of this section argue that these reforms should be addressed in the Superfund reauthorization. Superfund authorization expired last year, and the taxing authority expires this year.

I know many of my colleagues and other members of the Environment and Public Works Committee have been working hard, but Superfund reauthorization may not be completed this year. That is a real possibility.

So, in conclusion, I would like to share with you the realization that the Superfund cleanup provisions of Senate bill 343 are entirely consistent with the existing law, and the planned administrative reforms that the Clinton administration is putting in place even now.

Superfund is not a level playing field. Federal and State regulators have ignored risk and cost considerations throughout this process, in spite of the statutory requirements to consider these factors.

The program is badly broken largely because the degree and costs of cleanup have proceeded virtually unchecked for years.

Further, simply having these provisions in this bill has brought about a new willingness on the part of the regulators to be more realistic in the remedial action selection process.

Finally, the Superfund provisions of S. 343 are consistent with the law, are a needed reform of the remedy selection process, and are an appropriate and necessary reform of one of the most expensive regulatory programs we have experienced in history.

Madam President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Wyoming [Mr. SIMPSON], is recognized to speak for up to 15 minutes.

THE REGULATORY REFORM BILL

Mr. SIMPSON. Madam President, just a few words about various things. First, with regard to the efforts of Senator HATCH, Senator DOLE, and others, on both sides of the aisle, including Senator JOHNSTON, with regard to regulatory reform, I think it is very vital that we continue our efforts in a bipartisan way on this issue. It is a very simple issue out in the land. People are pretty well fed up with the quality and quantity of regulations over the years that have been ground out by the Federal Government.

It is long past time that we did something to interject common sense and sound science into the regulatory process, and the bill that Senator DOLE,

Senator HATCH, and Senator JOHNSTON put together will really go a very long way in doing that.

We have tried to ensure that Members on both sides of the aisle make their concerns known about various provisions in the legislation. We have worked very hard to include everyone. It is time to start walking the walk instead of talking the talk. So I hope we will continue our vigorous efforts.

We have seen in Wyoming so many issues with regard to coal mining. We are the largest coal-producing State in the Union; yet, we would have EPA come to our State where we have laws that are more strict than the Federal Government, and come to the mining area and set up air quality monitors for things like ''fugitive dust,'' in an area where the wind blows 60 miles an hour three times a week and will peel the vegetation right off the prairie. They set up their monitors and tell us about regulating and reducing fugitive dust. This is absolutely absurd. It reflects no common sense. Some EPA regulators are people of zeal, without any intellectual understanding of others or of their situation. Remember, too, that this community of Congress is populated by privileged people, many of whom have never met a payroll, many of whom know nothing about real life or how to work—really work—digging a ditch, tamping concrete forms, working for a construction company, cowboying—enough. I think it is time to give them a wake-up call, and I think we will do that.

Hopefully, we will, at the same time, try to deter the trend in this country that has been to try to get every single chemical out of every food, drink, and tube of lipstick known to man or woman. That type of activity causes our society to shoulder exorbitant costs that are just not necessary—$140 billion year on pollution control. We must decide how much will we spend to get the last 5 percent of the pollution out of the smokestack or the waste stream, because it is those expenditures that are so excessive.

We are being forced to recognize that the really tough choices are now unavoidable.

The administration and the environmental groups have been critical of our efforts to mandate that risk assessment and cost benefit analysis be used by the bureaucracy. But even the Washington Post stated in a recent editorial: ''Surely it makes sense to do the kind of analysis that weighs one health threat against another, and shows where reductions in pollution will pay off most effectively in lower rates of illness and death.'' And the Post editorial goes on to correctly recognize that the regulatory reform bill ''. . . addresses defects . . . that are real.'' And ''within it lies the genuine opportunity to strengthen the protection of the country's air and water.''

I find it disturbing that the environmental groups have run radio ads attacking Members of Congress who support this legislation. These ads greatly oversimplify the issues we are considering and as usual the environmental groups are using fear and emotion to try and turn the public against regulatory reform efforts. So when I hear groups say this is a back door assault on our environmental and health laws I recognize that they are resorting to what Senator Gary Hart used to call ''Mau Mau politics.''

This kind of activity is real quite uncalled for.

I am fond of saying that everyone is entitled to their own opinions, but nobody is entitled to their own facts. And the fact is that injecting sound science into the regulatory process can enhance our efforts to protect the public health and the environment.

We have a real opportunity to stop the tendency that Federal regulators have to overreact to any newly discovered dangers by diverting disproportionate financial and human resources into hastily conceived remedies. We have seen examples of that with superfund, or the asbestos in schools program and in so many other areas.

In the case of asbestos in schools we were told we had to get the asbestos out or we were going to kill or injure all the children. So Congress rushed to pass a law and the regulators issued regulations and we began a rush job to get the asbestos removed. But what we ended up doing was to release more asbestos into the air and to cost the taxpayers millions of dollars in remediation costs. And more importantly, we have inadvertently exposed more children to more asbestos and greater risk than if we had simply left it in place and contained it. So that is the type of thing that we want to avoid in the future and risk assessment and cost benefit analysis will help do that.

Some in Congress and in the bureaucracy have tried to provide the public with a risk free environment. That is a purely quixotic exercise. We cannot afford to provide a risk free environment and in fact it is not possible to do that in the real world. So let us recognize that and get on with the business of making certain that logical and well informed regulatory decisions are made in the future. We cannot do that without passing legislation such as the Dole bill and I am so very pleased that we are finally going to do something constructive with regard to regulatory reform since we can no longer afford to live with the status quo.

We will hear a metric ton of the tired old rhetoric about how we must protect the children and save the babies. How if we tinker with the current regulatory regime we will cripple the bureaucracy and cause regulatory gridlock. We will hear that it is arrogant to assign a value for human life, or that this is just an attempt to let industry and curses—big business—off the hook. But Mr. President, this is beginning to sound like the boy who cried wolf too many times. The American people are more sophisticated than that. They have heard these tired old phrases time after time. They are beginning to tune it out. They are suffering from what one journalist calls ''environmental compassion fatigue.'' So I trust the larger majority of Senators will not view this as a partisan issue or as an industry versus environmental group issue. But as a chance to help everyday citizens to get sensible and understandable regulations, based on real costs, risks, and common sense—in order that we can restore some of the credibility that the Federal agencies and Congress have lost over the years. This debate is about change. Bureaucrats don't like change. And this administration doesn't like any change that they didn't think of first.

But we must overcome this aversion to constructive change with goodwill, facts, common sense, and perseverance. So I trust my colleagues will put aside partisan rhetoric and fear mongering and we will all join together to truly reform our regulatory system for the benefit of a majority of the American people. They do not expect anything less from us, and I do trust we will not disappoint them.

VIETNAM AND DIPLOMATIC RELATIONS

Mr. SIMPSON. Madam President, with regard to Vietnam, I fully understand the heartfelt emotions and strong feelings which surround the normalization. Obviously we do, especially the delicate and painful issue of the POW/MIA's.

Nobody, nobody in their right mind wants Americans who fought for their country to be forgotten or abandoned, and in no way do I nor do any of my colleagues in this body want our Nation to forget any possible remaining POW/MIA's.

I have always said this. If there is proof of any Americans—any of them—being held against their will—proof—we should get them out right now.

I was involved in this process many years ago with Senator Cranston, my friend from California. We held hearings. I will never forget the gentleman, or I will say the chap, whatever lesser degree I can work up, who came before the Senate and said he had 287 minutes of a movie of someone in a cage imprisoned in Vietnam. We said, well, we would hope that you would produce that. He said, I will for 2 million bucks.

I think that is the closest I came to fisticuffs, at least in these recent times, with that person. Absolutely absurd and disgusting. He said he had these films and, of course, he did not, and then, of course, we had pictures of people in uniform with weapons, and then upon close examination we would find they were taken in Hawaii or some other country in Southeast Asia. Absolutely absurd and disgusting.

We said, ''You show us where they are and we will get them.'' I just believe we need to be very honest where we are with this gut-wrenching issue.

Last year, I applauded the President's decision to announce the lifting of the trade embargo, especially in view of the fact that this has been such a painful issue for him, due to the previous campaign scrutiny of his antiwar efforts during the Vietnam conflict. I am pleased that he did not shirk from the responsibility of doing what he felt was right, even though it was not necessarily popular with all the groups.

I visited Vietnam with some of my distinguished colleagues and saw personally the vast improvements taking place. Firsthand, I saw the continued progress in the area of human rights.

In my opinion, the best way to encourage the Vietnamese to continue along this path of redemption is by establishing these full diplomatic relations with the Vietnamese Government.

As a veteran myself, it is time to continue to march forward regarding this issue. Ever more effectively and positively we will learn about more of the POW/MIA issue, if business people, diplomats, military, American visitors travel and talk with Vietnamese all over that country.

Much will be gained by a larger United States presence in Vietnam. Gaining information about POW/MIA's has been exceedingly difficult without an embassy or other contacts since 1975.

Remember that, as we stiffed Vietnam for 18 years, we received nothing—nothing—in the way of cooperation, nothing in the way of information. Ever since we loosened our grip, much has come forward.

While we speak of the POW/MIA's with great, great compassion, it would be interesting to me to know what happened to the 86,700 people missing in action from the Second World War. Who is out speaking for them, and raising money in the process? Or the 9,000 or 8,700 missing in action from the Korean war. Who is speaking for them?

There had been an unfortunate test case of keeping the issue alive, with some groups, at least, with regard to their own personal gratification, and of course the aspects of the fundraising.

It is going to be a good thing. I commend the President. We will now be the 161st country to recognize Vietnam. Hear that. Normalization of the United States and Vietnam puts the United States on the list at No. 161. Because currently, 160 countries, including all of our major trading partners, have full diplomatic relations with Vietnam, providing their country's companies and citizens with a key political entry for vital decisions of procurement, vital decisions as to travel and intercourse among nations.

I want to commend the VFW. I am a lifetime member of the Veterans of Foreign Wars, who said last month that, "We are of the opinion if normalizing relations with Vietnam furthers the process toward the fullest possible accounting"—meaning POW/MIA's—"then we would support this decision."

I want to commend our sturdy friends, JOHN MCCAIN, JOHN KERRY, BOB KERREY, for taking the courageous position they have on this issue. Would it not have been for them, it would not have come to this point. All three serve as a remarkable testimony toward doing the right thing, putting the past aside, moving forward. That is what life is all about—change, moving forward, maturing.

TRIBUTE TO ABBY SAFFOLD

Mr. SIMPSON. Madam President, finally, just a word about this remarkable woman who leaves our midst in the Senate family. That is Abby, known to most Members as Abby.

Abby Saffold, schoolteacher, parole officer—I think perhaps she was that while she was in the Senate, as I think of it—for in many cases, as we would come in the door and we would say, "When is the next vote, Abby? When are we going to get out of here Friday," and "What is next week's schedule?"

There she was, with that very genial and very, very steady manner, sharing her remarkable expertise of the Senate. She was trained well by Senator ROBERT BYRD and others. She did it all, and she did it very well.

I would just like to wish her well and say that the most single particular thing for me about Abby was, whether I was in the minority or the majority, I was treated exactly the same—with courtesy, with intelligence, with good, rich, knowledge of the Senate.

I think that is the tribute to her, because there are those—not just staff, but those of us who are known simply as principals—who, when we are riding high in the majority, really do lay it on. Then, when we get in the minority, we kind of whimper and whine a bit. I have been in both places.

To Abby, the tribute is the courtesy that she extended to all, regardless of party, regardless of philosophy, and I certainly wish her well. Knowing her, she will be doing some things that will be very pleasing and important and satisfying to her. God bless her. I yield the floor.

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

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

OPPOSITION TO THE NORMALIZATION OF DIPLOMATIC RELATIONS WITH VIETNAM

Mr. GRASSLEY. Madam President, I want to comment on something that the President did yesterday.

The President normalized relationships with Vietnam. The President, I think, did the wrong thing. The President is not a veteran of any war. I have never been in military service. I do not presume to understand wars. But I do understand the commitments we made to the people who have been drafted and volunteered; that is, if they are missing in action, our Government is going to take all action necessary to make sure that we get information about them, and also, if you are taken as a prisoner of war, we are going to do everything we can to get you out. "Ye shall not be forgotten nor forsaken."

But yesterday there was a deafening roar that we heard all the way down here in the Nation's Capital—and that roar came from Wall Street. No. It was not about the Federal Reserve's decision to lower interest rates. It was because the Dow went through the roof, and it was because yesterday President Clinton announced that he will take steps to normalize diplomatic relations with Vietnam. And that is because it is driven not so much by a commonsense approach but because of corporate and commercial interests in America, and the profit motive was stronger than our humanitarian motives.

Of course, that sent the tickertape cascading through the canyons of steel. The champagne flowed freely throughout corporate America. The powerful forces of business and profit have won an important battle over America's obligation to account for our missing servicemen. The only thing flowing among the MIA families who have not had answers was resignation and despair yesterday.

This is a President whose term is marked by broken promises. I believe that when history recounts the Clinton years, many will reflect and call him "Broken Promise President."

That is what he has done on this issue. Yesterday President Clinton broke another promise, and he made a grave mistake by doing it. His decision is wrong because it displays a gross injustice to Americans who have fought to defend our country's freedom. It displays an injustice to their families, who have waited vigilantly and who have endured a pain of uncertainty for the past 22 years.

The President's action also reveals a dismal commitment to the men and women who are and have been members of the military, loyally serving their country because of this promise we have made to them that was not kept, that we shall not forsake nor forget them.

We are going to have a State Department authorization bill before this body perhaps next week, and I will have more to say about that then. But I want to make just a few comments because I was on the POW/MIA Committee.

I said 3 years ago that on this issue of commercial ties and diplomatic recognition, that there was a steamroller moving through this town headed directly toward normalization of relations with Vietnam. This was despite the fact that an investigation was still

under way into the POW/MIA issue by the select committee that I served on.

Corporate America is driving the steamroller. The avenues of its travels were largely underground. They were barely seen by the public. Government officials in all agencies in both branches of Government were busy paving the way for further advancement.

The one potential roadblock was a resolution of the POW/MIA issue. But the roadblock was no match for the steamroller. The Select Committee on POW/MIA's was never able to reach a consensus on the issue of the possibility that men remain in Vietnam. Moreover, there was never a thorough, independent evaluation of each MIA case. There were lots of promises but never an evaluation case by case.

There was also great hyperbole about Vietnam's extensive cooperation in resolving MIA cases. It is coming from the same ones who got all excited when the Vietnamese gave up pilot helmets and artifacts and generally useless photos and other information.

Madam President, that was pure bunk at that time. Vietnam has cooperated in resolving MIA cases about as much as the Japanese cooperate with us in world trade. There sure has been a lot of activity, but it is all atmospheric—lots of scurrying around, lots of digging, lots of busy work. But look at the facts.

Since our select committee finished its work, only 37 sets of remains have been recovered and positively identified. Eight of those were in 1993, 26 in 1994, and only 3 this year. We are still listing 2,202 as missing. So where is the progress?

The President said the following yesterday about the alleged cooperation of the Vietnamese, and I quote: ''Never before in the history of warfare has such an extensive effort been made to resolve the fate of soldiers who did not return.''

If I could borrow from the President's words, I would have said it this way: ''Never before in the history of warfare has such an extensive effort been made to resolve the fate of soldiers who did not return and yet so little accomplished.''

Those who have jumped on the steamroller argue that the best way to learn about the fate of the missing is to establish a presence in the country. I think that is a specious argument. It is devoid of rigorous analysis. That is a theory made out of whole cloth. There is no rational basis for it. In fact, it is simplistic.

The only thing that we will get out of the presence in Vietnam—in the absence of full accounting—is a bunch of business deals.

The only time Vietnam ever gave us any data on MIA's is when we played hardball like we think we ought to play hardball with the Japanese on trade.

During the select committee's investigation, we learned that the Vietnamese had at least three categories of information.

The first level is archival. This information is in museums and the like. Even the Vietnamese citizens have access to much of this information. This would include photos and helmets like we were given in the fall of 1992, and which some people went gaga over. This first level of information is, obviously, the least useful.

Next, there are the provincial wartime records of shootdowns. This information is an accounting of the date, the time, and the location of each shootdown of an American plane. It is recorded out in the countryside at the provincial level. It also provided data on the type of aircraft and the status of pilots and the crew.

These are official unit records of the antiaircraft corps of the Vietnamese military. The utility of this information is, among other things, that it would allow us to crosscheck the status of our MIA's with our own records.

Finally, there is the national security information. These are the central committee-level documents, kind of like the Politburo documents. These contain, in essence, Vietnamese national secrets on United States prisoner-of-war information and activities.

Before our committee learned of these levels of information, Vietnam consistently denied their existence. So did our crack investigative outfit on this issue, the Defense Intelligence Agency. Yet, somehow, as we pressed on, some of this information started to appear.

In April 1992, when a delegation from the select committee went to Indochina, the Vietnamese denied to us the existence of the archival material.

But just 6 months later, helmets and photos were sprouting everywhere and it was because the Vietnamese were being told give us data and then President Bush would lift the trade embargo.

Of course, the trade embargo was not lifted because all of the data that supposedly showed their cooperation was not very useful in resolving cases.

A year later, when President Clinton decided not to lift the economic embargo, lo and behold, we started getting some information from the provinces on shootdowns. But that information has remained spotty, and it came not through official channels but through humanitarian channels, the Military Joint Task Force full accounting.

The point again is when we play a little hardball, the data flows. When we do not, it does not.

As for the national security information, the Politburo information I was talking about, we have seen none, and this is notwithstanding the fact that our Government turned over to Vietnam millions of pages of our own declassified national security data on their prisoners and missing in action, as we should, as a result of the 1972 peace agreement.

Establishing a presence and establishing big business in Vietnam is not going to get us access to those national security records. Anyone who thinks that it is, Mr. President, is naive. And unless we press for it, unless we get access to it, there is no way that we can say we have done everything we can for a full accounting of our missing in action.

Mr. President, yesterday is a dark day for America. It was the day that President Clinton put an end to our Nation's pledge to those lost in battle, a pledge that says, ''Ye shall not be forgotten nor forsaken.'' This is a wound to the body politic that will not quickly heal.

ALZHEIMER'S

Mr. REID. Madam President, recently, it was announced that an international research team had discovered a gene that causes the most aggressive form of Alzheimer's disease. This is a tremendous breakthrough. This discovery could lead to solving the mystery of what goes wrong in the brain to cause Alzheimer's, and is a prime example of the need for medical research.

Alzheimer's disease is a progressive, degenerative disease that attacks the brain and results in impaired memory, thinking, and behavior. There have been other breakthroughs in the treatment and cure of Alzheimer's, as well as other neurological diseases. Other genes have been identified that lead to Alzheimer's; the first animal model of Alzheimer's disease—a transgenic mouse—has recently been produced, and is already being used to test drugs to slow the progression of the disease. Furthermore, Cognex, approved in 1994, is the first drug for treating Alzheimer's symptoms, and a combination of genetic testing and positron emission tomography [PET] scanning may yield an early diagnostic test for Alzheimer's. None of these discoveries could have occurred without funding for the research programs and scientists dedicated to finding cures for these devastating diseases.

Four million Americans suffer from Alzheimer's disease. The cost for caring for these men and women is $60 billion a year, making Alzheimer's the most expensive uninsured illness threatening American families. The disease is excluded from coverage by Medicare and most private insurance; therefore, the burden of the expenses is borne by the patient's family. The Alzheimer's Association estimates that at the rate of current research activities, researchers could reach their goal of delaying the onset of the disease by 5 years, reducing by half the number of people with Alzheimer's, and saving the country up to $50 billion a year. It is just common sense that investing in a cure now will result in huge savings in the long run.

I read with satisfaction William Safire's New York Times op-ed this past May, in which he encouraged investment in medical research. He called investment a no-brainer. Mr.

Safire also called GOP proposals to cut funding to the National Institutes of Health [NIH] shortsighted. I agree. The most effective way to curb the country's ever-growing medical costs is to cure or ameliorate the diseases that drive people into hospitals.

I would like to commend the Alzheimer's Association for their tireless efforts on behalf of the victims of Alzheimer's and their families, as well as their dedication to acquiring funding for research. The association estimates that Alzheimer's could affect over 14 million Americans by the middle of the 21st century. The costs will be astronomical, and it will be the future generations who will have to pay. The association further states that the disease has not yet financially overwhelmed the country because the families are providing almost all of the care. If this caregiving falls apart our annual health care costs will go up by more than $54 billion.

The ultimate return on our investment in Alzheimer research depends on scientists' ability to continue the search for new pieces of the puzzle. That is now threatened by the GOP budget proposal. For the past 2 years, public funding for Alzheimer's research has not even kept pace with inflation. The results have already proved harmful to research. Less than one in four high-quality applications for grants for Alzheimer's research is being funded. And individual grant awards are being cut by 10 to 20 percent. The number of epidemiological studies, that is—who gets Alzheimer's and why—has been reduced. Entire lines of investigation are being put on hold or lost forever as scientists turn to other fields of study. Funding for 28 Alzheimer's Disease Centers [ADC's], has been cut back. Finally, the National Institute on Aging has abandoned plans for new satellite clinics to serve rural, minority, and low-income communities and to increase their representation in research.

The Federal investment of $311 million in 1995 is less than $78 per person with the disease, or about $1 for every $321 the disease now costs society.

I have been a long-time supporter of NIH funding. It is my belief that medical research is the key to eliminating disease and making our health care system less costly and more effective. In fact, a recent NIH report estimated that approximately $800 million invested in clinical and applied medical research would realize a 1-year savings of approximately $6 billion.

The gene discovery, announced yesterday, will aid in the fight against Alzheimer's disease. These breakthroughs do not occur often enough. We, in Congress, have the responsibility to provide researchers with the funding to enable them to continue their indispensable work.

WAS CONGRESS IRRESPONSIBLE? LOOK AT THE ARITHMETIC

Mr. HELMS. Madam President, it does not take a rocket scientist to be aware that the U.S. Constitution forbids any President's spending even a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

So when a politician or an editor or a commentator pops off that ''Reagan ran up the Federal debt'' or that ''Bush ran it up,'' bear in mind that the Founding Fathers, two centuries before the Reagan and Bush Presidencies, made it very clear that it is the constitutional duty of Congress—a duty Congress cannot escape—to control Federal spending.

Thus, it is the fiscal irresponsibility of Congress that has created the incredible Federal debt which stood at $4,925,464,401,230.13 as of the close of business Tuesday, July 11. This outrageous debt—which will be passed on to our children and grandchildren—averages out to $18,697.15 on a per capita basis.

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 assistant 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.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Madam President, we have been debating this bill now for a number of days. We have made over 100 changes in the bill. We have tried to accommodate our friends on the other side.

Madam President, I notice the distinguished minority leader is here, and I will be delighted to yield to him so he can make his remarks, and then I ask consent I be recognized immediately following the minority leader.

The PRESIDING OFFICER. The Democratic leader is recognized.

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

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. WELLSTONE. Madam President, I ask unanimous consent I be able to speak for 10 minutes as in morning business.

The PRESIDING OFFICER. Is there objection? Is there objection to 10 minutes in morning business being allocated to the Senator from Minnesota?

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. There is objection at this time.

The Senator from Minnesota has been recognized.

Mr. DASCHLE. Madam President, are we still in a quorum call?

The PRESIDING OFFICER. The quorum call has been lifted and the Senator from Minnesota has the floor.

Mr. WELLSTONE. Madam President, I know the minority leader wants to lay down an amendment. Might I ask the minority leader if I can have some time right after that, in morning business?

Mr. DASCHLE. I have no objection to that. I am sure the request of the Senator from Minnesota can be accommodated.

Mr. WELLSTONE. Madam President, I ask unanimous consent, deferring to the minority leader, that I have 10 minutes to speak in morning business after he lays down the amendment.

The PRESIDING OFFICER. Is there objection to the Senator from Minnesota having 10 minutes as in morning business? Is there objection?

Mr. HATCH. Madam President, I am sorry?

The PRESIDING OFFICER. The Senator from Minnesota asked if he can have 10 minutes as in morning business following the Democratic leader's remarks, and asked unanimous consent.

Mr. DASCHLE. Madam President, I have been in consultation with the distinguished manager of the bill. I will withhold offering the amendment momentarily. The distinguished Senator from Utah has an amendment that he would like to offer.

We are willing to accommodate the interests of the distinguished Senator from Utah. Perhaps, following that, the distinguished Senator from Minnesota can be recognized for his morning business time.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Madam President, I say to my colleagues, I would be more than pleased to defer to the Senator from Utah. I was hoping I would be able to speak. I have an engagement at 10. Does the Senator think I would have an opportunity to do that after he lays down the amendment?

Mr. HATCH. I believe we can lay the amendment down and speak to it later.

Let me first get the amendment, and I will call it up and be glad to accommodate the distinguished Senator.

Mr. WELLSTONE. I thank the distinguished Senator from Utah.

AMENDMENT NO. 1498 TO AMENDMENT NO. 1487

(Purpose: To strengthen the agency prioritization and comparative risk analysis section of S. 343)

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

The PRESIDING OFFICER. The Senator from Minnesota has yielded the floor. The Senator from Utah sends an amendment to the desk. The clerk will read the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1498 to amendment No. 1487.

Mr. HATCH. Madam 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:

Delete all of section 635 (page 61, line 1 through page 64, line 14 and insert the following new section 635:

SECTION 635. RISK-BASED PRIORITIES.

(a) PURPOSES.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in sections 635 and 636 of this title;

(D) the methodologies and principle scientific determinations made in the analysis are subjected to independent and external peer review consistent with section 635, and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

(E) there is an opportunity for public comment on the results before making them final; and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1499 TO AMENDMENT NO. 1498

(Purpose: To strengthen the agency prioritization and comparative risk analysis section of S. 343)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1499 to amendment No. 1498.

Mr. HATCH. Madam 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:

In lieu of the language proposed to be inserted, insert:

SECTION 635. RISK-BASED PRIORITIES.

(a) PURPOSES.—The proposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious, and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in section 633 of this title;

(D) the methodologies and principal scientific determinations made in the analysis are subjected to independent and external peer review consistent with section 633(g), and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

(E) there is an opportunity for public comment on the results before making them final; and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in

complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

AMENDMENT NO. 1500

(Purpose: To establish risk-based priorities for regulations)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. ROTH, proposes an amendment numbered 1500.

Mr. HATCH. Madam 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 the word ''analysis'' in the bill and insert the following:

''analysis.

''Section 635 is deemed to read as follows:

SEC. 635. RISK-BASED PRIORITIES.

(a) PURPOSES.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—the term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency:

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in sections 635 and 636 of this title;

(D) the methodologies and principal scientific determinations made in the analysis are subjected to independent and external peer review consistent with section 635, and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

(E) there is an opportunity for public comment on the results before making them final; and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release

of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.— No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1501 TO AMENDMENT NO. 1500

(Purpose: To establish risk-based priorities for regulations)

Mr. HATCH. Madam President, I send an amendment to the desk on behalf of Senator ROTH and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. ROTH, proposes an amendment numbered 1501.

Mr. HATCH. Madam 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:

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

analysis.

SEC. 635. RISK-BASED PRIORITIES.

(a) PURPOSES.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) the comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs

in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in section 633 of this title;

(D) the methodologies and principal scientific determinations made in the analysis are subjected to independent and external peer review consistent with section 633(g), and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

(E) there is an opportunity for public comment on the results before making them final; and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

Mr. HATCH. Madam President, I will speak to these amendments as soon as the distinguished Senator from Minnesota has completed. I ask unanimous consent I be next recognized—except for the minority leader.

Mr. DASCHLE. Reserving the right to object, I will not object, but let me just indicate we are working here in good faith. We have not seen these amendments.

Mr. HATCH. I have not either.

Mr. DASCHLE. I hope we will have an opportunity, first, to look at the amendments; second, let me just say, I hope—I know we are working under the rights that every Senator is accorded under parliamentary procedure. But, again, we filled the tree, and I think we all understand the reasons for filling the tree. I hope we can have some good debate and have the opportunity to lay down amendments.

I was prepared to lay an amendment down—not fill the tree—and have a good debate about it.

The Senator from Utah has asked me to withdraw or delay the offering of that amendment. I have done so. Now I find that after I have conceded to do that we allow the Senator from Delaware to offer an amendment, and now we have not one amendment but four amendments simply to fill the tree.

Mr. HATCH. Will the Senator yield?

Mr. DASCHLE. Certainly. I am happy to yield.

Mr. HATCH. I want to accommodate the distinguished minority leader. He has been so gracious this morning. We are trying to work out the amendment, and we will certainly do so. But we would be happy to set these amendments aside in favor of the amendment of the distinguished minority leader. So it is not a problem. We will be happy to accommodate the minority leader.

Mr. DASCHLE. That is not necessary.

I would just call attention to the fact that I think it is important for us to work through these things and not to deprive either side.

Mr. HATCH. We intend to work in good faith with all Members on the floor, and we will do our very best to do so. As you know, this bill is a tough bill and there is a lot of controversy on both sides of the floor, although I think we are resolving those controversies. I think we are doing it in the ordinary course. We continue to try to resolve all the conflicts that might exist between our two sides. But we will try to cooperate with the distinguished minority leader. We want to move ahead on amendments today and get as much done as we can.

Mr. GLENN. Madam President, do I understand then that the Senator from Utah would be amenable to setting aside what was just accomplished here so that the minority leader could go ahead with the amendment that we have prepared?

Mr. HATCH. Sure. We will be happy to do that.

Mr. GLENN. Madam President, further inquiry, can we have copies of the amendments?

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. Madam 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. I ask unanimous consent that the Senator from Minnesota be permitted to speak for up to 10 minutes.

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

The Senator from Minnesota is recognized to speak for up to 10 minutes.

Mr. WELLSTONE. I thank the Chair.

THE RESCISSIONS BILL

Mr. WELLSTONE. Madam President, I read this morning in the paper that the majority leader has dismissed what I think was a very reasonable proposal about how to proceed on the rescissions bill. I want to be just very clear about where we are right now in the deliberations.

Madam President, on Friday morning Senator MOSELEY-BRAUN and I came to the floor of the Senate to express our concerns about the most recent version of the rescissions bill that had been worked out the night before. There had been a deal struck by some parties on Thursday night, and it was coming over to the Senate from the House Friday morning around 10. It was about 120 pages long. We had not had an opportunity to examine it. There were some I think who wanted to just voice vote it. But at a minimum, we wanted an opportunity to propose several amendments and to have debate on each of them.

Madam President, the position that I took then and I think Senator MOSELEY-BRAUN took as well—she certainly can speak for herself—is that when it comes to major spending bills,

I have always said we should have recorded votes. That is critically important. We should not have voice votes on large spending bills that are this crucial. By the same token, when you have a bill with $16 billion in spending cuts, and there are changes made from what we had passed in the Senate, changes made at the last second—then clearly it is important to talk about those changes, to talk about the priorities reflected in these cuts, what kind of programs are going to be cut, how they are going to affect people in the country and what the alternatives are.

So we talked some about our amendments. I focused on the Low-Income Energy Assistance Program. I will not take a long time on that right now. I spoke about that at some length on Friday. I talked about a very important Medicare Counseling program for senior citizens to make sure they do not get ripped off. And all too often that happens by insurance companies on supplementary coverage to Medicare. I talked about an important job training program for homeless vets, and other job training funds for dislocated workers. And Senator MOSELEY-BRAUN talked about school infrastructure and all the problems that go with the lack of investment in schools and lack of investment in children.

As it turns out late Thursday night some of the funding we had restored in the Senate was then cut again. This was a deal that we did not think was such a good deal. What we said was that we at least ought to have the right to propose amendments, have debate and have those voted up or down.

Madam President, at the end of this debate on Friday the majority leader pulled the bill from the floor, and said that it would not come back up except under a unanimous-consent agreement but certainly with no amendments. We are talking about a $16 billion spending bill, and he was insisting on no amendments. I sure think there is enough time for a few amendments. We made it very clear yesterday that we would agree to the four amendments. I have three amendments. Senator MOSELEY-BRAUN had one amendment. I think we were going to limit the debate to 1 hour on each amendment, equally divided, and we would stack votes for the next day. And I think we would have 40 minutes for summary of each amendment before votes, 10 minutes for each one. I was surprised that proposal has been turned down, because I thought it was eminently reasonable.

I must say to you, Madam President, that it seems to me that there must be something more at stake here. I do not understand what the majority leader is worried about. I mean I suspect that he would have the votes to defeat these amendments, though I do not think these amendments should be defeated. Certainly, this is all about the whole question of the way the legislative process works.

Madam President, I quote from a piece today in the New York Times about what is going on in the House:

> Draconian cuts; Subcommittee on Labor, Health and Human Resources yesterday did their work . . . eliminating jobs programs, programs in the Department of Energy like the Low-Income Energy Assistance, Head Start, Safe and Drug-Free Schools, assistance for the homeless, enforcement of environmental laws, job training programs for summer youth.

Madam President, in our amendments these are the very priorities we want to call into question. I believe that this rescissions bill was just a glimpse of what is to come. These are truly distorted priorities.

And what is especially troubling is that there are alternatives to cutting these high-priority programs. For example, we do not see rescissions in any of the wasteful spending within the Pentagon. We wanted to transfer a little money out of the travel and administrative budget of the Pentagon; over 60 percent of all the Federal Government's travel and administrative funds is in this one agency; billions and billions of dollars, to make sure people do not go cold in the winter; to make sure there is some support for dislocated workers. We wanted to at least attempt to restore funding for that, offsetting the cuts with cuts elsewhere. The dislocated worker funding is also key to many Americans. For example, we see bases being closed throughout the country. We see people losing their jobs. And we are not going to provide people the opportunity to have retraining and find other work? We are unwilling to provide a little bit of a support for elderly people by way of consumer protection when they purchase health care policies? We are not interested in any support for homeless vets when it comes to some job training or cutting that? But when it comes to subsidies for oil companies, coal companies, tobacco companies, that is not on the table. When it comes to looking at some of the waste within the Pentagon and transferring some of that funding to some of these programs, that is not on the table.

Madam President, let me be very clear about it. Our proposal was eminently reasonable.

We wanted to have some debate on key parts of this bill, which makes $16 billion worth of cuts in Federal spending. We agreed to some time for each amendment. It was limited time. We wanted to talk about the priorities of these cuts, and propose some alternatives. My understanding is that the majority leader has now dismissed even that.

Madam President, I do not think four amendments, a total of about 4 hours, is too much time to spend in the legislative process on a $16 billion rescissions bill. I do not think democracy works well when we shut off this debate and discussion. I do not think people in the country really know what we are doing when we shut off this debate and discussion. Frankly, I think that is the issue.

I am determined, given the reasonableness of our proposal, that we will have an opportunity to have these amendments considered, and we will have debate, within limits, and people will vote up or down, and people in the country will know that we are cutting funds for job training for dislocated workers, low-income energy assistance, counseling programs for older people about consumer protection to make sure they do not get ripped off when they purchase health care coverage, job training for homeless vets, and basic repair of schools for kids.

That is what we are doing. And now look at what the House Appropriations Committee is doing. This rescissions bill is just a glimpse of the distorted priorities that are now being put into effect in this Congress. Americans do not want to see their fellow citizens who have been laid off because of retrenchment or because of base closures without an opportunity to have job retraining. They do not want to see low-income people going cold in cold-weather States. They do not want to see senior citizens without consumer protections. They do not want to see homeless vets without some support. They do not want to see kids without some opportunities, learning in decent schools.

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

Mr. WELLSTONE. And I think the majority leader may be worried about that. So I am ready for the debate on these amendments, and I hope we will be able to work out some agreement.

I yield the floor.

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I just want to make a few opening comments on this bill before the Senate. It is a very important bill. I consider it one of the most important bills in the last 60 years. It is going to make a difference as to whether or not we are going to be regulated to death or whether regulators are going to have to meet certain standards and norms of common sense before they overregulate us, or should I say before they regulate us properly.

This bill would force them to have to do what is right. It will also force Congress to be a little more specific in its legislation so that we do not always have to rely on regulations. It will make the system more honest.

This bill is about common sense, and I think most Americans would agree that the Federal Government is out of control in terms of the burdens it places on them. A lot of people in this country believe that. We know that the

cost of regulations is eating us alive. It is between $6,000 and $10,000 per family in this country.

Now, many of them are essential. We acknowledge that. This bill will protect the essential regulations. And that is as it should be. We also know that some of these regulations are restrictive of freedom, some of them are taking properties away from people, some of them are just plain, downright offensive, and some of them are stupid.

In that regard, let me give my top 10 list of silly regulations—this is my fourth top 10 list of silly regulations—just to kind of bring home to everybody how utterly ridiculous some of the interpretations of regulations and the regulations themselves are in this country.

No. 10. Fining a man $10,000 because he filled out his tax forms with a 10-pitch typewriter instead of a 12-pitch typewriter. That is ridiculous. But that is what happened.

No. 9. Medicare will pay for a pacemaker but will not pay for a newer, smaller version of the pacemaker that actually would be less expensive because that specific version has not been approved by the FDA, even though it has been in clinical trials. It is ridiculous. And the old procedure costs a lot more compared to the new one.

No. 8. Fining a company $5,000 for accidentally placing the answer to line 17 on line 18 in an Environmental Protection Agency form. Now, who would not be upset with that type of ridiculous assessment by the regulators?

No. 7. Prosecuting a rancher for ''redirecting streams'' when he has cleared scrub brush removed from his irrigation ditches. The ditches have been in use since the beginning of the century, and they have cleaned them all the time. But they prosecuted him for ''redirecting the streams.'' Utterly ridiculous.

No. 6. Spending nearly $3 million to protect the habitat of the endangered dusty seaside sparrow and then managing the land poorly, thus allowing this sacred bird to become extinct. Spend $3 million, wreck the land, and the bird becomes extinct anyway. Ridiculous.

No. 5. A wrecking company's owner was convicted of a felony and sentenced to 3 years in jail. What was his crime? His crime was failing to inform bureaucrats that when his company demolished a building, a total of one single pound of asbestos was released into the atmosphere. Three years in jail. That is more than ridiculous.

No. 4 on this top 10 list of silly regulations for today: Requiring a farmer to suspend all economic activity on 1,000 acres of land because one red-cockaded woodpecker was found. I do not know about you, but my goodness gracious, it is time to put an end to this type of silly regulation.

No. 3 on the list of the silliest regulations, on our top 10 list for today, fining a business $250 for failing to report that no employee has been injured in the preceding year.

No. 2. Withholding approval of a medical waste container for almost a year only to determine that the product did not need FDA review. Ridiculous.

Let us look at No. 1 on our list of 10 silly regulations.

No. 1. The FDA took 7 years to approve a medical device which helped premature newborn infants breathe. It then made the company withdraw the product from over 250 hospitals because the agency found inadequacies in the company's documentation of its manufacturing practices. None of this documentation affected the safety of the product. Physicians later verified that children who could not get this product died.

Now, unfortunately, because of silly regulations, thousands of people are dying in this country, and many, many more people are being oppressed and mistreated in this country.

Mr. President, our Nation is being suffocated under a mountain of red-tape. Unnecessary, inefficient, and wasteful regulation stifles business, slows the economy, and costs our fellow Americans their jobs. It has gotten to the point where the words Americans fear most are, ''I am from the Government and I am here to help you.'' Amazingly enough, there are still those who attempt to argue that the Federal bureaucracy is just fine. They are satisfied with the status quo. We are not.

Overregulation is often just plain ludicrous. We have had some fun describing some of the goofy rules that the Feds think we just have to have. But the fact is these regulations are frequently not funny at all. They hurt people. They cause deaths—the very people they are ostensibly supposed to be helping.

For example, the Abyssinian Baptist Church in Harlem struggled for 4 years to get approval for a Head Start program in a newly renovated building. Most of the time was spent arguing with the bureaucrats about the dimensions of rooms that did not satisfy the guidelines. ''An entire generation of Head Starters missed the facility,'' said Kathy Phillips from the church. ''The people in Washington want to tell you this or that can't be done. I told them, 'I know you're talking about five pieces of paper, but we're talking about children.'''' When regulations hurt children, it is time to change the regulations.

In another case, an OSHA inspector noted that a worker wearing a dust mask had a beard, violating a rule that requires a close fit between face and mask. The dust was not heavy or of hazardous content, and even when used over a beard, the mask filtered out most of what there was. But the rule was clear and, like most rules, did not distinguish among differing situations. Nor did it matter that the worker was Amish. Given a choice between abrogating his religious beliefs or quitting his job, this Amish worker quit his job. Thus, in seeking to protect a worker, OSHA really cost him his job. Now, that is ridiculous.

The rigid nature of regulations is evident in the example of Tony Benjamin, the father of eight, who after reading about lead poisoning made a mistake to look to the Government for help. He had his children tested and found the youngest had lead levels almost at the danger threshold. He got a lead detection kit and, as is common in old houses, found lead beneath the surface of his walls. The State official said not to worry because Mr. Benjamin had recently painted over the old coat.

But the child's test results had been filed with the city health department. One day, unannounced, the city inspectors arrived and stamped the word ''violation'' in red ink on every nick in his paint, and after finding 17 nicks, declared his home a health hazard. Mr. Benjamin was told to move his family out of their home and strip and repaint it in large sections. If he failed to comply immediately, he was told, he could be fined over $8,000. Mr. Benjamin could not afford to do what the inspectors demanded. Certainly he could not vacate his home with his eight children. Where could they go? Meanwhile, the youngest child's lead level dropped well below the level considered dangerous, but the law still required abatement, clearly without exception. When a family can be thrown out of their own home without good reason, no one can tell me that this system is working.

Another situation involves a man who tried to defend himself against a grizzly bear. Bears had eaten about $1,200 of the man's sheep in one summer. However, the grizzly bear was listed as endangered, and he could do nothing. One night he heard bears attacking. And in his frustration, he came out of his house with a rifle and shot at the bears. Then another bear he had not seen moved to attack him so he shot it. The next day he went out to look for the dead bear. Instead he found it was very much alive as it started to charge him again. He shot it in self-defense, killing it. As a punishment for defending himself he was fined $4,000 for ''taking'' the bear which had attacked him.

Regulations also impose burdensome costs on hard-working people, burdens that make survival almost impossible. In one case an auto parts storeowner failed to display a sign indicating that his store accepts waste motor oil for recycling. For his crime, he faces a $10,000 fine and a 1-year prison term. The owner said that the sign was down because the windows were being washed. Well, think about it for a minute. You own a business. You are up against a fine of 10 grand and a year in jail for failing to post a sign for 1 day while you are washing the windows. What is wrong with this picture?

What is happening to us in America? Convicted, violent criminals, murderers and rapists are getting out of prison through the revolving door in

our justice system, yet a regular guy, who happens to be cleaning his window, is treated like a criminal. I say to my colleagues that if we allow this kind of distorted societal value system to continue, our negligence as holders of the public trust far exceeds anything this business owner could be cited for.

Other times the immense mountain of paperwork buries business alive. I spoke earlier about Mr. Dutch Noteboom, age 72. He has owned a small meatpacking plant in Springfield, OR, for 33 years. The USDA has one full-time inspector on the premises, one full-time inspector, and another spends over half of his time there. The level of regulatory attention is somewhat surprising since Mr. Noteboom has only four employees. But the rules require there be at least one inspector wherever livestock is slaughtered.

Mr. Noteboom said, ''I am swimming in paperwork, but I don't even know a tenth of the rules—you should see all these USDA manuals.'' Now, do we really need an inspector for every two employees?

These silly regulations could even stop well-meaning Government employees from being able to exercise common sense. In the late 1980's, Dr. Michael McGuire, a senior research scientist at UCLA found himself in trouble. His lab, which sits on 5 acres, is funded by the Veterans Administration. Its lawn needs to be cut. When the lawnmower broke, Dr. McGuire decided to go out and buy another one. He filled out no forms and got no approvals. During a routine audit, the auditor asked why the lawnmower was different. Dr. McGuire told the truth, and thus launched an investigation that resulted in several meetings with high-level Federal officials. ''I couldn't understand,'' Dr. McGuire notes, ''why important agency officials would spend their time this way.'' No kidding. I do not understand it either.

Finally, after months, they rendered their findings. They could find no malice, but they determined Dr. McGuire to be ignorant of proper procedures. He received an official reprimand and was admonished to study VA procedures about the size of an encyclopedia.

Oh, one more fact about this case. Dr. McGuire bought the lab's lawnmower with his own money. Now, can anyone believe that this is a useful and productive way to spend taxpayer money—to find fault with Dr. McGuire who did it on his own with his own money to help keep the lawn cut?

Well, Mr. President, I want to emphasize that the cost of regulation is not limited to a few unfortunate individuals. These examples of bureaucratic abuse, of mismanagement add up to a staggering cost for all Americans. The Americans for Tax Reform Foundation estimates that the average American works until May 5 just to pay their taxes. However, when the hidden costs of Government, the regulatory costs, are added in, it is not until July 10 that the people even start to earn money for themselves.

So we are working from January 1 to July 10 to even make a dime for ourselves. Monday was July 10, Mr. President. Until this week started, this very week, every single day that an average American had spent at work so far this year has been to pay for their Government. It was only this morning that they could expect to keep one penny of what they earned. Such a tremendous drain on hard-working Americans cannot be justified when the money is being spent on some of these ridiculous regulations I have mentioned today. They are just a few of literally the thousands and hundreds of thousands of them that are ridiculous and do not work.

This bill will eliminate the wasteful, absurd, and harmful regulations while keeping those that truly protect America. Those regulations that contribute to the greater good will not be affected by this bill. This bill will not summarily overturn environmental laws, antidiscrimination laws, or health and safety laws. Such allegations are pure hogwash.

But as we have noted from these few examples, the true worth of many rules should seriously be questioned. That is what this bill does. It requires the Federal Government to justify the rules and regulations they expect us to live by. And, in my book, that is not too much to ask. So I urge my colleagues in the Senate to support this legislation. And I appreciate being able to just make this short set of illustrations as to why this legislation is so important here today.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER (Mr. Frist). The clerk will call the roll.

The 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. Without objection, it is so ordered.

Mr. HATCH. Mr. President, we have had some discussion on both sides of the aisle on various issues. The minority leader would like to call up his amendment. We were first thinking in terms of setting aside these amendments that I have called up on behalf of Senator ROTH. But the way we will approach it is this way.

I ask unanimous consent that we withdraw those amendments and that the yeas and nays that have been ordered be vitiated.

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

So the amendments (Nos. 1498, 1499, 1500, and 1501) were withdrawn.

Mr. HATCH. Mr. President, as I understand it, the parliamentary situation is that the bill is now open for amendment?

The PRESIDING OFFICER. That is correct.

Mr. HATCH. I yield to the minority leader.

AMENDMENT NO. 1502 TO AMENDMENT NO. 1487

(Purpose: To protect public health by ensuring timely completion of the U.S. Department of Agriculture's rulemaking on ''Pathogen Reduction: Hazard Analysis and Critical Control Point (HACCP) Systems'' (proposed rule, 60 Fed. Reg. 6774, et al., February 3, 1995)

Mr. DASCHLE. Mr. President, let me thank the distinguished Senator from Utah for his cooperation and the accommodation he has shown us in accommodating the interests of all concerned here.

I call up an amendment that is at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 1502 to amendment No. 1487.

Mr. DASCHLE. 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:

On page 19, line 5, strike out ''or''.

One page 19, line 7, strike out the period and insert in lieu thereof a semicolon and ''or''.

On page 19, add after line 7 the following new subparagraph:

''(xiii) the rule proposed by the United States Department of Agriculture on February 3, 1995, entitled ''Pathogen Reduction: Hazard Analysis and Critical Control Point (HACCP) Systems'' (proposed rule, 60 Fed. Reg. 6774, et al.).''.

Mr. DASCHLE. Mr. President, the amendment that we have just offered has one specific purpose, and that is to protect the ability of the Department of Agriculture to issue its proposed rule requiring science-based hazard analysis and critical control point, or HACCP, systems in meat and poultry inspections. The rule is critical, for it will improve the quality of our Nation's food supply and help prevent a repeat of the E. coli bacterial contamination. But it is not just E. coli; it is salmonella, it is listeria, it is a number of other foodborne illnesses that as a result of recent experience has clearly demonstrated the need for a new system.

Last year, 2-year-old Cullen Mack, of my home State of South Dakota, fell ill from eating beef contaminated with E. coli bacteria. As a result of experiences like Cullen's, I held a number of hearings in the Agriculture Committee on the tragic 1993 outbreak of E. coli.

I held numerous follow-up hearings in which industry, producers and consumers all repeatedly called for improving and modernizing the meat and poultry inspection systems. Later, the Department of Agriculture developed regulations to address recurrences of this problem. The rules would modernize the meat inspection process using sensitive scientific techniques to detect contamination and prevent spoiled

meat from making its way into our food supply.

Not only would the public benefit from tough new meat inspection rules, but so would farmers and ranchers who raise the livestock and rely on the assurances that their products will reach the market in the best condition possible. Consumers and agricultural producers should not be asked to delay these essential reforms—reforms the entire agricultural and consumer community have been calling for for several years.

Unfortunately, this bill, even with the Dole amendment adopted yesterday, could lead to unacceptable delays in the issuance and implementation of this rule.

The problem is really very simple, Mr. President. In an attempt to reform the regulatory process, the bill overreaches and provides numerous opportunities to those who would seek to delay the rule, prevent it from being issued, or attempt its repeal. Such a result is, frankly, unacceptable and, I believe, would lead to the long-term detriment to the American people and American agriculture.

Yesterday, we debated the Dole amendment, which purported to address the problem. Unfortunately, it did little in that regard. It simply establishes a 180-day grace period for the regulation, at which point the agency must still comply with all of the provisions of the bill. It says for 180 days the effects of this legislation will not be addressed as it relates to the regulations. But after that, everything the bill calls for is every bit as much in effect as it would have been had the 180-day period not been in existence at all. It delays it for 6 months. It does not exempt the rule from the many requirements of the bill. And, as a result, that delay is really no fix at all.

So merely delaying compliance of the burdensome processes of the bill, which ultimately must be met anyway, is no solution. Moreover, once the rule is promulgated, the petition and judicial review processes would still apply. Therefore, the rule will be susceptible to the extensive challenges available through the petition processes and through litigation. All of this for a rule that has already gone through the lengthy rulemaking process, and for a rule that is so essential to protecting public health.

In short, Mr. President, a 180-day delay does not solve the problem.

In addition to these concerns are those that Secretary Glickman outlined in his letter of July 11. In that letter, Secretary Glickman voiced strong opposition to S. 343 because it would unnecessarily delay USDA's food safety reform, among many other things.

The letter explains the Secretary's view that the peer review requirement in S. 343 will delay USDA's food safety reform by at least 6 months.

As I read Secretary Glickman's letter, he is concerned that the bill, as amended by the Dole amendment, requires that risk assessments underlying both proposed and final regulations be peer reviewed prior to becoming final. In other words, before USDA can issue a final regulation reforming our meat and poultry inspection systems—a regulation that has been in the works now for more than 2 years and is based on more than 10 years of science-based reform efforts—the bill would require that the rule go through a lengthy review by scientists before it could be issued in its final form.

According to the Secretary, this peer review requirement would result, as I said, in a 6-month delay in this essential food safety reform.

My good friend and colleague, Senator JOHNSTON, has stated that he believes there are exemptions in the bill to deal with the peer review issue. It is my understanding from reviewing the bill and from discussing the matter with others that it is unclear whether USDA's E. coli rule, the HACCP rule, would fit the exemption and whether it would, therefore, avoid the delays associated with the peer review process.

Like any legal ambiguity, this provision invites litigation and should be corrected here on the floor before the bill becomes law.

If it is the intent of the authors of this legislation to exempt the E. coli regulation from delay caused by the peer review process—and from the other onerous processes in the bill—then they should simply vote for my amendment. My amendment would solve all of these problems by simply stating that the E. coli recall, the HACCP rule, cannot be considered a major rule for the purposes of this bill. It ensures that the bill cannot be used to delay this important rule.

The Department of Agriculture has already gone through a great deal to develop this regulation. USDA published the proposed rule in February of this year with a 120-day comment period. USDA also extended the comment period at the request of a large number of commenters.

Given this extensive comment period, if USDA suddenly declared an emergency exemption to avoid the peer review delay, it would simply be opening itself up to certain litigation, and even greater delay.

I also note that USDA attempted to publish emergency food safety regulations a couple of years ago. To provide consumers with information on how to avoid food-borne illness from pathogens like E. coli and salmonella, USDA issued emergency regulations requiring safe handling labels on meat and poultry products. These safe handling regulations were issued without notice or comment. USDA was sued and lost and had to go through the rulemaking process before the labels could even be required. The result, then, of that ''emergency'' provision was delay.

Mr. President, all we are seeking here is some common sense, some balance, some way in which to ensure that we can accomplish the goals set out in the bill, but to do so with a recognition that there is a sensitivity to many of the rules that are currently about to go into effect, rules that directly affect the public health and safety of millions of Americans, that ought not to be encumbered, that ought not to be thwarted in any way, as we go through what we consider to be reform in rulemaking overall.

The Secretary felt so strongly about this issue, Mr. President, that he has issued yet a second letter that I would like to read into the RECORD. It was submitted by James Gilliland, general counsel at the Department of Agriculture, and was addressed to me. It simply states:

> DEAR SENATOR DASCHLE: I am writing relative to the amendment Majority Leader Dole offered to S. 343 on the floor of the Senate yesterday. The amendment, which was adopted by a unanimous vote of the Senate, added ''food safety threat'' to the emergency exemption in the cost-benefit analysis subchapter of S. 343.
>
> I appreciate the Majority Leader's efforts to ensure that the Department of Agriculture's (USDA) efforts to reform the federal meat and poultry inspection system are not delayed by S. 343. However, the amendment does not provide an emergency exemption for the Department's food safety reform proposal and will not alleviate the delay that S. 343, in its current form, would have on the Department's efforts.

So, Mr. President, here again, we have it from the Secretary of Agriculture, from the Department of Agriculture, simply asking us to consider the consequences of what this bill could do to a process for meat inspection that has been under way, under consideration, proposed now for over 24 months. It would stop in its tracks the efforts made by two administrations, really, to put all of the science and the new knowledge and the processes that we have to make food inspection more meaningful and more effective into place. We do not want to do that. I do not believe anybody in the Senate wants to encumber the Secretary's efforts to ensure that meat safety can be provided to an even greater extent than it has been in the past.

My amendment will ensure that the Secretary has the latitude to provide for the culmination of this long effort and in a successful way, in a way that we all want. I urge its adoption.

I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I appreciate very much what the Senator from South Dakota, the very distinguished leader of the Democratic Party in this body, has to say about bringing common sense and some sensibility to regulation. I do not want to speak just to his amendment. But I think the points he is trying to make are the very basis for the legislation before us.

Although I might disagree with his amendment or whether it is needed, I want to give an example, as I have been trying to do each of the last 2 days, of

instances in which regulations have had a very negative impact in my State, a very unfair impact on certain individuals—individuals and small businesses, people that cannot afford to pay the legal fees to fight the harassment they get from Government bureaucrats, or where there is a misapplication of regulation, or where there is what I am going to mention today, disputes between Government agencies.

It is one thing to have a very egregious regulation that may be justified making an impact negatively upon what an individual might want or might not want to do. But it is quite another thing to have one Government agency say you can do something and another Government agency come along and say you cannot do it, and then not even be able to get a resolution to the dispute between the two agencies. And then what is even worse—in the case I want to recite for you—is that there are four Government agencies that have four different definitions of what a wetland is, and then you are negatively impacted.

Some say you can go ahead and do something, and another Government agency comes along and says ''No, we are going to fine you for what you did,'' and you cannot make use of your land.

Then it is really quite perplexing for the farmer who moved ahead on the basis of two Government agencies saying he could do something, and then after a third and a fourth Government agency said he could not do it, one of the first two Government agencies that said he could do it changed their mind and said he could not do it.

Now, when I say we ought to have common sense brought to regulation writing and in the enforcement of regulation, the very least that a citizen ought to be able to expect out of his Government is to get an answer and to get a resolution of a problem, and to get a quick resolution of the problem.

Persons ought to expect in the first place they would not have two Government agencies, one saying you could do something and one saying you could not do it. Or you would at least think if that is the way it is, those two Government agencies ought to get together and say ''Yes, you can do it,'' or, ''No, you cannot do it.''

We have such a morass of regulation and we have so much conflicting regulation that we actually have citizens of the United States that cannot get a resolution, cannot get agreement among Government agencies, and then it is even difficult to get an answer to your problem when you spend a lot of money on legal fees and appeals.

Now, that is the regulatory state on a rampage that is looking out for its own interest and not the interest of the citizens that it is impacting.

There is not common sense in a lot of regulation writing, and we, in rural America, have found really a lack of common sense when it comes to Government regulation of wetlands.

I want to highlight another case in my State that illustrates this. Remember, yesterday, I spoke about the country cooperative elevators that are impacted from the air quality standards of EPA, where they want to regulate what only occurs about 30 days out of a year as if it were happening 365 days, 24 hours a day, and costing these small cooperative businesses up to $40,000 to fill out a 280-page form that once they get it filled out only 1 percent of the elevators in my State are going to be impacted by the regulation in the first place.

The day before, I spoke about how EPA caused a small business in my State—the costs of legal fees and lost business $200,000—to defend himself against a criminal charge that was brought by EPA, by a paid informant who was a disgruntled former employee, and there was not any case there. Misinformation.

They came on this businessperson, a quiet morning at 9 o'clock in the morning, with their shotguns cocked, wearing bulletproof vests, sticking the gun in the face of the owner and in the face of the accountant, all on misinformation, and costing the business $200,000.

Now, that is what is wrong with regulation. There are people in this body that want Government regulation and they do not care about the adverse impacts upon the small businesses of America and the farmers of America from adverse regulation.

This bill before the Senate is to bring common sense to this process—nothing more, nothing less.

In the instance I want to recite this morning, it all started in April 1989. A young family purchased a 284-acre farm in Mahaska County, IA. I presume from the description of how this problem evolved, this was probably not a very expensive farm. It was probably a farm that only a young person could afford to purchase. Remember, in my State, less than 5 percent of the farmers are under 30 years of age. We lost a whole generation of farmers because of the agriculture depression in the 1980's. The average age of the farmer in my State is 61 years of age.

Do we want young farmers to start farming? Do we want them to start this business where they will produce for the consumer of America the cheapest food of any consumer in the world, because we city slickers only spend 8 percent of disposable income on food? There is no other consumer anywhere in the world that has that cheap of a buy or that quality of a buy. Or do we want corporate farming to take over America, where there are no young farmers who have the ability to get started?

We have a harassment by a Government agency here that I am going to give an example of that is an impediment to young people getting into farming, because this farm was in a state of disrepair. That is why it was cheaper for this person to buy.

The drainage system needed improvement. There was a stand of timber occupying part of the land. He wanted to make some improvements once he purchased it. He did the right thing. Before messing with Government regulation, because we really cannot understand Government regulation, go to some friends at the Soil Conservation Service and check with them, because for 60 years, the Soil Conservation Service provided technical help to the farmer. The farmer considered the employees of the Soil Conservation Service to be people that would level with or help you.

Now, of course, these employees of the Soil Conservation Service are seen as regulators. Farmers do not want them on their farm. You do not go to their office to ask questions any more because some Federal regulator is going to come down on you if there is some suspicion that you might do something that was wrong. Yet we have reduced dramatically the amount of soil erosion in America because of the cooperation between the family farmer and the Soil Conservation personnel.

Even in 1989, this farmer did the right thing, because he does not want to do something to his land and have the Government regulator come in and say ''You did this and should not have done it.'' So he did the right thing and checked with them ahead of time before making the necessary improvements to his drainage system and before clearing some of the trees. He checked with the Soil Conservation Service. The personnel at the SCS authorized his plans.

Also, the Iowa Department of Natural Resources, the State agency which issues farmers flood planning permits, also authorized what he wanted to do.

With the blessing of two Government agencies representing both State and Federal governments, this young farmer cleared trees and improved the drainage on his new farm.

However, in just a few months, October 1989, the Army Corps of Engineers, a Federal agency, visited the farm. They discovered and alleged that a wetland had been filled without a permit. A follow-up letter by the Corps directed the farmer to obtain an after-the-fact permit or be fined up to $25,000 per day. Mr. President, $25,000 per day—that is what the average farmer lives on in Iowa for a whole year.

A short time later, the Fish and Wildlife Service visited the farm and determined that more than 100 acres of wetlands had been impacted. Now, of course, this farmer was shocked to discover wetlands on his otherwise dry farm, especially since the Soil Conservation Service had already approved his actions.

The farmer agreed to a wetlands delineation by the corps. The corps used what is now not used by the corps, a 1989 wetlands manual, and according to this manual, you had to have water within 4 feet of the ground surface for it to be classified as a wetlands. And at no time has there been water at that

level. However, they did find, under another provision of the wetlands delineation, the presence of hydric soils, and so they declared 95 percent of the farm wetland.

Since the farmer thought this conclusion was absurd, he decided to appeal to the Soil Conservation Service, another Federal agency, because of that agency's long history of working with farmers and because they said he could go ahead and make these improvements.

Now, this is what is really frustrating to the farmer. This time around, when he went back to the SCS office, he found that the SCS office was more interested in cooperating with the Corps of Engineers than they were with the farmer. Even though they originally said that he could clear the land and improve the drainage system. This time the SCS was not the friend of the farmer. They found his 284-acre farm had 150 acres of wetlands. This determination was made in the face of compelling evidence to the contrary.

An extensive engineering study on the farm shows that normal flooding fails to inundate the farm for the 7 days required under the 1989 manual—which manual is no longer used. Furthermore, evidence from 23 monitoring holes showed that the water depth on the farm is normally 4 to 5 feet and not the 7 days on the surface that you must have under that manual to have a wetlands delineation.

So the farmer used this evidence from this extensive engineering study to appeal, then, to the Soil Conservation Service State office. Although the regulations required the Soil Conservation Service to respond to an appeal request within 15 days, they took more than 150 days to respond.

You know, 150 days is a whole cropping season on Iowa farmland—a growing season. They cannot even respond in the 15 days. Then you wonder why we need a regulatory reform act? It ought to be very obvious why we need one.

Now, surprisingly, when the SCS, the Soil Conservation Service, did respond, do you know what they said? They said they did not have enough information to make a decision. But the Soil Conservation Service had enough evidence to agree with the Corps of Engineers that 150 acres of this 284-acre farm had wetlands on it—after, months before, they said you can go ahead and make these improvements. They said they did not have any information, after both the Corps and the SCS had already made determinations of wetlands based on the exact same information.

Based on this case, it seems to me it is very easy to understand why the American public has become cynical about its Government. All people want for the high taxes they pay in this country, plus all the money we borrow—saddling the next generation of children and grandchildren with a big cost—they may not like the Government they get, and they are not getting what they are paying for, but they would at least like to see their Government work. Instead, what we have is a bureaucracy characterized by overlapping jurisdictions, where one official can authorize an action that another will condemn you for later.

There is also a lack of flexibility and common sense in interpreting and enforcing regulations. The average citizen can find himself subject to the whims of a powerful yet irrational Federal bureaucracy. During the last 2 years this young Mahaska County farmer I am referring to here has spent his own time and money attending countless numbers of meetings, hearings and appeals. His farm has been visited by Government officials on 7 different occasions. And he still does not have an answer. This all started in 1989 and here it is 1995. He spent thousands of dollars defending himself against Federal regulators, and the U.S. Government has spend thousands of taxpayers' dollars to deprive this farmer of the economic use of his property, yet this case remains unresolved.

The consequences are severe for this young farmer. He was deprived of disaster assistance during the floods of 1993, and is not eligible for Federal crop insurance. So the Government is depriving this farmer of benefits, even though a final resolution of his case has not been decided, and apparently this young man, then, is presumed guilty under these other Federal programs, until he proves himself innocent.

This type of overreaching by the bureaucracy must stop. S. 343 will force agencies to more carefully promulgate regulations, paying attention to the costs and benefits of their actions. Maybe this example will help us put in perspective the need for the cost and benefit analysis that is in this legislation.

This Government regulation has tremendous costs for this young farmer that I just referred to. There is nothing wrong with a Government agency, if it is going to have a Government policy, to make sure that the costs of that policy are not greater than the benefits. Or, under this legislation, if there is a determination that the cost is still greater than the benefit, at least you ought to choose the least costly method of accomplishing our goals. So, maybe this will cause these agencies to hesitate and contemplate, before they move ahead and infringe on the rights of our citizens. Hopefully, S. 343 will force these agencies to use more common sense in the future, and avoid situations like the one experienced by the young farmer in Mahaska County.

If the Corps of Engineers, if the Fish and Wildlife Service, if the Soil Conservation Service, and if the Iowa Department of Natural Resources want to show that they are concerned about the impact their regulations have, if they want to show the public that Government works, if they want to show the public that Government is good, if they want to show the public that Government is responsible, if they want to show the public that Government is cost effective, if they want to show the people that Government is humane, it is very easy to do. Just help this young farmer in Mahaska County, IA, to get a resolution to his problem.

Do you know what we think? We think the reason he is not getting his appeals decided is because he is right and the Government is wrong and they do not want to issue an OK to this guy, that he was deprived of something, because it would set a precedent.

A politician who does not admit he is wrong is destined to a rude awakening someday. And regulators that fails to admit they are wrong are subject to a rude awakening someday as well.

I hope that we have an opportunity through this legislation to give justice to our young farmers of America and justice to all young Americans.

Mr. GLENN addressed the Chair.

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

Mr. GLENN. Mr. President, I rise in support of the amendment offered by the minority leader. I have stated several times in the Chamber the importance of regulatory reform and the importance of the legislation that we are considering here. I know it does not get all the inches in the newspaper and all the TV time because it is bland, dry, arcane, all the words you can put together to make it uninteresting. Yet I would say this. I think this is one of the most important pieces of legislation—it affects more Americans directly—than any legislation we will take up this year except for probably the appropriations bills.

The rules and regulations that are put out pursuant to the laws that we pass here affect every single man, woman and child, every business, every activity that we conduct in this country. I believe very strongly in the need for regulatory reform for every person and business in America, but it must be done sensibly and it must be done with balance.

Regulatory reform, to be true reform, should fulfill two principles. First, it should provide regulatory relief for businesses, State and local governments, and individuals. And, second, it also should provide the necessary protections to the safety, health and environment of the American people.

Now, that is the balance.

S. 343 does not, in my opinion, provide that essential balance of regulatory relief and protection of the American people. That is why in this specific instance I support the minority leader's amendment on the USDA E. coli meat and poultry inspection rule.

Now, what is the problem? E. coli, what does that mean? Most people would not even know what you are talking about. Yet, according to USDA, the U.S. Department of Agriculture, Food Safety and Inspection Service, 3,000 to 7,000 people die each year—not just made ill but 3,000 to 7,000 people

die each year—from foodborne illnesses like E. coli, and another 3 to 7 million people get sick every year from such illnesses. Just from the E. coli bacteria alone, the estimates are, about 500 people die per year, year in, year out, year in, year out—500 fatalities.

We have had testimony before our Governmental Affairs Committee; we have heard the stories of those who have lost loved ones to E. coli. Rainer Mueller testified before our committee about his son's death from eating an E. coli contaminated hamburger, painful death. It could have been prevented if we had better inspection standards in the first place.

Nancy Donley came to Washington to tell the story of her son Ellis who also died from eating E. coli contaminated meat. The tragedies are real.

Now, is anyone immune from this? Other figures indicate that about 4 percent of the ground beef in supermarkets has E. coli bacteria present in it—4 percent. Just on an average, that would be 1 out of every 25 hamburger patties that you pick up or 1 out of every 25 steaks that you pick up out of a supermarket has E. coli bacteria.

Why is the problem then not more severe? Because we cook that meat and that kills E. coli. But in the raw state it has E. coli, and if it is not cooked enough you can come down with it. This can cause death, particularly among children.

Now, in the State of Washington, we remember the problem out there where 3 children died, 500 were sick from contaminated hamburgers from just one fast food outlet back a couple of years.

How do we prevent this? USDA is finally modernizing its inspection methods to be able to detect deadly bacteria like E. coli. The new proposal is called hazard analysis and critical control point [HACCP]. That will be the rule which will bring our Nation's meat and poultry inspection system into the 20th century.

Now, the proposed rule, the public comment period for which just closed, was wanted by the meat industry and has wide public support. It was pushed for by the meat industry. And the public certainly wants it. It will prevent deaths and illnesses, and we should not put this off.

The minority leader's amendment would exempt this critically important rule from the burdensome requirements of this bill. I support this amendment in order to show how important rules that are already underway will be delayed and can be stopped by the regulatory reform bill before us.

The situation with this rule reminds me of the regulatory moratorium that we had before us a short time ago except now we are calling it regulatory reform. Rules that are in the pipeline and will be final soon must go back to square one. Forget that the Department of Agriculture has already done a cost-benefit analysis. It now will be subject to all the requirements of S. 343—new rulemaking procedures, new decisional criteria, opportunities for lawyer after lawyer after lawyer to sue the agency and stop the rule, petitions for the agency to review the rule, and so on. Unending legal battles and litigation.

The potential delays for this rule are real but so also real are the additional deaths and sicknesses suffered by Americans who thought they were eating safe meat. And, indeed, every American deserves to have the meat they eat be safe. And yesterday the majority leader offered an amendment which was accepted to specifically include food safety rules among those rules covered by the bill's exemption provision. And yesterday the point was repeatedly made that there already was included in the bill an exemption from analysis requirements of the bill for ''health, safety or emergency exemption from cost-benefit analysis,'' which is the title of that section of the bill, but that is only for a 180-day period. Then the rule could be subject to judicial challenge if the agency had not completed all the analysis, and we would, indeed, be back to square one again.

The problem is that section does not really exempt anything in the bill. It only provides for a 180-day grace period after issuance of the rule, that is, it gives an agency an additional 180 days to comply with all the many requirements of this bill and all the legal challenges that can go along with that. And that is it. At the end of the 180 days, all of the onerous requirements of S. 343 kick in again, no exemption there——

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. GLENN. No. I would rather finish and then answer questions.

Just new opportunities for challenges, uncertainty, and delay. What will happen to the implementation of the rule when it faces these prospects? Regardless of the majority leader's amendment, the E. coli rule will be caught in the vise of S. 343 and public health will be in danger. The minority leader's amendment is a first step in protecting the health of the American people, but it certainly is not enough. S. 343 will catch other important rules, and overall it will make the jobs of the agencies to protect health and safety and the environment much more difficult.

S. 343 simply does not fulfill my two principles for regulatory reform: Regulatory relief and protection for the American people. That is why I, along with Senator CHAFEE and many others, have introduced S. 1001, which I believe is a balanced regulatory reform proposal. Our bill would not shut down important rules such as USDA's meat and poultry inspection rule. Our bill would require cost-benefit analysis and risk assessment, but it would not force agencies to choose the cheapest, least-cost rule. It would not let the lawyers drag the agencies into court over every detail, every step along the way. It would not create several petition processes that could be used to tie up agency resources in litigation. But it would provide for sensible reform and it would allow the agencies to perform their important duties.

Let me add that our bill also would not catch rules that are almost final, like the meat and poultry infection rule. Our bill has an effective date of 6 months from enactment, which gives the agencies time to gear up for the many requirements of this legislation. That makes sense. That is what we should be doing here, working toward commonsense reform.

I urge my colleagues to support this amendment. I strongly encourage them to take a hard look at our alternative proposal for regulatory reform, S. 1001. It makes amendments like this unnecessary. But I urge my colleagues to support the amendment put in by the minority leader.

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

Mr. GLENN. I will be glad to yield for a question.

The PRESIDING OFFICER. The Senator is yielding for a question.

Mr. JOHNSTON. Mr. President, I simply wanted to tell the Senator that I agree with him that on the 180-day period on the emergency situation, the period is too short. We are requesting —I put in a request to the other side of the aisle that we extend that 180 days to 1 year.

I think your suggestion is a good one and an appropriate one, and we will deal with that separately. That does not concern this amendment at this point.

Mr. GLENN. I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I strongly support the Daschle amendment. Just before making comment on that, I was listening to my good friend from Iowa talk about the rules and regulations going back some years affecting some of his constituents. I think all of us, during the course of this debate, have heard examples of rules and regulations that have been untenable and inexcusable. I think we have to be very careful even in the course of this debate and discussion because often when we go back and review the specific rule, regulation, or enforcement action that has been talked about, that has been addressed and has been altered and has been changed.

If you take the examples of OSHA, that performs 100,000 inspections a year, and they are 99.9 percent good inspections—sound, reasonable, rational—you are still going to have 100 that do not make it. I think we understand that. But we have a measure of lives that have been saved and the quality of life that has been improved by OSHA, for example, by work safety regulation, on the other side. So we will have a chance, as we have during the course of this discussion and debate, to consider that factor.

Those regulations that we heard about from the Senator from Iowa, of course, were issued in a previous administration. And I think any of us who, for example, have watched the difference between the administration of OSHA, particularly in the last 2 years under an excellent administrator, Joe Dear, can see the dramatic change, that the focus and attention has not been on the issuance of paper citations and rules and regulations, but really reaching at the core of what OSHA is really all about.

I was amused at the start of this debate when before our committee, they were talking about the rules and regulations, and how by and large those rules and regulations had accumulated under previous administrations. And it has been this administration that has been working both to try to reduce the complexity of the rules and regulations, simplify the process, and still move ahead in the areas about which I am most concerned; that is in the health and safety areas—in OSHA, the FDA, and in mine safety.

For example, the Delaney clause—I will have more to say about that later—should be updated, not repealed. And OSHA should be helped, not paralyzed, if we want to ensure that we are going to take the best in terms of modern science and industrial techniques in order to make our workplaces safer for American workers.

Mr. President, I strongly support the Daschle amendment, which I hope will serve two purposes: To keep this bill from blocking an important regulation and to illustrate one of the fundamental flaws of S. 343 that is so extreme and antiregulatory that it will block good and essential regulations that Americans want.

I would like to begin by telling a story about a constituent of mine, a 40-year-old woman named Joan Sullivan. Earlier this year, on February 4, 1995, Joan Sullivan did something almost every American does many times a year. She ate a hamburger. She did not know that such a simple act would lead her to the edge of death, to weeks of incapacitation, pain, and suffering, and to catastrophic medical expenses. Joan Sullivan had no idea she was risking her life when she sat down to eat that night, but she was. The meat she ate was tainted by a microorganism, E. coli, a bacterium that is found with increasing frequency in the Nation's meat supply.

When Joan ate that tainted hamburger she contracted an infection of astonishing virulence that came within a hair's breadth of killing her. Joan Sullivan was admitted to her local hospital emergency room with severe stomach pains, constant diarrhea, and vomiting. When her condition worsened, she was transferred to one of America's greatest medical institutions, the Massachusetts General Hospital in Boston, where her condition was diagnosed as hemolytic uremic syndrome.

Desperate measures to save her were undertaken. A tube was placed into Ms. Sullivan's chest without any anesthetic, according to her testimony, and inserted into one of her heart's major blood vessels in order to administer a blood-cleansing treatment. After a month in the hospital, 20 treatments, and the concentrated efforts of dozens of doctors, nurses, and technicians, Joan Sullivan's life was saved. But the cost in terms of her suffering and her family's time and anxiety and in the dollars spent on her care were enormous. Her medical bills alone have totaled approximately $300,000.

What happened to Joan Sullivan has happened to hundreds of other Americans, but many have not been as lucky as she. Many of the victims of E. coli poisoning, especially children, do not survive the infection. Although 5,000 to 9,000 Americans die every year from foodborne diseases, the FDA estimates that another 4 million—4 million—are made ill at a cost to consumers of about $4 billion a year.

That is why the U.S. Department of Agriculture is preparing a new regulation on meat and poultry handling and microbe sampling. The key to the proposed rule is the requirement that meatpackers and processors carry out microbiological tests once a day to be sure that their handling procedures are effective. USDA estimates that the rule, including its testing requirements, will save consumers $1 to $4 billion a year by preventing salmonella, E. coli, and other foodborne illnesses.

This is a rule that is urgently needed and Congress should do whatever it can to expedite. But the pending bill could set back the USDA's efforts by years, blocking the rule until the agency can jump through all of the procedural hoops and red tape associated with the bill's extreme risk assessment and cost-benefit analysis, and allowing businesses to challenge the rule after its issuance for failure to meet those requirements.

The supporters of this misguided bill keep arguing that they are for common sense. Well, common sense tells me that if the USDA has already done a risk assessment under the Executive order, and has already done a cost-benefit analysis estimating that the benefits will be four times greater than the cost, then it would be foolish, wasteful, and dangerous to make them go back and do the analysis again.

How much time and money will the agency waste unnecessarily while Congress forces it to comply with this bill's one-size-fits-all procedures?

Is it common sense to demand that the USDA explore the regional effects of the rule or whether it has analyzed the extent to which the industry can control the problem of E. coli contamination through voluntary measures? That is not common sense, that is common nonsense.

The bill's overly complex and rigid requirements add nothing at all to the agency's efforts to control this serious threat to public health. The bill's exemption for health and safety threats, as amended, clearly excludes rules dealing with E. coli contamination from the cost-benefit and risk assessment rules, at least when the rules are first promulgated. But it is clear that a meatpacker could still petition to force the agency to schedule the rules for the look-back review because the bill's analytical requirements have not been satisfied in every detail.

A hostile USDA Secretary in the next administration, by failing to complete the review, could effectively repeal the rules, leaving the public unprotected again.

This is a very real worry. There are elements of the meat industry and a number of Republicans who are supporting an effort in the U.S. House of Representatives to block the USDA's meat handling and sampling rule. The majority leader, and others, have been embracing this rule in the Senate. But the House Appropriations Committee has voted to send the rule into the limbo of negotiated rulemaking from which it may never emerge.

It is important that the Senate speak out in favor of protecting the public from E. coli and other meat and poultry diseases, to ensure this bill does not jeopardize the public health. We can prevent tragedies like Jean Sullivan's from happening, and we have a duty to do so. I urge support for the Daschle amendment.

Mr. President, what we talked about during the period of the last day or two has been E. coli, as if this was the only kind of problem. Let me mention briefly why the Daschle amendment is so important not just with regard to the proposal that has been made by the majority leader on the E. coli issue.

Under the Dole amendment, the food safety rules can be exempt from the red-tape and delay in S. 343 only if the agency, for good cause, finds that conducting the cost-benefit analysis is impractical due to an emergency of health or safety that is likely to result in significant harm to the public or natural resources. Industry can challenge this finding and block the final rule under the ample judicial review authority in section 625.

So even if you find out that a Secretary is able to move into a faster mechanism to try and address E. coli, you still have all the other procedures of S. 343 that can reduce protections for the public.

Under section 622, the agency is required to complete the analysis within 180 days of the rule's publication. I understand that that is going to at least be addressed in another amendment, but that is only really a part of the problem.

In addition, various meat suppliers and packing houses would be empowered to seek a waiver from the rule's requirements under the new special interest waiver authority in 629. This section allows industry to petition for the so-called alternative method of

compliance. This approach allows the rule to be issued but would dramatically undermine its effectiveness.

Once the rule is issued, industry can petition under the rollback authority in the legislation. Industry could seek the weakening of the E. coli rule on the basis that it does not meet the rigorous decision criteria in 624, and the rule automatically sunsets within 3 years if the agency fails to complete the review.

Once the rule is issued, industry can also file a petition under the authority of new revisions to section 553 of the Administrative Procedure Act that empower special interests to seek repeal of rules. The agency must respond within 18 months. Failure to respond, or a denial, could be litigated immediately under the new legislation.

Mr. President, the problem with S. 343, quite frankly, is we are opening up the door for all of the industries in this area. We are interested in their interests, we are interested in their productivity and their financial security, but make no mistake, all of the rules and regulations and the procedures and the look-back procedures are all opening up the door for the industries to come in and alter and change health and safety procedures, the whole series of add-ons that have been spelled out in detail by Senator GLENN and Senator LEVIN.

But I want to just point out, Mr. President, that the amendment of the Senator from South Dakota makes sense in trying to address real protections. The Dole amendment took it part way. The Daschle amendment addresses these other measures, which were not closed in the Dole amendment, which ought to lend credence to the concern of many Americans about what is happening on the floor of the U.S. Senate in terms of their health and their security and their well-being.

Let me mention just a few other of the health regulations endangered by this bill. We have not addressed those. We have the E. coli amendment. But among other regulations that are in the pipeline are the improved quality of mammography standards to ensure better diagnosis and early treatment for the millions of women at risk for breast cancer.

The Mammography Quality Act passed virtually unanimously in the Senate and the House of Representatives. The reason that it passed unanimously is because we found out after long and extensive hearings that in too many instances the various machineries that were being used to test women were not of sufficient accuracy and the people who were using those pieces of equipment had not been adequately trained.

As a result of extensive hearings and review, we have now required—Republicans and Democrats—that we are going to have the issuance of those standards which are going to give, hopefully, the actual scientific results to the people who are going to take the mammography examinations. Too many women in our society going through the existing system would get a stamp of approval when the training and the machinery were not adequate and they would fail to take the other kind of preventive steps and endanger their own health.

It was on that basis that we made these national standards, because the women in California should be protected as well as the women in Massachusetts. But still we find out that the new standards—and they are now being issued—they would be at risk. For what reason? For the various reasons that are outlined in this bill. I will take just a moment. We have gone through this, and the leaders have gone through this in great detail.

Not only do you have the mammography standards that are going to provide lifesaving information for women in terms of breast cancer, but you have the Comprehensive Seafood Safety Program. We had extensive debate in the last Congress about how we were going to make progress in terms of the safety of seafood.

The consumption of seafood has gone up dramatically in this country, and many of the attendant problems we found in terms of meat and poultry also affect seafood. I represent a State that has a great maritime tradition and is one of the leading States in the country in terms of harvesting seafood. The fishermen want this kind of protection because it is important in terms of the integrity of the product, and the people want that.

But there are some within the industry, and the record is replete—not out here but in the hearings that were held in FDA and our own Committee on Labor and Human Resources—about the industry group that does not want those regulations.

We spent a lot of time developing that program in terms of safety. Make no mistake about it, it may be E. coli today, but soon it will be something else related to the safety of seafood products. They do not have a special amendment. They do not have a Dole amendment. There is nothing out here in terms of mammography for the women of this country being proposed to protect them or to protect others with regard to seafood safety.

What about the rule to prevent iron poisoning of children by strengthening the packaging requirements for iron supplements? There are 10,000 incidents a year affecting children, many of them resulting in deaths, as a result of the ingestion of iron supplements. We have regulations that are about to be promulgated on the basis that they will save scores of children's lives a year. And they will be delayed. Another rule will prohibit the use of lead in food cans to protect infants and children from exposure to substances that may contribute to mental retardation, which is one of the major problems that we have in many areas of the country, in urban as well as rural communities. And another rule deals with lead in paint, where we have older rural communities that have used lead paint in their buildings, and in older communities, industrial communities, that not only have it in their buildings but also have it the playgrounds in their communities. We know the direct correlation between ingestion of lead and mental retardation and slow development, particularly of children.

One of the problems the Government intends to address is that the importation of various foods from many different countries around the world is still in cans which have a high content of lead. And in trying to respond not by limiting the opportunity for the consumer to be able to consume those products but to make those cans safer, we have rules and regulations to try and deal with those—children are at risk. And another rule in the works would regulate the level of diesel emissions in the mines, where miners work in the confined spaces. The regulations which are about to be issued in those areas, which have been examined and have taken review year after year, are about to be sidetracked.

Mr. President, I could continue—and will later on in this debate—to go through various other rules and regulations about to be issued on toy safety, because choking on small toys and small parts of toys is the leading cause of toy-related deaths. Between January 1980 and July 1991, 186 children choked to death on balloons, marbles, and small parts of toys. More than 3,000 children are treated in hospital emergency rooms because they swallow or inhale a small toy.

Congress enacted the Child Safety Protection Act last year. The law requires hazard labeling and bans balls that are small enough to choke a young child, and it requires the reporting of choking incidents. The Consumer Product Safety Commission has proposed rules to implement the reporting requirements and interpret other provisions of that.

Now, we say we are going to wipe those things out. We have heard the daily list of 10 rules and regulations do not make any sense. What are you going to tell those parents about toys? Who is going to make the rules and regulations? Do you expect the parents to understand blocking these rules? There is a need for this kind of review and examination and the collection of information.

So whether you live in Boston, or in Palo Alto, or wherever you live, if those parents' kids are going to play with a toy, they are going to be protected. But under the rules and regulations, they are going to have to do a thorough examination to see whether there is a geographical difference, whether there can be voluntary compliance.

We are talking about small children and they are talking about a study for voluntary compliance. Market based

mechanisms. Market based mechanisms for children's toys? We are expecting the agency to do a review on that?

Now, Mr. President, we talk about common sense. What they are proposing makes no sense.

You have baby-walker safety. Baby-walkers account for a high number of injuries annually, more than any other nursery product, sending approximately 25,000 infants to hospital emergency rooms in 1993 alone. Eleven children died in walker-related incidents in the past 5 years. In response, the Consumer Product Safety Commission has begun rulemaking to address the hazards associated with baby-walkers. Those are going to be delayed. How many other children are going to be impacted by a failure to be able to get this kind of safety?

Mr. President, the list goes on. I mentioned the iron toxicity prevention. FDA has proposed a rule to prevent the many needless deaths and serious injuries that occur when children accidentally ingest too much iron by eating too many iron tablets or supplements. Iron toxicity is the leading cause of poison deaths in children today. From 1986 through 1992, over 100,000 children were poisoned. Many suffered permanent injury, and at least 33 died. This rule would limit the iron potency of vitamins intended for children to require a warning label and childproof container.

What Member of the Senate has heard from a parent saying, ''Look, that kind of rule and regulation is outrageous, and that rule and regulation that is going to protect my child is just Federal bureaucracy. We want you to stop that''? Do you think the parents are going to be able to provide that adequate protection?

I see others of my colleagues on the floor who want to address this issue, as well as other issues. These are just examples. You might talk about the E. coli regulation. We could have a thousand other amendments. That is the trouble with the bill. For each and every one of these, you need another amendment to protect it. When you have the amendment accepted by the overwhelming majority, people might say we have addressed that particular problem. It takes the minority leader, Senator DASCHLE, to get a chance to look through that to try and recognize that only half the job has really been done. I daresay that, even with the acceptance of those amendments, we are still leaving at risk many of the children, the most vulnerable, and the workers, the parents, and millions of families all across this country that rely on the Government for help in the areas of health and safety, who do not have the expertise and ability and scientific information to be able to make these judgments in the interest of their family.

Sure, there have been mistakes. Sure, there have been the issues of regulations which are untenable and wrong. But it seems to me, Mr. President, that we ought to be concerned about those and consider how we can constantly work and try and find ways to work with the private sector, the public sector, the agencies to try and make it better, rather than have a whole scale alteration and change which is going to dramatically—and I say dramatically—put at greater risk the health and safety of the American people.

Mr. LAUTENBERG. Mr. President, I am proud to cosponsor and support the Daschle-Bradley amendment even though I am disappointed that it is necessary to offer the amendment. But we do need to offer the amendment because, once again, our Republican colleagues seem to be more responsive to the special interests than the public interest. It is unacceptable for this body to put thousands of lives at risk in the name of regulatory reform. Yet that, in my view, is what this bill does. Let me give you an example.

An estimated 4,000 people die each year as a result of meat and poultry tainted with harmful bacteria. Another 5 million become ill, but survive. These numbers are too high. You would think the Federal Government would feel an obligation to respond to that problem. This bill is a response. But it is the wrong response. It weakens our ability to regulate food safety rather than strengthen it.

In 1995, the sale of unsafe meat and poultry is unacceptable and deplorable. It is a scandal that meat today is inspected by the same standards first developed in the early 1900's. That is right, today's meat inspection process is nearly the same as it was 100 years ago—inspectors must rely on sight and smell.

USDA recently proposed rules that would finally bring meat and poultry inspection into the 20th century. Scientific testing would be used to prevent contaminated food from reaching American consumers.

These changes would save thousands of lives and prevent millions of Americans from suffering the ill effects of this harmful bacteria.

Death from E. coli poisoning can be excruciatingly painful. Symptoms range from diarrhea and vomiting, to extreme headaches, to neurological damage. Body functions often shut down one at a time. Blood transfusions are necessary. Death is common for children and survivors can suffer from the aftereffects of this poisoning for years.

Last year, I introduced the Katie O'Connell Safe Food Act with Senator BRADLEY. Katie O'Connell was a 23-month-old girl from Kearny, NJ, who died as a result of eating a fast-food hamburger infected with E. coli bacteria.

This act sought to prevent future tragedies like that suffered by Katie O'Connell and her family. I am pleased that after many years, the USDA proposed new standards that would do just this.

There are thousands of Katie O'Connell's across the Nation whose lives could be saved if we had a proper system in place to assure the safety of our food.

We owe it to our children and their families to ensure the safety of our food system. But the so-called regulatory reform bill before us now, even with the Dole amendment, will delay this long-awaited improvement in our meat and poultry inspection system. It will encourage challenges to rules which have already taken too long to be developed. It will delay USDA's ability to issue regulations which we need and most Members of this body want.

Regulations that are vital to the public health ought to be protected from additional delay. That is what the Daschle-Bradley amendment does. And that it why I support it.

Let us use some common sense and pass this amendment in the name of protecting the public health and safety.

Mr. President, let me close by saying that I hope we will have the opportunity to examine other amendments that will put the public health ahead of the special interests.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

AMENDMENT NO. 1503 TO AMENDMENT NO. 1502

(Purpose: To provide that risk assessments conducted to support proposed rules may be used to support final rules that are not substantially different with respect to the risk addressed)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for himself, Mr. HATCH, and Mr. ROTH, proposes an amendment numbered 1503 to amendment No. 1502.

Mr. JOHNSTON. 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:

In lieu of the language proposed on page 1, lines 5 through 9 insert the following:

''(10) Notwithstanding section 632, if the agency head determines that—

(A) a final major rule subject to this subchapter is substantially similar to the proposed major rule with respect to the risk being addressed;

(B) a risk assessment for the proposed major rule has been carried out in substantial accordance with section 633; and

(C) a new risk assessment for the final rule is not required in order to respond to comments received during the period for comment on the proposed rule; the head of the agency may publish such determination along with the final rule in lieu of preparing a new risk assessment for the final rule.

(11) Notwithstanding any provision of the Comprehensive Regulatory Reform Act of 1995 and the amendments made by such Act, including section 9 of such act, any rule for which a notice of proposed rulemaking was

filed before April 1, 1995 shall not be subject to the provision of this subchapter or subchapter III except for section 623 (relating to review of rules).''.

Mr. JOHNSTON. Mr. President, I invite the attention of my colleagues, particularly the Senator from Massachusetts, and the minority leader, if he is listening on his squawk box, and others, to this amendment, because it fixes the problem.

The problem, Mr. President, was well pointed out by the Secretary of Agriculture in his letter to Senator DASCHLE. What he said, with respect to this ongoing HACCP rulemaking, is that affects the 9,000 federally inspected slaughter processing plants in this country; that they have virtually completed a rulemaking; that that rulemaking has a cost-benefit and has a risk assessment that has been peer reviewed, and it is ready to go into operation. The Secretary says we should not have to go back and do that over again. It would give us a 6-month delay. A legitimate problem.

Now, what this amendment does, Mr. President, is fixes that problem, not only with respect to HACCP, but with all other Federal agencies, because it says that where there is a final rule, which is substantially similar to the proposed rule, where a risk assessment for the proposed major rule has been carried out in substantial accordance with section 633, and a new risk assessment for the final rule is not required in order to respond to comments received during the period for comments on the proposed rule, the head of the agency may publish such determination along with the final rule in lieu of preparing a new risk assessment for the final rule.

So that, in other words, if you have already done your risk assessment, in substantial compliance—not exact compliance—substantial compliance of section 623, which it is my understanding that that risk assessment has been carried out, you are exempt, not only for HACCP, not only this agency, but for all agencies.

Now, if that is not absolutely clear with respect to HACCP, let me give the clincher. The next paragraph, notwithstanding any other provision, if your notice of proposed rulemaking was filed before April 1, 1995, you ''shall not be subject to the provisions of this subchapter or subchapter 3 except for section 623.''

What that means is, if you have your notice of proposed rulemaking out, prior to April 1, as they did in agriculture, with the HACCP rules, you are exempt from everything except the petition process and the look-back.

That means the rule will go into effect as soon as proposed. It will stay in effect.

Now, if anyone wants to petition, what has to be done in order to get a petition granted, is to bear the burden of establishing, using the words of the statute, ''that there is a substantial likelihood that you would not be able to meet the standards of section 624.''

What are the standards of section 624? That the benefit justifies the cost, and that you have used the least-cost reasonable alternative that complies with the statute, unless considerations of health, safety, the environment, require a more expensive alternative, or unless scientific or data uncertainties require a higher standard.

Mr. President, if you are able to show that, if the petition is granted, only then do you do the risk assessment and cost-benefit analysis, only then do you have a new rulemaking, and there would be 3 years, plus an extension of 2 years as provided, a total of 5 years, in order to complete that process.

In the meantime, the rule is in effect.

Mrs. BOXER. Will the Senator yield for a series of questions?

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

Mrs. BOXER. Does this take care of the danger of the E. coli rule being repealed by the look-back or sunset provisions? I believe you say it would still have to comply with look-back and sunset; is that correct?

Mr. JOHNSTON. What would happen is the rule goes into effect. If you feel that that rule—the benefits do not justify the cost, and can show a substantial likelihood that that is so, then you could petition. If the agency agrees with you, then they would put you on the schedule for having a risk assessment and a cost-benefit analysis.

You do not throw out the rule in the meantime. You simply go through the scientific procedures.

Mrs. BOXER. I understand. In other words, the rule is in danger of being repealed by the look-back or the sunset procedures and is not exempted from the petition for waivers, according to your explanation—I would like to ask another question.

I believe, as I listen to my friend explain this, that the E. coli rule would have to comply with section 623 of the Dole bill and it seems to me that this in fact substitutes current law with this new law.

Mr. JOHNSTON. That is just not true.

Mrs. BOXER. I say that my friend admits, in fact, there is a danger that the——

Mr. JOHNSTON. I did not admit that.

Mrs. BOXER. Excuse me, my friend says, yes, it is subject to the look-back procedures.

Mr. JOHNSTON. But not in danger of being repealed. Those were the words of the Senator from California.

Mrs. BOXER. I have one more question.

My last question is, Did you work with the minority leader on this? Is Senator DASCHLE in agreement with your substitute amendment?

Mr. JOHNSTON. What Senator DASCHLE wants is to specifically exempt this rule, the HACCP rule, from any consideration of cost-benefit analysis or risk assessment.

We oppose that because we believe that any rule that is—HACCP will go into operation. But if someone can show that HACCP was not properly done and that it cannot meet the cost-benefit analysis, that the benefits do not justify the cost, then all we say is that you can deem the scientific panel, get the best science, and do it right, but the rule stays in effect in the meantime.

There is not a danger of will rules repeal, as if people are not going to be protected. There is a likelihood that if they have not done it right, they would have to do it right.

Now, what is wrong with putting science in control, if they have done it wrong in the first place? What is wrong with that?

Mrs. BOXER. Is the Senator asking a question?

Mr. JOHNSTON. Yes.

Mrs. BOXER. I say to my friend there is great disagreement over the very premise of this bill. Those that oppose it think it goes way too far, that the pendulum is going to swing to the side of the special interests in this country, to the detriment of the people who rely on us to protect the food supply.

I assume the answer to my question is that Senator DASCHLE does not support your substitute amendment.

Mr. JOHNSTON. Mr. President, there is no answer to those that say the bill goes too far, it protects special interests.

We are dealing with a technical amendments bill that involves a lot of provisions. You cannot answer an argument that says it goes too far and it enshrines special interests. It does not. The Senator has not shown me where it does. All I am saying is that this rule goes into effect.

By the way, the Senator from California, I believe, is a cosponsor of the Glenn substitute. Did the Senator know that the Glenn substitute would have the very effect that the Secretary of Agriculture complains about?

Under the Glenn substitute, you would be required to go back and do a cost-benefit analysis because it has not been done in accordance with what the Glenn substitute says.

We get this micromanaging of this bill where they ''fly-speck'' our bill and look at it and show—find ghosts where none exists, and then they propose legislation that has the exact same fault, sometimes worse faults.

But, that is fine.

Mr. GLENN. Will the Senator yield?

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

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

Mr. GLENN. We are changing that. We realized that was a fault in ours, and we are changing that. The other bill, S. 343, has not been changed.

Mr. JOHNSTON. We have changed it right now.

Mr. GLENN. Not in that regard.

Mr. JOHNSTON. Mr. President, again, we have this problem on this bill that the opponents of the bill will not take yes for an answer.

Secretary Glickman writes a letter and says, ''We have a problem, that we have gone through this extensive rulemaking, we do not want to have to do it over again.''

We say, ''Yes, Secretary Glickman, you have a problem. You should not have to do it over again. Not only should you not have to do it over again, but nobody in the Federal Government ought to have to do it over again.''

We proposed two fixes. If you started your rule prior to April 1 with a notice of proposed rulemaking, you are exempted. Or, if you have already done it and it is in substantial accordance with the section, you do not have to do it again. On both scores, this proposal for safe meat and E. coli, about which I am just as concerned as any member in this body—look, to say we are not concerned about health because we want scientists to do it right is to turn logic on its head. It is to turn the argument 180 degrees around. It is because we want it to be done right that we propose this bill. We do not want to have to do it over again. We do not want to delay. This amendment fixes the problem.

Now, the reason we oppose the Daschle amendment is, in effect, what Senator DASCHLE says; citing the same problem, he says, just exempt HACCP altogether from these requirements.

Well, you could come along and say, Well, this rule or that rule involves health or safety and it ought to be exempted.

Mr. President, we are not diminishing safety by this bill. To the contrary, we are requiring that the benefits ought to justify the cost, a very simple proposition. Why do we propose that? Because, across Federal agencies, we have seen terrible examples of waste, ignoring our own scientists, not even knowing what regulations cost, dealing with risks that do not exist.

With respect to this clean meat inspection, inspection of poultry houses, inspection of slaughterhouses—that regulation is going to go into effect under the second-degree amendment. We have fixed the problem. I wish the opponents to this measure would at least acknowledge that we are fixing the problem and not give us these arguments like: Oh, this is a special interest bill. Oh, you want dirty meat for your children.

Mr. President, it is just not true. Let the opponents to this measure speak to this measure. Do not speak to something that is irrelevant, like whether special interests are being taken care of. This is not a special interest. This second-degree amendment is proposed specifically because the Secretary of Agriculture said he had a problem, and it fixes that problem. If there is another problem, let us deal with that in a separate amendment. We have had over a hundred changes accepted to this bill already. It is a tight bill. It is a good bill. It is a workable bill. And this amendment makes it better and I hope my colleagues will accept it.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I hope, in the course of the next half-hour or so, I can be very specific in my critique of the DOLE bill, so my friend from Louisiana can see that I am coming at it after a great amount of thought.

I support the Daschle amendment because the Daschle amendment says, very simply, in plain English: We are moving ahead with that rule on E. coli. The Johnston amendment that he is substituting for the Daschle amendment deals with a broader issue. Fine.

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

Mrs. BOXER. If I might complete my thought, then I will be happy to yield.

We believe that the Daschle amendment is necessary so this HACCP rule which I refer to as the E. coli rule, that is about to take effect, can move forward now and be exempted from the bill. It is as simple as that.

If you want to deal with the issue in a broader way, we can look at the Johnston language. But it does not mean that the Daschle language is not needed if you are concerned about E. coli and want to see the rule move forward unencumbered by language that my friend took about 10 minutes to explain. It is still confusing. We think the Daschle language is clear. Just move forward with the rule, exempt it, and let us get a safe meat supply.

That is why I support the Daschle amendment.

Mr. JOHNSTON. Now will the Senator yield on that point?

Mrs. BOXER. I will be glad to.

Mr. JOHNSTON. Does my friend from California understand my amendment allows the E. coli rule to go forward the same as the Daschle amendment does?

Mrs. BOXER. It does not exempt the E. coli rule, in your own words, from the waiver provisions——

Mr. JOHNSTON. Yes, it does.

Mrs. BOXER. From the sunset provisions, from the look-back provisions; and also, from what I gather from my friend's explanation, it still has to comply with Section 623 and the spirit of the new law. That is what I understood from my friend.

Mr. JOHNSTON. If I may explain very carefully——

Mrs. BOXER. Therefore I believe the Daschle amendment is necessary, in a simple way, so I can look the people in the eye and say: That rule to protect you from E. coli is moving forward, period. And it is not going to be repealed because of actions by a special interest lobby that forces it to be repealed. I stand by my strong belief that the Daschle amendment is necessary.

Mr. JOHNSTON. Now, does the Senator understand—let us see where we agree and disagree.

Mrs. BOXER. I will be happy to yield.

Mr. JOHNSTON. Does the Senator understand that under the Johnston amendment, the E. coli regulations will go forward; be promulgated without delay?

Mrs. BOXER. As I understand my friend's comments, and I would have to have them read back to me to be certain, he said that you have to make sure, in your generic description, that the spirit of section 623 was complied with.

Mr. JOHNSTON. No. There are two bases on which this would be, that E. coli would go forward. First, that you had substantially complied with the risk assessment under section 633.

Mrs. BOXER. Section 633.

Mr. JOHNSTON. Or—understand ''or''—or that your notice of proposed rulemaking was put out before April 1, 1995. And this was put out before April 1, 1995. Therefore, it is exempt from the proposal.

Are we together on that?

Mrs. BOXER. It is not exempt from the look-back. It is not exempt from the sunset. It is not exempt from the waiver.

I would say to my friend, if the April date is consistent, it may well move forward. I concede that. However I believe some of my colleagues have raised questions about the April date.

Mr. JOHNSTON. So we are in agreement.

Mrs. BOXER. I do not know the exact date of the rule, but if my friend says it, I would agree. I have no reason to think he would not be honest on that point.

Mr. JOHNSTON. Do we also understand that in order to petition to have a risk assessment on this, that during all of that time, that the rule stays in effect? Are we in agreement on that?

Mrs. BOXER. Yes. I understand exactly what my friend said. It is subject to the look-back, the waiver, and the sunset provisions of the law.

Mr. JOHNSTON. Do you also understand that, as far as the sunset provisions, those are only rules that the Secretary himself will pick out? In other words, you do not sunset all rules, it is only such rules as he picks out for reexamination? And that is only if Secretary Glickman says he has to go redo his own work. Does my colleague understand that?

Mrs. BOXER. I understand my friend perfectly. The fact is, Secretary Glickman is here today and could be gone tomorrow. We do not legislate because Secretary Glickman is a good guy. We legislate for whoever happens to be Secretary of Agriculture.

I am going to take back my time, if I may, because I have a long statement on this bill. I have time constraints.

I know my friend speaks in total good faith but I hope he knows I also speak in good faith. I am concerned about E. coli because kids die from it and old people die from it. And I want to go to the route that will exempt it from this legislation. Legislation that is so complicated that two Senators have different ideas about what it means any day of the week. That says to me: Court cases. That says to me: Lawyers' dreams. Why not go with Senator DASCHLE's approach? You have a problem. You have a rule. Put it into place, exempt it from this bill.

If people do not want to vote for that, God bless them, that is their option. I respect them. But no manner of questions to this Senator is going to change my mind that the most direct way to protect people from E. coli is to support the Daschle amendment.

I want to get into the general subject of this bill. I think that all Americans agree there are tremendous benefits that come from our health and safety laws. If you look at some of our rivers, where there was no sign of life and they have been rejuvenated, it is because of our Nation's laws.

If you look at the quality of air in certain areas where we are reaching attainment levels, areas where kids are now born with a healthy ability to breathe, a lung capacity that they deserve, it is because of the Clean Air Act. I could go on and on and cite case after case, of where we have reaped benefits from our health, safety and environmental laws.

I also completely agree that there are instances where Federal agencies have ignored the costs of regulation on business and individuals. And those people feel they were treated unfairly, and in many cases it is true. In other words, I believe that we need to readjust the balance. There is no question about that. And that is why we need regulatory reform. The point I want to make is, while saying we need regulatory reform, I want to underline that we do not need, want, and should not pursue, regulatory repeal.

What the Dole bill will do by coming up with these incredible hurdles that agencies have to go through in order to protect health and safety, in essence, will be the repealing of our laws. We are making it so impossible for them to go into effect that our people could be left unprotected.

The Dole bill is basically a repeal. The Glenn bill cosponsored by Republican JOHN CHAFEE—is regulatory reform. Yes. That is why I have my name on that bill. And I am proud to have my name on that bill. You are going to see some interesting folks crossing party lines on this.

We need regulatory reform that provides reasonable, logical and appropriate changes in the regulatory process, that will eliminate unnecessary burdens on business, State and local government, and individuals. But we need regulatory reform that maintains our National Government's ability to protect the health and safety of the American people.

Why do I say ''National Government?'' It is because I believe a child in California that bites into a hamburger that could be tainted deserves as much protection as a child in Mississippi or Pennsylvania or New York. All the children of this great country deserve that protection. All the people of this great country deserve those national standards. If I travel to another State, I do not have to worry about ordering a hamburger because that State did not enact good law. I want to know there is a national standard, that there is a national inspection service.

I am committed to doing away with regulations that have outlived their usefulness, or have created needless redtape or bureaucracy.

I am equally committed to making sure the American people's basic needs are protected—the food they eat, the air they breath, the water they drink—because you may have a great job, you may have a great future, you may have a wonderful family, and yet, if something like this happens—where a family member is killed or maimed or hurt by bacteria in meat or bacteria in the water supply, it does not mean much, folks.

I want to share a chart with you. It is interesting because this public opinion poll was taken, as I understand it, by one of the Republic pollsters, Luntz Research and Strategic Services in March 1995. I think this is a warning, a warning to those who would just say, throw out our regulations.

''Which should be Congress' higher priority: cut regulations or do more to protect the environment?''

Twenty-nine percent of the American people, ''cut regulations''; 62 percent, ''protect the environment.''

And the pollster goes on to comment, ''This question here is a warning. Environmental protection is a higher priority than cutting regulations.''

It is clear. So what does this mean? It means that there cannot be a frontal assault by politicians on environmental regulations and food and safety regulations because a frontal assault would be so unpopular, those people would be booted out of office in 5 minutes.

So what do they do? They come up with back-door solutions. I think the Dole bill is a back-door solution of this kind. Call it regulatory reform, hide behind words like ''bureaucrat, overregulation, cost and benefit studies,'' and strip protections from the American people. When I talk about protection, I mean the most basic protection, the most basic rights to safe water, clean air, and so on.

I want to share with you some of the editorials and stories that have been appearing in the newspapers about regulatory reform and the Dole bill, the bill we are trying to make better by amending it, the bill for which we have a substitute called Glenn-Chafee bill which we think is far better.

USA Today, ''Reforms aimed at health, safety rules are too risky.''

The San Francisco Chronicle: ''Regulatory Reform or Polluters' Revenge?''

That is how the Chronicle saw it.

Congressional Quarterly cover story, ''Industry, Politics Intertwined in Dole's Regulatory Bill: Its sweeping changes offer the campaigning leader a platform and generate a wave of lobbying from affected businesses.''

Maine Sunday Telegram: ''Senate: No 'Reform' Trashes Environment.''

Mesa Tribune: ''Regulatory Reform, Polluters' Loophole.''

The New York Times talking about this bill: ''The Next Environmental Threat.''

And here is a story from Business Week: ''The GOP's Guerrilla War on Green Laws, Newt & Co. Plan a Procedural Overall, Not a Direct Attack,'' which is exactly my point.

You cannot say to the people we are repealing food safety laws, but you write a bill that makes it extremely hard for our agencies to protect the food supply. In essence, you have repealed those laws. It could not be said better than in the Business Week headline.

How about this? Detroit Free Press: ''Unnatural Reform, GOP Remedies Would be Environmental Disaster.''

So, when I criticize the Dole bill, I think I have a lot of support for my position. When I talk about special interests being behind it, which my friend from Louisiana got so upset about, I do not think you need a degree in political science to know that the pin-striped suits are all over this place, by the way, backing off a bill that already passed 15 to nothing out of the Government Affairs Committee because they see a better chance to get relief.

That is what hurts. We had a bill passed in a bipartisan way, but all of a sudden we are into a whole different situation.

Make no mistake about it: Laws that protect our clean air and water and our food supply are at stake here. It is an attack on the laws and regulations that protect us from the medicines we buy every day, the toys we give to our children, the cars we drive and the places where we work. The consequences of this bill are far-reaching—they will reach far into every town in America, into every kitchen in America, because when you turn on the water, and you back off of protecting that water supply, you are in danger.

I believe that this Dole bill, in the name of efficiency, in the name of cost-benefit analysis, will bring us gridlock and that will assist the special interests and the corporate polluters. And I did not come here to protect them. I came here to protect the people in my State who are going to rely on us for their health and safety.

The Dole petition and look-back, which we talked a little bit about with my friend from Louisiana, and the judicial review provisions will allow any well-financed ''bad actor''—what I mean when I say ''bad actor'' is a person in the industry who does not have principles. And that is certainly not a majority, but there are some.

I will never forget a very long time ago when I was very young and I was just getting into local politics. I went to a meeting on the issue of energy policy in America. And discussion on the safety of nuclear energy came up. I made a statement that I was worried about the disposal of nuclear waste. I felt very strongly that until we knew what we were going to do with the nuclear waste, we had better not continue

to build nuclear power plants. This was way back in the 1970's.

A utility industry person came up to me, drew me aside, and said, ''You know, young lady''— or something like that—he said, ''There may be a problem. There may be a health problem from nuclear energy waste. But no matter what you say, no matter what you do, it will not show up for 20 years and no one can prove it was us.''

I will never forget that. I looked at him. I said, ''When people get cancer, they are going to look to the environment. They are going to look to what we are doing with that nuclear waste.'' And he said, ''They will never pin it on us.''

That is a bad actor. That is a bad actor. Who was I? I was just an individual at this conference who was concerned. He would never say that to me today. But he said it to me a long time ago.

So when you think about what we are doing here, you have to think about the bad actors. The majority of people are not that way. They care about their products. Of course, they do. But when you have a bad actor, you have to be sure that that bad actor gets punished. And I believe under the Dole bill, with the petitions, with the lookbacks, with the judicial review provisions, we will allow any well-financed bad actor to paralyze an agency, to prevent the agency from developing new rules, to prevent them from reviewing old rules, to force a stay on enforcement of rules and cause the eventual sunset of rules. To me, it is completely unacceptable. I am not casting aspersion at those who like those provisions, but to me they will lead to gridlock. You might as well just repeal the laws if you are going to make it so hard for people to act.

I also believe the Dole provisions on so-called supplemental decision criteria create a supermandate that supersedes current law. Now, supporters of this deny it. They insist it is not the intent to supersede but merely to supplement the decisional criteria in other statutes. However, the bill clearly overrides other statutes including our health, safety and environmental laws because the standards in Dole would still have to be met even if they were in conflict with current law.

Mr. JOHNSTON. Will the Senator yield?

Mrs. BOXER. Yes, I will.

Mr. JOHNSTON. Was the Senator aware of the amendment which was accepted yesterday, the one which was cosponsored by Senator LEVIN, which specifically says that the bill does not override the requirements of any environmental law?

Mrs. BOXER. If that amendment passed, I stand corrected, and I am very pleased.

It covers all laws then or just environmental laws?

Mr. JOHNSTON. All requirements of laws including environmental safety and health laws.

Mrs. BOXER. Very good. Well, that is an improvement, and I am glad that it passed. By the way, there will be many other amendments that will improve this bill including the Daschle amendment.

The Dole bill, in my view, goes well beyond sensible reform by establishing a goal that is absolutely at odds with our responsibility to improve the well-being of all the American people. It says that we should protect only those values that can be measured in dollars and cents. It is a corporate bean counter's dream. This is my view. Forget about saving lives, because you cannot put a dollar figure on a life. Forget about getting poison out of our air and water. Forget about preventing birth defects, infertility, and cancer. If you cannot put a price tag on it, it does not count as a benefit. And that is wrong.

Mr. JOHNSTON. Will the Senator yield?

Mrs. BOXER. Yes.

Mr. JOHNSTON. Is the Senator familiar with provisions of the Dole-Johnston bill now before the Senate which state that the head of an agency can choose a more expensive alternative if nonquantifiable benefits to health and safety of the environment make that appropriate and in the public interest?

Mrs. BOXER. I say to my friend, yes, but that is so inadequate for what I am talking about and it gets back to my conversation I had with the Senator on another issue.

Mr. JOHNSTON. I thought the Senator just said it was impossible to consider nonquantifiable benefits.

Mrs. BOXER. I said very clearly that in this bill there is no way you can put a price tag on those benefits. Now, if you give a bureaucrat a chance to assert his or her own opinion, it is better than nothing. But in my opinion, it does not meet the test. I think that we should be able to consider that and not leave it up to some bureaucrat.

That is the problem I have with this bill. On E. coli, my friend says Dan Glickman will be wonderful. Great. What if it is another administration? I think we should legislate and not give up our power here. And I think we do that to a great degree.

Mr. JOHNSTON. How does the Senator suggest that we legislate with respect to——

Mrs. BOXER. I think we could be very clear and talk about it, if we could, after I finish my statement, on how I think we can measure and quantify these benefits. If my friend is willing, I will definitely propose an amendment that would reach to those issues.

Mr. JOHNSTON. I would invite my colleague to read the language which we have put in. It provides that benefits include all quantifiable and nonquantifiable benefits. So they are all brought in. I think it is really very clear. I invite the Senator to read that.

Mrs. BOXER. I would invite my friend to read the substitute bill because I think on this point it is much stronger when it deals with costs and benefits.

Now, I think Senator GLENN, who is a hero already—in other words, if he did nothing more in his life in the public arena, he would go down as a hero for what he has done in forging the advancement of space. We know that. He is already a hero. He is a hero for what he does here also. And as he says, maybe this is boring, but I have to say I do not think it is that boring. I do not think it is boring if your kid bites into a hamburger and is rushed to the hospital. Not only does it ruin your day, but it could ruin your life and he could lose his life.

I guess I would say to my friend from Louisiana, who is questioning my views on this bill, which is his right to do, we have a bill that passed out of the committee with a bipartisan vote, and now we are facing a bill which, in my opinion, does harm to the health and safety rules. So I think Senator GLENN is right in what he does in relation to cost-benefit analysis, in relation to judicial review, and in the many problems that we have with this bill.

I wish to talk about another area of the Dole bill that I think my friend from Louisiana supports, which is the provision on toxic release inventory, which I think would significantly undermine a community's right to know who is polluting and what kind of toxics are being released into the air. The toxic release inventory is an effective cost saving tool. Public scrutiny as a result of the information released under the 1986 Emergency Planning and Community Right to Know Act has often prompted industry to lower pollution levels without the need for new Government regulations. The Glenn-Chafee bill has no such provision.

In this whole area of toxic relief, my God, if we should be protecting anything here, it should be a community's right to know if someone is coming in and poisoning their neighborhood. Why should that be a secret? Why should they not have the information? Information is power, and a lot of folks who stand up here, particularly on the other side of the aisle, and say States rights, give it all back to the States, are going to support this alternative which takes away a community's right to know. Information is power.

I think the Dole bill strips away that knowledge, and I think that is wrong.

I do not think this bill is boring. Oh, yes, the proponents of the Dole bill will get you off on little sidebars here, but the whole issue is true, as I see it, and I am on the Environment Committee. I served in the House, and I know how these bills go. You had a bipartisan bill that was fair and just. Was it perfect? Probably not. My friend pointed out an area where it was not perfect, and they are fixing it. But it really worked to provide this balance the American people deserve—protection of their water, of their air, of their food supply, of

their very lives, if you will, balanced with sensible regulation.

Mr. JOHNSTON. Will my colleague yield at that point?

Mrs. BOXER. I think we have lost it in the Dole bill.

Yes, I will be happy to yield to my friend.

Mr. JOHNSTON. We just had a discussion about benefits and how the definition of ''benefits'' in the Dole-Johnston bill was insufficient and how the Glenn bill was so much better.

Does my colleague understand that the definition of ''benefit'' in the Glenn bill is word for word identical to that which is contained in the Dole–Johnston bill, save for one change? At the behest of Democrats we added the words ''quantifiable and nonquantifiable effects.'' That was Democrats who said, ''We want to be sure it includes both quantifiable and nonquantifiable.'' So they added that amendment. Does my colleague understand that? Excuse me, we also added the word ''health.''

Mrs. BOXER. It is my understanding they are not alike. If the Senator would like, when I finish I can put it side by side where they are not exactly alike.

Mr. JOHNSTON. If the Senator will allow me to come over, I have got them both right here.

Mrs. BOXER. As soon as I finish my prepared remarks I will yield time to my friend, and we can go through it. Right now——

Mr. JOHNSTON. I am looking at it right here.

Mrs. BOXER. I am working on it. It is my understanding it is definitely not the same. I will show it to you in a moment's time. I do not want to interrupt the flow of what I am saying. So if my friend will wait, I think I will be finished in just a few minutes here. We will go through the side by side of both bills on that issue of benefits.

Mr. JOHNSTON. If I am correct, will you acknowledge that?

Mrs. BOXER. I say to my friend, I have great respect for him. I told my friend he is correct a couple times and incorrect a couple times. But I will be glad to agree with my friend when I have the writing in front of me. I am going to have it for you.

Now, I think another key aspect of the Dole bill is how it will affect our ability to respond quickly to the threats of public health, safety and the environment. It is interesting that the majority leader, Senator DOLE, has responded so quickly to concern about E. coli. Now, if I heard my friend right yesterday, he got up and said that the Dole bill was not necessary, the Dole amendment was unnecessary. I thought that was really interesting. Senator JOHNSTON says to Senator DOLE that his amendment on E. coli is not necessary. Then I ask, why did Senator DOLE put it forward? Because it was necessary, because under the emergency provisions it did not say ''food safety.''

And yet my friends were defending the bill as it was. ''Oh, it is covered.'' I heard the colloquy that went on between the Senator from Delaware and the Senator from Louisiana. ''Oh, the Dole amendment is not necessary. The Dole amendment on E. coli is not necessary. We will vote for it.''

Well, I am telling you, I am glad that the majority leader offered that E. coli amendment because that opens the door to all of us who have other issues we want exempt as well. Critically important regulations on cryptosporidium and mammograms that my friend from Massachusetts talked about. The Dole bill would delay and possibly prevent issuance of these regulations. And although my friend from Louisiana said it was not necessary to have the DOLE language, he voted for it. Well, if it was necessary for E. coli, I say it is necessary for cryptosporidium. I say it is necessary for mammograms, and other areas.

Of course, we know that the Daschle amendment even goes further on E. coli because it says that rule will be exempted from this bill. And my friend from Louisiana stands up and says, we did not need this Daschle amendment because under a substitute he is offering the E. coli rule can move through. But he admits that the E. coli rule would still be subjected to the lookback provisions of the bill, the sunset provisions of the bill, and the waiver provisions of the bill.

So in fact we do need Senator Daschle's amendment. And I hope my colleagues will vote it in. Only those rules which represent an emergency or health or safety threat that is likely to result in significant harm to the public would be exempt under that emergency section. There is no definition of the term ''significant'' or ''likely'' in the bill.

Now, I say if one child dies as a result of eating contaminated meat, does that pose a significant harm to the public? It certainly is significant to the child's parents and the others who ate at the same restaurant or bought meat at the same grocery store. Now I want to show my friends the number of outbreaks just recently of the bacteria E. coli. It is enough to make your head spin. It is all across the country—North Dakota, Ohio, Nebraska, California, and so on, and so on, and so on.

As a matter of fact, on this next chart I will show you a personal case. I am going to talk about it. We want to put personal faces on this. We get a lot of talk about section 103 and section 202 and line 4 and line 6. And does the Senator know this and does the Senator know that? This Senator knows one thing. We should vote for the Daschle amendment and get that E. coli rule, moving safely on its way not subject to lookback and not subject to anything else. Let me tell you about this child.

Jesse Fendorf, Shawnee, KS. Unfortunately, Jesse was almost killed by infected meat contaminated by E. coli. To deal with this, Jesse had to have many blood transfusions and was on kidney dialysis for 2½ weeks. Today he is still ill. Someday it is likely he is going to need a kidney transplant. In the meantime, no one will sell his family any insurance. Now, clearly under the Daschle amendment the rule on E. coli would be exempted from the nightmare of this bill. It will go on its way and it will not be repealed. What if we get someone over there in Ag that decides it ought to be repealed? The least we can do for this child is pass the Daschle amendment—I will show you a few more faces.

Here are a few more faces. Alex Donley, Chicago, IL; Katie O'Connell, Kearney, NJ; Scott Hinkley, Saranac, MI; Lauren Rudolph. E. coli in food kills more than one victim each day. Who is next? Who is next?

Let me tell you about this case because it happens to be a constituent. Six-year-old Lauren Rudolph of Carlsbad, CA, was the first person to die on the west coast Jack-In-The-Box case of 1993. She suffered three heart attacks and had to be put on life support before she died. Her mother, Roni Rudolph, founded STOP, Safe Tables Our Priority, a national consumer watch group dedicated to improving our Nation's meat and poultry safety.

I mean, you look at these kids, 1990 to 1992. I am not going to say any more about this. Just look at this and vote for the Daschle amendment. Do not vote to weaken it. If a woman has her mammogram read by someone who is poorly trained in mammography and she dies as a result of not getting help, is that significant harm to the public? That is what you have to deal with in the Dole bill. There is no definition.

I will tell you right now, if it was a Senator's wife it sure would be significant. If a Senator's wife died of cancer because of a faulty mammogram, I am sure it would be significant. Well, to me it is significant if anyone dies because of a faulty mammogram. And yet in this bill we are going to derail these safety regulations.

We have to ensure that one of the most fundamental needs of any society—safe drinking water—is available to all Americans.

Public health continues to be threatened by contaminated drinking water.

In 1987, 13,000 people became ill in Carrollton, GA, as a result of bacterial contamination in their drinking water. In 1990, 243 people became ill and 4 died as a result of E. coli bacteria in the drinking water in Cabool, MO. In 1992, 15,000 people were sickened by contaminated drinking water in Jackson County, OR. And 1 year ago, 400,000 people in Milwaukee became ill and 104 died as a result of drinking the water from their taps which was infected with cryptosporidium.

A recent study completed by the Natural Resources Defense Council ''You Are What You Drink'' found that from a sampling of fewer than 100 utilities that responded to their inquiries, over

45 million Americans drank water supplied by systems that found the unregulated contaminant cryptosporidium in their raw or treated water.

I am going to show you just a couple more charts and then complete my statement because I know my friend is ready to talk. This is a real-life warning that was distributed by the Environmental Protection Agency as guidance for people with severely weakened immune systems in terms of our water supply.

Current EPA drinking water safety standards were not explicitly designed to assure the removal or killing of cryptosporidium. Efforts are now under way to resolve a number of scientific uncertainties that will enable EPA to set specific safety standards for this parasite in the future. Cryptosporidium has recently caused several large waterborne disease outbreaks of gastrointestinal illness with symptoms that include diarrhea, nausea, and/or stomach cramps. People with severely weakened immune systems are likely to have more severe and more persistent symptoms than healthy individuals. Moreover, cryptosporidium has been a contributing cause of death in some immunocompromised people.

People who have cancer, transplant patients, people on immunosuppressant drugs, little children, pregnant women—these are the most vulnerable.

This is what is going on in communities across the country, and we know people in Milwaukee died of crypto sporidium in the water supply. Do we want to derail a rule that will get this killer out of the water supply? I am sure every Senator would say, ''Oh, no, not me; I don't want to do that.'' But if you support this Dole bill, that is what you are doing, because you are going to subject this rule to all kinds of analyses and lookbacks, petitions, sunsets, judicial reviews, and all the rest of it.

There was an article in the Wall Street Journal, and the author said, ''Well, we know how to deal with this problem. Drink bottled water. Go to the store and for a few bucks, buy bottled water.''

Well, that is just swell, in a country like America where we are a democracy, we are going to have an environment that is safe for the wealthy, for those who can buy that bottled water. That is wonderful, is it not? What a society that would be. What an answer that is. That is almost as bad as James Watt in the old days under Ronald Reagan saying, ''Well, if you don't want to get skin cancer, just wear a hat and put sunglasses on, because we're not going to do anything more in the environment.''

That is not what this country is about. This country is about clean water and clean air. We are the best. We are the best in the world. So let us not vote for a back-door repeal of these laws by making it so very difficult to implement them. I do not want to see these anymore. I do not want people to be scared that they are going to die from drinking water out of the tap. Why would we support a bill that will make it more difficult to make the water safe? It just does not make sense.

We have a sound alternative. We have the Glenn-Chafee bill. We can be proud to support that. It takes care of our problems.

So whether it is mammograms, cryptosporidium in the water, E. coli—we could go on—let us not hurt the American people by supporting a bill that makes no sense.

So I am proud to stand in support of the Daschle amendment on E. coli. I am proud to stand in support of the Glenn-Chafee bill, and I am proud to stand in opposition to the Dole bill. This may sound like a boring debate, but when you strip away the arcane language of these bills, the bottom line is the safety and health of the American people.

Thank you very much, Mr. President. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, an effort has been made to use scare tactics to insinuate, to suggest, to expressly assert that those of us who are supporting meaningful regulatory reform are somehow trying to prevent appropriate action being taken in the case of matters that affect the health, the safety of the American people or the environment.

Time after time, statements have been made that we cannot take action to protect the American people from E. coli, admittedly a serious problem.

The reason I say it is scare tactics is the fact that the legislation before us very clearly deals with the situation. In fact, the legislation proposed, the so-called Dole-Johnston amendment provided, that a major rule may be adopted and may become effective without prior compliance with this subchapter if ''(A) the agency for good cause finds that conducting cost-benefit analysis is impracticable due to an emergency or health or safety threat or a food safety threat that is likely to result in significant harm to the public or natural resources.''

So I think it is important to understand the basic legislation anticipated that there could be situations where there were serious threats to health and safety, and because of the need for action, an exception would be made to the general rule of requiring a cost-benefit analysis.

Let me point out further that that language does not require that it be an emergency to fall within this exception, because the language specifically provides that there is an exception to the rule requiring cost-benefit analysis in the case of, first, an emergency that stands on its own feet—just the word ''emergency''—or health, that likewise stands on its own feet. So it does not need to be an emergency as long as it is a question of health. And the same thing, of course, could be said about a safety threat or a food safety threat. So that is point No. 1.

But yesterday action was taken because of concern expressed by the Secretary of Agriculture that there was a problem with respect to a rule involving E. coli. So because of that concern expressed by the Secretary, as well as the many statements that were made in the media, the press, the Senate adopted an amendment proposed by the majority leader that modified the language of which we just spoke and in which it expressly includes an imminent threat from E. coli. The language now reads:

> A major rule may be adopted and may become effective without prior compliance with this subchapter if
>
> (A) the agency for good cause finds conducting a cost-benefit analysis is impracticable due to an emergency or health or safety threat or a food safety threat (including—

This is the new language—

> (including an imminent threat from E. coli bacteria) that is likely to result in significant harm to the public or natural resources. . . .

This legislation was adopted by a unanimous vote, and Senators, both Republicans and Democrats, made it very clear that it was not an attempt in any way to prevent or threaten the issuance of a rule affecting E. coli.

Subsequently, there were concerns expressed again by the Secretary of Agriculture that the legislation unanimously adopted yesterday did not cover two situations that he saw as being burdensome or troublesome.

One was that under the amendment yesterday, it did not exempt his being required to take or make a risk assessment under subchapter 3 of the legislation, and that as part of the risk assessment, it would become necessary to have a peer review. Such peer review, the assertion was made, might delay the issuance of the rule by as much as 6 months.

So, once again, we are here on the floor seeking to allay this concern. And that is, of course, the purpose of the Johnston-Hatch-Roth amendment.

Under the Johnston-Hatch-Roth amendment, two steps are taken. It is specifically provided that a new risk assessment for the final rule need not be made if the final rule is substantially similar to the proposed rule. In other words, when you propose a major rule, there has to be a risk assessment made. And so if the situation is such that the final rule is very similar to the proposed rule, under this legislation, it would not be necessary for a new risk assessment to be made.

So that takes care of the problem. In fact, I point out to my distinguished colleagues that this legislation or this proposal, this amendment, very substantially modifies the burden on agencies because this modification not only applies to E. coli, but is a general rule, so that any time in the future when the

final rule, the final major rule, is substantially like the proposed rule, a new risk assessment would not have to be made for the reasons I have already mentioned.

The amendment, of course, goes further and provides that notwithstanding any provision of the Comprehensive Regulatory Reform Act of 1995 and the amendments made by such act, including section 9 of such act, any rule for which a notice of proposed rulemaking was filed before April 1, 1995, shall not be subject to the provisions of this subchapter or subchapter 3, except for section 623 relating to review of rules.

As I understand it, the proposed notice of proposed rulemaking in the case of E. coli was back in February, so the fact that this paragraph exempts any rulemaking where the notice of proposed rulemaking was filed before that date, again, ensures that action can be taken in the case of E. coli.

So I congratulate the Senator from Louisiana for his authorship of this legislation and I think, once again, we have addressed the problems that have been raised. I suspect that tomorrow, we will have some new problem because of the efforts on the part of some to use scare tactics.

Mr. President, I am concerned that the pending regulatory reform legislation, S. 343, has been poorly understood and mischaracterized at times. This legislation, the product of bipartisan compromise, the work of four committee chairmen, including myself, is vitally important to restoring some common sense in the regulatory process.

Simply put, the Dole-Johnston compromise would require regulators to issue regulations whose benefits justify their costs, unless existing statutory instructions prevent that.

This legislation will lead to a more efficient, a more effective regulatory process. But a number of recent statements misconstrue this legislation. I have, of course, just been addressing the misinterpretations, the scare tactics that have been used in the case of E. coli, which is a good example of the recent statements that have been made that are misconstruing this most important piece of legislation.

Let me take a few minutes to address some of these myths. First, S. 343 would not roll back environmental standards and does not—and I underscore the word ''not''—contain a supermandate. Section 624 of S. 343 contains the cost-benefit decisional criteria. Section 624 clearly states that the cost-benefit requirements shall supplement and not supersede another existing statutory instruction.

Section 624 merely requires regulators to pick a regulation whose benefits justify its costs, unless the statute authorizing the rule does not allow such an option. This is, in my judgment, just plain common sense.

Now, S. 343 also gives fair and equal treatment to environmental considerations and nonquantifiable benefits. The definition of benefits in section 621(2) clearly shows that in determining whether the benefits of a rule justify its cost, an agency should consider environmental, social, and health benefits. The agency also does not have to quantify all costs and benefits. Nonquantifiable factors count, too. S. 343 merely calls for a reasoned decision from the agency as to whether the benefits of a rule justify its cost, considering all relevant costs and benefits.

I might just point out the importance of the word ''justify.'' It does not mean that benefits have to outweigh costs. The word ''justify'' is much less strict than that.

Now, to deal with emergencies where an agency must issue regulations quickly to respond to immediate threats to human health, safety, or the environment, S. 343 contains emergency exemption from risk assessment and cost-benefit requirements in sections 632(c)(1)(A) and 622(f).

S. 343 will not roll back environmental standards. S. 343 will not cause undue litigation and will not clog the courts with lawsuits. S. 343 has limited judicial review.

In fact, it does not allow the normal level of judicial review that applies to laws as a matter of due course under section 706 of the Administrative Procedures Act.

Section 625 of S. 343 provides that an agency's failure to comply with S. 343 may only be reviewed by a court in the context of the whole rulemaking record under the very, very, deferential ''arbitrary and capricious'' standard.

A court cannot overturn a rule because an agency fails to comply with some unimportant procedure in doing a risk assessment or cost-benefit analysis. In other words, a court cannot nit-pick an agency for minor procedural missteps in doing the required analysis.

Only if an agency's failure to comply with S. 343 is so glaring as to render the rule arbitrary and capricious can a court overturn a rule.

Three, the process for reviewing old regulations under S. 343 will not overload the agencies or clog up the courts with litigation. Section 623 of S. 343 is designed to allow for the reform or elimination of inefficient, outdated, or ineffective rules already on the books. Again, this is a commonsense solution.

We should look at the old rules that do not make sense and try to reform them. Leave the other rules alone.

Section 623 allows each agency to choose any rule it thinks should be reviewed and place them on a review schedule. The agencies have up to 11 years to review these rules and decide whether they should be continued, reformed, or terminated.

In addition, a petitioner can request that the agency review any overlooked major rules within the first 3 years of the schedule. But to limit the number of petitions, S. 343 requires any petitioner to meet a very high burden of proof. That is, that there is a substantial likelihood that the rule should not meet the cost-benefit test in section 624 of the legislation.

This is a heavy burden of proof that will require substantial supporting documentation. But if a petitioner cares enough about a poorly written rule to prove that the benefits do not justify its cost, or that it otherwise fails the cost-benefit decisional criteria, why should we not review that rule?

Mr. President, section 623 is a fair, workable, and sensible solution to the thorny issue of reviewing existing rules.

In sum, Mr. President, when we look closely at how S. 343 would work, we can see it would achieve its intended goal—a more efficient and effective regulatory system. It will give us more bang for the buck, allowing Americans to achieve greater benefits at less cost. S. 343 will benefit everyone while providing needed protection for the environment, health, and safety. S. 343 will provide smarter regulation. I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER (Mr. FAIRCLOTH). The Senator from Wisconsin.

Mr. FEINGOLD. I would like to begin, Mr. President, by stating my support for the consideration of appropriate regulatory reform legislation in the U.S. Senate.

I do believe our regulatory process is in need of repair. I would like to compliment the majority leader and the Senator from Louisiana for trying to craft a bill that will reform a regulatory process that, no doubt, has and will continue to serve an important purpose, but has too often infuriated and frustrated a growing number of Americans.

Mr. President, I have held over 175 town meetings in my home State of Wisconsin during the past 2½ years. Many times I have had constituents stand up at the meetings and express their tremendous frustration and anger with the regulatory process that, too often, really, is impractical and impersonal and needlessly burdensome and, of course, many times, costly.

The regulatory process affects just about every American one way or another. It may be the factory owner who is trying to comply with a Federal workplace safety regulation. It might be a young couple shopping for a car safety seat for their child. Or it may be the millions of Americans who sit down every April and have the pleasure of trying to decipher the Rube Goldberg guidelines and rules known as our Federal Tax Code.

It is clearly in all of our interests to make sure we have a regulatory structure that is effective, efficient, and sensible.

Mr. President, though this does not mean that we should entirely dismantle the regulatory process—that is not a solution, because the regulatory process serves as a protective watchdog over the health and safety of every person in this Nation. It is responsible for

helping to ensure that we have cleaner air, cleaner water, and safer products.

I am constantly reminded of the need for regulatory reform by constituents who approach me with their concerns with the process. Unfortunately, I am also occasionally reminded by other kinds of incidents, Mr. President, incidents in my home State that illustrate just how important appropriate Government regulation really is.

Mr. President, it was just 2 years ago, in 1993, when an outbreak of cryptosporidium in the Milwaukee municipal water supply left 104 people dead and over 400,000 people seriously ill. Over 100 people, Mr. President, died from a single incidence of a water supply that became contaminated. That was a tragic reminder of how just one little crack in the regulatory process can have devastating consequences for a huge community that until then had never experienced any problems of any proportion of that kind.

Mr. President, that is why I am equally concerned about the impact of this legislation on future regulations. I am particularly concerned about the Government's ability to protect our drinking water, as it is clear that cryptosporidium, considered Milwaukee's problem in 1993, is now the country's problem.

On June 16, 1995, the Washington Post reported that cryptosporidium is now commonly found in lakes, rivers, and reservoirs all across this country. The Centers for Disease Control has warned that drinking tap water could be fatal to Americans with weakened immune systems, which the center estimates could number as many as 6 million Americans.

The city of Milwaukee itself now notifies at-risk populations of detections of cryptosporidium in municipal water, contacting hospitals, AIDS care facilities, institutions that service the metropolitan area's elderly, informing all those with fragile immune systems, so they may be able to protect themselves.

The city of Milwaukee is engaged in a multitier approach to investigating whether cryptosporidium is present in the drinking water: Testing occurs at the facility for the parasite, particulates, and turbidity of the water are used as indicators, and the city has established a network to monitor disease outbreaks that suggest individuals have been exposed to cryptosporidium.

However, it is not only those with fragile immune systems that experience health problems when exposed to cryptosporidium. As I said, over 400,000 people of all states of health became ill in Milwaukee itself. That is a very significant percentage of the population. And over 100 died following the city's cryptosporidium outbreak in April 1993. So I have observed firsthand the lingering health problems Milwaukee citizens continue to face.

Solutions to the problem of cryptosporidium will have to address nonpoint sources of pollution, and both the new $50 million threshold contained in the original draft of this legislation or the $100 million, and the assumptions that are made about risk characterization may impair our abilities to address this problem and sufficiently protect our water supply.

It is problems such as this that illustrate the consequences—sometimes fatal consequences—that are in store for the American people if a stranglehold is applied to the regulatory process.

We should also remember that there are scores of other regulations that go through without controversy and should not be caught in a big net that would require needless scientific evaluation and analysis that would impede their promulgation.

Indeed, sometimes Government regulations can be deregulatory in nature, such as those regulations that would clarify and simplify the Federal Tax Code, or regulations that might be associated with Federal legislation to reduce paperwork burdens for small businesses. That is the direction of many of our regulations today.

Last year, the Federal Election Commission promulgated a regulation that prohibits Members of Congress from converting campaign contributions into their own personal rainy day slush funds. That is a good regulation and the sort that should not be impeded by unnecessary cost-benefit analyses and risk assessments.

The Department of Veterans Affairs will soon be issuing guidelines for determining eligibility for certain benefits for veterans of the Gulf war who have experienced symptoms of the mysterious illness known as the Persian Gulf syndrome. Again, this is a regulation that I do not think anyone would want to be slowed by new process requirements.

The Consumer Product Safety Commission has thankfully kept thousands of dangerous toys off the market that could be harmful to children. The Department of Agriculture is considering long overdue regulations to improve and modernize the Federal meat inspection system.

I think such changes are crucial if we are to improve the level of protection provided to the American people from bacterial food-borne diseases that can in the worst cases result in death for our most vulnerable population.

There are clearly a large number of regulations that need to be implemented and should be implemented in a relatively quick and efficient manner. Such regulations are critical for protecting the health and safety of this Nation.

As others have correctly pointed out, this issue has a tradition of being handled in a bipartisan fashion in the U.S. Senate. In 1982, the Senate approved S. 1080, the Leahy-Laxalt legislation by a 94 to zero margin.

Then, just 3 months ago, the Government Affairs approved a bill by a margin of 15 to zero that the senior Senator from Maine, Senator COHEN, referred to as a restoration of common sense.

Unfortunately, the bill that was considered by the committee I serve on, the Judiciary Committee, was much more than any sort of reform bill. I had the feeling it was not a reform bill—it was a dismantling bill. A dismantling of our regulatory framework. It is not the sort of bill that I believe the American people would support if they knew all the details.

I am pleased that some of the excessive provisions of that legislation have been dropped and are not a part of the latest Dole-Johnston package. Unfortunately, the Dole-Johnston proposal, as I understand how it currently stands, does contain several provisions that I believe could hamstring the ability of Government agencies to adequately protect the health and safety of the American people. I know the Senator from Louisiana has strong feelings about this, but let me just mention a couple of my concerns. I will certainly listen to any responses he has, as the days goes on.

I think the issue of judicial review and how it has been addressed in different proposals best illustrates the difference between how you can improve the regulatory process and how you can paralyze the regulatory process.

Let me say at the outset that I support the ability of a person subject to a government regulation to ask a court to review the rulemaking record and determine if an agency has followed the proper procedures for issuing a regulation. I have always supported the concept of expanding an individual's access to our judicial system.

What I do not support is allowing a well-financed business interest with a legion of attorneys to file continuous lawsuits to paralyze an agency and prevent that agency from issuing a rule that will benefit the consumers, working people, children, and families of this country.

I find it interesting that just a couple of months ago this body found itself in a frenzy to clamp down on the supposed litigation explosion in product liability cases. So when we are talking about defective products that a manufacturer knowingly markets, those on the other side want to limit an injured consumer's access to the judicial system.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. FEINGOLD. I will be happy to yield.

Mr. JOHNSTON. I am glad my friend from Wisconsin raised the question of judicial review because, indeed, in the original Judiciary Committee bill, I believe it did open up areas to litigation on procedural matters on the question of compliance with the risk assessment protocol. And I think it did have the possibility of tying things up in court.

But the present Dole-Johnston bill provides that compliance with risk assessment and cost-benefit may be considered by the court, and I am quoting

now, ''solely for the purpose of determining whether the final agency action''—that is the rule itself—''is arbitrary and capricious or an abuse of discretion.'' The key words here are ''solely for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion.''

The final agency action is appealable anyway, under the present law. This simply makes the risk assessment protocol part of the record which may be considered only in connection with the final agency action.

Mr. FEINGOLD. I thank the Senator from Louisiana. I know he truly has made a good-faith effort to improve these provisions.

I ask unanimous consent to have printed in the RECORD at this point a letter from the U.S. Department of Justice to the majority leader, dated July 11, 1995, from Mr. John Schmidt.

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

U.S. DEPARTMENT OF JUSTICE, OFFICE OF THE ASSOCIATE ATTORNEY GENERAL,

Washington, DC, July 11, 1995.

Hon. ROBERT DOLE,

Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR DOLE: This letter provides the views of the Department of Justice on the judicial review provisions of the substitute amendment to S. 343, the Comprehensive Regulatory Reform Act of 1995.

As the agency with responsibility for representing the United States and its various agencies in the courts, the Department is obviously concerned whenever proposed legislation has the potential to result in a large number of new cases being introduced into the court system or in an expansion of issues required to be litigated in cases which are filed. Any proposal that covers nearly 100 pages of legislative text and imposes significant new requirements on every agency in the federal government, as S. 343 does, is bound to increase substantially the volume of federal litigation, and the complexity of cases which are litigated, unless judicial review of agency compliance is carefully delineated and controlled. Unfortunately, the numerous judicial review provisions contained in S. 343 provide a host of new opportunities for challenges to agency actions by regulated entities and other participants in the regulatory process. Because these provisions would increase the volume and complexity of federal litigation arising out of the regulatory process, adding burdens which are inconsistent with the fundamental goals of this legislation, the Department opposes the adoption of the Dole-Johnston-Hatch bill.

There are at least eight different provisions contained in the substitute amendment that provide separate statutory grounds for judicial review and which, in total, provide for the courts to review a wide range of decisions made by the agencies in the process of promulgating rules. The provisions are: section 625, establishing review of cost/benefit analyses and risk assessments as well as major rule determinations; section 5, amending 5 U.S.C. §706, establishing new standards under the Administrative Procedure Act for review; section 4(b), amending 5 U.S.C. §§604 and 611, establishing greater judicial review under the Regulatory Flexibility Act; section 3, amending 5 U.S.C. 553(m); section 623(e), establishing judicial review of compliance with agency regulatory review rules; section 623(g), establishing the right to petition the courts to extend the review period for a rule; section 623(h), providing that an agency decision not to modify a major rule is a final agency action and thus subject to judicial review; and section 623(j), providing that an agency decision to continue or repeal a major rule is a final agency action and thus subject to review. How these various provisions relate to each other provides an additional layer of complexity that will undoubtedly be raised in the courts as well.

There are three provisions that are particularly troublesome:

REVIEW OF COST/BENEFIT ANALYSES AND RISK ASSESSMENTS

Section 625 provides for judicial review of an agency's compliance with S. 343's subchapters on cost/benefit and risk analyses. The language in the substitute appears to be a significant improvement over that contained in the bill reported by the Judiciary Committee; however, it will continue to allow litigation over complex procedural requirements to be filed on every major rule.

There remain two basic problems which create the potential for litigation under section 625. First, section 625 provides that ''failure to comply with [the rules pertaining to cost/benefit and risk analyses] may be considered by the court solely for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion.'' When this section is read in conjunction with the extraordinarily detailed and prescriptive requirements for risk assessments 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.

This concern is compounded by the second problem. The decisional criteria in section 624 generally prohibit promulgation of a rule unless the agency head finds that it adopts the least cost alternative of the alternatives meeting the applicable criteria in section 624(b) or (c). Thus, the agency's choice is limited to a single alternative, not a range of reasonable alternatives. And while the bill dictates this choice, it fails to acknowledge that the tools of risk assessment or cost-benefit analysis inevitably produce estimates which are subject to dispute between reasonable people. Given the premise that only a single outcome is legally permissible, any of the underlying estimates may be outcome determinative. Thus, the combination of strict decisional criteria and judicial review creates a situation in which non-compliance with any of the many procedural steps mandated by the legislation could well be challenged as constituting an abuse of discretion.

Another issue that should be noted is the provision in 625(e) permitting interlocutory review of agency determinations that a rule is not a major rule. By allowing interlocutory challenges, the bill will potentially allow entities to frustrate the regulatory process with piecemeal litigation.

The Department strongly recommends language for section 625 similar to that in §626 of the Glenn/Chafee alternative that would limit judicial review to whether a rule has been properly classified as a major rule and to whether a risk assessment or cost-benefit analysis has been conducted. Only with this type of provision for narrowly-circumscribed judicial review can we avoid the risk of embroiling every new rule in a complex new layer of litigation and judicial decision-making—thereby undermining the goal of simplifying and improving the regulatory process which is the fundamental objective of this legislation.

APA STANDARDS OF REVIEW

Section 5 of the Dole-Johnston-Hatch substitute would amend 5 U.S.C. §706 to alter the Administrative Procedure Act standards of judicial review. In particular, it would amend section 706(a)(2)(F) in a manner that could be read to replace the current ''arbitrary and capricious'' standard of review of agency finding of fact in informal rulemaking with a new requirement that there be ''substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis.'' The practical effect of this change is unclear. However, we are concerned that it would make the informal rulemaking process slower and more burdensome, and increase the amount and complexity of litigation over agency rules, without significantly improving the quality of the rules. Furthermore, it simply is not necessary to amend these provisions of the APA in order to meet the goals of this legislation, i.e. to ensure the best available science is brought to the regulatory process and to ensure that regulatory agencies consider the costs and benefits of rules before they are imposed.

REVIEW OF REGULATORY FLEXIBILITY REQUIREMENTS

The Administration supports reasonable judicial review of compliance with regulatory flexibility requirements. However, section 4(b) of the substitute substantially rewrites the Regulatory Flexibility Act to impose a supermandate which will foster endless and needless litigation over whether a rule ''minimizes significant economic impact on small entities to the maximum extent possible.'' That provision, combined with the new standards for judicial review contained in section 4(b), will encourage even more litigation and open many rules to attack. We are particularly concerned that this provision also allows interlocutory challenges to proposed rules. In addition, the provision would expand review to situations in which the agency neither certified the rule nor prepared a preliminary or final analysis. This would arguably extend judicial review beyond the Regulatory Flexibility Act to general matters concerning compliance with the notice and public procedure requirements of the APA, for which judicial review already exists. Further, the one year period for seeking judicial review is too long and invites entities to layer challenges to regulations instead of bringing all such challenges by the time otherwise required for APA review.

We are also concerned by the provision which mandates that a rule be stayed if the agency has not completely complied, within 90 days, with a court order to prepare a regulatory flexibility analysis or take other corrective action. This would apply even to technical errors, to failure to comply with the deadline by just one day, and to situations where ninety days would simply be insufficient time to comply. This is inconsistent with APA practice which lodges discretion in the judiciary to determine whether a stay of a rule or, in the alternative, an extension of time to comply, would be appropriate under the particular circumstances.

For the reasons set forth above, the Department strongly opposes adoption of the Dole-Johnston-Hatch bill.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

JOHN R. SCHMIDT.

Mr. FEINGOLD. Mr. President, that does certainly acknowledge—in fact, I will read the language—the fact that

there is improvement but there are still complexities involved. The letter states, in part, on page 2, that:

Section 625 provides for judicial review of an agency's compliance with S. 343's subchapters on cost/benefit and risk analyses. The language in the substitute appears to be a significant improvement over that contained in the bill reported by the Judiciary Committee; however, it will continue to allow litigation over complex procedural requirements to be filed on every major rule.

So, Mr. President, I recognize the Senator from Louisiana is attempting to address this. I have not finally concluded that he has not addressed it completely. But the Department of Justice still believes the complexity involved here, I think it is fair to say, could invite a great deal of litigation and, I fear, give quite an advantage to the large interests that are more likely to have the attorneys and the wherewithal to fight these battles and jam up the regulatory process.

Mr. GLENN. Will the Senator yield?

Mr. FEINGOLD. I am happy to yield to the Senator from Ohio.

Mr. GLENN. I want to be certain I understood, the Senator asked that the letter be printed in the RECORD; is that correct?

Mr. FEINGOLD. I did ask unanimous consent it be printed in the RECORD.

Mr. GLENN. I think that is good, because a moment ago the Senator from Louisiana was talking about how the judicial review requirements have been cut back, yet this letter from the Justice Department points out eight separate areas for judicial review, and lists them very specifically. They also list the areas that give them particular concern: Review of cost-benefit analysis and risk assessments, the APA standards of review, and the review of regulatory flexibility requirements.

I know this is a lengthy letter. They give it in detail. But to those who think we are not increasing judicial challenges with S. 343, I think they should read this.

This is a letter dated July 11 to the majority leader. It spells out in great detail the specific provisions in S. 343 that will result in unnecessary judicial review. That is the opinion of Department of Justice.

I am glad the Senator is putting that in the RECORD.

Mr. FEINGOLD. I thank the Senator from Ohio.

I recognize that the Senator from Louisiana made a real effort to improve this process. I think he made a fair comment earlier today. It is not a sufficient response to his effort to simply say this bill goes too far. You have to be able to point out where it may go too far. I agree with the Senator from Ohio. Perhaps the guidance of the Department of Justice identifies those areas of continuing concern that we have to address before we make a final judgment about whether this bill is in the right shape to be the vehicle for regulatory reform that we all wish.

Let me continue. I have noticed in the 104th Congress the tremendous desire in this body when it came to product liability to limit litigation, to unclog the courts. That was the real focus of that bill. That was the justification frankly for something I thought took away the rights of a lot of people to potentially sue for damages and get their fair return and being made whole after they have been hurt by a product.

I notice that those who support changing our habeas corpus laws believe that a prisoner awaiting execution should be given one shot and one shot only at having his case reviewed by a high court. So apparently when we are ready to take a person's life away—and in too many cases an innocent person's life—the other side wants to again limit access to courts.

But when corporate America and well-financed business interests are involved, those on the other side—I want to be cautious here—suddenly want to enable those interests to file lawsuit after lawsuit after lawsuit.

There is something wrong here. Do we try to unclog the courts or not?

When you take a close look at some of the judicial review proposals that are out there, you begin to wonder what the litigation departments of the Federal agencies are going to begin to look like should any of these proposals become law.

How many attorneys are the agencies going to have to hire as they find themselves becoming more familiar with a courtroom than they are with their own offices? How many attorneys and other staff are the agencies going to have to hire to deal with the mountain of petitions that will pour into the agencies should the wrong bill be passed?

We do not know the exact answers to these questions. But considering the tremendous effort that the Clinton administration has made to shrink the size of Government—the smallest it has been since the Kennedy administration—considering the tremendous gains made by the Vice President's reinventing Government effort and considering the legislation passed last year that will reduce the size of the Federal work force by 250,000 employees, I think we should be extremely careful not to pass legislation that will nullify the progress that has been made on cutting back on the size of the Government.

I do not want to make these Federal agencies bigger than they need to be. I do not want to have to vote on larger appropriation bills each year to finance new Government bureaucrats and all of these procedural requirements and scientific analyses they must complete to meet the requirements of this bill. And to get the work of the Government done. I do not think that is what the American people had in mind when they hear words such as ''reform'' and ''efficiency.''

I am also concerned about the several provisions in this bill that seem to have little to do with the notion of reforming the regulatory process.

In fact, S. 343, the Comprehensive Regulatory Reform Act of 1995, as introduced by the majority leader on February 2, was just 32 pages long. That bill contained what many believe are the key ingredients of a strong regulatory reform bill. It contained requirements for cost-benefit analyses, it contained requirements to perform risk assessments.

It had judicial review and it had a mechanism for those who are being regulated to petition an agency to review an existing regulation.

Interestingly enough, the underlying legislation we are considering today has bloated to nearly 100 pages. It still has cost-benefit analyses, risk assessment, judicial review, a petition process and many other provisions originally a part of S. 343 as it was first introduced. But a host of new provisions, many of which have little or nothing to do with reforming the regulatory process, have been thrown into this pot luck legislation that has tripled in length since originally introduced.

One example is the effective repeal of the Delaney clause in this legislation. The Delaney clause, as many observers agree, is no longer consistent with modern scientific methods of detecting residues of pesticides, fungicides and insecticides on processed foods.

The zero-risk standard prevents use of chemicals that have been used for many years simply because new technology allows us to more easily detect minute levels of residues.

It provides for an inconsistent standard for EPA to set tolerances for pesticide residues in processed foods versus raw foods.

The current law does not provide for consideration of actual consumption patterns of various foods nor does it take into account the dietary intakes of different segments of our population.

And it only addresses cancer risk, rather than other potential health effects of food additives. These are problems that should be addressed.

However, despite these problems with the Delaney clause, a stand alone repeal of the provision—as included in the Dole-Johnston legislation—will do nothing to improve the safety of our food supply and simply does not belong in legislation intended to address the inadequacies of the existing regulatory process.

The fact is that there are incredibly complex and important issues that should be considered as a package of pesticide reform legislation in the appropriate committees.

When I served on the Agriculture Committee, I had a change to hear very compelling testimony on the types of ranges of issues that should be included.

For example, farmers fear that more and more of their crop protection chemicals will be taken without adequate alternatives. This issue needs to be addressed. But repealing Delaney only allows some chemicals to remain on the market—it does nothing to address the environmental side of the

equation that farmers are faced with on a regular basis.

Farmers also want to know that so-called minor use pesticides will continue to be available—they want reregistration to be made less burdensome and yet consumers want to be assured that those chemicals are safe despite potentially expedited registration processes. Repealing Delaney does not address this so-called ''minor use'' issue.

Consumers also want to know that the way in which we set tolerances for chemicals used in food production takes into account the needs of our most vulnerable populations infants and children.

This is what we heard so much about in the Agriculture Committee. A lot of studies and flies are based on adult males, not necessarily on the tolerances that children can absorb of certain pesticides and substances. Again, repealing Delaney does not address that issue.

Consumers want to know that all health risks have been addressed in the process of setting tolerances for chemicals, reproductive and developmental impacts as well as carcinogenic risks. Repealing Delaney does not solve that problem.

The bottom line, Mr. President, is that there is a lot of work that needs to be done with respect to the regulation of chemicals used in food production and processing by the EPA and the FDA. But that sort of reform needs to be done as part of a comprehensive package that addresses the issues of importance to manufacturers, food processors, farmers and consumers.

It should not be inserted as a phantom paragraph in a hundred-page bill that seeks to reform the process by which regulations are issued.

In closing, I want to reiterate my sincere and spirited support for reforming the regulatory process that is currently in place. I do not believe that the current system is acceptable—the need for reform is clear and imperative.

I think what we need is to rededicate ourselves to finding that proper balance between needed health, safety and environmental safeguards, and granting greater relief to those who are being regulated by rules that have little or no rational basis.

I hope that as this bill is considered now and in the coming days, that Members from both sides of the aisle can get together, roll up our sleeves and find an alternative that really does achieve the balance that I think we can support.

I thank the Chair, and I yield the floor.

Mr. GLENN addressed the Chair.

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

Mr. GLENN. Mr. President, I wish to specifically address the Johnston substitute for the Daschle amendment that was proposed earlier today.

Let me say in starting out that I agree with Senator JOHNSTON's intent. I wish there was some other way to do this. I wish that what he is proposing was a freestanding amendment; I could probably vote for it. I do not want to commit to that at this point, but it would make it much more palatable if it was put in in the form of a freestanding amendment instead of trying to replace Senator DASCHLE's amendment.

I agree with Senator JOHNSTON completely that we want to cut down on a repeat of expensive procedures, and that is what he attempts to do with this amendment.

I also understand his concern that he put this in to replace the Daschle proposal because he is afraid that, if the Daschle proposal passes with specific reference to food pathogens such as E. coli, salmonella, and so on, and this passes, it opens the door to a lot of other rules—cryptosporidium and a lot of other proposals. There is almost no end to the number of things that could be brought up as exceptions to S. 343, so I appreciate that.

At the same time, having said that, I disagree with replacing the Daschle amendment and disagree specifically with the proposal by my colleague from Louisiana, Senator JOHNSTON, for the following reasons.

The first involves risk. The Department of Agriculture informs us that whether or not they have to do a second risk assessment at the final rule stage, they will not in any event be able to say that the risk assessment that they have already done, which the Senator from Louisiana refers to, complies with the requirements of S. 343 as it would be amended by the Dole-Johnston substitute. They would have to go back and comply with S. 343, such things as least-cost analysis, new procedures for cost-benefit analysis, and every one of these steps is subject to judicial challenge along the way. So it changes things dramatically.

The Department of Agriculture says they could not just use the old information that they already have developed because there are now new requirements in S. 343, so it just would not work. This part of Senator JOHNSTON's second-degree amendment does nothing to protect the issuance of USDA's meat inspection rule. It just would not do it. So that is the first point.

The second point. Moving the effective date to April 1 for new proposed rules is certainly an improvement from an across-the-board, immediate effective date. I agree with that. Unfortunately, I do not believe it is enough. The requirements of this bill cannot be met within a few weeks or even a few months because the new rulemaking procedures, new least-cost rule criteria, preparing for a new level of judicial review, these all require months and months and months of new extra work.

So this new proposed effective date will let already-issued proposed rules through the process without delay. It will, however, effectively stop all other new rules that are in the pipeline. Agencies will have to go back and start over with their proposals.

Now, this is not right. And it will delay a large number of health and safety rules and just waste agency resources.

Now, lest we think this is just my opinion and I am making this up, let me give a few examples that have come to us so far. This is not a complete listing by any means, but by setting April 1, which the Johnston proposal does now, we then cut out such things as some of the mammography regulations; we cut out some with regard to flammability standards for upholstered furniture; we cut out some regulations with regard to cables and lead wires that particularly protect children. These are just three examples here of rules that would not go into effect, would not be exempted by the April 1 deadline.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. GLENN. Yes.

Mr. JOHNSTON. Is the Senator requesting that I withdraw the second-degree amendment and vote up or down on the Daschle amendment?

Mr. GLENN. No. I said that I was sorry that the Senator's amendment was not proposed as a completely separate amendment, that we should let the Daschle amendment go and have a vote of its own, and that I might even be able to support the Senator's proposal. I favor the general proposal of trying to cut out unnecessary paperwork, unnecessary risk analysis, unnecessary cost-benefit analysis, to cut those out and to prevent duplicate paperwork. Now, I would have to go through and read your amendment to be specific.

Mr. JOHNSTON. Would the Senator rather go ahead and vote on Daschle right now and propose it as a separate amendment?

Mr. GLENN. I would have preferred that. I said that earlier this morning in our private conversation. What I objected to specifically was cutting Daschle out for what he proposed. This substitute for Daschle is not a second-degree amendment. It substitutes for Daschle.

Mr. JOHNSTON. Mr. President, if the Senator will further yield, I am inclined at this point to pull down the amendment. Frankly, it is likely that there will be another second-degree amendment which will not include the April 1 cutoff date. I am now advised that the April 1 cutoff date, even though agreed to by some on the other side of the aisle, has not been cleared, so in any event it would not pass. I think that is very unfortunate because I think it was a complete fix for this rule as well as other rules.

But if my colleague from Ohio wants it withdrawn and my colleagues on the other side of the aisle want it withdrawn, it is not going to pass anyway,

so if that is what I am being asked to do—I want to be sure that if I do this now, that is what everybody wants to do.

The Senator from Ohio would like that done?

Mr. GLENN. I have made my comments about it earlier. I am not advising the Senator what to do. I had my objections this morning that your amendment did away with Daschle. That has been my concern all the way through this, because I think his amendment is good. I think it corrects the inadequacy of the amendment that we passed yesterday.

I support the Daschle amendment for all the reasons I stated earlier in the Chamber today. If the Senator wants a vote on his amendment, we can have a vote on his amendment. I think there are some problems with it that I was about to go into in more detail. If he wishes to withdraw his amendment, then we could proceed with Daschle.

Mr. President, while the other conversations are going on, I will proceed with some of these examples of what would happen if we set the 1 April date that is proposed in the Johnston amendment.

Here is one on mammography that would not fit under the exemption; it would be held up; it would be delayed. Let me read this.

The Mammography Quality Standards Act—MQSA, as it is called—of 1992 requires the establishment of quality standards for mammography clinics, covering quality of films produced, training for clinic personnel, recordkeeping, and equipment. MQSA resulted from concerns about the quality of mammography services that women rely upon for early detection of breast cancer. FDA is planning to publish proposed regulations to implement the MQSA. The potential magnitude of these regulations is substantial. Improving the quality of mammography translates directly into early detection of breast cancer, and earlier detection of breast cancer increases the likelihood of successful treatment and survival.

An interim rule in this regard was published December 21, 1993, and publication of the proposed regulations is planned for October 1995. Under the Johnston amendment, the Johnston replacement for the Daschle amendment, this is well after the 1 April deadline so this would not be exempted. They would have to go back then and redo all of their previous analyses under the new guidelines, the new directions given in S. 343—unnecessary delays, and all the work that has been done already, unnecessarily so.

Let me bring up another one that is different: Flammability standard for upholstered furniture. The Commission is in the process of developing a proposed flammability standard for upholstered furniture. The purpose of the standard is to reduce the deaths and injuries that result from fire incidents involving upholstered furniture started by small open flames—matches, candles, lighters, so on.

The beneficiary of the rule: The potential victims of house fires would benefit from this rule. In 1992, there were an estimated 80 deaths, 490 injuries, $48.3 million worth of property damage associated with open-flame ignition of upholstered furniture. A substantial portion of these are believed to be related to small flame sources.

The impact of S. 343 would keep the Commission from doing the work necessary to develop this standard until after the moratorium period. The delay could result in additional fire-related injuries and deaths that could have been avoided.

Now the date: The Commission issued an advance notice of proposed rulemaking on June 15, 1994, and is working toward a proposed rule. When that would be put out would obviously be after the April 1 deadline.

Let me give another example: cables and lead wires. The Food and Drug Administration has proposed a regulation to require that cables which connect patients to a variety of monitoring and diagnostic devices be designed so that the cables cannot be plugged directly into a power source or electrical outlet.

The agency has received several reports of death and injury resulting from misuse of these devices, including one death and two cases of serious electrical burns when unsupervised children plugged cables from a home apnea monitor into outlets; one death in a hospital when electrocardiogram cables were plugged into an infusion pump power cord; and a death when a neonatal monitor's lead wires were plugged into a power cord for another device.

Advance notice of proposed rulemaking was issued on May 19, 1994. The proposed rule was published June 21, 1995, comments to be received by September 8, 1995. Obviously, that would not go into effect. It would not be permitted to go into effect without all the additional analyses provided in S. 343.

Mr. President, if we are going to have a reasonable effective date, I think we should do what we have in the Glenn-Chafee bill. We should put the effective date out 6 months beyond passage of the legislation to allow agencies some reasonable time to put into place the new requirements to administer the legislation.

The amendment proposed may let the meat inspection rule through; too many others will still be stopped, including these I just mentioned.

Another example. There are also some other problems with S. 343. There is a general problem illustrated by the debate today and yesterday. The amendments offered yesterday, and Senator JOHNSTON's second-degree amendment this morning, show without a doubt that the proponents of S. 343—and I think they know it—have a less than satisfactory bill. They know it is a bad bill. I think it goes too far, and I think they also know it goes too far, because each time we get close to raising issues or offering amendments, as happened yesterday, they leap up to modify their own bill to avoid the inevitable conclusion on the floor that their bill is flawed.

I think the bill they brought to the floor would harm public health and safety. They may not be willing to admit that, but I think they know it is true nevertheless, and the examples I gave this morning of what would happen to the change to it that is proposed by the Johnston amendment, which replaces the proposal made by Senator DASCHLE earlier today, would go further in that direction, as I see it.

Mr. President, I want to point out one other thing. We talk about these amendments and rules and regulations and what would be required of the agencies to comply with the requirements of this bill.

Let me start off by saying that in committee, we had testimony that the estimate is that for each major rule and regulation that is put out under the version of regulatory reform that passed the House, it would cost somewhere around $700,000 to put the rule out. That was questioned by some people when I brought that out on the floor yesterday, and we discussed it in private back here. But let me give an example.

The Clean Water Act was passed back in 1972. There was an amendment to it later in 1972. There was another amendment to the Clean Water Act in 1977, and another one in 1987. It has been 8 years from 1987 to the present time. Just one regulation put out pursuant to that Clean Water Act, and I do not have a listing of how many regs were put out overall. But one regulation, that pertaining to effluent limitation guidelines and standards for metal products and machinery put out under that act, has taken 8 years to do.

This thick document that I hold before you is just the index for it. It just went into effect April 1995. That is just the index. I wish we had time to go through all these pages. These are single-spaced pages, one after the other, all the requirements.

This is just the development document for how they were going to go about it. This is pursuant to laws that we passed. If we want to see who is at fault for a lot of this, look in the mirror.

This is just a development document for the proposed effluent guidelines and standards for the metal products and machinery phase I point source category. That is just one regulation.

Do you know how much shelf space is taken up with that one regulation, that one single regulation put out pursuant to what we passed here in the Clean Water Act? I stepped off the width of this Chamber a while ago, and it comes out to somewhere around 112 to 115 feet of pacing here. That one regulation has shelf space of 123 feet just for the documents involved with one regulation.

Yet, we passed yesterday afternoon a new requirement in this bill that would open it up for hundreds and hundreds of new regulations that would have to meet the requirements of S. 343.

Now, sometimes I do not think we know what we are doing around here. In other words, just the shelf space for this regulation would be about 10 feet longer than from that wall to this wall in the Senate Chamber. I know anybody that happens to be watching this discussion on TV does not have an idea of what this dimension is here. But it is about 45 paces across here to get that kind of distance, taking about a yard per pace. That is one regulation we are talking about, under the Clean Water Act.

I do not know how many regulations are required. I think there are probably several hundred. I do not know the exact number, but I am sure there are at least several hundred under the Clean Water Act that we passed right here. Can they cut back on that and can they get by with 60 feet of shelf space? I do not know. I know that what we are going to require with this legislation whole new requirements, a whole new cost-benefit analysis, whole new risk assessment, least cost analysis—that means agencies have to develop a number of additional options to see which one is least costly. You cannot make more judgment and say we go with the one we think is most likely to be successful and exercise some commonsense judgment. Now we are going to have to develop several options under each one of these things, and we will probably double that space across the Chamber that would be needed to hold all these analyses.

That is just an example of what we are requiring here with some of this legislation. At the same time, we are talking about cutting down the agencies, cutting back on their budget, cutting people, getting people out of Government. Through our actions here, we are loading on additional requirements that are almost unbelievable. Can you imagine one regulation that requires 123 feet of shelf space and requires documents like I held up here just for the index?

That is just one under the Clean Water Act of 1972. And the subsequent amendments, and the final amendment that requires this was put out 8 years ago, and the final rule is coming out in 1995.

So, Mr. President, I am very concerned about where we go with this. I think we take a much more logical approach with S. 1001, the Glenn-Chafee bill. We would not leave out certain things, such as I mentioned here on mammography; flammability regulations, which protect families in homes; on the cables and lead wires; medical machinery, and so on. Those would all be left out in S. 1001. They would have to go back and go through this whole process over again if we passed the amendment submitted by the Senator from Louisiana to S. 343.

So, for all these reasons I have just given, I oppose this. I hope we can have, but I do not know whether the Senator from Louisiana still wants, a vote on his amendment. He talked about possibly withdrawing it so we can get on with a vote on the Daschle amendment.

Mr. President, I ask unanimous consent that an article from the July 17, 1995 Business Week be printed in the RECORD.

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

ARE REGS BLEEDING THE ECONOMY?

To the Republican Congress, regulations are like a red cape waved in front of a raging bull. ''Our regulatory process is out of control,'' says House Science Committee Chairman Robert S. Walker (R-Pa.). He and other GOP leaders charge that nonsensical federal rules cripple the economy, kill jobs, and sap innovation. That's often true: Companies must spend enormous sums making toxic-waste sites' soil clean enough to eat or extracting tiny pockets of asbestos from behind thick walls.

That's why GOP lawmakers on Capitol Hill want to impose a seemingly simple test. In a House bill passed earlier this year and a Senate measure scheduled for a floor vote in July, legislators demand that no major regulation be issued unless bureaucrats can show that the benefits justify the costs. ''The regulatory state imposes $500 billion of burdensome costs on the economy each year, and it is simply common sense to call for some consideration of costs when regulations are issued,'' says Senate Majority Leader Bob Dole (R-Kan.).

That sounds eminently reasonable. But there's a serious flaw, according to most experts in cost-benefit calculations. ''The lesson from doing this kind of analysis is that it's hard to get it right,'' explains economist Dale Hattis of Clark University. It's so hard, in fact, that estimates of costs and benefits may vary by factors of a hundred or even a thousand. That's enough to make the same regulation appear to be a tremendous bargain in one study and a grievous burden in the next. ''If lawmakers think cost-benefit analysis will give the right answers, they are deluding themselves,'' says Dr. Philip J. Landrigan, chairman of the community medicine department at Mount Sinai Medical Center in New York.

There's a greater problem: The results from these analyses typically make regulations look far more menacing than they are in practice. Costs figured when a regulation is issued ''almost without exception are a profound overestimate of the final costs,'' says Nicholas A. Ashford, a technology policy expert at Massachusetts Institute of Technology. For one thing, there's a tendency by the affected industry to exaggerate the regulatory hardship, thereby overstating the costs.

More important, Ashford and others say, flexibly written regulations can stimulate companies to find efficient solutions. Even critics of federal regulation, such as Murray L. Weidenbaum of Washington University, point to this effect. ''If it really comes out of your profits, you will rack your brains to reduce the cost,'' he explains. That's why many experts say the $500 billion cost of regulation, bandied about by Dole and others, is way too high.

Take foundries that use resins as binders in mold-making. When the Occupational Safety & Health Administration issued a new standard for worker exposure to the toxic chemical formaldehyde in 1987, costs to the industry were pegged at $10 million per year. The assumption was that factories would have to install ventilation systems to waft away the offending fumes, says MIT economist Robert Stone, who studied the regulation's impact for a forthcoming report of the congressional Office of Technology Assessment (OTA).

BOTTOM LINES

Instead, foundry suppliers modified the resins, slashing the amount of formaldehyde. In the end, ''the costs were negligible for most firms,'' says Stone. What's more, the changes boosted the global competitiveness of the U.S. foundry supply and equipment industry, making the regulation a large net plus, he argues.

While federal rules that improve bottom lines are rare, regulatory costs turn out to be far lower than estimated in case after case (table). In 1990, the price tag for reducing emissions of sulfur dioxide—the cause of acid rain—was pegged at $1,000 per ton by utilities, the Environmental Protection Agency, and Congress. Yet today the cost is $140 per ton, judging from the open-market, price for the alternative, the right to emit a ton of the gas. Robert J. McWhorter, senior vice-president for generation and transmission at Ohio Edison Co., says the expense could rise to $250 when the next round of controls kicks in, ''but no one expects to get to $1,000.'' The reason: Low-sulfur coal got cheaper, enabling utilities to avoid costly scrubbers for dirty coal.

Likewise, meeting 1975 worker-exposure standards for vinyl chloride, a major ingredient of plastics, ''was nothing like the catastrophe the industry predicted,'' says Clark University's Hattis. He found in a study he did while at MIT that companies developed technology that boosted productivity while lowering worker exposure.

Of course, it's possible to find examples of underestimated regulatory costs. And even critics of the GOP regulatory reform bills aren't suggesting that cost-benefit analysis is worthless. ''We should use it as a tool'' to get a general sense of a rule's range of possible effects, says Joan Claybrook, president of the Ralph Nader-founded group Public Citizen. But she and other critics strongly oppose the Republican scheme to kill all regs that can't be justified by a cost-benefit exercise. As a litmus test for regulation, ''the uncertainties are too broad to make it terribly useful,'' says Harvard University environmental-health professor Joel Schwartz.

What is useful is moving away from a command-and-control approach to regulation. There's widespread agreement among companies and academic experts that bureaucrats should not specify what technology companies must install. It's far better simply to set a goal, then give industry enough time to come up with clever solutions. ''We need the freedom to choose the most economical way to meet the standard,'' explains Alex Knauer, chairman of Ciba-Geigy Ltd. Krauer, for example, points to new, cleaner, processes for producing chemicals that end up being far cheaper than installing expensive control technology at the end of the effluent pipe.

DUMB THINGS

But when goals are being set for industry, the proposed cost benefit analysis approach could have a perverse effect. That's because agencies are rarely able to foresee the low-pollution processes industries may concoct. Smoke-stack scrubbers are a good example. The bean-counters will use the known price of expensive scrubbers in their analyses. Their cost-benefit calculations will then argue for less stringent standards. And those won't help spark cheaper technology. The result can be the worst of both worlds: costlier

regulation without significant pollution reductions. ''It's a vicious circle,'' explains Stone, ''If you predict that the costs are high, then you stimulate less of the innovation that can bring costs down.''

There's no doubt reform is needed. ''Frankly, we have a lot of dumb environmental regulations,'' says Harvard's Schwartz. But he puts much of the blame on Congress for ordering agencies to do dumb things. Now, Congress is tackling an enormously complex issue without fully understanding the ramifications, Schwartz and other critics worry. Overreliance on cost-benefit analysis could make things worse for business, workers and the environment.

REGULATION ISN'T ALWAYS A COSTLY BURDEN

Many regulations cost much less than expected because industry finds cheap ways to comply with them.

COTTON DUST

1978 regulations aimed at reducing brown lung disease helped speed up modernization and automation and boost productivity in the textile industry, making the cost of meeting the standard far less than predicted.

VINYL CHLORIDE

Reducing worker exposure to this carcinogen was predicted to put a big chunk of the U.S. plastics industry out of business. But automated technology cut exposures and boosted productivity at a much lower cost.

ACID RAIN

Efficiencies in coal mining and shipping cut prices of low-sulfer coal, reducing the need to clean up dirty coal with costly scrubbers. So utilities spend just $140 per ton to remove sulfur dioxide, vs,. the predicted $1,000.

Mr. GLENN. I yield the floor.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I will speak on the floor later on the entire regulatory reform bill and its affect on the American public.

I rise today to speak specifically to the Daschle amendment because it affects me personally and I feel very strongly about it. The underlying Daschle amendment on the floor for debate right now takes us a step closer to protecting a particularly vulnerable segment of our population—our children—from the most American of foods, the hamburger.

The Center for Disease Control estimates that thousands of people become ill each year due to E. coli-contaminated meat. In fact, one of the first tough issues I had to deal with upon my election to the U.S. Senate was visiting young children in hospitals in my hometown of Seattle and in Tacoma who had innocently eaten Jack in the Box hamburgers and then found themselves in critical condition after being infected by E. coli. Three of those children died in that outbreak. All I could do was stand there and assure those families that I would try to do all I could to make sure that this would not happen to any other child in our State or in this country.

Since that outbreak in the Pacific Northwest, this country has suffered 50 outbreaks of E. coli in 23 other States. E. coli repeatedly appears in ground beef that has been inspected under current meat inspection methods.

But help is finally on the way. This past January, USDA proposed a new meat inspection system that requires modern food handling techniques, safe storage, and scientific testing at slaughter houses and meatpacking plants. I think we all know that such a revised regulatory system is long overdue. But I am afraid that even with the amendment adopted yesterday by this body, this meat inspection regulation will be delayed because its opponents may—and very likely will—petition and subject this rule to the cumbersome review required by this bill. And any delay in this vital regulation's implementation will allow more children to become ill. Consequently, this Congress could become responsible for the illness and perhaps the death of thousands of children in this country.

I do not pretend to be an expert on the intricacies of this regulatory reform bill. I do know, however, that I have given my word to families who have lost children due to our current regulatory system's failure. I promised them I would work to protect children from lethal food products. So I strongly support the Daschle amendment ensuring the most expeditious implementation possible of E. coli regulations.

Mr. President, I intend to keep my word to the families who lost children in my State, who ate hamburgers that were tainted by E. coli. I intend to do it by voting for other amendments to S. 343 that will ensure that the Government works efficiently and cost effectively and that it will encourage general protection of human health and our environment.

We have to remember that it is our responsibility as the Nation's leaders to have commonsense protections in place and to ensure that those are there for all of our constituents. So I urge all of my colleagues to vote for the Daschle amendment.

I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I thank the distinguished Chair.

Mr. President, I have listened with some interest, as I am sure other people have, while the distinguished Senator from Utah has come to the floor with a list of egregious regulatory excesses, which I think he has called his top 10 list of silly regulations. And as one listens to those silly regulations, it is pretty easy to sit back and say, hey, that is pretty silly. Why is my Government doing silly things like that? It builds up resentment to regulations, and people say, wow, that is what this bill is all about. This bill will get rid of those silly regulations.

Now, the Senator from North Dakota is going to be here at some point in time, and he is going to discuss a few of the silly designations from the Senator from Utah. I would like to take on a couple, if I can, and I would like to try to substitute reality for the quick hit, easy perception. I begin that, Mr. President, by saying, as a number of us have said on this side of the aisle for a number of days, there are excesses in our regulatory process. And nobody in this Chamber denies that, and nobody in this Chamber is going to deny the need to have regulatory reform. There are stupid things that happen, and when we find them, we ought to get rid of them.

But what disturbs me, Mr. President, is to see an opportunity taken to label as sort of the top 10 silly items, items which when you look at them are not actually so silly after all or do not even fit or belong in that kind of category.

Now, I would like to go through a couple of those and set the record straight and factually look at some of the supposedly silly regulations, and perhaps my colleague from Utah would be willing to look at the real language and acknowledge that there may be a rationale there that has not been properly characterized in his top 10 silly list.

I am reading from the CONGRESSIONAL RECORD of June 28 when the Senator from Utah talked about the Head Start Program. He pointed to a church in Harlem, the Abyssinian Baptist Church, that struggled ''for 4 years to get approval for a Head Start program in a newly renovated building. Most of those 4 long years was spent arguing with Federal bureaucrats concerning the dimensions of the rooms.''

Mr. President, that is the Senator's rhetoric. Here is the reality: According to the New York City Agency for Child Development, there are not any Federal ordinances or regulations that apply to that building or to the rooms. None. Zero. In fact, it was local regulations—not Federal regulations—with which they were dealing and which were responsible for the delays.

According to Richard Gonzalez, the Assistant Deputy Commissioner responsible for running Head Start, ''The Federal Government did nothing to hold up this project.'' Yes, it took 4 years for the program to become operational, but the 4 years were not spent arguing about the dimensions of the rooms, they were spent finding sponsorship for the program; obtaining a lease agreement between the church, the owner of the property, and the city of New York; and completing the license process with the various city agencies.

So we have rhetoric and we have reality. This is the reality, Mr. President. I submit that that greatly changes the perspective of the way in which we ought to approach this debate.

On the same day, June 28, the Senator from Utah cited the use of Braille on drive-through cash machines. Now, that is pretty silly on its face, is it not? It is nice to come to the floor of the Senate and make fun of the notion that Braille is required on anything to

do with a drive-through machine because, obviously, blind people are not driving.

That is basically the thrust of the comments that were made on the floor. It sounds absurd and the rhetoric can make it pretty laughable, and people can get angry at regulations.

But what is the reality, Mr. President? The reality is that the banking industry itself recognized the need for these machines for passengers and for walk-up users. There are plenty of places in America where you have just one machine at a facility and you have a walk-up/drive-in teller, and people walk to the teller machine, just as they drive up to it.

In point of fact, because many blind people or visually impaired people do not want to be required to give up their privacy, they may be riding in a car and the car drives them to the automatic teller machine [ATM]. But they do not want to give their personal identification number to a stranger, so they get out of the car and they walk up and they use the ATM machine.

What happened here on the floor is almost insulting to those who are visually impaired, who have won the right which the banking industry has suggested is necessary.

In discussing the regulation, this is what the American Banking Association said:

> It is entirely conceivable and not unexpected that a passenger may exit the automobile to use the drive-up ATM, and this passenger may be an individual who is visually impaired.

The American Foundation for the Blind brought to my attention that despite what appears to be an obvious conclusion, blind or visually impaired people do use drive-up ATM machines. They may take a cab to the bank. They may ask a friend or a relative to drive them. But bank transactions are very personal and they clearly want to contain their pin number to themselves, so they say many times drive-up ATM machines are the only ones available after regular banking hours.

Now, the regulation that applies to this, Mr. President, only requires one machine of several available to have the Braille. If that machine is indoors, that satisfies the requirement. So there is no requirement that a machine that is drive-up must have the Braille. The only requirement is that one machine be available to the visually impaired. Is that a silly requirement? Not quite as silly as the Senator seemed to want to make it out to be.

Another example of rhetoric versus reality: The Senator from Utah said that Government regulations on the sale of cabbage total almost 30,000 words.

Mr. President, I ask unanimous consent that the Government regulations on cabbage be printed in the RECORD.

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

AGRICULTURAL MARKETING SERVICE, USDA

GENERAL

§ 51.4120. General.

(a) The accompanying grades for cabbage are intended to facilitate transactions between growers and processors who may wish to use a purchasing system based upon the quality of cabbage delivered. These grades are an out-growth of the widely accepted principle that price should be directly proportional to quality. The grower who delivers high quality cabbage deserves a premium price because such cabbage enables the processor to pack a better quality proudct.

(b) In the application of these standards it is assumed that in most instances sellers will not sort their cabbage into separate lots of U.S. No. 1 and U.S. No. 2 grades before delivery to the buyer, and that the buyer will pay a certain price for the percentage of each in the lot as determined by inspection. Upon delivery, the inspector will simply sort representative samples taken from each lot, and determine the percentage of each grade. Final settlement would then be made by applying the percentage of each grade to the total weight of the lot, and then applying the contract prices established for each grade. Under such a procedure, there is no need for tolerances.

(c) It will be noted, however, that the standards provide tolerances but these apply only when a grower or shipper has actually sorted his cabbage into separate lots of U.S. No. 1 and U.S. No. 2 grades before delivery to the buyer.

GRADES

§ 51.4121. U.S. No. 1.

''U.S. No. 1'' consists of heads of cabbage which are firm, and well trimmed; which are free from soft rot, seedstems, and from damage caused by bursting, discoloration, freezing, disease, birds, insects, mechanical or other means. Unless otherwise specified, the weight of each head of cabbage shall be not less than 3 pounds. (See § 51.4124.)

§ 51.4122. U.S. No. 2.

''U.S. No. 2'' consists of heads of cabbage which are not soft; which are fairly well trimmed, free from soft rot, seedstems, and from serious damage caused by bursting, discoloration, freezing, disease, birds, insects, mechanical or other means. Unless otherwise specified, the weight of each head shall be not less than 2 pounds. (See § 51.4124.)

CULLS

§ 51.4123 Culls.

''Culls'' are heads of cabbage which do not meet the requirements of either of the foregoing grades.

TOLERANCES

§ 51.424 Tolerances.

(a) For the purpose of determining compliance with one of the foregoing grades the following tolerances, by weight, are provided in order to allow for variations incident to proper grading and handling:

(1) For defects. Ten percent for cabbage in any lot which fails to meet the requirements of the grade, including therein not more than 3 percent for cabbage which is affected by soft rot and including in this latter amount not more than 1 percent for cabbage which is seriously damaged by soft rot.

(2) For size. Ten percent for cabbage in any lot which fails to meet the specified minimum size.

(b) In the application of these standards to determine the percentages of cabbage in any lot which meet the requirements of the respective grades no tolerances apply.

DEFINITIONS

§ 51.4125 Well trimmed.

Well trimmed means that the head shall be free from loose leaves and the stems shall be not longer than one-half inch. Loose leaves shall be considered those leaves which do not closely enfold the head. Heads of cabbage which show evidence of having been well trimmed in the field shall be considered as meeting the trimming requirements although they may have some leaves which have become loose in the process of ordinary handling.

§ 51.4126 Seedstems.

Seedstems means those heads which have seed stalks showing or in which the formation of seed stalks has plainly begun.

§ 51.4127 Damage.

Damage means any defect, or any combination of defects, which materially detracts from the processing quality of the cabbage, or which cannot be removed in the ordinary process of trimming without a loss of more than 5 percent, by weight, in excess of that which would occur if the head of cabbage were perfect.

§ 51.4128 Soft.

Soft means loosely formed or lacking compactness.

§ 51.4129 Serious damage.

Serious damage means any defect, or any combination of defects, which seriously detracts from the processing quality of the cabbage, or which cannot be removed in the ordinary process of trimming without a loss of more than 15 percent, by weight, in excess of that which would occur if the head of cabbage were perfect.

Mr. KERRY. The Government regulations on cabbage, Mr. President, are 1,808 words—only 208 words more than it took the Senator from Utah on June 28 to describe the problems with the 30,000 words and other silly regulations that do not exist.

The truth is, according to the San Diego Union-Tribune:

> That cabbage quote has been kicking around for years. . . It cropped up as a Reader's Digest filler years ago. That is where Ronald Reagan admitted finding it . . . and the thing has obtained a life of its own.

I ask the Senator from Utah if he has actually read the regulations, the 30,000 words, because here are 1,800 words, and what these 1,800 words do, Mr. President, is establish a capacity for the Federal Government to guarantee that those who grow cabbage get the highest price possible for the best cabbage by defining what will be the Grade No. 1 of cabbage and defining subsequently what is Grade No. 2 of cabbage.

Farmers all across this country have appreciated and applauded the fact that a very precise definition of that standard exists, so that high-quality cabbage can command an appropriate price.

I would suggest, Mr. President, that this really frames the debate here, in a sense. There is a rush to try to characterize very legitimate regulations as somehow excessive or unwanted when, in fact, if we stop and take a look at them, there are a number of examples of how these regulations assist people and make a difference to the lives of Americans.

I repeat, there are some silly regulations. Every Member knows that. We ought to be engaged in a process here that allows Members to legislate in a

way that tries to get rid of those that are legitimately silly but also allows us to improve this bill and to eliminate provisions which seeks to do things that I do not think any American wants to do.

Let me give an example, Mr. President. There is a provision in this bill that weakens the toxics release inventory [TRI]. The TRI program originated in 1986. This important sunshine law is the most successful voluntary environmental program Congress has ever enacted. Yet all that the toxics release inventory requires is a right-to-know. Because of TRI, emissions from facilities have decreased 42 percent nationwide since 1988; a reduction of 2 billion pounds.

If you are a citizen living in your community, and you have a large chemical plant or a small chemical plant or some business entity, and it is discharging toxins into the environment, the current law does not require them to stop discharging; the current law does not require them to stop using chemicals. It does not require them to stop producing chemicals. It does not require them to stop selling chemicals. This sunshine law does not require anyone to reduce their use of chemicals in any way; TRI only requires that companies that use over 10,000 pounds or produce over 25,000 pounds—a significant amount—of chemicals report the discharges from that usage on the TRI for everyone to see. It just requires them to tell the people in the community what they are emitting.

I just came from a press conference where the head of the Firefighters Union, representing 200,000 firefighters in America, said if you get rid of this, you will cost firefighters lives and the lives of the citizens who they are trying to save. Fire departments need to be able to plan, to know what kind of fire they are fighting in a particular community. Under today's law, if you have a fire in a community, because of the toxics release inventory, they just punch up the information on the computer, and they can look at the business where they are going to fight the fire. They see precisely the kind of chemicals that are contained at that facility, and they know whether they need gas masks, whether they need full chemical enclosures, whether to expect an explosion, whether to evacuate. They know a whole series of things in the public interest, Mr. President.

Since 1988, when the first reporting information was available, we have reduced the chemical emissions in this country by 42 percent voluntarily.

Some 2 billion pounds of chemicals have been taken out of the exposure stream to American citizens. We did not require it. There is no law that made it happen. But, because these companies were required to tell people what they were emitting, they began to better understand themselves what the consequences were and they began to make some different judgments; judgments about how best to prevent pollution, how to better use and conserve their raw materials in order to waste less; how to make their processes more efficient and by so doing save money.

There is no rationale, there is no scientific argument, there is no acceptable health standard argument, there is no environmental argument for coming in here in the Dole-Johnston bill and just throwing this out and creating a new risk-based standard that will require the 280 chemicals that were put on the list in November 1994 to suddenly be available for review again, and for many of them to jump over a whole series of tougher hurdles as to whether or not they will ever get back on the list.

So I hope my colleagues will take a hard, hard look at the reality of some of the provisions in this bill. I repeat, I would like to vote for a regulatory reform bill. I know the Senator from Ohio would. We appreciate the opportunity to be able to legislate and make changes that could improve this bill so we can do so. I am prepared to accept a cost-benefit evaluation and risk assessment standard in the analysis. I think that is fair. I think it is important.

But we should not make it a standard which somehow precludes the capacity of the rulemakers to make some rules, and of people to continue programs of good common sense.

Another example of what this bill is, it essentially eliminates the Delaney clause. The Delaney clause protects our citizens from being exposed to carcinogens in their food. The Dole-Johnston bill does not come in and suggest a responsible fix. It does not come in and suggest we can improve this in a thoughtful way that protects the health of children while reforming the Food, Drug and Cosmetic Act. This bill legislates changes preferred by one set of special interests and I hope the U.S. Senate does not embrace this provision.

So, my hope is that we are going to keep our eye on the ball here, as we listen to people denigrate—easily denigrate—regulations. I hope that our approach to reform will be done with accuracy and reflect the reality of the benefits that accrue to Americans because many of these efforts will be used to guarantee standards by which products will be sold and Americans will live.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, we had hoped to set aside the underlying Daschle amendment, which would set aside with it the Johnston substitute amendment. But I understand the minority leader wishes to go ahead with his amendment, so I regret to say the state of play is this.

I proposed a second-degree amendment which I believe totally and completely solves the problem and I have said to my colleagues, Why do you not take ''yes'' for an answer? My colleagues on this side of the aisle do not seem to want that ''yes'' for an answer. In the meantime, the proposal that I had, which I thought was suitable on the Republican side of the aisle, apparently has some major problems there. And we cannot bring the bill down at this point.

So I suggest we go ahead and vote on the Johnston amendment, which I guess will be voted down by Republicans because it goes too far. It will be voted down by Democrats because it does not go far enough. But I will vote for it because it solves the problem and I think that is what we want here.

In any event, I think we ought to go ahead and vote and get on with the business so we can deal with some other amendments. Apparently the successful ability to deal with this amendment is eluding us as we speak.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, I think the decision expressed by Senator JOHNSTON to go ahead is one I concur with. I think we have had enough debate on this, all parts of this—the Daschle proposal and the substitute Johnston amendment. We have gone through all of these issues this morning. There have been a number of people who have come to the floor and debated this.

I think we are ready for a vote. And I checked with Senator DASCHLE and he does prefer to have a vote on his. So we will just go ahead and vote through on both of them and see where we go.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I make a point of order a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. Mr. President, we have had a good debate now over the last several hours on this issue. I think there are probably four points that need to be made.

First of all, we all recognize that the legislation we passed yesterday—the Dole amendment—really does not go far enough in addressing the concern that many of us have raised, that simply delaying the implementation of the language for 180 days does not cut it. The Secretary has stated that. I think by and large most of our colleagues now have come to that conclusion.

Point No. 2: The passive process is one that has moved to a point where implementation is necessary. We do not want to encumber the Secretary of Agriculture in attempting to address a very serious concern having to do with meat inspection. We want the freest hand to enable him to do all that he

ought to be able to do, given all of the time that has already been invested in this issue, to do so in a way that is meaningful, in a way that ought to be accomplished as a result of the tremendous work done by the Department of Agriculture now in two administrations to reach the point that we are today.

Point No. 3: There is a realization that the current language will encumber the Secretary's effort unless something happens, unless we address through an amendment his ability to deal with all of the complexities of the passive system and to recognize that progress has been made, and that, indeed, we ought to give him the opportunity to do so regardless of what happens on this bill.

No. 4: In my view, the only way to do it, the only way to do it cleanly and without any equivocation, the only way to ensure that we can do it without legal misinterpretation, without the regulation being subjected to a good deal of litigation at some point in the future, is to pass the Daschle amendment, simply to exempt passive completely from the bill.

Were we to do that, the Secretary would have the ability to move ahead to do all that he needs to do to ensure that this rule can be promulgated now in a reasonable period of time. We can do so without any fear of litigation or bureaucratic complexity. We can do so with the knowledge that the work that they have invested, all of the effort put forth now over at least the last 24 months, will not be for naught, that we will actually accomplish what we all know we must do—protect food safety, give the Department of Agriculture the tools that they need to get the job done, ensure that this particular rule which has come as far as it has can be promulgated without the fear at some point in the future of a new challenge, a new complexity that would encumber the Secretary's opportunity to ensure that this rule is promulgated at some point in the future.

So, Mr. President, for all of those reasons, it just seems to me that as well intended as the effort of the distinguished Senator from Louisiana is, I am very concerned that at some point in the future the Department of Agriculture could be intimidated once again, could be encumbered in a number of different ways that were certainly not intended by the Senator from Louisiana or anybody else who indeed wants to resolve this problem. The best way to do it is to defeat the Johnston amendment, pass the Daschle amendment, and then move on to a number of other amendments that have been pending. There are a number of other Senators that have expressed to the Senator from Ohio an interest in coming to the floor and offering their amendments.

We want to expedite consideration of this legislation. I think the best way to ensure that we get on to some of these other amendments is to finally dispose of the Johnston amendment, pass the Daschle amendment, and move on to these other proposals.

We are ready to go. We do not want to prolong this debate any longer than it has to be, and certainly the best way to ensure that we do not prolong it is to dispose of it and to move on.

There has been some talk I know of yet another second-degree on the Daschle amendment. I hope that we can avoid that. I think after the good debate that we have had we deserve an up-or-down vote. We have acted in good faith. We have not in any way attempted to obfuscate the issue or prolong the debate any longer than necessary. I think it has been an enlightened and educational effort.

So I think now having done all that we have in the last 5 hours, it is imperative that we simply finish this and move on to other issues. Let us do that. Let us have a vote on Johnston. Let us have a vote on Daschle. Let us get on with the other amendments that are ready to go. That is the way I think we can ultimately finish this bill. The sooner we get on with it, the better.

With that, I yield the floor.

Mr. JOHNSTON. Mr. President, let me be clear. The Johnston amendment fixes the problem of passive. It simply fixes it. Reasonable minds can disagree about many things about this bill. There is no problem with passive going forward.

What the Johnston amendment says is that if you have already done a cost-benefit analysis and the rule has not changed, you do not have to redo it. And if you have promulgated your notice of proposed rulemaking prior to April 1 of this year, then you are exempted from cost-benefit or from risk assessment—very simple, very clear, very clear-cut. It fixes this problem.

We have had a lot of debate here about whether some woman who went to the Jack-in-the-Box and ate some hamburgers and died, and all of this is going to kill her.

Mr. President, it fixes the problem. Now, unfortunately, the amendment which was put forth on my behalf and with Senators HATCH and ROTH and had a majority of support for a while, now, after having hung out there for a few hours, my friends on the other side of the aisle have changed their minds, apparently some of them at least, with respect to the April 1 date. They are concerned that now there will be this flood of regulations which will be exempt from cost-benefit and risk assessment.

It is very unfortunate, Mr. President, that both sides could not stick together; that on our side of the aisle we could not recognize the fix which this is, and that the other side could not stick with what we thought was a deal. I fear what happens now is this whole bipartisan effort begins to come apart piece by piece—Democrats put forth a substitute and get 30-something votes, and the Republicans put forth their bill and it gets filibustered, and there we go.

We have to be able to come together, Mr. President, if we are going to pass this difficult legislation. We have to be able to come together in some sort of reasonable middle ground that solves the problem and stick to a deal. This is complicated enough. I found myself accepting amendments from our side of the aisle, and then come back and be met from our side of the aisle with that amendment which we accepted on their behalf as being a fault of the legislation. That has happened not once but several times.

We had a fix proposed from the other side of the aisle, and now they thought about it and that is not good enough.

That is not going to pass this bill. This is a very important bill. We have people strung out all over the philosophical spectrum on this bill, and when we start putting forth amendments and then withdrawing them, I fear the whole thing is going to come apart.

Mr. President, as I speak, there is still hope, and so I will yield the floor at this point and hope we can pull this amendment back together and the coalition for reasonable regulatory reform will reform.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I see both the distinguished leaders in the Chamber.

Mr. DOLE. Will the Senator yield to me?

Mr. LEAHY. Mr. President, I ask if I might be able to yield without losing my right to the floor.

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

Mr. DOLE. I think both leaders are trying to determine how we can get to a vote. The Senator from South Dakota had an agreement where we would by consent vote on the Johnston amendment, followed by a vote on the Daschle amendment if Johnston was defeated; otherwise, it would be as amended, I assume.

I am not able to get that agreement, but I would be prepared to vote on the Johnston amendment at this time.

The PRESIDING OFFICER. The Senator from Vermont still retains the floor.

Mr. LEAHY. Mr. President, I yield further, if I could do so without losing my right to the floor. I do not intend to hold the floor very long.

Mr. DASCHLE. Mr. President, if the Senator will yield for me to respond, I have no objection to having a vote on the Johnston amendment, but at some point I think it would be fair to say that we would like to have an up-or-down vote on the Daschle amendment. I do not know if others may have second-degree or substitute amendments that they wish to offer to this one. Obviously, that is anyone's right. But I think at some point it would be helpful if we could get a time certain for an up-or-down vote so we could move on to other amendments.

I know the distinguished majority leader has urged us to try to move this process along. In that interest, I think we have a few other amendments that could be offered maybe even with some time limits. So to accommodate everyone it would be helpful if we could get a time certain for a final vote on this one and move on to other amendments.

Mr. DOLE. If the Senator from Vermont will yield to me to respond to the Democratic leader, I understand the suggestion. I think the Senator from South Dakota probably knows that if the Johnston amendment is accepted—I guess I could say first, would there be any objection to just accepting the Johnston amendment?

Mr. DASCHLE. Accepting the Johnston amendment? We would be opposed to accepting the Johnston amendment. We want a rollcall on that.

Mr. DOLE. Right. So if it were adopted, then we could vote immediately then on the Daschle amendment, as modified. But if it were defeated, there would be probably another second-degree amendment. I think that is the only protection we would like to keep. There would be another second-degree amendment to the Daschle amendment which might be something that the Senator from South Dakota could agree with, maybe not. I am not certain.

Mr. DASCHLE. If the Senator from Vermont will yield again, let me just say we have been working in good faith on both sides to try to resolve this issue, and I especially commend the two managers for their efforts in trying to accommodate everyone. I do not understand, frankly, why it would not be in everyone's best interests just to have, even accept a tabling motion if that were the only option. But this process of second-degreeing all the amendments being offered precludes really an opportunity to have a vote on an issue that is quite simple.

So I understand and again accept the right of any Senator to offer second-degrees, but we would hope on this one, given the debate we have had, given the fact that we have had a good debate yesterday on the Dole amendment—the Senator was protected with second-degrees on that one—we could simply resolve this matter and go on to other amendments. I hope we would not have to have a second-degree on this one, too.

Mr. DOLE. I just want to be certain the Senator understands there could be a second-degree amendment.

Mr. DASCHLE. I understand that.

Mr. DOLE. I would not want to mislead the Senator. But could we then proceed, after the Senator from New Jersey and the Senator from new Vermont finish their statements, to vote on the Johnston amendment?

Mr. DASCHLE. My point is that we could agree to that if we could also agree at some point to have an up-or-down vote on the Daschle amendment.

Mr. DOLE. If the Johnston amendment is accepted, then the question is moot, of course,

Mr. DASCHLE. That is correct.

Mr. DOLE. So it would be hard to make an agreement until after we dispose of the Johnston amendment.

Mr. DASCHLE. If the Johnston amendment were not to pass, it would seem to me then the pending issue would be the Daschle amendment. And if that circumstance were to present itself, it would be helpful I think if we could then have an agreement that that would be the next vote followed without any intervening debate, we would go right to that vote and resolve this issue. If we could do that, I think we would be prepared to go to the vote on the Johnston amendment.

Mr. DOLE. I would have to check with other Members on this side before I could make that agreement. So maybe while they are debating, we can make some determination.

The PRESIDING OFFICER. The Senator from Vermont still retains the floor.

Mr. LEAHY. Mr. President, I do. And I will speak only briefly, as I know the leaders of this legislation want to go forward.

Mr. President, we have many, many issues on this bill, as we know, many issues now and many to come. But we have one issue that we ought to understand, and that is, will our food here in the United States continue to be the safest in the world, which I believe it now is. I believe it now is the safest in the world and it should continue that way. I believe this is important to every American. It is not an issue of whether you are a Democrat or a Republican. You want to have safe food. It is important certainly to every parent as it is to me as a parent because we know that children are uniquely vulnerable to contaminated food. Many times the things that might just cause an adult to get sick can cause a child to die.

Safe food is important to our farmers and ranchers. It is how they make their livelihood. They have to assume the consumers have confidence that the food they raise will be the safest in the world. Our consumers need to have confidence in the safety of the meat they buy or we can all understand how quickly they will stop buying that meat.

In Vermont, meat is the real food that real people eat. It is not just some abstract question. In the United States, half of all farm revenues come from livestock production. Ranchers and farmers cannot afford to have their incomes hit by another food scare. Beef prices, believe me, are low enough already. They will sink through the floor if we have another scare, and that is why I am here.

In the last 10 years, we have been pushing the Agriculture Act to protect the safety of our food supplies. As the past chairman of the Senate Agriculture Committee I tried to pass legislation to reform our food safety laws. Indeed, the legislation I proposed are very similar to the Department's proposed food safety rules.

If you look at the meat inspection laws we have now, they were put in place after the Upton Sinclair book ''The Jungle'' that warned the public of a threat to their food supply. That was decades and decades ago.

Again, American people assume they walk into the grocery stores and buy meat that is safe. We have built a whole industry. Our ranchers, our livestock, people, farmers, all assume this is in there, this sense of safety. Those who own the stores and distribute them, our restaurants, fast food outlets, have to go on the assumption they are passing out safe food, and the American people assume that. And now we know that we can do much better and that we should allow the American people to have what is much better.

It is not an academic issue because, in spite of the best efforts of thousands of meat inspectors, there have been serious outbreaks of foodborne disease. In 1986, an outbreak caused by the E. coli pathogen killed two elderly women, sickened 37 persons in Washington State. Twenty-seven of them had eaten at the Taco Time restaurant in Walla Walla, WA. Two years ago another outbreak occurred in a Jack in the Box Restaurant. This foodborne illness outbreak, which began January 17, 1993, made over 300 persons ill, resulting in the death of three children. At least one child, a 4-year-old girl, had a stroke caused by hemolytic uremic syndrome caused by the outbreak.

Now, these are serious matters. My full statement will put out a number of things on it. But it is why I support the underlying amendment. I want to make sure that people have safe food, that our farmers and ranchers, producers, and distributors are protected. That is why I support the Daschle amendment. I think the second-degree amendment, with all due respect to my friend from Louisiana, I believe that this really creates only a figleaf. It just says that any risk assessment previously done will continue to be valid.

That does not solve our problem. It does not solve the problem of the people who have suffered from E. coli. It completely eliminates the Daschle amendment. The Daschle amendment, instead, says let us get rid of the roadblocks and protect the American people. We ought, as Senators, to be prepared to support the Daschle amendment. That is not Republican and Democrat. That is saying we want safe food that we buy and safe food our children eat and we want safe food sold. And we want to be able to tell ranchers and livestock owners and farmers that if you put your food in the chain, it is going to be protected and safe.

Now, I think that otherwise you are going to be voting on an effort to stop the real protection of the American people. I believe that the amendment we are soon to vote on means more delay and more sickness. We still have to have another cost-benefit analysis. There still will have to be a new peer

review panel and a number of new issues litigated. It becomes a lawyer's dream. I think we ought to stand up for safety and approve the amendment from the Senator from South Dakota, Senator DASCHLE.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, I would like to share with the Senate the story of a young woman named Katie O'Connell. She was 2 years old and she died from eating hamburger at a fast food restaurant. Unknown to anyone, her meal was contaminated with E. coli, the deadly pathogen that really is the subject of this amendment. Sadly, the meat that Katie ate had been declared safe by inspectors from the U.S. Department of Agriculture. Katie died from a disease that should have been detected through our Federal meat inspection system. Katie is no longer alive because that system failed her and her family and has failed thousands of others across this country.

Diseases caused by foodborne illnesses often strike those who are most vulnerable in our society, our children. Last summer health officials in my home State of New Jersey, where Katie lived, found another outbreak of the disease that killed Katie just a short time before. One family, the McCormicks in Newton, NJ, had two of their children, ages 2 and 3, hospitalized. Their lives were endangered because they, too, ate meat that was declared safe by Federal inspectors at the Department of Agriculture.

These cases are far from isolated, unfortunately. The Centers for Disease Control estimates that there are over 9,000 people who die and another 6.5 million people who get sick every year from foodborne illnesses.

The USDA regulations proposed last February as an effort to meet this crisis would require daily testing for salmonella at meat and poultry processing plants across America. Additionally, each of the Nation's 6,000 slaughterhouses and processing plants would have to develop operating plans designed to minimize possible sources of contamination; in other words, to design systems to avoid contamination in advance instead of fighting it after it breaks out.

Mr. President, I think this proposal offered by the Department of Agriculture represents a significant improvement over the current system, which has remained in place remarkably unchanged for over 90 years, since reforms were put in place in the wake of, as the Senator from Vermont says, Upton Sinclair's great book, ''The Jungle.''

Ironically, a cost-benefit analysis was done of these proposed rules. And what did the cost-benefit analysis show? Well, the costs would be $250 million per year, lowering to $200 million after the first 3 years. And the benefits from these regulations would be at least $1 billion per year. In other words, almost a 5-to-1 ratio in terms of benefit over cost. That does not even really count the other fact here, Mr. President, that the Department of Agriculture used a relatively low number of $1 million, for the value of each human life. Contrast these cost with the savings to consumers of $1 to $3.7 billion per year attributable to lost wages and medical costs for sickness caused by foodborne disease that would be paid out without this rule.

Mr. President, what would be the cost to consumers if every penny of this system's cost were passed along? If every penny of the cost of these proposed regulations were passed along to consumers, the cost would be two-tenths of 1 cent per pound. That is right, two-tenths of 1 cent per pound. So a consumer would have to buy 5 pounds of hamburger before incurring any cost at all. Surely, the typical American family would be more than willing to pay this modest price to make sure that when they buy meat or go down to the fast food franchise and buy a cheeseburger for their child, that it will be safe meat.

Mr. President, I know some of my colleagues will say, ''Why eliminate these regulations? Why exempt these regulations from the coverage of this regulatory reform bill?''

Why single out this particular issue? Well, I think there is an answer to that. It is pretty simple. I do not want any more children to die. According to the USDA, the summer months are the prime time for foodborne diseases. In fact, last month alone, there were at least four more disease outbreaks. How many more will have to die before we take action, before we allow the regulations that have been proposed to go into effect and to assure families across this country that their children are not going to eat contaminated meat at a fast food franchise?

Mr. President, the National Academy of Sciences recommended that the USDA use this new kind of system that was proposed last February. They recommended it first 10 years ago. Yet, these proposed regulations have been the subject of countless hearings, roundtable meetings with industry and consumers, and on and on.

At one point, the industry even claimed that the E. coli organism was not technically an adulterant under the food safety law, clearly an attempt to deny the agency the ability to regulate E. coli. Mr. President, do we really need to waste years, lives and money redoing all the old analyses and creating new ones in an effort to stall or even defeat these regulations?

Senator DOLE's amendment that he offered yesterday modified the bill slightly regarding the effects of S. 343 on E. coli regulations. Senator JOHNSTON's second-degree amendment to the Daschle amendment would modify it further, but unfortunately not enough to ensure that the regulations would not be caught up in a revolving door of petitions and sunset provisions which could plunge the regulations into a swamp of uncertainty and litigation. The resulting delay would cause even more cases of sickness and death, and the delay is unnecessary.

I am very concerned that these regulations are already a target of Members in the other body who would try to delay them further through appropriations riders and other techniques. Instead of delay, I urge my colleagues to stop interfering with these regulations. They are exactly the kinds of regulations that we claim to want. We have them. They are here. They are cost-effective. They deal with a serious problem, and they have been subjected to close scrutiny by a wide variety of interests.

So, Mr. President, I urge that we reject the amendment by the Senator from Louisiana and adopt the amendment offered by the distinguished Senator from South Dakota and take a giant step toward protecting our families from outbreaks of E. coli on our next visit to a fast food franchise to buy a cheeseburger for our son or daughter.

I yield the floor.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The senior Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I might ask in the next few moments if the Senator from New Jersey will remain and we can visit about this issue only briefly because I express the same kind of urgency and the concern that the Senator has just expressed as it relates to a new inspection food safety process that the U.S. Department of Agriculture has begun to put in place, known as HACCP.

Let me also suggest that it was the meat industry of this country that brought this process and concept to USDA and suggest that this be the process that come forward. Why has it not come since 1906 until today? Why have we not been able to change the process? Everybody skirts the issue, but nobody talks about it. Has the industry wanted to change? Not always. The Senator is right. Guess who else has not wanted to change? The thousands of unionized meat inspectors who did not want to lose their jobs, even though—it is very important this be said in the totality of the discussion—even though it might have meant a safer product coming to the market.

In my State of Idaho and in the President's State of Idaho where the beef industry is critically important, 2 years ago something else happened. A child, not unlike the child that the Senator from New Jersey spoke of, went to a fast food restaurant to buy a hamburger and became critically ill. She did not die, but she was near death. It was the result of having ingested an E. coli bacterial-contaminated meat patty. We are all concerned about that.

But the fundamental question is simply: Does what we are doing here today or what we did yesterday stop the process that is currently under way in the

U.S. Department of Agriculture? The answer is no.

But there is another side to this story that is very important to discuss, beyond the politics and the rhetoric and the headlines that we have seen over the last 2 weeks that even the Senator from New Jersey would probably argue are not all fact.

When they argue that S. 343 will poison the food chain of America, that is not only not fact—and that is what they argued—that is a fabrication. Here is the reason it is, here is why the Senate ought to know this before they vote on the Daschle amendment.

Is it possible in the producing and the processing of food through to the consumer, be it the restaurant or the home dinner table, to produce a zero-risk food? The answer is, absolutely it is not possible to do. Even though America has the safest food in the world, and even though in the last couple of months in consumer reports from Europe, American meat products are preferred 5 to 1 over any other meat product of the world, and the answer is, because it is the safest in the world; the answer is, it is not zero-proof safe. Why? Because it is not possible to create a zero-safe environment.

Why? Because the Centers for Disease Control in a survey started in 1973 and concluded in 1989, in analyzing the pathogenic-borne food illnesses and deaths, answered the question this way: 97 percent of all deaths occur because of the way the food was prepared for the table, not the way it was processed in the plant.

It is fundamentally important for this Senate to know and for us to understand that the Daschle amendment changes not one iota of that equation. It is false rhetoric on the floor of the Senate to argue that somehow this will make meat safer. It is already 99.9 percent safe, and that is as safe as we can get it, and the institution of HACCP by USDA is an effort to make it 100 percent.

But we must face reality, and there are two very prevalent realities out there: One, we have to expect the preparer of the food to have a responsibility, and we cannot exempt them from that.

Second, something else is happening in America today. As we all become busier people—and we have—the bottom line is we cannot regulate a perfect world. We have to expect the consumer to have a responsibility in the preparation. So does S. 343 change the temperature of the grill in the fast food restaurant? It does not. It has absolutely nothing to do with it.

Here is the problem, though, with what we want to do to create the flexibility. Does the Daschle amendment create lookback so that if HACCP is not working well, we can adjust it? It does not. Do we want to lock in a process that is already one put upon the other, the other one being the old one that is not working anymore, because this administration has tried to bind all two together and you cannot do that and get a product that creates an efficiency in the market. No, it does not. In fact, it may lock us into an imperfect process that we are trying to institute to be a better one.

I hope, as someone from a State that is a major producer of meat products and from a State that is a major consumer of meat products and someone who worked with Mike Espy from day one to create a better process, that we deny the Daschle amendment because we do not want to lock in the forming of a process that may, to date, be imperfect. And staff tells me—and I believe they are accurate—that this may do just that. It may deny us the opportunity to adjust and change in our pursuit of the perfect, because the Senator from New Jersey knows, as I have seen him nod his head, we cannot get to the perfect because perfect is impossible; we can only create the best. Then we must say to the consumer of America that you, too, have a responsibility, whether it is the chef of a local fast food restaurant, or whoever, to make sure that the center of that hamburger patty has reached the temperature that might kill bacteria if it is present, and to say to the preparer in the family home that you, too, have a responsibility because 97 percent of the E. coli deaths in America occur because of the latter and not the former.

Mr. GLENN. Will the Senator yield?

Mr. BRADLEY. Well, I think he wanted to engage me in a colloquy for a question, the answer to which is yes.

Mr. CRAIG. Thank you.

(Mr. GRAMS assumed the chair.)

Mr. BRADLEY. I would like to respond briefly, if I could. I think the Senator makes a number of very good points. There is no question that many of the illnesses with regard to meat come about because the meat is not cooked properly, not cooked well done. Many of us like our meat raw, red. If you do, you increase your chances of E. coli pathogens.

Mr. CRAIG. Only reconstituted meat. Not the steak, but the hamburger.

Mr. BRADLEY. My point is that, after Katie died, I remember giving all kinds of speeches, urging that people insist that all hamburgers be well done, be cooked fully, urging owners of fast food franchises to take that as a responsibility. Some responded, some did not. So let me agree with the Senator on that point.

As to the real reason that has prevented the new regulations from going into effect over many years, well if it was the union, in that case I am against the union. I don't know the reason. I am for the consumer. Let us get the thing done.

Mr. CRAIG. Let me regain my time to say this. From the day that this administration began to work on this process of food inspection, there is no reason to accuse anybody. Everybody worked as quickly as they could to bring the new process on line. My only argument there is, why did it take us from the year 1906 to today to improve a process that we knew 30 years ago ought to be improved?

My point is simply this, relating to the Daschle amendment: The process we are putting in place is not yet complete. The administration knows that. So let us not lock ourselves once again in time and place. Let us be able to look back and make sure that it works, that it is an integrated, evolving process to make a safer meat product than, in my opinion, what the Daschle amendment does free standing, because it happens to fit the political debate of the day. That is not right.

Mr. GLENN. If the Senator will yield for 1 minute, the Daschle amendment——

Mr. BRADLEY. Mr. President, who has the floor?

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

Mr. GLENN. When did it get off the Senator from New Jersey?

Mr. CRAIG. I regained my time. But I will yield to the Senator from Ohio.

Mr. GLENN. The Daschle amendment permits USDA to go ahead, without going back and going through the hoops and the new things that would delay the regulations being put out that would be required under S. 343. That is what he does.

Recent surveys have shown that about 4 percent of the ground beef in supermarkets is tainted with E. coli. I do not know what else. That is 1 out of 25 hamburgers, if you want to put it on a percentage basis.

Mr. CRAIG. That is why they should be cooked thoroughly.

Mr. GLENN. Contamination of meat and poultry products sickens 5 million Americans a year and kills 3,500 to 4,000 people every year.

Mr. CRAIG. But 97 percent is as a result of preparation at the home, not at the factory.

Mr. GLENN. Maybe some are. If we prevent deaths with this legislation, what is wrong with going ahead where we know there is a clear and present danger?

Mr. CRAIG. That is not the issue.

Mr. GLENN. That is what Daschle does, whether you think so or not.

Mr. CRAIG. That is what Dole did yesterday.

Mr. GLENN. No, that is not what Dole did yesterday. You have not been listening to the debate on the floor.

Mr. CRAIG. I was here for 3 hours yesterday.

Mr. GLENN. And we went through some of that this morning.

Mr. CRAIG. Mr. President, let me at this point yield the floor. My concern is, of course, is the Daschle amendment creating the flexibility to allow the HACCP process for food inspection to go forward and to be changed and adjusted, as we do for the sake of a better product and program.

I yield the floor.

Mr. BRADLEY. Mr. President, I will not be long, but I would like to continue what I was saying before in response to the statements made by the distinguished Senator from Idaho.

I am all for cooking the meat. Let us cook the meat. But before the meat is cooked, 1 out of 25 hamburgers has E. coli bacteria in it. That is not produced by the person who is preparing it. That exists because it has not been caught earlier; 1 out of 25. So if the distinguished Senator is so concerned about the health of our children—and I believe he is, and I believe the industry is, if for no other reason than self-interest—then we need a new system of inspection, a system that will increase our chances of detecting E. coli before it reaches the unsuccessful preparation process.

So all the Daschle amendment says is, exempt E. coli from the potential of further delays, further petitions, further litigation, and a much longer time before it will ever be in place to capture and prevent the E. coli from being passed on to consumers.

Mr. JOHNSTON. Will my friend yield?

Mr. BRADLEY. No, I will not yield. And so all the Daschle amendment says is exempt E. coli regulations from this bill. If the distinguished Senator does not want E. coli to be in the meat of children in this country, in 1 in 25 hamburgers before preparation, then he should exempt it. Now, I believe that he does not, and I know that he has worked faithfully and diligently with the Department of Agriculture in an attempt to get an agreement among all parties. He is, in a very real sense, somebody who likes to build consensus. And I believe that what we have in the new amendments, as he said, is a much better job—a much better job—than current law. The Senator would admit that.

Is the regulation regime projected to be perfect? No. Is it much better than the current situation? Yes. All we are saying is, allow it to be put in place and do not make the very, very best the enemy of the very, very good, with the hope that at some distant moment, we will have the perfect set of regulations. Or 15 years from now, when we get to that point, there will have been 9,000 more people every year dying and more kids like Katie O'Connell dying.

Put it in place now, and revisit it later. That is what the Daschle amendment says by exempting E. coli from this regulatory reform bill.

Mr. JOHNSTON. Will the Senator now yield?

Mr. BRADLEY. I yield the floor.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. I am disappointed that my colleague would not yield for a question, because I wanted to ask him, did he not admit that the Johnston amendment allows this E. coli regulation to go forward? It does, and he has left the incorrect impression that the Johnston amendment somehow stops this regulation, and it does not.

Let us be candid, Mr. President, about our representations out here. Let us not give the impression that the Johnston amendment somehow is going to allow this hamburger to be tainted and go forward because it stops the E. coli regulation.

It does not. It solves the problem. It is clear that it does. There is no argument that it solves the problem.

Mr. President, I hope my colleagues understand that.

Mr. HATCH. Mr. President, I think we have debated this long enough. I think we have gone on and on here. Frankly, these are important considerations. We need to move on, on this bill.

I think Senator DASCHLE's amendment goes way too far. Exempting the Department of Agriculture's HACCP rule in its entirety is unnecessary.

The distinguished Senator from Louisiana is absolutely correct in the way he has characterized his amendment. Frankly, there is no reason to go to that extent.

There would be arguments—do we not exempt everything else, too, which is, of course, one of the ploys of those who want to defeat this bill. Sooner or later if we want to do something about overregulatory conduct in this society, we will have to pass this bill.

I commend the distinguished Senator from Louisiana for his ingenuity in coming up with this amendment. I support Senator JOHNSTON's approach. It leaves it to the agency head's discretion to determine whether a new risk assessment is necessary for final rules, where one has already been conducted for proposed rules.

This solves the problems for all rules. When an agency has done a risk assessment for a proposed rule before the effective day of this act, if the risk assessment has been properly done, why would we want to force them to do it over again? It just makes sense—again, commonsense approach to commonsense problems.

The Johnston amendment solves the problem, and it does it in a reasonable way without sharing any preference to industry, any group of people, any particular agency. It allows this bill to work to try and resolve the overregulatory aspects of our society.

As for the effective date provision, I think the April date is fair and will significantly prevent extra costs to the agencies which have already performed good cost-benefit analysis—and risk assessments, I should add—for proposed rules. Not to have them redo them, over again, just to comply with certain procedural requirements. It makes sense. It just makes sense.

The Daschle amendment is totally unnecessary. Any emergency situation is already exempted under S. 343. We take care of it. The language is clear. If a rule needs to be promulgated quickly to protect health, safety, and the environment, S. 343 allows prompt promulgation of those rules.

Concern that S. 343 will not allow rules to protect against E. coli bacteria to go forward is nothing but sheer hype.

The Johnston amendment allows for the proposed rules in the guidelines, in the pipeline, where money has been spent on studies, risk assessment, or cost-benefit analysis, not to have to go through these analyses again. It just makes sense.

Thus, the E. coli and food safety regulations will go forward under the Johnston amendment.

I hope our colleagues will support the Johnston amendment, because I believe that it is a reasonable approach to try and resolve these problems.

It is no secret that there are some who do not like the Johnston amendment, also. For some reason, there are some people who want to go back 50 years, if they could, and revoke everything.

Well, I want to go forward and start doing what we have to do to get this overregulatory burden off our backs in this country so this country can compete and be more competitive with the rest of the world, so that we can have our citizens treated more decently, so that the costs are not eating Americans alive, so that people do not die because of the overregulatory aspects of our society, which is happening today, and so that we have some reasonable, decent, honorable way of trying to get regulation and overregulation under control.

I think we need to go to a vote on this. I am prepared to go to a vote on the Johnston amendment, and we will see where we go from there.

If the Johnston amendment passes, it ends this issue as far as I am concerned. If it does not pass, we will have to look at it at that point.

I have to say that I do not think the Johnston amendment solves every problem. There are some legitimate concerns on our side that people have. Legislation cannot always be perfect—just like food safety cannot be zero risk. We have to do the best we can under the circumstances. This is the best we can do under the circumstances.

I commend the distinguished Senator from Louisiana for being willing to try and resolve this issue. I think his amendment does resolve it, at least on the issue of E. coli and other meat and poultry matters.

Frankly, if all agencies, in the sense of the agency head's discretion, so they did not have to do unnecessary, duplicative efforts on risk assessment and cost-benefit analysis—it makes sense. I think anybody with brains has to consider it makes sense, and I hope we vote this amendment up and get on with the rest of the amendments on this bill. I yield the floor.

Mr. BRADLEY. Mr. President, I would like to make sure that the record is absolutely clear in this debate.

I heard my distinguished colleague from Louisiana take umbrage at my

characterization of his amendment. I would like the RECORD to state that, yes, indeed, he allows the E. coli regulation to be placed into effect. He exempts any regulation promulgated before April 1, and the RECORD should show that; that it is the other amendment, the underlying amendment, that has the biggest problem.

I think the distinguished Senator from Louisiana offers an amendment that is a vast improvement over the amendment offered by the distinguished Senator from Kansas—a vast improvement. I salute him for offering this amendment and moving the Senate forward.

However, unfortunately, it is not enough. It is not as much as I think we need. It allows endless petitions. It allows sunsets to be placed on the regulation.

I believe we should simply exempt E. coli and let the Department of Agriculture do what they are going to do, without any kind of back-door or unforeseen event, and strengthen this regulation, to protect the food and meat for people in this country. I yield the floor.

Mr. GLENN. Mr. President, I, too, want to get on with the vote on this. I will be very brief and take just a couple of minutes.

In summary and in response to the Senator from Utah, the manager on the other side, I, too, wish that we had a separate vote on this Johnston amendment. We might be able to vote for it, but not if it replaces Senator DASCHLE's amendment.

The Department of Agriculture informed us whether they have to do a second risk assessment in the final rule stage, they are not going to be able to say that they are already doing risk assessment, complies with the requirements of S. 343, as it would be amended by the Dole-Johnston substitute. In other words, they would have to go back to least-cost, new procedures—all subject to judicial challenge and so on.

Mr. JOHNSTON. Will the Senator yield?

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

Mr. JOHNSTON. The Senator recognizes that since the notice of proposed regulation was put out prior to April 1, 1995, that it would be exempt totally from risk assessment and cost-benefit, under that part of the amendment as well as the other part, am I correct?

Mr. GLENN. Yes.

Mr. President, this brings up the second point. That is, moving the effective date to April 1 for new proposed rules. While it may be an improvement from an across-the-board immediate effective date, unfortunately I do not think that goes far enough.

This bill cannot be met within a few weeks or even a few months.

The new rulemaking procedures, the new least-cost, all the rest of these things that go into this thing are something that is going to take some time to do.

April 1, as an example, setting that as the cutoff time, means that regulations on mammography would be cut off. Regulations on the educational title I, help for the disadvantaged, where they are planning to implement those regulations this fall, in school this fall—those would be cut out.

Mr. JOHNSTON. Mr. President, will the Senator yield on that point?

Mr. GLENN. Yes.

Mr. JOHNSTON. Under the Johnston amendment, each one of those rules, having had a notice of proposed rulemaking prior to April 1, is exempt from this bill.

Mr. GLENN. I believe on all these the notice of proposed rulemaking was April 1.

Mr. JOHNSTON. On mammography? If the notice of proposed rulemaking was after April 1, how is it scheduled to go into operation right away? Most of these rulemakings, the Senator told me, take a long time.

Mr. GLENN. An interim rule was published on mammography on December 21, 1993, and publication of proposed regulations is planned for October 1995.

Mr. JOHNSTON. The April 1 date, under the Johnston amendment, is a notice of proposed rulemaking. So this notice has been out for years.

Mr. GLENN. Publication of proposed regulations is planned for October, 1995.

Mr. JOHNSTON. I know, but when was the notice of proposed rulemaking? That has been in operation—that has been out there for years.

Mr. GLENN. I do not have a particular date on that. It was my understanding, and the people that administer this have interpreted the Senator's proposal, his amendment, as cutting them off.

Mr. JOHNSTON. Mr. President, did the Senator not just tell me the notice of proposed rulemaking was 1993 or something?

Mr. GLENN. No, I said publication of the proposed regulations was planned for 1995.

Mr. JOHNSTON. You gave me a date in 1993 there?

Mr. GLENN. That was an interim rule published in 1993.

Mr. JOHNSTON. There had to be a notice of proposed rulemaking prior to the interim rule.

Mr. GLENN. I am told these are covered at different dates. I would have to go back and correct this. But the people administering this have looked at what the Senator is proposing and they say it would cut them off.

Mr. JOHNSTON. Mr. President, I tell my dear friend, that cannot be. It just cannot be.

Mr. GLENN. Mr. President, I will go on with this and then I propose we get on with the vote on this as soon as we can.

I was talking about the Elementary and Secondary Education Act. That would be held up because the dates on that—the final rule is coming out by July 1, 1995. That would be knocked out. The flammability standards for upholstered furniture would be knocked out. Cable lead wires used on medical equipment—that has caused considerable problems. There is a new rule coming out that would be held up.

This April 1 deadline, whether we argue about proposed rulemaking or specific dates, a couple of things that came to our attention this morning would be held up.

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

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

Mr. EXON. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business for no longer than 6 minutes.

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

LIES THAT PORNOGRAPHERS TELL

Mr. EXON. Mr. President, I am going to be asking unanimous consent for publication of a letter in the RECORD at the appropriate point, and I would like to ask unanimous consent that the heading of this letter, when it appears in the RECORD, be entitled ''Lies That Pornographers Tell.''

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

Mr. EXON. Mr. President, the letter that I referenced is a letter from attorney Bruce Taylor, of the National Law Center for Families and Children, dated July 10, 1995, and I ask unanimous consent that that letter, and an introductory memorandum, be printed in the RECORD.

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

NATIONAL LAW CENTER FOR CHILDREN & FAMILIES

MEMORANDUM OF OPINION IN SUPPORT OF THE COMMUNICATIONS DECENCY AMENDMENT AS ADOPTED BY THE U.S. SENATE ON JUNE 14, 1995

The National Law Center for Children and Families (''NLC'')[1] is of the opinion that the Communications Decency Amendment (''CDA'') is both effective and constitutional, as adopted by the United States Senate on June 14, 1995, by a vote of 84–16 in favor of Amendment 1288 to Title IV of S. 652, The Telecommunications Competition and Deregulation Act of 1995.

The CDA would clearly extend the historical proscriptions against the knowing distribution of obscenity to the burgeoning computer service networks, such as the ''Internet'', ''Use Net'', and ''World Wide Web''. The amendment also forbids the knowing dissemination of ''indecent'' material to minor children. Both provisions cover non-commercial, as well as commercial,

Footnotes at the end of article.

transmissions. These are critically needed updates in federal law. Present law does not prohibit providing indecency to minors over computer-phone modem facilities, since children are protected from indecency only in commercial dial-porn messages over the phone lines, 47 U.S.C. §223(b)(2) and (c), or when broadcast over TV and radio communications, 18 U.S.C. §1464. Likewise, the CDA would clearly cover all distributions of hard-core obscenity over the computer networks, whereas existing law has been applied only to commercial sales of obscenity by computer bulletin board use of phone facilities, 18 U.S.C. §1465.[2]

''This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment.''—*Miller* v. *California*, 413 U.S. 15, at 23 (1973)

''A requirement that indecent language be avoided will have its primary effect on the form, rather than the content, of serious communication. There are few, if any, thoughts that cannot be expressed by the use of less offensive language.''—*F.C.C.* v. *Pacifica Foundation*, 438 U.S. 726, at 743 n.18 (1978)

In *Miller* v. *California*, 413 U.S. at 24–25, the Court announced it's ''*Miller* Test'' and held, at 29, that its three part test constituted ''concrete guidelines to isolate 'hard core' pornography from expression protected by the First Amendment''. The Court has consistently upheld federal and state obscenity laws which prohibit the public and commercial dissemination of such unprotected hard-core obscenity. The United States Government and the States have long banned the use of the mails for transporting obscenity. See: *Rosen* v. *United States*, 161 U.S. 29, 41–42 (1896); *Roth* v. *United States, Alberts* v. *California*, 354 U.S. 476, 493–94 (1957). The use of common carriers has also been banned for the transportation of obscenity, even for private use. See: *United States* v. *Orito*, 413 U.S. 139, 141–44 (1973). The Court has held that telephone companies are ''communication common carriers'' subject to federal jurisdiction. See: *United States* v. *RCA*, 358 U.S. 334, 348–49 (1959); *F.C.C.* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 474 (1940). In 1988, Congress amended 18 U.S.C. §1465 to include new technologies, such as computer-phone modem systems, by adding the words ''uses a facility or means of interstate commerce'' to the prohibitions on commercial shipments of obscenity across state lines. (See: H.R. 3889, The Child Protection and Obscenity Enforcement Act of 1988, 100th Cong., 2nd Sess.)[3] By that 1988 Act, Congress also criminalized the use of cable, subscription, and satellite TV to distribute obscenity, 18 U.S.C. §1468.

Congress also spent several years developing a valid dial-porn statute, resulting in the present, constitutionally valid, version of 47 U.S.C. §223 (b) and (c), as amended in 1988–89. The Supreme Court upheld the power to completely ban obscenity from the phone systems. *Sable Communications of Calif., Inc.* v. *F.C.C.*, 492 U.S. 115, 124–26 (1989). In the *Sable* case, the Court struck down a total ban on indecent dial-porn to adults, but discussed with approval the reasonableness of the F.C.C.'s ''least restrictive'' practical methods to screen out minors, such as credit cards, access code-pin numbers, and scrambling. Id. at 121–22, 128–31. This blueprint for a valid statutory-F.C.C. scheme was adopted by Congress and upheld by the courts as a valid means to prohibit the distribution of indecency to minors by these ''least restrictive means'' that allow adult access while providing adequate safeguards to protect all but ''the most enterprising and disobedient young people''. Information Providers' Coalition v. F.C.C., 928 F.2d 866 (9th Cir. 1991); Dial Information Services v. Thornburgh, 938 F.2d 1535 (2nd Cir. 1991), cert. denied, 112 S.Ct. 966 (1992).

The Senate version of the Communications Decency Amendments, as sponsored by Senators Exon and Coats, amends 47 U.S.C. §223 in a way that is consistent with and follows the Court's pronouncements on First Amendment requirements discussed in the cases cited above. Such an extension of the valid dial-porn law to computer porn would prohibit only illegal obscenity and restrict indecency only to minors, while allowing adults access to non-obscene indecent communications when the F.C.C.'s technical screening devices are used, or when similarly effective practical means are developed by the users or service or access providers themselves, even if beyond those of the present F.C.C. regulations. The ''Exon-Coats'' amendment is, thus, more protective of legitimate rights than the existing dial-porn scheme.

It is not a valid argument that ''consenting adults'' should be allowed to use the computer BBS and ''Internet'' systems to receive whatever they want. If the materials are obscene, the law can forbid the use of means and facilities of interstate commerce and common carriers to ship or disseminate the obscenity. See: Paris Adult Theatre I v. Slaton, 413 U.S. 49, 57 (1973). The Supreme Court has forbidden the criminalization of the mere possession of obscenity in the privacy of one's own home, Stanley v. Georgia, 394 U.S. 557, 568 (1969), but has rejected any ''correlative right to receive it, transport it, or distribute it'' since there is no ''zone of constitutionally protected privacy [that] follows such material when it is moved outside the home area protected by Stanley''. Orito, supra, 413 U.S. at 141–42. To the contrary, the Court has held that there is ''a long-recognized legitimate interest in regulating the use of obscene material in local commerce and in all places of public accommodation''. Paris Adult Theatre, supra, 413 U.S. at 58. The Court also held that Stanley ''does not extend to one who is seeking . . . to distribute obscene material to the public, nor does it extend to one seeking to import obscene materials from abroad, whether for private use or public distribution''. United States v. Thirty-Seven Photographs, 402 U.S. 363 376–77 (1971) (adding that ''Congress may declare it contraband''). Perhaps the best defense for the CDA was summarized by the Court in Orito, supra at 143–44, where it held that Section 1462 could not be used to ship obscenity from San Francisco to Milwaukee by a common carrier, the airlines, stating:

''Given (a) that obscene material is not protected under the First Amendment . . . (b) that the Government has a legitimate interest in protecting the public commercial environment by preventing such material from entering the stream of commerce . . . and (c) that no constitutionally protected privacy is involved . . . we cannot say that the Constitution forbids comprehensive federal regulation of interstate transportation of obscene material merely because such transport may be by private carriage, or because the material is intended for the private use of the transporter. . . . Congress may regulate on the basis of the natural tendency of the material in the home being kept private and the contrary tendency once material leaves that area, regardless of a transporter's professed intent. Congress could reasonably determine such regulation to be necessary to effect permissible federal control of interstate commerce in obscene material, based as that regulation is on a legislatively determined risk of ultimate exposure to juveniles or to the public and the harm that exposure could cause.'' [Citations omitted.]

As the late Chief Justice Burger stated in Paris Adult Theatre, supra at 69: ''The States have the power to make a morally neutral judgment that public exhibition of obscene material, or commerce in such material, has a tendency to injure the community as a whole, to endanger the public safety, or to jeopardize, in Mr. Chief Justice Warren's words, the states' [and the Nation's] 'right . . . to maintain a decent society.'' The Court has also recognized that legislatures ''must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems'', Young v. American Mini Theatres, 427 U.S. 50, 71 (1976), and Congress has taken up such challenges by updating the various federal obscenity, child pornography and exploitation, and telephone and broadcasting statutes to cover new ways that people invent from time to time to traffic in unprotected obscenity and the provision of indecency to minors. The overlap of some criminal acts by inclusion in two or more federal statutes, like the corresponding prohibitions of the various state laws, is a testament to the need to keep all federal statutes comprehensive and paying their individual roles in deterring harmful, unprotected conduct and allowing prosecution under various circumstances. Shortly after World War II, the Court upheld application of the common carrier laws to cover the new technology of phonograph records, recognizing the power and intent of Congress to legislate comprehensively to prohibit traffic in obscenity. United States v. Alpers, 338 U.S. 680682–83 (1950). Congress later amended Section 1462 to specifically include phonographs, so as to clarify and give undeniable notice to all what the law prohibits. Such a task is now before the Congress and the Communications Decency Amendment serves this dual and noble purpose. (Congress should likewise consider updating and clarifying Section 1462 to plainly prohibit commercial and non-commercial use of any and all common carriers, including telephone, wire, cable, microwave, satellite, computers, etc., for carriage of obscenity for private and public use in interstate, intrastate, and foreign commerce and travel. Times are changing, technology is advancing, but obscenity is till obscene, unprotected, and harmful.)

Much of the hard-core obscenity on the BBS and ''Internet-World Wide Web'' networks is placed there for sale or advertisement by members of the pornography syndicates and by fledgling pornographers. However, the vast amount of hard-core pornography on today's computer bulletin boards and interactive nets is placed there indiscriminately by individual ''porn pirates'' who post freely available pictures of violence, rape, bestiality, torture, excretory functions, group sex, and other forms of hard and soft core pornography which are as available to teenage computer users as to men who are addicted to pornography. A tough federal law is needed to deter such unprotected and viciously harmful activity and the CDA does just that, making such activity a felony in order to deter those who would violate such federally protected interests and public decency and safety concerns. This proposed law would remove hard-core obscenity from most of the generally available computer boards and sites and isolate those who continue so that the remaining obscenity distributors may be identified and prosecuted or deterred by their own lack of anonymity. Present law is not successfully serving its intended deterrence and apprehension roles, obviously.

The CDA would also channel indecent speech and pictures that are not obscene away from the general access public boards and sites where minors and non-consenting adults could take advantage of the serious

uses and benefits of this new computer technology. The service and access providers could and would set up consensual access ''adult'' boards and sites where adults could subscribe or provide credit cards and/or access-pin codes and engage in all the ''adult'' (pornographic) speech they wish to consent to. This is no more burdensome than obtaining dial-porn, or cable television's pay-per-view or premium channels, or asking for ''men's sophisticate magazines'' at the convenience stores, or going to hard-core ''adult'' bookstores or into the ''adult'' porn section of video stores, etc., etc., etc. The hysterical arguments about indecency laws banning serious works of literature or library art, so cleverly but hypocritically pandered by the porn user's advocates, are no more real than they would have been under existing laws or in past enforcement actions by the F.C.C. The generations of law enforcement and judicial supervision have narrowly tailored the application of obscenity laws to ''hard-core pornography'' and indecency laws to intentional patterns of patently offensive sex, graphic sexual nudity, and four-letter ''Seven Dirty Words''. As the Court said in Pacifica, sura, 438 U.S. at 743, ''the Commission's definition of indecency will deter only the broadcasting of patently offensive references to excretory and sexual organs and activities''. The Court in Pacifica, at 742, also stressed that ''indecency is largely a function of context'' and that speech is not indecent unless it is so patently offensive for the time, place, and manner of its utterance that the community would universally disapprove of its open availability in those circumstances.

A review of the decisions of the Supreme Court and other federal and state courts shows that a slip of a four letter word of showing nudity for legitimate reasons has never been, nor would it be, found indecent under the F.C.C.'s, the Court's, or the Justice Department's interpretation of the term ''indecent''. Those in the ACLU and EFF who sound the screeching alarm are merely trying to deafen the gullible to drown out the screams of the children and parents who are being screamed off the modern age's most promising tool for education and global communications. They don't seek in earnest to ''empower'' parents to protect children, they want to force parents by the power of their arrogance to kick the kids off the system so they can trade dirty words and pictures. The Internet does not belong to the most obscene and indecent characters of this world, it was created and should be available to everyone, like radio, television, and telephone services, like the mails, common carriers, and other public interstate facilities. To these concerns should Congress turn in this critical time. The recent study of computer porn by the prestigious Carnegie Mellon University, as reported in the venerable Georgetown University law review provides ample reality to the real alarm being heard by the public and responsible public officials. The obscenity and indecency is totally out of control and the law is behind the times. The CDA merely modernizes existing federal law so that the old maxim that ''the law is presumed to know what everyone knows'' can be fulfilled.

The CDA as adopted by the Senate is both fair and reasonable. It intentionally safeguarded legitimate corporate and private rights. Some provisions of the CDA have even been criticized by pro-family groups as too lenient and providing too many defenses for pornographers, as well as too much exemption and good-faith defense for the on-line computer service access providers, such as Prodigy, CompuServe, NETCOM, and America On Line. The present version of the Amendment would, indeed, exempt the phone company carriers and computer access providers only to the extent that they provide mere access for users to connect to the services and boards of other companies and individuals beyond their control. This would not make the law ineffectual, however, it would simply channel the blame to those who deserve it and enlist the responsible corporations into taking good-faith efforts to avoid and block hard-core pornography and channel indecent speech to adults. To the extent any phone or computer access company would offer obscenity in their own boards, they would be as liable as anyone else. Likewise for making indecent material available to minors under age 18, if they do it-they are liable, but if they don't do it-they aren't liable if someone else does it. This puts the primary criminal liability on those who distribute obscenity to anyone and on those who make indecency available to minors without taking reasonable steps to limit it to adults. Although some people and groups may feel that the phone and computer access providers should bear responsibility for the traffic in obscenity and indecency that is available to minors, but the law need not extend the strictness of its liability to those who act in good faith or merely provide carriage to the illegal materials of others. Existing Section 1462 does not criminalize the act of the common carrier in merely carrying illegal materials. It prohibits the user from using the carrier to transport the obscenity. The carrier would be liable only if it acted beyond its role as a carrier and conspired with, or intentionally aided and abetted, the misuse of company facilities for illegal purposes. The same type of knowledge and criminal involvement would be required under the CDA and could be applied to such conduct.[4] The CDA's restrictions to protect minors from indecent speech are the ''least restrictive means'' to protect minors while allowing adults access to non-obscene speech. This is all the public can demand of its laws. The law cannot impose strict liability, but the CDA is designed to provide a serious criminal deterrent to those who would put obscenity onto the computer nets or who would publicly post indecent materials within easy reach of children.

Consistent with this aim, the Amendment contains ''good faith'' defenses that would allow any company, carrier, Internet connector, or private individual to create reasonable and effective ways to screen children out of adult conversations and allow adults to use indecent, non-obscene, speech among adults. This would encourage, and enable (or ''empower''), the access providers to take steps to enforce corporate responsibility and family friendly policies and monitor their systems against abuse. When they do take such steps, the good faith defense would protect them from becoming liable for unfound or unknown abuses by others, and that is all we think the law can ask of them at this point. There is only so much that can be done in a way that is ''technically feasible'' at any point in time (as the Court reminded us in Sable), and the CDA would not require anyone to take steps that are not technically feasible and does not, and should not, expect anyone to take all steps that may be technically possible.

This bill would also allow the States to enforce their own obscenity and ''harmful to minors'' laws against the pornographers and porn pirates. If they chose to regulate the carriers and connectors, they would be bound by the Supremacy Clause of the Constitution and the First Amendment to using consistent measures. This ''pre-emption clause'', subsection (g), is not intended to be inconsistent with existing requirements for the States to meet under any criminal law. The joint role of federal and state prosecution of those who distribute the obscenity, and indecency to minors, is intended to be a specifically preserved.[5]

The good faith defense also allows responsible users and providers to utilize the existing regulations from the F.C.C. for dial-porn systems, until such time as the F.C.C. makes new regulations specifically for the computer networks. This means that a company or individual who takes a credit card, pin number, or access code would be protected under present F.C.C. rules if a minor stole his parent's Visa card or dad's porn pin number. In other words, some responsibility still resides with parents to watch what their kids are watching on the computer. This is serious business and there is a lot of very harmful pornography on the ''Internet'', so parents better take an interest in what their children have access to, and cannot rely on the law or the businesses to solve the entire problem for them. Federal law can make it a crime to post hard-core obscenity on the computer boards, but many people are willing to break the law. The porn pirates are posting the kind of porn that hasn't been sold by the pornography syndicates in their ''adult'' bookstores in nearly 20 years. This law should deter them for doing that any longer and it would allow federal prosecutors to charge them for it now.

The defenses to indecency are available to every one, so that every one has a chance to act responsibly as adults in protecting children from indecency. This is what the Supreme Court will require for the indecency provisions to be upheld as ''least restrictive'' under the First Amendment. Conversely, no one has a defense to obscenity when they distribute or make obscenity available. The only exception to this is for the carriers and connectors in their role as mere access connectors, only then would they be exempt from the obscenity traffic of others. However, if the on-line service providers go beyond solely providing access, and attempt to pander or conspire with pornographers, for instance, then they would lose their obscenity exemption and be liable along with every one else. This is a limited remedy to prevent the bill from causing a ''prior restraint'' on First Amendment rights. This bill would be nothing at all if it were struck down or enjoined before it could be used against those who are posting, selling, and disseminating all the pornography on the computer networks.

There has been some criticism that this bill in adopting good faith defenses would make it ineffectual and that this would weaken the bill in the same way that the existing dial-porn law is not completely effective. We disagree. The defenses in the dial-porn law were necessary to having that law upheld by the courts. Without them, it was struck down by the Supreme Court. Only after the F.C.C. provided its technical screening defenses was the law upheld by the federal appeals courts. This law adopts those constitutionally required measures for indecency and for obscenity only for the mere access providers. The dial-porn law has removed the pre-recorded message services from the phone lines. The pornographers have gone to live credit card calls. To the extent they are still obscene, they can and should be prosecuted by the Department of Justice, with the help of the F.B.I. That is what it will take to remove the rest of the illegal dial-porn services. The most ineffective part of the dial-porn law is not the F.C.C. defenses, they are fine. What is broken is the phone company defense in the statute, 47 U.S.C. §223(c)(2)(B), that allows the bell companies to rely on ''the lack of any representation by a provider'' of dial-porn that the provider is offering illegal messages. This means that if the dial-porn company does

not tell the phone company that the messages are obscene or going to children as indecency, then the phone company doesn't have to block all the dial-porn lines until an adult subscribes in writing. This is not workable and should be fixed by Congress. The dial-porn law should also be amended to give good faith reliance only of a false representation by a dial-porn provider. If the phone company doesn't know about a dial-porn service, then they should not be responsible. However, the phone company should block all the dial-porn lines and only unblock them on adult request. This is the provision that is causing the phone companies not to act, not the F.C.C. defenses. There is no such provision in the CDA that would allow the carriers or connectors to wait for the pornographers to confess guilt before they must act. If they know, they must act in good faith. No more, no less. This computer porn law is, therefore, better than the existing dial-porn law in that respect.

This amendment would allow federal prosecutions against the pornographers and porn pirates immediately, thus removing much of the hard-core material from the networks that the carriers would be providing access to. A more perfect solution, if any there could be, cannot wait several months or years. If Congress has to exempt the connectors as long as they merely carry the signal and otherwise act in good faith, then so be it. If they abuse it, then Congress can take that break away when it is shown that they don't deserve it. In the meantime, the CDA will give federal law enforcement agencies a tool to get at those who are responsible for distributing the obscenity that is at the heart of the complaints at present. It is a good and constitutional law and arguments that it is too much Government involvement, or not enough, are not true, not realistic, and should not lead Congress to bypass this opportunity to enact an effective remedy to protect the public and our children from this insidious problem.

Bruce A. Taylor, June 29, 1995.

FOOTNOTES

[1]The National Law Center for Children and Families (''NLC'') is a non-profit legal advice organization which supports law enforcement and governmental agencies in the prosecution and improvement of federal and state laws dealing with obscenity and the protection of children.

The author of this Memorandum, NLC's Chief Counsel, Bruce Taylor, has been prosecuting obscenity and child pornography cases since 1973, presenting over 85 cases to juries and numerous oral arguments on appeal, as: Senior Trial Attorney, Child Exploitation and Obscenity Section, Criminal Division, U.S. Department of Justice (1989–94); Assistant Attorney General of Arizona (1989); General Counsel, Citizens for Decency through Law, Inc. (1979–89); Associate in Bertsch, Fludine, Millican & O'Malley, L.P.A. (1978–79); Assistant Director of Law, City of Cleveland (1977–78); Assistant Prosecutor, City of Cleveland (175–77); Chief Law Clerk to the Cleveland Prosecutor (1973–75) (see attached Resume of Bruce A. Taylor).

[2]The CDA and existing Section 223 are attached hereto.

[3]It was under Section 1465 that the Government convicted the operators of Amateur Action BBS in the Western District of Tennessee for shipping hardcore obscenity, depicting rape, incest, torture, children, excretory functions, etc, etc., from Milpitas, Cal., to Memphis by computer-phone modern facilities. The case is U.S. v. Thomas and is presently pending in the U.S. Court of Appeals for the Sixth Circuit. Interestingly, the A.C.L.U. and the Electronic Frontier Foundation, and some interactive computer service and access providers argued, as amici curiae in support of the Defendants, that present law did not apply to the computer systems, BBS and Internet networks, and that the material should be judged according to the ''cyberspace'' community standards of the customers of such pornographic distributors. This alone should illustrate the need to clarify and update all federal laws on this subject.

[4]In this regard, the Senate version of the CDA would be more clear if it were amended to add the words: ''or who aids, abets, or advertises for,'' after the phrase ''or a conspirator with'' in subsection (f)(1).

[5]In this regard, the CDA would be more clear by replacing the words ''this section'' at the end of the pre-emption clause, subsection (g); with: ''subsections (a)(2), (d)(2), or (e)(2)''. As we pointed out in Senate colloquies, this is intended to preserve the right and ability of the states to enforce this obscenity and harmful to minors statutes, consistent with the decision of the Court in Roth-Alberts, supra, 354 U.S. at 493–94.

LIES THAT PORNOGRAPHERS TELL

NATIONAL LAW CENTER
FOR CHILDREN AND FAMILIES,
July 10, 1995.

Re Cox-Wyden bill on the Internet connectors as consistent with Exon-Coats Senate CDA.

Hon. CHRISTOPHER COX,
House of Representatives, Cannon House Office Building, Washington, DC.

Hon. RON WYDEN,
House of Representatives, Longworth House Office Building, Washington, DC.

DEAR REPRESENTATIVES COX AND WYDEN: Please excuse the length of this letter, but much misinformation needs to be corrected and this is an issue of utmost importance to America's children and families. You have been lied to. I'd like to give you my views on the pornographer's propaganda and offer an explanation of the true meaning of the Exon-Coats amendment dealing with computer assisted obscenity and the problem of indecency being made available to minors.

A review of your proposed legislation to protect the computer information service providers shows that you are trying to accomplish the same objectives as the Senate version of the Communications Decency Amendment (''CDA''). Whatever you may have been led to believe about the ''Exon-Coats Amendment'' is obviously incorrect. The Senate bill accomplishes the same benefits and protections your proposed bill seeks to provide. However, I feel your bill, in giving immunity and a defense without a corresponding offense, will have the opposite effect to that which you seek.

Your bill imposes no obligations or prohibitions on either the computer or phone companies, nor on the pornographers. No one would be required to remove or restrict obscenity from the Internet or any BBS bulletin board systems, or to restrict indecency from minors. If any company wishes to take responsible corporate policy measures, your bill would only seek to protect them from civil liability. Under the Senate CDA, every company must clean up its own facilities, could not assist other persons to violate the law, and would be protected from both civil and criminal liability for good faith steps to enforce a responsible policy and restrict obscenity from everyone and indecency from minors.

Your explanatory statement for the Cox-Wyden Bill to protect the access provider Internet connectors (Prodigy, AOL, etc.) expressed a genuine concern for the unfairness of holding these connectors liable civilly for acts they may take in good faith to restrict or prevent the transmission of offensive materials over their facilities and services.

I think that your proposed measure is consistent with and intends a like result as the Communications Decency Amendment (CDA) of Senators Coats and Exon. The defense-immunity in your proposal, and the exemption and defenses in the CDA, as passed by the Senate, are co-extensive, not different. It is apparent to me that your purpose would be furthered by supporting the Senate's CDA (and even adding some additional provisions to the House version of the CDA, as discussed below and in my attached Memorandum of Opinion in Support of the CDA).

The New York decision against Prodigy, to which you referred, is a lawsuit result to which we also disagree. In fact, the Exon-Coats amendment recognized the same concern by granting those access providers and phone carriers an exemption from criminal liability for crimes committed by others over the facilities of others beyond their control, in (f)(1). The CDA also provides a good faith defense to offenses committed over one of their own facilities, if they take steps to restrict or prevent such offensive or unlawful communications, in (f)(3). Then, the CDA provided a civil hold-harmless provision to protect users and providers from liability for lawful acts taken in good faith to avoid liability for the offenses specified in 47 U.S.C. §223, as amended, in (f)(4).

The Senate CDA does not exempt access providers ''if they exercise 'no control' over the information their customers get'', as your release states. Just the opposite is true. A phone carrier or access connector is only exempt, under (f)(1), from crimes committed over facilities over which that company ''has no control''. If they have control, they must act (such as over their own boards and chat lines and over services with which they enter contracts or carriage agreements). If they truly have no control, they are not strictly liable for another's offenses (such as over a university or pornographer's board existing independently on the Internet or Use Net or World Wide Web to which they ''solely'' provide unassisted access.

To the extent the phone and access companies learn of other people abusing their systems with unlawful activities, they can and must act in good faith to prevent or restrict access to the offensive and unlawful materials, under (f)(3). The phone carriers and access providers are liable for all unlawful activity they know of on their own facilities, under (d)(1) and (e)(1). They are also liable for knowingly allowing others to use their facilities for unlawful acts, under (d)(2) and (e)(2).

The key to responsible action, to taking ''good samaritan'' policy measures, therefore, is in the operation of the good faith defenses. If a bill provided strict liability on a carrier or connector for all unlawful acts they know of on their systems, then their only avoidance of liability would be to pull the plug or to maintain complete ignorance (not to know is not to act ''knowingly'', so they won't look for what would give them guilty knowledge). A strict liability law, without good faith defenses, would have the effect of making the phone and computer companies turn a blind eye. The Senate version requires responsible action and empowers them to use technically feasible software and hard-ware measures and protects them from liability in doing so. Your bill seeks the effect of the Senate version, and the opposite effect of a ''no defense'' bill.

Your bill provides a similar exemption from liability for good faith acts to restrict access to objectionable material, in (c) of IFFEA. Without the exemption in (f)(1) and the defenses in (f)(3) of the CDA, the telephone-computer porn statute would provide near strict liability for the carriers and connectors without any incentive to protect themselves except to avoid all knowledge of the offensive materials.

Ignorance would be their best defense if the good faith defenses are removed from the Senate version and they would be criminally, as well as civilly, liable if they knew there were unlawful materials on other facilities over which they had no control but to which they knew one could gain access by using their facilities to reach the Internet and get

to those other boards and web sites. The unfairness of this result is the reason the Exon-Coats amendment was structured the way it is and your bill shows a like interest in having a fair application of the law without extending undue liability to those who take responsible action.

Here's how the Senate's CDA really works:

No substantive changes are made to existing ''dial-a-porn'' provisions in 47 U.S.C. §223 (b) and (c). Subsection 223(a) is clarified only to codify that subsection's historic interpretation as applying to unconsented harassing and obscene calls for annoyance or threat. This merely codifies present law and prevents subsection (a) from any argument that it would ban all ''indecent'' or ''obscene'' phone or computer conversations.

The CDA adds four new offenses, two in each of the new subsections (d) and (e), which are subdivisions (d)(1) and (d)(2) and then (e)(1) and (e)(2):

(d)(1) knowingly make or make available obscenity;

(d)(2) knowingly allow one's own facility to be used by others to make or make obscenity available;

(e)(1) knowingly make or make available indecency to minors;

(e)(2) knowingly allow one's own facility to be used by others to make or make indecency available to minors.

The (d)(1) and (e)(1) offenses apply to everyone, the pornographers, and the persons who post or sell it on a bulletin board or chat line or web site, and any board or site owner-operator who knowingly conspires with them or aids & abets them. They also apply to phone carriers and computer connectors who would provide such unlawful materials as one of their own services.

The (d)(2) and (e)(2) offenses are ''carriers'' crimes and apply only to phone carriers and access connectors who own-operate telecom. facilities used by others to make computer-modem connections to the Internet, Use Net, World Wide Web, or private BBS boards. To the extent a computer connector acts as a mere conduit, they act like carriers when they connect someone to the facilities of others on the nets or boards. To that extent, only, they are and should be treated as carriers are treated for the same activity.

Legally, the access provider-connectors (Prodigy, America On Line, CompuServe, NETCOM, etc.) are not ''common carriers'' like the telephone companies (ATT, MCI, Sprint, and the Bell companies). The Senate CDA specifically recognizes this in the last sentence of (f)(3), thus precluding FCC jurisdiction over the operation of those ''enhanced information services''. (Your bill, conversely, merely states, in (d), that nothing in your bill gives FCC jurisdiction. Nothing prevents FCC jurisdiction from another source or act, just that your bill doesn't confer it.) The Senate's CDA allow the FCC only to develop defenses and technical methods to screen out children from indecency and allow adults to have reasonable access to indecent material among themselves, like it did for dial-a-porn. The FCC's technical screening devices (credit cards, access-pin codes, and blocking) were cited by the Supreme Court as effective ''least restrictive means'' to screen out minors without affecting adult's rights to non-obscene but indecent communications among adults. Allowing these FCC regulations, along with any present or future soft or hard-ware solutions to restrict indecency to adults, makes the indecency provisions of subsection (e) of the CDA constitutional and effective.

Since existing federal law (18 U.S.C. §1462 and 47 U.S.C. §223) treats common carriers differently, because of their role as public access carriers, the CDA treated the access connectors in like fashion when they act as common carriers by merely providing access to the facilities of others beyond their control. To the extent a connector gives one access to its own facilities or services, like its own boards and chat sites that are within its control, it is liable like anyone else and must police its own operations. This is like dial-a-porn, where Mountain Bell (which does not provide lines to dial-porn providers) would not be liable for a call from a customer in Arizona who calls through Mountain Bell, then is carried from Mountain Bell by ATT to NYNEX, and reaches a dial-porn company in New York with which NYNEX has a contract. NYNEX can and should be liable if it is culpable, but Mountain Bell should not. The CDA apportions the same criminal liability on those who share the same criminal blame.

The CDA's (f)(1) only exempts the phone carriers and access connectors when they ''solely'' give one mere access to others' facilities over which they have ''no control''. As to their own boards and sites, they are liable for the offenses when they knowingly and intentionally allow users to transmit obscenity, or indecency to minors, through their systems. In that regard, however, they have the good faith defense in (f)(3) if they monitor, block, screen, etc., all the offensive material they know about and someone still gets unlawful material through. If they've done all they could to police their own boards, they would be protected. If they do nothing and they know their facilities are being so used for unlawful purposes, they would be liable under (d)(2) and (e)(2).

The incentive is therefore mandated (f)(3) that they do their own corporate responsible actions to restrict or prevent such transmissions or access. It is obvious, however, that Prodigy cannot police what is posted on a CompuServe board or on an independently operated board on the Internet (such as a university, pornographer, or private company board). They can, and would, delete such boards from their index and directory listings, and they could block the drive paths to known offending sites and porn pictures (known as ''GIF'' files-Graphic Interchange Format), to the extent technically feasible. If they advertised for such sites or GIF files of others, then they would not be ''solely'' providing access as exempted under (f)(1).

There is one change to the Senate CDA that could be made to specify some things that an access provider could not do to assist a pornographer on another's service, like listings and advertising porn sites and GIF files. To accomplish this result more clearly, I suggest that the House CDA add the words: ''or who aids, abets, or advertises for,'' after the phrase ''or a conspirator with'' in (f)(1). This would mean that the access connectors would be responsible for policing their own boards and services and could not assist or aid the unlawful activities of others that they cannot otherwise control.

Another change I would like to see in the CDA is to correct the last clause of the preemption clause, subsection (g), to make it clear and consistent with the first sentence. I suggest the words ''this section'' be replaced with: ''subsections (a)(2), (d)(2), or (e)(2)''.

Finally, I believe Congress has been betrayed by some telephone companies by not blocking all their dial-a-porn numbers unless they receive a written request from the customer for access to those numbers, as intended and provided in 47 U.S.C. §223(c)(1). The problem lies with the immunity granted by subsection 223(c)(2)(B)(i), which allows the phone carriers to avoid their blocking duties by relying ''upon the lack of any representation'' from a dial-porn provider that the provider is selling illegal messages. In other words, if the phone-sex company does not confess guilt to the phone company, the phone company need do nothing. Since the dial-pornographers don't admit anything, some phone companies don't block anything. This loophole has become a sink hole that Congress should plug. This can be remedied to its original intent by removing the immunity from reliance on silence and giving them immunity only if they were lied to or unknowingly misled. Two changes to that clause, §223(c)(2)(B)(i), would remedy this unjust result, as follows: (i) in good faith reliance upon the representation by a provider of communications that communications provided by that provider are not communications specified in subsection (b) of this section, or

Other than the two suggested clarifications to the CDA, and the one suggested correction to the dial-a-porn law, the Senate version of the CDA is eminently fair and as constitutional and effective as the law will allow.

I hope that, when you consider the Senate version in its entirety and as it would be applied and followed in reality, you will agree that the CDA provides the same protections you seek for the legitimate interests of the computer and phone companies, while outlawing illegal obscenity from the computer networks and allowing minor children to take advantage of the educational and growing benefits of the computer without being bombarded with so-called ''adult'' materials. The Internet need not be the ''adult bookstore'' of cyberspace. The Senate bill would put the ''adult'' books in the back room and have adults show ID to get in. Just like in every day life in the rest of the country. This is the least restrictive means to protect children, and they are entitled to at least ''the least'' the law will allow them under the First Amendment.

As for obscenity, the Senate version only prohibits that which is already illegal to distribute by any other federal means. Existing laws in Title 18 of the U.S. Code prohibit: the sale of obscenity on federal property or in Indian Country (§1460); all mailings of any obscenity (§1461); use of a common carrier to ship any obscenity in interstate or foreign commerce or smuggle it into the U.S.A. (§1462); broadcasting obscenity or indecency by radio or TV (§1464); transporting it across state lines by any method, or using an interstate commerce facility such as computer phone-modems, to ship or transit it for sale or distribution (§1465); selling obscenity at retail that was shipped through interstate commerce (§1466); and using cable, subscription, or satellite TV systems to distribute obscenity (§1468).

The Communications Decency Amendment is a good, fair, and constitutional proposal. You and your colleagues have been lied to about what it would do and what it provides. I trust that you seek a proper blend of law and private action and I trust in your instincts to see through the smoke. Without a law, the computer nets will continue to be abused by the purveyors of hard-core obscenity and it will continue to be a place in which responsible adults should fear to let their children play. A law that does not prohibit unlawful materials is no law at all to the pornography syndicates, their associates, and the addicted customers. An overly strict law would not be tolerated by the courts, for fear of an unconstitutional prior restraint.

There is no reasonable doubt that only a carefully worded and First Amendment sensitive statute will survive the legal challenges that the ACLU, Center for Democracy and Technology, Electronic Frontier Foundation, and some commercial pornography companies will mount. The CDA can withstand the tests to be applied, no other proposal can make that claim. This is a serious

problem and needs a serious and lawful solution. The CDA would be a valid extension of federal obscenity law to the computer networks and a valid extension of dial-a-porn protections for children from indecent adult material.

Our hope is that you sponsor and support the CDA as passed by the Senate. Your leadership would probably insure its passage. The country, all us parents and grandparents, all of our children, our neighbors, even the addicted customers need your help and that of your fellow Members of the House of Representatives. Please reconsider and look at the Communications Decency Amendment in a new light. It is a good bill. Look for yourself. It won't lie to you like porn advocates have.

Please let us know if we can help you in this regard.

Sincerely yours,

BRUCE A. TAYLOR,
President & Chief Counsel.

Mr. EXON. Mr. President, this letter is by a distinguished lawyer, who has, I guess, as much experience with the prosecution of pornographers as most lawyers in the United States would recognize as a real authority on the subject.

The letter of July 10 is addressed to the Honorable CHRISTOPHER COX of the House of Representatives and the Honorable RON WYDEN of the House of Representatives. The subject is the Cox-Wyden bill on Internet connectors as consistent with the Exon-Coats Senate decency amendment. And I quote:

DEAR REPRESENTATIVES COX AND WYDEN: Please excuse the length of this letter, but much misinformation needs to be corrected and this is an issue of utmost importance to America's children and families. You have been lied to. I'd like to give you my views on the pornographer's propaganda and offer an explanation of the true meaning of the Exon-Coats amendment dealing with computer assisted obscenity and the problem of indecency being made available to minors.

A review of your proposed legislation to protect the computer information service providers shows that you are trying to accomplish the same objectives as the Senate version of the communications decency amendment (''CDA''). Whatever you may have been led to believe about the ''Exon-Coats amendment'' is obviously incorrect. The Senate bill accomplishes the same benefits and protections your proposed bill seeks to provide. However, I feel your bill, in giving immunity and a defense without a corresponding offense, will have the opposite effect to that which you seek.

Mr. President, although the letter has been printed in the RECORD, I would like at this time to quote from the last two or three paragraphs:

The communications decency amendment is a good, fair, and constitutional proposal. You and your colleagues have been lied to about what it would do and what it provides. I trust that you seek a proper blend of law and private action and I trust in your instincts to see through the smoke. Without a law, the computer nets will continue to be abused by the purveyors of hard-core obscenity and it will continue to be a place in which responsible adults should fear to let their children play. A law that does not prohibit unlawful materials is no law at all to the pornography syndicates, their associates, and the addicted customers. An overly strict law would not be tolerated by the courts, for fear of an unconstitutional prior restraint.

There is no reasonable doubt that only a carefully worded and first amendment sensitive statute will survive the legal challenges of the ACLU, Center for Democracy and Technology, Electronic Frontier Foundation, and some commercial pornographic companies will mount. The CDA can withstand the tests to be applied, no other proposal can make that claim. This is a serious problem and needs a serious and lawful solution. The CDA would be a valid extension of Federal obscenity law to the computer networks and a valid extension of dial-a-porn protections for children from indecent adult material.

Our hope is that you sponsor and support the CDA as passed by the Senate. Your leadership would probably insure its passage. The country, all us parents and grandparents, all of our children, our neighbors, even the addicted customers need your help and that of your fellow Members of the House of Representatives. Please reconsider and look at the communications decency amendment in a new light. It is a good bill. Look for yourself. It won't lie to you like porn advocates have.

Please let me know if we can be of help in this regard.

Sincerely yours,

BRUCE A. TAYLOR,
President and Chief Counsel for the National Law Center for Children and Families

Mr. President, since the Exon-Coats measure passed with a 84 to 16 majority, the Senate of the United States sent a very loud and clear signal that something has to be done about obscenity. Something has to be done with regard to material that is being used promiscuously on the Internet today. This is a wonderful new system for the distribution of information. But if we are to sit idly by and listen to some of the opponents, who do not want to do anything about this problem, the American people are being convinced and are now being told by national publications, including Time magazine, who last week had an indepth story with a front-page cover showing a child.

This is a carefully crafted piece of legislation. It is obviously necessary, as has become evident to most people who have taken the time to either see this smut—and I use that word very advisedly because it does not begin to describe the bestiality and the sexual perverts that have invaded this system, primarily to make money.

The courts have continually held that we have the right to do something in the courts when we have this kind of material in full swing. We had a hearing in the Commerce Committee today, primarily on violence on television. The people are justifiably upset about that. We also talked today about the large amount of sex and suggested sex that is being thrown at our children today. The Exon-Coats proposal with regard to our Internet system is an important step in the right direction. And as more and more people look at it, and as more and more people recognize all of the lies that are being told about this piece of legislation—simply untruths designed and planted in many publications by those who want the pornographers to run at will and be available at will to our children on the Internet.

Mr. President, I think this is a step in the right direction. I have personally hand delivered a copy of this letter that I had printed in the RECORD to the Attorney General of the United States, Janet Reno. I have had a personal conversation with the Vice President of the United States about this today. He was very much interested in this letter. I faxed the letter to him. In addition thereto, I have had delivered today to the White House itself, to the attention of the President, this well-thought-out letter that adequately and honestly describes the well-thought-out Exon-Coats amendment. I only hope that the Members of the House of Representatives will awaken. I think too many of them have been misled and lied to about the communications decency amendment. I hope it becomes law.

I thank the Chair and yield the floor.

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

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

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. COHEN. Mr. President, I would like to offer a few comments this afternoon about the need for regulatory reform and then more specifically about a substitute amendment that I anticipate will be offered, if not today then sometime during the course of the debate on this bill.

At the outset, I would like to make clear that I believe that we need to have regulatory reform in this country. We now have what is fairly described as a cumbersome regulatory morass. I think it is the result of over 40 years of having a very activist Government. The number of executive branch and independent regulatory agencies has been steadily increasing since the New Deal. This increase in the size of Government has been compounded by the fact that Congress passes hundreds of new laws every year, while statutes are rarely taken off the books. With each new law comes an ever-expanding set of detailed rules and regulations. So, while we cannot deny the fact that those faceless Federal bureaucrats do compound the problem, we also ought to look right here at home in the U.S. Senate and House of Representatives, because we, too, have responsibility for this trend of more and more laws which require more and more regulations.

This regulatory burden that Congress has created, I think everyone recognizes, is daunting even for the largest

of corporations that can hire a whole spate of attorneys to advise them in complying with the regulations that are imposed. But I think the burden is clearly overwhelming for most of the small businesses in this country that are bombarded with reams of technical legalese and ordered to comply with regulations they do not understand. These are the very small businesses which happen to be the backbone of this country's economy. I think the overwhelming burden they are required to measure up to, and many cannot do so, has contributed in large part to the disenchantment with Government we are seeing in recent years.

We have heard a lot about bringing common sense into the regulatory process. My colleague from Utah has spoken about this. But I would like to point out the fact it was Senator GLENN, of Ohio, whom I recall first holding up the book, ''The Death of Common Sense,'' in one of our hearings in the Governmental Affairs Committee. We can all quote from this book and others, giving anecdotes which lay a foundation for the need for change in this country.

One anecdote from that book discusses an OSHA regulation that requires manufacturers to describe the possible harmful effects of a hazardous substance on every package or container of the product. In 1991, OSHA decided that packages of everyday bricks must contain a hazardous substance notice because a small amount of silica is released when the bricks are sawed in half. But OSHA did not consider the fact that bricks are rarely sawed in half, and that when they are only trace amounts of silica would be released. Nonetheless, the agency imposed this useless paperwork requirement on the Nation's brick manufacturers. Clearly, in that case, common sense did not prevail.

I recently held a field hearing in Maine on Government regulations. I heard of another case where Federal regulators appeared to lose their common sense. A number of years ago, the Food and Drug Administration, the FDA, demanded that McCurdy Fish Co., of Lubec, ME, change its production method to protect the public from the threat of botulism. The FDA's extensive testing, however, never found any contamination in McCurdy's product. In addition, the FDA was applying a safety standard for freshwater fish even though McCurdy sold small ocean herring, a totally different type of fish. Nonetheless, FDA insisted that this small company purchase $75,000 worth of equipment to eliminate a hazard that had never arisen in the past and that was unlikely to ever arise in the future. Yet, with only $250,000 of annual revenue, McCurdy simply could not comply. As a result, it was forced to close its doors back in 1991, eliminating 22 jobs in an industry that had been part of that small community since the early 1800's.

Twenty-two jobs may not sound like a lot to many of my colleagues here in the Senate, but 22 jobs in a small town like Lubec, on the coast of Maine, has a major impact upon the local economy. That is another case where common sense did not prevail. It is another case where we saw regulations proposed and imposed by the so-called faceless bureaucrats which really produced an inequitable result.

Even though all of us can point to these types of horror stories and we can all agree that we need to reform our regulatory system, I think there is substantial difference of opinion about what is the correct solution.

First of all, I do not think we can accomplish reform in a one-shot proposition. It cannot be accomplished on one piece of legislation; it cannot be accomplished overnight. As impatient as we might be to remove these excessive layers of regulation that have been accumulating over the past 40 years, we cannot succumb to the temptation to look for a quick fix that is going to cause many more problems than it hopes to resolve. Real regulatory reform requires Congress to review each and every piece of Federal legislation, to repeal the laws that are no longer working or serving a useful purpose, and fix those that are unnecessarily causing an undue burden on our economy.

Mr. President, I am prepared to do that. That is what needs to be done. We should not try to pass some sort of regulatory reformation here that is going to deal on a procedural level with what needs to be focused on in terms of substantive issues.

The bill before the Senate seeks regulatory reform through procedural reform rather than substantive changes in the law, and it focuses on reforming the process for implementing and reviewing these Federal regulations. The Governmental Affairs Committee, on which I sit, has been struggling with this issue for decades. Some 20 years ago the committee first issued a comprehensive report, concluding that the regulatory system was too costly and the process for developing the regulations too often ignored the costs that those regulations imposed on the economy. And the problems have only worsened since that time. The annual cost of Federal regulation was recently estimated to be approximately $560 billion for 1992 and projected to reach the staggering level of $660 billion by the year 2000.

The remedy for this ill is twofold. First, Congress has to stop passing laws without considering the huge costs we are imposing on the economy in comparison to the benefits that are going to be derived. Second, after Congress does pass a law, the executive branch agencies need to make every effort to interpret and enforce the laws in the least costly manner possible.

I believe that S. 291, which is the bill that was unanimously reported out of the Governmental Affairs Committee this past March, represented a balanced approach toward reforming the regulatory process. A version of that bill is going to be introduced as a substitute by Senator GLENN and Senator CHAFEE later on during the course of the debate on this measure. It requires the agencies to perform cost-benefit analysis and risk assessment for major rules. It authorizes sufficiently rigorous judicial review to ensure that the agencies take this responsibility very seriously. And it mandates that agencies review their existing regulations of cost effectiveness.

I believe this approach is clearly superior to the one that we are currently considering.

These provisions, combined with the congressional review process already passed by the Senate, would represent a marked improvement in our current regulatory system. I am a cosponsor of the Glenn-Chafee substitute and hope it gains the support of my colleagues.

The Glenn-Chafee substitute is also commendable because it does not alter substantive statutes that are currently in effect and does not delegated to unelected Federal judges the authority to second-guess Congress' judgments about the costs and benefits of public policies.

I frankly do not believe it is appropriate to attempt to alter carefully crafted legislation, some of which has enjoyed the support of Congresses over the years, through a statute which is designed to improve Federal rulemaking. If we do not like the Clean Water Act, if we do not like the Clean Air Act, if we do not like the Superfund Act, we ought to change them. But what we are doing is calling upon the regulators to change the substantive law that we have the responsibility to modify and to change if we are dissatisfied with it.

I also believe it is inappropriate for a Congress which is concerned about litigation, about lawyers, about judges, about judicial activism, to suddenly hand them our laws and say, ''Here, you take care of this. You decide whether the agencies have exceeded their mandate. You decide whether or not their cost-benefit analysis was correct or inaccurate. You decide whether or not the least possible cost is involved here, as opposed to another regulatory alternative.''

I do not believe that judges are well-equipped to evaluate whether the social and economic benefits of a policy justify its costs. The balancing of costs and benefits is essentially a political judgment, not a legal one. If a law passed by Congress requires agencies to implement inefficient regulations, then the responsibility for reversing those regulations rests with Congress. The Glenn-Chafee alternative accomplishes this by requiring the agencies to notify Congress when a regulation fails a cost-benefit test and by giving Congress the power to void any such regulation through expedited procedures.

Mr. President, I think, for a Congress which is concerned about too much litigation taking place in this country, this bill is really inviting more litigation, and more lawyers and judges to now start interpreting what is taking place in the agencies, rather than the Congress measuring up to its own responsibility.

So I think that the pending bill before us certainly can be improved upon. If the goal of regulatory reform is to make Government work better, we should not be overloading the Government with so many analytical requirements that it does not work at all. We cannot on the one hand bog agencies down with analytical requirements and expose them to additional litigation, and at the same time demand that they be able to meet the public's demand for prompt action.

One thing is for sure. We know this. If another bacteria infects the city water system, the public is going to want to know, ''Where is the EPA?'' If workers are trapped in a factory fire, the public is going to want to know, ''Where was OSHA at the time to prevent this incident from taking place?'' If there is an outbreak of contaminated meat, people will look to the Department of Agriculture for answers. The public wants smaller and less intrusive Government. It also expects the Government to perform a core set of functions promptly and effectively.

So these are the issues that are of concern to me: The effect of the bill on existing law, the role of the courts, and the cumulative burden on the agencies.

I believe the Glenn-Chafee substitute is superior to the bill we are considering. I do not know if it will gain a majority. But I hope it receives sufficient support to force some needed changes to S. 343.

Over the past week of debate, progress has been made on a number of fronts and some improvements have been made to the bill. The Johnston amendment raising the threshold for major rules from $50 to $100 million was a step in the right direction.

I would like to see the process of negotiation and compromise continue so a regulatory reform bill passes the Senate by a substantial margin and a bill emerges from conference that will be signed into law by the President. A truly bipartisan regulatory reform bill that could be enthusiastically supported by both parties would go a long way to restoring some of the confidence in our government that unfortunately has eroded over the past years.

I see both of the authors of the bill on the floor. I want to commend them for being open to making changes. I think some real progress has been made during the last several days to improve the legislation now pending.

I am hopeful that we will see even more changes to make sure that a strong bipartisan group of Senators supports the legislation.

For that reason, I would like to urge very strong consideration of the Glenn-Chafee substitute when it is proposed.

Mr. GLENN. Mr. President, I want to respond briefly to the remarks by the senior Senator from Maine because on our committee, the Governmental Affairs Committee, he has been one of the stalwarts on the Republican side in working on these matters of regulatory reform, and he deserves a lot of credit for that.

I particularly appreciate his remarks. He is a cosponsor of the Glenn-Chafee approach to this whole matter of regulatory reform. We worked with him through the years. And I know how devoted he is to bringing some reform in this particular area.

So I appreciate his remarks very, very much.

I yield the floor.

Mr. HATCH. Mr. President, I ask unanimous consent that amendments numbered 1502 and 1503 be withdrawn.

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

So the amendments (Nos. 1502 and 1503) were withdrawn.

Mr. HATCH. Mr. President, I ask unanimous consent that Senator Johnston be recognized to offer a first-degree amendment, the text of which is the pending Johnston amendment, and that a vote occur on the first-degree amendment with no second-degree amendments in order.

Mr. JOHNSTON. Mr. President, will the Senator withhold that? It is a similar text but since it strikes in a different part of the bill, it will not be an identical text to that now pending.

Mr. HATCH. With that understanding.

Mr. GLENN. Mr. President, reserving the right to object, it was our opinion that we knew exactly what we were going to vote on at 5 o'clock. Now I do understand that is liable to be changed?

Mr. JOHNSTON. Under the rules, in order to accomplish what we wanted to accomplish, we had to amend a different page and section of the bill. The guts of this would be identical with a couple of really stylistic changes. The way it would read is: Any rulemaking pending on July 12, 1995, for which a notice of proposed rulemaking or a proposed rulemaking has been published in the Federal Register before April 1, 1995—et cetera.

Mr. GLENN. Mr. President, I would like to see it first so we can consider it with staff and look at it. We will put in a quorum call. I do not know what this does to our 5 o'clock time that was planned. I think we can probably resolve it between now and 5 o'clock. If we do, I will have no objection.

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

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

Mr. WELLSTONE. Thank you, Mr. President.

I ask unanimous consent that I be able to speak for 5 minutes as in morning business.

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

RESCISSIONS BILL

Mr. WELLSTONE. Thank you, Mr. President.

Mr. President, I was on the floor earlier today trying to just present some clarity about the rescissions bill. I will not go over my remarks I made earlier, but, Mr. President, the simple point I made was that Senator MOSELEY-BRAUN and I, Friday and today, always made it clear that we had several amendments, altogether four amendments, and we agreed to 50 minutes on each amendment, to be in the evening and the stacked votes the next day, and equally divided for summary, 50 minutes equally divided. That seemed an eminently reasonable proposal, especially for a bill where there were changes from what we had done in the Senate and wanted a chance to make some changes in this piece of legislation.

That was rejected by the majority leader, Mr. President, which amazed me. I mean, to argue that Senators cannot come out and have some amendments and some discussion about a peace of legislation so people know what is in there, it seems to me to go against the grain of what we are about and what representative democracy is about.

Now I see something put out by the Republican Policy Committee, ''The Cost of Delay: The Filibuster * * *.'' So, Mr. President, could I just read from the dictionary about what a filibuster is? ''The Cost of Delay: The Filibuster * * *.'' Here is the definition of ''filibuster'' right out of the dictionary. ''The use of obstructionist tactics such as the making of prolonged speeches or the introduction of irrelevant material for the purpose of delaying legislative action.''

Our amendments are hardly irrelevant. They deal exactly with these cuts. We wanted to have some offsets. We agreed to a time limit on the amendments; less than an hour for each one. And now I see this accusation of the filibuster.

Mr. HATCH. Will the Senator yield on that?

Mr. WELLSTONE. I would be pleased to, if I could read one more time the definition of ''filibuster.'' Maybe my colleague could further explain what the filibuster is, although I——

Mr. HATCH. I would be happy to.

Mr. WELLSTONE. I cannot think of a better colleague to do that for me. One more time before we get into these kinds of accusations and this kind of attack politics, ''The Cost of Delay:

The Filibuster * * *.'' ''Filibuster. The use of obstructionist tactics such as the making of prolonged speeches or the introduction of irrelevant material for the purpose of delaying legislative action; an instance of the use of such tactics, especially in the United States Senate.''

Again, when Senators have amendments to a piece of legislation, very relevant, and agree to a time limit, and make it very clear that all we want is an opportunity to have a debate and discussion so people know what the priorities are of this rescission bill and some opportunities to improve it as we see it and better represent our constituents, that is hardly a filibuster.

My second point, by the way, Mr. President, is there is no delay on our part. The delay is on the part of the majority leader who will not accept an eminently reasonable proposal. There is probably not a Senator in the U.S. Senate, Democrat or Republican, I say to my colleague from Utah, who does not believe that it is important for us, especially if we do not block a motion to proceed and especially if we have a time agreement, to have an opportunity to improve a piece of legislation.

I would be pleased to yield to the Senator.

Mr. HATCH. If the Senator would yield, I just enjoyed the Senator's remarks. And as someone who has seen filibusters on both sides, it is a little more than long, interminable speeches and irrelevant materials being brought up. The fact of the matter is that we have now been on this E. coli matter for 2 solid days when the original bill took care of that problem. Then to resolve it even further, to make it more explicit, Senator DOLE brought his amendment forth yesterday, and it passed and solved it again.

Now we are talking about exempting all of the HACCP rules, basically everything that the Department of Agriculture wants to do. To be honest with you, we know that this amendment is an amendment just plain geared to try to stop this bill, because if you exempt one agency, then we will see 50 people in here arguing to exempt other agencies or other agency particulars or other special interests. And we would like to just see them all covered.

Now, the E. coli is taken care of. The meat problems are taken care of in this bill. They were taken care of before we got into this amendment process. We have been tied in knots for 2 days over this E. coli problem that was taken care of in the original bill. We have tried to solve the problem for the other side by restating it. We have put new language in this bill. And, frankly, there is a belief on the part of many—I think some on both sides of the aisle, many—that there is delay for delay's sake here.

Now, whether that is true or not, I am not going to say this early in this stage of the bill. But it looks to me like it is starting to smell like it is true. And it is no secret that this is a bill that many on the other side and some on our side do not want to pass. But the vast majority here in the Senate do. And I think it is time to go ahead.

Now, we do not have a time agreement. I have tried to get a time agreement. It has been objected to or at least they have asked me to withhold until the amendment of the distinguished Senator from Louisiana can be thoroughly examined by the other side.

Mr. WELLSTONE. Would the Senator yield?

Mr. HATCH. I might also add that the Senator from Louisiana could have modified his amendment at a whim, as it sat on the desk up here before we talked about a unanimous consent agreement. And he modified it. And in a very innocuous—

Mr. WELLSTONE. Mr. President, do I have the floor?

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

Mr. HATCH. I thought he yielded the floor. I apologize. I thought he yielded the floor.

Mr. WELLSTONE. Mr. President, just so the Senator would—I will let the Senator from Ohio respond, but just for a moment, I want the Senator from Utah to know, I was actually not referring to this piece of legislation at all.

Mr. HATCH. You were referring to something else?

Mr. WELLSTONE. That is correct. I just want to make it clear that when I see a piece of literature coming out on a rescissions bill titled ''The Cost of Delay: The Filibuster * * *,'' I just wanted to read for some of my colleagues who make these accusations the definition of ''filibuster.'' It seems to me when Senators are going to be engaged in these kinds of attacks, we ought to be clear what a filibuster is. So, I read the definition of ''filibuster.'' And I will do it one more time. Dictionary definition: ''The use of obstructionist tactics such as the making of prolonged speeches or the introduction of irrelevant material for the purpose of delaying legislative action.''

Our proposed amendments are not irrelevant. They are directly relevant to this bill. We have offsets. We have agreed to amendments. We have agreed to time limits on those amendments. That is in no way, shape or form a filibuster.

I do not want to interrupt the flow of discussion about this bill, but I must say that if this goes on, I am going to have to come out here and start reading definitions of democracy and other such terms that are important to the way we conduct our business.

But, Mr. President, before I yield the floor, let me just make it clear one more time. I did this morning, and I want to say it one more time. Senator MOSELEY-BRAUN and I have been very clear. We were clear Friday; we are clear now. The bill comes over, changes are made, changes are made late Thursday night, changes that are made that we think make this rescissions bill not the bill that was passed out of the Senate.

We think it could use improvement. We think the people in the country do not know about some of these changes. We are not at all sure that some people's priorities are to cut low-income home energy assistance, summer jobs training, job training for dislocated workers, or counseling programs for seniors when it comes to consumer protection on health policies that they purchase. Therefore, we wanted the opportunity and desired the opportunity and made it clear to have some discussion. I do not know why my colleagues are afraid of some limited discussion about this so people in the country know what is in it. But it certainly is not a filibuster. We are ready to proceed as soon as there is no longer any delay, and I certainly hope the majority leader will be willing to let us go forward.

I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, let me clarify this. There was an agreement worked out between the leaders. Senator HATCH was in the process of reading that. There was disagreement with it from Senator JOHNSTON, who is a coauthor of S. 343, the Dole-Johnston bill. He wanted to change his amendment in some respects in the middle of the unanimous-consent request. I wanted to see what the changes were, which I do not think is at all unreasonable. If they were innocuous, fine, we would go ahead with it. It turned out they are a bit more substantive than I anticipated—dates changed, wording changed. So we have had staff working on it as fast as we can, checking with people who are more familiar with this than some of us.

So that is what is going on right now. There was no intention to delay on our part whatsoever. It is just that in the middle of a unanimous-consent which we thought we had agreement on, changes were made in what we were about to vote on supposedly at 5 o'clock. I do not think it is unreasonable at all to know what it is we are voting on when something is being changed. That is the problem.

They are in the cloakroom right now. I think we are going to have agreement on this shortly, but I am not willing to agree to a unanimous-consent request until we know what the vote is going to be on. We thought it was going to be on the amendment that we debated all day. The amendment has changed somewhat. As soon as this is worked out, we can set the vote.

There is no attempt to delay. The change is made not in favor of the Glenn-Chafee bill, but one of the coauthors of the Dole-Johnston bill. That is the reason we are where we are with this delay.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

Mr. President, I have been following the debate in an effort to understand exactly what the ramifications are of the amendment offered by the Senator from South Dakota [Mr. DASCHLE] and the second-degree amendment offered by the Senator from Louisiana [Mr. JOHNSTON].

The manager of the bill, the Senator from Utah, has discussed the matter with me, and in order to try to obtain some clarification, I called the Secretary of Agriculture to try to understand the specifics as to what is involved here on the inspection of meat and poultry.

I favor regulatory reform and, in the course of the debate and amendments for consideration, I have supported amendments which will reform the regulatory process to try to eliminate some of the red tape which is now present. But I do believe that when it comes to matters of health and safety, we have to be very, very careful about how the reform measures impact the regulatory process. Furthermore, the regulatory process has to be reasonable so business can proceed without undue regulations.

There is general agreement today that there is excessive governmental regulation, and it is not easy to find the appropriate balance. In my judgment, it depends upon the specifics.

The Secretary of Agriculture pointed out to me the problems which have been discussed at some length regarding E. coli bacteria and salmonella. He said that for some 10 years, there has been an interest in the scientific community in moving beyond the traditional touching and smelling; that from the E. coli and salmonella, some 4,000 people die each year and several hundred thousand are made ill; that the proposed rulemaking, which was submitted in January, has brought comments from many, many people, thousands of comments, and they are in the process of considering those comments.

The Secretary says there will be appropriate consideration so that there will not be an undue regulatory burden. He has received many complaints from the small packers who complained, understandably, about the cost in the testing, and there have been some complaints that they have not had enough of an input in the process. Secretary Glickman says that there will not be a final rule until there has been very substantial input from small business.

The second-degree amendment which has been offered by Senator JOHNSTON would exempt, as I understand it, the rulemaking process which Secretary Glickman is concerned about here but would not stop at a later time somebody going back and insisting on the kind of cost analysis which might invalidate the rule which the Department of Agriculture is considering at the present time.

A question which is on my mind is whether there should not be some input from the Secretary of Agriculture who could make recommendations so that we could have legislative language which would protect the small packers, the small business people and have some guarantees against excessive regulations, but which would not tie the Secretary's hands on taking the steps which are necessary to guarantee the safety of meat and poultry.

On this date of the record, it is my view at the moment, and I am prepared to listen to further argument, while the amendment by Senator JOHNSTON is a significant step forward in exempting the current regulatory process at least for the time being, that it is not a guarantee that there will not be some revision at a later time which would jeopardize the sanitary condition of meat and poultry.

My colleague from Utah, the distinguished chairman of the Judiciary Committee, asked me to review it to try to give him my thinking, because there is a vote count going on now. As I see it at the moment, I would support the Johnston amendment, but similarly I would support the Daschle amendment. I told my colleague from Utah it might be useful to have a discussion on the record.

Mr. HATCH. I appreciate my colleague's candor. Actually, the Dole amendment yesterday solved the problem. Johnston solves it even further. What apparently the Secretary of Agriculture does not like is the petition process provided in this bill. I just suggest that if, 5 years from now, science dictates there is a need for a change, what is wrong with having the petition process to help to effectuate that change? That is what is provided for here.

The fact of the matter is that the Daschle amendment exempts the Department of Agriculture rules asserting hazard analysis and critical control point systems from S. 343. Those are the systems that deal with E. coli in meat and poultry. Now, it is not necessary because yesterday the Senate, by a large margin, accepted Senator DOLE's amendment that makes it absolutely clear what was already present in S. 343, that the bill contains emergency exemptions from cost-benefit analysis and risk assessment requirements of the bill. Consequently, where an emergency exists, where food safety from E. coli bacteria exists, S. 343 would permit and allow for a prompt promulgation of the HACCP rules.

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

Mr. HATCH. First, I will add one other thing. The Johnston amendment takes care of the problem without exempting a rule from the bill, which is a very bad precedent. If we exempt one rule, everybody will be in here with their own special rules. We think all of the agencies should have the obligation under this bill to pass reasonable regulations.

The Johnston amendment makes clear that the proposed rules in the pipeline as of April 1, 1995, will not have to redo cost-benefit analysis and risk assessment. This applies to the E. coli and food safety USDA-proposed rules, as well.

Now, as I understand it—and I think it is a silly argument—those arguments for the Daschle amendment want a complete exemption for the Department of Agriculture rules because that would mean there would be no costly petition pursuant to section 633 of S. 343, and the petition need not be done. I call that silly because the petition process should lie for proposed rules prior to April 1, 1995. If it turns out that scientific assumptions underlying the bill are erroneous, or the rule turns out to be burdensome, why not allow for the petition and the agency rule? The rule would still be in effect if the petition is filed, so one can argue that safety will not be harmed.

So we do not think that is essential. We think JOHNSTON covers the problem and DOLE does. We do not think there should be an exception for one aspect of regulation that would open the bill for all kinds of arguments that other aspects should be accepted at all. The petition process guarantees that we have the best science, and that petition process goes on for years.

Mr. SPECTER. If my colleague will yield for a question, there are a number of questions I would like to discuss with the Senator from Utah, but I will start with the core question. When you talk about not wanting to have an exception because then you would have other exceptions, is not the issue of safety and health as it relates to meat and poultry a very, very unique circumstance which justifies an exception for that very important category? What other categories would the Senator from Utah anticipate seeking exemptions? Because if there are other categories where an exemption is accorded on a case-by-case basis, I think that is something the Senate ought to consider.

Mr. JOHNSTON. If the Senator would allow me, Mr. President, I will answer. The unique circumstance of meat and poultry inspection is not unique, but it is an unusual circumstance, in that you have a rulemaking that is already mature, that has been out there for a couple of years, and they have already done a cost-benefit analysis and it is ready to go into operation, I think, later this year or early next year. In other words, it is ready to go, and the unusual circumstance is that you do not want to have to go back and redo that. And under the Johnston amendment, that would be exempted from the provisions of this bill, so that the rule can go into effect.

Now, with respect to future rulemakings, 2 years from now or 5 years from now, we are saying this activity, even though it deals with public health, ought to have to go through the same scientific evaluation as any rules,

because almost all of this bill is concerned either with safety, with health, or with the environment. If we are going to exempt this, then why not product safety? You know, automobiles kill a lot of people. Why not the Clean Air Act? The Clean Air Act kills more people than E. coli by factors of hundreds. Hundreds of people die because of asthma, or whatever, because of unclean air. There is no problem with emergency rules. We have that taken care of, and we have a further amendment, even better, to take care of that.

But the point is, you do not want to exempt future rules from scientific evaluation, from risk assessment, and from cost-benefit just because they deal with health, because almost everything deals with either health, safety, or the environment. We do want to exempt this rulemaking, which is ready to go forward and which will protect the public. We do not want to delay that.

The Secretary of Agriculture has a very legitimate concern there. But we do not want to come along on a case-by-case basis and exempt anything that relates to health or safety or the environment, which is important, too, because then you have no bill left.

Mr. SPECTER. Has there been an effort made to seek any exemption beyond this one on the Department of Agriculture?

Mr. JOHNSTON. As part of the unanimous consent, we had requested that there be an agreement that there be no other amendments once we vote on the Daschle amendment with respect to health or safety. That was not agreed to on this side.

Frankly, I have been asking around about what is next on that, and I have heard, well, there might be one on mammography, there might be one on cryptosporidium. Who knows? It is health and it is important, sure; everything is important. But under the Johnston amendment, any ongoing rulemaking is not going to be stopped. That is going to be allowed to go into operation. And if any emergency situation beyond that comes up, the bill will allow you to take care of the emergency situation. But if you have a new rulemaking, even though it relates to health, or safety, or the environment, that ought to pass scientific muster just like everything else because, look, great wrongs are committed in the name of health. In fact, most of the problems have been committed in the name of health.

Mr. SPECTER. Both ways.

Mr. JOHNSTON. Both ways. But we are correcting that with the Johnston amendment. And then, other than that, we subject all rules to good science. That is what this bill is basically about.

Mr. SPECTER. If I may reply for a moment to what the Senator from Louisiana has commented about. I would be interested to see in the unanimous consent request if the issue is just limited to the Department of Agriculture. That would be very weighing on my mind on how I vote on the Daschle amendment.

I support the Johnston amendment. I think it is a decisive step forward. I discussed this earlier today off the floor with the Senator from Louisiana. I think it is a step forward. But I want to know what other specific situations might rise to the level of the problem of the E. coli and the salmonella.

Is it not true, if I may ask, whether there is not a lookback procedure, as the expression is used, even with passage of the Johnston amendment, that would open the door to reevaluation of this regulatory process that the Secretary of Agriculture is now engaged in?

Mr. JOHNSTON. What it provides is that a year after the effective date, the Secretary or the agency shall list all rules which he or she thinks should be reviewed and that he or she thinks cannot pass muster under the bill; that is, where the benefits do not justify the costs.

So that the Secretary himself or herself, if they want to review one of these rules, they can. They can do that anyway, today.

In addition to that, if someone out there feels aggrieved, they can file a petition for a review. That is the lookback the Senator is talking about. But it is a high threshold.

They have to show a substantial likelihood that they could not meet the test. The basic test is that the benefits justify the cost.

Mr. SPECTER. To what extent does the Daschle amendment change that?

Mr. JOHNSTON. It would exempt it from any scientific evaluation as provided for in this bill whatever.

For the future, or lookback or anything else, this would be it. No questions asked. It would be business as usual with respect to this activity.

Mr. HATCH. If I could just add to my colleague from Pennsylvania, we do not believe anything should be exempt from S. 343, because what S. 343 requires is that we consistently push for the best science available.

Frankly, the problem the Johnston amendment does deal with is what you do with proposed rules before the effective date. The amendment would set the date of April 1, 1995, as the cutoff date. Anything before that date, including E. coli rules, will not have to redo already done risk assessments and cost-benefit analysis—if, in the discretion of the head of that agency, they have already done that.

We do not want to have to do unnecessary, duplicative risk assessments and cost-benefit analysis. That is what his amendment does.

Frankly, safety is not the issue in this matter. Safety is taken care of through the Johnston amendment. Money is really the issue. Frankly, there is little or no reason for the Daschle amendment, once we have the Johnston amendment.

Mr. SPECTER. I thank my colleagues. I will confer further with the Secretary and further study the matter.

Mr. JOHNSTON. Mr. President, I was going to suggest as a way to handle this unanimous consent that I send an amendment to the desk at this time, and that the unanimous consent refer to the amendment at the desk. I will not do so until Senator GLENN or the representative of the minority leader comes out.

I suggest if we do that, we send a Johnston amendment to the desk, have the unanimous consent refer to the Johnston amendment and to the Daschle amendment in the way that it is now stated.

Mr. President, I see Senator GLENN. I was going to suggest I send an amendment to the desk, and that the unanimous consent refer, then, to the amendment at the desk.

Mr. GLENN. Reserving the right to object, and I do object right now, we are spelling out what the changes are that have been made so we can comment on them briefly before we go to the unanimous consent request. That is being prepared. It should be ready within 4 or 5 minutes. I would rather do that and then send it to the desk.

Mr. JOHNSTON. The Senator could refer to it in the unanimous-consent.

Mr. HATCH. I do not see a problem of sending it to the desk.

Mr. GLENN. Mr. President, I still object until we have a chance to look at this.

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

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

The Chair, in his capacity as a Senator from the State of Wyoming, suggests the absence of a quorum.

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. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that Senator JOHNSTON be recognized to offer a first-degree amendment, the text of which both sides are acquainted with, and a vote occur on the first-degree amendment with no second-degree amendments in order after 5 minutes of debate, divided equally between Senators JOHNSTON and GLENN.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATCH. I further ask that following the vote on the Johnston amendment, Senator DASCHLE be recognized to offer a first-degree amendment, the text of which is the pending Daschle amendment, with no second-degree amendments in order, and a vote occur immediately on the amendment without any intervening debate or action.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATCH. Finally, I ask unanimous consent that following the disposition of the Daschle amendment, no other amendments regarding the USDA HACCP rules proposed on February 3, 1995, be in order during the pendency of S. 343.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 1504 TO AMENDMENT NO. 1487

(Purpose: To provide that risk assessments conducted to support proposed rules may be used to support final rules that are not substantially different with respect to the risk being addressed)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for himself, Mr. HATCH, and Mr. ROTH, proposes an amendment numbered 1504 to amendment No. 1487.

Mr. JOHNSTON. 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:

On page 50, between lines 15 and 16, insert the following new paragraph:

''(4) If the agency head determines that—

(A) a final major rule subject to this subchapter is substantially similar to the proposed major rule with respect to the risk being addressed;

(B) a risk assessment for the proposed major rule has been carried out in substantial accordance with section 633; and

(C) a new risk assessment for the final rule is not required in order to respond to comments received during the period for comment on the proposed rule; the head of the agency may publish such determination along with the final rule in lieu of preparing a new risk assessment for the final rule.''

1. On page 19 strike out lines 11 through 13 and the words ''than 30 days after such date of enactment),''.

2. On page 20, line 9 strike out the words ''(or, in the case of a notice of proposed rulemaking'' and strike out lines 10 through 12.

3. On page 43, amend line 11 to read ''agency after the effective date of this subchapter''; strike out lines 12 and 13; and strike out ''section 623'' on line 14.

4. On page 48 amend lines 4 and 5 to read ''effective date of this subchapter, the head of each''.

5. On page 97 relable subsection (b) as subsection (c) and insert a new subsection (b) as follows:

''(b) Any rulemaking pending on July 12, 1995 for which a notice of proposed rulemaking or a proposed rulemake has been published in the Federal register before April 1, 1995 shall not be subject to the provisions of subchapter II or subchapter III of chapter 6 of title 5 U.S. Code except for section 623 (relating to review of rules).''

Mr. JOHNSTON. Mr. President, I think it is fair to say that the Johnston amendment will not be opposed because the Johnston amendment is not now a substitute to the Daschle amendment; the Johnston amendment is a freestanding amendment which exempts the inspection of meat provisions from this subchapter. In other words, it allows that rule to go forward without any delay at all. I believe everyone is for that.

The controversial amendment will be the Daschle amendment which will follow this because, if and when we adopt the Johnston amendment, it will solve the problem of the rulemaking. But what it will do is exempt totally the whole area from future rulemaking. If we do that with respect to inspection of meat and poultry, then what is next? Cryptosporidium, clean water, the Clean Air Act, car seats for kids, radioactivity? It sets a precedent to exempt everything from this bill and, if health is the standard by which you exempt matters from scientific determination, then why do a risk assessment at all because almost everything in this bill—almost everything—has to do with health, safety, or the environment.

So, Mr. President, I ask my colleagues to vote for the Johnston amendment. I expect that almost everyone will. I urge that they vote against the Daschle amendment, as that undermines this whole bill because it sets a precedent for taking everything out of risk assessment and cost-benefit analysis and scientific determination.

I reserve the remainder of my time.

Mr. GLENN. Mr. President, the Johnston amendment, as revised, will exempt from the cost-benefit and risk assessment provisions of this bill any pending rules proposed before April 1 of this year. However, Senator JOHNSTON's amendment does not solve the E. coli problem, since it would continue to subject the HHCCP rule to a petition and look-back process, as well as judicial review. That is of considerable concern. These procedures could expose this important public health rule to unnecessary and potentially life-threatening delay.

In addition, Senator JOHNSTON's amendment would continue to apply the requirements of this bill to many rules now in the pipeline which were proposed after April 1. Those rules would be subject to all of the requirements of the bill—cost-benefit analysis, risk assessment petitions, and look-back.

This amendment would continue to allow the bill to delay rules that are currently in the pipeline, such as protections against cryptosporidium, unsafe mammography standards, and other important rules.

For that reason, I urge my colleagues to vote no on the Johnston amendment and yes on the Daschle amendment, which would clearly permit the HHCCP rule, a rule that would protect the public from tainted meat, to go forward without change.

I reserve the remainder of my time.

Mr. JOHNSTON. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 20 seconds.

Mr. JOHNSTON. Mr. President, I am surprised that Senator GLENN is now opposing the Johnston amendment because earlier today he said if the Johnston amendment were freestanding, he would support it. It is still a good amendment. It takes care of the problem. It prevents any delay in any pending rule now, and I urge my colleagues to vote for it.

Mr. GLENN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 1 minute and 6 seconds.

Mr. GLENN. Earlier today, I said I might. I wanted to see the language. I think it was good that I said that earlier. We have had a couple of changes here in the middle of the unanimous-consent request that changed the nature of this.

So I did not make a commitment to vote for this in whatever form it might come up. I am for the general principle being proposed, but not the way this was developed today.

So I yield the remainder of my time, and I am ready to go to a vote.

Mr. JOHNSTON. I ask for the yeas and nays.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. GLENN. I yield back the remainder of my time.

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

The legislative clerk called the roll.

The PRESIDING OFFICER (Ms. SNOWE). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 69, nays 31, as follows:

[Rollcall Vote No. 301 Leg.]

YEAS—69

Abraham	Exon	Lugar
Ashcroft	Faircloth	Mack
Baucus	Ford	McCain
Bennett	Frist	McConnell
Bingaman	Gorton	Murkowski
Bond	Gramm	Nickles
Breaux	Grams	Nunn
Brown	Grassley	Packwood
Bumpers	Gregg	Pressler
Burns	Harkin	Pryor
Byrd	Hatch	Robb
Campbell	Hatfield	Roth
Chafee	Heflin	Santorum
Coats	Helms	Shelby
Cochran	Hollings	Simpson
Cohen	Hutchison	Smith
Conrad	Inhofe	Snowe
Coverdell	Jeffords	Specter
Craig	Johnston	Stevens
D'Amato	Kassebaum	Thomas
DeWine	Kempthorne	Thompson
Dole	Kyl	Thurmond
Domenici	Lott	Warner

NAYS—31

Akaka	Feinstein	Leahy
Biden	Glenn	Levin
Boxer	Graham	Lieberman
Bradley	Inouye	Mikulski
Bryan	Kennedy	Moseley-Braun
Daschle	Kerrey	Moynihan
Dodd	Kerry	Murray
Dorgan	Kohl	
Feingold	Lautenberg	

Pell	Rockefeller	Simon
Reid	Sarbanes	Wellstone

So the amendment (No. 1504) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I ask for the yeas and nays on the Daschle amendment.

The PRESIDING OFFICER. Has the amendment been proposed?

AMENDMENT NO. 1505 TO AMENDMENT NO. 1487

(Purpose: To protect public health by ensuring timely completion of the United States Department of Agriculture's rulemaking on ''Pathogen Reduction: Hazard Analysis and Critical Control Point (HACCP) Systems'' (proposed rule, 60 Fed. Reg. 6774, et al., February 3, 1995)

Mr. DASCHLE. Mr. President, I call up the amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 1505 to amendment No. 1487.

Mr. DASCHLE. 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:

On page 19, line 5, stike out ''or''.

On page 19, line 7, strike out the period and insert in lieu thereof a semicolon and ''or''.

On page 19, add after line 7, the following new subparagraph:

''(xiii) the rule proposed by the United States Department of Agriculture on February 3, 1995, entitled ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (proposed rule, 60 Fed. Reg. 6774, et al.).''.

Mr. HATCH. Madam President, I ask for the yeas and nays on the Daschle amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second

The yeas and nays were ordered.

Mr. DOLE. Madam President, I will just say, we are not making much progress on this bill. We hope to have votes on into the evening. So I hope we will have some volunteers ready to offer amendments right after this vote.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1505. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 49, nays 51, as follows:

[Rollcall Vote No. 302 Leg.]

YEAS—49

Akaka	Bradley	Cohen
Baucus	Bryan	Conrad
Biden	Bumpers	Daschle
Bingaman	Byrd	Dodd
Boxer	Chafee	Dorgan
Exon	Kerry	Pryor
Feingold	Kohl	Reid
Feinstein	Lautenberg	Robb
Ford	Leahy	Rockefeller
Glenn	Levin	Sarbanes
Graham	Lieberman	Simon
Harkin	Mikulski	Snowe
Hollings	Moseley-Braun	Specter
Inouye	Moynihan	Thompson
Jeffords	Murray	Wellstone
Kennedy	Nunn	
Kerrey	Pell	

NAYS—51

Abraham	Frist	Lugar
Ashcroft	Gorton	Mack
Bennett	Gramm	McCain
Bond	Grams	McConnell
Breaux	Grassley	Murkowski
Brown	Gregg	Nickles
Burns	Hatch	Packwood
Campbell	Hatfield	Pressler
Coats	Heflin	Roth
Cochran	Helms	Santorum
Coverdell	Hutchison	Shelby
Craig	Inhofe	Simpson
D'Amato	Johnston	Smith
DeWine	Kassebaum	Stevens
Dole	Kempthorne	Thomas
Domenici	Kyl	Thurmond
Faircloth	Lott	Warner

So the amendment (No. 1505) was rejected.

Mr. JOHNSTON. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senate majority leader.

Mr. DOLE. Madam President, I understand—if I could have the attention of my colleagues—I understand the Senator from Wisconsin has an amendment on which he is willing to accept a time agreement of 30 minutes. We were going to propose 30 minutes and any second-degree amendment be limited to 20 minutes equally divided and must be relevant to the first-degree amendment.

I do not have a copy of the second-degree amendment. There may be one or more second-degree amendments. But if we could start off on the premise that the Senator from Wisconsin had 30 minutes, maybe by the time he finishes, we will have a copy of the second-degree amendment. Will that be OK?

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senate minority leader.

Mr. DASCHLE. Madam President, we would certainly want to accommodate some time agreement, but I think in order to accommodate any specific time agreement, we would want to see the second-degree amendment. If we could do that, just as soon as we see it and have a chance to look at it, I think we could lock into a time certain. But I would be reluctant to lock into any time until we had a chance to look at it.

Mr. DOLE. In the meantime, the Senator from Wisconsin will proceed on the basis we hope to have a time agreement?

Mr. DASCHLE. That will be all right.

Mr. DOLE. So any of my colleagues who would like to eat, I think it is safe to say there will be no votes until 8 p.m.

Mr. JOHNSTON. Madam President, how long did the majority leader wish to proceed?

Mr. DOLE. Hopefully for a while. I understand the Senator from Delaware will have an amendment following disposition of the amendment of the Senator from Wisconsin. We are not moving too quickly. There are still, as I understand it, numerous amendments. We have not had the major amendment from the other side, the Glenn amendment.

So, we will be here for a while yet this evening.

Mr. JOHNSTON. Madam President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. We have had some delays on both sides.

Mr. DOLE. Right.

Mr. JOHNSTON. We have a number of amendments we are sort of waiting to get cleared on the other side having to do with the problem Senator GLENN pointed out on 180 days within which to perform a risk assessment. We want to extend that to a year. That is something on which we are just waiting for an answer. It is a very simple, straightforward amendment.

There is another one having to do with Superfund. Those are really big amendments. If we got those adopted, I think it might change the sort of mood, our procedure.

They are not, apparently, ready, so I do not insist on it. But I hope we could get a procedure for clearing these amendments on the other side as well as on our side.

Mr. DOLE. Right. I do not know if we have had any cleared on either side, but I think we should try to cooperate where we can. As far as I know, nothing has been cleared.

Mr. KERRY. Will the majority leader yield for a moment? Madam President, I ask the majority leader. We have a list, a series of sort of major items, and then some less major, that have been presented some time ago. We did, in the day before we departed for the recess, have a negotiating process that at least had just begun. That broke up with the notion that at some point we might hear from people whether we could get back and see if we could make more progress.

It is my sense the Senator from Utah has, in good faith, offered to sit down. The Senator from Louisiana has. The difficulty is both of them have also had a requirement to be on the floor for a significant period of time, so it is very hard to try to accomplish what I think might be possible, which is to have progress in the negotiating effort.

I do not know if that means, therefore, it might make sense to have a prolonged quorum call in the morning, or maybe come in a little later and give us time to get together and see if we could find some commonality. But we are still waiting for a response with

some specificity to those things that have been submitted.

Mr. HATCH. If I could answer the distinguished Senator?

Mr. DOLE. I will be happy to yield to the Senator from Utah for that purpose.

Mr. HATCH. If I could answer the distinguished Senator, it is my understanding that both sides are pretty well aware of what we can agree to and what we cannot agree to. But I would be happy to sit down in the morning and go over every detail and see what we can do.

But we have given responses to that. It is my understanding staff has been informed of what our positions are.

Mr. KERRY. Well, Senator——

Mr. HATCH. If that is not so, I will be happy—I would be happy to sit down anyway, because there may be things we can work out.

Mr. KERRY. It was my understanding, in conversations a few moments ago with the Senator from Louisiana, that he thought we had the capacity to accommodate a particular concern on the decisional criteria which we had some colloquy on yesterday on the floor and some further conversation on today.

Mr. HATCH. Let us sit down and see if we can.

Mr. KERRY. But we still do not actually have language or an agreement to do so, so we are in this sort of nebulous area. I think it would be helpful if we could find the time to work through those critical areas. At that point, a lot of our people who would like to vote for this bill if we can fix these things will have the ability to decide whether we are close to that, whether that is a reality or not. I think it would help determine what the course will be on this legislation.

Mr. DOLE. We had a brief discussion last night, I guess before we adjourned, with the Senator from Louisiana because the Senator from Ohio raised a question last evening about 9 major areas of difference and 23 minor areas of difference which consumed—I do not know—25 or 30 pages of suggestions, or a number of pages.

I think we are in the process—at least I understand Senator HATCH and Senator JOHNSTON may be in the process—of going through those one by one trying to get some response to the Senator from Ohio. But that does not mean we should not meet and see if we cannot make further progress.

Mr. JOHNSTON. Mr. President, if the leader will yield, I have completed that process and given answers for those. But we will be happy to meet as well and talk about what the answers are.

Mr. LEVIN. If the leader will also yield for that, I understand from the Senator from Utah that the responses that we now have that we can take a look at overnight are also reflecting his own views and the views of others on that side of the aisle.

Is that fair?

Mr. HATCH. I think that is fair. I think it is correct. Of course, we are going to continue this dialog throughout this process. There will be an attempt to accommodate folks on both sides of the aisle. We are getting down to where we are going to have to battle out some of these issues.

Mr. DOLE. We have, I might add, requests for morning business for about an hour and a half in the morning. That might accommodate concerns, and give Senators time to sit down and at least go over each of the items.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DASCHLE. It is my understanding that the Senator from Wisconsin will be recognized to offer his amendment.

The PRESIDING OFFICER. That is correct.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 1506 TO AMENDMENT NO. 1487

(Purpose: To protect the public from the dangers of Cryptosporidium and other drinking water hazards by ensuring timely completion of rulemaking to protect the safety of drinking water from microbial and other risks)

Mr. KOHL. Madam 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 Wisconsin [Mr. KOHL], for himself, Mr. DASCHLE, Mr. GLENN, Mr. FEINGOLD, Mr. LAUTENBERG, and Mrs. BOXER, proposes an amendment numbered 1506 to amendment numbered 1487.

Mr. KOHL. Madam 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:

On page 19, line 5, strike out ''or''.

On page 19, line 7, strike out the period and insert in lieu thereof a semicolon and ''or''.

On page 19, add after line 7 the following new subparagraph:

''(xiii) any rule proposed or promulgated by the Environmental Protection Agency that relates to the control of microbial and disinfection byproduct risks to human health in drinking water supplies.''

Mr. KOHL. Madam President, we have heard the arguments made by proponents of S. 343 stating that the emergency exemption section of this bill will protect urgent health and safety regulations in the pipeline. However, a careful reading of the legislation reveals that many essential regulations would not be protected under this section or the bill as a whole. My amendment will address a particularly serious omission: namely regulations to protect the public from the dangers of cryptosporidium and other drinking water hazards.

Simply, what my amendment does is exempt pending EPA regulations regarding cryptosporidium and related waterborne parasites from the strictures of this bill.

Unfortunately, I am all too familiar with the cryptosporidium parasite because of the recent outbreak of this waterborne disease in my State of Wisconsin. As many may recall, the water supply in Milwaukee was contaminated with this parasite in 1993, and 104 people died. Let me repeat, 104 people died. And more than 400,000 became severely ill as a result of drinking ordinary tap water.

As we continue this debate, I urge my colleagues to keep in mind, this bill is not just about how many forms businesses should be required to fill out, this bill is about peoples' lives.

Over the years, we have come to take for granted the safety of our drinking water. We have done much to protect American water consumers from devastating waterborne disease and death that plagues so many other countries in the world. But we have become complacent about the safety of our drinking water—perhaps too complacent.

In the aftermath of the Milwaukee cryptosporidium outbreak, EPA, water utility organizations, local government officials, and public interest groups have worked together to agree upon a plan of action. All parties agree that the cryptosporidium problem must be addressed. And now all parties have agreed on the way to fix this problem. EPA is in the process of issuing three regulations to implement this agreement, in order to prevent the devastation that crippled Milwaukee from occurring again. But S. 343 threatens to stop the process dead in its tracks. While that may not be the intention, I believe that that will be the outcome.

In cooperation with the regulated industry and public interest groups, EPA is moving forward on three regulations:

First, the information collection rule, which requires water utilities to collect data about the contaminants, like cryptosporidium, in their water. Based on the information collected, the next two regulations will be finalized.

Second, the enhanced surface water treatment rule, which, based on the information collected, will require new treatment and filtration methods to protect against cryptosporidium and related parasites, and

Third, the disinfectants/disinfection byproducts rule, which will propose standards on certain harmful byproducts that are created as a result of using chemical disinfectants to treat drinking water.

This is not an example of a Federal agency issuing ridiculous regulations in a vacuum. Instead, this is an example of the Federal Government finally addressing a problem that should have been addressed long ago. And it is an example of a cooperative effort with all involved parties.

Given the overwhelming need and support for these regulations, we should not be subjecting these regulations to the time consuming and extremely complicated labyrinth of S. 343.

I would like to briefly mention just a few of the problems that S. 343 poses for the pending cryptosporidium protection regulations.

First, S. 343 would stop EPA from gathering information on cryptosporidium. One of the first things EPA is doing, even before setting drinking water standards, is to gather information from water utilities to gain a better understanding of the problem. This is a common sense approach. The information gathered will help the agency and the water utilities gain a better understanding of the nature of the cryptosporidium problem and other less-known waterborne parasites. The rules cost would make this information collection rule subject to the strictures of the bill. But this creates a catch–22: The whole purpose of this rule is to gather information to be able to judge the costs and benefits of creating new standards to protect against waterborne diseases. So it would be impossible to do a cost benefit analysis on the effort to gather data. This makes no sense.

A second problem with S. 343 is that it could stop EPA from issuing stronger drinking water rules altogether. Without the information collection EPA has proposed, it will be impossible for EPA to conduct a full risk assessment as required under S. 343. Further, S. 343 makes it nearly impossible for EPA to specify the technology needed to adequately treat water to address cryptosporidium. Instead, the bill requires use of least cost alternatives, and establishment of vague performance goals that make it difficult to protect consumers.

It is highly unlikely that these regulations would be covered by the emergency exemption in the bill. How could the EPA possibly win a court challenge—and I am certain there would be a court challenge—on whether this rule is responding to an emergency? The information collection rule, which starts the whole process, is to determine the extent to which there is an emergency. Certainly for those of us who have watched the human devastation in Milwaukee, there is no question that an emergency exists. And I know that my colleagues from Texas, Georgia, Oregon, Nevada, and other States that have had recent outbreaks view this as an emergency, as well. But we still must determine the extent of the problem nationwide. And that's a time consuming process. Can you imagine the opponents saying, ''Well, if you're planning to spend 18 months collecting information it can't really be an 'emergency.' ''

One final note on the emergency exemption we have been hearing so much about. The emergency exemption just delays the cost benefit analysis requirement by 180 days. It does not waive the cost benefit analysis. Having to do a risk benefit analysis mid stream would disrupt the data collection process.

Madam President, I urge my colleagues to support this amendment to protect the drinking water rules which are in the works. More than 45 million Americans use tap water from systems that have been found to have cryptosporidium. Everyone agrees that we have a problem here. And, everyone agrees on the solution. My reading of the Dole-Johnston bill is that it would certainly delay and even stop this solution. My amendment would ensure that does not happen.

Madam President, S. 343 is intended to streamline the regulatory process and bring common sense to government. However, there are times when lack of action on the part of the Federal Government does not make sense. If we had stricter water treatment standards in place, maybe the tragedy in Milwaukee would not have happened.

I yield the floor.

The PRESIDING OFFICER (Mr. DEWINE). Is there further debate on the amendment?

Mr. FEINGOLD. Mr. President, I rise today in full support of the amendment proposed by my colleague from Wisconsin [Mr. KOHL]. I cannot express to my colleagues in the Senate the significant urgency with which regulations on cryptosporidium, other waterborne parasites, and disinfection byproducts, need to move forward. EPA has negotiated a series of regulations with the cooperation of water utilities and public interest groups to require public water systems to test for cryptosporidium and other parasites and issued them as a proposed rule package. Using information from these negotiations, the EPA has also indicated its intent to prescribe particular treatment and filtration techniques to prevent waterborne disease outbreaks. Mr. President, this regulatory reform bill should support, not hinder, the results of negotiated rulemaking. Bringing the potentially regulated community together with the regulatory agency to discuss in a constructive way the content and scope of governmental requirements in negotiated rulemaking is the type of process that helps to ensure our objectives in regulatory reform.

Lest anyone in this body think that cryptosporidium is either just Milwaukee's problem, or an unfortunately vogue parasite brought into the limelight 2 years ago, cryptosporidium has been widely detected in public water systems, including here in Washington, DC, in 1994. In a September 30, 1994, CONGRESSIONAL RECORD statement, I described the contents of a three-part NBC news ''Dateline'' series that ran on cryptosporidium. Though the news show time limits prohibited a listing of all the cases of concern, the program reported that between 1986 and 1992, the Centers for Disease Control reported a total of 102 drinking water disease outbreaks linked directly or indirectly to microscopic parasites, viruses, and bacterium striking 34,155 people in 35 States.

Concerns with cryptosporidium outbreaks continue. On June 15, 1995, the CDC and EPA issued additional guidance for people with weakened immune systems, such as people with HIV and AIDS, cancer and transplant patients taking immunosuppressive drugs, and people with genetically weakened immune systems, to take extra precautions in consuming municipal water such as boiling their water or using a cyst-certified water filter to protect against cryptosporidium.

Some 400,000 people, of all States of health, became ill in Milwaukee and my colleague from Wisconsin and I have seen firsthand the ongoing health problems and the significant institutional response and coordination challenges that Milwaukee citizens continue to face, in the absence of regulation.

I also remain concerned about the health risks posed by disinfection byproducts, rules that were proposed to control the amount of disinfectant byproducts allowed in drinking water at the same time that safeguards would be strengthened against disease-causing microorganisms such as cryptosporidium. According to the fall 1994 EPA Journal, chemicals used to disinfect drinking water, such as chlorine, form byproducts that can harm human health. For example, chronic exposure to excessive amounts of trihalomethanes, a class of byproducts, can cause cancer, liver and kidney damage, heart and neurological effects, and effects on fetuses. The proposed rule would lower the maximum contaminant level for total trihalomethanes from 100 micrograms per liter to 80 and address 6 other byproducts.

In conclusion, our efforts to reform the regulatory process should not thwart rules that are needed and consensus-based, such as the rules on cryptosporidium. The citizens of Milwaukee, and indeed the citizens of many other major cities, are asking for the Government to respond to this public health concern. I believe exempting these rules from this bill is both the responsible public policy course, and the right thing to do.

Mr. ROTH. Mr. President, I make a point of order a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KOHL. 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. KOHL. Mr. President, I would like to insert in the RECORD supporters of the Kohl amendment to exempt microbial and disinfection byproduct rules from S. 343. Those organizations are: American Oceans Campaign, Clean Water Action, Environmental Working Group, Friends of the Earth, National Association of People with AIDS, Natural Resources Defense Council, Physicians for Social Responsibility, Sierra Club, and U.S. Public Interest Research Group.

Mr. President, 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. 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, let me congratulate the distinguished Senator from Wisconsin [Mr. KOHL] for taking the initiative on this matter. His constituents were hard hit in Milwaukee not long ago when they had some of these problems with cryptosporidium. It resulted in around 100 deaths and some 400,000 people ill. So he brings this to our attention. He certainly has the personal experience of knowing what happened back right where he lives with people he knows.

For that reason, I fully support the Senator from Wisconsin on this amendment to ensure the health and safety of our people. As I stated earlier when talking about the E. coli bacteria, this bill, S. 343, does not, in my opinion, provide that essential balance of regulatory relief and protection of the American people, and there does have to be that kind of a balance.

That is why I supported the minority leader's amendment on the USDA E. coli meat and poultry inspection rule. And that is why I support this amendment on rules addressing cryptosporidium. The current dangers to public health from contaminated drinking water were made clear by the outbreak of cryptosporidium in the water supply of Milwaukee, WI. As I said a moment ago, it resulted in an estimated 100 deaths and over 400,000 illnesses. I do not know the population of Milwaukee, but that means just about everybody around that area was sick for a while—400,000 people ill, and some ill enough that around 100 died from this—died.

So the amendment of the Senator from Wisconsin would exempt this critically important rule from the burdensome requirements of this bill. I support this amendment in order to show how important rules that are already underway will be delayed and can be stopped by the regulatory reform bill before us.

I stated earlier the situation with this rule reminds me of the regulatory moratorium we had before us not long ago except now we are calling it regulatory reform. Rules that are in the pipeline and will be final soon must still go back to square one all over again. Even with the emergency exemption that the proponents of S. 343 keep pointing to, this rule would still be subject to all the petition provisions, be subject to all the judicial review opportunities, the agency review of rules, and et cetera, all the things that are provided.

Also, the emergency exemption in S. 343 does not really exempt anything from the bill. It would be only temporary at best. It only provides for a 180-day grace period after issuance of the rule. That is, it gives an agency an additional 180 days to comply with the requirements of the bill and that is it.

Now, at the end of the 180 days, all of the onerous requirements of S. 343 kick in again. No exemption then. Just new opportunities for challenges, uncertainty, and delay.

Now, I guess the people who wrote this assume that 180 days was enough to do all the investigating that would have to be done. But some of these rules and regulations take years and years to finalize. Yet, we are saying, Do this within 180 days or you have to go back and start all this all over again. It is just a new opportunity for challenges, uncertainty and delay.

What will happen to the implementation of the rule when it faces those prospects? Well, regardless of the Senator from Wisconsin's amendment, the cryptosporidium rule will be caught in the vise of S. 343 and public health will suffer. The potential delays for this rule are very real. So there will be the additional deaths and sicknesses. They will be very real, too. Those sicknesses and deaths will be to those Americans who possibly assume wrongly that their water is safe to drink.

This amendment is certainly a step in the right direction to protect the health of the American people. But it certainly is not enough. S. 343 will catch other important rules, and overall it will make the jobs of the agencies to protect health, safety, and the environment much more difficult.

S. 343 simply does not fulfill my two principles for regulatory reform: regulatory relief and protection for the American people. And I repeat for the umpteenth time on the floor, there has to be a balance between those two. That is why I, along with Senator CHAFEE and many others, have introduced S. 1001, which we believe is a balanced regulatory reform proposal. It is a tough bill. It is not an easy bill. But our bill would not shut down these important rules that are already in the pipeline.

So I urge my colleagues to support this amendment. I strongly encourage them to take a hard look at our alternative proposal for regulatory reform, S. 1001. It makes amendments like this unnecessary.

Mr. President, I would like to also talk for a moment about problems for control of cryptosporidium with the amendment to exempt prior proposed rules, the Johnston amendment, so-called, that we just passed.

Now, the amendment we passed, which I voted against, would raise several problems for control of cryptosporidium, even apart from the likelihood that the continued application of the section 623 petition process would have the effect of nullifying the exemption.

First, the interim enhanced surface water treatment rule [IESWTR] to address waterborne microbial contamination, was proposed on July 29, 1994. This proposal did not actually contain a specific approach to control such contamination, but as an integral part of the negotiated agreement with stakeholders, including the drinking water industry, it set forth general control options that might be part of a final rule and request for other options. This was done because, per the agreement, the final rule was to be developed after and based on a large effort by the industry to gather scientific information on microbial and related drinking water contaminants. By being made very general as controls, as agreed, the proposal would expedite the regulatory process after the data collection.

Second, given how little of necessity that the proposed IESWTR told about the controls to be required in a final IESWTR, judges may conclude it would be irrational to apply the exemption to a proposed rule which arguably does not fulfill the normal function of a proposal—to describe the initially intended direction of the regulatory agency's approach to controls on the particular issue.

Now, given the general rule of legal interpretation that the legislative body not be presumed to have intended an irrational result and the concern elsewhere in the bill, and in this amendment, that notice in the Johnston amendment—that notice suggests final rules should be substantially similar—substantially similar to proposed rules, some judges might find this a basis for deciding that Congress could not have intended any proposal made before April 1, 1995, to include this proposal.

Further, as the word interim suggests, the regulatory negotiation left open the potential that further controls might be needed for cryptosporidium, and the IESWTR did not necessarily represent the full regulatory response appropriate for cryptosporidium. The concept for the interim rule to be promulgated as quickly as reasonably possible after the information collection was completed shows the intent of the reg neg to put in place—regulatory negotiation—to put in place whatever controls were quickly attainable but still solidly science based.

Thereafter, if implementation of the interim-enhanced surface water treatment rule left a substantial remaining risk to health from cryptosporidium, that risk could be addressed in an enhanced surface water treatment rule. Therefore, even if the proposed IESWTR did prove to be exempted under this amendment, any later enhanced surface water treatment rule clearly would not be exempted. I bring that up because it does apply to cryptosporidium and specifically with regard to the Johnston amendment that we passed just a short time ago.

So once again I urge my colleagues to support the amendment by the distinguished Senator from Wisconsin. He points out the dangers because there were dangers in his State that resulted in around 100 people dying and some

400,000 ill. I think knowing that the danger, knowing that that is what has already occurred, to say that we should take any chance at all or make any requirement for going back and doing new analysis, new risk assessment, we know the risk is there. Doing new cost-benefit ratios, doing new everything when we know what the danger is, I think would be a mistake.

So I fully support the distinguished Senator from Wisconsin, and I would urge my colleagues to support this amendment when we have a vote here in a half hour or so. And I hope that it will pass because it is something that is needed to protect the health and safety of this country so we do not have more outbreaks such as the disastrous one that happened in Milwaukee.

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. KOHL. I ask unanimous consent that the quorum call be rescinded.

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

Mr. KOHL. I would like to thank very much my colleague from Ohio for the kind words he said about this amendment and, of course, for the arguments most importantly that he has presented in support of this amendment.

In the aftermath of the Milwaukee incident, Mr. President, EPA negotiated a package of regulations to protect citizens against future outbreaks. All interested parties participated in this regulatory negotiation, people like water utilities, local officials, public interest groups, and others. And now all parties have agreed to these regulations. They feel strongly about moving ahead as quickly as possible.

I ask unanimous consent to have printed in the RECORD the very broad list of groups that have participated in the very cooperative, commonsense regulatory process.

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

REGULATORY NEGOTIATION COMMITTEE, DISINFECTANTS AND DISINFECTION BYPRODUCTS RULE, MEMBERSHIP LIST

Scott Bernstein, Center for Neighborhood Technology, Chicago, IL; David Bailey, Environmental Defense Fund, Washington, DC; James R. Elder, Director, Office of Groundwater and Drinking Water, U.S. Environmental Protection Agency, Washington, DC; Paul Foran, Illinois Commerce Commission, Danville, IL—representing National Association of Regulated Utilities Commissioners; Joe Glicker, Portland Water Bureau, Portland, OR—representing unfiltered surface water systems; Barker G. Hamill, Chief, Bureau of Safe Drinking Water, Dept. of Environmental Protection and Energy, New Jersey Department of Environmental Protection, Trenton, NJ—representing Association of State Drinking Water Administrators; George Haskew, President, Hackensack Water Company, Harrington Park, NJ—representing American Water Works Association; Robert J. Hirsch, Council Member, City of Myrtle Beach, Myrtle Beach, SC—representing National League of Cities; Donald Jackson, South Central Connecticut Regional Water Authority, Branford, CT—representing Association of Metropolitan Water Agencies; Edward G. Means, Director, Water Quality, Metropolitan Water District of Southern California, Los Angeles, CA—representing National Water Resources Association; Kim Mortensen, Chair, Bureau of Epidemiology and Toxicology, Ohio Department of Health, Columbus, OH—representing Association of State and Territorial Health Officials; Erik Olson, Senior Attorney, National Resources Defense Council, Washington, DC; David Ozonoff, School of Public Health, Boston University, Boston, MA—representing Conservation Law Foundation; Scott Rubin, Pennsylvania Office of the Consumer Advocate, Harrisburg, PA—representing National Association of State Utility Consumer Advocates; Margot F. Saunders, National Consumer Law Center, Washington, DC; Ronald Twillman, Manager of Laboratories, St. Louis County Water, St. Louis, MO—representing National Association of Water Companies; Chris Wiant, Director, Tri County Health Department, Englewood, CO—representing National Association of County Health Officials.

Mr. KOHL. 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. Without objection, it is so ordered.

Mr. HATCH. Mr. President, here we go again. This is a very similar amendment my dear colleague from Wisconsin has brought up. It is quite similar to what we have been debating for the last 2 days.

Yesterday the adoption of Senator DOLE's amendment makes crystal clear that S. 343 contains several provisions that deal with health and safety emergencies.

Any rule, including any proposed EPA rule dealing with cryptosporidium, is not delayed by the Dole-Johnston bill. The bill waives the requirement for notice and comment procedures when emergencies occur. I do not know how much more clear we can make it than we have made it in this bill.

The bill waives the cost-benefit requirements when emergencies occur. The bill waives the risk assessment requirements when emergencies occur. Simply put, S. 343 will not—let me just emphasize that, will not—in any way delay the promulgation of a rule when health and safety emergencies require quick public action.

I understand my colleague from Wisconsin—and I know he is very sincere and he is literally trying to solve a problem that he thinks does exist, but we have solved that problem in the prior language that has been put in this bill.

In any event, rules to protect against cryptosporidium microbes are already in place. The public safety is protected today. As we stand on the Senate floor, the public safety is protected.

When EPA enforces a rule, it does so through an adjudicatory order, not a rule. This is important. When an inspector or EPA official shuts down a water processing plant or water reservoir by an order, they do so by an order, not a rule. Such orders, which are not rulemakings, are explicitly exempt from S. 343—explicitly exempt from S. 343.

So nothing will stop the EPA from issuing an order, not a rule, but an order shutting down a water plant or a water processing plant if they find that plant and that water not to be safe.

As to the petition process, it is true that a proposed rule, such as the cryptosporidium proposed rule, may be subject to S. 343's petition process. But this is a good thing.

Why is it a good thing? Years from now when perhaps new science requires a new standard, why should we not put into this bill—which we have—a provision that a petition should be granted to require an agency to look at the latest scientific data? That is what is involved here. We just want all decisions in the future to be made on the best available science so that the decisions will be right.

More important, we put protections in this bill to make sure that the rulemaking by the regulatory agencies is done in the highest form and in the best sense. If a rule becomes burdensome, why should not the rule be reviewed? If we find that there is a scientific change that merits reviewing the rule, why should we not use the best science to do so? That is what this bill does. It is a commonsense bill. It is pure and simple common sense.

The Dole-Johnston bill protects health and safety. The Dole-Johnston bill does not delay the promulgation of emergency rules or even apply at all to orders that enforce agency health and safety rules. And that is something that has not been brought out in our debates up to now, that orders are not covered. Orders can be issued by these agencies and, frankly, emergency rules can be obtained where an emergency exists. The bill is explicit on it. The bill makes it clear. The bill protects the American public, and the bill requires that the best science be used through the years in these areas.

So there is no need for this amendment and, frankly, it is the same issue as we had with regard to the E. coli issue. We have solved that problem. We have an emergency provision in this bill that will allow true emergencies to be taken care of without worrying about risk assessment or cost-benefit analysis until afterwards. And in this particular case, the EPA can issue an order to correct it, if there was a cryptosporidium problem, without any consideration at all and would accomplish exactly what the distinguished Senator from Wisconsin would like to accomplish.

So I hope my colleagues will recognize this and realize that we have to get serious about passing a bill that

literally makes a lot of sense, makes common sense, invokes the best science available, not only today but as science develops into the future and, basically, does everything that we really need to have done to force the bureaucracy to be more responsible with regard to the issuance of rules.

That is why this bill is so important, because we can get rid of a lot of the irresponsibility of the bureaucracies in this society, bureaucracies that are eating us all alive and many times without justification, while at the same time upholding rules that are truly drafted, that work, that make sense, that are in the best interest of health and safety and meet the highest scientific standards necessary to protect the American public.

So I hope, as much as I respect my colleague from Wisconsin—and I do, and we work together on the Judiciary Committee—I believe that this amendment is not needed. I know it is not needed. The bill covers these problems, and I hope our colleagues will be willing to vote it down.

I yield the floor.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I would like to make it clear that I believe this is an emergency, and I would like to think my colleague from Utah agrees we have an emergency situation here. But we also have to understand this is not a situation where there can, under any circumstances, be quick action. This is not a situation where there can be an immediate order. We understand in order to gather the information necessary to promulgate the rules and regulations some amount of time necessarily, if unhappily, but necessarily will take place, and that is why, first, we have to understand we have to gather information.

So I say to my colleague from Utah that if he believes that this situation is covered in the bill, then let us just make it clear. There is no sense getting involved in belaboring the point. Again, if, as my colleague from Utah says, this matter is already addressed in the bill—I do not believe it is—but if he believes that it is addressed in the bill, then there should be no harm in reiterating this point. What I am saying is, let us not leave it later on to lawyers to dispute and to decide, to argue whether or not the bill covers this particular cryptosporidium problem.

Let us simply make it clear with this amendment that it does insert it into the bill in any way in which my colleague from Utah wishes to do that, because I think I hear him saying that there is a problem with cryptosporidium that needs to be addressed. I think he has said that very clearly. He is saying that the bill addresses it.

What we are saying—and what many people would say—is that the bill does not address it. So I do not think it is too much to ask of my colleague from Utah to understand that people are terribly concerned that S. 343 will not derail the cryptosporidium problem and that we are asking for his assurance in the bill that the cryptosporidium problem will not be put off the tracks because of the way in which the bill is written and because of the way in which lawyers then will be able to bring all kinds of arguments against taking action on cryptosporidium.

So I think that is a reasonable request insofar as our colleague agrees that the cryptosporidium problem needs to be addressed and should not be set aside by S. 343.

Mr. HATCH. I believe the cryptosporidium problem is being addressed here and under current law. We even make it stronger under this bill. But the important thing is that we do not think anything should be exempted from this bill, because this bill, by not exempting these matters, requires that the best available science, as it evolves into the future, be applied to these types of issues.

If we exempt cryptosporidium, make an exception for it—as the minority leader wanted to do with the last amendment on the E. coli and meat and poultry inspection problems—then we are not guaranteeing that we will apply the best and finest science into the future. We provide for emergency relief here. We do provide that orders are not to be interfered with. So there is plenty of power in the law right now to resolve this problem. This bill will help to do it anyway. The emergency provisions, I think, are more than adequate and, I think, crystal clear.

Mr. BIDEN addressed the Chair.

Mr. KOHL. Mr. President, I yield to my friend from Delaware.

Mr. BIDEN. Mr. President, I will ask a question of my friend from Utah, or a generic question. It seems to me that what is happening here on the last amendment and this amendment is that we are allowing ourselves to be captives of a rule that we are setting out that makes no sense. This generalized notion, when one states it, that there should be no exemption sounds like a rule of equity. There should be no exemption. But when cryptosporidium—not a thing you take home in your lunch pail to feed to your children, not a thing that anyone can find any rational basis for thinking it could be beneficial in the food or water chain anywhere along the line. To suggest that you cannot take something that is of nothing but destructive capacity when ingested by human beings and explicitly exempt it from this process that is being put in place, seems to me to make one a victim of your own rule—a rule that is of no value in and of itself.

This generalized notion that everything is on the table, everything has to be considered, is a little bit like saying that when we do the Federal budget, everything is on the table, including whether or not we have an army, or everything is on the table, including whether or not we continue to have a Constitution. There are certain things that are not on the table, and there is no value in anything other than keeping them off the table. Other things that are of such clear, damaging consequences to the public at large should be taken out of the general rule we have here, and we should say flatout, no, flatout cannot—cannot. There is no tolerance level for certain things.

I think we are getting caught up, and we are acting like lawyers. I am a lawyer, and I do not accuse my friend from Wisconsin of being a lawyer. I know he is not. Everybody always says, ''Do not call me a lawyer.'' Many of us here are lawyers, and we are sounding like lawyers. We are setting up rules. It is almost a tautology that we are constructing here. We are penalizing ourselves by making ourselves subscribe to a generalized proposition that makes no sense.

And so I compliment my friend from Wisconsin in insisting that this change take place. And I think, to put it on the other side of the coin, what the Senator from Utah is saying—what damage is done to this legislation by doing what the Senator from Wisconsin wants? If we are going to err, does it not make sense to err on the side of seeing to it that there is not a repeat of the situation that occurred in the Senator's State? Does it not make sense to err on that side? What damage are we doing to a specific industry, a specific economic interest, a specific company by doing what the Senator wants? And even if we were, so what?

I find this to be getting to be a very tortured discussion. So I hope our colleagues—and I know the last thing in the world my colleague from Utah would want to happen would be to change the law in such a way that we increase the possibility of what the Senator from Wisconsin is trying to prevent from happening again. This bill requires the agency to conduct all of the analysis required by this bill within 180 days, even if there is an emergency.

I thought an emergency meant an emergency. I do not think the American people think that when they talk about emergency, they are talking about 180 days. Is that an emergency? How many people could we lose in 180 days? How much damage can be done? That is 6 months. We are not talking about an emergency where somebody says, I found this out today and tomorrow it stops. That is, I think, an unrealistic timeframe for conducting risk assessment and peer review and cost-benefit analysis, all of which is required.

Assuming those requirements can be met, the bill then allows regulated parties to come in and challenge whether the benefits justify the cause, or that the agency adopt the cheapest regulatory alternative, or whether any analysis that is conducted has been done properly, or any number of other

issues that can be litigated under this bill. The rule could be tied up in litigation. The parties could seek injunctions to prevent it from going into effect, based on the cumbersome requirements of the bill. And once the rule went into effect, industry could also petition to seek a repeal of the rule, or seek interpretation of the rule, or seek a waiver or an alternative method of compliance. If denied, they could then litigate these issues again in court.

This bill already recognizes that some types of rules should be exempted from the requirements. For example, the bill already exempts rules affecting the banking industry—deposit insurance funds, the farm credit insurance fund. It exempts rules relating to financial responsibility of brokers, dealers of futures, commission merchants, and safeguarding investor security. It exempts anything relating to the introduction of a product into the market. Some of these exemptions could well be sensible on precautions, given the complex, cumbersome, expensive process required by this legislation. But certainly a rule affecting, in this case, cryptosporidium, or in the case of the last amendment, meat inspection and safety, is at least as important as to whether or not those exemptions which I just mentioned, including the banking industry and financial transactions, should be exempt.

So we do have in this legislation, in essence, what the Senator from Wisconsin is seeking.

But guess what it is for? It is not for public health and safety. It is for what my Republican friends seem most concerned about, and they should be concerned, I agree with their concern. But it seems they are concerned about property. Property. Not people—property.

Banking industry, deposit insurance, farm credit insurance. We exempt that, why not exempt things that kill people? I am not arguing we should not exempt what they exempted.

What I do not understand is the generalized statement made that everything is on the table. It is not all on the table. The rules affecting banking are not on the table the same way as the rest. Deposit insurance funds are not on the table the same as everything else.

It is kind of funny. It reminds me—I have been here a long time. I remember when there was a move for the neutron bomb back in the 1970's when Carter was President. The virtue of the neutron bomb was that it killed only people and does not destroy property. That was a really great benefit of the neutron bomb.

We are going to make it very, very difficult under the version my Republican friends are offering, to be able to protect the public on matters relating to things like cryptosporidium or E. coli and many other things, but not difficult to protect the public interest when it comes to Federal deposit insurance.

Now, I think we should do what we have done as it relates to these economic interests, but what I do not understand is why is the thing the Senator is talking about, which literally, if not handled well, causes death, human life is lost, why is it not treated the same way?

I suggest to my friend from Wisconsin, keep at it. Do not buy on—which I know he does not—to the argument that everything is on the table. Everything is not on the table. Everything is not being treated the same way. Things affecting public health and safety are put in one category because business has interest in those things. Things that affect business in terms of potentially being exposed financially are exempted from this cumbersome process.

Do not let them kid you, Senator. These folks understand what they are doing. They understand what they are doing. They are making it easier to make a mistake when it comes to public health and safety and making it, as they should, difficult to make a regulatory mistake when it comes to financial transactions.

I do not think that is what the American people want. I think if you gave them a choice, would they take a risk on a Federal bureaucrat overstepping his or her bounds when it came to clean water, or take a risk at overstepping their bounds when it came to financial institutions, what do you think they would pick? I think they would say, ''I would run the risk of having an overzealous person take care of my water, an overzealous person taking care of my meat, an overzealous person taking care of the air I breathe.''

I know the Senator from Wisconsin. We have worked together too long. If anybody abhors bureaucracy, it is the man from Wisconsin. The Senator is the most no-nonsense businessman I have ever come across.

That is why the Senator has been such a successful businessman as well as such as successful Senator. The Senator is one of the few people on the floor of this Senate who knows how cumbersome bureaucracy can be, who is frustrated by it as a businessman, and worked his way through it to become an incredibly successful businessman, is on the floor here saying, hey, wait a minute, we are going too far here.

I hope the public understands what this is about because it is so complicated. We can get so caught up in this. What does peer review mean? What does it mean when we are talking about all of these various aspects of the bill?

It comes down to simple things. From my standpoint, when it comes to cryptosporidium, which I can hardly pronounce but I know full well what the consequences of its ingestion, I am not as worried about some feckless bureaucrat out there exercising unreasonable power. I do not like bureaucrats exercising unreasonable power. But I want to say this is the place I least worry about it, least worry about it.

Let me say, I would rather have some obnoxious bureaucrat making sure there is no E. coli in the hamburger my kid eats at McDonald's than I would worry about a bureaucrat overstepping their bounds in terms of telling banks what they can and cannot do.

Is it not funny how this debate goes when it comes to money, when it comes to dollars? We do not want to fool around too much. When it comes to human life, when it comes to public health and public safety, well, then, we know how the bureaucrats are.

This is not a defense of bureaucrats. I am a cosponsor of the Glenn bill. I want to remind everyone when the Glenn bill came out in another form—same substance but under another title several months ago—the environmentalists were against it.

The Senator from Wisconsin and the Senator from Delaware are not up here being purists. We realize that bureaucracy gets in the way of business. We realize bureaucracy increases costs unnecessarily for consumers. We realize that Washington does not know all the answers, have all the answers.

That is what the Glenn bill does. But this goes too far. It goes too far. As I said, I think I will go back to my home State, I will not speak for the Senator's State or any other State in the Nation, even presumptuous for me to speak of my own State, although I think I understand it as well as anyone.

I have listened as hard as anyone over the last 25 years I have been in office. I make a bet. Ask them whether or not they are worried about whether or not someone is being overzealous and protecting their water, someone is being overzealous and protecting contaminants in the meat, or feces in the meat that they ingest, and whether that is something they really think the Senate should be worried about right now, and my guess is they are going to say ''You know, Senator, I don't think you are doing enough to make sure my water is clean. I don't think you are doing enough to make sure that the meat, the fish and the poultry I ingest lacks contaminants. I don't think you are doing enough to make sure that the environment and the air I breathe and the water I swim in and the beaches I bathe on are clean.''

''I do think you are right, Senator, that worrying about pink flamingos and spotted owls and endangered species can be taken to a ridiculous extreme. Senator, when it comes to the water my kid drinks, when it comes to the hamburger my kid eats, when it comes to the beach my kid swims on, I do not think you are doing enough.''

Is that not the essence of what this debate is about? Which side can we err on? I think the Senator from Wisconsin is erring on the right side. I would suggest that this notion that everything is on the table, treated the same way, is not accurate.

I yield the floor.

Mr. KOHL. I thank the Senator from Delaware. I could not agree more with his comments. He is talking very clearly about the things that affect human health and safety, the things that the American people have repeatedly insisted that they care about, are concerned about, and do not want to see any mistakes made concerning their human health and safety.

What happened in Milwaukee, which has happened to a lesser extent in other communities, but what happened in Milwaukee, we lost 104 people because the water developed a parasite that was not protected.

What the EPA now is doing, I want to say again, the EPA is now in the process, along with water utilities and other concerned interest groups, without anybody disputing the process that is unfolding, the EPA is in the process of collecting information which will result, finally, in setting up rules and regulations regarding the treatment of drinking water.

Now, I would challenge any Senator, the Senator from Utah or any other Senator, to come to Milwaukee and tell the people that in this regulatory reform bill the Milwaukee situation and the EPA process which is now unfolding is or is not absolutely protected.

I think if we would have to tell them that we think it is protected but we cannot absolutely guarantee that the process that is unfolding is protective, I do not think that any public official could stand up in Milwaukee and make the case and satisfy people in Milwaukee that he or she was doing his job.

We had the outbreak. We lost 104 people. And 400,000 people got sick. There is a process of unfolding to see it does not happen again, not only in Milwaukee but all across the country. What we are simply asking is that this process be guaranteed to unfold, and that there not be any chance that S. 343 could impede that happening. It seems to me, I suggest to my colleague from Utah, that is a reasonable request to make, and a reasonable assurance to ask for, as we move ahead with S. 343.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Utah is recognized.

Mr. HATCH. Mr. President, we have reached a point where I really appreciate my colleague. I know they have had a particular problem. I know he is trying to solve it, as he always does. He is a sincere, dedicated Senator, and I appreciate it personally. And he is a friend.

But the point that I am making is that in this bill it is crystal clear that the regulators have every right to treat any cryptosporidium situation as an emergency and to pass the necessary rule or obtain the necessary orders to stop it. There is no reason to add anything else to this bill with regard to cryptosporidium.

The real point here is that there is nothing in the Dole-Johnston bill that delays, harms, impedes or hinders the promulgation of rules that protect health and safety of the American people—nothing. In fact, there is everything in this bill that would lead one to—and the bureaucracy—to meet the highest scientific standards of the time, not just of today, but as we go into the future.

These are some of the real reasons why this bill is so important and why we cannot exempt anything from the coverage of this bill that might be subject to regulation. The reason is because the bill's main emphasis is on using the highest form of science in order to resolve this. When you exempt something, you do not have to do that.

We have been putting up with really almost 40 years, now, since 1958, with the Delaney clause. The Delaney clause was enacted at a time when we only could determine scientifically parts per thousand—parts per million at the very most—in 1958. Today, because of the scientific advancements that we have had, and because of the scientific attainments that we have attained over these last 40 years, we can now ascertain through science parts per quintillion.

What that means is, parts per quintillion is like having a teaspoonful of water as part of all of the Great Lakes system. Yet we have this stupid, idiotic Delaney clause that requires zero risk with regards to anything that might be carcinogenic. And we have grandfathered foods that are carcinogenic because they have long been used, and we have barred foods that are not, where there is just a negligible risk, or no risk, really, of getting cancer from eating these foods. The fact of the matter is, that is what is wrong when you try to exempt something from what really are good, scientifically based legislative bits of language.

This bill will take care of cryptosporidium. The current law will, but this bill even does more. Because nobody is going to have any delay in any emergency where the bureaucracy would act anyway. Because they would not have to go through a risk assessment or a cost-benefit analysis in an emergency, pre-issuing the rule or order or whatever it may be. They would have to do the cost-benefit analysis and risk assessment afterwards. But they could act immediately on any emergency situation. Any cryptosporidium problem would be resolved.

But more important, because we will not exempt cryptosporidium, the best possible science will be applied through the upcoming years; unlike the Delaney clause, where the worst possible science generally is applied, and where we, like I say, we do not know where we are. And where the rule is used to keep out substances and foods that really have no carcinogenic effect, where there is very negligible or very minimal—de minimis risk of harm to any human being—where we keep those off the marketplace. We have seen that time after time.

What we want to do, and what we are trying to do in this bill, is have the very best science we possibly can. We like the rule of common sense. We have no doubt that, if there is a threat to health and safety of the American population, and it becomes an emergency, that our regulators will immediately attack those problems. But they will attack them by having thought through this bill, and it is requisite that they do it in the right way and that they do it in a non-onerous way. They will not have to go through a risk assessment or a cost-benefit analysis before they act, in the case of true emergencies. Anybody who does not understand that does not understand the bill. There is absolutely no reason, absolutely no reason for us to make exemptions for, really, anything of this nature in the bill.

By the way, Senator KOHL has mentioned that EPA has negotiated an information-gathering rule dealing with cryptosporidium data, scheduled to be released next December. The argument just made that S. 343 will delay or impede the information-gathering rule is simply not true. The information-gathering rule is not covered by the cost-benefit and risk requirement provisions of the bill, of this bill. Research is not covered by the bill's requirements. So that needs to be made clear.

Just to make the point one more time, we do not want to exempt anything from this bill because we have confidence that our regulators are going to go after anything that threatens the health or safety of American citizens. I have no doubt about that. I do not think anybody else does either. We have provided specific language in this bill that, if there is a true emergency, they do not have to go through any delay at all. They can handle that emergency immediately. And we also provide in this bill, once the emergency is handled, that well into the future the very finest science is going to have to be applied in these instances.

Frankly, to go beyond that and to exempt something where we might wind up with another Delaney clause—I admit, people could say that is a stretch, but it is not. We do that all the time in this country. I think it is a real mistake. If you really want to solve the problem of cryptosporidium, then do it with the bill's language, where we provide for emergency relief by those who are concerned about these type of problems as they arise. And since cryptosporidium is something that everybody is concerned about, I cannot imagine any bureaucrat not being willing to solve the health and safety aspects of that particular problem.

We are prepared to go to a vote. I am prepared to move to table.

Mr. BIDEN. Mr. President, if the Senator will withhold the tabling motion, I would like to make several brief comments.

Mr. HATCH. I will be happy to withhold. I would like to move on.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I will try to decode this in what I understand to be, to use the phrase we all use here, basic old common sense.

What the Senator from Wisconsin is saying is: Hey, look, if a bureaucrat oversteps his bounds and comes up with some preposterous ruling relating to pesticides or parasites in the water, and says that one—I did not even know the figure the Senator used, but one teaspoon—whatever the measurement was that would equal one teaspoon relative to the entire Great Lakes—and says you cannot put that in the water, that amount, if this is that ridiculous, there is emergency relief for the company which is doing that. It is called the Congress. That is the emergency relief. Come to Congress and say, ''That stupid bureaucrat just passed this rule saying you cannot have more than 1 part per hundred trillion of such and such in the water. We can pass a law. We can say no. It can be 5 million parts per trillion.'' That is the emergency relief I think we should have. But what is the emergency relief that he is suggesting for us, if in fact what is being done to the water system is damaging? It is this cumbersome procedure even under an emergency which is declared that takes months to occur.

So I think common sense dictates to me if a manufacturer—that is what we are talking about, a business, an economic interest—is in fact damaged because some silly bureaucrat comes up with a rule that makes it impossible for them to conduct business and does no harm to the water system, there is recourse, emergency recourse—the U.S. Congress.

What is the emergency recourse for the constituent in Wisconsin if in fact a pesticide is being put in the water that is causing serious damage? It takes time under this rule. The Senator says nothing is exempt. First of all, anything, any rule that does not affect $100 million worth of something is exempt from this process, this cost-benefit analysis, this risk assessment laid out in this thick piece of legislation in both the Glenn bill and the Hatch bill we are talking about. So that is one exemption.

There is a second exemption, a series of exemptions. If you turn to page 16 of the text of the bill, it says it does ''not include''—meaning that the cost-benefit analysis is not required for the following things: A rule that involves the internal revenue laws of the United States.

So what it says here is even if the IRS comes up with a stupid rule where a cost far outweighs the benefits, it is not reviewable under this law. Even if the rule of an agency that impedes an international trade agreement, and if in the implementation of it the cost far outweighs the benefit, it is not subject to this legislation. The list goes on. Just pick another one.

A rule or agency action that authorizes the introduction into commerce or recognizes a marketable status of a product. You would have the most damaging darned product in the world where the cost would far outweigh the benefit, and it is not reviewable.

So this idea that there is something sacrosanct here about not exempting anything, what the Senator is asking for is this incredible exception where his amendment would be the only thing out there. There are a raft of actions that mindless bureaucrats can take that are not subject to the cost-benefit analysis and risk assessment required in this bill.

Why? Why? Why should we somehow now impose a rule of legerdemain here in the Senate saying, ''Senator, what you are asking for is an exemption. You are asking for something to be treated differently than the rest of the bill. And we just cannot do that. It will open up the floodgates here.'' No one said that. But that is implicit.

I would say to the Senator there are lot of things that are not subject to a cost-benefit analysis that mindless bureaucrats can undertake. I might add I do not think most bureaucrats are mindless. But let us pick that mindless bureaucrat.

In law school we always talked about a ''reasonable man.'' No one could always find a reasonable man. But we always talked about the reasonable man. We have the mindless bureaucrat wandering the halls of Congress and the floor of this body. He or she is the person we are all after. Well, if we find that mindless bureaucrat and he or she is mindlessly engaged in regulations relating to the Internal Revenue Code, we say, ''You may continue to be mindless. This does not apply to you.'' If they are talking mindlessly interfering with a rule, interfering with the introduction of a product into commerce, you say, ''You can continue to be mindless.''

The list goes on for two pages:

''(iv) a rule exempt from notice and public procedure under section 553(a);

''(v) a rule or agency action relating to the public debt;

''(vi) a rule required to be promulgated at least annually pursuant to statute, or that provides relief, in whole or in part, from a statutory prohibition, other than a rule promulgated pursuant to subtitle C of title II of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.);

''(vii) a rule of particular applicability that approves or prescribes the future rates, wages, prices, services, corporate or financial structures, reorganizations, mergers, acquisitions, accounting practices, or disclosures bearing on any of the foregoing;

''(viii) a rule relating to monetary policy or to the safety or soundness of federally insured depository institutions or any affiliate of such an institution. . . .''

It goes on and on:

''(xi) a rule or order relating to the financial responsibility of brokers and dealers or futures commission merchants, the safeguarding of investor securities and funds or commodity future or options customer securities and funds, the clearance and settlement of securities, futures, or options transactions, or the suspension of trading under the Securities Exchange Act of 1934.

''(xii) a rule that involves the international trade laws of the United States.''

They are all exceptions. There is not a cost-benefit analysis required for those; no requirement to do anything like any of this legislation we are about to pass. We can do that. Why cannot we do it for cryptosporidium or E. coli? What is the problem? Because there is emergency relief for an aggrieved party, if a mindless bureaucrat sets out a rule that has no relationship to science, and it is called the Congress. It can change the law. The bureaucrats can only make laws we authorize them to make.

Why provide this kind of hurdle for an agency attempting to protect the water supply of the Nation? Why provide this hurdle to catch the occasional overzealous bureaucrat overreaching and damaging the property owner, or damaging a business interest? Why not provide it with the 535 Members of the Congress?

If there is one side I would err on, I would err on the side of the Congress. But there are already significant portions of our commerce in this Nation that are legitimately and reasonably exempted from any cost-benefit analysis including any rule that does not have the impact of $100 million.

I yield the floor.

Mr. KOHL. Mr. President, I will take a minute to summarize again what my amendment is all about.

We have a problem of cryptosporidium in this country. We had an outbreak in Milwaukee, and we lost 104 people, leaving 400,000 people seriously ill. We had outbreaks in a dozen other communities in the country. I will not enumerate all of those communities. But San Antonio, Jackson County, OR, Las Vegas, and we had something here in Washington, DC, recently. There is no question about the need to promulgate rules and regulations.

As I said, the involved water utilities—and other interest groups—all of them have agreed that we must set in motion the process we have to collect information and then promulgate rules to protect our water supply in this country from another outbreak of cryptosporidium. No disagreement. And that process is now under way.

Now, people who have looked at S. 343, lawyers and other people—I am not a lawyer—have assured me that there is a real danger that under S. 343 as it is written the EPA process that is underway will be sidetracked, may very well be sidetracked. Some believe that it will. Some believe that it may be.

What we are asking for in S. 343 is assurance that the process now underway and agreed to by EPA and water utilities and other interest groups will not be sidetracked. That is all this amendment says. Let us see to it that the process is not sidetracked.

So I ask my colleagues to consider that simple consideration when they

decide how to vote on whether or not to table this amendment which, as I understand, is going to be asked for by the opposition.

I yield the floor.

The PRESIDING OFFICER. Is there other debate on the Kohl amendment? If not, the question is on agreeing to the amendment of the Senator from Wisconsin.

All those in favor of the amendment—the Senator from Utah is recognized.

Mr. KOHL. I ask for the yeas and nays.

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

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

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

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from North Carolina [Mr. HELMS] is necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUYE] is necessarily absent.

The result was announced—yeas 50, nays 48, as follows:

[Rollcall Vote No. 303 Leg.]

YEAS—50

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

NAYS—48

Akaka	Feingold	Lieberman
Baucus	Feinstein	Mikulski
Biden	Ford	Moseley-Braun
Bingaman	Glenn	Moynihan
Boxer	Graham	Murray
Bradley	Harkin	Nunn
Bryan	Heflin	Pell
Bumpers	Hollings	Pryor
Byrd	Jeffords	Reid
Chafee	Kennedy	Robb
Cohen	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Simon
Dodd	Lautenberg	Snowe
Dorgan	Leahy	Specter
Exon	Levin	Wellstone

NOT VOTING—2

Helms	Inouye

So the motion to table the amendment (No. 1506) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I am going to propound a unanimous consent request. I am going to ask consent that the Senator from Delaware be recognized next to offer an amendment concerning risk-based priorities; that there be 30 minutes for debate to be equally divided in the usual form; that any second-degree amendment be limited to 15 minutes to be equally divided and must be relevant to the first-degree. I do not know if any second-degree amendments are going to come from that side or not. Since it will not come from this side, maybe it will not be necessary that they be seen ahead of time.

Mr. GLENN. Mr. President, reserving the right to object. I know the majority leader wants to speed this along, and I agree with that. We have been moving along pretty well. But I think without knowing what amendments might even be put forward and how serious they might be, I would not want to agree on time limits unless we had the amendments in advance and could look at them and decide how important they are. I will have to object.

Mr. DOLE. As I understand, the amendment of the Senator from Delaware is available.

Mr. ROTH. I ask the distinguished Senator from Ohio whether it might not be possible on my amendment, which has been cosponsored by Senator BIDEN, that we might not reach a time agreement on that.

Mr. GLENN. I thought the unanimous consent request was on all the—

Mr. DOLE. Thirty minutes on the Roth amendment equally divided and then any second-degree amendment 15 minutes.

Mr. ROTH. Can we agree there will be no second-degree amendments on this amendment?

Mr. GLENN. On this particular amendment, I probably would accept the amendment. I think there would be objection on our side to accepting the amendment.

Mr. JOHNSTON. Mr. President, we want to accommodate the Senator from Delaware. The problem is it takes the National Academy of Sciences out of the picture at least in part, and it is highly controversial, as I understand it, with the National Academy of Sciences. I confess, I have been working on these other amendments and have not had the time. It is not one of the most important issues, and we do want to try to work with the Senator from Delaware. I wish we had a little time to try to focus on it, because we want to try to find a way to accommodate.

Mr. ROTH. We will just lay it down tonight.

Mr. JOHNSTON. That would be good.

Mr. GLENN. We can lay it down tonight and discuss the time limit tomorrow. I would not want to agree to a time limit tonight.

Mr. DOLE. I understand. The Senator from Ohio is not prepared to consent to any agreement. I do not quarrel with that. The amendment will be laid down tonight, and then maybe tomorrow we can work out a time agreement.

There will be no more votes this evening, unless someone wants to have another vote; no more votes.

Tomorrow morning, there will be, as I understand it, a meeting with Senator KERRY, Senator LEVIN, Senator JOHNSTON, Senator GLENN, Senator HATCH, Senator ROTH and others.

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

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

AMENDMENT NO. 1507 TO AMENDMENT NO. 1487

(Purpose: To strengthen the agency prioritization and comparative risk analysis section of S. 343)

Mr. ROTH. 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 Delaware [Mr. ROTH], for himself and Mr. BIDEN, proposes an amendment numbered 1507 to Amendment No. 1487.

Mr. ROTH. 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:

Delete all of section 635 (page 61, line 1 through page 64, line 14 and add in its place the following new section 635:

SEC. 635. RISK-BASED PRIORITIES.

(a) PURPOSE.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purpose of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic, planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance is allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in section 633 of this title;

(D) the methodologies and principal scientific determinations made in the analysis are subjected to independent and external peer review consistent with section 633(g), and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

(E) there is an opportunity for public comment on the results before making them final; and

(F) the result are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies, shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

Mr. ROTH. Mr. President, as I understand it, the intent is that I only lay down the amendment at the present time.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. ROTH. 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 that I be allowed to proceed as in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMERICA'S HEMOPHILIA COMMUNITY

Mr. DEWINE. Mr. President, tomorrow the Institute of Medicine will release the findings of a major investigation into how America's hemophilia community came to be decimated by the HIV virus.

Even before this report is released, some of the tragic facts are very well

known. In the early 1980's, America's blood supply was contaminated by HIV-infected donors. Many Americans have become HIV positive by transfusions of the HIV-tainted blood.

Mr. President, Americans who contract HIV through a single blood transfusion know they can point to the specific blood supplier and therefore seek redress. But this is not the case with people who suffer from hemophilia. Those individuals have to undergo blood treatment too often and receive blood products from too many sources for this recourse to be open to them. They simply cannot identify the blood supplier that is culpable.

Mr. President, this community has been extremely hard hit by the spread of HIV. Mr. President, this story is one of the great tragedies of the last decade. It is a sad, tragic, and shocking story.

Mr. President, today there are approximately 20,000 Americans who require lifelong treatment for hemophilia, a genetic condition that impairs the ability of blood to clot effectively. In the early 1980's, more than 90 percent of the Americans suffering from severe hemophilia were infected by the HIV virus.

Think of it—more than 90 percent. I think everyone knows someone who suffers from hemophilia. Mr. President, 90 percent of those individuals in this entire country have been affected by HIV.

Mr. President, people with hemophilia have to receive treatment on a regular basis, treatment that requires the use of blood products from many sources.

The danger to this population is and was immense. Their ability to get health insurance and life insurance has been severely limited. They also have very little chance of legal redress for the tainted blood they have received.

Mr. President, in America's past, a challenge of some public health disasters, disasters in which the Federal Government has played a contributing role, has, in fact, been met with a Federal response. I believe, Mr. President, that the U.S. Senate needs to tackle the question of whether the Federal Government should play a similar role in the crisis now taking place in America's hemophilia communities.

The report scheduled to be released tomorrow will be very helpful, as we discuss this problem. It is my hope, it is my expectation, that the report will address three very important questions: 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 fail to 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?

Said in another way, what did the government know? When did it know it? What did it do about it? Whom did it inform? Mr. President, if the answer to any of these three questions is no, it is clear to me, and I would hope to other Americans, that the Federal Government has not met its responsibility—has simply not met its responsibility 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, there is reason to suspect that the answer to all three of these questions is, tragically, ''No.'' No to each of the questions.

Beginning in 1982, an investigation by the Centers for Disease Control suggested that aids was being transferred by blood-borne agents, but the public health service of this country did not call for precautionary measures to protect the blood supply until March 1983.

Mr. President, on January 4, 1983, the Centers for Disease Control recommended the testing of new viral inactivation methodologies—essentially, new strategies to stop the spread of HIV virus in the blood supply.

The public health service did not—I repeat, did not—act on this recommendation. Neither, Mr. President, did the Food and Drug Administration.

Furthermore, we know that Federal agencies assured the American people that it was safe to go ahead and use these blood products. Now we know the products were, in fact, not safe.

Mr. President, I will be examining this report that will be issued tomorrow with great care, as I think all Americans should.

I believe the story this report is going to tell will not be a reassuring story, that the picture that this story will paint will not be a pretty one.

Therefore, I expect to come back to this floor before this Senate to discuss appropriate steps for the Congress to take in response to this very great human tragedy.

I thank the Chair. I yield the floor.

TRIBUTE TO RABBI JUDEA MILLER

Mr. MOYNIHAN. Mr. President, I rise today to pay tribute to a great man, Rabbi Judea Miller. He passed away July 9, 1995, and the loss of his presence is already felt by all those who knew him.

A much respected fixture in the city of Rochester, NY, Rabbi Miller led an exciting life in which he continually challenged the status quo and injustice in society. Born in New York City in the early 1930's, Rabbi Miller first served as a rabbi in the U.S. Army at Fort Riley, KS. After completion of his service, he moved to Temple Emanu-El in Witchita, KS and then to a temple in Malden, MA before settling at Temple B'rith Kodesh in 1973. Yet throughout his geographic moves, the rabbi held dear the notions of equality and acceptance. In 1962, he traveled south to Mississippi to assist in the voter registration drives. There, he and a local minister dined at a Woolworth's lunch counter, marking that restaurant's first integrated meal.

He continued this fight for justice taking stands against slumlords and poor education and capital punishment. He was a defender of faith in the largest sense and he reached out to other religions. Said the Reverend Dwight Cook of Mt. Olivet Baptist Church, ''Rabbi Miller was about bringing people of different races and different religions together.''

He will be remembered dearly by his friends, his congregation, and the city of Rochester. He will be remembered, the Rochester Chronicle and Democrat said, as, ''a voice of dignity, reason and compassion, speaking always on behalf of justice and peace.'' Those who knew him already miss him dearly.

Rabbi Miller is survived by his wife, Anita; his son, Rabbi Jonathan Miller; his daughter, Rebecca Gottesman; his mother, Yetta Waxman; and five grandchildren.

Mr. President, I ask unanimous consent that the following article from the Rochester Democrat and Chronicle be placed in the RECORD.

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

[From the Rochester Democrat and Chronicle, July 11, 1995]

A VOICE FOR PEACE

Regular readers of the Democrat and Chronicle editorial pages knew Rabbi Judea Miller well. He was a frequent contributor, a voice of dignity, reason and compassion, speaking always on behalf of justice and peace. His writings consistently revealed his sense of scholarship and history; and his empathy for peoples of every race and religion.

His death Sunday is a loss to us all.

He wrote often of his wish for security for the Jewish state of Israel, but he often ran into criticism from those who saw him too ready to make peace with the Palestinians. In 1989, for example, he wrote of his visit to the Palestinian refugees at Ramallah, and described in moving terms the conditions he found there. In 1992, he compared Serbian attacks on the Bosnian Muslims to the Nazi attacks on Jews.

Miller was full of intellectual curiosity, and he went where his restless mind took him. In 1987 he journeyed to visit the Russian dissident, Andrei Sakharov, who had only recently been released from his exile. In 1990 he defended the writer Issac Bashevis Singer against Yiddish critics who, Miller said, were so wounded by the pain of the Holocaust that they could not see the uncomfortable truths that Singer was writing.

Hundreds of Rochesterians knew Miller personally, through his unceasing efforts to bridge the racial and religious gaps that divide blacks, whites, Protestants, Catholics and Jews in our community.

In April, when he announced his retirement from Temple B'rith Kodesh, he assured a reporter: ''I will still be around to make trouble.'' The only trouble he ever made was for those whose prejudice or ignorance stood in the way of the world of peace and justice that he envisioned.

THE ARMED SERVICES COMMITTEE NATIONAL DEFENSE AUTHORIZATION BILL FOR FY 1996

Mr. THURMOND. Mr. President, as chairman of the Senate Armed Services Committee I am reporting on behalf of the committee an original bill entitled ''The National Defense Authorization Act of Fiscal Year 1996,'' along with the committee report. I anticipate that the bill and its report will be available in the document room in the next few days.

I would like to extend my sincere appreciation for the fine work of the members of the committee as well as the outstanding efforts and long hours provided by all the committee's staff.

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

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

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

CLOTURE MOTION

Mr. LOTT. 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.

The bill 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 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, and Judd Gregg.

Mr. LOTT. Mr. President, I would like to just comment on the cloture motion that was just sent to the desk.

I note on behalf of the leader that we have spent a lot of time today and did not cover a lot of territory. There is real concern we are not making good progress on this regulatory reform package. We have a long way to go, maybe a lot of amendments. We just need to be making a lot more progress.

The leader wanted us to go ahead and file this cloture motion and take a look at what happens tomorrow and on Friday. If good progress is being made, then it would not be necessary, or if some agreements could be reached, it would not be necessary to have this cloture vote. But in order for there to be one this week, it was necessary we go ahead and file a cloture motion. If no agreement is reached, or if progress is not being made, we could expect a vote on this to occur on Friday morning.

So I think it is important to note we are hopeful it will not be necessary to go forward with that, but we had to go ahead and file it in view of the time considerations.

ORDERS FOR THURSDAY, JULY 13, 1995

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9 a.m. on Thursday, July 13, 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 the transaction of morning business until the hour of 10:45 a.m., with Senators permitted to speak for up to 5 minutes each with the following exceptions: Senator THOMAS, 25 minutes; Senator KASSEBAUM, 10 minutes; Senator KENNEDY, 10 minutes; Senator DORGAN, 15 minutes; Senator SIMPSON, 10 minutes; Senator BINGAMAN, 10 minutes; Senator SPECTER, 15 minutes; Senator MOSELEY-BRAUN, for 10 minutes.

Further, that at the hour of 10:45 a.m., the Senate resume consideration of S. 343, the regulatory reform bill, and the pending Roth amendment No. 1507 on risk-based priorities.

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

PROGRAM

Mr. LOTT. Mr. President, for the information of all Senators, the Senate will resume consideration of the regulatory reform bill tomorrow at 10:45. Pending is the Roth amendment on risk-based priorities. Senators should therefore expect rollcall votes throughout the day.

Mr. President, I see the distinguished manager of the bill for the minority here, seeking recognition. We were prepared to go to close business for the day, but in view of his seeking recognition, I yield the floor at this time.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

COMPREHENSIVE REGULATORY REFORM ACT

Mr. GLENN. Mr. President, I rise now with a sense of real disappointment because I thought we were moving along very well. We were doing this in good faith, moving as fast as we can. There has not been delay on our side. We have not submitted a lot of amendments. The amendments have taken some time to discuss, but that discussion has been as much on the Republican side as it has on the Democratic side. I think any fair analysis of the record over the last 2 days would show that. In fact, on the bill we are considering, S. 343, it is the Dole-Johnston bill, and I think one of the coauthors of that bill has been responsible for as much time on the floor—more time on the floor being spent than have those of us who have opposed some of that.

I do not know why it is necessary to try to make this point with cloture, which means there seems to be a feeling that we have been delaying things on our side so we have to be cut off with cloture. I do not think that is fair. I really do not.

I think anybody who has watched these proceedings or been involved on the floor here knows we have been going ahead in good faith. We have been trying to move things. We have not delayed things. The only delay I can think of, out of the last 2 days, where any time was taken on our side that might be looked at as unnecessary on the other side, was the time this afternoon when we were trying to work out this agreement for whether the Johnson amendment and the Daschle amendment were going to be taken up in what order. There was a period of maybe an hour this afternoon where we wasted time on that, that is true. But that is the only time.

Outside of that, we have been operating in good faith that we were moving ahead on these things. I think this puts a whole different cast on this thing.

I do not know whether this fits the same pattern as some of the patterns a little earlier a month or so ago when we were laying down a bill and putting down the cloture the same day before we even got started. But this is just an unfair castigation, as I see it, of the way we have proceeded on this bill.

So I must say I am disappointed. Obviously, I cannot do anything about it. But I am disappointed that the other side views this with such lack of faith in our good efforts to move forward on this that they think it is necessary to file cloture.

I yield the floor.

Mr. LOTT. Mr. President, if I might respond to the comments of the distinguished Senator, first of all, there has been no castigation in the way this legislation has been handled. As far as laying down cloture the same time bills are offered, I recall that was done an awful lot in the previous 2 years. This cloture was not laid down the same time the bill was brought up for consideration. We have been on this bill now for parts of 4 or 5 days.

Perhaps the Senator from Ohio did not hear my comments when I sent this cloture motion to the desk. If I could have the Senator's attention, I direct his attention to the fact that I said when I sent it to the desk that it was hoped that it will not be necessary to have a vote on the cloture motion. But we did not make a whole lot of progress today in terms of numbers of amendments considered. It may not be necessary to go through with the vote

on the cloture motion. But if one is not filed tonight, there would be no way for one to be brought to fruition before next Monday.

It is the clear hope of the leader, and I think the leaders, that this legislation be completed early next week because we do have a long list of very important legislation pending which we hope to be able to consider in a timely fashion and with fair and full debate before we go out for the August recess. I know the Members are looking forward to that opportunity to be with their families, their children, their new brides. And in order to be able to achieve that, we are going to have to make some progress on a long list of legislation that is necessary before we go out. We need to start taking up appropriations bills. We need to get two or three appropriations bills done next week. We need to get several—seven or eight—of the appropriations bills completed before we go out for the August work period.

So all I am saying to the distinguished Senator from Ohio is that I know he is working hard. I know he is working in good faith. We hope that will continue to be the case. We hope tomorrow that we will be able to take up and dispose of a lot of serious, relevant amendments. Then I think the leader would have the option of talking with the distinguished floor managers of the bill, Senator HATCH and Senator GLENN, and see where we are, make a decision as to how much progress is being made, seeing if there is any possibility at that point to get some finite list of amendments and get some idea of when we might be able to bring this legislation to a conclusion.

So I just want to respond, first of all, that there has been no castigation of his efforts or intentions. I think there has been good faith on both sides of the aisle. There has been a bipartisan effort underway. It is not intended to cut off debate, but it is intended by the leader as a signal to let us keep working, let us keep moving, and let us not let it get bogged down between now and Friday afternoon.

Mr. GLENN. Mr. President, talking about castigation, I think the very fact of filing cloture indicates a castigation of how we have been operating on this side. It indicates that something has to be cut off to move us forward and that we have not been doing an adequate job here. I do not think that is the case at all. That is what I referred to by castigation.

As far as the schedule, I do not believe there will be a more important piece of business before this Senate this year than this legislation. It may be dry, it may be arcane, it may be hard to understand, and it may be complicated. But this stuff affects every person here in this room. It affects every person in this city, and across this land, and in major, major ways.

I just do not see that we are going to be able to rush through something like this and do the job that should be done for the people of this country.

Since Monday, I am told by staff there have been 16 amendments; 11 of those were put in by Republicans; 6 of those were withdrawn; there were 5 of the Democratic proposals, I believe, that have been voted on. So that is an indication of what we have done since Monday. This is Wednesday evening. I do not think that is taking too long on what is one of the most important pieces of business that this body will take up this year.

The appropriations bills may be more important. But I do not think any other legislation is going to affect as many people directly in this whole Nation as what we do on this. To now have to go under a 30-hour time limit and say, ''If cloture is invoked, that is it. No matter how important it is for the people of the country, no matter how complex, how complicated, yes, we are going to rush through because we have some other stuff we have to get on to.''

We all have to get out for that August break, for sure. I agree. I want to go out on the August break. But to rush through this thing and indicate that we have to meet some schedule, I think, is unwarranted because this is a very important piece of legislation.

I say once again that since Monday, 16 amendments, 11 of them Republicans, 6 of those withdrawn, 5 Democrats, and we have had votes. I think we have moved along pretty well since Monday, and so I must say it disappoints me greatly, obviously, when we felt we had to file cloture, or the leader felt he had to file cloture on us when we have been operating in good faith, moving along, spending long hours on this. So I am disappointed, that is all.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The distinguished Democratic leader.

Mr. DASCHLE. Let me just associate myself with the remarks of the distinguished manager of the bill on our side, Senator GLENN. I was hoping we could avoid this. I had the opportunity throughout the last couple of days to talk to the distinguished majority leader about our desire to continue to work in good faith. I think we have done that.

Obviously, today was a good example of what has happened. I laid down an amendment this morning, and by far the bulk of the debate has been on an amendment offered by the distinguished Senator from Louisiana, Senator JOHNSTON, and modified on several occasions throughout the day by Senator JOHNSTON.

It was only at the end of the day, after a great deal of prodding and pleading on our part, that we could finally agree to a time limit and an up-or-down vote on his amendment and then on mine.

So I think the distinguished Senator from Ohio said it very well—16 amendments, 11 Republican, 5 Democrat. We are here tonight. I would note that in the Chamber there is one Republican and four or five Democrats ready to continue to work. So I am disappointed that the cloture motion was filed. I think it is fair to say that we will not be precluded from offering amendments, from ensuring that this debate receives the full airing it deserves. This is one of the most important pieces of legislation to come before the Senate in this session of Congress, regardless of what else may be brought up before the end of the year.

So we will not be precluded from that. We will offer amendments. I think we will anticipate the unity that we have experienced on several occasions already this year when it has come to cloture in protecting Members' rights to offer amendments and have the full debate.

So while we may have a cloture vote, I have the feeling that we will be on this bill for a little while yet because we need to raise a number of issues that have yet to be addressed. We will have the alternative perhaps as early as tomorrow. Subject to however that may turn out, we may or may not want to protect our rights to deal with other issues. So it is unfortunate, and we will continue to work in good faith. Hopefully we can resolve these outstanding issues in whatever time it may take.

It is not our desire, as the Senator from Ohio has indicated, to prolong debate unnecessarily, to do anything other than work in good faith to resolve the outstanding differences and get on with final passage.

I yield the floor.

Mr. LOTT. Mr. President, if I could respond briefly to the distinguished Democratic leader's comments, first of all, just 20 minutes ago I am sure we probably had 90 or 100 Senators in the Chamber prepared to work. If there had not been agreement that we end the work for today, on both sides of the aisle, we would still all be here, and so I do not believe the RECORD reflecting there are only one or two Republicans here willing to work and four or five Democrats—it was already announced that business was over for the day, and basically we were in the process of shutting down.

I do want to say, secondly, to my distinguished friend from South Dakota that I think there has been a good-faith effort. I think he does want to try to bring this to a reasonable conclusion as far as time and the results, and we continue to hope that will be the case. Maybe we will make good progress tomorrow. Maybe we will make good progress Friday.

Maybe, with him working with the distinguished majority leader, we will find it is not necessary to have a cloture vote, or it may be necessary. I do not think that it is not allowing enough time when you spend 5, 6, 7, 8 days on one piece of legislation. It is very important, I agree on that, and we ought to have it fully discussed, which

I think it certainly is being and has been for quite some time.

I note also, though, that we have just had a meeting, bipartisan leadership meeting with the President, in which the President was saying please get together, move forward expeditiously. He was wondering about the rescissions bill. No conclusion has been reached on the rescissions bill. The President was saying he was in hopes that we could move through a long list of important items to him and the country—welfare reform. We would like to work on that. Appropriations bills and reconciliation. So the President is also asking that we move things right along, and I think that we have an obligation to try to do that.

For instance, I was under the impression that there was going to be an alternative maybe available earlier—I thought Monday. We have not seen it. But maybe, as it was just indicated, there will be an alternative, or substitute that will be offered tomorrow and we can have full debate on that, and that will kind of settle the dust. And then we will be able to move on to an expeditious conclusion.

That is all that is done here, for the leader to preserve his options and to, quite frankly, keep pressure on all of us, both sides of the aisle, without being critical of the leaders because they are doing a very difficult and very important job, but to keep pressures on us, to serve notice that we need to keep moving forward, making progress. And if we are not, then he has this option. If we did not file it tonight, we would not have the option until next Monday or Tuesday, depending on when it was filed, for it to ripen for a cloture vote, if necessary. We hope it will not be necessary, but we are going to keep that option available.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I respect the ability of the Senator from Mississippi to be able to put a shiny note on almost anything. But I must say that the question still remains whether or not it is appropriate to file it today, Wednesday, or whether or not you could not preserve the option to file it on Friday, and it would ripen by Monday, or file it Monday and ripen by next Wednesday.

The question is, what signal is being sent. If you look back at the RECORD, this bill was laid down in the Chamber—excuse me, it was printed in the RECORD on a Wednesday night. Thursday it appeared prior to our departure for the July 4 recess.

It was then agreed upon that there would only be debate and no amendments offered. That was a suggestion, I might add, of the majority leader. So we departed on a Friday with everybody agreeing there was only debate.

We came back only this Monday, the mid part of the day. We had an agreement to have some votes in the afternoon. We then went into a recess the next morning for conferences. We recessed in the evening without any additional votes. Now we are back here on Wednesday.

So here we have one of the single most important pieces of legislation that will come before us—I think everybody agrees with that—and here we are with a cloture motion at the desk on Wednesday evening with only five Democratic amendments voted on.

Now, the Senator from Mississippi has suggested, well, this happened a great deal previously. I would say to the Senator, respectfully, that by June of the first session in the prior terms this never happened.

This happened in the second session. And it did begin to happen with some frequency because certain people here adopted a conscious policy of filibustering everything. And everybody knows that our efforts in the final months of the last session of the last term were literally governed by the policy of gridlock that was a calculated strategy to let nothing pass. Thereupon, Senator MITCHELL, who was truly the monument to patience and goodwill, came to the floor again and again and again without pressing the notion of late nights and cloture and order in our lives. So I think that really it does not send a good signal in the context of where we traveled in last few days.

Second, we entered into some negotiations in those days when the floor was open for debate. I thought we were making some progress. At the last meeting Senator NICKLES, who headed up the task force on the other side of the aisle, stood up and said, ''Well, we have gone just about as far as we can go today. I'll let you know when we can have the next meeting.'' Well, it is now Wednesday, 9:30 at night. We still have not been notified about another meeting. There has been no serious effort to reengage in negotiations. So this filing has to be placed also in the context of that fact, that if this was serious, we might indeed have met.

Now, I want to have what I call a press alert here tonight because the reason this cloture motion has been filed is basically to empower a certain political strategy to take place, which is to try to put those who want to legislate a good piece of legislation on the defensive with the notion that they are somehow delaying the Holy Grail of regulatory reform. And so we now have hanging over our heads the specter of disappearing for a weekend with a cloture vote where we have to assert our right to legislate under the cloud of being accused of standing in the way of regulatory reform. That is the game here. And my hope is that as more and more of these amendments come to the floor and Americans are given a chance to measure what is happening here with an attempt to take away the right to know and supplant it with the right to hide and the right to pollute, or to take away the ability of regulators to issue reasonable rules, or even to approach a standard of reasonableness here, I think people are going to understand.

Now, I would say for myself, I am running this year. It does not matter to me if we have to vote cloture five, six, seven, eight times to preserve the right to protect those things that 25 years have made a difference in people's lives. And you know, I think that we ought to get about the business of trying to figure out how we are going to lift stupid rules and legitimately irrelevant, excessive agency regulations, but at the same time not take something like the Delaney clause that keeps carcinogens out of the food that our kids eat and our fellow citizens eat, and somehow just throw it out, which is what this bill does.

So I do not think most Americans have yet come to realize the full measure of what is at stake in this legislation. But this Senator certainly is happy to debate it for some period of time to help them do so.

Mr. LEVIN addressed the Chair.

Mr. LOTT. Mr. President, if I could, if the Senator would yield, I would like to respond to that. First of all, there is some degree of trepidation, I would say. Maybe there is going to be another meeting in the morning at 9:30. Maybe he had not—the Senator from Massachusetts and others—had not received that information. But I understand there is an attempt to meet and to discuss and negotiate further. And I say with some degree of trepidation because, you know, this is regulatory reform. I do think that the American people want that. I do think that the American people and the economy and the people that have lost their jobs because of the overbearing burden of the bureaucrats and the mandates and the regulations spewing out of this city, hundreds of thousands of pages annually going out and being dumped on the private citizens and small businesses and people who are trying to make a living in this country, want regulatory reform. They want regulatory relief.

Mr. KERRY. Would the Senator like me to——

Mr. LOTT. I have to say, I frankly have been shocked at all of the discussion and the concerns and ''we must get rid of this, and we must get rid of this portion of the bill.'' What are we going to wind up doing here, striking out all after the enacting clause and sending it to conference? We did a lot of work that has been done on this, a lot of negotiations.

A lot of compromises, but at some point we have to make up our minds if we want real regulatory reform or not. And I am not questioning there are probably other amendments that are deserving to be considered and we can take up and vote on. We have got time to do that, and we will be doing that tomorrow. But, you know, a lot of negotiations have already gone on. A lot of good portions of the original bill have already been jettisoned, in my opinion. A lot of critical portions have

already been weakened that I think are—we are going to regret later on, without getting into specifics at this late hour.

But, you know, I really am concerned that the appearance is beginning to go out that we are going to nitpick a very important piece of legislation. I agree with that, to the degree we will not wind up with very much. I will be glad to yield.

Mr. KERRY. Let me say to my friend, you see, it seems to me that the Senator from Mississippi is now doing exactly the kind of characterization that I just issued a press alert on, suggesting that we are tearing apart a bill that is, in fact, the nirvana of regulatory reform. But what the Senator neglects to tell the American people is that by a vote of 15–0, the committee that has spent years working on this issue sent a bill to the floor. It is the Roth-Glenn bill. It is the heart of what we will vote on as an alternative. And I say again to my friend, 15–0. If that bill were on the floor today, without the Dole-Johnston substitute in the mix, as the only ingredient of legislation, I submit to my friend we would pass it 100–0. Maybe 98–2. But now that we have got the new mix, a contentiousness has entered the entire equation.

I might add, there are two other committees that have jurisdiction here. The Environment Committee, of which the Senator from Rhode Island is the chairman, was bypassed altogether. Now, that may be because he is noted for his reasonableness on these issues. And then the Judiciary Committee, which also has jurisdiction, was not allowed to legislate one amendment. Not one amendment. So what happened is that the three committees with jurisdiction were taken completely out, and this bill was essentially written by the majority leader, by a cabal of people involving a lot of interests that have been specially served here. Take out the Delaney clause. Take out the toxic release. Have a special fix here and a special fix there.

Mr. LOTT. If I could ask the Senator to allow me to reclaim my time.

Mr. KERRY. That is your right.

Mr. LOTT. I think there are 4 committees that have jurisdiction in this area. They had some jurisdiction. Judiciary has jurisdiction. I believe Energy and Natural Resources had a bill that Senator MURKOWSKI and Senator JOHNSTON and others had worked on for a long time, as well as the bill out of the committee chaired by Senator ROTH. Senator ROTH, as a matter of fact, the chairman of the Government Affairs Committee, sent out a letter today saying this is in his opinion a better bill than what was reported out of his committee.

As a matter of fact, what happened with this bill is exactly what I think the Senator from Massachusetts is calling for. This is an amalgamation that has some of the better parts of the Judiciary Committee bill in it, some of the better parts of Government Affairs. It is not some mongrel hybrid; it is an amalgamation of good bills.

So that was point No. 1, that everybody had a jurisdiction here. And to say, Oh, well, only Government Affairs can have the lead call, I do not think that is very fair. Other very important committees had a very important part. But beyond that there were a lot of discussions and negotiations that went on between the distinguished majority leader and Members on your side of the aisle—a lot of discussions, a lot of give and take, a lot of changes, a lot of compromises, many of which this Senator did not agree with. But in an effort to try to come up with a bipartisan bill, those changes were made.

We are going to have to do more of that around here.

Mr. BROWN. Will the Senator yield?

Mr. LOTT. I will be glad to yield.

Mr. BROWN. I simply, as a member of the Judiciary Committee, want to comment on the point raised by the Senator from Massachusetts. The bill was considered over a period of months in the Judiciary Committee. I must say, in the 5 years I have been in the Senate and the 10 years I spent in the House of Representatives, and the 4 years I spent in the Colorado State Senate, it is the first and the only bill I have seen filibustered in committee, and that is exactly what happened.

The reason amendments were not offered by committee Democrats is that, when the floor was open to them to offer amendments, members choose instead to filibuster. I offered an amendment, which was added to the bill, so, clearly amendments were added in our process in the Judiciary Committee. My amendment was not included in the Roth bill that came out of that committee. My amendment simply points out there are times when Federal Government agencies will develop conflicting regulations. My amendment provides a safe harbor for working people who find themselves subjected to conflicting regulations and are put at risk by when Government agencies' regulations require opposite actions.

So the statement that no amendments were considered in the Judiciary Committee is not accurate. Amendments were considered and amendments were added. The fact that Democratic amendments were not acted on in the last few days came from the fact that members choose to filibuster the bill rather than respond to it.

Finally, I do not want to delay your deliberations in winding up the session, but let me simply add, one of the problems with this bill and one of the problems with this area is that so few Members of the House and the Senate have had a chance to work with their hands and work in business and be subjected to regulation. We passed last year and this Government sent out over 60,000 pages of new regulations.

Let me repeat that, because I do not think Members focused on it. Over 60,000 pages of new regulations, not counting the hundreds of thousands of regulations that exist already. The Federal Government promulgated so many regulations that people who work in this country do not even have time to read the regulations that affect their lives. I suggest to any Senator who is concerned, work in an industry that is subjected to Federal regulations. You cannot even read what you are subjected to. You cannot even get people who work for a living to even read what they are liable for, what they are at risk for that this Government pumps out.

Before we pursue this effort, you ought to place yourself in the position of the people who have to work for a living, who have to live with these regulations and find themselves subjected to fines and penalties for insane regulations they do not have a chance to read.

If you sat down today and read solidly for a year, 8 hours a day, no coffee breaks, no time off, no holidays, read 52 weeks a year without any vacations and you read at 300 words per minute, you would still not read the regulations, the new ones that came out this year. You would probably read a little over half of the pages of the new regulations that came out.

Now we have a problem. We are strangling this economy with redtape and regulations, and I just would say to my good friends that have raised objection about this, honestly talk to some of the people who have to live under these regulations. See what they are subjected to.

This is a burden that is crushing. It is crushing to our competitiveness and the people who operate under this burden. I have talked to contractors who make their living trying to build houses. They find themselves in the position of having somebody who has never built a house in their life come out and tell them how to build a house. They never built a house in their life, do not know anything about it, but if you do not do it the way they tell you, you can be fined and lose your entire business.

What we have done is set up a system to micromanage this economy. The bill that is before us is a joke. Some improvement it is, but to say the only regulations you are going to subject this test to are ones that have the threshold that is included in this bill is absurd. That is the problem.

I do not think what has been voiced on this floor has reflected the impact these regulations have on the working people in this country. We are strangling this economy and working people of this country with needless regulations. What we need is a lick of common sense. So we can fight over this bill, but the fact is the threshold is already so high that you have denied relief to most of the American people that desperately need it.

If we are going to be competitive in the world economy, if we intend to give

people good livelihoods, if we are concerned about the wage of working men and women, we better figure out a way to have more of the people pull the wagon and less regulating where it goes. If you are talking about a business, you have to get more people out of the office and onto the assembly line where they do the work.

That is what this bill is all about, to find a way we can make America more competitive and more productive and more creative and spend less time on regulations. We need to do a lot more in this bill. I hope Members will take some time to look at what we have done to this economy, because it is devastating.

Mr. LOTT. Mr. President, if I could continue——

Mr. KERRY. I will not take long.

Mr. LOTT. I still want to respond a little more to your earlier question.

(Mr. BROWN assumed the chair.)

Mr. KERRY. Let me say to my friend from Colorado that when he got into that recitation about the coffee breaks and the amount of time and pages, I all of a sudden feared he might have been one of those people who had written some of these regulations. But knowing that he did not and would not, I just want to say, we agree with everything he just said, and the bill that Senator GLENN and Senator ROTH brought out of committee 15–0 would have, indeed, addressed almost everything that the Senator just said.

The problem is, if you take, for instance, the threshold argument the Senator just made, the threshold was set in 1975 by President Ford. One hundred million dollars is worth $35 million today, and if you lowered it to $50 million, you are talking about reality of a $17 million threshold.

As my friend knows, there is not a lawyer in America who cannot conjure up a threshold impact of $17 million in real value, $50 million, or otherwise. We lifted that to $100 million for a major rule, but we still have a $10 million threshold in here for Superfund. And under the Nunn amendment that was adopted, we brought in this extraordinary panoply of small business at a whole new threshold. So you have literally a 100- to 400-percent increase in EPA and other agency requirements here just to review the new rules you brought under it. I know the Senator is not going to add to the budget to provide personnel to do that. So you have an enormous gridlock problem.

I will just say to my friend from Mississippi, by having filed this cloture motion, I believe, if I am correct in the parliamentary procedure, amendments now have to be filed by 1 p.m. tomorrow; is that correct?

Mr. LOTT. That is correct.

Mr. KERRY. So if amendments have to be filed by 1 p.m. tomorrow, those of us who have to work tonight in preparation for a meeting have to disperse our staff in order to ensure all Democratic amendments can be brought together by 1 p.m. tomorrow. That is an example, I say respectfully, of how this breaches the process. There is, in effect, a chilling effect on our capacity to pull ourselves together for a meeting and negotiate. And second, there is a terribly unfair burden put on all of our colleagues who will arrive tomorrow morning to learn that they have about 2 or 3 hours to put in an amendment.

Mr. LOTT. Mr. President, first of all, I realize this is the Senate, unlike most legislative bodies, but I would be somewhat shocked if most Senators do not already know what amendments they want to offer and have already gotten them drafted.

This is not something that just drifted onto the floor of the Senate. This has been coming for weeks and months. Surely, most Senators have their amendments ready to go. Now, I realize maybe some of them would be affected by other amendments that may be offered during the next couple of days. I do not view it as a real burden. We are on this bill, and everybody knows what is in it supposedly and should have their amendments ready to go.

I want to go back to a point made earlier about how one committee reported out a bill unanimously. That committee was the only committee that considered the so-called original Roth bill. The Dole bill went to four committees—not only Judiciary, Energy, and Governmental Affairs, but Small Business.

Then there were negotiations to try to make it a genuinely bipartisan bill that went on between Senator DOLE and Senator JOHNSTON of Louisiana, who has worked so diligently in trying to find a compromise that could go through in a bipartisan way.

Then I remember there were subsequent negotiations. I went into a meeting in the distinguished Democratic leader's office one day, and there must have been 15 Senators in there. I was floored. I left pretty quickly because I said nothing good will come out of this because there were too many people involved.

There were more changes made. I know changes were made because there were changes made on sections I worked on, some that I certainly did not agree with. There has been a long, protracted effort to develop a compromise bill. There comes a point when you have to stop changing it and vote. We are hoping that point will come early next week.

One final point.

Mr. LEVIN. Will the Senator yield for 1 minute?

Mr. LOTT. One final point, and then I will be glad to yield to you.

There is something that the Senator from Colorado in his fine remarks just reminded me to comment on. We were all home during the Fourth of July recess. I was in my State. I met with some small business representatives, among other things. I remember a small businessman from Fulton, Mississippi. I met with the group and they told me that under a new rule promulgated, that they, for small technical violations in their company, could be fined up to $10,000 per day until the bureaucrat concluded that they had complied with this violation they had. I think probably this bill will help address that kind of problem. And they gave me the new regulations. This is one small business group in my State, although it is a nationwide group. The new regulation that could lead to a $10,000 fine per day, which would put most of them out of business in about 2 days, was that thick. We need to deal with that.

I know we are trying to do that. I hope we will, but I am beginning to really have my doubts about whether or not we can continue to water this bill down and have one that is worth going forward with.

With that, I will yield to the Senator from Michigan.

Mr. LEVIN. I thank the Senator from Mississippi for yielding. I will be very brief. I just want to add one chapter to the historical record here. Immediately prior to the recess, there was a suggestion that those of us that favored the so-called Glenn bill, or the Glenn-Chafee bill, that we put suggested changes——

Mr. LOTT. If the Senator will withhold, I was going to say something to the Senator from Massachusetts, but he may be gone. I will say it now if the Senators from Ohio and Michigan are concerned about the filing deadline of 1 o'clock. I am sure the leader—in fact, I understand he will be willing to get a unanimous-consent to delay that until 5 o'clock tomorrow afternoon. In furtherance of that, would that be helpful?

We will do that in the morning, then, after we have checked with others. I wanted to make that offer so they know we are perfectly willing to be helpful and cooperative if there is a time problem in getting those amendments drafted.

I yield once again.

Mr. LEVIN. As I was saying, there is one element which has not been spoken to, which is the fact that immediately prior to the recess, it was suggested to those of us that support the Glenn-Chafee bill that we put into specific language form suggested changes in the Dole-Johnston bill. And we did that. The staff, I think, probably stayed up all night to do that. Three pages of very specific proposed changes were delivered prior to the recess about two weeks ago. Nothing happened. There was no response to the suggested changes until today. And it is still a bit fragmentary, but at least now we think we understand what the response is on the part of the supporters of the pending Dole-Johnston legislation.

If we are talking about expediting the process here, it seems to me that those of us who support the Glenn-Chafee proposal have, for almost now two weeks, been waiting for a response to some very specific language suggestions. Instead, we raised this issue on

Monday, and then I think yesterday the Senator from Utah suggested, well, let us just go at it amendment by amendment. The tree was filled up a couple times, by the way, so that it was all controlled. Amendments could not frequently be offered without a gatekeeper okaying it. And then they were second-degreed. That is all part of the rules. There is nothing new about that.

But to suggest that there has been an effort on the part of the supporters of the Glenn proposal to, in any way, delay instead of to debate and hopefully approve the pending amendment, I think, is a misplaced suggestion. And that suggestion is implied when a cloture motion is filed. That is the implication of the filing of a cloture motion.

Somehow or other, people who are the supporters of the Glenn approach are in some way delaying the legislation that is pending before us, and there is not only no evidence of that, it is quite the contrary. There was an effort made in the last two weeks to get some very specific responses to some very specific proposals. Again, the first glimpse we had of a response was just today.

So I suggest to my good friend from Mississippi that the filing of cloture tonight is inappropriate. It is also, I believe, counterproductive because, just tonight, without any knowledge that a cloture motion might be filed, there was an understanding reached that there would be a meeting tomorrow morning, and I believe the time was set at 9:30. And then, having agreed to do that, suddenly there is a cloture motion filed. That is not the kind of signal which I think is a productive signal in terms of moving legislation.

As far as the legislation is concerned, I have to tell you that I think all of us in this body, hopefully, have seen a great deal of evidence of excessive regulation, of abuse, and of waste in this process.

I came to this town determined to get some kind of accountability in this process. I have been a strong supporter of legislative veto and executive oversight. I believe we ought to have cost-benefit analysis required by law. I believe in the various parts of both proposals.

So the speeches about regulatory overkill, I think, are very appropriate. There has been some. There has also been some very essential regulation that has made it possible for us to breathe cleaner air and to have cleaner water and to have safer vehicles, and other things. The question is the balance. We want both, a cleaner environment, a safer workplace, but not overkill in the regulatory process. We can have both. But the signal that was sent here tonight, when after there was an understanding about meeting tomorrow morning to try to make some more progress, and then to file a cloture motion, it seems to me, is a counterproductive act, and it tends to undermine the possibility of progress here rather than to promote it.

So that is why I think it was a mistake for that cloture motion to be filed. It prevents relevant amendments from being considered if cloture is invoked because they have to be technically germane, but they can be relevant and be prevented from being debated. I do not think it is in anybody's interest, as long as good progress is being made. And surely there has been some progress, and there is no effort to delay the consideration of this bill by anybody I know. I think cloture is not the appropriate signal which should have been sent tonight. I regret that it was.

Mr. LOTT. Mr. President, the only thing we have pending would be to close. Does Senator GLENN wish to make a comment?

Mr. GLENN. Yes, I do. Mr. President, I will not go on long because we have been on the floor a long time today.

I do not want to let the wrong impression go out to those who may be watching. The impression was left perhaps by the distinguished chair in his remarks a moment ago here, the distinguished Senator from Colorado, as though we were delaying and we are not interested—it could give that impression; it could be interpreted that way, at least—and that somehow those for the Dole bill are in favor of regulatory reform, and those of us who have some other views about how that can be accomplished are somehow not as much in favor of regulatory reform. Nothing could be further from the truth.

We have worked hard in committee, and the Senator from Michigan, Senator LEVIN, is maybe too modest. I have heard him say in committee that one of the major things he wanted to get into when he came here—having been president of the city council in Detroit, he knew the impact of regulations and what they did to the business people and the community and the city government of Detroit, and what they did to the surrounding communities of Detroit, and he was determined to do something about it.

I have heard on a number of occasions, both in committee and in private conversation with him, about his dedication to this, which is to his everlasting credit. I think we have worked on this specific legislation in committee for close to 3 years now.

So this is not something that we come at lightly. We are as dedicated on the Democratic side to regulatory reform as anybody on the Republican side. We have some different views about how to get to it, that is all, and what is workable and what is not. That is our difference on this. It is not any difference in dedication. When I spoke on the floor and we opened up on this bill, my earlier remarks were exactly along that line. We are a united Senate on one thing, and that is the need for regulatory reform. But we also, at the same time, know that we must hit a balance. We cannot just do away with all regulations.

I agree with the examples, and I can give a dozen more from Ohio that match those of the distinguished Senator from Colorado, on overregulation. That is what we have to correct.

However, at the time we are doing this, do not throw out the good that the regulations have done in the country along with throwing out the excesses.

We do have better health in this country because of regulations. Some have gone too far—yes. Do we have a better business climate in this country because of regulations? Yes, but there have been excesses in that area, too.

So we certainly do have to correct these things. We agree with that. We are as united with the Republicans as anybody can be in our dedication to seeing that regulatory reform is carried out. We get the same comments from our business people and our organization people, our school people, our local government people, that the Republicans get when we get back home. We are as dedicated to this as anybody can be.

Now I might say in committee, as was already referred to, we voted that out of our committee, the Governmental Affairs Committee, under Chairman ROTH, 15–0. Unanimous.

Now, there is a different approach that Senator DOLE has taken. I think our approach hits a better balance. That is all we are trying to do here, is make sure that balance is hit.

What we are trying to do now in filing cloture is force a restricted time on this legislation—one of the most important pieces of legislation we will have before the Senate—we are trying to take a complicated bill, and instead of saying how good we will make it, we are saying we will spend minimum time on it, force your hand. We will spend minimum time off the floor, will not give time for amendments, for balance, for fairness, for consideration of those things. We will have minimum time on it.

This will be a big concession on the Republican side apparently—big deal, we will have an extension from 1 o'clock to 5 o'clock to get everything that we want in this.

Everything has not been considered in this bill. All amendments have not been considered. These are very complicated pieces of legislation—both of the proposals.

I just want to address one other thing. I just cannot agree with my distinguished colleague from Mississippi when he says we have gotten down to nit-picking on this. That is the phrase that he used. Some 500 people a year die from E. coli. Cryptosporidium killed 104 people, and made 400,000 seriously ill in Milwaukee a couple years ago.

Senator ABRAHAM and Senator NUNN addressed small business interests, Senator DOLE addressed E. coli with his amendment, Senators JOHNSTON and

LEVIN put in the super mandates, so existing laws could not be superseded by something an agency does over here.

Now, I do not think of those as nit-picking. I think these are health and safety matters for the people of this country. Anybody that was fair in looking at what has happened on this floor can certainly not come to the conclusion that these things have been nit-picking concerns on the Democratic side.

Quite the opposite. These are life and death concerns, and it is the reason they were brought up, the reason we wanted to amend this. It is the reason I supported some of the amendments on this.

Now, there have been negotiations that have gone on on this legislation in the past, as Senator LEVIN says. We cannot help but wonder whether this was good faith negotiation when we now have cloture filed against Members at this hour of the evening, after we thought we were closing down the Senate, and all at once, staff came running out and said, ''Did you know they filed cloture?'' They filed cloture. I thought that could not be. I thought there was a mistake. It happens that it is true.

We want to work through this. Obviously we want to have a chance to do as good as we might otherwise have done. I want to disabuse anybody of the idea that we are not concerned about regulatory reform on this side of the aisle. We are as concerned and as dedicated to it as anybody, regardless of whatever political labels each may take. I yield the floor.

Mr. LOTT. Mr. President, I repeat, as the distinguished Senator from Ohio pointed out, this is not a new issue. It has been pending for years. It has been considered for the last 3 or 4 years and in the Governmental Affairs Committee. It has been considered for at least a couple years that I know of, Energy and Natural Resources Committee. There have been hours, days, spent bringing Members to this point.

This is a good bill. This is a bipartisan bill. The Dole-Johnston bill has been laboriously crafted and developed and changed—in some ways people would think improved. In my opinion it has been weakened.

I repeat, I believe we have an especially good bill now, one that is a balance, that is bipartisan. I just have to say, at some point, we have to just agree to disagree. How long can you negotiate? Forever?

This is the most, I think, probably the most negotiated bill that we have had this year. How many changes are we going to make? It reaches a point, I think, that we weaken it so much that then there will be some that have to start asking ourselves, is this still a strong regulatory reform bill.

There is still talk about taking major portions out of it. Talking about taking the Superfund part out of it. Boy, if that has not been a regulatory nightmare, a lawyer's dream. But there are those that say we should not have Superfund as part of regulatory reform. My goodness, I do not know any area where we probably need regulatory reform more than in Superfund.

We could go back and forth, on and on. This is a good bill. We need strong regulatory reform. We are talking about not only 60,000 pages of regulations just last year being promulgated, we are talking about estimates from as much as $300 to $600 billion a year cost to the economy for many regulations that are necessary.

I know many of the Senators here tonight, Senator LEVIN would like to have regulatory reform, but at some point, we just have to stop changing it and vote. Let the votes fall where they do and bring it to a conclusion.

I think we probably talked enough about this tonight. We will see what kind of progress we make tomorrow and the next day, and maybe we can reach agreement and conclude this legislation and go on to other very important pieces of legislation.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

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

REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO LIBYA—MESSAGE FROM THE PRESIDENT—PM 64

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

I hereby report to the Congress on the developments since my last report of January 30, 1995, concerning the national emergency with respect to Libya that was declared in Executive Order No. 12543 of January 7, 1986. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c); section 204(c) of the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1703(c); and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa–9(c).

1. On December 22, 1994, I renewed for another year the national emergency with respect to Libya pursuant to IEEPA. This renewal extended the current comprehensive financial and trade embargo against Libya in effect since 1986. Under these sanctions, all trade with Libya is prohibited, and all assets owned or controlled by the Libyan government in the United States or in the possession or control of U.S. persons are blocked.

2. There has been one amendment to the Libyan Sanctions Regulations, 31 C.F.R. Part 550 (the ''Regulations''), administered by the Office of Foreign Assets Control (FAC) of the Department of the Treasury, since my last report on January 30, 1995. The amendment (60 *Fed. Reg.* 8300, February 14, 1995) added 144 entities to appendix A, Organizations Determined to Be Within the Term ''Government of Libya'' (Specially Designated Nationals (''SDNs'') of Libya). The amendment also added 19 individuals to appendix B, Individuals Determined to Be Specially Designated Nationals of the Government of Libya. A copy of the amendment is attached to this report.

Pursuant to section 550.304(a) of the Regulations, FAC has determined that these entities and individuals designated as SDNs are owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya, or are agencies, instrumentalities or entities or that government. By virtue of this determination, all property and interests in property of these entities or persons that are in the United States or in the possession or control of U.S. persons are blocked. Further, U.S. persons are prohibited from engaging in transactions with these individuals or entities unless the transactions are licensed by FAC. The designations were made in consultation with the Department of State and announced by FAC in notices issued on January 10 and January 24, 1995.

3. During the current 6-month period, FAC made numerous decisions with respect to applications for licenses to engage in transactions under the Regulations, issuing 119 licensing determinations—both approvals and denials. Consistent with FAC's ongoing scrutiny of banking transactions, the largest category of license approvals (83) concerned requests by Libyan and non-Libyan persons or entities to unblock bank accounts initially blocked because of an apparent Government of Libya interest. The largest category of denials (14) was for banking transactions in which FAC found a Government of Libya interest. One license was issued authorizing intellectual property protection in Libya and another for travel to Libya to visit close family members.

In addition, FAC issued one determination with respect to applications from attorneys to receive fees and reimbursement of expenses for provision of legal services to the Government of Libya in connection with wrongful death civil actions arising from the Pan Am 103 bombing. Civil suits have

been filed in the U.S. District Court for the District of Columbia and in the Southern District of New York. Representation of the Government of Libya when named as a defendant in or otherwise made a party to domestic U.S. legal proceedings is authorized by section 550.517(b)(2) of the Regulations under certain conditions.

4. During the current 6-month period, FAC continued to emphasize to the international banking community in the United States the importance of identifying and blocking payments made by or on behalf of Libya. The FAC worked closely with the banks to implement new interdiction software systems to identify such payments. As a result, during the reporting period, more than 171 transactions involving Libya, totaling more than $6.5 million, were blocked. As of May 25, 27 of these transactions had been licensed to be released, leaving a net amount of more than $5.2 million blocked.

Since my last report, FAC collected 37 civil monetary penalties totaling more than $354,700 for violations of the U.S. sanctions against Libya. Eleven of the violations involved the failure of banks to block funds transfers to Libyan-owned or -controlled banks. Two other penalties were received from companies for originating funds transfers to Libyan-owned or -controlled banks. Two corporations paid penalties for export violations. Twenty-two additional penalties were paid by U.S. citizens engaging in Libyan oilfield-related transactions while another 54 cases of similar violations are in active penalty processing.

Various enforcement actions carried over from previous reporting periods have continued to be aggressively pursued. The FAC has continued its efforts under the ''Operation Roadblock'' initiative. This ongoing program seeks to identify U.S. persons who travel to and/or work in Libya in violation of U.S. law.

Several new investigations of potentially significant violations of the Libyan sanctions have been initiated by FAC and cooperating U.S. law enforcement agencies, primarily the U.S. Customs Service. Many of these cases are believed to involve complex conspiracies to circumvent the various prohibitions of the Libyan sanctions, as well as the utilization of international diversionary shipping routes to and from Libya. The FAC has continued to work closely with the Departments of State and Justice to identify U.S. persons who enter into contracts or agreements with the Government of Libya, or other third-country parties, to lobby United States Government officials or to engage in public relations work on behalf of the Government of Libya without FAC authorization. In addition, during the period FAC attended several bilateral and multilateral meetings with foreign sanctions authorities, as well as with private foreign institutions, to consult on issues of mutual interest and to encourage strict adherence to the U.N.-mandated sanctions.

5. The expenses incurred by the Federal Government in the 6-month period from January 7 through July 6, 1995, that are directly attributable to the exercise of powers and authorities conferred by the declaration of the Libyan national emergency are estimated at approximately $830,000.00. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the Office of the General Counsel, and the U.S. Customs Service), the Department of State, and the Department of Commerce.

6. The policies and actions of the Government of Libya continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. In adopting UNSCR 883 in November 1993, the Security Council determined that the continued failure of the Government of Libya to demonstrate by concrete actions its renunciation of terrorism, and in particular its continued failure to respond fully and effectively to the requests and decisions of the Security Council in UNSCRs 731 and 748, concerning the bombing of the Pan Am 103 and UTA 772 flights, constituted a threat to international peace and security. The United States continues to believe that still stronger international measures than those mandated by UNSCR 883, possibly including a worldwide oil embargo, should be imposed if Libya continues to defy the will of the international community as expressed in UNSCR 731. We remain determined to ensure that the perpetrators of the terrorist acts against Pan Am 103 and UTA 772 are brought to justice. The families of the victims in the murderous Lockerbie bombing and other acts of Libyan terrorism deserve nothing less. I shall continue to exercise the powers at my disposal to apply economic sanctions against Libya fully and effectively, so long as those measures are appropriate, and will continue to report periodically to the Congress on significant developments as required by law.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *July 12, 1995*.

MESSAGES FROM THE HOUSE

At 12:03 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 523. An act to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 82. Concurrent resolution directing the Secretary of the Senate to make technical corrections in the enrollment of S. 523.

The message further announced that the House has agreed to the following bills, in which it requests the concurrence of the Senate:

H.R. 1141. An act to amend the act popularly known as the ''Sikes Act'' to enhance fish and wildlife conservation and natural resources management programs.

H.R. 1642. An act to extend nondiscriminatory treatment (most-favored-nation treatment) to the products of Cambodia, and for other purposes.

H.R. 1643. An act to authorize the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Bulgaria.

H.R. 1868. An act making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1996, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated.

H.R. 1141. An act to amend the act popularly known as the ''Sikes Act'' to enhance fish and wildlife conservation and natural resources management programs; to the Committee on Environment and Public Works.

H.R. 1642. An act to extend nondiscriminatory treatment (most-favored-nation treatment) to the products of Cambodia, and for other purposes; to the Committee on Finance.

H.R. 1643. An act to authorize the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Bulgaria; to the Committee on Finance.

H.R. 1868. An act making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1996, and for other purposes; to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

S. 1023. An original bill to authorize an increased Federal share of the costs of certain transportation projects in the District of Columbia for fiscal years 1995 and 1996, and for other purposes (Rept. No. 104–111).

By Mr. THURMOND, from the Committee on Armed Services, without amendment:

S. 1026. An original bill to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes (Rept. No. 104–112).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. CHAFEE:

S. 1023. An original bill to authorize an increased Federal share of the costs of certain transportation projects in the District of Columbia for fiscal years 1995 and 1996, and for other purposes; from the Committee on Environment and Public Works; placed on the calendar.

By Mr. WELLSTONE:

S. 1024. A bill to amend title XVIII of the Social Security Act to assure fairness and choice to patients under the medicare program, and for other purposes; to the Committee on Finance.

By Mr. BUMPERS (for himself, Mr. NICKLES, Mr. PRYOR, and Mr. INHOFE):

S. 1025. A bill to provide for the exchange of certain Federally owned lands and mineral interests therein, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. THURMOND:

S. 1026. An original bill to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. BROWN (for himself, Mr. BRADLEY, Mr. BRYAN, Mr. CHAFEE, and Mr. LAUTENBERG):

S. 1027. A bill to eliminate the quota and price support programs for peanuts, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. AKAKA:

S. Res. 149. A resolution expressing the sense of the Senate regarding the recent announcement by the Republic of France that it intends to conduct a series of underground nuclear test explosions despite the current international moratorium on nuclear testing; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WELLSTONE:

S. 1024. A bill to amend title XVIII of the Social Security Act to assure fairness and choice to patients under the Medicare Program, and for other purposes; to the Committee on Finance.

THE MEDICARE HEALTH CARE QUALITY ACT OF 1995

• Mr. WELLSTONE. Mr. President, I am pleased to introduce the Medicare Health Care Quality Act of 1995 today to make certain that Medicare beneficiaries are protected and receive access to high-quality care when they enroll in health plans offered through the Medicare Program.

I am deeply concerned about the extreme cuts in the Medicare Program that would be necessitated by the recently adopted budget resolution. A careful examination of the program clearly shows that the increasing numbers of elderly, disabled, and end-stage-renal disease patients—changing demographics—and overall health care inflation account for most of the increased growth in spending. According to projections based on CBO numbers, the cuts contained in the Republican budget resolution will not allow the Medicare Program to even keep pace with the private sector on a per person basis. And the Medicare Program takes care of many of our society's sickest and frailest members.

We have heard a lot recently about Republican proposals to restructure Medicare by giving seniors a voucher and allowing them to purchase health coverage in the private market. This legislation would ensure that plans participating in such a program would be required to meet minimum standards of performance, and that access to needed care, and quality of that care are assured. Many health plans already meet the standards I have included in this legislation, but for those that do not, this legislation will provide a critical safety net for patients.

If a voucher system is created, it is likely that constraints on the amount of the voucher will force many seniors to choose managed care plans, as their most affordable alternative. Currently abut 3 million Medicare beneficiaries are enrolled in managed care plans through the Medicare Program. Most of these patients are satisfied with the care they receive. A significant fraction, however, primarily the frailest, the sick and disabled, are not satisfied, according to a recent report by the office of the inspector general of the Department of Health and Human Services. Serious problems identified with the program identified in this report included:

> Compliance with Federal enrollment standards for health screening and informing beneficiaries of their appeal rights appeared to be problematic.
>
> Perceived unmet service needs . . . led 22% of disenrollees and 7% of enrollees to seek out-of-plan care''
>
> Some beneficiaries reported having difficulty making appointment for services in terms of the days waited for scheduled appointments. . .
>
> Some beneficiaries reported they were refused referrals to specialists. . .

It is clear to me, however, when I look at the managed care plans in Minnesota, that managed care plans can provide access and quality in health care, while holding down the growth of costs. In a recent editorial on July 6, 1995, in the New England Journal of Medicine, the editor-in-chief, Dr. Jerome Kassirer stated:

> Managed care itself is not the enemy. On the contrary, many of its effects are salutary. Patients stay in the hospital far fewer days, many surgical procedures that previously required hospitalization are now safely performed in day surgery, there is far more attention to preventive care, many medical practices have been standardized to produce better outcomes, and satisfying patients has become an explicit goal. There is, however, remarkable diversity among managed-care plans. Some, mostly older plans that were created when cost containment was an unexpected benefit rather than their central purpose, deliver high-quality care economically. Unfortunately, others cut costs by recruiting the healthiest patients, excluding the sickest, rationing care by making it inconvenient to obtain, and denying care by a variety of mechanisms.

The Medicare Health Care Quality Act of 1995 defines the standards that must be met by any health plan, including managed care plans, if they are to participate as a plan for Medicare patients. The major standards would include those for:

Information to be provided to enrollees on plan coverage, benefits, patient satisfaction, and quality indicators to assist consumers in making informed purchasing decisions.

Utilization review activities, credentialing of health professionals, and handling of grievances by consumers and providers to assure that all are treated fairly by the health plan.

Provision of adequate access to care, including specialty and emergency care without penalizing consumers.

Fair marketing of health plans to Medicare beneficiaries to be certain plans cannot selectively market, and enroll only the healthiest patients.

Mr. President, I have repeatedly stated that trying to restructure the Medicare Program without addressing the bigger question of overall health system reform is foolish, and likely to worsen the situation in the private sector. As Medicare cuts are put in place, providers will be forced to shift charges to private sector payers, insurance rates will rise, more people will be unable to afford coverage, and we will all end up paying more for our health care in the end. I believe that we must tackle health care reform in this Congress. Until that happens, however, and as Medicare beneficiaries continue to join private sector health plans, including managed care plans, in increasing numbers, it is critical to be certain that adequate patient protections are in place. The Medicare Health Care Quality Act of 1995 will go a long way toward doing that.

I ask unanimous consent that a copy 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. 1024

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 ''Medicare Health Care Quality Act of 1995''.

SEC. 2. REFERENCES IN ACT; TABLE OF CONTENTS.

(a) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

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

Sec. 1. Short title.
Sec. 2. References in Act; table of contents.
Sec. 3. Requirements relating to health professionals.
Sec. 4. Grievance procedures.
Sec. 5. Discrimination.
Sec. 6. Requirement for utilization review program.
Sec. 7. Access.
Sec. 8. Requirements for organization service areas.
Sec. 9. Other enrollee protections.

Sec. 10. Information on eligible organization.
Sec. 11. Enrollment by mail.
Sec. 12. Waiver of certain medicare coinsurance and deductibles not remuneration.
Sec. 13. Effective date.

SEC. 3. REQUIREMENTS RELATING TO HEALTH PROFESSIONALS.

Section 1876(c) (42 U.S.C. 1395mm(c)) is amended by adding at the end the following new paragraph:

''(9)(A) The eligible organization shall credential health professionals furnishing health care services through the organization.

''(B)(i) The eligible organization shall establish a credentialing process. Such process shall ensure that a health professional is credentialed prior to that professional being listed as a health professional in the eligible organization's marketing materials, in accordance with recorded (written or otherwise) policies and procedures. The credentialing process shall provide for the review of an application for credentialing by the credentialing committee established under clause (iii).

''(ii) The medical director of the eligible organization, or another designated health professional, shall have responsibility for the credentialing of health professionals under the organization.

''(iii)(I) The eligible organization shall establish a credentialing committee that—

''(I) is composed of licensed physicians and other health professionals to review credentialing information and supporting documents;

''(II) provides input to the eligible organization on the credentialing process and procedures; and

''(III) appropriately represents the medical specialties of applicants for credentialing.

''(iv)(I) Credentialing decisions under the eligible organization shall be based on objective standards with input from providers of health services credentialed under the organization. Information concerning all application and credentialing policies and procedures shall be made available for review by the health professional involved upon written request.

''(II) The standards referred to in subclause (I) shall include determinations as to—

''(aa) whether the health professional has a current unrestricted valid license to practice the particular health profession involved;

''(bb) whether the health professional has clinical privileges in good standing at the hospital designated by the practitioner and the primary admitting facility, as applicable;

''(cc) whether the health professional has a valid DEA or CDS certificate, as applicable;

''(dd) whether the health professional has graduated from medical school (allopathic or osteopathic), completed a residency (accredited by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association), or received Board certification (by medical specialty boards recognized by the American Board of Medical Specialties or the American Osteopathic Association), as applicable;

''(ee) the work history of the health professional;

''(ff) whether the health professional has current, adequate malpractice insurance in accordance with the policy of the eligible organization;

''(gg) the professional liability claims history of the health professional;

''(hh) whether the health professional has been convicted of a crime or cited by a licensing board for professional misconduct; and

''(ii) whether the health professional has any malpractice payments or disciplinary actions registered with the National Practitioner Data Bank under section 427(b) of the Health Care Quality Improvement Act (42 U.S.C. 11134(b)).

''(III) A health professional who undergoes the credentialing process shall have the right to review the basis information, including the sources of that information, that was used to meet the designated credentialing criteria.

''(C)(i) A health professional who is subject to credentialing under this paragraph shall, upon written request, receive from the eligible organization any information obtained by the organization during the credentialing process that, as determined by the credentialing committee, does not meet the credentialing standards of the organization, or that varies substantially from the information provided to the eligible organization by the health professional.

''(ii) The eligible organization shall have a formal, recorded (written or otherwise) process by which a health professional may submit supplemental information to the credentialing committee if the health professional determines that erroneous or misleading information has been previously submitted. The health professional may request that such information be reconsidered in the evaluation for credentialing purposes.

''(iii)(I) A health professional is not entitled to be selected or retained by the eligible organization as a participating or contracting provider whether or not such professional meets the credentialing standards established under this paragraph.

''(II) If economic considerations, including the health care professional's patterns of expenditure per patient, are part of a selection decision, objective criteria shall be used in examining such considerations and a written description of such criteria shall be provided to applicants, participating health professionals, and enrollees. Any economic profiling of health professionals must be adjusted to recognize case mix, severity of illness, and the age of patients of a health professional's practice that may account for higher or lower than expected costs, to the extent appropriate data in this regard is available to the eligible organization.

''(iv)(I) The eligible organization shall develop and implement procedures for the reporting, to appropriate authorities, of serious quality deficiencies that result in the suspension or termination of a contract with a health professional.

''(II) The eligible organization shall develop and implement policies and procedures under which the organization reviews the contract privileges of health professionals who—

''(aa) have seriously violated policies and procedures of the eligible organization;

''(bb) have lost their privilege to practice with a contracting institutional provider; or

''(cc) otherwise pose a threat to the quality of service and care provided to the enrollees of the eligible organization.

At a minimum, the policies and procedures implemented under this subparagraph shall meet the requirements of the Health Care Quality Improvement Act of 1986.

''(III) The policies and procedures implemented under subclause (II) shall include requirements for the timely notification of the affected health professional of the reasons for the reduction, withdrawal, or termination of privileges, and provide the health professional with the right to appeal the determination of reduction, withdrawal, or termination.

''(IV) A written copy of the policies and procedures implemented under this paragraph shall be made available to a health professional on request prior to the time at which the health professional contracts to provide services under the organization.

''(D) For purposes of this paragraph, the term 'health professional' means an individual who is licensed, credited, accredited, or otherwise credentialed to provide health care items and services as authorized under State law.''.

SEC. 4. GRIEVANCE PROCEDURES.

Section 1876(c)(5)(A) (42 U.S.C. 1395mm(c)(5)(A)) is amended—

(1) by adding ''(i)'' after ''(A)''; and

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

''(ii) The procedures described under clause (i) shall include—

''(I) recorded (written or otherwise) procedures for registering and responding to complaints and grievances in a timely manner;

''(II) documentation concerning the substance of complaints, grievances, and actions taken concerning such complaints and grievances, which shall be in writing.

''(III) procedures to ensure a resolution of a complaint or grievance;

''(IV) the compilation and analysis of complaint and grievance data;

''(V) procedures to expedite the complaint process if the complaint involves a dispute about the coverage of an immediately and urgently needed service; and

''(VI) procedures to ensure that if an enrollee orally notifies the eligible organization about a complaint, the organization (if requested) must send the enrollee a complaint form that includes the telephone numbers and addresses of member services, a description of the organization's grievance procedure.

''(iii) The eligible organization shall adopt an appeals process to enable covered individuals to appeal decisions that are adverse to the individuals. Such a process shall include—

''(I) the right to a review by a grievance panel;

''(II) the right to a second review with a different panel, independent from the eligible organization, or to a review through an impartial arbitration process which shall be described in writing by the organization; and

''(III) an expedited process for review in emergency cases.

The Secretary shall develop guidelines for the structure and requirements applicable to the independent review panel and impartial arbitration process described in subclause (II).

''(iv) With respect to the complaint, grievance, and appeals processes required under this paragraph, the eligible organization shall, upon the request of a covered individual, provide the individual a written decision concerning a complaint, grievance, or appeal in a timely fashion.

''(v) The complaint, grievance, and appeals processes established in accordance with this paragraph may not be used in any fashion to discourage or prevent a covered individual from receiving medically necessary care in a timely manner.''.

SEC. 5. DISCRIMINATION.

Section 1876(c) (42 U.S.C. 1395mm(c)), as amended by section 3, is amended by adding at the end the following new paragraph:

''(10)(A) The eligible organization may not discriminate or engage (directly or through contractual arrangements) in any activity, including the selection of service area, that has the effect of discriminating against an individual on the basis of race, national origin, gender, language, socio-economic status, age, disability, health status, or anticipated need for health services.

''(B) The eligible organization may not engage in marketing or other practices intended to discourage or limit the enrollment

of individuals on the basis of health condition, geographic area, industry, or other risk factors.

''(C) The eligible organization may not discriminate in the selection of members of the health professional or provider network (and in establishing the terms and conditions for membership in the network) of the organization based on—

''(i) the race, national origin, disability, gender, or age of the health professional;

''(ii) the socio-economic status, disability, health status, age, or anticipated need for health services of the patients of the health professional or provider; or

''(iii) the health professional or provider's lack of affiliation with, or admitting privileges at, a hospital.

''(D) The eligible organization may not discriminate in participation, reimbursement, or indemnification against a health professional who is acting within the scope of the license, training, or certification of the professional under applicable State law solely on the basis of the license, training, or certification of the health professional. The eligible organization may not discriminate in participation, reimbursement, or indemnification against a health provider that is providing services within the scope of services that it is authorized to perform under State law.''.

SEC. 6. REQUIREMENT FOR UTILIZATION REVIEW PROGRAM.

Section 1876(c) (42 U.S.C. 1395mm(c)), as amended by sections 3 and 5, is amended by adding at the end the following new paragraph:

''(11)(A) The eligible organization shall have in place a utilization review program that meets the requirements of this paragraph and that is certified by the Secretary.

''(B) The Secretary shall establish standards for the establishment, operation, and certification and periodic recertification of eligible organization utilization review programs.

''(C)(i) The Secretary may certify an eligible organization as meeting the standards established under subparagraph (B) if the Secretary determines that the eligible organization has met the utilization standards required for accreditation as applied by a nationally recognized, independent, nonprofit accreditation entity.

''(ii) The Secretary shall periodically review the standards used by the private accreditation entity to ensure that such standards meet or exceed the standards established by the Secretary under this paragraph.

''(D) The standards developed by the Secretary under subparagraph (B) shall require that utilization review programs comply with the following:

''(i) The eligible organization shall provide a written description of the utilization review program of the organization, including a description of—

''(I) the delegated and nondelegated activities under the program;

''(II) the policies and procedures used under the program to evaluate medical necessity; and

''(III) the clinical review criteria, information sources, and the process used to review and approve the provision of medical services under the program.

''(ii) With respect to the administration of the utilization review program, the eligible organization may not employ utilization reviewers or contract with a utilization management organization if the conditions of employment or the contract terms include financial incentives to reduce or limit the medically necessary or appropriate services provided to covered individuals.

''(iii) The eligible organization shall develop procedures for periodically reviewing and modifying the utilization review of the organization. Such procedures shall provide for the participation of providers in the eligible organization in the development and review of utilization review policies and procedures.

''(iv)(I) A utilization review program shall develop and apply recorded (written or otherwise) utilization review decision protocols. Such protocols shall be based on sound medical evidence.

''(II) The clinical review criteria used under the utilization review decision protocols to assess the appropriateness of medical services shall be clearly documented and available to participating health professionals upon request. Such protocols shall include a mechanism for assessing the consistency of the application of the criteria used under the protocols across reviewers, and a mechanism for periodically updating such criteria.

''(v)(I) The procedures applied under a utilization review program with respect to the preauthorization and concurrent review of the necessity and appropriateness of medical items, services or procedures, shall require that qualified medical professionals supervise review decisions. With respect to a decision to deny the provision of medical items, services or procedures, a provider licensed in the same field shall conduct a subsequent review to determine the medical appropriateness of such a denial. Physicians from the same medical branch (allopathic or osteopathic medicine) and specialty (recognized by the American Board of Medical Specialties or the American Osteopathic Association) shall be utilized in the review process as needed.

''(II) All utilization review decisions shall be made in a timely manner, as determined appropriate when considering the urgency of the situation.

''(III) With respect to utilization review, an adverse determination or noncertification of an admission, continued stay, or service shall be clearly documented, including the specific clinical or other reason for the adverse determination or noncertification, and be available to the covered individual or any individual acting on behalf of the covered individual and the affected provider or facility. The eligible organization may not deny or limit coverage with respect to a service that the enrollee has already received solely on the basis of lack of prior authorization or second opinion, to the extent that the service would have otherwise been covered by the organization had such prior authorization or a second opinion been obtained.

''(IV) The eligible organization shall provide a covered individual with timely notice of an adverse determination or noncertification of an admission, continued stay, or service. Such a notification shall include information concerning the utilization review program appeals procedure.

''(vi) An eligible organization utilization review program shall ensure that requests by covered individuals or physicians for prior authorization of a nonemergency service shall be answered in a timely manner after such request is received. If utilization review personnel are not available in a timely fashion, any medical services provided shall be considered approved.

''(vii) A utilization review program shall implement policies and procedures to evaluate the appropriate use of new medical technologies or new applications of established technologies, including medical procedures, drugs, and devices. The program shall ensure that appropriate professionals participate in the development of technology evaluation criteria.

''(viii) Where prior authorization for a service or other covered item is obtained under a program under this paragraph, the service shall be considered to be covered unless there was fraud or incorrect information provided at the time such prior authorization was obtained. If a provider supplied the incorrect information that led to the authorization of medically unnecessary care, the provider shall be prohibited from collecting payment directly from the enrollee, and shall reimburse the organization and subscriber for any payments or copayments the provider may have received.

''(E)(i) The eligible organization shall, with respect to any materials distributed to prospective covered individuals, include a summary of the utilization review procedures of the organization.

''(ii) The eligible organization shall, with respect to any materials distributed to newly covered individuals, include a clear and comprehensive description of utilization review procedures of the organization and a statement of patient rights and responsibilities with respect to such procedures.

''(iii) The eligible organization shall disclose to the Secretary of the eligible organization utilization review program policies, procedures, and reports required by the Secretary for certification.

''(iv) The eligible organization shall have a membership card which shall have printed on the card the toll-free telephone number that an enrollee should call for customer service issues.

''(v) The eligible organization shall establish mechanisms to evaluate the effects of the utilization review program of the organization through the use of member satisfaction data or through other appropriate means.''.

SEC. 7. ACCESS.

(a) IN GENERAL.—Section 1876(c) (42 U.S.C. 1395mm(c)), as amended by sections 3, 5, and 6, is amended by adding at the end the following new paragraph:

''(12)(A) The eligible organization shall demonstrate that the organization has a sufficient number, distribution, and variety of qualified health care providers to ensure that all covered health care services will be available and accessible in a timely manner to all individuals enrolled in the organization.

''(B) The eligible organization shall demonstrate that organization enrollees have access, when medically or clinically indicated in the judgment of the treating health professional, to specialized treatment expertise.

''(C)(i) Any process established by the eligible organization to coordinate care and control costs may not impose an undue burden on enrollees with chronic health conditions. The organization shall ensure a continuity of care and shall, when medically or clinically indicated in the judgment of the treating health professional, ensure direct access to relevant specialists for continued care.

''(ii) In the case of an enrollee who has a severe, complex, or chronic condition, the eligible organization shall determine, based on the judgment of the treating health professional, whether it is medically or clinically necessary or appropriate to use a care coordinator from an interdisciplinary team or a specialist to ensure continuity of care.

''(D)(i) The requirements of this paragraph may not be waived and shall be met in all areas where the eligible organization has enrollees, including rural areas.

''(ii) If the eligible organization fails to meet the requirements of this paragraph, the organization shall arrange for the provision of out-of-organization services to enrollees in a manner that provides enrollees with access to services in accordance with this paragraph.''.

(b) ACCESS TO EMERGENCY CARE SERVICES.—Section 1876(c)(4)(B) (42 U.S.C. 1395mm(c)(4)(B)) is amended—

(1) by inserting ''emergency'' before ''services'' the first place it appears;

(2) by striking '', if (i)'' and all that follows through ''the organization''; and

(3) by adding at the end the following new sentence: ''In such subparagraph, 'emergency services' are services provided to an individual after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected by a prudent layperson (possessing an average knowledge of health and medicine) to result in placing the individual's health in serious jeopardy, the serious impairment of a bodily function, or the serious dysfunction of any bodily organ or part, and includes services provided as a result of a call through the 911 emergency system.''.

SEC. 8. REQUIREMENTS FOR ORGANIZATION SERVICE AREAS.

(a) IN GENERAL.—Section 1876 (42 U.S.C. 1395mm) is amended by adding at the end the following new subsection:

''(k)(1) Except as provided in paragraph (2), for purposes of this section, if the eligible organization's service area includes any part of a metropolitan statistical area, the service area shall include the entire metropolitan statistical area (including any area designated by the Secretary as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act within such metropolitan statistical area).

''(2) The Secretary may permit an organization's service area to exclude any portion of a metropolitan statistical area (other than the central county of such metropolitan statistical area) if—

''(A) the organization demonstrates that it lacks the financial or administrative capacity to serve the entire metropolitan statistical area; and

''(B) the Secretary finds that the composition of the organization's service area does not reduce the financial risk to the organization of providing services to enrollees because of the health status or other demographic characteristics of individuals residing in the service area (as compared to the health status or demographic characteristics of individuals residing in the portion of the metropolitan statistical area not included in the organization's service area).''.

(b) CONFORMING AMENDMENT.—Section 1876(c)(4)(A)(i) (42 U.S.C. 1395mm(c)(4)(A)(i)) is amended by striking ''the area served by the organization'' and inserting ''the organization's service area''.

SEC. 9. OTHER ENROLLEE PROTECTIONS.

(a) CLARIFICATION OF RESTRICTIONS ON CHARGES FOR OUT-OF-PLAN SERVICES.—

(1) INPATIENT HOSPITAL AND EXTENDED CARE SERVICES.—Section 1866(a)(1)(O) (42 U.S.C. 1395cc(a)(1)(O)) is amended in the matter preceding clause (i) by inserting after ''this title'' the following: ''(without regard to whether or not the services are furnished on an emergency basis)''.

(2) PHYSICIANS' SERVICES AND RENAL DIALYSIS SERVICES.—Section 1876(j)(2) (42 U.S.C. 1395mm(j)(2)) is amended by striking ''this setion'' and inserting ''this section (without regard to whether or not the services are furnished on an emergency basis)''.

(b) ARRANGEMENTS FOR DIALYSIS SERVICES.—Section 1876(c) (42 U.S.C. 1395mm(c)), as amended by sections 3, 5, 6, and 7 is amended by adding at the end the following new paragraph:

''(13) Each eligible organization shall assure that enrollees requiring renal dialysis services who are temporarily outside of the organization's service area (within the United States) have reasonable access to such services by—

''(A) making such arrangements with providers of services or renal dialysis facilities outside the service area for the coverage of and payment for such services furnished to enrollees as the Secretary determines necessary to assure reasonable access; or

''(B) providing for the reimbursement of any provider of services or renal dialysis facility outside the service area for the furnishing of such services to enrollees.''.

SEC. 10. INFORMATION ON ELIGIBLE ORGANIZATION.

Section 1876(c)(3)(C) (42 U.S.C. 1395mm(c)(3)(C)) is amended—

(1) by redesignating clauses (i) and (ii) as subclauses (I) and (II);

(2) by inserting ''(i)'' after ''(C)''; and

(3) by adding at the end the following new clause:

''(ii)(I) The eligible organization shall provide prospective covered individuals with written information concerning the terms and conditions of the eligible organization to enable such individuals to make informed decisions with respect to a certain system of health care delivery. Such information shall be standardized so that prospective covered individuals may compare the attributes of all such organizations offered within the coverage area.

''(II) Information provided under this section, whether written or oral shall be easily understandable, truthful, linguistically appropriate and objective with respect to the terms used. Descriptions provided in such information shall be consistent with standards developed for medicare supplemental policies under section 1882.

''(III) Information required under this clause shall include information specific to medicare beneficiaries concerning—

''(aa) coverage provisions, benefits, and any exclusions by category of service or product;

''(bb) plan loss ratios with an explanation that such ratios reflect the percentage of the premiums expended for health services;

''(cc) prior authorization or other review requirements including preauthorization review, concurrent review, post-service review, post-payment review, and procedures that may lead the patient to be denied coverage for, or not be provided, a particular service or product;

''(dd) an explanation of how organization design impacts enrollees, including information on the financial responsibility of covered individuals for payment for coinsurance or other out-of-plan services;

''(ee) covered individual satisfaction statistics, including disenrollment statistics;

''(ff) advance directives and organ donation;

''(gg) the characteristics and availability of health care professionals and institutions participating in the organization, including descriptions of the financial arrangements or contractual provisions with hospitals, utilization review organizations, physicians, or any other provider of health care services that would affect the services offered, referral or treatment options, or physician's fiduciary responsibility to patients, including financial incentives regarding the provision of medical or other services;

''(hh) quality indicators for the organization and for participating health professionals and providers under the organization, including population-based statistics such as immunization rates and other preventive care and health outcomes measures such as survival after surgery, adjusted for case mix; and

''(ii) an explanation of the appeals process and the grievance procedure.''.

SEC. 11. ENROLLMENT BY MAIL.

Section 1876(c)(3) (42 U.S.C. 1395mm(c)(3)) is amended by adding at the end the following new subparagraphs:

''(H) Each eligible organization that provides items and services pursuant to a contract under this section shall permit an individual entitled to benefits under part A to obtain enrollment forms and information and to enroll under this section by mail, and no agent of an eligible organization may visit the residence of such an individual for purposes of enrolling the individual under this section or providing enrollment information to the individual other than at the individual's request.

''(I)(i) Each eligible organization that provides items and services pursuant to a contract under this section shall include the information described in clause (ii) in any solicitation for enrollment in such organization sent by mail to an individual entitled to benefits under part A.

''(ii) The information described in this clause is—

''(I) the toll-free number of the health insurance advisory service program established under section 4359 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1395b–3); and

''(II) an appropriate explanation of the services provided by such program.

SEC. 12. WAIVER OF CERTAIN MEDICARE COINSURANCE AND DEDUCTIBLES NOT REMUNERATION.

(a) IN GENERAL.—The Secretary of Health and Human Services shall modify section 1001.952(k) of title 42, Code of Federal Regulations, to provide that the term ''remuneration'' as used in section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) does not include any reduction or waiver of a coinsurance or deductible amount owed to a provider furnishing patient services covered under part B of the medicare program under title XVIII of such Act if such reduction or waiver is provided under a program that—

(1) facilitates access to health services for patients, who because of economic circumstances might otherwise refrain from seeking needed health care;

(2) initially and annually screens patients to determine financial need and eligibility for the program; and

(3) establishes financial need and eligibility on a case-by-case basis and grants such a reduction or waiver only if the beneficiary—

(A) has an annual gross income (including Social Security benefits, tax-exempt income, and income from any other source) of 200 percent or less of the Federal poverty level;

(B) does not have assets in excess of $30,300, excluding the homestead (as defined in State law) and one automobile;

(C) is not eligible for medical assistance under a State plan under title XIX of such Act; and

(D) is not enrolled in a prepaid health plan.

(b) ADDITIONAL EXCLUSION.—The modification described in subsection (a) shall be in addition to any exclusions contained in such section on the date of the enactment of this Act.

SEC. 13. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to contract years beginning on or after January 1, 1997.●

By Mr. BUMPERS (for himself, Mr. NICKLES, Mr. PRYOR, and Mr. INHOFE):

S. 1025. A bill to provide for the exchange of certain federally owned lands and mineral interests therein, and for other purposes; to the Committee on Energy and Natural Resources.

THE ARKANSAS-OKLAHOMA LAND EXCHANGE ACT OF 1995

Mr. BUMPERS. Mr. President, today I am pleased to introduce a piece of legislation that will begin a public process for a project of great importance. This legislation would allow for the exchange of lands between the Weyerhaeuser Co., the Forest Service, and the Fish and Wildlife Service. This land exchange could, in my view, achieve a number of worthy goals for the environment in my home State of Arkansas and for the State of Oklahoma. It is a bill that I have been working on, and will continue to work on, with the advice and assistance of Senators PRYOR, NICKLES, and INHOFE, as well as Congressman BREWSTER of Oklahoma and the entire Arkansas House delegation.

First, let me provide a bit of background on this exchange proposal. In 1985, I learned that the Weyerhaeuser Co. had informed the Forest Service that it had thousands of acres of land for sale in Arkansas. These lands included undeveloped timberland adjacent to Lake Ouachita. After a meeting that I had with representatives of the Weyerhaeuser Co., they agreed to withhold the sale to allow me time to work through the appropriations process and acquire environmentally significant lands through the land and water conservation fund for the Ouachita National Forest.

The acquisition of lands inside the Lake Ouachita Management Area presents opportunities for more dispersed recreation, wildlife enhancement work, and protection of visual and water quality of the lake. These acquisitions began in 1989 and have continued up through this year. As a result of these acquisitions, the Government has been able to acquire almost 40,000 acres of some of the best forest lands I have seen. Since the acquisition program started, the bald eagle has become established on Lake Ouachita. In addition, habitat is provided for the red-cockaded woodpecker, Southern lady slipper, and Arkansas fat mucket mussel. The area is popular for deer, turkey, and small game hunting.

While it would be nice to continue acquiring lands through the land and water conservation fund, that is just not a practical strategy. I know that some of my constituents do not like the concept of a land exchange because it means some lands leave Federal ownership and, under this proposal, would go to the Weyerhaeuser Co. However, reality is that this Government has a budget deficit, and funds for land acquisition have been decreasing for several years. In fact, the money that has been dedicated to land acquisition of the Weyerhaeuser property has fallen steadily since 1991. The decrease of funds has not resulted from my lack of interest in this area. It is due to the fact that Federal dollars are scarce for the kind of environmental enhancement I would like to see. Therefore, I believe it is incumbent upon Congress, the Federal Government, land owners and interest groups to be creative about how we can reach mutual goals for conservation. I challenged the Weyerhaeuser Co. to work with me in finding such an opportunity, and I believe they have taken a good step toward such an effort. I know Senator NICKLES offered the same challenge. As a result, for the past year, the Weyerhaeuser Co., the Forest Service and the Fish and Wildlife Service have been working to determine if a mutually agreed upon land exchange proposal could be achieved. The bill today represents the result of that preliminary effort.

Pursuant to this legislation, the State of Arkansas would gain approximately 25,000 acres for a national wildlife refuge. This unique bottomland forest called Pond Creek is located in the floodplain between the Cossatot River and the Little River. It is extremely rich and diverse in wetland habitat for wading birds, resident and migratory waterfowl, small mammals, deer, fish, alligators, and other wildlife. I understand that there are four bird rookeries there, used by herons, egrets, and other birds. This land would become part of the Cossatot National Wildlife Refuge.

Arkansas would also benefit by acquiring lands that would complement Lake Ouachita; the Little Missouri Wild and Scenic River; Flatside Wilderness, and parts of the Ouachita National Forest. These acquisitions would enhance recreational opportunities for hiking, rock climbing and mountain bicycling. It would protect watersheds, and help block up ownership that is currently intermingled between the Weyerhaeuser Co. and the Forest Service. In the State of Arkansas, approximately 30,000 acres would be added to the Ouachita National Forest.

In Oklahoma, the exchange would add more than 100,000 acres to the Ouachita National Forest through the addition of lands around Lake Broken Bow. This lake is similar to Lake Ouachita—very beautiful, and worthy of protection. I will work closely with my colleagues in the Senate and House from Oklahoma to ensure that this legislation fits with their goals for the area.

To summarize, through this exchange the Federal Government stands to receive almost 160,000 acres of land that is currently owned by the Weyerhaeuser Co. I want to emphasize that I have personally viewed this property and believe it is worthy for consideration in this land exchange bill.

Of course, Weyerhaeuser will also receive something in this exchange through the acquisition of approximately 28,000 acres of the Tiak district of the Ouachita National Forest in Oklahoma and approximately 20,000 acres in Arkansas. This is land currently under timber management, and would continue under timber management by the Weyerhaeuser Co. I have inquired into the company's forest practices and understand that these lands would be managed in conjunction with its recently adopted Forestry Resource Goals. These goals strengthen and reinforce the company's commitment to continue protecting water quality and fish habitat in carrying out forest management, providing habitat for wildlife associated with managed forests, using scientifically based practices to protect soil stability and ensuring long term soil productivity; and considering aesthetics in forest practices as they manage forestlands for sustainable production of wood and other forest products. I understand that the Weyerhaeuser practices go beyond the guidelines of State Best Management Practices [BMP's], and that it has a good neighbor policy that calls for carefully considering the concerns of adjacent landowners and host communities.

There are several issues I would like to address. First, is the concern that Weyerhaeuser is merely trading away cutover lands. I have toured the exchange area and seen first hand the quality of lands that the Forest Service has been receiving through the land and water conservation fund, as well as the lands that Weyerhaeuser would transfer to the Government. These are some of the best forests I have seen, and they deserve to be in Federal ownership.

Currently, the Arkansas Nature Conservancy has scientists conducting an ecological assessment of all of the Weyerhaeuser lands that would come into Federal ownership. I am anxious to see the result of this work, and it will be important for Congress to review this proposal as the bill moves ahead. I plan to hold hearings on this very topic so that we can all understand the environmental impact of the land exchange. While we know a great deal about the lands currently in Federal ownership that would go to Weyerhaeuser, this assessment will help us learn more information about the quality of lands owned by Weyerhaeuser that would go to the Ouachita National Forest for management. I understand that preliminary data show that this land provides habitat for a number of sensitive species and serves important watersheds.

A question has arisen about whether this exchange would be a value-for-value exchange. I can assure my colleagues that this exchange would be a value-for-value exchange. I understand that the Forest Service, Fish and Wildlife Service, and Weyerhaeuser Co., have contracted with an independent land appraiser to determine the values of the land and ensure that land is traded on a value-for-value basis. That is, the total value of the land, timber and other economic resources that the Federal Government would give up will equal the total value that it receives from Weyerhaeuser. Determining resource values will involve surveys, land appraisals, timber cruises, mineral and

geologic assessments. As with any other business transaction, evaluations would be based on such items as recent comparable sales and current market values. These will provide an economically sound basis for discussion and negotiation—even for areas where the highest and best land uses may be environmental, recreational, or aesthetic rather than economic. I plan to be sure that the land values will be established precisely before this legislation is enacted.

Concerns have also been raised about whether or not hunting and fishing will be allowed in the Cossatot National Wildlife Refuge. I believe that as long as hunting and fishing can be conducted in a manner that is compatible with sound wildlife management, then it makes sense to allow this and other forms of recreation.

One issue that I am committed to working on with my colleagues from Oklahoma is an issue regarding the school districts in McCurtain County. I understand that under the current land exchange proposal, two school districts—Haworth and Tom—would lose money they presently receive under current allocations from the timber receipt payments. I know these timber receipt payments are important to the operation of these school districts and look forward to finding an equitable solution to this situation.

Then there is the issue of minerals. Because of the acreage imbalance, the exchange would result in approximately 100,000 acres of Weyerhaeuser minerals being located under the lands to be conveyed to the Federal Government. At my request, Weyerhaeuser Co. has met with the Forest Service to come up with a recommendation that could be agreed to by all parties. The result of these discussions includes a proposal whereby Weyerhaeuser would trade all Forest Service mineral rights—approximately 50,000 acres—for an equivalent amount of acreage of Weyerhaeuser mineral rights when the surface is exchanged. The Weyerhaeuser hardrock minerals, which means all minerals except oil and gas, on all of the property Weyerhaeuser conveys to the Government, would be conveyed at the time of the surface exchange. However, Weyerhaeuser will reserve oil and gas rights on the acres for 45 years. Ownership by Weyerhaeuser of all oil and gas rights within any section containing a producing oil or gas well would extend beyond 45 years for as long as production continued. Weyerhaeuser would also reserve a proportionally reduced 6.25 percent of 8/8's overriding royalty interest in all oil and/or gas produced from any well located within the eight governmental sections immediately surrounding any section in which well is producing as of December 31, 2041.

Finally, let me say Mr. President that this proposal has a great deal of support. It is supported in concept by the Forest Service and the Fish and Wildlife Service. It has the support of the Arkansas Nature Conservancy and the Oklahoma Wildlife Federation to name but a few. I was particularly encouraged recently by the statement of the Department of Agriculture's Under Secretary for Natural Resources and Environment, James Lyons. When I asked him about the exchange in an Interior Appropriations Subcommittee hearing, he said ''I think it is a good exchange for the taxpayers and for Weyerhaeuser, and certainly for the State of Arkansas''. I would encourage anyone who has concerns about this proposal to contact Weyerhaeuser and the Forest Service and take the time to tour the proposed lands for exchange. It was time well spend for me, and I would highly recommend it.

I would emphasize that I want to hear from my constituents about this proposal. I want to hear about what they like and what they don't like so that I can be sure that the public process we are beginning today will benefit from their views.

I ask unanimous consent that a copy 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. 1025

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that:

(1) the Weyerhaeuser Company has offered to the United States Government an exchange of lands under which Weyerhaeuser would receive approximately 50,000 acres of Federal land in Arkansas and Oklahoma in return for conveying to the United States lands owned by Weyerhaeuser consisting of approximately 165,000 acres of forested wetlands and other forest land of public interest in Arkansas and Oklahoma, consisting of:

(A) certain Arkansas Ouachita lands located near Lake Ouachita, Little Missouri Wild and Scenic River, Flatside Wilderness and the Ouachita National Forest;

(B) certain lands in Oklahoma located near McCurtain County Wilderness, the Broken Bow Reservoir, the Glover River, and the Ouachita National Forest; and

(C) certain Arkansas Cossatot lands located on the Little and Cossatot Rivers and identified as the ''Pond Creek Bottoms'' in the Lower Mississippi River Delta section of the North American Waterfowl Management Plan;

(2) acquisition of the Arkansas Cossatot lands by the United States will remove the lands in the heart of a critical wetland ecosystem from sustained timber production and other development;

(3) the acquisition of the Arkansas Ouachita lands and the Oklahoma lands by the United States for administration by the Forest Service will provide an opportunity for enhancement of ecosystem management of the National Forest System lands and resources;

(4) the Arkansas Ouachita lands and the Oklahoma lands have outstanding wildlife habitat and important recreational values and should continue to be made available for activities such as public hunting, fishing, trapping, nature observation, enjoyment, education, and timber management;

(5) private use of the lands the United States will convey to Weyerhaeuser will not conflict with established management objectives on adjacent Federal lands;

(6) the lands the United States will convey to Weyerhaeuser as part of the exchange described in paragraph (1) do not contain comparable fish, wildlife, or wetlands values;

(7) the United States will convey all mineral interests and oil and gas interests to Weyerhaeuser on or under all surface acres designated to be exchanged pursuant to the exchange described in paragraph (1) in which the Federal Government owns such interests;

(8) pursuant to such exchange, Weyerhaeuser will convey to the United States all mineral interests and equivalent oil and gas interests on or under all surface acres designated to be exchanged pursuant to the exchange described in paragraph (1) in which Weyerhaeuser owns such interests;

(9) the United States and Weyerhaeuser have agreed to the values and boundaries of all lands, mineral interests, and oil and gas interests to be conveyed in the exchange and concur that the lands, mineral interests, and oil and gas interests to be conveyed by Weyerhaeuser and the lands, mineral interests, and oil and gas interests to be conveyed by the United States are approximately equal in value; and

(10) the exchange of lands, mineral interests, and oil and gas interests between Weyerhaeuser and the United States is in the public interest.

(b) PURPOSE.—The purpose of this Act is to authorize and direct the Secretary of the Interior and the Secretary of Agriculture to enter into an exchange of lands, mineral interests, and oil and gas interests that will provide environmental, land management, recreational, and economic benefits to the States of Arkansas and Oklahoma and to the United States.

SEC. 2. DEFINITIONS.

As used in this Act:

(a) LAND.—The terms ''land'' or ''lands'' mean the surface estate and any other interests therein except for mineral interests and oil and gas interests.

(b) MINERAL INTERESTS.—The term ''mineral interests'' means geothermal steam and heat and all metals, ores, and minerals of any nature whatsoever, except oil and gas interests, in or upon lands subject to this Act including, but not limited to, coal, lignite, peat, rock, sand, gravel, and quartz.

(c) OIL AND GAS INTERESTS.—The term ''oil and gas interests'' means all oil and gas of any nature whatsoever including carbon dioxide, helium, and gas taken from coal seams (collectively ''oil and gas'') together with the right to enter lands for the purpose of exploring the lands for oil and gas and drilling, opening, developing, and working wells on such lands and taking out and removing from such lands all such oil and gas together with the right to occupy and make use of as much of the surface of said lands as may reasonably be necessary for these purposes subject to the Secretary of Agriculture's rules and regulations set forth in section 251.15 of title 36, Code of Federal Regulations.

(d) SECRETARIES.—The term ''Secretaries'' means the Secretary of the Interior and the Secretary of Agriculture.

(c) WEYERHAEUSER.—The term ''Weyerhaeuser'' means Weyerhaeuser Company, a company incorporated in the State of Washington.

SEC. 3. EXCHANGE.

(a) EXCHANGE OF LANDS AND MINERAL INTERESTS.—

(1) IN GENERAL.—Subject to paragraph (a)(2), within 120 days after the date of the enactment of this Act, the Secretary of Agriculture shall convey to Weyerhaeuser, subject to any valid existing rights, approximately 20,000 acres of Federal lands and mineral interests in the State of Arkansas and

approximately 30,000 acres of Federal lands and mineral interests in the State of Oklahoma as depicted for exchange on maps entitled ''Arkansas-Oklahoma Land Exchange—Federal Arkansas and Oklahoma Lands,'' dated 1995 and available for public inspection in appropriate offices of the Secretaries.

(2) OFFER AND ACCEPTANCE OF LANDS.—The Secretary of Agriculture shall make the conveyance to Weyerhaeuser if Weyerhaeuser offers deeds of title, subject to limitations and the reservation described in subsection (b), acceptable to the Secretary of Agriculture that convey to the United States the following:

(A) approximately 110,000 acres of lands and mineral interests owned by Weyerhaeuser in the State of Oklahoma, as depicted for transfer to the United States upon a map entitled ''Arkansas-Oklahoma Land Exchange—Weyerhaeuser Oklahoma Lands,'' dated 1995 and available for public inspection in appropriate offices of the Secretaries;

(B) approximately 30,000 acres of lands and mineral interests owned by Weyerhaeuser in the State of Arkansas, as depicted for transfer to the United States upon a map entitled ''Arkansas-Oklahoma Land Exchange—Weyerhaeuser Arkansas Ouachita Lands,'' dated 1995 and available for public inspection in appropriate offices of the Secretaries; and

(C) approximately 25,000 acres of lands and mineral interests owned by Weyerhaeuser in the State of Arkansas, as depicted for transfer to the United States upon a map entitled ''Arkansas-Oklahoma Land Exhchange—Weyerhaeuser Arkansas Cassatot Lands,'' dated 1995 and available for public inspection in appropriate offices of the Secretaries.

(b) EXCHANGE OF OIL AND GAS INTERESTS.—

(1) IN GENERAL.—Subject to paragraph (b)(2), at the same time as the land and mineral interests exchange is carried out pursuant to this Section, the Secretary of Agriculture shall exchange all Federal oil and gas interests, including existing leases and other agreements, in the lands described in paragraph (a)(1) for equivalent oil and gas interests, including existing leases and other agreements, owned by Weyerhaeuser in the lands described in paragraph (a)(2). Any exchange of oil and gas interests pursuant to this Act may be made without regard to the limitations requiring that exchanges be made within the same State under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(2) RESERVATION.—In addition to exchanging oil and gas interests pursuant to paragraph (b)(1), to account for the acreage imbalance in the exchange required under this Act, there is hereby reserved to Weyerhaeuser, its successors, and assigns until December 31, 2041, and for so long thereafter that oil or gas is produced therefrom (''term reservation''), all oil and gas in and under the acreage imbalance lands depicted for reservation by Weyerhaeuser upon a map entitled ''Arkansas-Oklahoma Land Exchange—Weyerhaeuser Oil and Gas Interest Reservation Lands,'' dated 1995 and available for public inspection in appropriate offices of the Secretaries. Beginning January 1, 2042, there is hereby reserved to Weyerhaeuser, its successors and assigns, a proportionately reduced 6.25 percent of 8/8's overriding royalty interest in all oil and gas produced from any well in any governmental section adjacent to or cornering a section in which oil and gas is being produced at the expiration of the term reservation (''overriding royalty''). The overriding royalty will continue until either the producing well (a well producing on December 31, 2041) ceases production or until all federally leased wells to which the overriding royalty applies ceases production, whichever is later.

(c) GENERAL PROVISIONS.—

(1) VALUATION.—The lands, mineral interests, and oil and gas interests exchanged pursuant to this Act shall be approximately equal in value, as determined by the Secretaries and agreed to by Weyerhaeuser. To ensure that the natural values of the area are not affected by the exchange, a formal appraisal based upon drilling or other surface disturbing activities shall not be required for any mineral interests or oil and gas interests exchanged.

(2) MAPS CONTROLLING.—The acreage cited in this Act is approximate. In the case of a discrepancy between the description of lands, mineral interests, and/or oil and gas interests to be exchanged pursuant to subsection (a) and the lands, mineral interests, and/or oil and gas interests depicted on a map referred to in such subsection, the map shall control. Subject to the notification required by paragraph (3), the maps referenced in this Act are subject to such minor corrections as may be agreed upon by the Secretaries and Weyerhaeuser.

(3) FINAL MAPS.—Not later than 180 days after the conclusion of the exchange required by subsection (a), the Secretaries shall transmit maps accurately depicting the lands and mineral interests conveyed and transferred pursuant to this Act and the acreage and boundary descriptions of such lands and mineral interests to the Committees on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(4) CANCELLATION.—If, before the exchange has been carried out putsuant to subsections (a) and (b), Weyerhaeuser provides written notification to the Secretaries that Weyerhaeuser no longer intends to complete the exchange, with respect to the lands, mineral interests, and oil and gas interests that would otherwise be subject to the exchange, the status of such lands, mineral interests, and oil and gas interests shall revert to the status of such lands, mineral interests, and oil and gas interests as of the day before the date of enactment of this Act and shall be managed in accordance with applicable management plans.

(5) WITHDRAWAL.—Subject to valid existing rights, the lands, mineral interests, and oil and gas interests depicted for conveyance to Weyerhaeuser for possible exchange on the maps referenced in subsections (a) and (b) are withdrawn from all forms of entry and appropriation under the public land laws (including the mining laws); and from the operation of mineral leasing and geothermal steam leasing laws effective upon the date of the enactment of this Act. Such withdrawal shall terminate 45 days after completion of the exchange provided for in subsections (a) and (b) or on the date of notification by Weyerhaeuser of a decision not to complete the exchange.

SEC. 4. DESIGNATION AND USE OF LANDS ACQUIRED BY THE UNITED STATES.

(a) NATIONAL FOREST SYSTEM.—

(1) ADDITION TO THE SYSTEM.—Upon acceptance of title by the Secretary of Agriculture, the 140,000 acres of land conveyed to the United States pursuant to Section 3(a)(2)(A) and (B) of this Act shall be administered by the Secretary of Agriculture in accordance with the laws and regulations pertaining to the National Forest system.

(2) PLAN AMENDMENTS.—Within 36 months after the completion of the exchange required by this Act, the Secretary of Agriculture shall amend applicable land and resource management plans and accompanying documents pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1604).

(b) OTHER.—

(1) ADDITION TO THE NATIONAL WILDLIFE REFUGE SYSTEM.—Once acquired by the United States, the 25,000 acres of land identified in section 3(a)(2)(A), the Cossatot lands, shall be managed by the Secretary of the Interior as a component of the Cossatot National Wildlife Refuge in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee).

(2) PLAN PREPARATION.—Within 24 months after the completion of the exchange required by this Act, the Secretary of the Interior shall prepare and implement a single refuge management plan for the Cossatot National Wildlife Refuge, as expanded by this Act. Such plans shall recognize the important public purposes served by the nonconsumptive activities, other recreational activities, and wildlife-related public use, including hunting, fishing, and trapping. The plan shall permit, to the maximum extent practicable, compatible uses to the extent that they are consistent with sound wildlife management and in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) and other applicable laws. Any regulations promulgated by the Secretary of the Interior with respect to hunting, fishing, and trapping on those lands shall, to the extent practicable, be consistent with State fish and wildlife laws and regulations. In preparing the management plan and regulations, the Secretary of the Interior shall consult with the Arkansas Game and Fish Commission.

(3) INTERIM USE OF LANDS.—

(A) IN GENERAL.—Except as provided in paragraph (2), during the period beginning on the date of the completion of the exchange of lands required by this Act and ending on the first date of the implementation of the plan prepared under paragraph (2), the Secretary of the Interior shall administer all lands added to the Cossatot National Wildlife Refuge pursuant to this Act in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) and other applicable laws.

(B) HUNTING SEASONS.—During the period described in subparagraph (A), the duration of any hunting season on the lands described in subsection (1) shall comport with the applicable State law.

SEC. 5. OUACHITA NATIONAL FOREST BOUNDARY ADJUSTMENT.

(a) IN GENERAL.—Upon acceptance of title by the Secretary of Agriculture of the lands conveyed to the United States pursuant to Section 4(a)(2)(B) and (C), the boundaries of the Ouachita National Forest shall be adjusted to encompass those lands conveyed to the United States generally depicted on the maps entitled ''Arkansas-Oklahoma Land Exchange—Weyerhaeuser Oklahoma Lands'' and ''Arkansas-Oklahoma Land Exchange—Weyerhaeuser Arkansas Ouachita Lands'' dated 1995. For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Ouachita National Forest, as adjusted by this Act, shall be considered to be the boundaries of the Forest as of January 1, 1965.

(b) MAPS AND BOUNDARY DESCRIPTIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall prepare a boundary description of the lands depicted on the maps referred to in Section 3(a)(2)(B) and (C). Such maps and boundary description shall have the same force and effect as if included in this Act, except that the Secretary of Agriculture may correct clerical and typographical errors.

• Mr. NICKLES. Mr. President, today I am introducing the Arkansas-Oklahoma Land Exchange Act of 1995. This

legislation represents several years of work on the part of the U.S. Forest Service, the Weyerhaeuser Co., the Oklahoma and Arkansas congressional delegations, State officials, and local communities. I firmly believe that this land exchange will benefit not only timber resource management, but also wildlife habitat, tourism, recreation, and the economic vitality of the region.

During the course of negotiations, I strongly held that any exchange of lands would have to serve the best interests of Oklahoma citizens and the taxpayer. With this in mind, we crafted a proposal that would represent no cost to the Federal Government and that would allow for an equitable exchange of land and resources between the U.S. Forest Service and the Weyerhaeuser Co.

Specifically, the public, through the U.S. Forest Service, will receive 105,000 acres in southeast Oklahoma adjacent to Broken Bow Lake and near the McCurtain County Wilderness Area, the lower Mountain Fork River, and the Glover River. These acres will become part of the Ouachita National Forest. The U.S. Forest Service will also receive approximately 28,000 acres located near Lake Ouachita in Arkansas and an additional 25,000 acres in Sevier County, AR, to become part of the Cossatot National Wildlife Refuge.

In exchange, the Weyerhaeuser Co. will receive 28,000 acres of land located in the Tiak District of the Ouachita National Forest in McCurtain County, OK. The Tiak District was hand planted in pine timber and has been managed commercially in large blocks by the U.S. Forest Service for many years. In Arkansas, Weyerhaeuser will receive approximately 20,000 acres of scattered tracts located in Garland, Yell, and Perry Counties.

I am committed to ensuring this proposal will not have an adverse impact on school district funding in southeastern Oklahoma. I am presently working with State and local officials, as well as the U.S. Forest Service and Weyerhaeuser, to guarantee an equitable and fair distribution of Forest Service timber receipt payments to local school districts. We are progressing positively and will attempt to reach an agreement before the exchange of lands is authorized to proceed.

I have confidence in Weyerhaeuser's sound forest management practices and its commitment to replanting trees and protecting wildlife. I also have confidence in the U.S. Forest Service's ability to manage the land surrounding Broken Bow Lake as it becomes part of the Ouachita National Forest. I appreciate their commitment to managing our natural resources for the benefit of all citizens, including the development of tourism and recreation in the area.

The Arkansas-Oklahoma Land Exchange Act of 1995 has the support of the Oklahoma Wildlife Federation, the Broken Bow Lake and Mountain Fork River Association, the Idabel Chamber of Commerce, the Broken Bow Chamber of Commerce, and the McCurtain County Chapter of Wild Turkey Federation.●

By Mr. BROWN (for himself, Mr. BRADLEY, Mr. BRYAN, Mr. CHAFEE, and Mr. LAUTENBERG):

S. 1027. A bill to eliminate the quota and price support programs for peanuts, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

PEANUTS LEGISLATION

● Mr. BROWN. Mr. President, later this year Congress will be considering a new farm bill. This bill will guide our farm program into the next century. As we look to the future, we must clean up outdated programs of the past. Senator BRADLEY and I are introducing a bill to eliminate the Federal peanut program.

The peanut program was established as part of the Agricultural Adjustment Act in 1938 when America was emerging from the Great Depression. Insuring a stable supply and price for agricultural commodities, including peanuts, was of great importance during the unstable economic times that followed the Great Depression. Today, however, the peanut program drives up the price for consumers and restricts the number of farmers that can take part in the program.

The peanut program was originally intended to stabilize prices for farmers. Now, it has become a cartel. A small number of farmers own licenses, issued by the USDA, that allow them to participate in the program. These licensed farmers are restricted by a set production quotas reminiscent of communist-era central planning. How does someone obtain an allotment under the quota to grow peanuts? The right to participate in the program can be inherited, purchased, or rented. In fact in 1991, 68 percent of the peanuts produced under the peanut program were produced by farmers who rented the right to grow peanuts under the Federal program from licensed quota-owners. Those who rented collectively paid $208 million for the privilege of using someone else's quota.

Farmers who do not own and are not able to rent a quota allotment are shut out of the peanut cartel. They cannot sell their peanuts on the U.S. free market. Unlicensed peanut farmers have only two options. They can sell their peanuts on the international markets where they receive only about half what quota-owners are assured through the Federal program. They also could sell their peanuts to the Federal Government for one-fifth the price the quota-owners receive, which is below the cost to produce the peanuts.

While the peanut cartel benefits a small number of quota-owners, it gouges the American consumer. This program makes peanuts and peanut butter more expensive to Americans. In a 1993 report, the General Accounting Office estimated that the current program cost the U.S. peanut consumer between $314–$513 million per year in higher prices.

The peanut program differs significantly from other commodity programs. Commodity programs should provide a measure of stability to the agriculture industry and insure an abundant supply of food at a reasonable price. The peanut program does not accomplish this goal. The current peanut program prevents farmers who do not own or cannot rent a quota from selling on the U.S. market. The current program artificially raises the price of peanuts and peanut products to U.S. consumers.

Consumers do not benefit from the program. Most of the peanut growers do not benefit from the program. The peanut program only benefits a small number of people who own a quota license.

This program is simply a bad program that needs to be eliminated. The agriculture industry has under gone a significant change since its inception. America and the American farmer have outgrown the peanut program.●

● Mr. BRADLEY. Mr. President, today, Senator BROWN and I are introducing legislation to end the Federal peanut program, a system of production quotas, price support loans and import restrictions which benefit a privileged few at great cost to American taxpayers and consumers.

You do not have to be a peanut farmer to take advantage of the peanut program. In fact, you do not have to be farmer at all. You just have to be lucky enough to inherit—or rich enough to buy—a quota. Quota holders live all over the United States and in foreign countries as far away as Hong Kong and Great Britain.

The Federal peanut program has been in place since the 1930's. It places strict quotas on peanut production, which drive up the cost to consumers by as much as $500 million a year, according to the American Peanut Product Manufacturers.

Farmers who wish to grow peanuts for human consumption in the United States must own or lease a quota. And while quotas are assigned to particular farms, they can be rented or sold to someone else within the same county.

The GAO reports that 68 percent of all quota owners merely rent out their quotas to others. Even worse, fewer than 22 percent of all quota holders control 80 percent of the total U.S. peanut quota.

This program does nothing to help American farmers. It simply lines the pockets of what amounts to a Park Avenue peanut cartel.

Additionally, the Government provides Federal price support loans of $678 per ton for peanuts grown within the quota limits, despite the fact that the world price for peanuts is only $350 per ton. If a farmer cannot sell his crop, he can forfeit it to the Government in return for the Federal price support. These price supports will cost American taxpayers $119 million in 1995.

This program turns market capitalism on its head. It forces consumers to pay twice as much for peanuts than they otherwise would pay. Ironically, high peanut prices are shrinking the market for peanut products. At this rate, we're going to make peanut butter and jelly a delicacy.

For the dynasty of peanut quota holders, this program is the greatest thing since sliced bread. But for everyone else, it is a shell game you cannot win. The peanut program does not need overhauling, it needs to end now.●

ADDITIONAL COSPONSORS

S. 256

At the request of Mr. DOLE, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 332

At the request of Mr. CONRAD, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 332, a bill to provide means of limiting the exposure of children to violent programming on television, and for other purposes.

S. 394

At the request of Mr. D'AMATO, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 394, a bill to clarify the liability of banking and lending agencies, lenders, and fiduciaries, and for other purposes.

S. 620

At the request of Mr. CRAIG, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 620, a bill to direct the Secretary of the Interior to convey, upon request, certain property in Federal reclamation projects to beneficiaries of the projects and to set forth a distribution scheme for revenues from reclamation project lands.

S. 741

At the request of Mr. PRESSLER, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 741, a bill to require the Army Corps of Engineers to take such actions as are necessary to obtain and maintain a specified maximum high water level in Lake Traverse, South Dakota and Minnesota, and for other purposes.

S. 800

At the request of Mr. COCHRAN, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 800, a bill to provide for hearing care services by audiologists to Federal civilian employees.

S. 877

At the request of Mrs. HUTCHISON, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 877, a bill to amend section 353 of the Public Health Service Act to exempt physician office laboratories from the clinical laboratories requirements of that section.

S. 917

At the request of Mr. DOMENICI, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 917, a bill to facilitate small business involvement in the regulatory development processes of the Environmental Protection Agency and the Occupational Safety and Health Administration, and for other purposes.

S. 942

At the request of Mr. BOND, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 942, a bill to promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitary regulatory enforcement actions against small entities, and for other purposes.

SENATE JOINT RESOLUTION 37

At the request of Mr. FEINGOLD, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of Senate Joint Resolution 37, a joint resolution disapproving the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of the People's Republic of China.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the names of the Senator from Indiana [Mr. COATS], the Senator from Iowa [Mr. GRASSLEY], the Senator from Utah [Mr. HATCH], the Senator from Arizona [Mr. MCCAIN], the Senator from Nevada [Mr. REID], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Montana [Mr. BURNS], the Senator from Florida [Mr. GRAHAM], the Senator from Virginia [Mr. WARNER], and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of Senate Resolution 103, a resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

SENATE RESOLUTION 146

At the request of Mr. JOHNSTON, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Resolution 146, a resolution designating the week beginning November 19, 1995, and the week beginning on November 24, 1996, as ''National Family Week'', and for other purposes.

SENATE RESOLUTION 149—RELATIVE TO A SERIES OF UNDERGROUND NUCLEAR TEST EXPLOSIONS

Mr. AKAKA submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 149

Whereas the President of France stated on June 13, 1995, that the Republic of France plans to conduct 8 nuclear test explosions over the next several months;

Whereas the United States, France, Russia, and Great Britain have observed a moratorium on nuclear testing since 1992;

Whereas a resumption of testing by the Republic of France could result in the disintegration of the current testing moratorium and a renewal of underground testing by other nuclear weapon states;

Whereas a resumption of nuclear testing raises serious environmental and health concerns;

Whereas the United Nations Conference on Disarmament presently is meeting in Geneva, Switzerland, for the purpose of negotiating a Comprehensive Nuclear Test Ban Treaty (CTBT), which would halt permanently the practice of conducting nuclear test explosions; and

Whereas the announcement by the President of France severely undermines the efforts of the international community to conclude a CTBT by 1996, a goal endorsed by 175 nations, including France and the United States, at the recently completed NPT Extension and Review Conference (the conference for the extension and review of the Nuclear Non-Proliferation Treaty): Now, therefore, be it

Resolved, That it is the sense of the Senate that the Republic of France should abide by the current international moratorium on nuclear test explosions, refrain from proceeding with its announced intention of conducting a series of nuclear tests in advance of a Comprehensive Test Ban Treaty, and initiate preparations to close its underground test sites at the Mururoa and Fangataufa atolls.

● Mr. AKAKA. Mr. President, today I submit a resolution which expresses the sense of the Senate regarding the Republic of France's intention to conduct a series of underground nuclear test explosions despite the current international moratorium on nuclear testing.

On June 13, 1995, French President Jacques Chirac announced that the Republic of France planned to resume nuclear testing in the South Pacific. A series of eight underground tests are planned beginning September, 1995 and ending in May, 1996 at the Mururoa and Fangataufa atolls located in French Polynesia.

Following the French announcement, I contacted the White House to urge

President Clinton to convey the concerns of the United States and the Pacific island nations to France over its resumption of nuclear testing. We in the Pacific, more than any other region in the world, know the ramifications of nuclear testing. We only have to look at what happened to Bikini, Enewetak, or Rongelap Atolls in the Marshall Islands to understand the long-term damage to human lives and the environment that can occur as a result of nuclear testing. I have visited these atolls and I can attest to the plight of the native peoples in these areas. The U.S. nuclear testing between 1950 and 1960 resulted in epidemic-like outbreaks in these communities, including damage to the nervous system, paralysis, impaired vision, and increased rates of cancer. Even a half century later, the effects are still being felt. To this date, clean up efforts have been difficult and slow, and some residents have not been able to return to their homelands.

In May, the world's five nuclear powers—the United States, France, Russia, China, and Britain—persuaded the rest of the world to indefinitely extend the nuclear Non-Proliferation Treaty. To win that consensus, the five countries promised to sign a Comprehensive Test Ban Treaty by the end of next year. The resumption of French nuclear testing seriously undermines these international efforts to curb the proliferation of nuclear weapons.

We cannot ignore the resumption of nuclear testing by France. By adopting this resolution, the Senate will strongly encourage France to abide by the current international moratorium on nuclear testing and refrain from proceeding with its announced intention of conducting a series of nuclear tests in advance of a Comprehensive Test Ban Treaty.●

AMENDMENTS SUBMITTED

THE COMPREHENSIVE REGULATORY REFORM ACT OF 1995

HATCH AMENDMENT NO. 1498

Mr. HATCH proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill (S. 343) to reform the regulatory process, and for other purposes; as follows:

Delete all of section 635 (page 61, line 1 through page 64, line 14 and insert the following new section 635:

SECTION 635. RISK-BASED PRIORITIES.

(a) PURPOSES.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in sections 635 and 636 of this title;

(D) the methodologies and principle scientific determinations made in the analysis are subjected to independent and external peer review consistent with section 635, and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

(E) there is an opportunity for public comment on the results before making them final; and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk

analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

HATCH AMENDMENT NO. 1499

Mr. HATCH proposed an amendment to amendment No. 1498 proposed by him to the bill S. 343, supra; as follows:

In lieu of the language proposed to be inserted, insert:

SECTION 635. RISK-BASED PRIORITIES.

(a) PURPOSES.—The proposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious, and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in section 633 of this title;

(D) the methodologies and principal scientific determinations made in the analysis are subjected to independent and external peer review consistent with section 633(g), and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

(E) there is an opportunity for public comment on the results before making them final; and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an

accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

ROTH AMENDMENT NO. 1500

Mr. HATCH (for Mr. ROTH) proposed an amendment to the bill S. 343, supra; as follows:

Strike the word ''analysis'' in the bill and insert the following:

''analysis.

''Section 635 is deemed to read as follows:

SEC. 635. RISK-BASED PRIORITIES.

(a) PURPOSES.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—the term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency:

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in sections 635 and 636 of this title;

(D) the methodologies and principal scientific determinations made in the analysis are subjected to independent and external peer review consistent with section 635, and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

(E) there is an opportunity for public comment on the results before making them final; and

(F) the results are presented in a manner that distinguishes between the scientific

conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.— No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

ROTH AMENDMENT NO. 1501

Mr. HATCH (for Mr. ROTH) proposed an amendment No. 1500 proposed by Mr. ROTH to the bill S. 343, supra; as follows:

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

analysis.

SEC. 635. RISK-BASED PRIORITIES.

(a) PURPOSES.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) the comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in section 633 of this title;

(D) the methodologies and principal scientific determinations made in the analysis

are subjected to independent and external peer review consistent with section 633(g), and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

(E) there is an opportunity for public comment on the results before making them final; and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

DASCHLE (AND LAUTENBERG) AMENDMENT NO. 1502

Mr. DASCHLE (for himself and Mr. LAUTENBERG) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 19, line 5, strike out ''or''.

On page 19, line 7, strike out the period and insert in lieu thereof a semicolon and ''or''.

On page 19, add after line 7 the following new subparagraph:

''(xiii) the rule proposed by the United States Department of Agriculture on February 3, 1995, entitled 'Pathogen Reduction: Hazard Analysis and Critical Control Point (HACCP) Systems' (proposed rule, 60 Fed. Reg. 6774, et al.).''.

JOHNSTON (AND OTHERS) AMENDMENT NO. 1503

Mr. JOHNSTON (for himself, Mr. HATCH, and Mr. ROTH) proposed an amendment to amendment No. 1502 proposed by Mr. DASCHLE to the bill S. 343, supra; as follows:

In lieu of the language proposed on page 1, lines 5 through 9, insert the following:

''(10) Notwithstanding section 632, if the agency head determines that—

(A) a final major rule subject to this subchapter is substantially similar to the proposed major rule with respect to the risk being addressed;

(B) a risk assessment for the proposed major rule has been carried out in substantial accordance with section 633; and

(C) a new risk assessment for the final rule is not required in order to respond to comments received during the period for comment on the proposed rule; the head of the agency may publish such determination along with the final rule in lieu of preparing a new risk assessment for the final rule.

(11) Notwithstanding any provision of the Comprehensive Regulatory Reform Act of 1995 and the amendments made by such Act, including section 9 of such Act, any rule for which a notice of proposed rulemaking was filed before April 1, 1995 shall not be subject to the provision of this subchapter or subchapter III except for section 623 (relating to review of rules).''.

JOHNSTON (AND OTHERS) AMENDMENT NO. 1504

Mr. JOHNSTON (for himself, Mr. HATCH, and Mr. ROTH) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 50, between lines 15 and 16, insert the following new paragraph:

''(4) If the agency head determines that—

(A) a final major rule subject to this subchapter is substantially similar to the proposed major rule with respect to the risk being addressed;

(B) a risk assessment for the proposed major rule has been carried out in substantial accordance with section 633; and

(C) a new risk assessment for the final rule is not required in order to respond to comments received during the period for comment on the proposed rule;

the head of the agency may publish such determination along with the final rule in lieu of preparing a new risk assessment for the final rule.''

On page 19 strike out lines 11 through 13 and the words ''than 30 days after such date of enactment),''.

On page 20, line 9 strike out the words ''(or, in the case of a notice of proposed rulemaking'' and strike out lines 10 through 12.

On page 43, amend line 11 to read ''agency after the effective date of this subchapter''; strike out lines 12 and 13; and strike out ''section 623'' on line 14.

On page 48 amend lines 4 and 5 to read ''effective date of this subchapter, the head of each''.

On page 97 reliable subsection (b) as subsection (c) and insert a new subsection (b) as follows:

''(b) Any rulemaking pending on July 12, 1995 for which a notice of proposed rulemaking or a proposed rulemaking has been published in the Federal Register before April 1, 1995 shall not be subject to the provisions of subchapter II or subchapter III of chapter 6 of title 5 U.S. Code except for section 623 (relating to review of rules).''

DASCHLE AMENDMENT NO. 1505

Mr. DASCHLE proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 19, line 5, strike out ''or''.

On page 19, line 7, strike out the period and insert in lieu thereof a semicolon and ''or''.

On page 19, add after line 7 the following new subparagraph:

''(xiii) the rule proposed by the United States Department of Agriculture on February 3, 1995, entitled 'Pathogen Reduction: Hazard Analysis and Critical Control Point (HACCP) Systems' (proposed rule, 60 Fed. Reg. 6774, et al.).''.

KOHL (AND OTHERS) AMENDMENT NO. 1506

Mr. KOHL (for himself, Mr. DASCHLE, Mr. GLENN, Mr. FEINGOLD, Mr. LAUTENBERG, and Mrs. BOXER) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 19, line 5, strike out ''or''.

On page 19, line 7, strike out the period and insert in lieu thereof a semicolon and ''or''.

On page 19, add after line 7 the following new subparagraph:

''(xiii) any rule proposed or promulgated by the Environmental Protection Agency that relates to the control of microbial and disinfection byproduct risks to human health in drinking water supplies.''

ROTH (AND BIDEN) AMENDMENT NO. 1507

Mr. ROTH (for himself and Mr. BIDEN) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

Delete all of section 635 (page 61, line 1 through page 64, line 14 and add in its place the following new section 635:

SEC. 635. RISK-BASED PRIORITIES.

(a) PURPOSE.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purpose of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity, or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with an accredited scientific body—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(2) CRITERIA.—In arranging for the comparative risk analysis referred to in paragraph (1) of this subsection, the Director shall ensure that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance is allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, by individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects;

(C) the analysis is conducted, to the extent feasible, consistent with the risk assessment and risk characterization principles in section 633 of this title;

(D) the methodologies and principal scientific determinations made in the analysis are subjected to independent and external peer review consistent with section 633(g), and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e);

(E) there is an opportunity for public comment on the results before making them final; and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No later than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies, shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

(3) AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

SNOWE AMENDMENT NO. 1508

(Ordered to lie on the table.)

Ms. SNOWE submitted an amendment intended to be proposed by her to

amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place in the substitute amendment, insert the following new section:

SEC. . BOTTLED WATER STANDARDS.

Section 410 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 349) is amended—

(1) by striking ''Whenever'' and inserting ''(a) Except as provided in subsection (b), whenever''; and

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

''(b)(1)(A) Not later than 180 days after the Administrator of the Environmental Protection Agency promulgates a national primary drinking water regulation for a contaminant under section 1412 of the Public Health Service Act (42 U.S.C. 300g–1), the Secretary, after public notice and comment, shall issue a regulation under this subsection for that contaminant in bottled water or make a finding that the regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems (as defined under section 1401(4) of such Act (42 U.S.C. 300f(4))) but not in water used for bottled drinking water.

''(B) In the case of contaminants for which national primary drinking water regulations were promulgated under section 1412 of the Public Health Service Act (42 U.S.C. 300g–1) before the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Secretary shall issue the regulation or publish the finding not later than 1 year after such date of enactment.

''(2) The regulation shall include any monitoring requirements that the Secretary determines appropriate for bottled water.

''(3) The regulation shall require the following:

''(A) In the case of contaminants for which a maximum contaminant level is established in a na tional primary drinking water regulation under section 1412 of the Public Health Service Act (42 U.S.C. 300g–1), the regulation under this subsection shall establish a maximum contaminant level for the contaminant in bottled water that is at least as stringent as the maximum contaminant level provided in the national primary drinking water regulation.

''(B) In the case of contaminants for which a treatment technique is established in a national primary drinking water regulation under section 1412 of the Public Health Service Act (42 U.S.C. 300g–1), the regulation under this subsection shall require that bottled water be subject to requirements no less protective of the public health than those applicable to water provided by public water systems using the treatment technique required by the national primary drinking water regulation.

''(4)(A) If the Secretary fails to establish a regulation within the 180-day period described in paragraph (1)(A) or the 1-year period described in paragraph (1)(B) (whichever is applicable), the national primary drinking water regulation described in subparagraph (A) or (B) of such paragraph (whichever is applicable) shall be considered, as of the date on which the Secretary is required to establish a regulation under such paragraph, as the regulation applicable under this subsection to bottled water.

''(B) Not later than 30 days after the end of the 180-day period, or the 1-year period (whichever is applicable), described in subparagraph (A) or (B) of paragraph (1), the Secretary shall, with respect to a national primary drinking water regulation that is considered applicable to bottled water as provided in subparagraph (A), publish a notice in the Federal Register that—

''(i) sets forth the requirements of the national primary drinking water regulation, including monitoring requirements, which shall be applicable to bottled water; and

''(ii) provides that—

''(I) in the case of a national primary drinking water regulation promulgated after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the requirements shall take effect on the date on which the national primary drinking water regulation for the contaminant takes effect under section 1412 of the Public Health Service Act (42 U.S.C. 300g–1); or

''(II) in the case of a national primary drinking water regulation promulgated before the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the requirements shall take effect on the date that is 18 months after such date of the enactment.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be allowed to meet during the Wednesday, July 12, 1995, session of the Senate for the purpose of conducting a hearing on television violence.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, July 12, 1995, for purposes of conducting a Full Committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to review proposals with regard to disposition of Power Marketing Administrations.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be granted permission to conduct an oversight hearing Wednesday, July 12, 1995, at 9:30 a.m., on the effects of proposals to statutorily redefine the constitutional right to compensation for property owners, with particular emphasis on Federal environmental laws.

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

COMMITTEE ON FINANCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Wednesday, July 12, 1995, beginning at 9:30 a.m. in room SD–215, to conduct a hearing on Medicaid.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, July 12, 1995, at 2:00 p.m. to hold a closed hearing on intelligence matters.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Wednesday, July 12, 1994, to hold hearings on abuses in Federal student grant programs proprietary school abuses.

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

SUBCOMMITTEE ON WESTERN HEMISPHERE AND PEACE CORPS AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Western Hemisphere and Peace Corps Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 12, 1995, at 10 a.m. to hear testimony on the legislative and municipal elections in Haiti.

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

ADDITIONAL STATEMENTS

EUROPE VIEWS THE IVY LEAGUE

• Mr. SIMON. Mr. President, I do not ordinarily enter into the RECORD speeches that are 6 years old, but I came across a speech given by James Perkins, the distinguished former president of Cornell, to the Nassau Club in Princeton, NJ, on November 1, 1989.

It was titled ''Europe Views the Ivy League: With Astonishment and Jealousy.''

Because it contains so many insights into where we are and how we got where we are, I think it is worth reprinting in the CONGRESSIONAL RECORD, and I urge my colleague and their staffs to take the time to read it.

For example, he says: ''It is not uncommon for an Ivy League university to have a public relations office of a dozen or more people and a development office of 50 and sometime as many as 70 full-time persons at work on maintaining accurate and up-to-date files on the financial prospects of its important alumni. These files would be the envy of the CIA and the KGB.''

As a former Ivy League college president himself, he notes: ''that the presidents of Ivy League institutions spent at least 25 percent of their professional time on the financial needs of their universities and personal attention to both individuals and institutions which can provide financial resources to meet its needs.'' He finds a German observer, ''reminded his audience that in Japan, it was the public universities that restricted their enrollment and so expansion was taken care of by the proliferation of private institutions which had, of necessity, to live off their tuitions.

The result was the Ivy League experience in reverse. It is the universities of Tokyo and Kyoto that are the Harvards, Yales, and Princetons of Japan. The best students apply to the prestigious public institutions while the privates have to fight to maintain anything like the same quality of instruction. While in the United States 80 percent of undergraduates are in the public sector, in Japan almost 80 percent of students are in private institutions.''

Many of my colleagues will remember James Perkins as the person who headed the Commission on Foreign Language and International Studies appointed by President Carter.

It was one of the finest commissions ever to serve this Nation, and no small part of the reason was the leadership of Jim Perkins.

I ask that the text of his 1989 speech be printed in the RECORD.

The speech follows:

EUROPE VIEWS THE IVY LEAGUE WITH ASTONISHMENT AND JEALOUSY

(By James A. Perkins)

European higher education is suffering from three pressures. The first is new limits on public funds after three or four decades of increasing financial support. Consequently, there is a serious effort to secure funds from private sources. In educational systems that have almost been free of student charges, there has been the need to establish tuitions or, in those cases where they exist in small amounts, to increase them. These efforts have not been successful and have often led students to take to the streets. Support from wealthy individuals or corporations is practically non-existent because most European societies see business support as damaging to the intellectual integrity of the university.

A second pressure comes from the increasing demand to decentralize authority from the central government to regions on the one hand and to the universities on the other. The recognized need for flexibility and the capacity to innovate requires plural rather than uniform arrangements. But the legacy of Napoleon, who viewed higher education as a centralized public function, required equal treatment through a uniform curriculum which could only be installed and managed by a central authority. Efforts to decentralize have had extreme difficulties because local authorities have had little experience in managing educational institutions and the universities themselves do not have a system of governance that assures effective autonomy.

The two exceptions to this general rule are Western Germany, where the states preceded the establishment of the central government (although they did not create it), and Spain, where Catalonia and the Basque country have had a long history of considerable independence from the central government in Madrid. It is worthy of some note that the education reform law of 1984 in Spain does, in fact, provide for increased educational responsibility for the provinces, which only a half dozen of them have been able to accept.

A third pressure for change involves the educational consequences of the provision for a strong European community to be established in 1992. There is the possibility of a growing move towards something like the federal system in the United States where the individual countries of Europe are prepared to surrender some of their independence to community authorities.

On all three counts, the search for private funds, the decentralization of control from central governments and the prospects for a European community with federal overtones—all three of these pressures and prospects have led to serious soul-searching on the part of European public officials and educators. It is not surprising that their attention would turn to the experience of the United States which, in one way or another, has had to deal with maintaining a decentralized system, a successful effort to secure private funds for higher education, and a federal system that has acquired a reasonable balance between federal and local authorities, along with a substantial private sector.

It could be that four distinguished European educators decided to study one of the most successful examples of private institutions in the context of a decentralized system on the one hand and a network of connection between universities (both public and private) on the other. The four of them could have decided to make a special study of what we know as the Ivy League. Here are eight private institutions with the highest academic standards, with steady and high demand for admission (in spite of high tuition rates), and having secured what, to European eyes, seems like phenomenal amounts of money, both as endowments under their own control and annual gifts from all sources running into tens of millions of dollars. The question these four educators might have asked themselves was, ''how do they do it and what lessons can we draw from their obvious success?'' They visited the Ivy League universities, studied their governance and academic programs and their financial arrangements in considerable depth and reported on their findings to a large gathering of their colleagues.

The first critique was by a Swedish social psychologist from the University of Stockholm who reported somewhat as follows. The current success of these 8 institutions finds its roots in the origins of the country where 13 independent colonies became the original states which, on their own initiative, formed a federal government. The United States, he reported, did not have to face the extreme difficulties of decentralizing political power because political power started out decentralized. And each colony was determined to create institutions of higher education long before the successful revolutionary war, the only exception being Cornell which became a land grant university in the 1860s but inherited the academic traditions of its colonial predecessors.

A second historical fact of importance is, so he reported, that early higher education had powerful religious sponsors which, in turn, reflected the many sects of Protestantism as well as the presence of a Catholic interest in higher education. This diffuse religious background assured the plurality of university design and purpose on the one hand and gave the universities strong support in securing their independence from governments, both federal and state. There was, and is, no Church of England or Lutheran predominance as in Scandinavia, nor Catholic monopoly as in the southern half of Europe. Thus independence and differentiation soon led to competition and provided some of the historical basis for the flourishing of these private institutions.

Finally, because of their private initiation, they were almost completely dependent upon the tuitions they charged their students which was possible because only a very small fraction of an age group had any interest in higher education. The dependence on tuition meant that from the very earliest days these institutions were sensitive to student and family demand on the one hand and society's needs on the other for a diversity of trained citizenry with widely held democratic values. This market orientation helped assure that individual needs could have a priority over government prescription.

The Swedish educator ended his report by emphasizing that in the United States the states came first and they, in turn, supported the independence of the private college. Thus they never experienced the agony faced by European universities urging their government bureaucracies to let go some of their power and to build up their regions and universities and the capacity to exercise the responsibility that goes with decentralized power.

His summary point was that not only did the states come first but so did private universities supported almost entirely with private funds. With this background the development of the Ivy League institutions was almost a natural consequence of the early political and social arrangements of the United States.

The next reporter was a French professor from the University of Paris. He said he accepted the report of his Swedish friend and fully agreed that the processes by which the United States developed from states to a federal system and the fact that the private universities came first as a natural consequences surely described the favorable soil which nourished private institutions like the Ivy League. But he went on to report that this independence is, in modern times, secured by multiple sources of funds to carry on the work of these institutions. The early dependence on tuitions has already been noted, but today, they represent only a part of the needed income. Having carefully excluded government in early days, government has not been welcomed back as an important and, indeed, a decisive source of funds for the research enterprise that has given the university its substantial position in society. Tuitions continue to rise, but, in a concern for equal treatment and social justice, they are offset by the availability of scholarships, loans, and campus jobs that have kept these institutions from becoming intolerably elite. They are elite, but only in a meritocratic sense, and not in a social or economic sense.

A second source of funds has been gifts from various sources such as corporations, individuals, and particularly alumni of the various institutions involved. Private universities have relied on gifts for many years but now, it is astonishing to report, public universities are beginning to receive large sums of private money also. He said that it seemed to be deep in the American culture that people of wealth should give to charities, their churches, and their educational institutions. Some of the wealthiest donors to higher education, like Andrew Carnegie and John Rockefeller, really believed that a wealthy man had almost a religious duty to use his wealth for the good of society. It was as if they wished to atone for any sins that might have been committed in the acquisition of their wealth.

As has been mentioned, the third source of funds from government falls into two categories. State governments have been an almost negligible factor in the financing of Ivy League institutions. Once again, he mentioned that Cornell University is something of an exception because the State of New York finances four of its colleges by contracts that provide both its capital and its ongoing expenses. He also found it interesting that many States had now adopted a plan to provide public funds to its private institutions on a formula basis. This means they provide a specified amount of funds based upon the number of recent bachelor's and doctor's degrees granted by the institution in the previous year. This process effectively neutralizes the prospect of undue interference coming along with state money.

With respect to the federal government, the Ivy League institutions receive funds based on the programs they pursue that are of interest to the federal government. Thus, scientific research, undergraduate scholarships, and occasional fellowship programs come to these universities not based upon a judgment of the university as such but rather the value of the programs they pursue as part of the federal interest. It was not many years ago, he reported, that there was a large debate in the United States as to whether federal money should go directly to the institutions. However, this view did not prevail because it was felt that it would interfere with state responsibility on the one hand and the independence of the universities, both public and private, on the other.

Finally, he reported, that in the last 40 years there had been an astonishing increase in support of private universities in general and the Ivy League in particular from business corporations. In 1988 higher education had received over $2 billion of funds with a substantial fraction of this money paid to private universities in general and to the Ivy League in particular. He reported that universities had been able to receive this money, just as they had from government, through a process that effectively protected their independence from having the business interests exercise undue influence over its teaching programs. He stated, however, that in the area of research there was large debate in process in the United States as to whether the desire to acquire business corporations as partners in various research enterprises was not raising danger flags on the integrity of the research enterprise, compromising the primary university preoccupation with basic research, and forcing an imbalance in curricular interests in favor of the more short-run interests of profit-oriented commercial enterprises. He thought that this debate should be followed with interest by the European countries that were looking to business as a source of replacement funds for reduced government expenditures.

His main point was that these four sources of financial support—tuitions, gifts, government, and business—not only were important in themselves but, together, they helped assure the independence of the university by balancing both the funds and their interests in a way that would insure both the development and the independence of their institutions.

The next critique was presented by a Professor of the School of Architecture at the University of Rome. She said that she fully supported the presentations of her two colleagues that the educational quality and institutional success of the Ivy League schools had to be traced to their colonial origins and the current success in arranging for financial support from multiple sources. However, she said that to these two primary factors must be added the skillful development of institutional loyalty on the part of alumni and friends—especially alumni. Looking at the U.S. scene from Europe, the strong, emotional attachment and loyalty to their universities on the part of their graduates is a distinctive feature of the higher educational scene. Among all the institutions, it is the private ones which have been, of necessity, most successful since private contributions are a decisive part of their total income. And of private institutions, perhaps the Ivy League has developed the process of securing alumni support to the highest level of both art and governance.

She pointed out that this highly developed institutional loyalty has produced a continuing influx of funds for operating expenses, for capital buildings, and endowments. But this financial support has not come by chance. She was astonished to find that the development of institutional loyalty started soon after a student's original entry. Even the student newspapers carry reports of the latest benefactions. They also were likely to headline the achievements of its more distinguished, or at least more visible, alumni. Their football teams, whether they won or lost, receive continuous and vocal support from the university's alumni. And all of this adds to the central notions of pride in the university and encourages their interest to assure their university's financial health.

But all this requires hard and careful work by professionals to make sure that the university's activities continually appear in the press and on television. At the same time, every effort is made to encourage alumni to return to the campus, not only for athletic events, but also for lectures and public events of interest to alumni.

To assure the success of this activity, the university has a very substantial office concerned with constructive public relations on the one hand and having an up-to-date knowledge about the potential of key individuals for making financial contributions to the university. It is not uncommon for an Ivy League university to have a public relations office of a dozen or more people and a development office of 50 and sometimes as many as 70 full-time persons at work on maintaining accurate and up-to-date files on the financial prospects of its important alumni. These files would be the envy of the CIA and the KGB. Furthermore, these development offices work closely with university management and faculty leadership to see that these key individuals become members of important departmental advisory committees, leading members of the alumni council, and are promoted to membership on boards of trustees. She found that the presidents of Ivy League institutions spent at least 25% of their professional time on the financial needs of their universities and personal attention to both individuals and institutions which can provide financial resources to meet its needs.

In summary, she said, the business of raising money for private institutions, like the members of the Ivy League, is a big business, requiring many professionals, very hard work, and careful attention to matching needs and sources of funds over a long period of time. She could not fail to mention to her European colleagues, who may believe that securing private support was merely a matter of just asking for it, that it required considerable attention and substantial offices over a long period of time.

The fourth and final rapporteur was the German Director for Higher Education in the Ministry of Education and Science. He, also, reported on the importance of early history, multiple financial sources, and the sophisticated fundraising efforts of the Ivy League universities as decisive factors in their current success.

But he was astonished to discover how little the Ivy League institutions themselves recognized the role of public bodies in assuring this success. He reminded his audience that it was the privilege of the Ivy League schools to remain both selective and relatively small in their admissions which made it possible for them to concentrate on the quality of their education and research. He pointed out that in the great expansion of higher education in recent decades it was public institutions which took in almost 80% of this explosive demand for higher education. Without this expansion of pubic universities, the pressure on the Ivy League schools to double or even quadruple their numbers would have been irresistible. They would either have to have become much larger or there would have to have been 3 or 4 times as many, which could not possibly be of the same quality.

Diverting from the European scene for a moment, he reminded his audience that in Japan, it was the public universities that restricted their enrollment and so expansion was taken care of by the proliferation of private institutions which had, of necessity, to live off their tuitions. The result was the Ivy League experience in reverse. It is the universities of Tokyo and Kyoto that are the Harvards, Yales, and Princetons of Japan. The best students apply to the prestigious public institutions while the privates have to fight to maintain anything like the same quality of institution. While in the United States 80% of undergraduates are in the pubic sector, in Japan almost 80% of students are in private institutions

The German rapporteur ended by repeating that, in his judgment, the administrations and faculties of the Ivy League should recognize that Harvard must be grateful to the University of Massachusetts, Yale to the University of Connecticut, and Princeton to the public universities of Rutgers, Trenton State, and Mercer County Community College. They should view these institutions as their unsung friends, making it possible for them to be universities with world reputations for high quality and institutional success.

The final European report was by the former Vice Chancellor of Sussex University in England. He said it was his assignment to bring the discussion out of the euphoric clouds of astonishment and jealousy. In other words, he, speaking for the group, felt they should record some concerns they had about the future of the Ivy League universities.

They had been very successful in being able to continuously raise tuitions to meet their rising costs. But now these increases were going up faster than inflation and faster than the increase in personal incomes. They had already heard rumblings of discontent on the part of many who felt they could not afford these higher costs which available scholarship funds, particularly for middle income groups, could not fully compensate. They believed the time is not far off when there would be a strong reaction to these increases which would certainly come with any serious recession. In short, the golden age of the Ivy League may be here and now but perhaps not forever.

A second concern was the widely understood knowledge of the great wealth of these institutions with endowments, in some cases, of well over $1 billion and annual gifts in excess of $30 million a year. As the view persists and expands that the Ivy League universities are extremely well off, it will become more difficult to secure support in the face of the rising concerns of drug abuse, the deteriorating environment, and the obvious need to refurbish the physical infrastructure of the nation.

A third concern that must be on the list of these institutions is the rising quality of both instruction and research at the public universities and their recent successful efforts to raise private funds. Indeed, he reported, two of the five wealthiest educational systems, in terms of endowment, were public—Texas and California. And reports of large and successful endowment drives and annual fundraising on the part of the large public universities had become commonplace in the press. The private universities are obviously uneasy at the successful invasion of the private sector by the public universities. But they have no easy reply to the counter-complaint that public funds, both federal and now state, are finding their way into the private institutions.

To top off this report on the fragility of success, the Englishman said that perhaps the biggest difficulty he and his colleagues saw in the Ivy League was a tendency towards complacency. They felt they ''had it made'' and deserved support just because they were who they were. He was sensitive to this matter because he felt that some of the difficulties of Oxford and Cambridge in his own country was traceable to their belief that they had a right to public support which it was the government's duty to make good.

However, he concluded by saying that, as Europeans, they were jealous of Ivy League success, astonished at the way it was accomplished, but far from clear as to how far the U.S. experience could be transferred to Europe. He thought it was impossible to believe that anything like the Ivy League could be reproduced in Europe. The heavy hand of the Napoleonic belief that the university was a public utility, the faculty appropriately civil servants, and the chief administrators who reigned but did not rule would preclude any similar development. Their higher education would remain public, but he did see the real possibility that there would be an increase in private support of these public institutions and a closer relationship between them and the private sector that would take the form of tuitions providing a larger fraction of income and the business community a larger fraction of research as well as of general costs. On this last score, the hard work of the Ivy League universities over decades of time was a lesson that all European universities could well take to heart.●

FLY AND PROTECT OLD GLORY

● Mr. REID. Mr. President, Congress is again considering a constitutional amendment prohibiting the physical desecration of our flag. As always, I stand firm in my belief that this amendment is both a necessity and a salute to our country.

As our national symbol, the U.S. flag deserves to be honored and protected. Freedom of speech is one of the most cherished and defended rights of the American people; however, desecration of our flag goes beyond the premise of free speech.

As the time nears for this issue to once again come before Congress, a strong division of opinion remains. Constitutional scholars and editorialists have weighed in on both sides of this debate with some very thoughtful columns. One insightful article, in particular, was written by Mike O'Callaghan, a former two-term Governor of Nevada and the current executive editor of the Las Vegas Sun. I ask that this article be printed in the RECORD, and I encourage my colleagues to consider the interesting points raised in this column.

The article follows:

FLY AND PROTECT OLD GLORY

(By Mike O'Callaghan)

Today is Flag Day and time to honor Old Glory. Few, if any, Americans will dispute the honor we bestow upon our symbol of national unity today or any other day. There has been some strong disagreement about amending the U.S. Constitution to give Congress and the states power to make unlawful the physical desecration of our flag.

There is nothing wrong with disagreeing with any attempt to amend the document which spells out the strengths of our nation. The Constitution was written so it can be amended from time to time. Before it is amended, there should be long discussions about the content of any amendment before it is approved by Congress and/or the state legislatures. Those who argue against this latest suggested amendment are no less patriotic than are those who believe the amendment is a necessity.

Many people believe that this proposed amendment isn't necessary. I must agree with them to a point, but they must recognize that our own Supreme Court has made it necessary. Twice the justices have ruled that neither the states nor Congress has the power to make flag desecration illegal. Now that they have told Americans that such flag-protection laws are unconstitutional, the next move for many flag-loving Americans is to amend the Constitution. This is a very American response to what they believe is an illogical Supreme Court ruling.

The American Legion has taken the forefront in pushing for a ban on flag desecration. The American Civil Liberties Union has taken the opposite point of view because that organization views such an amendment as weakening the First Amendment's protection of free speech.

The ACLU isn't the only group that has taken a stand against the proposed amendment. Assistant Attorney General Walter Dellinger, speaking for the Clinton administration, warned that the amendment will ''create legislative power of uncertain dimensions to override the First Amendment and other constitutional guarantees.'' Also, Sen. Ted Kennedy sees it as a ''troubling and unprecedented effort to politicize the Constitution.''

In addition to Dellinger, Kennedy and the ACLU, the Los Angeles Times refers to the proposed amendment as one we don't need. The Times editorial writer asks, ''But should such contemptible disrespect be seen as imperiling the basic fabric of American life? Are we as a people so insecure in our love of country and esteem for its institutions that we let the childish behavior of a few justify the profoundly serious and worrying step of eroding one of the Constitution's most noble and vital protections?''

I find it necessary to disagree with the ACLU, the Clinton administration, Sen. Kennedy and the Los Angeles Times. This won't be the first or last time that I have or will disagree with this distinguished group of intellectuals. As for politicizing the Constitution, I can only shake my head in disbelief after reading Kennedy's worry about amending the Constitution. The entire amending process is a series of political actions provided for by the instrument being amended.

As I have written before, I'm more than a little insulted by the inane argument that such a constitutional change will be an infringement on our right of free speech. That argument, made by many who oppose an amendment to protect the flag, has little or nothing to do with damaging the First Amendment. A person can write and talk all day long and into the night about the shortcomings of our city, state and nation. That same person, if angry enough, can renounce his or her citizenship without being worried about being jailed. Millions of Americans believe public desecration of our nation's symbol is taking it one step beyond acceptable behavior and is an act beyond the bounds of free speech.

Today is Flag Day. Let's honor Old Glory and do our best to protect her from desecration by supporting an amendment to the Constitution. And let's not forget the words of my Navajo friend Thomas Begay who watched our flag unfurl over Mt. Surabachi on Iwo Jima 50 years ago. Recently, he wrote me and said, ''Passage of this amendment is but one small step toward restoring some accountability for one's actions. Responsibility for one's actions is part of being a citizen of this country. Responsibility, values, a sense of what's right and wrong are taught at a very early age here on the Navajo reservation. These values come from the family and are reinforced in our school. Respect for the flag is one of the basics that every Navajo child is taught before they even start school. Our nation as a whole could still learn a lot from its Native American population.''●

SPECIAL OLYMPICS

● Mr. BINGAMAN. Mr. President, we have all looked with awe and admiration toward the playing fields of Connecticut and the largest sporting event in world this year—the Special Olympics World Games.

We all know that this singular event is the product of a visionary mind and an energetic spirit, both in the person of Eunice Kennedy Shriver. It was she who dreamed the dream and did the hard work necessary to make that dream come true. Thousands are now involved, but it was Eunice Shriver who made Special Olympics a vital, reliable part of lives that otherwise would have lacked focus and achievement.

People from my State have come east to participate, and today I rise to honor Larenson Henderson and the basketball players of Team New Mexico from Shiprock. This is an all-Navajo team, Mr. President, the first completely American Indian team in any sport in the history of the Special Olympics.

The New York Times had a story on this outstanding group of young men, and quoted their coach as saying, ''They have heart,'' and indeed they do. Heart is the tie that binds all Special Olympic athletes, and it is the driving force behind the Games themselves.

We've seen wonderful things happen in New Haven during these Special Olympics, but perhaps the best is yet to come. One of the Navajo players said, ''Losing these games doesn't bother me. We're playing with the best teams. It gives us more confidence just playing them.''

Mr. President, I'd say it makes us all proud that this excellent program has produced such an attitude through an atmosphere of healthy competition guided by the simple creed of doing one's best. Eunice Shriver and all associated with this fine effort deserve our warmest thanks and praise for helping these athletes win by simply giving them the means to try.●

NORMALIZATION OF RELATIONS WITH VIETNAM

● Mrs. FEINSTEIN. Mr. President, yesterday afternoon, President Clinton announced his decision to fully normalize relations with Vietnam. I rise today to offer my strong support for this initiative.

I believe it is time for the United States to close the final chapter on a

sad history with Vietnam, and open a new chapter with the optimism that a mutually beneficial relationship is now warranted, appropriate, and possible.

Mr. President, last year in response to Vietnam's heightened efforts to help account for the American servicemen lost in the war in Southeast Asia, President Clinton ended our economic embargo of Vietnam. At that time, many argued that ending the embargo would halt Vietnam's efforts to help us locate these men.

In fact, Mr. President, just the opposite has occurred, and Vietnam has actually strengthened its efforts to resolve POW/MIA cases.

By normalizing relations with Vietnam, we will continue on this path of mutual participation and strong efforts to account for these men, and increase our access to evidence in Vietnam.

The Veterans of Foreign Wars, which represents over 600,000 Vietnam veterans, now supports normalizing relations with Vietnam. They are optimistic that normalizing relations will in fact further progress on accounting for POW/MIAs in Southeast Asia.

A senior-level Presidential delegation, including Assistant Secretary of State Winston Lord and Deputy Secretary for Veterans Affairs Hershel Gober, visited Vietnam in May to review the four categories the President laid out for examining progress on the POW/MIA issue; their findings were highly reassuring.

The Vietnamese government provided them with valuable new information, including analyses, maps, and witness data, that will help in reaching the fullest possible accounting of POWs and MIAs.

Mr. President, we made a commitment to the Vietnamese government. The Bush administration laid out specific goals that the Vietnamese would have to meet as conditions for normalization, and the Vietnamese have worked diligently to meet them. We should keep our commitment.

A sad truth of war is that many who courageously fought and gave their lives for the sake of freedom will never be located. The distinguished Senators from Arizona and Massachusetts, who have provided outstanding leadership on this issue, have pointed out that efforts to account for MIAs in Vietnam have been far more extensive than similar efforts after any previous war:

They emphasize that of the approximately 2,000 Americans who remain technically classified as missing-in-action, only 55 cases still hold serious questions, and all of these cases have been investigated at least once.

Mr. President, we must remember that there are over 8,000 remaining MIA cases from the Korean war and 78,000 from World War II, as noted by the Wall Street Journal. And the Vietnamese, who have made great strides in accounting for our MIAs, must live with the knowledge that 300,000 of their own people remain unaccounted for, according to the Vietnam Veterans for Reconciliation, a group of veterans who, although now involved in an array of fields from law to public policy, volunteer their time to try and resolve MIA cases.

All United States military personnel who have been involved in efforts with Vietnam to account for MIAs and POWs, including General John Vessey, who has led these efforts, state unequivocally that Vietnam's cooperation has been extensive.

Of course, the families and loved ones of the missing deserve our strongest efforts to know what happened to these brave Americans. But I believe that, at this point in time, 22 years after the United States withdrew from Vietnam, to normalize relations will be the best way to reach whatever closure to these cases is realistically possible.

Mr. President, normalizing relations with Vietnam will not only further our interests in accounting for our missing servicemen, it will serve other important United States interests in the region as well, particularly by advancing U.S. commercial interests in Asia.

The Pacific Rim holds 60 percent of the world's population today. It is the fastest growing trade area of the world, with many strong and dynamic economies. The Vietnamese economy has been growing at a rate of 8 percent a year and foreign investment in this nation has been rapidly increasing, according to the Wall Street Journal.

Just last month, the European Union announced an expansive economic agreement with Vietnam, including providing Vietnam with most-favored-nation status. This agreement will give the EU a substantial edge in trading in one of the world's fastest growing markets. And the EU is not alone: a total of 160 countries, including all of our major trading partners, enjoy full diplomatic relations with Vietnam.

With a population of over 70 million and enormous economic potential, Vietnam could become a major market for American services and products. Already, dozens of major United States companies are establishing a presence in Vietnam. But until now, they have been unable to reach their full potential.

Some of the companies involved in setting up ventures in Vietnam are Caterpillar, Inc., Proctor and Gamble, Boeing, Eastman Kodak, IBM, Lockheed Martin, and McDonnell Douglas. And the list goes on and on: Citibank, Nike, General Electric. In fact, over 100 companies belong to the Coalition for U.S.-Vietnam Trade, which endorses fully normalized relations. These companies are awaiting the opportunity to invest in Vietnam's dynamic economy.

Mr. President, for Americans, these opportunities mean more jobs at home. One of the great benefits of this new chapter in United States-Vietnamese relations will be that ordinary Americans will benefit economically from the trade that will result.

There is an additional benefit that will flow from fully normalized relations with Vietnam. Greater contacts and expanded trade will put the United States in a better position to encourage respect for human rights and democracy in Vietnam. Increased cooperation and contact will lead to a more active exchange of ideas.

As we saw with the Soviet Union and Eastern Europe, when the barriers began to come down, Western ideas about democracy and freedom soon took hold. So too, with Vietnam: as the American and Vietnamese peoples come into greater contact with each other, the people of Vietnam will benefit by enjoying greater democratization.

Mr. President, today is a day of hope and optimism for the United States and Vietnam. Today, we put the tragedies of the past behind us and begin to work together to build a better relationship. Our children, and the children of Vietnam, will have a brighter future because of this decision. I commend President Clinton for taking this bold step.●

DRUG THERAPY IN PRISONS

● Mr. SIMON. Mr. President, recently the New York Times had a series of three articles on addiction.

The second of the three articles titled ''Drug Therapy: Powerful Tool Reaching Few Inside Prisons'' tells a tragic story of our failure to provide drug treatment for those in our prisons.

Those who serve on the Labor and Human Resources Committee with me know of my discouragement over our failure to pay more attention to drug treatment.

About a year ago, I visited Cook County Jail in Chicago, and in the process of going around a minimum security area where there were perhaps 40 men on cots in a large room similar to my old Army basic training barracks, I asked one of them what he would like to see to give him a better chance for the future. He told me he would like to get into the drug treatment program.

I turned to the jail official taking me around and asked why he could not. I was told they had 9,000 prisoners and places for only 200 in the drug treatment program. I asked for a show of hands among the other men in the dormitory who would like to get into drug treatment, and 25 or 30 raised their hands. Our failure to provide that opportunity for these men is as shortsighted as anything I can imagine.

As Mr. Treaster points out in his story: ''Only a fraction of inmates—about 2 percent—undergo the kind of serious rehabilitation that can change destructive behaviors that have been congealing for a lifetime.''

The article also accurately points out: ''Drug treatment is a glacial process. Powerful changes can occur, but they take months, not days.''

Many of the drug treatments are being cut back in time and, as a result, being cut back in effectiveness.

We should be listening to the practical words of experience that come forward from Joseph Treaster's article.

I ask that his article be printed in the RECORD and urge my colleagues and their staffs to read the article.

The article follows:

DRUG THERAPY: POWERFUL TOOL REACHING FEW INSIDE PRISONS

(By Joseph B. Treaster)

On a summer night as sweet and soft as any he had ever known, Pierre Mathurin and another young man pulled to the curb in a quiet section of Queens, snorted a couple of lines of cocaine and set out down the sidewalk. They had spotted a man and a woman strolling alone, and now they were going after them, Mr. Mathurin's fingers tightening on a chrome-plated .25-caliber pistol.

It was just a week shy of Mr. Mathurin's 20th birthday, and his career as a drug dealer and armed robber was gathering momentum nicely. But that evening did not go as expected. The woman screamed, and Mr. Mathurin, fleeing with a wallet and a gold chain, was chased down by neighbors with baseball bats, turned over to the police and eventually sent to a prison drug treatment program that transformed his life.

Now, more than four years later, Mr. Mathurin says he is a retired criminal and recovering cocaine addict, earning a living as a barber and a partner in a video shop, paying taxes and finding it hard to visualize the frightening predator who stalked the streets in his skin. An energetic fireplug of a man who has traded the excitement of the streets for the dreams of a budding entrepreneur, Mr. Mathurin seems to be living proof that drug treatment, long viewed by skeptics as just so much touchy-feely hokum, can have a powerful impact on the lives of those who sustain the drug culture.

With more than one million Americans now behind bars and up to 80 percent of them involved with powerful drugs like cocaine and heroin, rehabilitation programs, at their best, offer a potent weapon for decreasing addiction, crime and the spiraling costs of incarceration.

Yet only about one in six inmates receives any kind of treatment, and much of it amounts to little more than ''just say no'' admonishments. Only a fraction of inmates—about 2 percent—undergo the kind of serious rehabilitation that can change destructive behaviors that have been congealing for a lifetime.

A result is that prisons perpetuate a kind of pinwheel of failure among drug users, who return to the streets unchanged and end up back in prison, sometimes within weeks. The best programs drastically cut the rearrest rate of participants. And they seem to be economical. One study in California showed that every $1 invested in solid drug treatment saved $7 in future costs of crime and incarceration.

Abstinence alone would not end the longing for drugs, experts say, but abstinence is not even an issue at most prisons, where drugs are available for those willing to pay.

Drug treatment advocates say the country could be providing intense anti-drug therapy to everyone in prison who needs if for a tiny fraction of what is being spent on the most explosive prison-building spree in history. But the nation's political leaders have stuck with bricks and mortar. Last fall, the Democratic-controlled Congress authorized $8 billion to build new prisons over the next six years, and only $400 million for drug treatment in state and Federal prisons. This year, the new Republican majority in Congress increased the prison construction allotment to $10 billion, leaving the treatment money the same.

few states, like California and South Carolina, are expanding drug treatment for prisoners. Texas began a sweeping new program four years ago, but is now scaling it back. And in New York, one of the pioneers, Gov. George E. Pataki, has cut treatment for several thousand prisoners as part of his plan to reduce state spending.

Joseph A. Califano Jr., the former aide to President Lyndon B. Johnson who now heads the Center on Alcohol and Substance Abuse at Columbia University, said society has a warped image of the inmate population that works against greater allocations for drug treatment.

''The average American thinks we've got guys in jail like the ones Jimmy Cagney and Humphrey Bogart played in the 1930's,'' Mr. Califano said. ''In reality, the prisons are wall to wall with alcohol and drug abusers and the mentally ill. They're not hardened criminals; they're people who can change. But they can't change without help.''

But Representative Bill McCollum, a Florida Republican who heads the House subcommittee on crime, said he and many others remain skeptical about the rehabilitative powers of treatment and about its power to reduce prison populations.

''The priority is in taking violent criminal offenders off the street and locking them up for long periods of time,'' he said. ''That comes before drug treatment.''

RESHAPING PEOPLE

''My life started changing''

Prison is an ideal place to apply drug treatment, in large part because that is where the addicts are.

On the outside, heavy drug users are scattered through almost every community. It is often hard to locate them and even harder to persuade them to enter treatment. Inside prisons, most inmates are motivated to enter treatment not because they are concerned about their drug problems but because they have something else to gain: early release, in New York; a relief from boredom; a cell in a prison closer to home.

After months in a treatment program, however, many inmates find that they have been drawn into the process despite themselves. That was the case with Mr. Mathurin. ''It just started growing on me,'' he said. ''Stuff started happening and my life started changing.''

Keeping addicts from dropping out of treatment is almost as big a problem as coaxing them to enter in the first place. In prison, though, partly because the alternative is just another bunk in another cell block, the dropout rate is much lower.

Drug treatment programs, even the least intense ones, seem to bring tranquility to prisons. Administrators and officers say inmates in treatment programs fight less and give their keepers less of a hard time. John P. Erickson, who is in charge of substance abuse programs in the California prison system, said, ''There is a ripple effect in terms of the overall prison environment.''

The kind of treatment that has proved most effective with inmates is done in a so-called therapeutic community. Residents are housed together, and they eat, sleep and work on their drug problems together. They begin the day at the crack of dawn by cleaning up their cells and making their beds with military tucks. Then, after a peppy morning meeting, they march through a schedule of encounter groups and seminars that continues into the early evening. The structure itself is part of the treatment.

While drug abuse is the universal link in these programs, it is addressed as a symptom rather than the heart of the problem.

''The therapeutic community is a school about life,'' said Ronald Williams, a former heroin addict and armed robber who now runs New York Therapeutic Communities, which operates treatment programs in prisons in New York and Texas. ''It's teaching how to live a life that is crime free and drug free, and providing the tools to accomplish that.''

It amounts to reshaping people, and researchers say the best results usually take 12 to 18 months. But a therapeutic community at the R.J. Donovan Correctional Facility, a medium security prison in southern California, has shown a striking impact after only 9 to 12 months. In that therapy program, the reincarceration rate has been cut by about a third. A year after leaving prison, 42.6 percent of the inmates who graduated from the program were back behind bars again—compared with 63 percent of those who had served their time merely lifting weights, playing basketball and doing chores.

The results have been even better at a therapeutic community in a Delaware prison with a program that runs 18 months.

Drug-treatment programs promise eventual savings because they reduce the recidivism rate among graduates. But they require more initial spending, raising the cost per prisoner by about $10 a day in Texas and California and $15 a day in New York. Without treatment, Texas spends $44 a day to keep an inmate in prison. In California the cost is $57, and in New York it is $71.

States try to cut costs while still offering treatment by offering lectures on the dangers of drugs—which are pretty well known to most addicts—and weekly meetings of an hour or two of Narcotics Anonymous and Alcoholics Anonymous. California and New York offer some drug education programs that run over several months, and Alabama and Florida have been providing eight weeks of intensive treatment for many prisoners. But experts say such abbreviated treatment has little lasting effect.

''It's a false economy,'' said Dr. Lewis Yablonsky, a sociologist at East Texas State University who has been working with therapeutic communities for years. ''If the states get behind the therapeutic community concept, we will cut our prison population in half over the next 25 years. That would save billions of dollars.''

SHOWING THE WAY

Once an inmate, now a counselor

Drug treatment is a glacial process. Powerful changes can occur, but they take months, not days.

In a session shortly after breakfast one Monday morning at the Donovan Correctional Facility in California, on a sun-parched plateau overlooking the Mexican border, a handful of inmates sat in a circle of armchairs in a pleasant, carpeted room with paintings and color photos on the walls.

Michael Watkins, an imposing young burglar who likes crack cocaine far too much, was hunched over, glowering.

''I dreamed I was getting high,'' he said. He was upset. He had been working to rid himself of cravings for three months, and now he worried that he was sliding back.

But across the circle, Phillip Serrato, a 25-year-old drug smuggler and heroin addict, could not have been happier with himself. He had been out on the grassy prison yard, between the plaza filled with barbells and weight lifters and the asphalt basketball courts, he said, when some friends from his old neighborhood started passing around heroin and crystal methamphetamine.

''It gave me the chills,'' he said. ''But I didn't take any, and I feel real good in my chest.''

Gregory Kuhn, a 30-year-old drug dealer, had just turned down a marijuana joint in the yard. ''Being right there, smelling it,'' he

said wistfully. ''I looked at it and I know I couldn't touch it.''

It was the start of another week of treatment at Donovan, where the drug culture that persists behind bars is so accepted that it goes unremarked upon by prisoners and counselors alike. Russell Power, who has the name Rita tattooed on his neck in small, loopy script, was leading the group. Like many of the counselors working in the program at Donovan, run by Amity, a private treatment organization also operating in Arizona and Texas, Mr. Power, 38, is a former inmate and recovering drug addict methamphetamine was his drug, manufacturing it was his crime.

Like most of America's inmates, many of the men came from households and neighborhoods where conversations about ideas, emotions and dreams were rarely held. Thinking broadly and deeply about their lives was not easy for them. And so Mr. Power's objective that morning was simply to get them talking and, in turn, thinking, first steps in recognizing and changing habits that repeatedly landed them in prison.

The addict-counselors, like Mr. Power, often seem to be participating as equals. But they are quietly suggesting ethical approaches to life, ways to get along without drugs, often using their own recovery and return from crime as illustrations.

Later that Monday, departing from his notes in a seminar dealing with truth, information, priorities and support, Mr. Power talked about using the group sessions to let off steam and tension. ''If you're dreaming about using, you need to be talking about it in groups,'' he said. ''If you're thinking about killing somebody you need to be saying it in the group.

''I use the group that way. If I talk about it, I usually won't do it.''

On another afternoon in group therapy, after watching a film about German concentration camps intended to provoke a conversation about hatred, one inmate, Jimmy Carpenter, an heroin addict and shoplifter, objected to comments from another, Larry Jones, that compared the new Republican leadership to the Nazis.

Certain that Mr. Carpenter, who has two years of college, was putting him down Mr. Jones sprang to his feet, veins pulsing in his neck, and lunged across the circle. Standing inches apart, the two men blustered and sputtered. Finally, with everyone shouting them down, they slumped into their chairs.

It has been a close call, two men at the precipice of what would have been the first fist fight since drug treatment was started at Donavan in 1991. And, as it turned out, it was not about Nazis and Republicans at all.

Mr. Carpenter and Mr. Jones had been friends for 25 years. A year ago, when they entered the treatment program, they promised each other they would stay away from drugs. But not long before the holocaust discussion, Mr. Carpenter had broken his word. He had got hold of some marijuana and crystal methamphetamine in the yard and, after everyone else went to sleep, he turned on the light by his bunk and began to party. He stayed up all night, reading, listening to music and savoring the drugs.

A guard notice the light and, in the morning, Mr. Carpenter was asked to give a urine sample, which, of course, proved he has been using drugs.

Though they try not get so close to the edge, the explosion was the sort of thing the counselors strive for.

''It teaches the inmates how to work through emotions,'' said Rod Mullen, the executive director of Amity.

''If they don't learn to control their emotions.'' he said, ''the first bad thing that happens will set them off. They'll go rob a store, beat up their girlfriend, get drunk, get into a high-speed chase and then, of course, they're right back in the institution again.''

GRADUAL ACCEPTANCE

Success brings more programs

Drug treatment in American prisons has had a rocky history. From its inception in the 1930's at Federal institutions in Lexington, Ky., and Forth Worth, it has generally been poorly administered and ineffective. By the mid-70's, criminal justice experts had come to believe that nothing works.

Some of the first convincing evidence that treatment could have a significant impact on crime came in the late 1980's from a therapeutic community in a New York State prison. Tracking inmates who had been out of the Arthur Kill state prison on Staten Island for three years, Dr. Harry K. Wexler found that of those who had spent a year in the Stay'n Out drug treatment program there, 27 percent had been in trouble with the police again, compared with 41 percent of the inmates who received no treatment.

Gradually, drug treatment in prisons began to expand as word of the success at Arthur Kill and at a prison in Oregon spread among professionals and Federal officials began financing pilot projects around the country. In a bit of horse trading in 1989, the New York State Assembly, which was Democratically controlled, agreed to go along with Gov. Mario M. Cuomo and the Republican-controlled Senate to build more prisons on the condition that drug treatment also be increased. By last year, there were eight therapeutic communities, treating about 8 percent of the state's 68,000 inmates.

Except for Stay'n Out, the therapeutic communities in the New York prisons run programs that last six months, about half as long as most experts think is the minimum necessary. Most of the inmates who go into therapeutic communities are primed with about six months of anti-drug education. But experts say the combined programs have far less impact on inmates than a full year of intensive treatment.

LIVING WITHOUT DRUGS

On his own, tempted no more

Pierre Mathurin's journey to recovery started in the Mohawk state prison in the gently rolling farmlands of central New York. He had been in prison for about a year and he had been getting high on marijuana and cocaine about every other week, depending on how supplies were running. Once in a while, he would get some heroin, he said, and sell it for 10 times its street value.

One morning at Mohawk, he said, he woke up and said to himself, ''I don't want to get high no more.''

He was not particularly interested in drug treatment. He did not think he needed it.

But he was told that the only way he could get into the work release program that would get him back on the street a year earlier was to go into treatment. So he signed up, and was sent to a therapeutic community run by a Phoenix House, the largest residential drug treatment organization in the nation at the state prison in Marcy.

He was not a model patient. Twice he became incensed in encounter groups and threatened to punch other inmates. Each time, he was punished with extra chores and required to repeat parts of the treatment. Therapeutically, that may have worked to his advantage, because he ended up with nine months of treatment, three months more than the standard in New York.

Though experts say that follow-up treatment outside prison further diminishes the likelihood of inmates' being rearrested by as much as 20 percent, Mr. Mathurin, like most inmates around the country, was not required to continue his treatment after being released.

But something had taken hold in him, and he arranged to participate in encounter groups at a Phoenix House center in Manhattan three times a week. Then it was twice a week. Then, once a week and finally, he was on his own, except for the Narcotics Anonymous meetings that he attends three times a week.

He is back with some of his old friends now, and some of them are still using drugs. One of them is the young man with whom he did his last stickup. He got away that night, was picked up for gun possession a couple of years later, but got off with five years' probation. He is still using drugs, and he and Mr. Mathurin are still close. But Mr. Mathurin said he did not feel tempted to get high with his friend.

''He doesn't do it in front of me, and we don't talk about it,'' Mr. Mathurin said. ''One day, he'll probably be like me. But I'm not going to preach recovery. He's got to want it.''

In the old days, Mr. Mathurin said, he considered himself mainly a drug dealer and had gone out to rob people only when sales were slow. There was, though, a certain amount of excitement, he said, in ''putting somebody in fear.''

''Now,'' he said, ''I don't think that was right. I'm not going to say I'm making more money now. But I'm feeling better. I may make less, but you spend more wisely when you actually earn it.''●

RECESS UNTIL 9 A.M. TOMORROW

Mr. LOTT. 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 10:07 p.m., recessed until Thursday, July 13, 1995, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate July 12, 1995:

DEPARTMENT OF STATE

JAMES FRANKLIN COLLINS, OF ILLINOIS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR AT LARGE AND SPECIAL ADVISOR TO THE SECRETARY OF STATE FOR THE NEW INDEPENDENT STATES.

STANLEY TUEMLER ESCUDERO, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF UZBEKISTAN.

JOSEPH A. PRESEL, OF RHODE ISLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SPECIAL NEGOTIATOR FOR NAGORNO-KARABAKH.

OFFICE OF PERSONNEL MANAGEMENT

STEPHEN D. POTTS, OF MARYLAND, TO BE DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS FOR A TERM OF 5 YEARS. (REAPPOINTMENT.)

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. KENNETH A. MINIHAN, 000–00–0000

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE. THE OFFICERS INDICATED BY ASTERISK ARE ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE:

DENTAL CORPS

To be lieutenant colonel

*ANDERSON, DAVID C., 000–00–0000

*APICELLA, MICHAEL J., 000–00–0000
BAUR, DALE A., 000–00–0000
*BECKER, TIMOTHY A., 000–00–0000
BLYTHE, GREGORY A., 000–00–0000
*BODEY, TIMOTHY E., 000–00–0000
*BRUCE, GEORGE L., 000–00–0000
CARMICHAEL, WILLIAM, 000–00–0000
COOK, BENJAMIN T., 000–00–0000
*CORBETT, MARYJO, 000–00–0000
CRIPPS, KATHRYN A., 000–00–0000
*CURETON, STEVEN L., 000–00–0000
CZERW, RUSSELL J., 000–00–0000
DUKE, JIM B., JR., 000–00–0000
DUVERNOIS, MARK F., 000–00–0000
*EARLY, CALVIN L., 000–00–0000
FERGUSON, HENRY W., 000–00–0000
*FREYFOGLE, MARIA L., 000–00–0000
*FULKERSON, MICHAEL, 000–00–0000
*GALLOUCIS, THERESE, 000–00–0000
GAWLIK, JOHN A., 000–00–0000
GIEBINK, DALE L., 000–00–0000
*GILMAN, DAVID G., 000–00–0000
*HALL, GARY L., 000–00–0000
*ISAAC, JOSEPH B., 000–00–0000
*LAVIN, DANIEL P., 000–00–0000
MALONE, KAY H., 000–00–0000
MAXWELL, MARK F., 000–00–0000
METHVIN, NATHAN F., 000–00–0000
MOON, MARTY G., 000–00–0000
*MORRIS, WALTER J., 000–00–0000
MUSE, JOHN H., 000–00–0000
OAKES, KEVIN S., 000–00–0000
PARKER, JAMES E., 000–00–0000
PIVONKA, TIMOTHY M., 000–00–0000
RADKE, MARTIN C., 000–00–0000
*RAEZ, ARLYNN G., 000–00–0000
REICHL, PETER G., 000–00–0000
ROACH, ROBERT B., 000–00–0000
*SANDLEBACK, BRET F., 000–00–0000
SMITH, ALAN D., 000–00–0000
SNYDER, HAROLD B., 000–00–0000
SOUTH, GREGORY R., 000–00–0000
*SUNDBERG, MARK A., 000–00–0000
*SWIEC, GARY D., 000–00–0000
*VAIL, MARK V., 000–00–0000
WILL, MICHAEL J., 000–00–0000
WONG, MING T., 000–00–0000
WUNSCH, KEITH A., 000–00–0000
*ZUEHLKE, ROBERT K., 000–00–0000

MEDICAL CORPS

To be lieutenant colonel

*ALITZ, CURTIS J., 000–00–0000
ANDERSON, LAWRENCE, 000–00–0000
*ANGELONI, VINCENT L., 000–00–0000
ANGUEIRA, CARLOS E., 000–00–0000
ARMSTRONG, MICHAEL, 000–00–0000
ARMSTRONG, SCOTT C., 000–00–0000
*BABCOCK, JANIINE G., 000–00–0000
*BARRAZA, EVELYN M., 000–00–0000
BARTHEL, HERMAN J., 000–00–0000
*BELBEL, ROGER J., 000–00–0000
*BELL, JAMES A., 000–00–0000
*BENIQUEZ, ENRIQUE, 000–00–0000
BLACK, JOHN F., 000–00–0000
BOLAN, CHARLES D., 000–00–0000
*BRANTNER, LINDA M., 000–00–0000
BRENT, ELAINE L., 000–00–0000
*BRITTAIN, PHILIP C., 000–00–0000
BROADHURST, RICHARD, 000–00–0000
*BROWN, BRUCE F., 000–00–0000
*BUNDY, EARL D., 000–00–0000
BURCH, HENRY B., 000–00–0000
*BURRELL, LINDA M., 000–00–0000
*CALDWELL, CHARLES M., 000–00–0000
*CALLAHAN, CHARLES W., 000–00–0000
*CAMPBELL, BRIAN S., 000–00–0000
*CANDLER, WILLIAM H., 000–00–0000
CARDINAL, PETER A., 000–00–0000
*CARPENTER, ALAN L., 000–00–0000
*CARTER, WALLACE R., 000–00–0000
CAUDLE, LESTER C., 000–00–0000
CHRISTENSON, JOSEPH, 000–00–0000
*CICERI, DAVID P., 000–00–0000
*CLEMENT, STEPHEN C., 000–00–0000
*COBB, CLARK H., 000–00–0000
*COLL, EDWARD J., 000–00–0000
*COLONNA, JOHN O., 000–00–0000
*CONRAD, STUART A., 000–00–0000
CORDTS, PAUL R., 000–00–0000
COTTER, DERMOT M., 000–00–0000
*COTTER, FRANK, 000–00–0000
*COUGHLIN, WILLIAM F., 000–00–0000
DEBO, RICHARD F., 000–00–0000
*DEMERS, DENISE M., 000–00–0000
*DEW, MICHAEL S., 000–00–0000
DICK, JOHN S., 000–00–0000
*ELG, STEVEN A., 000–00–0000
ENDY, TIMOTHY P., 000–00–0000
*EUHUS, DAVID M., 000–00–0000
FARRINGTON, CHARLES, 000–00–0000
FAUCETTE, KELLY J., 000–00–0000
*FICHTNER, KURT A., 000–00–0000
*FITCH, CHARLES P., 000–00–0000
FLYNN, ANNE M., 000–00–0000
FOLEY, JOHN P., 000–00–0000
*FORTENBERY, EDWIN J., 000–00–0000
*FRANKS, ERIC H., 000–00–0000
*FRAZIER, DUSTIN C., 000–00–0000
*FRISHBERG, DAVID P., 000–00–0000
*GAYLE, EVERETT L., 000–00–0000
*GEISSELE, ALFRED E., 000–00–0000
*GONZALEZTORRES, INE, 000–00–0000
*GOODRICH, SCOTT G., 000–00–0000
*GREEFKENS, STEPHEN, 000–00–0000
GREENE, COLIN M., 000–00–0000
*HAAK, MICHAEL H., 000–00–0000
HADLEY, STEVEN C., 000–00–0000
*HAMELINK, JOHN K., 000–00–0000
*HAMILL, RANDY L., 000–00–0000
*HAYS, JANET V., 000–00–0000
HEAVEN, RALPH F., 000–00–0000
*HEPPNER, DONALD G., 000–00–0000
*HEYER, BONNIE L., 000–00–0000
*HISE, LEO L., 000–00–0000
*HOGE, CHARLES W., 000–00–0000
*HORAN, MARY P., 000–00–0000
HOTARD, MICHAEL C., 000–00–0000
HUGHES, WILLIAM A., 000–00–0000
JACOCKS, JOHN M., 000–00–0000
*KASPER, ROBERT E., 000–00–0000
KAVOLIUS, JEFFREY P., 000–00–0000
*KELLER, RICHARD A., 000–00–0000
*KIM, YOUNGSOOK C., 000–00–0000
*KIRSHNER, DREW L., 000–00–0000
KLEMME, WILLIAM R., 000–00–0000
KNUTH, THOMAS E., 000–00–0000
*KRYWICKI, ROBERT F., 000–00–0000
*KULIK, STEVEN A., 000–00–0000
*LABUTTA, ROBERT J., 000–00–0000
*LAIRD, JOHN R., 000–00–0000
*LAWHORN, STEPHEN C., 000–00–0000
LEIBERT, BRUCE A., 000–00–0000
LIENING, DOUGLAS A., 000–00–0000
LISEHORA, GEORGE B., 000–00–0000
*LOPEZ, JUAN M., 000–00–0000
*LOUNSBERY, DOREEN M., 000–00–0000
*LOWRY, PATRICK J., 000–00–0000
*LYNGHOLM, THOMAS P., 000–00–0000
*MACDONALD, DAVID C., 000–00–0000
*MAGILL, ALAN J., 000–00–0000
*MAHER, CORNELIUS C., 000–00–0000
*MAHONEY, MICHAEL C., 000–00–0000
MALAVE, DAVID, 000–00–0000
*MALIK, ANWAR K., 000–00–0000
*MALONE, RICKY D., 000–00–0000
*MARINO, CHRIS J., 000–00–0000
*MARSH, JOHN O., 000–00–0000
*MARTIN, BRYAN L., 000–00–0000
*MASON, CARL J., 000–00–0000
*MC CARTER, DALE L., 000–00–0000
MC DERMOTT, GLENN D., 000–00–0000
*MEGO, DAVID M., 000–00–0000
*MELLEN, PAUL F., 000–00–0000
*MOCZYGEMBA, RICHARD, 000–00–0000
*MOORES, RUSSELL R., 000–00–0000
MORGAN, ANN M., 000–00–0000
*MORRIS, JOSEPH T., 000–00–0000
MULLIN, JAMES C., 000–00–0000
NACE, MARY C., 000–00–0000
*NATTER, LONNY R., 000–00–0000
*NAUSCHUETZ, KAREN K., 000–00–0000
*NOLAN, JOHN W., 000–00–0000
*NORTH, JAMES H., 000–00–0000
*O'DONNELL, SEAN D., 000–00–0000
*OHNO, AGNES K., 000–00–0000
*PEELE, MARK E., 000–00–0000
POLLY, DAVID W., 000–00–0000
POLLY, SHIRLEY M., 000–00–0000
PORTER, CLIFFORD A., 000–00–0000
POWELL, JOHN A., 000–00–0000
*PROCTOR, JON A., 000–00–0000
*RAEZ, EDUARDO R., 000–00–0000
*RAMOS, AUGUSTO, 000–00–0000
RANDOLPH, RICHARD J., 000–00–0000
RENOMDELABAUME, HEN, 000–00–0000
*ROBIE, DANIEL K., 000–00–0000
RONNINGEN, LELAND D., 000–00–0000
ROVIRA, MIGUEL J., 000–00–0000
*SANTIAGOMARINI, JUA, 000–00–0000
SCHLATTER, MARGARET, 000–00–0000
*SCHMIDT, HOWARD J., 000–00–0000
SEAY, WALLACE J., 000–00–0000
SEDLAK, RICHARD G., 000–00–0000
*SHAFFER, RICHARD T., 000–00–0000
SILKOWSKI, PETER A., 000–00–0000
*SIMMONS, GARY E., 000–00–0000
SLACK, MICHAEL C., 000–00–0000
SMITH, GEORGE R., 000–00–0000
*SMITH, PAUL D., 000–00–0000
*SMOLEN, HARRY G., 000–00–0000
*STEVENS, EDWARD L., 000–00–0000
STPIERRE, PATRICK, 000–00–0000
*SUDDUTH, LYNN S., 000–00–0000
*SUDDUTH, ROBERT H., 000–00–0000
SWANN, STEVEN W., 000–00–0000
*THEROUX, JOHN F., 000–00–0000
TSUFIS, MARC P., 000–00–0000
*UNDERWOOD, PAULA K., 000–00–0000
*VAUGHAN, THOMAS K., 000–00–0000
WALTERS, TERRY J., 000–00–0000
*WARD, THOMAS P., 000–00–0000
WATERHOUSE, WILLIAM, 000–00–0000
*WELLER, ROBERT W., 000–00–0000
*WELLFORD, ARMISTEAD, 000–00–0000
*WESCHE, DAVID L., 000–00–0000
*WESTPHAL, KENNETH W., 000–00–0000
*WILLIAMS, GUY P., 000–00–0000
*WILSON, FREDERIC B., 000–00–0000
*WILSON, JON J., 000–00–0000
*WILSON, STEVEN S., 000–00–0000
*WONG, ROLAND W., 000–00–0000
ZEFF, KARL N., 000–00–0000
*ZIMMERMAN, GRETA C., 000–00–0000

THE FOLLOWING-NAMED LIEUTENANT COMMANDERS IN THE STAFF CORPS OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF COMMANDER, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

MEDICAL CORPS OFFICERS

To be commander

ACOSTA, JOSE A., 000–00–0000
AGEE, KIMBERLY, 000–00–0000
ALFORD, PHILIP P., 000–00–0000
ARMSTRONG, CHRISTOPHER R., 000–00–0000
BALEIX, JOHN C., 000–00–0000
BARR, RICHARD S., 000–00–0000
BILDSTEN, SCOTT A., 000–00–0000
BONGIOVANNI, MICHAEL S., 000–00–0000
BOYD, HAROLD D., 000–00–0000
BRAATZ, STEVEN E., 000–00–0000
BRAZEE, SYLVIA Y., 000–00–0000
BRINGS, HANS A., 000–00–0000
BROOKS, KEVIN E., 000–00–0000
BRYANT, PAULETTE C., 000–00–0000
BULGER, ROSE M., 000–00–0000
BURKE, ROBERT J., 000–00–0000
CANADY, MICHAEL R., 000–00–0000
CENTNER, DONALD J., 000–00–0000
CHIMIAK, JAMES M., 000–00–0000
CHINN, COLIN G., 000–00–0000
CHRISTEN, BRUCE R., 000–00–0000
CLAPPER, LAURA M., 000–00–0000
COHILL, EDWARD N., 000–00–0000
COLLE, GREGG J., 000–00–0000
COMBEST, DAVID C., 000–00–0000
COOK, JOEL P., 000–00–0000
CRUFF, DENNIS M., 000–00–0000
CUSHMAN, JERRY F., 000–00–0000
DAELEY, MARK A., 000–00–0000
DALY, KAREN A., 000–00–0000
DARLING, ROBERT G., 000–00–0000
DEEDMAN, ROBERT A., 000–00–0000
DOYLE, JOSEPH G., 000–00–0000
DWYER, TERRENCE X., 000–00–0000
ELIAS, WALTER, III, 000–00–0000
ELWOOD, WILLIAM S., 000–00–0000
FITZGERALD, DEBORAH M., 000–00–0000
FLAX, STEPHEN H., 000–00–0000
FLEMMING, DONALD J., 000–00–0000
FORSYTH, JOHN C., 000–00–0000
GACCIONE, DANIEL R., 000–00–0000
GALLAGHER, KEVIN L., 000–00–0000
GASS, FREDERICK C., 000–00–0000
GERLACH, STEPHAN O., 000–00–0000
GERSTENFELD, TAMMY S., 000–00–0000
GILLIS, ROBERT B., 000–00–0000
GRIFFIN, LORRAINE J., 000–00–0000
GRIFFIN, RICHARD L., 000–00–0000
HANSEN, DAVID A., 000–00–0000
HARRELLBRUDER, BEVERLY G., 000–00–0000
HATLEY, THOMAS E., 000–00–0000
HENDRIX, STEPHEN L., 000–00–0000
HERDEN, MARY J., 000–00–0000
HERMAN, BARRY E., 000–00–0000
HIGGINS, JAMES C., 000–00–0000
HOEKSEMA, GREG W., 000–00–0000
HOLMBOE, ERIC S., 000–00–0000
HONIG, MARK P., 000–00–0000
HUFFORD, DENNIS L., 000–00–0000
HULLANDER, ROBERT M., 000–00–0000
HUNTER, ROBERT B., III, 000–00–0000
HURST, WILLIAM, 000–00–0000
JANKIEWICZ, JOSEPH J., 000–00–0000
JOHNSTON, MARK H., 000–00–0000
JONES, SHAUN B., 000–00–0000
KANE, EDWARD J., JR., 000–00–0000
KARL, ROBERT L., 000–00–0000
KEEFE, KELLY S., 000–00–0000
KEMPF, DOUGLAS P., 000–00–0000
KNIGHTLY, JOHN J., 000–00–0000
KNITTEL, DOUGLAS R., 000–00–0000
KNOIZEN, KERRY K., 000–00–0000
KOBERNIK, TIMOTHY, 000–00–0000
KUHN, JEFFERY J., 000–00–0000
LAMB, CHARLES L., 000–00–0000
LANE, JOHN I., 000–00–0000
LEWIS, ANDREW W., 000–00–0000
LIBERMAN, MARK A., 000–00–0000
LIGHT, JERRY T., 000–00–0000
LIM, ALAN 000–00–0000
LIPTON, JAMES A., 000–00–0000
LOCKE, RONALD 000–00–0000
LOWE, ROBERT R., JR., 000–00–0000
MAC DONALD, MARIAN L., 000–00–0000
MACYKO, CATHERINE A., 000–00–0000
MANDIA, STEPHEN E., 000–00–0000
MARRON, JAMES A., 000–00–0000
MARSHALL, ROBERT C., 000–00–0000
MARSHALL, SHARON A., 000–00–0000
MARTIN, GREGORY J., 000–00–0000
MARTIN, LAURA M., 000–00–0000
MASCOLA, JOHN R., 000–00–0000
MAXWELL, DANIEL L., 000–00–0000
MC BRIDE, WAYNE Z., 000–00–0000
MC CANN, DERVILLA M., 000–00–0000
MC CLATCHEY, SCOTT K., 000–00–0000
MC DONALD, ERIC C., 000–00–0000
MC DONOUGH, JOHN L., 000–00–0000
MC MAHON, ROBERT W., 000–00–0000
MEVORACH, ROBERT A., 000–00–0000
MICHALSKI, JOHN A., 000–00–0000
MINER, DAVID W., 000–00–0000
MOELLER, KATHLEEN H., 000–00–0000
MOELLER, MICHAEL S., 000–00–0000
MOQUIN, ROSS 000–00–0000
NOWICKI, MICHAEL J., 000–00–0000
NUTAITIS, MATTHEW J., 000–00–0000
O'BRIEN, THOMAS J., IV, 000–00–0000
OLIVOS, GUILLERMO 000–00–0000
O'MALLEY, TIMOTHY P., 000–00–0000
OOSTERMAN, STEPHAN E., 000–00–0000
PARKER, RICHARD L., 000–00–0000
PARRY, ROBERT L. 000–00–0000
PATTI, MICHAEL J., 000–00–0000
PERLA, TODD A., 000–00–0000
PESQUEIRA, MICHAEL J., 000–00–0000
PETERSON, DREW A., 000–00–0000
PINTO, FRANK J., JR., 000–00–0000

PITMAN, KAREN T., 000–00–0000
PIZARRO, PABLO D., 000–00–0000
POTTER, PAUL, 000–00–0000
PRATT, DENNIS, 000–00–0000
PROCTOR, JEFFREY G., 000–00–0000
REBAGLIATI, GERARD S., 000–00–0000
RECTOR, JAMES T., 000–00–0000
REDMOND, BILLY, 000–00–0000
ROBERTS, DAVID, 000–00–0000
ROBINSON, WILLIAM P., JR., 000–00–0000
ROHLEDER, KATHLEEN A., 000–00–0000
ROSS, MARCO A., 000–00–0000
SALTZMAN, ANDREW K., 000–00–0000
SARGENT, BRIAN E., 000–00–0000
SCHNEIDER, JAMES J., 000–00–0000
SCHOEM, SCOTT R., 000–00–0000
SEGNA, RUDY A. 000–00–0000
SHOWS, DONALD E., 000–00–0000
SIEFERT, JOHN A., 000–00–0000
SMITH, JAMES F., JR., 000–00–0000
SNEAD, THOMAS A., 000–00–0000
SORENSON, ROBERT B., 000–00–0000
SOUTHER, STEPHEN D., 000–00–0000
SPAW, RAYMOND G., 000–00–0000
STEDWELL, RAY E., 000–00–0000
STEELE, KIRTH W. 000–00–0000
SUAREZ, ERIC S., 000–00–0000
SWARTWORTH, WILLIAM J., 000–00–0000
SWEGLE, JAMES R., 000–00–0000
TACORONTI, RUDOLPH V., 000–00–0000
TEMERLIN, STEVEN M., 000–00–0000
THOMAS, CORNELIUS W., 000–00–0000
THOMAS, DAVID E., 000–00–0000
TOBIN, MICHAEL L. 000–00–0000
TYSON, JOHN W., 000–00–0000
ULRICH, GEORGE G., 000–00–0000
UNGER, DANIEL V., IV, 000–00–0000
VALENTE, JAMES D., 000–00–0000
VUKOVICH, JONATHAN G., 000–00–0000
WALL, ROBERT S., 000–00–0000
WANDEL, ANY G., 000–00–0000
WEBSTER, NICHOLAS L., 000–00–0000
WETSMAN, HOWARD C., 000–00–0000
WILSON, BRITT C., 000–00–0000
WILSON, JAMES S., 000–00–0000
WINGLER, KENNETH A., 000–00–0000
WOYTASH, JAMES J., 000–00–0000
YOUNG, ROBERT P., 000–00–0000
ZAUSMER, GLENN, 000–00–0000
ZUKOWSKI, MARK L., 000–00–0000

SUPPLY CORPS OFFICERS

To be commander

AHERN, MICHAEL G., 000–00–0000
ANDERSON, BERNIE J., JR., 000–00–0000
ASSELIN, ROBERT R., 000–00–0000
AVRAM, GEORGE P., 000–00–0000
BATES, BASIL B., 000–00–0000
BETHMANN, THOMAS S., 000–00–0000
BIANCHI, ROBERT J., 000–00–0000
BIRDWELL, ROBERT J., 000–00–0000
BRENNER, GERARD F., 000–00–0000
BROWN, MARK A., 000–00–0000
BURTON, CHESTER O., 000–00–0000
CAMPBELL, RICHARD D., 000–00–0000
CARLSON, MICHAEL P., 000–00–0000
CHOJNOWSKI, KIM C., 000–00–0000
COOPER, DAVID L. JR., 000–00–0000
COX, WAYNE A., 000–00–0000
COYNE, JOHN W., 000–00–0000
CRAFT, MICHAEL J., 000–00–0000
CRAWFORD, KEVIN P., 000–00–0000
CURRY, WILLIAM S., 000–00–0000
CUSKEY, JEFFREY R., 000–00–0000
DAVIS, HARRY W., 000–00–0000
DEMANN, PETER J., 000–00–0000
DESMARAIS, CAROL J., 000–00–0000
DEXTER, MARK D., 000–00–0000
DOWNS, DANIEL L., 000–00–0000
DUCHOW, DARBY J., 000–00–0000
DUNN, JAMES L., 000–00–0000
DUNNEHAYES, ANNE, 000–00–0000
FALLON, JAMES S., 000–00–0000
FLONDARINA, PAUL V., 000–00–0000
FRASER, HEATHER A., 000–00–0000
FREEBURN, GREGORY H., 000–00–0000
GORDON, MICHAEL E., 000–00–0000
GRAFF, DAVID J., 000–00–0000
GRAU, CHARLES V., 000–00–0000
GREEN, BRUCE E., JR., 000–00–0000
GREEN, TIMOTHY F., 000–00–0000
GUEVARA, JOY M., 000–00–0000
HAY, ROBERT W., JR, 000–00–0000
HAYWARD, JOHN A., 000–00–0000
HITSON, ROBERT L., 000–00–0000
JACUNSKI, WALTER W., 000–00–0000
JORGENSEN, HERMAN J.M., IV, 000–00–0000
KAMMERER, RONALD G., 000–00–0000
KELLY, GARY E., 000–00–0000
KERBER, JAMES L., 000–00–0000
KERTZ, GARY W., 000–00–0000
KOMPANIK, MICHAEL P., 000–00–0000
KUHM, FREDERICK G., 000–00–0000
LAMBERT, MARIE S., 000–00–0000
LAWRIMORE, JANICE A., 000–00–0000
MANNA, JOSEPH F., 000–00–0000
MARCINEK, ROBERT D., 000–00–0000
MC CARTHY, JOHN P., 000–00–0000
MC CLELLAN, MOLLY J., 000–00–0000
MELTON, WALTER H., 000–00–0000
MENDEZ, RICHARD A., 000–00–0000
MILLER, DONALD C., 000–00–0000
MILLER, JONATHAN D., 000–00–0000
MILLER, ROBERT W., 000–00–0000
MONETTE, ROBERT L., 000–00–0000
MOON, KYUNG C., 000–00–0000
MORGAN, CHARLES W., 000–00–0000
MUCK, STEVEN R., 000–00–0000
MURPHY, ROBERT P., 000–00–0000
NAPOLI, JOSEPH A., JR., 000–00–0000
O'CONNOR, KEVIN T., 000–00–0000
PADDOCK, CHRISTOPHER D., 000–00–0000
PAGE, ASA H. III, 000–00–0000
PINKERTON, KIM G., 000–00–0000
RACKLIFFE, JOHN A., 000–00–0000
REIDY, DONALD J. JR., 000–00–0000
RITCHIE, MARY G., 000–00–0000
ROE, RUSSELL G., 000–00–0000
ROMANO, STEVEN J., 000–00–0000
ROSS, TIMOTHY J., 000–00–0000
RULE, GADSDEN E., 000–00–0000
SEIDL, MARK F., 000–00–0000
SERGESON, ROBERT B., 000–00–0000
SICARI, JAMES J., 000–00–0000
SMALL, CHRIS W., 000–00–0000
SNYDER, ROBERT J., 000–00–0000
SPEAR, CHARLES O., IV, 000–00–0000
STAGGS, CARL S., 000–00–0000
STYRON, ERNEST L., 000–00–0000
SULLIVAN, LOREN C., 000–00–0000
SWEENEY, EDWARD J., 000–00–0000
SWEENEY, RICHARD F., 000–00–0000
SWERCZEK, ANTHONY G., 000–00–0000
TALWAR, PAUL, 000–00–0000
TIFFANY, MURRAY L., III, 000–00–0000
TILLSON, PATRICK A., 000–00–0000
TROJAN, GREGORY C., 000–00–0000
VANHAASTEREN, CLEVE J., 000–00–0000
VITT, CHRISTOPHER M., 000–00–0000
WARREN, GRIFFIN L., 000–00–0000
WIGGS, DAVID B., 000–00–0000
WISE, MICHAEL S., 000–00–0000
WRIGHT, WALTER F., 000–00–0000
ZAK, GARY W., 000–00–0000
ZUCKER, JANET F., 000–00–0000

CHAPLAIN CORPS OFFICERS

To be commander

ARNOLD, RALPH W., JR., 000–00–0000
BARTZ, WILLIAM J., 000–00–0000
BUENAVENTURA, CESAR V., 000–00–0000
BURRELL, HAROLD W., 000–00–0000
CASH, TIERIAN, 000–00–0000
DOUGLAS, RALPH S., 000–00–0000
DOUGLASS, WILBUR C., III, 000–00–0000
EVANS, ROBERT D., 000–00–0000
FUNG, KARL K., 000–00–0000
KLOAK, DAVID G., 000–00–0000
LOOBY, JAMES F., 000–00–0000
MILTON, NATHANIEL, 000–00–0000
PUTTLER, JAMES D., 000–00–0000
SHAFER, DAVID W., 000–00–0000
THIES, THOMAS E., 000–00–0000
VILLANUEVA, FELIX C., 000–00–0000
VINSON, JAMES E., JR., 000–00–0000
WAUN, WILLIAM G., 000–00–0000
WILLIAMS, ROBERT L., JR., 000–00–0000
WOHLRABE, JOHN C., JR., 000–00–0000
WYRICK, PHILIP A., 000–00–0000
ZUFFOLETTO, MICHAEL P., 000–00–0000

CIVIL ENGINEER CORPS OFFICERS

To be commander

BALK, DAVID M., 000–00–0000
BANHAM, STEPHEN R., 000–00–0000
BELLIS, CHRISTINA A., 000–00–0000
BERSSON, THOMAS F., 000–00–0000
BROWN, JOHN R., 000–00–0000
CHASE, HENRI G., 000–00–0000
COLEMAN, BRYCE C., 000–00–0000
COOK, PAUL S., 000–00–0000
COWELL, JAMES W., JR., 000–00–0000
DAVIS, HULEN M., JR., 000–00–0000
FEILER, PHILIP S., 000–00–0000
HUBBARD, EUGENE F., 000–00–0000
INGALLS, JON W., 000–00–0000
ISELIN, STEVEN R., 000–00–0000
JACKSON, JAMES R., 000–00–0000
JENNISON, STEPHEN D., 000–00–0000
KING, DANIEL P., 000–00–0000
LORD, STEPHEN J., 000–00–0000
MAFFETT, GREGORY L., 000–00–0000
MC KERALL, WILLIAM C., 000–00–0000
MILLER, CHARLES C., III, 000–00–0000
MONACHINO, JOSEPH A., 000–00–0000
PARKER, ROBERT F., 000–00–0000
PECK, JAMES T. V.L., 000–00–0000
PEEK, MICHAEL A., 000–00–0000
POELKER, SCOTT D., 000–00–0000
RAMSAY, ROBERT A., 000–00–0000
RIEGER, MICHAEL N., 000–00–0000
ROTH, RICHARD D., JR., 000–00–0000
SARLES, MARK V., 000–00–0000
SCHLESINGER, R.D., 000–00–0000
SHOPE, BRUCE G., 000–00–0000
STEWART, DAVID J., 000–00–0000
THACKSON, RUSSELL C., 000–00–0000
WATTS, EDWIN B., 000–00–0000
WHITE, KEVIN M., 000–00–0000
WIEGAND, FRANCIS P., JR., 000–00–0000
ZINK, JOHN W., 000–00–0000

JUDGE ADVOCATE GENERAL'S CORPS OFFICERS

To be commander

ALLRED, KEITH J., 000–00–0000
ARGALL, DENNIS J., 000–00–0000
ARMSTRONG, ERICK L., 000–00–0000
BATTIN, PATRICIA J., 000–00–0000
CARBER, FRANK H., JR., 000–00–0000
CLEMENT, DAVID B., 000–00–0000
CRAWFORD, JAMES W., III, 000–00–0000
DART, BEVERLY R., 000–00–0000
DONOVAN, DANIEL G., 000–00–0000
GAASCH, CAROLE J., 000–00–0000
HOUCK, JAMES W., 000–00–0000
MAC KENZIE, BRUCE W., 000–00–0000
MASON, MICHAELEEN, 000–00–0000
NEHER, PATRICK J., 000–00–0000
WALTMAN, BURTON J., 000–00–0000

DENTAL CORPS OFFICERS

To be commander

ARAGON, JOHN R., 000–00–0000
AUSMUS, MATHEW S., 000–00–0000
BABINEC, ROCCO M., 000–00–0000
BEATTY, DEAN A., 000–00–0000
BUCK, JOHN S., 000–00–0000
DICKINSON, JAMES, 000–00–0000
DURY, DOROTHY C., 000–00–0000
EHRICH, DANIEL G., 000–00–0000
FOSS, ROBERT D., 000–00–0000
FUENTES, FRANCISCO, 000–00–0000
GARRITY, PATRICIA M., 000–00–0000
GLYNN, DAVID W., 000–00–0000
HANKS, ROGER E., 000–00–0000
HERNANDEZ, ARTHUR J., 000–00–0000
HOYT, LISA G., 000–00–0000
HUBER, TIMOTHY R., 000–00–0000
LUNDGREN, JOHN P., 000–00–0000
MC CRAVY, LAURIER L., 000–00–0000
MC LEOD, BRUCE C., 000–00–0000
MEARS, KEVIN J., 000–00–0000
PADGETT, THOMAS B., 000–00–0000
PARREIRA, FRANCIS R., 000–00–0000
PASTUOVIC, MILAN N., 000–00–0000
REAGAN, PAUL D., 000–00–0000
REEVES, NANCY L., 000–00–0000
ROUTIER, DONALD D., 000–00–0000
RUSSELL, DAVID A., 000–00–0000
SCHAFER, DUANE R., 000–00–0000
SELLERS, VERNON, 000–00–0000
SMITH, PAUL R., 000–00–0000
SZAL, RICHARD L., 000–00–0000
THOMAS, BRUCE J., 000–00–0000
THOMPSON, THOMAS M., 000–00–0000
TODD, ALLEN D., 000–00–0000
WALKER, CAROL L., 000–00–0000
WATKINS, DALE V., JR., 000–00–0000
WATTS, JOHN H., 000–00–0000
WEBBER, CAROLINE M., 000–00–0000
WILSON, TIMOTHY J., 000–00–0000
YOUNGBLADE, CHARLES J., JR., 000–00–0000

MEDICAL SERVICE CORPS OFFICERS

To be commander

ANDERSON, EDWARD W., JR., 000–00–0000
ANDERSON, THOMAS J., 000–00–0000
BATCHELOR, ROGER A., 000–00–0000
BAYSINGER, MARK O., 000–00–0000
BRANNMAN, PAMELA S. H., 000–00–0000
BRESHIKE, KEVIN J., 000–00–0000
CHURCH, COLE J., 000–00–0000
CLIPPER, ROBERT W., JR., 000–00–0000
CORWIN, ANDREW L., 000–00–0000
DEVINE, RONALD J., 000–00–0000
EICHNER, RYAN B., 000–00–0000
FOGARTY, MICHAEL B., 000–00–0000
FRANCIS, JOSEPH P., 000–00–0000
FRANKE, EILEEN D., 000–00–0000
HIGGINS, GARRY A., 000–00–0000
JONES, TREVOR R., 000–00–0000
KANOUR, WILLIAM W., JR., 000–00–0000
LEIBOLD, VIRGINIA E., 000–00–0000
LEMM, MICHAEL E., 000–00–0000
LUND, PAUL W., 000–00–0000
LUZ, JAMES T., 000–00–0000
MANN, MICHAEL O., 000–00–0000
MASON, RICHARD P., 000–00–0000
MUNSON, MARK R., 000–00–0000
MURDOCH, DONNA M., 000–00–0000
OCKER, KENNETH R., 000–00–0000
OLSEN, CHARLES N., 000–00–0000
PATTERSON, ERIN E., 000–00–0000
POBLETE, RICARDO Q., 000–00–0000
ROBINSON, CHARLES A., 000–00–0000
ROBINSON, STEVEN E., 000–00–0000
SCHWALM, MICHAEL A., 000–00–0000
SLATER, RANDALL A., 000–00–0000
STEVENSON, FRANCINE S., 000–00–0000
TAYLOR, DEAN A., 000–00–0000
THOMPSON, TIMOTHY E., 000–00–0000
TINLING, WALTER W., 000–00–0000
UPDEGROVE, CHARLES D., 000–00–0000
VALENTIN, ELEANOR V., 000–00–0000
WEBER, DENISE E., 000–00–0000
WILKINSON, MICHAEL O., 000–00–0000

NURSE CORPS OFFICERS

To be commander

ALDRICH, DIANNE J., 000–00–0000
ANDERSON, MARY A., 000–00–0000
ATCHISON, JOAN R., 000–00–0000
BACKMAN, MARY P., 000–00–0000
BANKSTARR, SHARON E., 000–00–0000
BARENDSE, BARNEY R., 000–00–0000
BURKE, DARLENE M., 000–00–0000
CARRIO, JAN M., 000–00–0000
CHERRY, JOHN W., 000–00–0000
CHRISTENSEN, SOREN, 000–00–0000
CLOSS, MARGARET M., 000–00–0000
CULVER, PATRICIA M., 000–00–0000
DONOVAN, DENDY D., 000–00–0000
ESPINOSA, JULIO S., JR., 000–00–0000
FRICKER, DIANA L., 000–00–0000

FRYSLIE, ARLETTA R., 000–00–0000
GIL, JOSIE I., 000–00–0000
HAND, WALTER R., JR., 000–00–0000
HEINDEL, LOUIS J., 000–00–0000
HIGGINS, LINDA W., 000–00–0000
JACKSON, MARY K., 000–00–0000
KOHL, JAMES E., 000–00–0000
LAMPO, BONNY J.C., 000–00–0000
LUNDGREN, KARIN E., 000–00–0000
MADDEN, LORETTA A., 000–00–0000
MARTINSANDERS, SUSAN L., 000–00–0000
MCCARTHY, DAVID R., 000–00–0000
MCCLOSKEY, JUDITH A., 000–00–0000
MCCORMICKBOYLE, REBECCA J., 000–00–0000
MCDOWELL, DENISE S., 000–00–0000
MCKINSEY, KAREN T., 000–00–0000
MOORING, ELIZABETH M., 000–00–0000
MORRIS, SANDRA E., 000–00–0000
MURPHY, PAMELA L., 000–00–0000
NOGGLE, VANESSA A., 000–00–0000
PEARLMAN, HELEN V., 000–00–0000
PENDRICK, PAULA A., 000–00–0000
PEPPARD, SANDRA W., 000–00–0000
PIERCE, KATHLEEN M., 000–00–0000
RADERSTORF, VIRGINIA M., 000–00–0000
RICE, BILLY J., 000–00–0000
ROARK, PAMELA K., 000–00–0000
ROSEMOND, ANDREA B., 000–00–0000
RUFFRIDGE, SUSAN B., 000–00–0000
SAUNDERS, SANDRA K., 000–00–0000
SCHMIDTGEARY, MARGARET J., 000–00–0000
SENZIG, MARIE S., 000–00–0000
SPENCER, JOHN G., 000–00–0000
SWANSON, NANCY A., 000–00–0000
TOLTON, ELLEN S., 000–00–0000
ULBRICHT, STEPHEN M., 000–00–0000
WARREN, NANCYE K., 000–00–0000
WEIBERT, SHEILA M., 000–00–0000
WILLOUGHBY, DONA M.R., 000–00–0000
YAKSHAW, RONALD A., 000–00–0000
YAREMA, DEBRA D., 000–00–0000

LIMITED DUTY OFFICERS (STAFF)

To be commander

ROSADO, GILBERTO, 000–00–0000
TICHY, THOMAS N., 000–00–0000