SENATE—*Friday, July 14, 1995*

(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].

PRAYER

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

Almighty God, we thank You for this moment of quiet in which we can reaffirm who we are, whose we are and why we are here. Once again we commit ourselves to You as Sovereign Lord of our lives and our Nation. Our ultimate goal is to please and serve You. You have called us to be servant-leaders who glorify You in seeking to know and to do Your will in the unfolding of Your vision for America.

We spread out before You the specific decisions that must be made today. We claim Your presence all through the day. Guide our thinking and our speaking. May our convictions be based on undeniable truth which has been refined by You.

Bless the women and men of this Senate as they work together to find the best solutions to the problems before our Nation. Help them to draw on the supernatural resources of Your Spirit. Give them divine wisdom, penetrating discernment, and indomitable courage.

When the day draws to a close, may our deepest joy be that we received Your best for us and worked together for what is best for our Nation. In Your holy name. Amen.

The PRESIDENT pro tempore. The able Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I ask unanimous consent to speak as in morning business for not to exceed 3 minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, thank you.

OUR NATION'S DEFENSES

Mr. INHOFE. Mr. President, I want to call to your attention an editorial which was in yesterday morning's Washington Post by Charles Krauthammer.

I think he best characterizes where we are today in terms of our Nation's defense—in this editorial—more than anything I have read recently. He talks about the problems that we have in our defense system.

I think several of us have been disturbed that this administration has stripped our defenses down to the bone. We are operating now on a budget that is about what it was in 1980 when we could not afford spare parts. There are several of us who believe that we could not fight two regional wars right now. We could not fight the Persian Gulf war as we did.

This Nation has to rebuild its defense system. Charles Krauthammer states three incontrovertible facts.

The first is, America is coming home. He points out that we are bringing from overseas our bases back to the mainland of the United States. In 1960, we had 90 bases around the world. Today we have 17.

His second incontrovertible fact is that America cannot endure casualties. If you look at what is happening on CNN with the coverage on all of these humanitarian missions that are going on right now all over the world, we have more troops in more parts of the world right now on missions that have nothing to do with our Nation's security. We saw Captain O'Grady and how the entire Nation was watching him and hoping and praying for him. This is a concern that the entire Nation has; that we have a very low tolerance of casualties. Yet we look at Somalia. We had 18 Rangers that were killed there. And I have a great fear for what can happen in Bosnia.

The third fact is that America's next war will be a surprise. I think we all understand this. Certainly, Pearl Harbor was a surprise. The invasion of South Korea was a surprise. The Falklands war was a surprise. The next war will be a surprise, too.

To meet this criterion, what weapon, according to Charles Krauthammer, is the best one to do that? He says clearly it is to expand the B-2 bomber program—the B-2 bomber program—because, No. 1, it has the range; No. 2, it is invisible; and, No. 3, it is immediate. If you look at the Persian Gulf war, the F-117's, they had the invisible characteristics of a stealth fighter. Over 2 percent, I think, of the missions were flown by the F-117, and they got 40 percent of their targets.

So, Mr. President, I will conclude by saying that seven of the currently living former Secretaries of Defense agree with Charles Krauthammer that we need to expand the B-2 program, and I believe it, too.

Mr. President, I ask unanimous consent that this editorial by Charles Krauthammer be printed in the RECORD.

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

[From the Washington Post, July 13, 1995]

THE B-2 AND THE "CHEAP HAWKS"

(By Charles Krauthammer)

We hear endless blather about how new and complicated the post-Cold War world is. Hence the endless confusion about what weapons to build, forces to deploy, contingency to anticipate. But there are three simple, glaringly obvious facts about this new era:

(1) America is coming home. The day of the overseas base is over. In 1960, the United States had 90 major Air Force bases overseas. Today, we have 17. Decolonization is one reason. Newly emerging countries like the Philippines do not want the kind of Big Brother domination that comes with facilities like Clark Air Base and Subic Bay. The other reason has to do with us: With the Soviets gone, we do not want the huge expenses of maintaining a far-flung, global military establishment.

(2) America cannot endure casualties. It is inconceivable that the United States, or any other Western country, could ever fight a war of attrition like Korea or Vietnam. One reason is the CNN effect. TV brings home the reality of battle with a graphic immediacy unprecedented in human history. The other reason, as strategist Edward Luttwak has pointed out, is demographic: Advanced industrial countries have very small families, and small families are less willing than the large families of the past to risk their only children in combat.

(3) America's next war will be a surprise. Nothing new here. Our last one was too. Who expected Saddam to invade Kuwait? And even after he did, who really expected the United States to send a half-million man expeditionary force to roll him back? Then again who predicted Pearl Harbor, the invasion of South Korea, the Falklands War?

What kind of weapon, then, is needed by a country that is losing its foreign bases, is allergic to casualties and will have little time to mobilize for tomorrow's unexpected provocation?

Answer: A weapon that can be deployed at very long distances from secure American bases, is invulnerable to enemy counterattack and is deployable instantly. You would want, in other words, the B-2 stealth bomber.

We have it. Yet, amazingly, Congress may be on the verge of killing it. After more than $20 billion in development costs—costs irrecoverable whether we build another B-2 or not—the B-2 is facing a series of crucial votes in Congress that could dismantle its assembly lines once and for all.

The B-2 is not a partisan project. Its development was begun under Jimmy Carter. And, as an urgent letter to President Clinton makes clear, it is today supported by seven secretaries of defense representing every administration going back to 1969.

They support it because it is the perfect weapon for the post-Cold War world. It has a range of about 7,000 miles. It can be launched

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

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instantly—no need to beg foreign dictators for base rights; no need for weeks of advance warning, mobilization and forward deployment of troops. And because it is invisible to enemy detection, its two pilots are virtually invulnerable.

This is especially important in view of the B-2's very high cost, perhaps three-quarters to a billion dollars a copy. The cost is, of course, what has turned swing Republican votes—the so-called "cheap hawks"—against the B-2.

But the dollar cost of a weapon is too narrow a calculation of its utility. The more important calculation is cost in American lives. The reasons are not sentimental but practical. Weapons cheap in dollars but costly in lives are, in the current and coming environment, literally useless: We will not use them. A country that so values the life of every Capt. O'Grady is a country that cannot keep blindly relying on non-stealthy aircraft over enemy territory.

Stealth planes are not just invulnerable themselves. Because they do not need escort, they spare the lives of the pilots of the fighters and radar suppression planes that ordinarily accompany bombers. Moreover, if the B-2 is killed, we are stuck with our fleet of B-52's of 1950s origin. According to the undersecretary of defense for acquisition, the Clinton administration assumes the United States will rely on B-52s until the year 2030—when they will be 65 years old!

In the Persian Gulf War, the stealthy F-117 fighter flew only 2 percent of the missions but hit 40 percent of the targets. It was, in effect, about 30 times as productive as non-stealthy planes. The F-117, however, has a short range and thus must be deployed from forward bases. The B-2 can take off from home. Moreover, the B-2 carries about eight times the payload of the F-117. Which means that one B-2 can strike, without escort and with impunity, as many targets as vast fleets of conventional aircraft. Factor in these costs, and the B-2 becomes cost-effective even in dollar terms.

The final truth of the post-Cold War world is that someday someone is going to attack some safe haven we feel compelled to defend, or invade a country whose security is important to us, or build an underground nuclear bomb factory that threatens to kill millions of Americans. We are going to want a way to attack instantly, massively and invisibly. We have the weapon to do it, a weapon that no one else has and that no one can stop. Except a "cheap hawk," shortsighted Republican Congress.

Mr. INHOFE. Mr. President, I yield the floor.

COMPREHENSIVE REGULATORY REFORM ACT

The PRESIDING OFFICER (Mr. DEWINE). Under the previous order, the Senate will now resume consideration of S. 343, the regulatory reform bill, 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.

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

Hutchison amendment No. 1539 (to amendment No. 1487), to protect against the unfair imposition of civil or criminal penalties for the alleged violation of rules.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio [Mr. GLENN] is recognized to speak for up to 45 minutes.

Mr. GLENN. Mr. President, I thank the Chair.

Mr. President, we have heard a lot the last few days about horror stories of regulations, horror stories about Government's heavy hand and how civil servants that serve this country well most of the time sometimes get carried away with the program and throw their Federal regulatory weight around to the point where it really is intrusive in the lives of our citizens and do some things that just defy common sense.

I am not going to be the last one to stand here today and say that never happens. I think when we rise on the floor here and make repeated remarks and make repeated examples of things that are not of obvious truthfulness, that we do a disservice. So some of the things that have been said here on the floor in the last few days I want to spend some time this morning correcting.

Let me say I feel strongly about this for our people that work in civil service for this Nation. For the last 8 years until last fall I was chairman of the Governmental Affairs Committee. One of our areas of oversight, our areas of jurisdiction, is the civil service of this country. We work very closely with them. We have representatives of civil service groups that come in and talk to us on a regular basis. We keep in touch with them on almost a daily basis with staff. We work to get them better pay and working conditions and so on.

So, we work with the people of OPM, the Office of Personnel Management, to make sure that the people in civil service are treated fairly. Many of them are very talented people who serve the Government and who could be doing better outside. They have every bit of the same dedication for their country as we have right here, and they feel strongly. It hurts them when they are unfairly castigated, unfairly pointed out as doing things that are wrong in administering the laws of this land.

So I wanted to correct some of the things that have been said. I know my distinguished colleague from Utah pointed out that he has his daily 10 transgressions in the area of misuse of rules and regulations. I sort of overlooked these things until they started being picked up and published in some of our papers in Ohio.

So I think I have it as a duty to correct some of these things. We have asked the administration downtown to look into some of these things. Some of the information I have puts a little different slant on some of these things. I want to run through a few of these this morning because I think it is important to protect the reputation, protect the feelings—if you want to put it on that basis also—of people who work very hard in the civil service. I want to correct some of these things.

It was said the other day on the floor—I believe it was No. 10 on the list for that particular day—that the Federal Government was "delaying a Head Start facility for years because of the dimensions of the rooms."

The reality of the situation was that this is misleading because it was not due to Federal regulations at all. And I would add that S. 343, the Dole-Johnston bill, would do nothing in any way to solve this problem.

The fact is that Head Start regulations do not address room dimensions. Head Start applies reasonable and flexible standards to its facilities, and over the past 6 years these flexible standards have allowed Head Start to develop thousands of new facilities.

The example that was given by my distinguished colleague was due to a legal dispute between a subcontractor and the city of New York. It had nothing to do with Federal regulations. If such legal disputes are the problem, then I think we should question support of what some describe S. 343 as—a lawyers' full employment act of 1995.

Now, another one was put out which turns out to be a myth also. The claim was that the Federal Government was:

Forcing a man to choose between his religion and his job because rules do not allow workers to wear a mask over a beard.

The reality. This is flat wrong. OSHA knows of no cases in which a employer received a citation because their employees were not wearing properly fitting respirators because their workers wore beards for religious reasons. In fact, OSHA regularly grants exemptions for protective gear requirements for employees who object due to "personal religious convictions."

Now, the general rule of respiratory protection is for the protection of the people involved, but obviously if a person has a beard for a religious purpose or whatever, they try to take care of that. They do not insist that a person be cited in a situation like that. They give an exemption for that. And that is their policy.

Another one was cited that morning. It was No. 7 that particular morning on the list of items of ridiculous regulations. I quote:

Fining a gas station owner $10,000 for not displaying a sign stating that he accepts motor oil for recycling.

The reality. There is no such Federal regulation. EPA does not require gas stations to post signs stating that they accept used motor oil. There is no Federal RCRA regulation requiring the posting of such a sign. RCRA does require gas station owners just to label

tanks used to store recycled oil, but that is to prevent contamination of stored, used motor oil with other solvents or other contaminants. So there was no regulation on a sign that would accept motor oil for recycling.

Another one stated that same morning. This was No. 3, I believe, on the list:

Prohibiting an elderly woman from planting a bed of roses on her land.

The reality. There is no current regulation which could prohibit planting a rose bed. This allegation is one that keeps cropping up all the time, it turns out. I was not aware of this, but they say this is one that comes around from time to time—it has been around for years—in Republican administrations and Democratic administrations. It has been recycled for years, and the State in which this is alleged to have occurred has varied with the telling of the story. In some cases it has been Wyoming, in others it has been Texas or Louisiana. So they have heard this over at the agency for a long time.

Whenever it surfaces, EPA or the Army Corps of Engineers attempts to track down the specific situation, so every time this rumor comes up they go at it again to make sure they have not missed something. And since the name of this supposed elderly woman has never surfaced, it has been very difficult to verify it. It involves checking with multiple field offices of various Federal agencies. Despite these numerous checks, there never has been any wetlands case identified that involved anyone planting a rose bush. So that one has been around for years.

Another one. This was cited as No. 2 the morning this particular one was given. It said, and I quote:

Fining a man $4,000 for not letting a grizzly bear kill him.

Well, the reality is it simply is not true. This story was circulated in a Wall Street Journal editorial on June 23, 1993. The story painted a portrait that would have flattered a Hollywood screen writer and mischaracterized the real facts as much as they were misrepresented on the floor.

A rancher was fined $4,000 for shooting a grizzly bear which is listed as an endangered species, but he shot him because it had killed and eaten some of the rancher's sheep.

Now, the fact is the bear did not attack or threaten the rancher or anyone in his family. Indeed, it is certainly not illegal to kill an endangered species when a human life is threatened.

The rancher in this case was fined because he killed an endangered species for killing the sheep—listen to this—after he was financially compensated for the loss of his sheep, after he was assured that he would be compensated for any further losses, and after he declined the State of Montana's offer to build an electric fence to protect the sheep and after he was informed that if he killed the bear anyway he would be prosecuted.

We do not have too many bears in my home State of Ohio, so I guess we are not going to be coming under some of these same problems, but to the western States that is an important one.

Another one. And this was No. 1 on the hit list the other day on the floor. It says:

Requiring braille instructions on drive-through ATM machines.

Well, according to the American Bankers Association,

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.

So when no other machines on the premises are available, this is an entirely rational regulation. It recognizes the need for these machines for passengers and walkup users both.

Now, there was another one on one of the other days here. These lists that my colleague from Utah has put out have been I think two mornings I know of, maybe three mornings but two mornings for sure. So this was No. 10 on the list as we counted David Letterman style on the floor on another morning. It was said that we stopped an owner from building on a wetland of 0.006 acres, about the size of a Ping-Pong table.

Well, the reality of the situation when it was checked is this. The applicant proposed to place 30 cubic yards of fill material in a creek and EPA received objections to the proposed project from local property owners. The local property owners themselves complained about this. And the applicant was unwilling to reduce the size of the fill, was unwilling to move the proposed building 25 feet to avoid dumping fill material in the creek. The applicant then attempted to obtain a waiver from the local city to its requirements, not Federal but to its requirement of a 25-foot buffer zone. The applicant evidently obtained a waiver of some sort from the city and did not need to dump fill material in the creek. Those are the facts of the situation.

Another one that day. I think this was No. 7 on the list. I quote:

Fined a company for not having a comprehensive hazardous materials communication plan for its employees even though the company only has two part-time employees.

Well, the reality of the situation is that OSHA does not require a "comprehensive hazardous materials communication plan." It does have a right to know standard or a hazardous communications standard that protects employees when they are working with potentially toxic substances. And that is common sense. The simple right to know principle would have made a difference, for instance, for a nursing home maintenance worker who unknowingly—he had not been told about this so he did not know what the hazardous materials were—unknowingly mixed bleach and common lime remover in a bucket and was killed by the resulting toxic gas.

Another one was pointed out as a Federal transgression on administration of regulations. This was another one on the list that same day, No. 6.

Required a $6 hospital mask instead of a $1.25 mask with no analysis of the benefits and costs.

Well, what is the reality of this one? This one is slightly more complicated. In the last 10 years, the rate of new cases of tuberculosis has increased by 23 percent, reversing a 30-year downward trend. Outbreaks have occurred in hospitals in Atlanta, Miami, and New York City. In 1993, OSHA released its guidelines for protecting workers from exposure to TB.

That means they are going to be in where the TB patients are.

The OSHA guidelines are based on a document issued by the Centers for Disease Control and Prevention in 1990. The CDC guidelines recommend employees wear NIOSH-approved high-efficiency particulate air respirators as a minimum level of protection.

In 1993, OSHA was petitioned to protect workers against contracting TB in certain workplaces. When the proposed rule is published—

It is not finalized.

when the proposed rule is published, it will include a preliminary risk assessment, a cost of compliance analysis, an analysis of effective indices, and the evaluation of the rule's benefits. Through these analyses, OSHA will then determine which type of mask would adequately protect workers from TB.

Another one pointed out as the heavy hand of Federal regulation that day:

Required such stringent water testing that local government considered handing out bottled water to save money.

The reality is this. EPA has recognized the high cost of water testing for some small communities can be a serious problem, particularly if water supplies are contaminated and need treatment. EPA has been working for several years to assist States in implementing science-based programs of waivers from monitoring requirements while still assuring the safety of water supplies.

Most States now have waiver programs, but they are not always actively used. But for the vast majority of Americans, drinking water safety monitoring inspection is inexpensive and effective. Costs range from 1 cent to 9 cents a month for 90 percent of U.S. households, far less than the cost of bottled water, as was pointed out.

I will also point out that President Clinton specifically asked EPA on March 16 of this year to undertake revision of water testing to ensure water safety at a reasonable cost. EPA has subsequently met with officials from 19 States that are developing a new approach to streamline the drinking water monitoring.

Ironically, I will point out, the Dole bill, S. 343, might delay implementation of many of these streamlining rules. It could delay solving the problem rather than help out.

Another one pointed out that day as a regulatory misfire, No. 1—counting down 10 to 1 like David Letterman does:

A company was fined $34,000 by the EPA for failing to fill out form R, even though they did not release any toxic material.

EPA could find no record of any case exactly like this. We think there may be some because the dollar figure is similar, but there is no record of a case like that. EPA is seeking penalties of $34,000 against two companies that did release potentially harmful chemicals.

Two companies, Washington Ornamental Iron Works and Thatcher Tubes, were fined for failure to report air emissions to EPA's toxics release inventory, as required by section 313 of the Emergency Planning and Community Right To Know Act.

The principle behind this statute is that citizens in a community have a right to know what chemicals are being released into their communities, what chemicals their children are breathing, what chemicals they themselves are breathing, when these releases take place and in what quantity.

Washington Ornamental Iron Works of Gardenia, CA, was fined $34,000 for failure to report for the years 1990 and 1991. In 1990, the iron works released 14,000 pounds of trichloroethylene. In 1991, the iron works released 12,000 pounds of the same material. They finally came into compliance in June 1995 after receiving a civil administrative complaint from EPA.

Why is this important? At high levels of exposure, this kind of trichloroethylene causes central nervous system disorders, irregular heart rate, and pulmonary edema. Production of this solvent is scheduled to be phased out by the year 2002 because of its ozone-depleting characteristics also.

I think in a case like that, the fine was well justified. I do not know about form R—nobody knows what happened on form R. That is one case where the $34,000 fits, and I think justly.

Another one happened to also involve a $34,000 fine. Thatcher Tubes of Muscatine, IA, was fined $34,000 for failure to report the company emitted 7,300 pounds of methylethylketone in 1991 and 8,783 pounds of the same chemical in 1992. Methylethylketone is irritating to the eyes, mucous membranes, and the skin. Headache and throat irritations are reported among people exposed to the concentration near the maximum level allowed in the workplace. At higher levels, workers complained of numbness in the fingers and arms, sometimes a leg. Dermatitis was sometimes reported following prolonged exposure to vapors.

Those are two EPA could find where the $34,000 figure fit. I think anybody could look at these things and say, "Good, let us applaud the EPA for what they did for protecting all of us and for the people in those particular communities in those cases."

Here is another one. No. 7 on the list the particular day it was given on the floor.

Nevada rancher, Wayne Hague, faces a potential 5-year prison sentence under the Clean Water Act by hiring someone to clear scrub brush from irrigation ditches on his property. The ditches have been used since the turn of the century.

Facts of the case, back to reality again: Virtually every part of this statement is false. The case did not even involve violations of the Clean Water Act. The scrub brush, as it is called, consisted of over 100 pinion pines and juniper trees in the Toiyabe National Forest in Nevada. He claimed his property was actually on Federal property. Mr. Hague's actions constituted an unauthorized destruction of Federal property in violation of Federal criminal law.

Another one: Fish and Wildlife Service required a farmer to stop economic activities on his 1,000 acres because of the presence of the red-cockaded woodpecker. The reality is this is just factually incorrect. This example refers, we believe, to Mr. Cohen, a timberland owner of North Carolina who owns far more than 1,000 acres of land, but private property owners, like Mr. Cohen have the opportunity to develop a habitat conservation plan that allows them to both protect the endangered species and to use their land productively.

Many organizations and developers are participating in such plans to protect the woodpecker. Mr. Cohen has submitted a management plan to the U.S. Fish and Wildlife Service, and it has been approved and he is logging his land in a productive way that does not destroy the endangered species.

Another one which was myth No. 3 on the day that it was stated:

OSHA fined a company $500 for failure to submit a report that no employee was hurt last year.

This is something that was a problem, but the problem has already been fixed. This is no longer a problem. OSHA is committed to injecting common sense into the enforcement process when an employer has an effective health and safety program but fails to meet the exact letter of the law, such as failure to fully complete or sign the annual form. That well-meaning employer is treated differently.

Over the last year, OSHA citations for these recordkeeping requirements have declined by between 60 and 70 percent. It reflects OSHA's new emphasis in this administration on compliance with the spirit rather than simply the letter of the law. OSHA will continue to issue citations when employers clearly disregard their obligation to maintain records of work-related injuries and illnesses. It is important that OSHA continue to provide employees with the message that complete and accurate occupational injury records are of paramount importance. Records of workplace illnesses provide employers and workers information that can help them identify hazards and prevent injuries and illnesses in the future.

Mr. President, those are just a few of the responses. We could not get the complete answers to all of the things that were charged on the floor. I think we see there is a lot of myths going around here. I wanted to make sure the reality of these situations was also brought to light today. I hope that we will have better substantiation of any charges in the future because it reflects poorly on the Federal employees, those in civil service who are trying to administer the law and do it fairly and correctly, not only adhering to the letter of the law but also doing it in a fair manner so that people do not have undue problems with the Federal Government.

I am the last one to say there are not a lot of problems. I have been advocating regulatory reform for years in the Governmental Affairs Committee. We have a bill, S. 1001, which we think does a better job of balancing the requirements for protecting the public while not overburdening people with rules and regulations.

Let me go on to another one stated on the floor also. The distinguished Senator from Iowa has been on the floor for 2 days when I was on the floor, at least, and has repeated this one story in particular that I wanted to address today, because it disturbed me enough the first day that, if it were true, I really wanted to look into it. His description of it was very, very graphic. He talked about Mr. Higman in Akron, IA, and how some 40 agents of the Federal Government—EPA I believe it was stated—came rushing into this establishment with their guns cocked, pointing at everybody, particularly the accountant, as I recall, and that this whole thing cost Mr. Higman about $200,000 in court costs, all because a disgruntled employee gave false information about pollutants, toxic materials at this business site.

Well, I was very curious about this because I thought if there was that kind of egregious behavior going on around the country without due cause, we should be looking into it and maybe we should have a hearing on this. I did not know. So we looked into it. It turns out that a letter was sent to Senator GRASSLEY on August 18, 1993. I would like to read you selected parts of this because it puts a little different light on this incident about these people rushing in with guns cocked, pointing at people in Mr. Higman's establishment in Akron, IA.

The special agents that I am quoting comes in part from the letter from EPA to Senator GRASSLEY. This person was asked by Administrator Browner to respond to Senator GRASSLEY's letter, I gather, of July 1, 1993, concerning a criminal enforcement action taken in 1991 against the Higman Sand & Gravel Co. in Akron, IA. I am pleased to be able to respond. Special agents of EPA's criminal investigation division conducted a search at the Higman site pursuant to a Federal search warrant authorized by a Federal magistrate and approved by a U.S. attorney. This was not something where people decided willy-nilly to come rushing in. The search warrant was authorized by a Federal magistrate, approved by a U.S. attorney.

The affidavit for the search warrant was based on information from, they thought, a confidential, reliable informant that hazardous waste was being stored at the site. The Higman Co. is not a permitted facility to store hazardous waste. It does not have the proper facilities.

Information was also received from another Federal law enforcement agency that searches of the homes of some of the Higman employees had recovered machine guns and explosives and that the agents conducting the search at the Higman Co. site might encounter armed individuals and explosives. An informant advised the agents that a loaded rifle was always kept in the office at the Higman Co.

Based on this information, 17 law enforcement officials from the EPA, ATF, and the Iowa Department of Criminal Investigations participated in the execution of the search warrant at the Higman Co. There were not 40. This says 17, which is certainly enough; there were 10 employees at the company when the search was conducted. The agents recovered loaded weapons from the site, and the hazardous waste specified in the search warrant was found on the grounds of the company.

So the material was there. They were not authorized to have it there. The reason they were not permitted to have it there was because it might be a danger. What was it, cyanide? I do not know. What can you store that is a danger to other people around the community? These things have to have special storage, and this was not a site that was permitted to have this toxic material.

Now, this went to trial. I believe the Senator stated on the floor that Mr. Higman's court costs were somewhere around $200,000. Now, a jury acquitted defendants Harold Higman, Jr., and Harold Higman, Sr., and Higman Sand & Gravel Co. in this case. The jurors were polled after the trial and stated they knew the Higman Co. was not a permitted facility and that the material recovered was in fact hazardous waste. However, they did not believe the Government proved that the hazardous waste was stored at the site knowingly.

So the difference here is that everything that led the agents to come in there in the first place was true. There were loaded weapons. They found those on the site. The toxic material was there on the site. So all the reasons why they took the precautions and acted as they did and got approval from a Federal magistrate and a U.S. attorney, were verified with exactly what happened once they got into that community. EPA special agents are thoroughly trained in the use of force, and they exercise the use of force with great discretion, with the constitutional rights of affected citizens in mind. They take precautions in this area.

I ask unanimous consent that this letter be printed in its entirety in the RECORD so people can make their own judgments on that.

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

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, August 18, 1993.

Hon. CHARLES E. GRASSLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRASSLEY: Administrator Carol Browner has asked me to respond to your letter of July 1, 1993, concerning a criminal enforcement action taken in 1991 against the Higman Sand and Gravel Company in Akron, Iowa. I am pleased to be able to respond to your letter.

Special agents of EPA's Criminal Investigation Division conducted a search at the Higman site pursuant to a federal search warrant authorized by a Federal Magistrate and approved by a U.S. Attorney. The affidavit for the search warrant was based on information from a confidential reliable informant that hazardous waste was being stored at the site. The Higman Company is not a permitted facility to store hazardous waste.

Information was also received from another federal law enforcement agency that searches of the homes of some Higman employees had recovered machine guns and explosives and that the agents conducting the search at the Higman Company site might encounter armed individuals and explosives. An informant advised our agents that a loaded rifle was always kept in the office at the Higman Company.

Based on this information, seventeen law enforcement officials from the EPA, ATF, and the Iowa Department of Criminal Investigations participated in the execution of the search warrant at the Higman Company. There were ten employees at the company when the search was conducted. The agents recovered loaded weapons from the site and the hazardous waste specified in the search warrant was found on the grounds of the company.

A jury acquitted defendants Harold Higman, Sr., Harold Higman, Jr., and Higman Sand & Gravel Company in this case. The jurors were polled after the trial and stated that they knew the Higman Company was not a permitted facility and that the material recovered was in fact hazardous waste, however, they did not believe the government proved that the hazardous waste was stored at the site "knowingly."

EPA special agents are thoroughly trained in the use of force. They exercise the use of force with great discretion and always with the constitutional rights of affected citizens in mind. Our special agents are also trained to be concerned for their own safety and the safety of others when entering potentially dangerous surroundings. Special agents must weigh and balance all these considerations when executing a search warrant. The recent events in Waco, Texas are a chilling reminder of the very real dangers federal agents face in the performance of their law enforcement duties.

Although I favor an enforcement process without unnecessary confrontation, I would not presume to second-guess the judgment of those special agents who were responsible for the execution of a Federal search warrant for alleged criminal violations of Federal laws. While this Administration is dedicated to the establishment of an improved relationship between the EPA and the business community it regulates, and would always prefer to achieve environmental protection through voluntary compliance, this Agency is also charged with the congressional mandate to aggressively enforce against violators of the environmental laws. The Agency's execution of its enforcement responsibilities is always guided by the particular circumstances surrounding each individual case, exercising the best judgment with the information available.

I hope this responds to the specific concerns raised in your letter. If you wish to discuss your concerns further, please let me know so I can be of assistance.

Sincerely,

STEVEN A. HERMAN,
Assistant Administrator.

Mr. GLENN. Another one brought up on the floor also was that in the July 11 CONGRESSIONAL RECORD, there was an extended statement about how EPA's air permitting program is causing a lot of redtape for the grain elevators in the State of Iowa. This has been a problem, I know that. But I think the statement is misleading in that EPA is aware that small grain elevators operate only on a seasonal basis. They have been working with the Feed and Grain Association to get the facts about the amounts of small particle pollutant emissions that might be expected from these sources. They responded to Senator GRASSLEY's concerns in this regard. I am glad they have done so.

The main points I summarize as follows. EPA's air permitting program provides for a 2-year transition period during which small sources such as some grain elevators can avoid the need to get a Clean Air Act permit and maintaining records sufficient to document their low-level emissions. EPA is working with the Feed and Grain Association to identify more realistic assumptions on the amount of time an elevator can operate. They recognize that small grain elevators only operate on a seasonal basis, not year around. They are participating in an industry-sponsored source-testing effort aimed at the emissions factor, which is the estimate of how much small particle pollution is emitted per unit of grain

processes. It is industry sponsored, and EPA is working right along with them on this.

So those efforts, while not completed yet—I grant that—should help clarify which, if any, grain elevators should be considered a major source of emission and subject to air permitting requirements.

Mr. President, these are just a few of the things that have come up here on the floor. I did not try to make the complete 100-percent rebuttal to all of the things said here on the floor because some of these may very well be cases where there were onerous oversteps made by Federal agents in the enforcement of laws. But I also state again what I have stated before.

If we want to see the difficulty with regulation, I think most of us in the Senate need only look in the mirror when we get up in the morning. Eighty percent of the regulations are required by law and passed in the Congress. We pass laws here with the House, back and forth, it goes to the President and is signed, and they implement the laws and regulations. Eighty percent of what they write there are regulations written pursuant to what we require right here.

So if we want to see one of the biggest problems with regulators, we better just look in the mirror in the morning.

We have another problem here. What we are requiring with the proposed legislation, S. 343, there are going to be an awful lot of checks, an awful lot of requirements for regulations.

I had an example here of just one under the Clean Water Act. I will not go through all the details, as I have done the last couple days on the floor here.

This one regulation passed, implemented, just one out of several hundred under the Clean Water Act, just one requires 126 feet of shelf space. We checked with the Capitol Architect. I can tell Members what that is—three piles of documents from this well to the ceiling up there. That is 42½ feet, the Architect says. Mr. President, three piles of documents.

The average cost, we are told by testimony in the Governmental Affairs Committee, was about $700,000 per regulation, that is necessary. I am not one that says we cut back on that. If we are going to have a regulation, we should do it right and make sure the application is absolutely correct.

In the time I have remaining, I would like to point out, also, that these regulations are not all just dreamed up by some Government bureaucrat. Mr. President, 80 percent of them are required by what we require here on the floor, in the laws that we pass.

We are the ones requiring them. I think all the cost analysis that we are now putting over there and requiring on the agencies by this legislation, we should apply to ourselves, right here, when we are considering passing a law. Why do we not do the cost studies, not pass something unless we do the cost studies, not put it over there, require all sorts of studies, and say it is too expensive?

Now we provide a capability for legislative review. We call it so we can bring a rule back, redo it here, after they have done it over there. We should be correcting that in the first instance, right here.

Let me run through just a few of the things, regulations that have saved lives. Toy safety. Small parts on children's toys. We estimate 12 choking deaths are related to such small parts annually. Should we not protect our children against that, if we can? If we can just have some regulations that help establish the right procedures on that? Of course.

Child resistant cigarette lighters. The Consumer Safety Commission issued a safety standard in 1993 that established a requirement to make disposable cigarette lighters child resistant. Fires started by children under age 5 cause an estimated average of 150 deaths, approximately 1,100 injuries, nearly $70 million in property damage.

Can we not do better than that? I think we can. That is what they have done. These are regulations that save lives every year. All regulations are not goofy. All regulations are not something just dreamed up by some bureaucrat and misadministered or maladministered.

Poison prevention safety closures. They estimate that packaging for products like aspirin or turpentine making them child resistant saved over 700 lives per year. Ban on bean bag cushions. Where they had problems with these things, deaths occurred when a pocket was created in a cushion that could trap an infant's exhaled carbon dioxide and the infant could not breathe properly. Had regulations on that that saved lives.

Child-resistant packaging for mouthwash. Very simple things like that, but they save lives. Fireworks requirements. Safe cribs. Flammable children's sleepwear. Power mowers. Are these things that are just dreamed up? No, most of these things, I would say, are required by legislation we passed here. Most of these things are implemented over in the agencies because we required them to be implemented with the legislation that we passed here.

Automatic residential garage door openers. Hit that thing and it comes down. Well, if a child happens to get under it, and the report indicates that some 54 children between the ages of 2 and 14 had died after being trapped under such garage doors. Died. Is it wrong to say that it has to have a safety device on it? Equipment manufacturers, after January 1, 1993, provide features to minimize the likelihood that a child would be trapped and killed by a garage door.

We have more regulations on lead poisoning, and brown lung disease regarding the textile workers. In 1978 there were an estimated 40,000 cases of brown lung—also byssinosis—but in 1985 the prevalence of the disease declined to about 900 cases, or less than 1 percent of cotton textile workers.

There is evidence that complying with OSHA's cost dust standard increased productivity in the textile industry. A 1980 article in the Economist reported that a tighter dust control measure required by OSHA's rule prompted firms to replace outdated machinery with newer, more efficient systems, and they were more productive after they did that.

Exposure to HIV and hepatitis B.—rules were put out to protect workers who routinely were exposed to blood or other infectious material. Saved lives.

Mine explosions and fires. Safety requirements there have been very effective. In my home State of Ohio, which is affected by that because we have a lot of mines in southeast Ohio, near the area I grew up. The ventilation standards for underground coal mines prevent the accumulation of methane and cold dust fuel for explosions and fires.

In the 25 years before passage of the Coal Mine Health and Safety Act of 1969, 901 miners were killed in explosions. I can remember explosions happening when I was a kid back there. There would be a mine explosion and several people would be killed. It would be a terrible thing. In the 25 years after that act was passed, the explosions claimed 133 miners, instead of the 901. Mine falls are also covered by safety rules, black lung disease, mine cave-ins, all with improved, decreased mortality rates.

Mr. President, I say that I did not really plan to get into all of these things originally when these things were brought up on the floor, but I found that some of our papers back home in Ohio were picking up on these examples and using them in editorials, and I thought I better correct some of these things to make sure we understand that all of these rules and regulations that were cited here on the floor are not bad.

Some of them are misunderstandings and some of them are good regulations, even though they are pointed out in a different light.

I do not have much time remaining, but let me say one other thing. We had E. coli debates here on the floor the last couple of days, and votes here on the floor the last couple of days.

I heard on the radio when I was driving in this morning, an outbreak, I believe in Atlanta, where there were 18 cases of E. coli reported yesterday. I already knew about 16 cases. I believe most of that was in Wisconsin. We have

an outbreak now in Wisconsin, Tennessee, Illinois, and Georgia, of E. coli.

This is not something that is just a fictitious product of our imagination here when we express concern about E. coli, and we were told we were nit-picking, we were just trying to delay things, because we are concerned about the safety and health of people out there. We know what E. coli does. We lose an average in this country of 500 lives a year to E. coli. This bill would delay implementation of regulations that would help curtail that.

Mr. President, 3,000 to 7,000 total lives lost each year to foodborne illnesses. Cryptosporidium in the water supply, and so on. Up in Milwaukee, it killed 100 people, made 400,000 people deathly ill. Mr. President, 100 died. That is the reason the Senator from Wisconsin, Senator KOHL, was so concerned about this and brought this amendment to the floor.

These are not idle concerns we have had over here. We have been termed all sorts of things the last few days. One that stuck in my mind from the other side is we are liberal Democrats favoring big Government. Liberal Democrats favoring big Government. That is all we are doing—favoring big Government. This is the reason we are opposing S. 343.

Mr. President, that is not the case. I am as concerned as anybody in this body about the health and safety of people across this country. I am as concerned as anybody about having a regulatory system in this country that does not permit excesses but, at the same time, hits that balance of protecting the people from the kinds of things we are talking about here this morning. It protects the people of our country whose health and safety has been hard won over the last 25 years. Have there been excesses? Of course there have been excesses. But by and large have we had people's lives saved? Are our children breathing safer air? Are they drinking safer water? Are they protected more from food illnesses, and so on, than they were back 25 years ago? Yes, the answer is, and these regulations have done that. They have made a better, safer America.

Have there been times when things were overregulated, when people overregulated, got carried away by the particular regulation and went too far with it? Sure there are, and we ought to correct that. But to take a chance of rolling back the clock and saying, as a means of getting more money, disregarding the selfish greed some people might have, that we will let up on these regulations or will somehow make it more difficult to protect health and safety, I think is just plain wrong. That is the reason why we, at the appropriate time, will offer our amendment, S. 1001, as a substitute, because we think it does hit that better balance. It does not have the excesses that S. 343 has.

Mr. President, I only ask one thing, before I yield the floor, and that is when we bring examples to the floor, from now on, from whatever source, on whichever side of the aisle, we document these charges being made, the horror stories about rules and regulations and how maladministered they have been.

I will return to the statement I started out with. The civil service people and the rules and regulations writers, basically, in this country, are people as fine as anybody in this body; as fine as any Senator. They are just as dedicated to their country. They are just as dedicated to the health and safety of this country as anybody in this body. And they are on the firing line. They are charged with administering these things out there. And I do not think we often appreciate it. We castigate them there as though most civil servants administering these things are somehow deficient in mentality, I guess, and cannot administer with some sort of modicum of just plain old common sense.

Yet it is just exactly the opposite. These people are as dedicated as anyone here. If we want to see who is misleading them there, look in the mirror. That is what I tell my colleagues here. Because 80 percent of the regulations that are written are written pursuant—they are required by the legislation we pass here; 80 percent. We had that testimony in committee. That is the best estimate we can make, is 80 percent are required to be written by what we put in legislation here.

So I think our efforts at regulatory reform are good. I think, out of all this debate, we will come out of it with better legislation, better requirements. But, at the same time, I say we should be requiring these same kinds of cost analysis, risk assessments, in the first place, right here. We should be looking at that before we pass legislation, not sending it over there and then griping about the people on the other side, downtown in the agencies, who are trying to administer the laws we pass and then we give them the devil because we did not give them enough guidance in the first place and they come up with something we do not like. We say, "Oh, isn't it terrible?"

I would like to see us take these same laws and requirements and require ourselves to do these thing before we pass legislation here on the floor. That would make common sense. Maybe we would really restore confidence in Government at that time.

I see the Presiding Officer getting a little nervous about my time here. I know I am a few minutes over, and I appreciate his indulgence.

I yield the floor.

AMENDMENT NO. 1539

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of amendment No. 1539, offered by the Senator from Texas [Mrs. HUTCHISON].

The Senator from Utah.

Mr. HATCH. Mr. President, I have been listening to the remarks of my distinguished colleague. I might just add that I have tremendous respect for him, but he has been pretty defensive here this morning on some of these illustrations. I was interested that 80 percent of all regulations are deemed necessary.

Mr. GLENN. They are required by law.

Mr. HATCH. They are required by law. Since there were almost 70,000 pages last year of regulations, I suspect you would have to say that 80 percent of those were required by law. What about the other 20 percent? You see the other 20 percent is what we are concerned about. If that is so, that is between 12,000 and 14,000 pages of regulations that were not required by law.

I think Senator GLENN has misunderstood my point. I have not said that all regulations are goofy. Of course not. If they were, it would take me 50 years of bringing up my list of 10 to even make a dent in the goofy regulations.

What is the point? That the Government is perfect? Efficient? Spends our money wisely? Is that what the point is here today? Because I do not think there is an American citizen alive who believes that.

I would just like to ask a question. Do you really believe out there, America, that you are not overregulated? Do you really believe these people here in Washington are always doing everything just wonderfully right for you? Do you believe small business is not oppressed? Do you believe that private properties are not being taken by ridiculous rules and regulations?

I know people, real down-home people, who have lost their properties without just compensation, which is required under the Constitution, because of goofy regulations. I have to say I enjoyed listening to the distinguished Senator from Ohio this morning. I appreciate all the research he and apparently OSHA and EPA and other agencies have tried to put together to track all of this material down.

I hope these agencies are as quick and responsive to question the concerns raised by me and other members of the public. See, that is the problem here. They are not quick to resolve these goofy regulations that are ridiculous, that wear America down, that cost us our efficiency, that do not really help us, health-and-safety-wise, but just oppress small business, oppress individuals, oppress our farmers—taking property, land values in the process. But I do think the Senator from Ohio has made the point. We can debate the details of these illustrations, but I have tried to cite some examples this week to illustrate a problem that I

think the American people can confirm.

Let me just make two additional points.

Mr. GLENN. Will the Senator yield?

Mr. HATCH. I will be happy to, sure.

Mr. GLENN. What I pointed out were things where the examples you gave were flat wrong. That is the point. Those are the ones I pointed out. They were flat not true, and I refuted a good portion of the ones that were pointed out here on the floor.

Everyone knows there is overregulation. I agree with that.

Mr. HATCH. We respectfully disagree. We think they are true, and they come from real, down-home, real-life Americans.

Mr. GLENN. I just gave the data, the specifics of each case here. You must not have been listening.

Mr. HATCH. I was listening. I think you admitted in many cases that this could happen, but there is another spin, another interpretation. I can acknowledge that. But let me just make two points.

That does not mean they are wrong. That does not mean they did not happen. Just because OSHA has a different point of view or EPA has a different point of the view—which naturally they do—that does not mean that they are right and that these poor down-home average citizens of America are wrong.

Let me just make these two quick points. One, we need regulations. We all acknowledge that. Many regulations serve the public well and protect our interests in maintaining healthy and safer workplaces and environment. I am the first to admit that. I agree with that. And I may even agree that up to 80 percent of those regulations are needed, under the statutes that we passed.

By the way, let us not let us off the hook either. Some of the statutes we pass are goofy.

Mr. GLENN. I agree with that.

Mr. HATCH. I heard the distinguished Senator from Ohio agree with that.

Mr. GLENN. I agree with that.

Mr. HATCH. Some of the statutes we pass are goofy. And let me agree with my colleague from Ohio, whom I happen to care a great deal for, even if he is defensive here today, that not only are some of the statutes goofy but we in the Congress, we do not define statutorily what we really want, sometimes, and we just leave it up to the bureaucracy to go out and screw up America. And sometimes they do. And I think anybody who does not agree with that proposition is not living in America, or even outside of America and watching what goes on in America, with some of our overregulatory excesses. That is what this is all about.

I have to say, thousands of workers for the Government work hard and they really do a good job, and many of the regulators do a great job. We are not meaning to malign all Federal regulators, certainly not. But we do know a lot of these regulations are goofy. We do know that a lot of them cost American business and small business a lot of unnecessary money and, thus, every American citizen. We do know that people are being hurt and oppressed in this country because of stupid, idiotic, ridiculous and, yes, to use my term, silly regulations. I have to say, acknowledging that most regulators do a good job and are really trying to do what is right, and we want to recognize and commend their efforts—but this bill does nothing to change good regulation. Good regulation is going to be sustained by this bill and it is going to be more scientifically proven.

We are going to use the best science, not just 1958 Delaney clause science that, really, everybody admits does not really apply today in this sophisticated day, where we can do parts per quintillion compared to the parts per thousand that we did back in 1958 when Delaney was passed, from a scientific standpoint.

All this bill does is try to rationalize the system to make it more accountable to the public. That is first. Second, notwithstanding the many necessary worthwhile regulations in effect, and notwithstanding the commendable efforts of many civil servants, this is a regulatory system out of control. I think the American public can confirm the need to fix the current system, as the Dole bill does, to ensure that common sense and accountability prevail. That is all we are talking about here.

Let me just make a couple of points and then I would like to see if we can get some time agreements.

Mr. President, the Federal bureaucracy does not work the way it should. It is wasteful, it is inefficient, and all too often hurts the American people it is trying to help. Americans have come to fear and even loathe the leviathan that has grown inside of this Washington, DC, beltway.

We have heard a lot about how this bill will harm the public health and safety. The opponents of the bill like to suggest that by stopping the runaway train of regulation we will reduce the protection of public health, safety, and the environment. That simply is not true, and I do not think many Americans believe it to be true.

Opponents of the bill continue to claim—in my view, erroneously—that lives will be lost because if this bill is passed. The fact is that lives are being lost due to the inefficiencies in the current regulatory system. By failing to pass this bill, thousands of people will die due to misplaced priorities in the current system.

There is a report put out by the National Center for Policy Analysis which illustrates this point. They asked Dr. John Graham, the director of the Harvard Center for Risk Analysis, to look at how the Federal bureaucracy spends money. He concluded that they do a very bad job—such a bad job that, if we got them to do it right, we could save 60,000 lives a year every year for the same amount we spend now—60,000 lives, if we would just do regulations right. In other words, a more efficient regulatory system would save lives. According to Dr. Graham, we could save the same number of lives we do now and do it for $31 billion less.

I would like to give a couple of examples from Dr. Graham's study to show how absurd and wasteful the current system is. Right now we spend $115.6 million per year on benzene emission control, and it saves only 5 years of one life; $115.6 million per year on benzene emission control that saves only 5 years of one life—not five lives, but 5 years of one life in this country. If we spent the same amount of money on requiring the installation of collapsible steering columns in automobiles, we could save 1,684 years of life. That is an increase in efficiency of 33,680 percent.

Another example of misplaced resources is the $100 million spent on control of release of low-level radiation from nuclear power plants. According to Dr. Graham—remember, he is a Harvard Ph.D. who is widely respected across the board by the left, right and everybody else—according to Dr. Graham, that $100 million spent on control of release of low-level radiation from nuclear power plants buys 1 year of one life—just 1 year. However, if we spent that money on cervical cancer screening and treatment, it would save 2,000 years of life every year.

I would like to use one other example to illustrate how the money wasted by foolish bureaucrats hurts society. A February 1994 FYI publication by the Heritage Foundation calculated that over $4 billion that is spent to prevent one death under the hazardous waste disposal ban could instead be used to keep over 47,000 criminals in jail for 3½ years. They further estimated that it would reduce the arrest charges over those 3½ years by 22,680 violent crimes, 7,711 robberies, 1,035 homicides, 586 rapes, 1191 other sexual assaults, and 658 kidnapings.

In other words, by spending our resources more wisely we can save even more lives. But, no, the Nader crowd, Ralph Nader, Joan Claybrook, people like that, are crying for an inefficient zero-risk attitude in certain select areas that do not allow us to save all of these lives in another area. These regulations cost us an arm and a leg to save a few months or years out of one life in this whole society when we could be saving 60,000 lives every year. That is what this bill is about, getting some common sense into the regulatory system.

Opponents of this bill might respond by arguing for spending even more money on collapsible steering columns, jails, and more regulations while preserving the status quo. But the status quo is not acceptable. We should be maximizing the benefits to society and minimizing the risk, and doing it intelligently and in a decent way. And this bill will help us to get there. The current bureaucratic mess misses the best opportunities to really help Americans and impose this crushing cost on our citizens. I wanted to make that little point here today.

The Senator from Ohio again referred to his alternative substitute amendment this morning, noting that he planned to offer it. Could I ask the Senator if he is prepared to offer his substitute this morning or today, because I think we ought to get into that. It is really going to lead to a more efficient and more effective debate. We can get right down to the nitty-gritty of what our differences are between the two bills.

Both sides have discussed it this week. We would be happy to enter into a time agreement on it. I think it is just a wise thing for us to get it up and try to narrow the differences between the two bills if we can. The only way we are going to get there is if the Senator calls it up and we debate it. Does he think we can?

Mr. GLENN. We will have meeting in a little while to determine when we will be bringing it up. It will be brought up. There is no doubt about that.

Mr. HATCH. We would like to bring it up today if we can and get moving on it. So I hope that the meeting will allow us to get going. I think it will join the issue. It will do everybody a favor and a service, and we will be able to discuss the differences between the two bills, if we can narrow the differences and go from there.

Could I ask the Senator another question? We have Senator HUTCHISON here today and Senator DOMENICI. They both have amendments. I think the other side is completely aware of these. I think they are prepared to argue them. Is it possible for us to have reasonable time agreements?

Mr. GLENN. I will have to check into that. Maybe we could. I do not know yet. What time would be suggested on Hutchison?

Mr. HATCH. Would she be happy with 10 minutes equally divided?

Mrs. HUTCHISON. Yes. I am happy with 10 minutes equally divided.

Mr. GLENN. I am sure that would not be satisfactory. I think we had some people who wanted to speak on that side on that. I will see if we can come up with a time agreement.

Mr. HATCH. Could I propose a unanimous consent on it? Why do I not just propose it and see if the Senator can accept it. If he cannot, we will understand.

Mr. GLENN. I already said I cannot accept a time agreement until I talk to the people who want to speak on this subject. I will object to it. Go ahead and propound it.

Mr. HATCH. Will the Senator see if he can share with his side a time agreement with 30 minutes equally divided?

Mr. GLENN. We have people interested in speaking on this. They are on their way over now. I do not know how much time they may require. I could not commit to any time agreement at this moment.

Mr. HATCH. There is some indication that we might be able to, if we can join this issue. Some of the Senators are on their way over. We might be able to shoot for a vote sometime right after 11, shortly after 11, maybe around 11:10. Let us at least push for that. Then will the Senator also check and see if we can get a time agreement on the Domenici amendment? We would like to move on these.

We know that a lot of people want to get out of town, but we want to have some votes today, and I do not want to have them at 6 o'clock.

If we could do Hutchison and then Domenici and then Kennedy, if he wants to do his OSHA amendment, that would be great.

Mr. GLENN. We have a list of amendments we can proceed through today all right. We have about, I think there are six or seven substantive amendments, and we do not have time agreements on any of them. We have to discuss time agreements as we go along. I join my friend; I hope we can do that.

Mr. HATCH. If I can recommend something to my dear colleague and friend, what we would like to do is narrow down all the amendments if we could today so we know where we are going and everybody knows what the game plan is and we can plan on this, because I know that we are not going to give too much more time to this bill. I know the majority leader has a very important agenda, and he does not want to spend too much more time on this. So if we could get a list of all the amendments that we are going to have to decide between now and next Monday night, to hopefully finish this bill by Monday evening probably late, then we will work on this side to try to make sure we get time agreements on these amendments as well.

I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, if I could ask the Senator from Utah a question, would the Senator like for me to proceed with the amendment?

Mr. HATCH. I think the Senator should begin.

Mrs. HUTCHISON. Explain it, and then as soon as the Democrats who wish to speak on the issue come, we would work out a time agreement?

Mr. HATCH. I think we should move ahead on the amendment and hopefully we can have a vote about 11:10.

Mrs. HUTCHISON. I thank the Senator. I appreciate the Senator from Utah working on this amendment, and I appreciate the fact that he is also cosponsoring the amendment.

Mr. President, the Hutchison-Heflin amendment is also cosponsored by Senators NICKLES, CRAIG, and LOTT. The purpose of our amendment is to prevent agencies from bringing enforcement actions seeking criminal and civil penalties when due process and fair notice are not followed. In some cases, agencies have sought to impose penalties retroactively based on a new agency interpretation of a rule or a new factual determination even where the person against whom the action is brought has reasonably relied upon a prior agency interpretation or determination.

Now, because of this, corporations are forced to spend hundreds of millions of dollars to defend civil and criminal cases brought under the various Federal statutes. These millions, of course, take from that business's ability to grow and create new jobs. It is hurting our economic vitality in this country that we have to spend so much fighting regulations that are unfairly put forward and that the company either does not have notice of or the interpretation has been changed and the company cannot reasonably be expected to know there has been a change.

Now, we in Congress bear a large share of the blame for this situation. For example, we have created open-ended environmental enforcement statutes which call for penalties of up to $25,000 a day in civil cases, months and even years in Federal prison for criminal cases without having to provide proof of actual damage to the environment or the intention to violate a single provision of the Federal regulations. Now is the time to put common sense and justice back into the equation.

This amendment would add a new section 709 to the Administrative Procedure Act to prevent penalties from being imposed for unpublished, inconsistent and retroactive agency interpretations in civil and criminal actions. My amendment would codify into administrative law the fundamental principle that an agency must give the regulated community adequate notice of its interpretation of a statute or any rule enforcing that interpretation through civil or criminal penalties.

We are talking here about people going to prison, or we are talking about huge fines that can make a difference, especially in a small business, as to whether that company can keep on going, if it can hire new people, if it can buy that new machine. That is what we are talking about. The $25,000

a day fine is not small potatoes and especially if you are a small business.

Such notice may be lacking where the agency's interpretation of a rule in question is not made clear to the regulated community or where the agency states that the rule does not apply to certain conduct or where the agency attempts to apply a new interpretation but does it retroactively. It is fine that there is a new interpretation, but I think the people who are responsible for dealing with these regulations certainly should know if the regulation interpretation has changed.

Section 709 would impose limitations on the ability of Federal agencies to pursue civil or criminal penalties for alleged violations of rules in circumstances where the imposition of such penalties would be inconsistent with basic principles of due process.

Now, courts routinely will uphold principles which this amendment embodies. The codification of the principles would deter agencies from pursuing these cases in the first place and save unnecessary legal expense. We know litigation is expensive and burdensome, particularly for small businesses. Many defendants are forced to settle a case and pay a reduced fine because to fight it would be more expensive.

So even if the finding is plainly unfair, a company may just pay the fine to avoid the costly litigation expenses. That is not the way the Federal Government should rule. Federal Government agencies that we delegate should be fair. We are not against the businesses of this country. We are for them. We want business to succeed because that is how we create the economic vitality and the jobs that keep our country going.

Agencies that are used to being given a considerable measure of deference when their regulatory interpretations are challenged in a nonenforcement context sometimes misunderstand that fundamental principles of due process should take precedence over the concept of deference when civil and criminal penalties are at stake in court.

Section 709 will discourage Government regulators from initiating unjustified enforcement or other actions by reminding them through clear statutory pronouncements of their obligation to provide businesses with adequate notice of their regulatory responsibilities and their duty to enforce the regulations fairly.

I urge all of my colleagues to support this amendment, to apply the same principles of due process and justice that are embodied in our Constitution and in our enforcement of civil and criminal laws to the enforcement of agencies' rules. That is what this amendment does. This amendment says that the basic rules of fair play—notice before you are going to have a penalty assessed—would be in this code so that agencies would be on notice and so, of course, the person or business that has to comply with these regulations will know exactly what they are being required to do. That is a concept that is well settled in our Constitution, in the framework of our Government and in the laws that we pass.

Basic fairness and due process has been the foundation of our Government. My amendment today just puts those basic principles into the Administrative Procedure Act so that everyone is on notice—the Federal regulator is on notice and the regulated entity is on notice—that there will be fair and due process.

Mr. President, that is what this amendment does. I hope that we can get a fair debate on this, because I think it is a very important concept for us. But it is essential that everyone have the same book to read from, the same playing field to play on; that everyone is on notice of what the regulations are going to do, what the interpretation by the regulators will be.

We put that in the code so that everyone knows what they are required to do—the agency and the regulated. I would like to see a time in this country when we did not have an adversarial relationship between our regulators and our businesses because, after all, we want our businesses to succeed. We want our companies to export overseas. We want the jobs to be created in America. Why cannot business be a partner rather than an adversary?

That is what my amendment will try to do by putting everyone on notice that they have to have a fair and due process. But it is going to take more than that, Mr. President. It is going to take an attitude by everyone that we are going in the same direction, that we want to have good, solid, firm regulations. If a business gets out of line, we want to make sure that business gets back in line. But we want to do it in a partnership, not an adversarial relationship.

I think just putting it down on paper is the responsibility of Congress. It is our responsibility to say what the parameters are, and that is what this regulatory reform bill does. This regulatory reform bill sets the parameters. It makes Congress do what it should have done a long time ago. And that is, tell the regulators what the congressional intent is.

Why would we pass broad general guidelines, delegate our responsibility to the regulators to enforce these broad general guidelines and then be surprised when they do things that we never envisioned? It is our responsibility to make sure they know what our intent is so that when we delegate that responsibility, they stay within those limitations. It is our responsibility, Mr. President, but I think rather than broad general guidelines, we need to be more specific.

This is a specific. This amendment does put in the Administrative Procedure Act exactly what everyone must do—the people making the regulations and the people following the regulations. It is our responsibility to make it clear. I think this will go a long way toward stopping the over litigation, the money that is wasted on lawsuits, instead of going into the bottom line so that a business can grow and prosper and export and create jobs and keep our economy able to absorb the new people that want to come into our system and the immigrants that are coming into our system. That has been a hallmark of this country, and that is what we want to continue. That is why this is such a good bill and so important that we pass it.

So, Mr. President, I am going to stop and let those who might have other views state them. Let us have a good debate, but I hope that my colleagues will realize that this is a very important amendment for fairness, for justice, for due process and for making sure that everyone is singing from the same hymnal, that we all know what is expected of us, that we know that there will not be a law in this country or a regulation in this country that a company will have to fight when they did not even know that it was on the books. That is the purpose of this amendment.

Mr. President, I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I would like to speak in behalf of the Hutchison amendment. I would like to inquire first—parliamentary inquiry—of what is the time situation. Is there any agreement on this amendment?

The PRESIDING OFFICER. There has been no agreement.

Mr. LOTT. Mr. President, I do want to speak in behalf of the Hutchison amendment and commend her efforts to develop this amendment. I know that she has been working tirelessly to develop the right language, and I know that some changes have been made.

I think this amendment goes to the heart of what this bill is all about. When I look at words that describe what she is trying to accomplish, it is words like "fairness," "understanding of what the rules are," "not being penalized by a change in the rules," or the "effects of retroactive rules."

I have seen in my own State many instances where businessmen and women, large and small, and even farmers complied with the rules that they understood were on the books, and then they had those rules retroactively changed and were told, "You are going to be penalized, you did not comply with the law" when, as a matter of fact, they did. They complied with the existing rules.

What we are asking of the small businessman and woman of America, in

some instances, is it to remind readers of how Washington bureaucrats will interpret a rule or how a rule will be interpreted in the future.

What we are trying to do here today is to stop retroactive rulemaking, and get a clarification on what occurs when a rule is changed. Americans need to know what the rules are.

The amendment, in my opinion, will prevent unfair administrative enforcement action. It requires, as I understand it, the agencies to show the same concern for due process—due process—that Americans expect from the courts and the Congress.

The amendment prohibits the imposition of civil or criminal penalties if the agency did not give adequate notice of a prohibited conduct. Let me stop on that. Should you not at least get adequate notice? Should you not be told what you are going to have to comply with? It seems like a minimum sort of requirement.

Or if a court finds that the defendant reasonably determined it was in compliance with a rule based on the published rule or based on its summary explanation in the Federal Register; or if the defendant was told that it was in compliance by the agency.

Think about that. You are told by some agency or department—all of this alphabet soup in Washington—"OK, you're all right, you're in compliance," and then later, weeks, months, years later you are told, "Sorry about that, one of our employees gave you the wrong information. You are not in compliance. And, oh, by the way, there is this little civil or criminal penalty you might be liable for."

These are basic fundamental American rights that we have lost over the past 20 years. I think there have been overzealous interpretations of rules and maybe even laws. Although, when I talk with some of these agency representatives often I am told, "No, no, no, we can't do that, the law doesn't allow that," but when I examine it further I find it is not the law, it is the agency's interpretation of the law. This is not a little difference—this is a big problem.

This amendment would prevent an agency's rule interpretation from being enforced by a court if the agency did not publish in a timely manner the information.

This amendment would prevent courts from imposing civil penalties based on retroactive application of rule changes. I guarantee you, every Senator in this Chamber can tell you an example where a constituent complied with the rules and were faced with fines because the rules were changed and then they were told, "You have to pay."

It does not make any difference that your constituent complied with the law at the time, it does not make any difference if you took action to deal with cleaning up something and you properly transferred what you got in that cleanup process to somebody else, you are responsible for the subsequent requirements of this rule. This is just basically wrong.

This amendment would prevent that from happening if there is a retroactive application of an agency's interpretation of a law or rule or in an agency's determination of facts.

This amendment does not—does not—prevent agencies from making changes. Sure, lots of times you find new evidence, new science, new factors come into play and changes should be made. That is fine. This is all well and good. I know lots of rules and regulations I would like to see changed. Agencies can make those changes and then apply them prospectively with adequate notice. If an agency makes a change, fine. But it should only apply henceforth, and you must tell the American people that they are going to be affected differently because there has been a change.

Some may be surprised that we even need this amendment in the first place. Most Americans do not have to deal with so many Government agencies and departments. They do not know all of this.

They would be amazed that Americans are denied public notice or that they can have a rule change and then be subjected to a process where they can be put out of business because of unknown penalties or even criminal violations. In their zeal to collect more fines and increase their budgets and sometimes even make work, in my opinion, for an ever-increasing number of cases and lawyers at the Justice Department, agencies have done a number of things.

Let me share with you some examples. One aspect of the regulatory abuse is inadequate notice of an agency's interpretation. The Department of Agriculture tried to impose the continuous meat inspection requirements for meatpackers on a retail grocery store chain because it sold pizzas which were baked at a central location. USDA said the grocery stores were meatpackers because their pizzas had pepperoni, ham, and bacon on them. My son is in the pizza business. If there is any food business I know anything about, it is pizza. This is a crazy rule. USDA said the store was in the meatpacking business, but the Sixth Circuit Court of Appeals ruled that USDA failed to properly give notice that it was going to change and expand its rule interpretation. Therefore, it could not enforce the rule against the grocery store chain.

OSHA—one of my favorite agencies—requires that tunnel diggers have self-rescue equipment when they are near the end of a tunnel where the digging is going on. That makes sense, but then without notice OSHA tried to expand this rule to cover other workers like those building the metro system here in Washington, DC, metro. No notice—that is the key phrase. It is OK to expand a rule, but you should at least tell the folks effected?

The judge—now Supreme Court Justice Scalia—writing for the D.C. Circuit, said:

> Where the imposition of penal sanctions is at issue . . . the due process clause prevents [deference to agency interpretations] from validating the application of a regulation that fails to give fair warning of the conduct it prohibits or requires.

Fair warning and fair notice—this is a basic American tenet, I thought. But over the years we have lost that too.

Another OSHA example of inadequate notice. Here OSHA ruled that a railing be installed around open-sided floors, but not open-sided roofs. It could have required railings for both, but it did not. OSHA then cited a builder for failing to have a railing around an open-sided roof. Maybe it should have been there that is not the point. The Fifth Circuit Court of Appeals found that while OSHA could require rails around open-sided roofs, they clearly knew the difference between floors and roofs, and that it had not done so. But the court ruled that "an employer * * * is entitled to fair notice in dealing with his Government," and that "if a violation of a regulation subjects private parties to criminal or civil sanctions, a regulation cannot be construed to mean what an agency intended but did not express."

An agency should at least tell us what it wants. If they do not express it, why are we liable for that? Again, we are not mind readers of agency bureaucrats.

I have many, many illustrations that there are occasions when inadequate notice of prohibited conduct with retroactive application has occurred, but let me conclude with one final example from EPA. I think EPA is one of the more blatant violators of due process and fair treatment. It fined General Electric Corp. $25,000 for violating the Toxic Substances Control Act, for distilling and reusing a freon solvent rinsing agent. EPA concluded that the distillation and reuse of this solvent posed no health risks and actually produced an environmental benefit by reducing the amount of contaminated materials—but the EPA nevertheless imposed a penalty. In this case they actually said GE had a positive effect on our environment by reusing contaminated materials. Judge Tatel—a recent appointee to the D.C. Circuit Court by President Clinton—said, "In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing a civil or criminal liability."

This is one of President Clinton's own judicial appointees on the D.C.

Circuit Court that, once again, said that without proper notice, you cannot penalize. Clearly, this demonstrates that this amendment is not partisan in nature. It is about basic justice and fairness.

I support this amendment. I think its addition would greatly enhance this regulatory reform bill. Again, I commend the Senator from Texas for her work in this effort. This amendment is so fundamental, so basic, so logical that I would think that it would be just overwhelmingly accepted. I urge its adoption.

I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I rise to both compliment the Senator from Texas on what she is attempting to do, if it is what I think she is attempting to do, and I would like to be able to ask her a few questions and ask her to consider whether or not she might be willing to make a few modifications.

Let me begin by saying that the idea of an individual or a corporation expending their time, energy, and money in an effort to take an action in which they operate in total good faith, and they go to a Federal agency, speak to an appropriately authorized bureaucrat, someone with authority to make a judgment, and are told that, yes, what you are proposing, based on what information you have given us, is totally appropriate, is consistent with the rules and regulations, and you should be able to go forward; and then that person goes forward and finds—after they have made their investment, after they have undertaken their action, they are told, wrong, wrong, you are violating the regulation, you are violating the rule, you are subject to a civil or criminal penalty here. And the taxpayer retorts and says, but they told me it was all right. They said it was OK to do this. I think that taxpayer should, as this amendment suggests, be exempt from civil and criminal penalties, with no civil administrative penalty, either court imposed or administratively imposed, if they violate a rule after having been told by the rulemaker that it is OK to go ahead and do this.

Now, I understand from the comments—and I was able to listen to some of the comments of the distinguished Senator from Texas in my office on the television, but I did not hear them all. As I understand it, her fundamental intention is to hold harmless people who act in good faith, rely on in good faith, and provide in good faith with the blessing of the appropriate agency.

So my question is: Is that the major thrust and purpose of the Senator's amendment?

Mrs. HUTCHISON. The Senator from Delaware is correct, as far as I can tell from what you are saying. It is a matter of fairness, notice, retroactive interpretation, change, basic due process and basic fairness.

Mr. BIDEN. May I ask the Senator another question. If, in fact, a taxpayer goes in to the regional director of the EPA or into any number of Federal "alphabet" agencies and sits down and says, I want to do the following, and then in laying out the facts of what they intend on doing does not disclose all the facts—does not, for example, tell the regulator that where they want to lay this pipe or where they want to build this building is in the middle of a swamp. He says, "I own a piece of land that is high ground and here is my plan, this is what I want to do. Can I do it?"

If the taxpayer does not fully disclose to the agency the actual facts as the taxpayer knows them, does the Senator intend for that taxpayer to be held harmless, if it turns out the rule has been violated?

Mrs. HUTCHISON. I would say to the Senator from Delaware that becomes a fact question for the agency or for the court to determine if a penalty is put forward.

Mr. BIDEN. So, if, in fact, the agency, after the fact, the agency writes a letter, saying, "John Doe, taxpayer, go ahead and build your building on the site you asked whether you could build it on," and then finds out later that John Doe told them it was high ground, and it turns out to be a literal swamp that they filled in, I assume that John Doe would not be able to say in court, "Look, I got a letter here and it says go ahead and build."

The agency would be able to say, would they not, that, well, "We were not given all the facts, your honor, and the penalty should prevail," is that what the Senator is saying?

Mrs. HUTCHISON. I say probably that situation is covered very well in our amendment, because it says that the agency shall not be able to impose the civil or criminal penalty after disclosure of material facts at the time and appropriate review.

I think it is possibly covered very well.

Mr. BIDEN. I am not suggesting it is not. I want the record to reflect if all the material facts are not made known to the agency at the time the approval is given, I assume the taxpayer does not get the benefit of being held harmless, is that correct?

Mrs. HUTCHISON. I would say any court or any agency probably is going to be able to determine pretty carefully the difference between high ground and a swamp.

Mr. BIDEN. If the Senator reads the first section of the Senator's section 709, subsection (1):

> No civil or criminal penalty shall be imposed by a court, and no civil administrative penalty shall be imposed by an agency, for the violation of a rule.

By law, we are telling a court they cannot impose a penalty.

My question is, Is the exception to that, if it is clear that on a material fact the taxpayer did not disclose all the facts, would the court be able to say as the Senator reads her own amendment, look, I understand section 709 of the amendment says we cannot impose a penalty?

But if we look forward down here, mister lawyer for the defendant, it says material facts—the material facts were not all made available here; therefore, even though the taxpayer has a letter saying go ahead, I will fine the taxpayers.

Mrs. HUTCHISON. I think the Senator from Delaware is stating it correctly.

Reading further through the amendment, after the part that the Senator read: "No civil or criminal penalties shall be imposed" if they find that the defendant "engaged in the conduct alleged to violate the rule in reliance," and it provides all of the ability for the court or the agency to make the fact determination.

Mr. BIDEN. Where does it say that? Can the Senator show me where in the amendment it says that?

Mrs. HUTCHISON. "if the court or agency, as appropriate, finds that the defendant"—in good faith determined based on the language of the rule or "engaged in the conduct alleged to violate the rule in reliance upon a written statement issued by the appropriate official" "* * * stating that the action complied with, or that the defendant was exempt * * *"

I think that there is a lot of latitude by the court to determine. If we go on through the rest of the amendment and go over to the next section it says:

> No agency shall bring any judicial or administrative action to impose a civil or criminal penalty based upon . . . a written determination of fact made . . . after disclosure of the material facts at the time and appropriate review of those or in interpretation of the statute.

Section (c), the third page is where I am reading from.

Mr. BIDEN. The Senator is reading from page 3 of her amendment where it says:

> No agency shall bring any judicial or administrative action to impose a civil or ciriminal penalty based upon—
>
> (1) an interpretation of the statute, rule, guidance, agency statement or policy, or license requirement or condition, or
>
> (2) a written determination of fact made by an appropriate agency official, or state official as described in paragraph (a)(2)(B), after disclosure of the material facts at the time and appropriate review,
>
> if such an interpretation or determination is materially different from the prior interpretation made by the agency or State official described in (a)(2)(B), and if such person, having taken into account all information that was reasonably available at the time of the original interpretation or determination, reasonably relied in good faith upon the prior interpretation or determination.

What that says to me, Mr. President, is not, I think, what the Senator intends.

Would the Senator object to language explicitly saying that if all the material facts are not disclosed to the agency at the time of the letter of approval then a civil and criminal penalty could apply if the law was violated. Would the Senator have any objection to clarifying it?

Mrs. HUTCHISON. I would be happy to sit down with the Senator from Delaware and go through it. I do not think it is a very good idea to write a bill on the floor. The Senator has the evening to look at it.

We can go to your desk, and if there is something we can modify that would allow the Senator to support this amendment, that I can agree to, I would love to do that.

Mr. BIDEN. Let me make another point, and I truly appreciate the Senator's consideration.

The second problem I have with the amendment as it is written is this section (a)(2)(A), it says, "no civil or criminal penalty," and then it shifts to "shall be imposed, if the court or agency as appropriate, finds that the defendant reasonably in good faith determined, based upon the language of the rule published in the Federal Register, that the defendant was in compliance with, exempt from or otherwise not subject to, the requirements of the rule."

Let me explain why that bothers me. We can make an analogy to one of the more loathed agencies in America, the IRS. I know I do not do my taxes anymore, and I have the dubious distinction two times ago as being listed as the poorest man in the U.S. Senate. Second poor only to the man in Montana sitting behind the Senator, so I do not have a very complicated tax form to fill out.

But I do not even do my own taxes anymore. I pay about 1,200 bucks a year to have somebody do my taxes when I do not have anything to declare. I do not have any money. I am not proud of that, but I do not have anything. I do not own a single stock, a single bond, a single investment. I do not own anything, except me and the bank own my house.

Having said that, if I decided I was going to try to save myself this 1,200 bucks this year—were I not a U.S. Senator, I would not have anybody do my taxes, but I am afraid I would inadvertently make a mistake and there would be a headline in the newspaper that says "BIDEN screws up his taxes" so I pay somebody to do them, even though I do not have any need to do it.

Having said that, I sat down and tried to figure out interest, on what interest is a legitimate deductible—on my mortgage. So I wrote this all out and I got it figured. I got this all down just right.

It turns out, when I sent it in, figuring if I sent in this finished tax form to the accountant, one of these big accounting firms, that I would get a break because they would not have to do all this work and maybe it would not be $1,200 or whatever it was, maybe it would be $300—it turns out I was wrong the way I calculated the interest.

I did it in good faith. I acted in good faith. I guess I am revealing the fact that maybe I am not as bright as I would like to think I am, but I am a relatively well educated guy. I acted in good faith. I went out and did it as best I could—fearful of the political consequences if I was wrong, so I had an incentive to get it right. And I still ended up wrong.

Nobody suggests that, even though I relied—I acted in good faith, I reasonably, in good faith, determined that I could deduct more than I was actually able to deduct on my home mortgage interest—because I did not figure out the basis correctly, but at any rate, that I was able to do that—I doubt, when the IRS came to me and said, "No, BIDEN, you owe $220 more than you calculated," that I should go to a court and say, "I am not paying it; take it to court," and you cannot get it from me because I can prove to a court I reasonably relied on what the code said.

I just made a mistake. What worries me here is that some of these regulations are understandably complicated, like the IRS code. So, if I come along, as a guy who in my State wants to build a project or dispose of a chemical or whatever, and I act in good faith and I reasonably, in good faith, determine that this law does not apply to me—when anybody who really knows, knows if I had gone to my lawyer or if I had spoken to somebody they would make it clear that I did have the requirement to abide by a different way—I do not know why we should reward ignorance.

I can understand rewarding reliance, reliance on good faith: Going, disclosing all the facts to the agency, saying "Here is the deal, this is what I plan on doing, here are my plans." And some agency guy or woman saying, "That is OK." Then I go ahead and do that, and they come back and say, "Wrong, wrong. We are going to fine you." That person should be held harmless.

But what I do not agree with, that subsection (a) seems to allow, is, if I sit down as Joe Biden Waste Removal Co., read the regulations, and say, "You know, in good faith I think I can dump this toxin in the local landfill," and I go ahead and dump it in the local landfill, and then the EPA, or State of Delaware comes along and says, "No, you violated the law," for me to be able to go back and say, "You know, I in good faith determined that this word meant that," I do not think I should be held harmless, because the public interest is at stake here.

Mr. NICKLES. Will the Senator yield?

Mr. BIDEN. Yes, I will be delighted to yield.

Mr. NICKLES. If I might just inquire of the Senator, I have an interest in this language but also I have an interest in getting the bill moved.

If the Senator has a suggestion, we are happy to consider those suggestions.

Mr. BIDEN. I agree.

Mr. NICKLES. I know several Senators want to know——

Mr. BIDEN. I will cease and desist and negotiate with my friends. I assume we are not going to vote on this right away, correct?

Mrs. HUTCHISON. Mr. President, if I could interrupt my good friend from Oklahoma, I absolutely agree with him. I think we need to sit down and work together if we can. But, with all due respect, the point that he is making is not even necessary, under this. We are talking about not being able to have a penalty, a fine, or put you in jail. I think that is covered now.

If you sit down with the IRS and say, "I, in good faith, thought I should have this exemption," I would expect the IRS and hope the IRS would say, "No, Senator BIDEN, you actually owe $220 more." And I would not suggest a Senator as smart as the Senator from Delaware would think that is a fine?

Mr. BIDEN. I say to the Senator, maybe it is because I had the disadvantage of having practiced law, I can assure her the IRS does say, "By the way, there is a fine."

Fortunately, the Senator did not have to practice law. And they do that, by the way.

Mrs. HUTCHISON. The Senator from Delaware knows it is well settled in our law that there is a good-faith test. If it is not a willful violation, I would hope we would protect people who in good faith, in a fact determination, would be able to say I did not mean to do this.

If you think the IRS would, in fact, penalize someone with a fine for that, then I think we should protect them from the IRS. That is what my amendment does.

Mr. BIDEN. I do not want to be overtechnical. The Senator from Texas, I think, is confusing the difference between civil law and criminal law. Willfulness is required for criminal, not for civil. But I do not want to get into that debate.

Mrs. HUTCHISON. I think good faith is well settled in principle in civil law.

Mr. BIDEN. Mr. President, I admire the Senator but she is fundamentally wrong on the law. But I do not want to debate that.

Let me just say this. If the Senators are saying that they, in fact, are not going to move to vote on this right

away, then there is not a problem. I am willing to yield the floor and go ahead and see if we can negotiate this.

But if we are going to vote, if I yield the floor and we are about to vote on this issue, then I am going to speak on the issue. I do not want to speak on the issue. I would rather try to resolve it.

Would the Senator from Oklahoma or the Senator from Texas be kind enough to tell the Senator from Delaware what the plan is, relative to moving on this amendment as is, in terms of the timeframe?

Mr. NICKLES. I will be happy to respond to the Senator. I know Senator DOLE wants a couple of votes quickly. That is the reason why I thought maybe we could talk.

In listening to the Senator from Delaware I thought I heard the Senator say he has real problems with the words that were inserted, "in good faith." If he has other suggestions, I would like us to talk about them and maybe we can resolve that.

Mr. BIDEN. Good.

Mr. NICKLES. I do know Senator DOLE wants some votes. I do not want to get into protracted, extended debate. I know Senator KENNEDY has an amendment dealing with OSHA that shall be controversial. We need to dispose of it, I hope, pretty quickly. We were in hopes we could have votes on Senator HUTCHISON's amendment quickly. My thought is we might be able to resolve more with a little side discussion than we could on the floor.

Mr. BIDEN. Let me say to my friends—it will take 30 seconds to say it—I am delighted to see if we can resolve it. If we cannot, I will have a second-degree amendment to which I will wish to speak. But I thank the Chair and yield the floor, and maybe we can talk.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, while my colleagues are——

Mr. LEVIN. Mr. President, I wonder if the Senator from Idaho could yield just for 2 minutes so I can address the Senator from Delaware and Texas on this issue?

Mr. CRAIG. I will be happy to.

Mr. LEVIN. If I could have the attention of the Senator from Delaware and the Senator from Texas just for one moment? The suggestion has been made by the Senator from Delaware that we attempt to work out language on the amendment of the Senator from Texas. I hope that can be true, because I think the intent of the amendment is an important one and a laudatory one.

There are a number of things which I believe can be clarified, which will help that amendment reflect what is that laudatory purpose, where, if people act in good faith, they should be able to rely on agencies' rules and interpretations.

We do want fair warning to people. In addition to the problem which has been raised by the Senator from Delaware, there is an additional problem which is that there is a narrow reference to the word "rule," in the amendment of the Senator from Texas. I believe that the court opinion which the Senator from Mississippi, I believe, quoted—although it may have been someone else—it is not just a rule, that agencies act by. It is also interpretations, guidance. In other words agencies act in many ways.

As a matter of fact, this bill is going to permit petitions to get agencies to reconsider guidance and interpretations. So the notice which so correctly we should insist upon comes frequently from more than just a published rule, but also comes from agency guidance and interpretations. We do not want the agency to be limited to just published rules. We want people to be able to get interpretation and guidance from agencies, so that when the Senators from Texas and Delaware are sitting down to try to put the language of (c) in (a), I hope they will also look at the use of the word "rule" and expand that to include other published guidance, correspondence and so forth.

That is the suggestion that I would make as they are reviewing this very useful amendment.

Mr. CRAIG. Mr. President, let me reclaim my time. I would be happy to yield for a comment by the Senator from Texas.

Mrs. HUTCHISON. Mr. President, I appreciate that because I would like to respond to the Senator from Michigan that we would be happy to add some language, to have "definition" and "rule." "Rule" is in section C. If you would prefer to put "rule" and "definition" in A, I think we could work something out because, as the Senator from Michigan said, what we are trying to do here is have a due process and a fair play in the Administrative Procedure Act. We want to have that goal. Then perhaps with some word changes and better definitions, we could work something out.

Mr. LEVIN. I thank the Senator from Texas. I thank the Senator from Idaho.

Mr. CRAIG. Mr. President, I am a cosponsor of the amendment of the Senator from Texas. I hope that she and the Senators from Michigan and Delaware can work out the differences because I think it is an extremely important amendment.

When I look at what has gone out there in the past and is currently going on, I pose this question to you, Mr. President: Can you imagine living in a country where the laws are not posted or published—anywhere, in some instances—but you can still get in trouble for violating them? That is kind of the feeling of a lot of our people out in the private sector trying to make a living, especially those in the business community and especially the small business community that does not have the hundreds of thousands of dollars of resources to keep a stable of attorneys around telling them what to do and how to do it. Sometimes they find themselves exactly in that situation. They find themselves in a world where those who enforce the laws tell you it is OK to do something and then turn around and punish you for doing it.

That is some of what the Senator from Delaware just spoke to. But in the same instance, if you have invested a lot of money and time and you thought in good faith you were doing it only to be told you are not and then to be fined, I think in most instances the average citizen in our country who has reacted very openly about these issues would say that is just wrong. Most Americans, I believe, would find that kind of system to be intolerable, outrageous, and in all fairness I agree with them. That is why I am a cosponsor of this amendment.

Yet, as unbelievable as that description may be—Mr. President, we find today that that is in part the regulatory system we have—it is a mystery to me how anyone could most possibly defend that status quo. Yet, we find Senators on the floor saying, Wait, everything is OK. Well, everything is not OK if we spend $600 billion nonproductive dollars in our economy every year in this situation, and yet good-faith citizens find themselves subject to penalties and subject to fine.

It is inconceivable that the current system actually would allow agencies to decide after the fact that an action or a failure to act should be penalized. If we were talking about criminal law—and that became a brief discussion a moment ago—it would be considered flat-out unconstitutional. Well, if it is unconstitutional in criminal law, why should not it be unconstitutional here? That is because for three decades we have been caught up in the attitude that the regulatory agencies of our Government know better how the world out beyond the beltway ought to be instead of the private citizen who is trying to provide the goods and services for society and operate in good faith, who has the right to choose and make reasonable and sound decisions.

So I think if it is unconstitutional in criminal law, it ought to be unconstitutional here, and that is why we ought to fix it. And I think that is why the Senator from Texas is clearly headed in the right direction.

I compliment her for her energies and her effort in her amendment. Her amendment is nothing more than I think, as I mentioned a moment ago, common sense and fair play. It just says that people should be put on notice as to what actions are required or prohibited of them. That ought to be clear and straightforward. Those who get approval before they act from an

agency authorized to regulate or speak on policy in a particular area should not be punished for relying on that advice.

The simple question then is, Well, then, where do we go? If I have heard that once, I have heard it a hundred times, Mr. President, in my town meetings from small business people saying, What do we do then? Do we just simply go out of business because we cannot get the right direction, or we cannot find a way to be in compliance with some obscure rule or regulation, that a Federal regulator now comes in and says, Here is the $10,000 fine for doing something wrong, when they in fact may have been advised that the way they were going to do it and then did it was right? That is an intolerable world.

This amendment does not interfere with an agency's ability to revise its rules or to interpret those rules. It just requires penalties to be imposed for future violations as opposed to past violations.

Mr. President, regulations are not supposed to be a goal in themselves. They are supposed to be a way of reaching important goals. Let me repeat that because that is exactly where the small business community, the backbone of the American economy, finds themselves. They find themselves always moving toward the regulation. That is the goal. It ought not to be the goal. It should be the way you get to a productive economy, in the right and proper, socially acceptable level of performance.

If we make the laws and regulatory process a trap for the unwary, nobody is served, and the tragedy of nobody being served is that then nobody wants to play. And in this instance, what we are talking about is the creation of jobs, the strengthening and the building of an economy. When nobody wants to play because they find themselves prohibited or the very limited failure to perform is so violent that it could put them out of business, then something is substantially wrong.

It does not get us to our goals because people do not even know what is required of them. It discourages them from even trying to find a way to work with the law, to work with the enforcing agency. One of those important concepts is embodied in our law and our Constitution, a concept that we all fight to adhere to here. That is called due process. Really, what the Hutchison amendment talks about is the simple concept of due process. That is just another way of defining fairness.

Mr. President, we need this reform. Let us send a strong message of support for fairness and due process with what I hope is an amendment that we could accept unanimously, and that the Senators now involved in it might work out their differences so we can as a Senate say to the American people and to the producers out there, We have heard you, we are responding to you, we are going to create a government that is a good deal more friendly, which respects your right as the producer and the taxpayer, and will work with you in good faith as a partner instead of a cop that comes through the front door and says, Here is the fine, pay up, you are in violation for something we told you to do because now we have decided you did it wrong.

Mr. President, I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Oklahoma.

Mr. NICKLES. Mr. President, negotiations are underway right now to see if we cannot come to a closure on Senator HUTCHISON's amendment. I think there is general agreement that her amendment is needed. I happen to share that concern. I am happy to be a cosponsor of it. I hope maybe we can alleviate some of the concerns that were raised legitimately by Senator BIDEN and Senator LEVIN and pass that amendment. Those negotiations may be going on for a few more minutes.

So I would hope that we could move ahead on a couple of other things. I know Senator KENNEDY mentioned yesterday that he has an OSHA amendment, that he would like to exempt OSHA. I hope he will bring that to the floor. I hope we can have a vote very quickly on Senator DOMENICI's amendment which he raised, and it was debated last night.

So I would let people know that hopefully we will have soon a vote on the Domenici amendment. I hope Senator KENNEDY will bring his amendment to the floor very soon and that we can begin debate on it and hopefully have a vote on it after a short discussion. Maybe a time limit with be necessary on that. Possibly by that time we will have the negotiations completed on the amendment offered by Senator HUTCHISON. I think her amendment is needed. I also think it is well drafted. Maybe we can solve some of the ambiguities on it.

But it is important to let people know that, if they rely on an agency ruling, that ruling made sense and there will not be a retroactive application of a fine or a penalty. If they are given a letter, if they are told by administrative agency, this is OK, this is right, this is in the CONGRESSIONAL RECORD, you should not have retroactive application and fine or some type of other civil penalty. That would be a mistake. That is not fair. That is unjust.

I believe there would be bipartisan support for that. I agree that there should be overwhelming support for this amendment. Hopefully that will be adopted.

I see my friend and colleague from Massachusetts. I mention to him maybe we could move forward on his amendment very quickly and try to solve that. I know Senator DOLE has real concerns about moving this legislation forward.

I want to compliment the managers. I saw Senator GLENN just a moment ago, and Senator ROTH and Senator HATCH, because they worked very, very hard to try to make some progress. It was very frustrating the first 2 or 3 days.

I think yesterday we made a lot of progress. I compliment Senator JOHNSTON for helping make that happen. So yesterday evening we started making real progress. I might mention for those on the other side of the aisle that had raised a lot of concerns about this bill, I think a lot of those concerns were alleviated.

So maybe, again, that will help promote this and make it more possible to pass this bill. I know the majority leader said he would like to have this bill passed no later than Tuesday. I think he is being patient. We started on this bill actually on Thursday before the recess. So we have had a lot of debate.

This bill is needed, Mr. President. In my opinion, it is one of the most important pieces of legislation we will consider this year. It is needed for a lot of reasons. One of the primary reasons is because we have a lot of unnecessary regulation in this country. We have a lot of regulations that do not make sense, a lot of regulations that cost too much. So people do feel like they are overregulated, overburdened. When you have regulations coming in that do not make sense or cost an inordinate amount for marginal improvements, we are saying, wait a minute; let us do something different. And that is what this legislation is all about.

So I compliment the sponsors of this legislation. The idea of saying that we should have a policy to make sure that the benefits justify the costs, I think makes eminent good sense. We have had past Presidents who have put that in Executive orders, but we never had it in the law. Why not put it into law? That is what we are trying to do. We are saying that we should use risk analysis so we can actually prioritize those areas that need a scientific analysis so we will determine where we can focus and concentrate our efforts to make sure that we take the limited resources we have from the regulatory agencies, from the Government, from the taxpayers to concentrate on those that will do the most good.

Some people have characterized this bill and said this will be harmful to their health. I do not think so. I think it will be just the opposite. We only have so many dollars in the agencies; we only have so many dollars from the taxpayers. Let us concentrate those dollars where we can get basically the maximum amount of safety, the maximum amount of health from the dollars that are expended.

Mr. President, again, if there are additional amendments, I urge our colleagues to bring those amendments forward because I know the majority leader wants to draw this bill to a close. At least one cloture motion has been filed. There may be another one filed. I hope that is not necessary. I hope that everyone in good faith will offer their amendments, bring them to the floor, debate them, debate them today, debate them all day Monday if necessary, maybe very late Monday night if necessary, and come to an agreement where we can have final passage on Tuesday.

I also know the majority leader wants to go to a Bosnia resolution on Tuesday. We also have appropriations bills that we must begin consideration of.

I think we are making good progress on the Hutchison amendment, and if we could resolve it and have a vote or pass the Domenici amendment, I think that would be progress, and hopefully dispose of Senator KENNEDY's amendment. That would be excellent progress as well.

So I thank my friends. Again, I compliment Senator HATCH and Senator ROTH and Senator JOHNSTON for their leadership on this bill. I would like to see some greater momentum and movement on the amendments pending today. I encourage all Republicans who have amendments to bring them to the floor as well and maybe we can dispose of those today.

I yield the floor.

Mr. HATCH. Mr. President, the Hutchison amendment that is currently pending, which restores a modified version of section 709 to the Judiciary Committee version of S. 343, is intended to deal with the problem that is appearing with more frequency of agencies bringing enforcement actions and seeking civil and criminal penalties for the alleged violations of rules that are increasingly complex, convoluted, and often unclear.

In their zeal to compile enforcement statistics, some Government agencies have, on occasion, initiated cases based upon novel interpretations of their own rules, interpretations that have never been communicated to the regulated community, or the community they are regulating. In some cases, the actions have been brought to retroactively impose requirements based on some new—some new—agency interpretation of a rule or some new factual determination even where the person against whom the action is brought has reasonably relied upon a prior agency interpretation or determination.

Moreover, there are situations in which agencies develop complicated and ambiguous rules and then seek to punish individuals or companies if they guess wrong as to what those rules mean. At stake in these cases are penalties worth millions of dollars, and even Federal imprisonment is at stake for some of our citizens.

Against this backdrop, I believe the Hutchison amendment contains an appropriate and necessary restraint on the authority of agencies to pursue civil or criminal penalties for the alleged violation of rules and circumstances where the imposition of such penalties would plainly be unfair. In large measure, the amendment simply makes explicit or clarifies requirements that already exist under the Administrative Procedure Act.

Moreover, nothing in this amendment prevents an agency from changing its interpretation of a rule consistent with the requirements of sections 552 and 553 of the Administrative Procedure Act and subject to the protections provided by this section, enforcing the new interpretation prospectively.

The Hutchison amendment does, however, prevent the Government from extracting civil or criminal penalties or retroactively imposing regulatory requirements in cases where the defendant can demonstrate that prior to the alleged violation the responsible agency or State authority told the defendant, either directly or through an interpretation duly published in the Federal Register, that the defendant was in compliance with or was not subject to the rule at issue. The ultimate result of this legislation will be, in my view, better enforcement leading to better compliance, better protection of health, safety, and the environment and greater respect by the regulated community for the enforcement practices of the Federal Government.

So this is an important amendment, and I really hope we can work out the language to the satisfaction of our colleagues on the other side and get this amendment passed as soon as we can.

I agree with the distinguished Senator from Oklahoma that we need to move ahead on this bill. We need to have a number of votes today and, hopefully, get rid of some of the amendments that we have today and move on.

While we have this lull, let me just give my 6th of the top 10 list of silly regulations. And I will start with No. 10.

Silly regulation No. 10: Prohibiting a person from developing his land because it will become a habitat for the endangered salt marsh harvest mouse after—get this—after the polar ice caps melt and the sea rises. That is No. 10 on my list of silly regulations.

Silly regulation No. 9: The owner of a van was in an accident and as a result 2 gallons of gas leaked out of the van's gas tank. The fire department flushed it into a drainage ditch. As a result, the Coast Guard attempted to fine the owner of the van $5,000 for "polluting the waters of the United States." That is silly regulation No. 9.

Silly regulation No. 8: Prohibiting the sale of a children's toy for 8 months, sending the company into financial reorganization only to admit the toy should not have been banned at all. Yet, it admitted that it was an editorial error.

Silly regulation No. 7: Attempting to dismantle private homes at a cost of $8 million due to lead-contaminated soil, except there was no evidence of any lead contamination.

Silly regulation No. 6: The General Accounting Office estimated that in 1990, the IRS imposed over 50,000 incorrect or unjustified levies on citizens and businesses per year. That makes today's list a list of the top 50,000 silly regulations.

Silly regulation No. 5: FDA, which has a legendary bias against dietary supplements, tried to assert that the product, black currant oil—the oil of the fruit, black currants—was not a supplement, but rather an unsafe food additive. The FDA's logic was that the oil was the additive added to the food—the gelatin capsule containing the oil. Two different U.S. courts of appeal rejected this.

Two different U.S. courts of appeal rejected this unanimously, one saying it was "nonsensical," the other saying it was "Alice in Wonderland." Those are actual quotes from the courts.

Silly regulation No. 4: FDA also banned dietary supplement manufacturers from telling women of childbearing age that folic acid could prevent birth defects in their babies, even though the FDA's mother agency, the Public Health Service, and its sister agency, the Centers for Disease Control, had publicly issued this recommendation.

Let us just talk about lives for a minute. Had the FDA allowed the dietary supplement manufacturers to make the absolutely accurate claim—which they, of course, do now—over the last 11 years since they have known about folic acid's 0.4 milligrams of folic acid benefit in helping to prevent neurotube defects, we would have prevented 1,250 neurotube defective babies every year for the last 11 years, babies born with spina bifida. That could have been completely prevented had those claims been permitted. The agency, according to some, has known about it for the last 11 or 12 years. To be fair to the FDA, they knew about it for 3 years before they finally conceded that their bias to the dietary supplement was not valid and 0.4 milligrams of folic acid would prevent 1,250 babies a year from having spina bifida.

Silly regulation No. 3: FDA has a regulation, the so-called food standard of identity, specifying in great detail the Government-mandated ingredients characteristics of French dressing. I might add, they issued no such requirements for any other dressing—Italian, ranch, or honey-mustard to mention a

few—but I am sure they are working on it.

Silly regulation No. 2: Seizing $2,000 of a business' bank account only to concede the case against it was baseless, but they still did not return the money because of "computer difficulties."

Finally, silly regulation No. 1: I want to thank my good friend from Texas, Senator HUTCHISON, for bringing today's No. 1 silly regulation to my attention. Requiring a woman's clothing store to hire male salesmen and place them in the fitting rooms.

Now who in America does not know of some of these silly regulations and interpretations of regulations? Who in America doubts that we are inundated with this kind of crap? Who in America is not upset about it? Who in America does not realize that that is what this bill is all about? We are trying to stop this type of stuff and get regulators to be more responsible. And that is recognizing the fact that many of them are and most regulations are, but it is the ones that are not that is driving this country crazy, making us uncompetitive, making it more difficult for this country, in many respects, to be the greatest country in the world. Frankly, it will be the end of us if we keep going the way we are going.

That is why this bill is so important. That is why we simply have to do a better job about regulating in our society. The Hutchison amendment, just to end with that, I think, makes a lot of sense. It protects people against silly interpretations of regulations.

Mr. President, I ask unanimous consent that amendment No. 1539 be temporarily laid aside and that Senator KENNEDY be recognized to offer his amendment on OSHA.

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

Mr. HATCH. Let me suggest the absence of a quorum. Did the Chair rule on that?

The PRESIDING OFFICER. Yes.

Mr. NICKLES. Will the Senator withhold?

Mr. HATCH. I withhold.

Mr. NICKLES. Mr. President, for the information of our colleagues, I think we are making good progress on the Hutchison amendment. Hopefully, that will be resolved very quickly.

The unanimous-consent request just agreed to says we now go to the amendment of the Senator from Massachusetts dealing with OSHA exemption. Hopefully, we can come to a quick time agreement on that and dispose of that amendment.

RESCISSIONS BILL

I make one other plea. It is Friday morning, and we still have not passed the so-called rescissions package. Mr. President, I believe about 90-some percent of the Senate agrees with passing the rescissions package. I was at the White House earlier this week and President Clinton said he hoped the Senate would pass it very quickly.

I believe there is one or maybe two colleagues that still have some opposition to that package. But I urge that they come forward and agree so we can save the taxpayers $9 billion and we can get some much-needed relief to victims of disasters in California, Oklahoma, and other places. I think it is vitally important.

It is also important for us in the appropriations process so we can have those amounts. It would make a big difference on the appropriations levels for 1996.

I certainly hope we can pass the rescissions package before we leave today.

I see the majority leader on the floor. I also see my friend and colleague from Massachusetts on the floor. I appreciate his cooperation, as well. I hope that we can enter into a time agreement on his amendment very soon.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I just hope we can get some votes. We have had a lot of speeches. We have not had any votes. It is now 11:30. Many of our colleagues have plans this afternoon. But if we are going to speak all morning, we are going to have to vote all afternoon. It is all right with me, as long as everybody understands that. I hope we can get time agreements so we can make more progress on this bill today.

Our attendance is good. I think most people planned on being here all day today, and we will be here all day today and, hopefully, we will be voting all day today. If we can get time agreements, as suggested by the Senator from Oklahoma, it certainly would be helpful.

Mr. LEVIN. If the majority leader will yield, I think there is good attendance and there was some progress made. The Senator from Texas offered an amendment this morning——

Mr. DOLE. I think Senator BIDEN has been negotiating.

Mr. LEVIN. Yes. I think progress has been made. It is an amendment that has purpose which I think is shared widely and broadly, and there is progress being made on that language. I believe Senator KENNEDY is on the floor ready with his amendment, as well.

Mr. HATCH. Can we agree to a time agreement?

Mr. DOLE. Will the Senator agree to a time agreement? Great.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, let me comment, too, that I hope we can complete our work on a couple of additional amendments this morning and work well into the afternoon. I have talked to a number of our colleagues, and we are prepared to stay late into the afternoon to work on these amendments. So I encourage the leader to continue to hold us here and continue our work.

RESCISSIONS BILL

I did not have the opportunity to listen to my friend, our colleague from Oklahoma, about the rescissions bill. But I hope we can resolve that matter at some point as well. We have made an offer that, in my view, is a good-faith offer. We have laid down three amendments, and we are prepared to work under very tight time agreements there. We could have that bill on the President's desk by the end of the week. We can do it today.

I hope that we can accommodate the Senators who have expressed an interest simply in being heard on some very important issues. They have agreed to limit their amendments. They have agreed to a limited amount of time. We have had a number of other colleagues that have expressed an interest in modifying the bill, who have said in the interest of moving the bill, they will withhold doing that at this time.

So we are really at a point where a couple of Senators simply want to have the right to offer an amendment. I do not think that is too much to ask. Hopefully, we can resolve that and move on with rescissions. We are here to work, and we will be here this afternoon. I encourage everybody who wants to participate in the debate to do so and come to the floor.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Is the bill open for amendment at this time?

Mr. HATCH. If the Senator will yield, is he willing to agree to a time agreement?

Mr. KENNEDY. I will be glad to.

Mr. HATCH. I suggest one-half hour equally divided.

Mr. KENNEDY. No, we would need at least 45 minutes to be able to make our presentation. I do not know what will be necessary on the other side. Why do we not get started, and we can try and work that out.

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

Mr. KENNEDY. Yes.

PRIVILEGE OF THE FLOOR

Mr. LEVIN. I ask unanimous consent that Scott Garrison, a legislative fellow with the Oversight Subcommittee staff, have floor privileges during consideration of S. 343.

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

Mr. JOHNSTON. Mr. President, I wonder if the Senator from Massachusetts—he said he would need 45 minutes. Why do we not get an hour and a half time agreement, and we can yield back time if we do not need all of that.

Mr. HATCH. Let us just move ahead and see where we are.

Mr. JOHNSTON. I think we would do well to get a time agreement.

Mr. KENNEDY. Why do we not get started on it. It is not my intention to take a great deal of time. We would like to get moving and start on it.

AMENDMENT NO. 1543 TO AMENDMENT NO. 1487

(Purpose: To provide that certain cost-benefit analysis and risk assessment requirements shall not apply to occupational safety and health and mine safety and health regulations, and for other purposes)

Mr. KENNEDY. 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 Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1543 to amendment No. 1487.

Mr. KENNEDY. 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 46, insert between lines 4 and 5 the following:

"§ 629A. Inapplicability to occupational safety and health and mine safety and health regulations

"This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to—

"(1) occupational safety and health; or

"(2) mine safety and health.

On page 50, insert between lines 15 and 16 the following new paragraph:

"(4) This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to—

"(A) occupational safety and health; or

"(B) mine safety and health.

On page 96, insert between lines 20 and 21 the following new sections:

SEC. . OCCUPATIONAL SAFETY AND HEALTH REGULATIONS.

(a) PRIORITY FOR ESTABLISHING STANDARDS.—Section 6(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(g)) is amended—

(1) by striking "(g) In" and inserting "(g)(1) Notwithstanding any provision of the Comprehensive Regulatory Reform Act of 1995, in"; and

(2) by adding at the end the following new paragraph:

"(2) Notwithstanding any provision of the Comprehensive Regulatory Reform Act of 1995, in determining the priority for establishing standards relating to toxic materials or harmful physical agents, the Secretary shall consider the number of workers exposed to such materials or agents, the nature and severity of potential impairment, and the likelihood of such impairment.".

(b) RISK ASSESSMENTS FOR FINAL STANDARD.—Section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) is amended by adding at the end the following new subsection:

"(h)(1) In promulgating any final occupational safety and health regulation or standard, the Secretary shall publish in the Federal Register—

"(A) an estimate, calculated with as much specificity as practicable, of the risk to the health and safety of employees addressed by such regulation or standard, the affect of such regulation or standard on human health or the environment, and the costs associated with the implementation of, and compliance with, such regulation or standard;

"(B) a comparative analysis of the risk addressed by such regulation or standard relative to other risks to which employees are exposed; and

"(C) a certification that—

"(i) the estimate under subparagraph (A) and the analysis under subparagraph (B) are—

"(I) based upon a scientific evaluation of the risk to the health and safety of employees and to human health or the environment; and

"(II) supported by the best available scientific data;

"(ii) such regulation or standard will substantially advance the purpose of protecting employee health and safety or the environment against the specified identified risk; and

"(iii) such regulation or standard will produce benefits to employee health and safety or the environment that will justify the cost to the Federal Government and the public of the implementation of and compliance with such regulation or standard.

"(2) If the Secretary cannot make the certification required under paragraph (1)(C), the Secretary shall—

"(A) notify the Congress concerning the reasons why such certification cannot be made; and

"(B) publish a statement of such reasons with the final regulation or standard.

"(3) Nothing in this subsection shall be construed to grant a cause of action to any person.".

SEC. . MINE SAFETY AND HEALTH REGULATIONS.

The Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) is amended by inserting after section 101 the following new section:

"RISK ASSESSMENTS FOR FINAL STANDARDS

"SEC. 101a. (a) In promulgating any final mine safety and health regulation or standard, the Secretary shall publish in the Federal Register—

"(1) an estimate, calculated with as much specificity as practicable, of the risk to the health and safety of employees addressed by such regulation or standard, the affect of such regulation or standard on human health or the environment, and the costs associated with the implementation of, and compliance with, such regulation or standard;

"(2) a comparative analysis of the risk addressed by such regulation or standard relative to other risks to which employees are exposed; and

"(3) a certification that—

"(A) the estimate under paragraph (1) and the analysis under paragraph (2) are—

"(i) based upon a scientific evaluation of the risk to the health and safety of employees and to human health or the environment; and

"(ii) supported by the best available scientific data;

"(B) such regulation or standard will substantially advance the purpose of protecting employee health and safety or the environment against the specified identified risk; and

"(C) such regulation or standard will produce benefits to employee health and safety or the environment that will justify the cost to the Federal Government and the public of the implementation of and compliance with such regulation or standard.

"(b) If the Secretary cannot make the certification required under subsection (a)(3), the Secretary shall—

"(1) notify the Congress concerning the reasons why such certification cannot be made; and

"(2) publish a statement of such reasons with the final regulation or standard.

"(c) Nothing in this section shall be construed to grant a cause of action to any person.".

Mr. KENNEDY. Mr. President, the purpose and effect of this amendment is simple and straightforward; that is, to exempt the rulemaking by the Mine Safety and Health Administration and Occupational Safety and Health Administration from the cost-benefit analysis and risk assessment provisions of S. 343 and to substitute in their place the more sensible provisions of the Gregg-Bond OSHA reform bill.

Mr. DOLE. Will the Senator from Massachusetts take 40 minutes, and we will take 20 minutes?

Mr. KENNEDY. We would like 45, if we could. It is my understanding it will be without a second-degree amendment.

Mr. DOLE. There will be a motion to table.

Mr. HATCH. A total time of 1 hour is fine.

Mr. KENNEDY. As I understand it, we have 45 minutes, and the Senator has 15; is that correct?

Mr. DOLE. That is fair.

Mr. HATCH. I ask unanimous consent that the Kennedy amendment be subject to an hour time agreement, with 45 minutes devoted to Senator KENNEDY, and 15 minutes under my control, and that there be no second-degree amendments.

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

Mr. KENNEDY. Mr. President, the Kennedy amendment takes the exact language from the Gregg-Bond OSHA reform bill, S. 562, and applies it to OSHA and MSHA, as well. Rather than imposing a duplicative new layer of rulemaking procedures, the amendment requires that, along with the publication of a final rule, the Secretary of Labor publish a certification that the rule was developed using good science and that its benefits justify its costs. That is basically what has been the recommendation of those that are supporting S. 343, that we are going to use the best in science and we are going to make sure that the benefits are going to justify the costs.

It is that test, that criteria, that was introduced by the Senator from New Hampshire, Senator GREGG, and Senator BOND, and five other Republicans, to be the test that would be applied in terms of the OSHA legislation. We are accepting that as an additional requirement on the existing cost-benefit ratio, so that we will be complying with the spirit of the legislation and doing it in an effective way, particularly with regard to these two agencies

that make such a difference in terms of the protections of the health and safety of the workers.

The purpose of this amendment is simple and straightforward: To exempt the rulemaking by the Mine Safety and Health Administration and OSHA from the cost-benefit analysis and risk assessment provisions of S. 343, and to substitute in their place these more reasonable provisions.

The Mine Safety and Health Act has been a tremendous success—an example of sensible regulation that has saved lives without compromising, in any way, the productivity of the industry. For 25 years, the act has contributed to a steady decline in deaths and disease among mine workers, while productivity has improved dramatically. Mine explosions were once common; today they are rare. Black lung disease was once a fact of life in the coal fields. Now it is much less prevalent—cut by two-thirds.

The charts I have behind me demonstrate what has been the record over the period since 1969 when the MSHA was actually put into effect, in terms of mine safety. If you look here, coal mine fatalities are represented by this falling line here, and coal mining productivity is represented by the rising blue line here. We have seen a dramatic decline in terms of fatalities since the time MSHA was actually put into place, and what we have seen is a dramatic increase in productivity.

This legislation is working. This legislation is working, providing for the protection of workers, and also, as I indicated, productivity for the mine operators. This is another example of the coal mining fatality rate, where we have seen a dramatic decline in terms of the fatalities in the mines of this country.

In 1968, a coal miner was five times more likely to be killed while working than he would be today. Since 1968, coal mining productivity has increased 80 percent. With that kind of record, it is clear that MSHA has provided the kind of commonsense regulation that every mining family and every American are looking for.

Mining and its hazards create the kind of risk that must be regulated. MSHA's concerns are cave-ins, where tons of rock crush miners to death, underground fires that burn miners to death or asphyxiate them, and methane gas explosions. These are dangers that have been present for decades.

These are the tragic mine accidents that occurred in recent years:

The Wilberg Mine fire, 1984, that killed 27 Utah miners.

Magma Copper Mine (1993), where an underground mine structure collapsed and killed four Arizona miners.

The Grundy Mine explosion (1982) that killed 13 Tennessee coal miners.

Golden Eagle Mine (1991) where a methane explosion injured 11 Colorado miners.

Solvay Trona Mine (1995) in Wyoming, where a collapse trapped two miners for days and one died of a heart attack.

Marianna Mine fire (1990), where an explosion and fire injured 11 Pennsylvania firefighters.

We do not have to elaborate on the risk assessment and peer review panels like those required by the bill to tell us that excessive coal dust levels cause black lung disease. Congress, based on unquestioned science, made that judgment in the Mine Act of 1969. We debated it and discussed it. We had hearing after hearing after hearing. All the medical science indicates it.

Why put that particular regulation at risk? Why would we waste taxpayer dollars, forcing the labor Department to respond to petitions questioning whether proper risk assessment and cost-benefit analyses were done for the law's ventilation and dust standards? Who complains to the Congress about these standards? It is not the mining industry. Richard Lawson, who is president of the National Mining Association, regards those rules as in large part responsible for the amazing progress of the last quarter century.

In March, at an event celebrating the Mine Act's success, this is what Lawson said. This is Richard Lawson, the president of the National Mining Association.

> There is no question in my mind, and I don't know of anybody in the entire mining industry that would argue with this statement, that we wouldn't have achieved the results that we have in the past 25 years if we hadn't had a Federal regulatory program and a State regulatory program.

Now, here we have the miners that are supporting it. And Mr. Lawson's statement represents the mine operators' view of the record of what has been achieved in terms of increasing productivity and the success of this program. To my knowledge, there is no welling up from around this country, particularly from mining States, that says that we ought to abandon this or change this in a dramatic way and build in all these other kinds of additional steps into this to make it effective. Yet, we are being asked to do it.

Mr. President, if it ain't broke, why fix it? Why would we waste agency resources and tax dollars by forcing MSHA to respond to petitions by fly-by-night mine operators? They are the ones that are going to make the petitions. Make no mistake about it. They are the ones that are going to be asking for the petitions in terms of rules and regulations. They will be able to do it. They will be qualified and be able to do that under this proposed legislation.

They will seek exemptions from roof support standards or methane gas standards—standards that have saved scores of lives. 1979 to 1983, before MSHA issued its automated temporary roof support system, 64 miners were killed by roof falls while installing temporary support. Since the regulation went into effect, no miners have been killed in this way.

Who can say how many lives have been saved by MSHA's methane gas regulations? The burden is on those who want to change the way the Mine Safety and Health Administration goes about its work. The burden is on them to prove that any change would not impede the agency's performance, let alone that the changes are somehow an improvement.

Mr. President, no one has even attempted to make that case. Why? Because no one but lawyers and lobbyists, and some mining companies, who want to escape the law that would benefit from the changes made by S. 343.

Mr. President, the $100 million threshold amendment that the Senate adopted will do nothing to help MSHA because regulations that cost less than $100 million have a significant impact on small businesses, and are still treated as major rules under the small business impact amendment which was adopted. Ninety-nine percent of the mines are classified by SBA as small businesses. Virtually every MSHA regulation will be classified as a major rule.

Thus, the new MSHA rules have to go through the complex procedures of the bill, and existing rules would be subject to sunset through the bill's petition process. Will MSHA standards be repealed under the lookback provisions? There is a real reason to worry. Mine operators who want to avoid penalties for noncompliance can be expected to petition to have as many rules added to the lookback schedule as possible.

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

Mr. KENNEDY. I would, for a brief question.

Mr. JOHNSTON. I thank the Senator.

On page 4, line 15 of his amendment, it says if the Secretary cannot make the certification required under section 1(C), he shall notify the Congress and publish his statement.

1(C) says, the main part there, that the benefits must justify the cost.

Now, my question is, when the Senator says he cannot make the certification, does that mean he cannot in good conscience make it, or he cannot because he disagrees with it?

In other words, is there any limitation on why he cannot make the certification?

Mr. KENNEDY. Senator, I will come back to that. I would like to make the presentation with regard to what this section provided. Then I will come back to how this proposal, S. 343, undermines the kinds of protections for miners, even with the Levin amendment, which deals with health standards, but would not apply in terms of the safety standards. I will be glad to come back.

I want to make the point and the case, which is the obvious case, and that is, if the MSHA program is working, and protecting the lives of workers, and if under the S. 343 we are going to be opening up safety and health standards that are working and protecting lives today, the burden ought to be on those who say why the present standards are not working.

The important question is not whether the various new other provisions are going to be adequate or sufficient or insufficient to permit the Secretary, under certain circumstances, to make certain certifications, based upon scientific information.

When a person is out there in the mine and has lost a brother in those mines, lost loved ones in the mines, and we see the dramatic change that has taken place in the mines in productivity, that is what is before the Senate, not some extraneous provisions about certification based upon other scientific information that is going to alter and change.

If the Senator has specific recommendations, the specific issuance of safety regulations that he believes under MSHA have been so bureaucratic, have been so outrageous, have been so intolerable, those are legitimate matters we should debate.

What we will debate and show is that because of the steps that have been taken by MSHA, the mines of this country have become a great deal safer.

That is the basic point. It is the basic point of this amendment, to say, look, it ain't broke, why alter it? Why change it? Why risk it? It is working and working effectively.

I dare say that with regard to occupational health and safety provisions that we have a similar kind of a result as well.

If we take, for example, on the OSHA—and as I mentioned earlier in the course of the debate, we find some 100,000 inspections that are conducted a year—if we have 99.9 percent good ones, we have done extremely well but 100 businesses are still unhappy. And I must say that under the leadership of Joe Dear, the head of OSHA, OSHA has done an extraordinary job in bringing that agency into a sensible, responsible position.

It always amuses me that when examples are raised about the abuses of OSHA, by and large it is under the administration of the previous administration—not of this one.

No one can tolerate that it is the previous administration or this one. We ought to free ourselves. When we have rules coming out and we have 99.9 percent accuracy, solid and sensible and responsible issuance, we still will have some that do not make any sense.

This is not a bad batting average, particularly when looking at what has happened in the annual occupational fatalities declining under OSHA from 1947, 1970 and 1993. These are the figures: 17,000, 13,000 and 9,000.

We can look back and we can either take the time of the Senate or not take the time of the Senate. If we looked at the decline in terms of fatalities prior to OSHA, even based upon the alterations and change in terms of the industrial direction of this country, we still see the dramatic, dramatic, dramatic results which I have mentioned. That is, the very significant decline in terms of fatalities.

That has to be worth something. We listened to our friends and colleagues talk about the person that issued some citation because the failure of publication of some safety standard say, "Well, therefore, we ought to abandon this kind of process." What we have to do is look at the results.

If you look at what is happening in terms of the current timeframe, under OSHA, for the issuance of various standard settings, the standard settings which have direct relationship to the killing of workers in the workplace and also occupationally hazardous conditions in it, you see a picture of delay.

At the present time the number of years, right here on the bottom of this chart, the number of years to complete the rules —take, for example, the cadmium standards. It has taken 3 years to issue these standards—17 deaths a year. Every year we fail to issue it, 17 deaths, plus 78 additional workers developing kidney disease each year.

We look at the confined spaces—17 years to issue these regulations. It took 17 years to do it; 54 deaths a year, 5,000 serious injuries a year.

The lockout/tagout standards—it took 9 years to get these regulations. It has taken 9 years. There were 122 fatal electrocutions a year. Mr. President, 122 electrocutions a year and 85,000 injuries per year that are going to be remedied with the issuance of those lockout standards.

The process safety management standards, that is to prevent chemical explosions—it has taken 5 years. It has taken 5 years for those. There are 26 deaths a year and 150 serious injuries per year. This is the time just on these matters. This is the amount of time it has taken just in these areas. Why? Because of hearings, because of peer review, because of open hearings about re-review, advisory committees, all of the rest of the process that goes on. That takes years and years and years.

If my colleagues want to extend all of those right out here and right across this, then you go ahead and implement S. 343. That is the basic result. Because of the series of petitions, the lookback provisions, the ability for various companies and corporations who are going to be affected by these standards to petition, we will undermine safety standards.

Who is out there to say that these kinds of factors, that we have demonstrated have a direct impact on the safety of working conditions for Americans, should not be addressed? Of course they should be addressed.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. Mr. President, I see others who wish to address this issue on the floor. I yield myself 2 more minutes and then I will be glad to yield to the Senator from Illinois and then I will be glad to answer some questions on this.

But what we are basically saying is that we have a challenge as a country and a society to ensure that the workplace is going to be as safe as we can make it. There are always going to be accidents. But we ought to have, as a society, the sense that we are not going to be just producing widgets more efficiently and effectively and more dangerously than any other industrial country in the world. We should make every single attempt to try to make sure that the workplace is going to be safe and secure.

By and a large, the employers of this country are desirous to do it. And many of the States have moved ahead in very creative and imaginative ways, like the State of Washington, Oregon, other States as well, in terms of developing systems to be able to do that. And we are encouraging it and want to work and try to find more effective ways.

But the fact of the matter is, at the same time that we are seeing this wholesale assault that we are seeing on MSHA, reducing their budget by a half, we are also complicating their lives with limited resources to be even more dilatory in the publications of rules and regulations that have a direct correlation to the safety and security of those that work in the mines and those that work in other hazardous occupations.

All we are saying at the present time is, first of all, we have OSHA reform regulation that is before the Labor and Human Resources Committee that is being considered at the present time and on which we have had hearings. We have recommendations that have been made by our Republican friends on that committee—I yield myself 2 more minutes—by Republican friends on that committee, to try to work out ways to address, in a very important and significant way, some of the abuses that have been there. We are trying to work together to do that.

But what is happening now here on the floor of the U.S. Senate, S. 343, is, under the guise of regulatory reform, putting in danger the working conditions of workers in the mines of this country, in the most hazardous industry. Make no mistake about it, in the most hazardous industry in this country we are affecting, in an adverse way, protecting the health and safety of those workers without a single hearing

and without any kind of due consideration. That is wrong. That is wrong.

For that reason I hope our amendment will be accepted.

To reiterate, if their petitions are granted, the rules will all be scheduled for review in the first 3 years.

This is particularly troubling because MSHA's budget is not growing; the Agency will have fewer people to perform these reviews, not more.

The House Appropriations Committee is in the process of slashing MSHA's budget, and the congressional budget resolution called for a 50 percent cut in MSHA's budget.

There is every reason to fear that even a supportive administration will be so overloaded and hamstrung that it will not be able to complete reviews of all scheduled rules, and they will be repealed, despite their proven effectiveness in savings miners' lives. But there is another problem.

The bill allows a hostile Secretary of Labor to put every safety and health standard up for review—and no one could challenge his action.

The bill provides: "The head of the agency may, at the sole discretion of the head of the agency, add to the schedule any other rule suggested by a commentator during the rulemaking under subsection (a)."

This in an invitation for real mischief. It is no wonder that mineworkers and others fear this bill and suspect that its real purpose is to roll back the regulations that have helped improve their lives.

And what about the future? What is the hope of making further progress in mine safety through sensible regulation, if this bill is enacted? If MSHA is forced to respond to a multitude of petitions and devote additional resources to the lookback process, there will be fewer resources available to develop new standards to deal with emerging threats to miners' lives. And because this bill adds so many new requirements to every rulemaking, each rule will take longer to complete and will be more expensive to develop.

MSHA has an important regulatory agenda, which includes updating 22-year-old air quality standards and addressing the hazards of diesel-powered equipment in underground coal mines. Diesel emissions at the levels commonly found underground have been linked to cancer and chronic lung disease, and diesel equipment poses the risk of fire or explosion. Rules to address these issues should not be delayed.

The same kind of considerations apply to the Occupational Safety and Health Administration, which—like MSHA—has had tremendous success in making America's workplaces safer and healthier.

We hear anecdotes repeatedly about OSHA's overzealous or misguided enforcement, and a small number of those stories are true.

But the plain, unvarnished fact is that OSHA and its State partners conduct 100,000 inspections a year. The handful of stories we hear about overzealous inspectors involve less than one-tenth of 1 percent of OSHA's annual inspections. Yet these anecdotes take on a political importance totally out of proportion to their true impact.

What we hear too little about is the tremendous positive impact of OSHA on the lives of America's working men and women.

Since the creation of OSHA in 1970, the fatality rate from on-the-job accidents has fallen 57 percent. This is an accomplishment we should celebrate, but almost no one in the Senate or in America ever hears this good news.

OSHA has worked. It has saved lives and it continues to save lives.

If Congress does not get in the way, I have no doubt that OSHA will be even more successful in the years to come, thanks to the groundwork laid by its current Assistant Secretary, Joe Dear, and Secretary of Labor, Bob Reich.

Some people have suggested that things improved on their own, that industry was getting safer before OSHA was created, and that OSHA has had no real impact. That is bunk.

As the charts I have with me show, it is true that workplace fatalities were falling before the act's passage in 1970, but the rate of improvement is far greater post-OSHA that pre-OSHA. In the 23 years before OSHA, death rates fell 43 percent. In the 23 years after OSHA, death rates fell 57 percent.

The real impact of OSHA has been even greater than these rates indicate, since such a large number of on-the-job deaths today are caused by murders and homicides which are risks that OSHA has never regulated.

These are impressive numbers, but they deal with only a small part of OSHA's mission. The act's greatest impact is on occupational health, not on accidental, traumatic deaths. And that impact is directly attributable to OSHA's regulations and standards, the subject of my amendment.

OSHA's regulations have been enormously successful in reducing the harm they were designed to address. Let me mention just a few of them:

Cotton dust. In 1978, OSHA issued a standard to protect the Nation's textile workers from brown lung, a crippling and sometimes fatal disease that destroy's the lungs, effectively strangling its victims. At that time, there were 40,000 cases of brown lung among textile workers.

Seven years later, after OSHA's standard had greatly reduced the level of cotton dust in the plants, the prevalence of the disease had declined to about 900 cases, a 98-percent reduction in the disease.

Industry fought the issuance of the cotton dust standard and predicted dire consequences. But the industry's cost estimates for compliance turned out to be wildly exaggerated, and it ignored the economic benefits of the standard.

As it turned out, the new machines installed to reduce dust exposure were so much more efficient that the industry's productivity and profits increased significantly.

The Economist magazine reported that the dust standards unexpectedly gave America's textile industry a leg up on the rest of the world.

Lead poisoning.—In 1978, OSHA issued a standard to protect workers from excessive exposure to lead, which accumulates in the blood, organs, and bones, causing anemia, brain and nerve disorders, high blood pressure, and reproductive illnesses.

Within 5 years, the number of workers in lead smelting and battery manufacturing plants with dangerously high levels of lead in their blood dropped by 66 percent, from 19,000 to 6,500—12,500 workers saved in those two industries, from the disabling and deadly effects of lead poisoning.

HIV and hepatitis B.—In December 1991, pursuant to legislation sponsored by Senator DOLE, Senator HATCH, Senator Mitchell, and myself, OSHA issued a rule to protect workers routinely exposed to blood or other infectious material from HIV, hepatitis B, and other bloodborne diseases. Some people have forgotten the urgency of that standard, now that it has done its job and workers are better protected.

But in 1990 there were 65 reported cases of health care workers becoming infected with HIV from on-the-job exposures, and in 1987, 3,100 health care workers contracted hepatitis B. In 1993, the first full year of employer compliance with the standard, hepatitis B cases among health care workers dropped 77 percent.

OSHA's job safety standards have also been highly effective.

Since OSHA revised its trench standard, which protects workers against cave-ins, the number of deaths in trench and excavation accidents has fallen 35 percent.

In a single month in 1977, 59 people were killed, and another 49 were seriously injured in grain dust explosions. Since OSHA's grain handling rule was issued in 1988, grain dust explosions have fallen by 58 percent.

No one denies that OSHA's fire protection and fall protection standards save lives, though we tend to forget it until something dramatic happens.

The Hamlet, NC, poultry plant fire where 25 employees died and 55 were injured, was a tragic reminder of what noncompliance with OSHA standards can mean for workers.

The Cleveland, OH, construction site where an OSHA inspector ordered compliance with fall protection just 2 days before a scaffold collapsed, and the two workers' lives were saved because of it, was a more positive reminder of the value of these standards.

Few Members of Congress know the facts about these agencies and the laws they administer, let alone the potential adverse effects of applying the Dole-Johnston bill to their standards-setting processes.

There have been no hearings in the Labor and Human Resources Committee on this bill's application to these agencies. The Department of Labor has never been given an opportunity to testify about S. 343 or regulatory reform by any Senate committee.

But one thing is clear, Mr. President, this bill will mean the addition of numerous new steps and months and years of delay in rulemaking at OSHA and MSHA.

OSHA has analyzed the effect the bill would have had on its recent issuance of a standard regulating worker exposure to cadmium, a chemical that causes cancer and kidney ailments. It estimates that S. 343 would have delayed the standard by at least 4 years.

Is delay somehow a good thing? Has OSHA been too hasty over the years in its standard setting? Has it rushed to judgment? Not at all. In fact, just the opposite is true.

OSHA's rules have been issued at a glacial pace that has constantly frustrated worker safety, regardless of which party controlled the executive branch. As the charts I have with me show, OSHA's rules often take many years to complete—17 years in the case of the confined space standard.

Will the bill's requirements lead to better standards?

No. OSHA and MSHA standards are governed by statutes that prohibit the use of cost-benefit analysis as a decisional criterion. And as has been made abundantly clear, the Dole-Johnston decisional criteria do not override the underlying statutory criteria. Because OSHA must set its standards to reduce significant risks of harm "to the maximum extent feasible," cost-benefit analysis cannot change the outcome of the rulemaking.

What sense does it make, therefore, to require OSHA to do elaborate analyses of the regional effects of a rule or to analyze the costs and benefits of numerous alternatives, when it is compelled by statute to choose the level of protection that reduces the risk to the maximum extent feasible?

Many Senators apparently believe that OSHA's rules have been too onerous and costly. In fact, they have not.

As a study recently reported in Scientific American makes clear, health and safety regulation has been a negligible cause of layoffs. The Bureau of Labor Statistics has for many years asked business owners and managers what they perceive to be the cause of layoffs they have ordered. According to the managers themselves, who are the people in the best position to know, environmental and safety regulations combined only cause one-tenth of 1 percent of layoffs.

In fact, OSHA's regulations often cost far less than industry predicts. I mentioned the case of cotton dust earlier, where the industry over-estimated the cost of the rule by 400 percent and failed to anticipate its benefits.

As Business Week magazine pointed out in its July 17 issue, other OSHA rules have also had positive economic effects.

The vinyl chloride standard, for example, succeeded in wiping out the cancer it was designed to prevent, but it also boosted industry employment, productivity, and profits by inducing investments in automated technology.

Will the risk assessment provisions lead to better decisionmaking? No.

OSHA and MSHA deal with recognized hazards of so great a magnitude that the bill can add nothing useful to their risk identification. Following Supreme Court cases, OSHA does not attempt to regulate risks less than one in a thousand, unlike other agencies that sometimes address risks as small as one in a billion.

Will OSHA benefit from the bill's peer review procedures? No. OSHA already employs the most robust peer review procedure of any agency in the Government.

Public hearings are held, on the record, on all proposed OSHA standards. Scientists, lawyers, and technical staff from academia or industry can cross-examine OSHA's staff and experts, submit comments for the record, and critique every document on which the agency relies. Every significant question is answered on the record and in the preamble to the final rule.

Because the bill's provisions will add nothing but expense and delay to worker safety and health rulemaking, my amendment adopts a different approach to this subject—an approach endorsed by seven Republican Senators and suggested by two of them, Senator BOND and Senator GREGG, both of whom were or are members of the Senate Republican Task Force on Regulatory Reform.

My amendment takes the language from the Gregg-Bond OSHA reform bill, S. 562, and applies it to OSHA and MSHA.

Rather than imposing a duplicative new layer of rulemaking procedures, the amendment requires that along with the publication of a final rule, the Secretary of Labor publish a certification that the rule was developed using good science and that its benefits justify its costs. An estimate of the costs and a comparative analysis of the risk addressed by the rule would also have to be published.

This is the sort of commonsense approach to regulatory reform that the American people want—a guarantee that top government officials will not publish rules without examining their costs and benefits, and assurance that they have employed good data and sound science.

The people do not want—and Congress should not impose—a rigid, one-size-fits-all bureaucratic maze that will complicate regulation without making it better.

OSHA and MSHA rules have worked. We should not attempt to fix something that is not broken.

I yield 7 minutes to the Senator from Illinois and then we will answer some questions.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 7 minutes.

Mr. SIMON. Mr. President, I strongly support the Kennedy amendment. This bill, as it stands, is a bureaucracy builder, not a bureaucracy buster. I would just point out that Business Week has an article in the July 15 issue which suggests this is adversely going to affect business as well as working men and women.

But very specifically, the Kennedy amendment protects MSHA and OSHA, and protects working men and women. The Presiding Officer is from the Commonwealth of Pennsylvania, where there is a lot of coal mining. I am down in southern Illinois. From our home, a little community of 402 population, Makanda, the biggest big city, if I can call it that, is Carbondale, IL, which, as its name suggests, used to be a coal mining city. There are a lot of coal mines around there.

I talked to too many people who have lost husbands, fathers, grandfathers in coal mine disasters. I have been at too many entrances to coal mines while people wait. I have been to eastern Kentucky. Congressman Carl Perkins asked me to go there with him after a coal mine disaster in eastern Kentucky. We are not just talking about statistics, those statistics that Senator KENNEDY—if I could ask Senator KENNEDY's staff to put those coal mine statistics up there again?

Mr. KENNEDY. I will be glad to put them up there.

Mr. SIMON. You do an excellent job at that.

Mr. KENNEDY. I appreciate that.

Mr. SIMON. Take a look at what happens there. Those are not just statistics. We are talking about the lives of people. That has been a dramatic change for coal miners in southern Illinois, in Pennsylvania and elsewhere. Why change this when both the industry and the coal miners say this makes sense?

Let me give it from the viewpoint of OSHA. First of all, OSHA has just recently reviewed 33,000 pages of regulations and targeted more than 1,000 of those for elimination. Has OSHA been excessive, had too much minutiae in what they have been doing? No question about it. We have had too much regulation. But they are dealing with it and I am impressed by Joe Dear, who now heads OSHA, and what he is doing.

We had a witness who testified about problems with OSHA. I asked that witness to come that afternoon and asked

the head of OSHA to come to my office. He was there. They are moving.

Trenches? 1990, trench deaths have fallen by 35 percent, since they put in their regulation on trenches.

Grain dust, a major problem in Midwest States, deaths from explosions in grain elevators. The grain dust—since 1988, according to the grain industry, the fatality rate in the industry has dropped by 58 percent. And the injury rate has dropped by 41 percent.

I would add here, even with the changes that we have made in OSHA, we still have, among the Western industrialized countries, the highest fatality and injury rate in manufacturing and in construction of any Western industrialized nation. If you adopt this legislation without the Kennedy amendment, let me tell you, the figures that you see right there on coal mine fatalities are going to go up. Just as certain as I am standing here, that is going to be the result.

Brown lung: In 1978, there were an estimated 40,000 cases affecting 20 percent of the industry's work force. I visited with these workers in southern Illinois and talked about this problem. By 1985 only 1 percent of the textile industry work force was affected by the disease.

Here we have OSHA—which, unquestionably, as we all know, has been excessive—getting hold of their situation. They are eliminating over one-third of the regulations they have. They are doing the job. Let us not interfere with the job that is being done well.

The coal miners of Pennsylvania, the coal miners of Illinois, and of every State that has coal mines, would plead with us, if they knew the details of this, they would plead with us to adopt the Kennedy amendment. And the same on OSHA.

I think it is extremely important that we protect our working men and women. OSHA is doing an improved job. OSHA is performing. There have been abuses, like in any good thing. Religion can be abused, education can be abused, affirmative action can be abused, anything can be abused. But OSHA basically has been doing a good job and improving the job. Let us not risk the future of our workers.

I strongly urge the adoption of the Kennedy amendment.

I yield the remainder of my time to Senator KENNEDY.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY addressed the Chair.

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

Mr. KENNEDY. Mr. President, I want to take a few moments that we have at this time to go through at least some of the types of changes that have taken place in recent times which have made important differences in terms of the health and safety of workers in this country.

In 1978, cotton dust standards: OSHA issued a standard to protect the Nation's textile workers from brown lung, a crippling and sometimes fatal disease that destroys the lungs and effectively strangles its victims. At that time there were 40,000 cases of brown lung among textile workers. Seven years later, after OSHA, the standard had greatly reduced the level of cotton dust in the plants, the prevalence of the disease had declined to about 900 cases, a 98-percent reduction in the disease.

Those cotton dust standards were brought. The question was about the issuance of these standards, whether OSHA was complying with the existing law. That was the statute that had been approved by Congress. It went all the way up to the Supreme Court. The Supreme Court of the United States affirmed that it did. Effectively, that law was being challenged by the major textile companies, and the major textile companies had a different standard. The difference standard effectively is the kind of standard that is included in this legislation. That is a very practical way of describing and understanding what is at risk.

The industry fought the issuance of the cotton dust standards and predicted dire consequences. But the industry's cost estimates for compliance turned out to be widely exaggerated, and it ignored the economic benefits of the standard. As it turned out, the new machines installed to reduce the dust exposure were so much more efficient than the industry's, productivity and profits increased significantly.

Here was a major health standard resisted by the industry but saving thousands and thousands of workers who were working 40 hours a week, 52 weeks of the year, trying to bring up a family, working in the kind of conditions in which their lungs were effectively closed down. There are ways of dealing with it—by establishing limitations on the amount of cotton dust in the workplace. OSHA issued those regulations. As a result of it, thousands of workers are alive today.

That was resisted by the industry, the same industry that supports S. 343. They did not want those kind of standards then and they do not want future standards to protect the workers in those workplaces now.

That is what this thing is all about. You can talk about other things, such as trying to bring the most important and significant new scientific data. We are all for it; that is, the provisions to make sure there is an adequate review of the risk benefits and the bringing of the best in terms of the certification.

But when you have to wait months and years and years for the issuance of standards that can make a difference in terms of the lives of workers, why are we so willing to throw those out? Who on the floor of the Senate could say that there is an uproar across this country, by industries all across this Nation, or by workers that we are being closed down, that we are being put out of business? It is to the contrary, Mr. President.

A recent publication of Business Week talks about how industry in a number of different areas resisted the kind of health and safety standards for their industry, made wild claims about the cost and about what is it was going to mean in unemployment and all the rest. And after they implemented these various health and safety standards, they increased their profitability and productivity because the workers were able to work and work effectively and work harder.

Take another example: lead poisoning. In 1978, OSHA issued a standard to protect workers from excessive exposure to lead which accumulates in the blood, organs and bones causing anemia, brain and nerve disorders, high blood pressure and reproductive illness. Within 5 years the number of workers in lead smelting and battery manufacturing plants with dangerously high levels of lead in their blood dropped 66 percent—from 19,000 to 6,500—12,000 workers saved in those two industries from the disabling and deadly effects of lead poisoning—12,000 workers.

All of us here in the Senate want to work to find ways of eliminating irrational, irresponsible bureaucratic rules and regulations. But when you are talking about saving 12,000 workers from either death or serious injury, and you want to change the process, you want to change the way it is done, you want to open up the door for a lot more industries that are being directly required to implement those health and safety standards, you are putting at risk the lives and the well-being of those workers. Where is the outcry? Where is the outcry from our colleagues in terms of safety?

As I mentioned earlier in the presentations, the statements that are made by the organizations of miners have indicated that the kind of work that has been done in mine safety has been consistent with the increasing productivity.

Mr. BOND. Mr. President, as chairman of the Small Business Committee and chairman of the Regulatory Relief Task Force, I am looking forward to the opportunity to discuss the problems at OSHA and some potential solutions. I believe we will have this debate in earnest after next January 1, when Congress will finally have to comply with the Congressional Accountability Act. For the first time, thanks to the new Republican Congress, we will ourselves get a feel for what we have foisted upon the private sector for a generation, through OSHA regulations and the Fair Labor Standards Act and many others from which we have until now exempted ourselves. This amendment focuses attention on the Gregg-

Bond OSHA reform bill sooner than I expected.

When the Senator from New Hampshire and I introduced the OSHA reform bill in April, we tried to address many of the problems we had heard about from our constituents. And believe me, we have had complaints. We have had complaints of OSHA overreach and OSHA overzealousness from virtually every sector of employment: from bakeries to construction companies to restaurants and retailers to roofers to colleges and universities—we have heard about problems.

Now, I don't for 1 minute advocate abolition of the agency. I believe they are charged with an important public purpose: that is, protecting the health and safety of the American worker. No one disputes the importance of the purpose of the agency. But in this case, enforcement has been a problem.

Yesterday I outlined some of the examples of OSHA silliness: material safety data sheets for common household products, material safety data sheets which are required at every worksite but never looked at by the people they are supposedly protecting, and fines without purpose and without merit.

I hate to tell some of the inside-the-beltway, stuck-in-the-past crowd this, but safe business is good business. I have always believed that most employers have the best interests of their employees at heart. In many cases, employer and employee are neighbors, or members of the same church or parish, or have kids that attend school together. Employers want the best for their employees, and vice versa. But even those few employers who do not care are concerned about the bottom line. With the rising costs of worker's compensation, most employers want to do everything in their power to promote safety and health.

But OSHA still lives in the past, and takes an adversarial role to business. Instead of helping businesses comply with the many rules and regulations they set forth, they send an inspector—who may or may not know anything about the type of business they are inspecting—to a worksite to try to find as many violations as possible. The Gregg bill would codify OSHA's little used onsite consultation program, through which Federal funds are used to provide technical assistance to employers to assist them in complying with OSHA standards. That way, a hospital administrator who is uncertain about specific steps her nurses should take to comply with the bloodborne pathogen standard or the foreman at a construction site uncertain about how many ladders and rails should go up to meet the fall protection standard could call the regional OSHA office and have someone come out to help them come into compliance with the law. Consultation is a part of our bill, but the Senator from Massachusetts has left that, and other good provisions, out of his amendment.

I would like to devote a few moments to discussion of the cost benefit and risk assessment provisions the Senator from Massachusetts has included in his amendment. As he indicated, he has taken language directly from the Gregg bill. I am delighted that he agrees we should examine all OSHA rules, and not just those over $100 million. Perhaps it would not be too big a step to support the rest of the Gregg OSHA reform bill as well. But I must say, frankly, the cost benefit and risk assessment provisions in S. 343 are an improvement over what we envisioned in this bill. I think the Senator from New Hampshire would agree that we did not envision S. 526 as the "be all and end all" of OSHA reform. We are open to new ideas and improvements. And many of us—Senators DOLE, JOHNSTON, ROTH, NICKELS, and others—have spent the last several months working on the fine points of what is needed to achieve a fair regulatory system.

There are several important elements of S. 343 that Senator KENNEDY has left out of his amendment, including judicial review, the requirement that agencies use the least costly option to implement a proposed rule, and the opportunity for affected businesses to petition the agency for permission to implement an alternative method of compliance.

To carve out a special exemption for OSHA from the regulatory process we have laid out in S. 343 is just plain silly. S. 343 clearly permits rules affecting the health and safety of the American people to go into effect without delay. But if the Kennedy amendment were adopted, we would not have the opportunity to get rid of some of the silly OSHA regulations already on the books, that we have heard about over and over during the last few days. Businesses would not have the opportunity to petition for a review of material safety data sheets for Joy detergent, for instance.

So the Senator from Massachusetts has suggested that he will take our old language on the cost benefit and risk assessment verbatim, knowing that we prefer the new language. So I must ask my colleague from Massachusetts, why not take the whole bill?

Why not release the small business men and women of this country, including those in Massachusetts, from the burden of excessive paperwork and the threat of recordkeeping fines, as the Gregg bill does.

Why not release the small business men and women of Massachusetts, Missouri, and every other State from the threat of an OSHA citation—that is, fine—in each and every circumstance where a violation is found—even those that do not put workers at risk or where the employer acts immediately to correct the program. Our bill would give OSHA inspectors the discretion to issue a warning in lieu of a citation in those cases where either there is no danger to the workers or the employer has acted in good faith to correct a violation quickly.

Further, why not release the small business men and women of this country, who create the new jobs that provide paychecks to families, from the burden of large fines for paperwork, recordkeeping, or other relatively minor violations, as the Gregg bill does.

Those are the reforms we need in OSHA; we do not need to change the good language we have agreed on regarding reform of the regulatory process to accommodate the bureaucrats at OSHA.

I urge my colleagues to reject the Kennedy amendment.

Mr. KENNEDY. Mr. President, how much time remains? I know there are others who want to speak on this and are also interested in shortening the period.

The PRESIDING OFFICER. The Senator has approximately 10½ minutes of his time.

Mr. NICKLES. Mr. President, I wonder if my friend from Massachusetts will agree to a unanimous consent to reduce both sides by 5 minutes.

Mr. KENNEDY. How much time does that leave us?

The PRESIDING OFFICER. That would leave the Senator from Massachusetts approximately 5 to 6 minutes.

Mr. KENNEDY. Fine.

Mr. NICKLES. Mr. President, I will put the question. I ask unanimous consent to reduce the time allotted to both sides by 5 minutes.

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

Mr. NICKLES addressed the Chair.

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

Mr. NICKLES. Mr. President, I yield myself 2 minutes.

I rise in strong, strong opposition to the amendment proposed by our friend, Senator KENNEDY. This amendment exempts OSHA. It exempts it from cost-benefit or risk assessment under this bill. If we are going to do that, why have a bill?

I heard my colleague say we are interested in safety and if you are not—almost imply that if you want this bill, you are not interested in safety, and that is totally incorrect.

Mr. President, I happened to be an employer before coming to the Senate. I wish I had all the OSHA volumes that are required for a small manufacturer. I wish I had those. They would not fit on this desk. And if you have 60-some-odd employees, you have reams and reams and reams of volumes, mostly written by unnamed bureaucrats that

know very little about business telling you what to do, subjecting you to fines and penalties if you do not subscribe. To say that they should be exempt from cost-benefit or risk assessment is totally wrong—totally, completely wrong. I happen to care about public safety and the safety of our workers and any workers in America as anybody on this floor, but we need to rein in unnecessary regulations. That is what this bill is about. They should not be exempt.

So I would urge my colleagues to support our motion to table the Kennedy amendment.

Mr. JOHNSTON. Mr. President, will the Senator yield me 2 minutes?

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

Who yields time?

Mr. NICKLES. Mr. President, I yield the Senator 2 minutes.

Mr. JOHNSTON. Mr. President, as I listened to the Senator from Massachusetts, you would have thought we were repealing OSHA and MSHA, repealing the underlying law that protects workers and miners.

Mr. President, this bill, the Dole-Johnston amendment, specifically takes into consideration that all of the standards of existing law remain in effect and are not overridden or changed.

Now, the Kennedy amendment is based on two false premises. First, that good science is somehow an enemy of health and safety. It is exactly the opposite. And second, that somehow the Dole-Johnston amendment does not allow you to take into consideration the value of life, health and safety. And the amendment specifically states that administrators, or agency heads may take into consideration and increase the cost of regulation in order for benefits, nonquantifiable benefits to health, safety, or the environment.

Moreover, Mr. President, the Kennedy amendment, while on the one hand seeming to suggest that you have to have benefits justifying the costs, in another provision about which I asked him, all the administrator has to do, if he does not want to comply with the fact that the benefits have to justify costs, is say he cannot do it. Why can he not do it? Well, he might not in good conscience be able to do it. He might not be able to do it because he disagrees. He might not be able to do it because he wants not to.

And what does he do if he does not make this certification that the benefits justify the costs? All he has to do is publish it and send a copy to the Congress and no problem. In other words, Mr. President, this permits the administrator to waste the taxpayers' money because admittedly the benefits do not justify the costs and no problem; we will continue to do business as usual and waste the taxpayers' money without helping health and safety.

The PRESIDING OFFICER. Who yields time?

The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the issue is are we going to put at risk a set of procedures which have worked and which we want to perfect and which the committee is considering and on which we are prepared to work with our Republican colleagues by accepting a standard of using good scientific information and good cost-benefit analysis as was in the Gregg-Bond bill.

This is not something that was dreamed up by this side. It is a standard which has been included by seven Republicans to require a certification that there will be sound cost-benefit relations and the best in terms of scientific information will be available. We are prepared and urge that that be added to the existing criteria. But to say, well, we are prepared to use a complete new kind of way of regulating the health and safety of workers in the workplace as suggested in this bill I think is a great disservice and puts at serious risk the health and well-being of workers in this country.

How much time remains, Mr. President?

The PRESIDING OFFICER (Mr. COVERDELL). The Senator from Massachusetts has just over 4 minutes; the majority has 5½.

Mrs. KASSEBAUM addressed the Chair.

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

Mrs. KASSEBAUM. Mr. President, I would like to yield myself 3 minutes.

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

Mrs. KASSEBAUM. I would just like to say as chairman of the Labor and Human Resources Committee, that there is no way that either the committee or this body would ever put at risk the lives of American workers. That is not what is in question here. And I find it very troubling that that is the message being conveyed on the floor of the Senate.

We would all agree that health and safety standards are enormously important. That is why there has been support over the years for OSHA. OSHA addresses workplace hazards by issuing safety and health standards. That has not been the question. But OSHA has also become one of the most intrusive of all Federal agencies, and that is one of the primary reasons why we need regulatory reform.

I do not understand, as the Senator from Illinois mentioned, why coal mining fatalities would increase simply because we would do a stronger cost-benefit analysis of regulations promulgated since April.

There has been much made about Senator GREGG's legislation which was, of course, drafted and introduced without knowing whether there would be a significant regulatory reform effort. Since we are now dealing with regulatory reform in this Chamber, Mr. President, OSHA must be considered as part of that process. And I think Senator GREGG's legislation, as he would acknowledge himself at this point, has been overtaken by events.

It is really very sad to me that somehow, some in this Chamber would say that workers' lives were being placed at risk when all we are trying to do is to make the regulatory process work in a positive and constructive way.

The Senator from Illinois acknowledged that OSHA itself is working to eliminate about one-third of their regulations. They are recognizing that changes need to be made. We have held two hearings in the Labor and Human Resources Committee, and we heard from many witnesses that changes must be made. But I think in no way does this regulatory reform legislation undermine that positive effort.

I do not know how much time I have remaining, Mr. President.

The PRESIDING OFFICER. The Senator has 30 seconds.

Mrs. KASSEBAUM. If I may yield myself another minute or two, I would ask the Senator from Delaware.

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

Mrs. KASSEBAUM. Let me just give you an example. For instance, OSHA is currently working on its indoor air quality regulation that it estimates may cost the business community about $8 billion to implement. This indoor air standard, according to OSHA, will prevent some respiratory diseases such as sick building syndrome, which can cause asthma, lung irritation, and other congestion.

Yes, that surely is a problem in some workplaces, but we are not talking about putting a price tag on human life necessarily in this instance. We are talking about congestion and irritation, and we are talking about a process that may become so regulatory and burdensome that we might lose the opportunity to have an effectively functioning work force. And we threaten our workers' job security when the burden becomes so onerous to both the business side and the work force side. To its credit, OSHA is now carefully examining that proposed regulation.

There has to be a balance. It has to be a positive one. There has to be worker protection through health and safety standards that operate to the benefit of both employer and employee. I would just suggest that this is not the time or the place to undermine the efforts that are in this legislation.

I urge my colleagues to defeat the amendment of the Senator from Massachusetts.

I yield the floor, Mr. President.

Mr. KENNEDY addressed the Chair.

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

Mr. KENNEDY. I yield myself 15 seconds. Because of the failure of occupational health and lung and respiratory standards, the Department of Registry of Motor Vehicles in my State of Massachusetts just closed down. So I think it is something that is serious, at least in my State.

I yield 1 minute to the Senator from Illinois and the remaining time to the Senator from West Virginia.

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

Mr. SIMON. Mr. President, in response to my friend from Kansas, the reality is what we are doing is we are putting in effect a procedure that will lengthen the time in which MSHA and OSHA can respond to problems.

She mentioned indoor air quality. I do not know very much about it. I know I have been in some factories and it has been great. I have been in others where there clearly is a problem. We want balance, but why lengthen this procedure that is already one that takes years?

It just looks like a blip on the chart when you see the coal mine fatalities go up in 1984. I remember when we cut back on the number of coal mine inspectors and that went up, and then we put more back in and you see the line go down.

What we are doing is making it harder to get standards that make sense. I want balance. The Senator from Kansas wants balance. We will have that with the Kennedy amendment.

The PRESIDING OFFICER. The Chair advises the Senator from Illinois that his 1 minute has expired. The Senator from Massachusetts yielded the remaining time to the Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Massachusetts.

I rise in support of the amendment offered by the Senator from Massachusetts, which will clarify our Nation's policy toward protecting the American worker by exempting the mine safety and health regulations from the subjective cost-benefit analysis and risk assessment requirements in this proposed bill.

Recently, the Mine Safety and Health Administration, MSHA, recognized the 25th anniversary of the Coal Mine Health and Safety Act of 1969, which has led to a quarter-century of effective life-saving health and safety regulations in mining. On this anniversary, mine workers, managers, and owners all praised MSHA's achievements.

I believe Members of the Senate need to pause and consider the hazardous conditions and the risks to which hard-working miners are exposed.

During the 3-year period prior to passage of the act, an average of more than 250 workers died annually in coal mining accidents. Conversely, between 1992 and 1994, the average number of annual coal mining deaths totaled fewer than 50.

In addition, cases of black-lung disease, caused by inhalation of coal dust in the mines, have been reduced in the last 25 years by an average of 75 percent, and the prevalence of black lung disease among miners has declined by more than two-thirds.

I strongly support MSHA's efforts in improving mining safety conditions, and I am thankful for the lives saved because of the passage of the Coal Mine Health and Safety Act 25 years ago.

I urge all Members to support the amendment offered by the Senator from Massachusetts to assure all American miners that our Nation's prosperity will not come at the price of their health and well-being.

Mr. President, I yield back any time.

Mrs. KASSEBAUM addressed the Chair.

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

Mrs. KASSEBAUM. Mr. President, I yield back all time remaining on our side and move to table the amendment of the Senator from Massachusetts. I ask for the yeas and nays.

The PRESIDING OFFICER. The Chair will note that the Senator from Massachusetts still has 17 seconds remaining.

Mr. KENNEDY. I yield back that time.

The PRESIDING OFFICER. The Senator from Massachusetts yields back his time.

Mrs. KASSEBAUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 1543. 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 Indiana [Mr. LUGAR] is necessarily absent.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Ohio [Mr. GLENN] are necessarily absent.

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

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—58

Abraham	Bond	Campbell
Ashcroft	Breaux	Chafee
Baucus	Brown	Coats
Bennett	Burns	Cochran
Cohen	Hatfield	Nunn
Coverdell	Heflin	Packwood
Craig	Helms	Pressler
D'Amato	Hollings	Roth
DeWine	Hutchison	Santorum
Dole	Inhofe	Shelby
Domenici	Johnston	Simpson
Faircloth	Kassebaum	Smith
Ford	Kempthorne	Snowe
Frist	Kyl	Stevens
Gorton	Lott	Thomas
Gramm	Mack	Thompson
Grams	McCain	Thurmond
Grassley	McConnell	Warner
Gregg	Murkowski	
Hatch	Nickles	

NAYS—39

Akaka	Feinstein	Mikulski
Biden	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Bradley	Inouye	Murray
Bryan	Jeffords	Pell
Bumpers	Kennedy	Pryor
Byrd	Kerrey	Reid
Conrad	Kerry	Robb
Daschle	Kohl	Rockefeller
Dodd	Lautenberg	Sarbanes
Dorgan	Leahy	Simon
Exon	Levin	Specter
Feingold	Lieberman	Wellstone

NOT VOTING—3

Bingaman	Glenn	Lugar

So the motion to lay on the table the amendment (No. 1543) was agreed to.

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

Mr. GRASSLEY. Mr. President, I want to respond to some unfortunate remarks that were made by my friend from Ohio, Senator GLENN, regarding some of the constituents of mine who have been mistreated by Federal agencies. These are examples, over each of the last 4 days, that my colleagues have heard me speak about on the floor of the Senate. And I used these examples of my constituents being mistreated by the bureaucracy as evidence of the need for the regulatory reform bill.

It is very interesting that my colleague from Ohio was interested enough in my constituents to go to those Federal agencies that had abused them and to get some talking points for their defense. I can understand wanting to get the story straight. We should all want to do that. But as most of us know, relying on an agency for the truth can be a big mistake. I say that to say the very least, because, after all, we are not——

Mr. WELLSTONE. Mr. President, can we have order in the Chamber so the Senator from Iowa can be heard?

The PRESIDING OFFICER. The Senator from Minnesota is correct. Will the Senate please come to order and Senators take their conversations to the cloakroom so that we might have order.

Mr. GRASSLEY. Mr. President, really the only person I care who hears this is Senator GLENN. But if everybody else wants to listen and see how what I said these last few days is accurate, I am going to go into those points. But, as I said, Senator GLENN went to the agency and got their side of the story.

There is nothing wrong with that, as long as they get the truth. But as most of us know, relying on an agency for the truth can be a big mistake, and I say that at the very least. After all, we are not having hearings on Waco and Ruby Ridge and Whitewater because Federal agencies and officials always tell the truth.

Now, in regard to the incident I related on Monday, about Mr. Higman of Akron, IA—that is in northwest Iowa, not Ohio—Akron, IA, northwest Iowa. Mr. Higman's was the gravel company that some of you may have heard me use as an example.

Senator GLENN stated that a Federal magistrate and a U.S. attorney approved the search warrant. That is all very true. But, as I said in my remarks on Monday, the Federal agencies, including even the magistrate and U.S. attorney, were relying on a phony informant who, by the way, was a disgruntled employee. And, by the way, Mr. Higman was acquitted. As I said, he, in the process, has lost $200,000 in either legal fees or lost business.

There were supposed to be firearms and machine guns on the property. What did they find? They found a loaded .22 used for rats and varmints, not a shotgun as was alleged by my friend from Ohio. And it is not a crime to have a loaded .22 rifle on your property. Of course, if the ATF and some of my colleagues had their way, there would be millions of people in hot water for having a loaded .22 on their property.

As for the so-called toxic waste that was on the property, the Senator from Ohio made an unfortunate insinuation that it could have been cyanide or something deadly. So, what was it? It was some drums of paint thinner. Maybe paint thinner should not have been on the property. But at least the Senator from Ohio acknowledged that Mr. Higman was acquitted. But then the Senator said that he found that Mr. Higman did not do it knowingly. The fact is, Mr. Higman did not do it knowingly because he did not do it at all. He did not do it at all. Who did store the waste on Mr. Higman's 300-acre property without Mr. Higman's knowledge? It was the paid informant that the EPA used. This paid informant, who, by the way, was offered $24,000 by EPA, was actually paid only $2,000. This paid informant had taken this waste, hid it on the property, and tried to sell it to people. And who did the Federal agencies go after? They went after the innocent small business owner, Mr. Higman, who was set up by this disgruntled employee.

The fact remains that innocent people were subjected to very harsh treatment by a large force of Federal agents, with guns brandished, because the owner had a .22 rifle.

Remember, this is a story where I said a shotgun was pointed in the face of an accountant sitting at her desk doing accounting. Where is the rationality of all of this? You know the story of Federal law enforcement agencies out of control. These are all getting too commonplace. And to defend these actions only makes things worse. We will have a lot about Waco and about Ruby Ridge to consider in this process.

There is one other instance that the Senator from Ohio used, and it will take me a couple of minutes and I will yield the floor. This is in regard to the grain elevator problem I talked about, the grain elevator problem where EPA made a rule that assumed that every grain elevator in my State was going to operate 365 days a year, 24 hours a day, emitting pollution into the air when, if one little elevator operated that long, that would be able to process all of the 10.3-billion-bushel corn crop of the entire United States. How ridiculous can the regulation be?

The Senator from Ohio said that the EPA is aware of this problem and that the EPA is working on this problem. The only reason the EPA is aware of this problem, and supposedly is working on this problem, is because I have introduced a bill to solve this problem and because I grilled Carol Browner, the EPA Administrator, on this problem before a committee. Ms. Browner has been so-called working on it now for 9 months and the problem is still there. The regulation is still on the books. And we are not getting very far.

As a matter of fact, the EPA has refused to communicate with the Feed and Grain Association since May, despite the statement of the Senator from Ohio that the EPA is working with the grain elevator operators and owners.

My question is, why was the EPA not aware of the problem before initiating such a stupid rule in the first place, and hence the need for this legislation? And even Ms. Browner acknowledges that this rule does not make sense. But do we see any changes yet? No. Because this is another example of Federal bungling and Federal inertia, and, hence, the need for this legislation.

So I want Senator GLENN to know, I want EPA to know, that I stand by my constituents and, regardless of whether U.S. Senators or Federal agencies bring their reputations into question, these people were and are still innocent small business people, trying to get by without being strangled by an out-of-control Federal bureaucracy.

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

Mr. SIMON. Mr. President, I offer an amendment in behalf of Senator WELLSTONE and myself.

The PRESIDING OFFICER. The Chair advises the Senator from Illinois that amendment No. 1539, offered by the Senator from Texas, is pending.

Mr. SIMON. I ask unanimous consent that be set aside so this amendment can be considered.

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

AMENDMENT NO. 1547 TO AMENDMENT NO. 1487

(Purpose: To exempt rules and agency actions designed to protect children from poisoning)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself and Mr. WELLSTONE, proposes an amendment numbered 1547 to amendment No. 1487.

Mr. SIMON. 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 25, between lines 22 and 23, insert the following:

"(g) EXEMPTION FOR THE PROTECTION OF CHILDREN.—None of the provisions of this subchapter shall apply to agency rules or actions intended to protect children against poisoning, including a rule—

"(1) relating to iron toxicity poisoning;

"(2) relating to lead poisoning from food products; or

"(3) promulgated under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.).

On page 49, line 21, strike "or".

On page 50, line 2, strike the period at the end and insert "; or".

On page 50, between lines 2 and 3, insert the following:

"(F) a rule or agency action a purpose of which is to protect children from poisoning, including a rule—

"(i) relating to iron toxicity poisoning;

"(ii) relating to lead poisoning from food products; or

"(iii) promulgated under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.)

Mr. SIMON. Mr. President, I am pleased to say that I think we have an amendment that will be agreed to. It is very simple. It says: None of the provisions of this subchapter shall apply to agency rules or actions intended to protect children against poisoning; including a rule, and it specifies three:

Iron toxicity poisoning. We had 28 children die of iron poisoning and those kinds of injuries in the last 3 years;

Relating to lead poisoning from food products. That is, cans that come in from other countries that use lead soldering in the top of the cans;

Third, promulgated under the Poison Prevention Packaging Act to protect children.

I believe my colleagues, Senator HATCH and Senator LEVIN, find the amendment acceptable. I do not want to speak for them.

Mr. HATCH. Mr. President, we are prepared to accept this amendment. I have to say there are some who are

concerned about any exemption at this point in the bill. But I am prepared to accept it on behalf of the majority. I presume that the minority is prepared to accept the amendment.

Mr. LEVIN. Mr. President, we are not only prepared to accept the amendment, but we commend our friends from Illinois and Minnesota for offering this amendment and for pointing out the importance of so many of our regulations on health and safety and the risk that we take if we proceed down a road which might jeopardize some of those regulations unnecessarily or needlessly.

We certainly accept the amendment.

The PRESIDING OFFICER (Mr. GRAMS). Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Illinois.

The amendment (No. 1547) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, we still want to have a few more votes today. It is my understanding that the Domenici amendment is being worked on, and the Hutchison amendment is being negotiated. We are hopeful that we can resolve both. If we cannot, in the case of Hutchison, I just suggest we get it up and vote on it, and do it as soon as we can. So that our colleagues need to understand what is going on. If there are any other amendments that should be brought to the floor at this time, I would sure like to have them so we can move ahead.

Mr. LEVIN. There will indeed be other amendments available should we want to proceed on additional votes. We are working currently on the Hutchison amendment, I understand, and on the Domenici amendment as well. They may be ready soon.

Mr. HATCH. Mr. President, I wonder if it would not be a wise thing for the interim periods like this when we do not have anything else to do, when we are waiting for people to come with their amendment, if we laid down amendments, such as the Glenn amendment, and debated them. There are a lot of differences between the two bills. That would be the best way for people to become informed on what is going on and what the differences are. It is also a methodology for us to get together and see if we can resolve some of the difficulties between the two bills. And then we will have a vote on the Glenn amendment as soon as we can, so everybody knows.

I think that also would help diminish the total number of amendments that we have. We would like to finish this bill and finish it as soon as we can. I think everybody is starting to feel that way. There is no reason for the delays.

In the meantime, I do not see any reason why those who have amendments should not be here right now presenting their amendments. We will set aside temporarily the Domenici and Hutchison amendments and allow any amendment to be presented.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, it is our intention to lay down the Glenn substitute today. Senator GLENN is not here because of an illness in the family. Even in his absence, we intend to lay that down. I think it is important that the differences between the Glenn-Chafee amendment and the Dole-Johnston approach be laid out clearly. There are many remaining differences. There are many remaining issues to be resolved in the Dole-Johnston substitute for which amendments will be offered.

So even though Senator GLENN cannot be here, the Glenn-Chafee amendment will be laid down a little bit later on this afternoon. In the meantime, we are trying to resolve these other two amendments. There are other amendments available.

Mr. HATCH. Could I also ask the minority, since we have been accepting amendments over here and I understand there is really no logical or real objection to the Snowe bottled water amendment, I think we ought to get that accepted and move it through.

Mr. LEVIN. I am not familiar with the Snowe amendment. I am happy to become familiar with it.

Mr. HATCH. I think the Thomas amendment is one that can be accepted on your side. I think we could move those out of the way. We could certainly be moving forward on those. As soon as you give approval on that, we will go ahead.

Mr. LEVIN. I am not familiar with them. I assume our staff is.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, my remarks are not related to this legislation, if the managers need to interrupt my remarks. My remarks will not last long. But I do want to make them today in person.

TRIBUTES TO SENATOR JOHN C. STENNIS AT HIS FUNERAL IN MISSISSIPPI

Mr. NUNN. Mr. President, a number of us on the floor of the Senate paid tribute to our former colleague, John Stennis, shortly after his death on April 23 of this year.

From the days when he was the youngest judge in Mississippi, through his time as President pro tempore of this body, when he was third in the line of Presidential succession, John Stennis was a man of integrity, honor, judicious temperament, and great personal kindness.

A robber took the Phi Beta Kappa key he had worn since his graduation from the University of Virginia Law School—and almost took his life—but no one could ever take away the courage, kindness, and humility of this giant who served in this body for more than 41 years. He married a young home demonstration agent who had come to his county to help farm families improve their lives, and together he and Miss Coy demonstrated for 55 years what a happy, loving home could be. He loved his family, his country, and his State, and his great affection for the people of Mississippi was returned in equal measure.

A large delegation of both Democrats and Republicans, led by Senators COCHRAN and LOTT, journeyed to Senator Stennis' hometown, DeKalb, MS, for his graveside service on April 26. The service beautifully symbolized the life of John Stennis. It was simple, but powerful and inspiring, reflecting the quiet dignity, wisdom and humility that characterized the man.

Today I would like to enter into the RECORD the remarks made at Senator Stennis' funeral on April 26, 1995, at Pine Crest Cemetery in DeKalb, MS, by his son, John Hampton Stennis, and his minister, the Reverend Jerry Allan McBride, as well as the tribute sent by President Clinton, and a number of other tributes.

I ask unanimous consent that those tributes be printed in the RECORD.

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

A SERVICE IN THANKSGIVING FOR THE LIFE OF THE HONORABLE JOHN CORNELIUS STENNIS, PINECREST CEMETERY, DEKALB, MS, APRIL 26, 1995

REMARKS OF JOHN HAMPTON STENNIS

My sister, Margaret Jane, and I as we grew up in Kemper County during the mid-1940s were required to memorize passages. My mother handled the Bible; my father taught us patriotic sayings and poems.

First was the Pledge of Allegiance to the flag of the United States of America. Daddy taught from the small plaque I now hold. We were in the midst of World War II. He illustrated the meaning of the Pledge of Allegiance by Judge Learned Hands' address at "I Am an American day," entitled "The Spirit of Liberty":

"The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests longside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded; the spirit of liberty is the spirit of Him who, near two thousand years ago, taught mankind that lesson it has never learned, but has never quite forgotten; that there may be a kingdom where the least shall be heard and considered side by side with the greatest."

His patriotism did not consist of short and frenzied outbursts of emotions, but in the tranquil and steady dedication of a lifetime.

My father's oldest sister, Aunt Janie, had given him a copy of One Hundred and One Famous Poems With a Prose Supplement. We learned almost all these poems; I shall share a few lines from some.

From "Be Strong," Maltbie Davenport Babcock:

Be strong!
We are not here to play, to dream, to drift;
We have hard work to do, and loads to lift;
Sun not the struggle-face it; 'tis God's gift.

* * * * *

Be strong!
It matters not how deep intrenched the wrong,
How hard the battle goes, the day how long;
Faint not—fight on! To-morrow comes the song.

From "A Psalm of Life," Henry Wadsworth Longfellow:

Tell me not, in mournful numbers,
Life is but an empty dream!—
For the soul is dead that slumbers,
And things are not what they seem.

Life is real! Life is earnest!
And the grave is not its goal
Dust thou art, to dust returnest,
Was not spoken of the soul.

* * * * *

Let us then be up and doing,
With a heart for any fate:
Still achieving, still pursuing,
Learn to labor and to wait.

From an unknown poem about a young boy who watched his father go to the field behind a mule-drawn plow at sunrise and return at dusk:

I believe my father had a pact with God
To guide his plow and keep his furrow straight.

Finally, from Micah 6:8 of the New English Bible:

God has told you what is good;
and what is it that the Lord asks of you?
Only to act justly, to love loyally,
to walk wisely before your God.

SERMON BY THE REVEREND JERRY ALLAN MC BRIDE

When all is said and done, the most important words that will be said about John Cornelius Stennis will not be that he was a great statesman and United States Senator. He was certainly all of that; but he was so much more. In all of the ways by which we measure value in our society and our world, the person and spirit of this man transcended common worth. For the measure of John Stennis is found in his character and dignity. To his wife, he was a devoted husband and partner. To his children and grandchildren he was a loving father and grandfather and a wise teacher. To his friends he was a man whose friendship could always be counted on. To his country he was a leader who found his "power" only in the commitment to service. And to his state he was a shining example for the very best that is in all of us.

Above all, John Stennis was a man of faith. He spent his life in ministry that was just as dedicated as if he had donned the clerical robes of a minister in his beloved DeKalb Presbyterian Church. John Stennis believed that success was ultimately measured in terms of how faithful he was to the trust that the people had placed in him. And by all accounts, the trust of the people was never betrayed, and although he rose to the highest levels of political power, he never forgot who sent him, and what his mission was. I was so very touched when I walked into the Senator's home. It is a true monument to the goodness of John Stennis and his family. The simplicity of this great man's surroundings spoke of an inner wisdom and a real sense of what is ultimately important; and what is not. John Stennis never forgot where he came from and subsequently he never forgot who he was. The great prophet of social justice in the eighth century B.C., Micah, ask the question, What is it that the Lord asks of you?" And the answer, "to act justly, to love loyally, and to walk wisely before our God," describes the life of this true servant of the people.

So we gather today for all of the reasons that people come together at a time like this. We gather to celebrate the long and meaningful life of John Stennis, and we gather to mourn. Both are part of the cycle of creation. This great man meant so much to so many, and even though I did not know him personally, he knew me. And he knew all of the people who farmed the land, and worked the hills, and built the towns and cities of this our beloved state. John Stennis knew all Mississippians, and all Americans, and for that matter all people everywhere, and he left us such a legacy, and an example of how to live life as a public servant and a citizen of the world.

In the cynical, ego centric, and violent world which we live, it is important that we follow the good example that John Stennis has left us. He was so many things. He was ever a gentleman who never forgot that integrity was the only way to fully honor the trust of the people. He was a man of civility who never forgot that there is a right and a wrong way for men and women to disagree, and then come to a solution that will benefit the common good. Above all, John Cornelius Stennis was a man who, when he saw injustice would have no part of it, and he called us all to a higher standard of fairness and justice. He was a man who believed that service meant giving to others rather than gathering for himself.

In his campaign literature for the 1947 senatorial race, John Stennis stated what would be the standard for his life and his public service when he wrote.

"I want to go to Washington as the free and unfettered servant of the great body of the people who actually carry the burden of everyday life. I want to plow a straight furrow right down to the end of my row. This is my political religion and I have lived by it too long to abandon it now. I base my appeal to you on this simple creed, and with it I shall rise and fall."

By all accounts, John Cornelius Stennis always remembered the "great body of the people who actually carry the burden of everyday life." He remembered them because he was one of them. And by all measures, it can be said that John Stennis did in fact "plow a straight furrow." And not only did he plow it, but he watered, and tended, and harvested, and then he plowed again, and harvested again. John Stennis plowed the straight furrow and we are better because of who he was and what he did for everyone of us. We will miss John Stennis but because of the fruits of his life, which were justice, compassion, and integrity, we will never forget the furrow he plowed.

The liturgy, for Burial, is characterized by joy, in the certainty that "neither death, nor life, nor angels, nor principalities, nor things present, nor things to come, nor powers, nor height, nor depth, nor anything else in all creation, will be able to separate us from the love of God in Christ Jesus our Lord".

This joy, however, does not make human grief unchristian. The very love we have for each other in Christ brings deep sorrow when we are parted by death. Jesus himself wept at the grave of his friend. so, while we rejoice that one we love has entered into the nearer presence of our Lord, we sorrow in sympathy with those whom mourn.

May the souls of the faithful departed rest in peace.

APRIL 25, 1995.

To the Family and Friends of Senator John C. Stennis:

Hillary and I were deeply saddened by Senator Stennis' death, and we extend our heartfelt sympathy.

During more than four decades in the United States Senate, Senator Stennis proved himself to be a wise leader and a devoted patriot, consistently earning the respect of his colleagues and the support of the people of Mississippi. A grateful nation will honor his memory next December with the commissioning of the *John C. Stennis*, the next *Nimitz* class aircraft carrier. His positive influence on our nation's defense policies, his insistence on ethics among public officials, and his many personal examples of bravery remain an inspiration for all Americans.

John, Margaret, and the rest of you are in our thoughts and prayers.

WILLIAM J. CLINTON.

[From the Los Angeles Times, Apr. 24, 1995]

JOHN C. STENNIS; LONGTIME SENATOR

(From a Times Staff Writer)

Former Sen. John C. Stennis (D-Miss.), a deeply religious defense hawk who served four decades in the Senate and exercised a major influence on U.S. military policy, died of pneumonia Sunday afternoon at St. Dominic Hospital in Jackson, Miss. He was 93.

Nicknamed the "Conscience of the Senate" for his personal rectitude and his efforts to shape the upper house's code of ethics, Stennis retired in 1988. He had undergone cardiovascular surgery in 1983 and a year later had his left leg amputated because of a malignant tumor in his upper thigh.

As chairman of the powerful Senate Armed Services Committee for 12 years, beginning in 1969, Stennis played a key role in fighting off deep cuts in the defense budget. He opposed judicial efforts to desegregate public schools in 1964, but three decades later he supported extending the Voting Rights Act.

Close to eight presidents, Stennis was the last of the classic Southern gentlemen who so forcefully shaped the character of the mid-century Senate. He was crusty yet courtly, a stern moralist with an almost mystical devotion to the Senate.

"He was a great senator in every way," Sen. Thad Cochran (R-Miss.) said Sunday. "He was effective, respected and deeply appreciated by the people in Mississippi. He was truly a man of great stature."

Stennis himself was more modest about his place in history. "How would I like to be remembered?" he mused in a 1985 interview. "I haven't thought about that a whole lot. You couldn't give me a finer compliment than just to say, 'He did his best.'"

Despite his genteel manners, Stennis could be tough. Early in 1973, when the senator was 71, he was held up by two young hoodlums in front of his home in northwest Washington. They robbed him and then shot him twice. One bullet pierced his stomach, pancreas and colon.

Surgeons at the Army's Walter Reed Hospital at first doubted he would survive. But then-President Richard Nixon, emerging from Stennis' hospital room, predicted that the senator would make it because "he's got the will to live in spades." Within eight months, Stennis was back on the Senate floor.

Stennis attributed his remarkable recovery to prayer and to his excellent physical condition, achieved from years of exercising in the Senate gym.

"I just prayed that I could be useful again," he said, reflecting on his ordeal. "That's what the consuming thought was, the consuming question—could I survive and be useful I decided that I could."

Stennis displayed a different kind of toughness in 1954 when he served on the select committee that probed charges against the late Sen. Joseph R. McCarty (R-Wis.) and became the first Senate Democrat to call for censure of the free-swinging Wisconsin lawmaker. Although Stennis was a dedicated conservative and an outspoken foe of communism, he was offended by McCarthy's tactics.

During the censure debate, Stennis rallied support from many colleagues who had been afraid to attack McCarthy. In a vigorous speech, he accused McCarthy of besmirching the Senate's good name with "slush and slime."

That same year Stennis was one of the first members of Congress to caution against U.S. involvement in Indochina.

In a Senate speech delivered when the Eisenhower Administration was considering intervention to prevent a French disaster in Vietnam, Stennis presciently warned that committing U.S. ground forces could lead to "a long, costly and indecisive war."

Yet 11 years later, when President Lyndon B. Johnson made a large scale commitment to fight in Vietnam. Stennis loyally backed his commander in chief. "Once the die is cast and once our flag is committed and our boys are sent out to the field, you will find solid support for the war from the South," he said.

He also firmly backed defense spending throughout his career, supporting the Pentagon even when the Vietnam War made weapons procurement unpopular. "If there is one thing I'm unyielding and unbending on, it is that we must have the very best weapons." he once said.

As the Vietnam War wound down, however, Stennis co-sponsored the War Powers Act of 1973, which limits the President's power to send troops into combat without congressional consent.

Senate liberals clashed frequently with Stennis on subjects ranging from defense spending to civil rights, but they invariably praised him for his fairness and courtesy.

And those were the qualities he praised.

From the time he entered politics in 1928 as a member of the Mississippi Legislature, he tried to base his life on this motto: "I will plow a straight furrow right down to the end of my row."

That slogan reflected his rural background. John Cornelius Stennis was born Aug. 9, 1901, in DeKalb, Miss., and grew up on a cotton and cattle farm in what he described as the "poor end of the poor end" of his state. He graduated from Mississippi State University and the University of Virginia Law School, and served as a district attorney and circuit judge before entering politics.

His Scots Presbyterian parents taught him to appreciate the value of a dollar. "I was raised to believe waste was a sin," he once said. Stennis practiced that belief with a vengeance: He carefully saved all the string from packages that arrived at his home.

As a courtly Southern gentleman, Stennis was known to interrupt a Senate committee hearing to find a seat for a woman spectator. But he had little tolerance for miniskirts and other modern feminine trends.

When a female Senate aide once sat on a sofa wearing a skirt that exposed a good deal of her thigh, Stennis averted his eyes and grumbled to a colleague: "I'm going to get a bolt of cloth so that lady can finish her dress."

After his retirement, Stennis served as executive-in-residence at the Mississippi State University campus in Starkville. The university houses the John C. Stennis Institute of Government and the Stennis Center for Public Service, created by Congress.

"I do believe the most important thing I can do now is to help young people understand the past and prepare for the future," Stennis said in 1990. "As long as I have energy left, I want to use it to the benefit of students."

Stennis is survived by two children. His wife, Coy Hines Stennis, whom he always called "Miss Coy," died in 1989.

ABILITY TO ADAPT HELPED STENNIS ENDURE AND MISSISSIPPI ADVANCE

(By Butch John and Jay Hughes)

U.S. Sen. John C. Stennis was remembered Sunday as a man willing and able to adapt to sweeping change in Mississippi without surrendering his dignity or his devotion to its people.

A staunch segregationist during his early years in the U.S. Senate, he became an enthusiastic proponent of equality for all Mississippians in his later years, former state Democratic Party Chairman Ed Cole said.

"He had a deep and abiding respect for people, even when they disagreed with him. He had a deep and abiding faith in the good of people, all people," said Cole, the first black political professional employed by Stennis.

Hired in 1981 to work in Stennis' Jackson Congressional Office, Cole said Stennis, 93, who died Sunday of pneumonia, never forgot the people who helped his four-decade career in the U.S. Senate.

And his state won't forget him, said Gov. Kirk Fordice, who ordered flags at state offices lowered to half-staff in mourning for Stennis.

"All of Mississippi mourns for John C. Stennis, one of the outstanding Americans ever to serve in the United States Senate," Fordice said. "His service to this state was long and faithful."

Fordice, a Republican said he once served on Stennis' local reelection committee in Vicksburg at the senator's request, "probably as a note of bipartisanship."

"He was that kind of guy," Fordice said. "In the olden days I think there was a lot less partisanship."

Stennis never fell prey to many politician's flaw of forgetting the people who put him in office, Cole said.

"I was constantly amazed how he remembered the small things people did for him—seven, eight, nine races before," Cole said. "He would often have you drive up a back road to see some farmer who nobody knew about, and nobody knew Sen. Stennis knew anything about. He never forgot them."

Others who knew him said he never lost his down-home touch despite a rocketlike rise to some of the most powerful positions in the Senate.

"We used to travel some together, go around in the district and to other places. He always would tell me, 'Let's get some ice cream; that's my weakness.' Wherever we were, we'd go get it. That was just the way he was," said 3rd District U.S. Rep. Sonny Montgomery, who served with Stennis for 23 years.

"He was one of the stalwarts for the state of Mississippi," said state Sen. David Jordan of Greenwood, who as an early civil rights supporter found himself on the other side of Stennis' pro-segregation stand.

"I would have liked to have seen him more open to all of the state. We didn't always have the access to him that some of the white folks had. But over the years he changed. He became a statesman for all of the people."

Former Lt. Gov. Evelyn Gandy said Stennis remained in close contact with state officials throughout his stay in Washington. When there was a problem, she said, Stennis would make a point to fix it.

"His heart was with the people of Mississippi, and he responded to their needs, and he helped those of us who were elected at the state level to respond to those needs," she said.

Rex Buffington, Stennis' press secretary from 1978 until the senator retired in 1988, said the key to Stennis' power sprang from his reputation.

"A lot of that came from being committed to doing the right thing. A lot of his power and influence came, not just from the positions that he held, but from the esteam that people held him in," Buffington said.

Buffington said he admired Stennis long before going to work for him, and when he took the job he was concerned that in Washington he would find a man much different from his public reputation.

"What I found when I got there was just the opposite. He was an individual who was even greater than that wonderful image," he said. "It was incredible, really, working for a legend, and one who lived up to and even exceeded his reputation."

Almost immediately after leaving office, Stennis' health began to seriously fail and he was forced to drop out of all public life, Buffington said.

"The senator that we knew has really been gone for a while," he said. "It was as though when he left the Senate he finally let go."

Buffington now serves as executive director of the Stennis Center for Public Service at Mississippi State University. It was created by Congress in 1988 to attract young people to public service careers.

Former Gov. William Winter campaigned for Stennis when Stennis first ran for the Senate in 1947. He later served as his legislative assistant.

"He represented, to me, what a public leader ought to be like," Winter said. "His total commitment to public service, his integrity, his impeccable personal character and his qualities as a true gentleman."

"During his service in the United States Senate, Mississippi had one of the most effective and highly respected senators that this or any other state ever had," Winter said. "We shall not soon see his like again."

Others echo Winter's assessment.

"He truly was a man of great stature. He will long be remembered as one of the finest senators Mississippi ever produced," said U.S. Sen. Thad Cochran, a former colleague. "He never said anything bad about anybody else and looked for the good in others. He was appreciated for that. People noticed that."

Former Gov. Ray Mabus, currently ambassador to Saudi Arabia, called Stennis "a statesman for the ages."

Mr. NUNN. Mr. President, John C. Stennis devoted his long life to public service. He encouraged, taught, and inspired many Senators and Senate staffer members, and was the model for many young people who have entered public service, not only in Mississippi but throughout this country. The John C. Stennis Center for Public Service at Mississippi State University continues that work with programs for young people and for current public servants at the local, State, and Federal level. Starting with the 103d Congress, the center began conducting leadership workshops for senior congressional staff members. Senator Stennis' strong commitment to honorable public service will live on through the work of the Stennis Center, and through the countless lives he influenced.

I thank the Chair.

Mr. HATCH. 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. 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.

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. HATCH. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside so we can present another amendment.

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

AMENDMENT NO. 1548 TO AMENDMENT NO. 1487

(Purpose: To extend the terms of permits for grazing on National Forest System lands to allow time for compliance with the National Environmental Policy Act of 1969 in connection with permit renewals)

Mr. HATCH. Mr. President, I send an amendment to the desk, for and on behalf of Senator THOMAS of Wyoming, 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. THOMAS, proposes an amendment numbered 1548 to amendment No. 1487.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . RENEWAL OF PERMITS FOR GRAZING ON NATIONAL FOREST LANDS.

Notwithstanding any other law, at the request of an applicant for renewal of a permit that has expired before, on, or after the date of enactment of this Act for grazing on land located in a unit of the National Forest System for which a land and resource management plan under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) is in effect, if all action required under the National Environmental Policy Act of 1969 with respect to the land and resource management plan has been taken, the Secretary of Agriculture shall reinstate, if necessary, and extend the term of the permit until the date on which the Secretary of Agriculture completes action on the application, including action required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) This section shall apply only to permits that were not renewed solely because the action required under the National Environmental Policy Act had not been completed.

Mr. HATCH. Mr. President, it is my understanding that this amendment has been cleared by both sides. We are prepared to accept it and make it part of the Senate bill. I ask the distinguished Senator from Michigan if that is correct.

Mr. LEVIN. The amendment is acceptable on this side, Mr. President.

Mr. HATCH. I urge adoption of the amendment.

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

So the amendment (No. 1548) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I again ask unanimous consent that the pending business be temporarily set aside.

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

AMENDMENT NO. 1549 TO AMENDMENT NO. 1487

(Purpose: To amend the Federal Food, Drug, and Cosmetic Act to modify the bottled drinking water standards provisions to require the establishment of regulations relating to contaminants in bottled drinking water)

Mr. HATCH. Mr. President, I send another amendment to the desk and ask for its immediate consideration. I send this amendment for and on behalf of Senator Snowe, our Senator from Maine.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Ms. SNOWE, for herself, Mr. KEMPTHORNE, Mr. COHEN, Mr. LEAHY and Mr. LIEBERMAN, proposes an amendment numbered 1549 to amendment No. 1487.

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

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

The amendment is as follows:

At the 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 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 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) of 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 (which 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.".

Mr. HATCH. Mr. President, I understand that both sides have agreed to accept this amendment. Therefore, I urge adoption of the amendment.

Mr. LEVIN. Mr. President, the amendment is acceptable on this side. My understanding of the amendment, and I would like perhaps confirmation of this from my friend from Utah, is that this amendment gets into the problems that have been created for the bottled water industry by the delay in getting the rules which they are waiting for accepted and promulgated.

If my understanding is correct, this is an instance where it is the business community that wants the rule. Sometimes we think it is the business community alone that is bothered by burdensome regulations. There have been too many instances where there have been burdensome regulations. There has also been many instances where there were critically necessary regulations, and the struggle we are going through is to try to come up with reform which will leave in place the essential process to protect our health and safety.

But my understanding of this amendment is that in the case of the bottled water industry, we have an industry which has been waiting for regulation, asking for regulation in order to stop people from representing on bottled water that it, for instance, might be spring water if it is just tap water.

We need, we are told by the bottled water industry, the agency to act, and the delay in this is actually hurting an industry.

So this is an instance where it is the industry which is trying to get through a regulatory process, trying to get a rule which will both protect it from bottled water which is misrepresented as something other than it is not, and we also had the situation where this was caught up in a moratorium.

One of the arguments against the moratorium is while it may sound good at first blush, the problem is we have a whole lot of businesses, as well as people, waiting for safety and environmental and health rules, that are awaiting the regulatory process to work.

I have not had a chance to study this amendment, and I want to make sure my understanding is correct, but it is my understanding that the purpose of this amendment is an attempt to get the bottled water regulations finally adopted; is that correct?

Mr. HATCH. As I understand it, the Senator has stated it correctly. This is the situation where regulation can be a very good thing if it is appropriately done. And, in many cases, it can be a very good thing. And so I commend the Senator from Maine for bringing it forth at this time. I believe the Senator is correct. I urge adoption of the amendment.

Ms. SNOWE. Mr. President, I want to first thank the majority leader and Senator HATCH for working with me and Senators COHEN, KEMPTHORNE, LEAHY, and LIEBERMAN on this amendment. Throughout this process, they have clearly demonstrated their strong support for the bottled water industry and for bottled water consumers, and they deserve to be commended for their cooperation and good work.

I also wanted to clarify a couple of points that were raised during the discussion on the amendment between Senator HATCH and Senator LEVIN. First, it is definitely correct that the amendment is supported by the bottled water industry. In fact, this legislation has been one of the bottled water industry's biggest priorities for the past couple of years.

Second, Senator LEVIN referenced the FDA's standards for defining spring water. This amendment does not apply to the FDA's spring water definition rules. It applies only to public health standards for bottled water.

In addition, I wanted to point out that the big issue here is more the discrepancy in timing between the EPA's and the FDA's issuance of rules for tap water and bottled water, respectively, than it is the bottled water industry's level of enthusiasm for Federal regulation. The bottled water industry does have an interest in the promulgation of reasonable regulations that provide additional assurances of the safety of its product, but the industry's biggest interest is in making sure that the FDA does not take too long in issuing its regulations for bottled water after the EPA promulgates regulations for tap water. And I will explain why in a moment.

I also wanted to thank Senator KEMPTHORNE, who chairs the Subcommittee on Drinking Water, Fisheries, and Wildlife, for his assistance in getting this amendment adopted. My motive in offering the amendment to the regulatory reform bill was to provide another option by which we can get the legislation enacted, giving it a better chance of ultimate success. But I think it is important to recognize that Senator KEMPTHORNE has been working on this issue as part of the Safe Drinking Water Act reauthorization bill that he is now drafting, and that he will continue to do so as that bill moves through the Environment and Public Works Committee. I commend him for his efforts on this issue, and I look forward to working with him during the SDWA reauthorization process so that we can give this urgently needed legislation another opportunity for eventual adoption.

Mr. President, my amendment, which is cosponsored by Senators COHEN, KEMPTHORNE, LEAHY, and LIEBERMAN, is designed to make the regulatory process for bottled water more efficient and responsive, while expanding health protections for the consuming public.

Under current law, bottled water is considered a food product, and is therefore subject to the Federal Food, Drug, and Cosmetic Act. My amendment requires the FDA, which has jurisdiction over bottled water, to publish final regulations for a contaminant in bottled water no more than 6 months after the EPA has issued regulations for that same contaminant in public drinking water or tap water.

Unfortunately, the FDA has a history of long delays in issuing its regulations for bottled water after EPA publishes its standards for tap water. On December 1, 1994, FDA published a final rule for 35 contaminants in bottled water. Nearly 4 years earlier, however, in January 1991, the EPA regulations for these contaminants had already been issued.

In another case, it took the FDA 4 years to issue regulations for a series of volatile organic chemicals in bottled water after the EPA issued regulations for those chemicals in public drinking water in 1989. And presently, final regulations for 23 new contaminants in bottled water are still pending at FDA, even though the EPA's version of the regulations went into effect in January 1994—a year and a half ago.

While the FDA takes its time, bottled water producers and consumers are left in limbo. In the absence of Federal standards, the bottled water industry, which is composed of 430 bottling facilities in the United States, is vulnerable to charges that its product is unsafe. In fact, the Administrator of the EPA suggested publicly on two occasions that bottled water was not fully protected because the FDA had not issued certain regulations that had already been issued by the EPA for public drinking water.

Of course, charges that bottled water is unsafe or unprotected couldn't be further from the truth. Bottled water is subject to strict industry safety standards and to various State rules. But the Federal standards do provide an important additional assurance for consumers nationwide. Without these standards, consumers may question whether bottled water is really a safe, natural, and healthy alternative to tap water, and sales in the industry could be unnecessarily dampened. Not only do consumers lose when the bureaucracy drags its feet, but an industry

that employs thousands of Americans loses.

My amendment will ensure a more expeditious response in the future. In addition to the 6-month deadline for new contaminants, the FDA will be given 1 year to issue final regulations for contaminants that the EPA already regulates, but that have not yet received new FDA standards for bottled water. If the FDA fails to meet either the 6-month or 1-year deadlines, the existing EPA standard is automatically implemented for bottled water.

In some cases, FDA may determine that a particular contaminant regulated by EPA does not occur in bottled water. My amendment would allow the FDA to simply publish such findings in the Federal Register before the deadline periods expire.

The amendment also stipulates that in all cases, the FDA standards for bottled water must be at least as stringent as the EPA's standards for public drinking water. The bill does reserve the FDA's right to issue more stringent standards, however, adding an extra measure of public health protection, if necessary.

It is my hope that this amendment will prompt the FDA to coordinate its regulatory activities for drinking water with the EPA from the beginning, before either agency issues a notice of proposed rulemaking. By coordinating in this process, the agencies could issue their regulations at roughly the same time. The amendment would therefore have the effect of improving the efficiency of the Federal regulatory process—something all of us agree is necessary—while enhancing health protections for consumers. It represents a clear win-win proposition for all of our constituents.

The bottled water industry generates $2.7 billion in sales annually, and it serves millions of American consumers, with the potential to serve even more. Surely, these producers and consumers alike deserve the kind of consideration from their Government that my amendment guarantees. I am pleased to see that Senators on both sides of the aisle agree and support the amendment.

Mr. LEAHY. Mr. President, I am glad to be a cosponsor of Senator SNOWE's amendment which is the exact language of S. 412 regarding bottled water quality standards. Like many other enterprises from heart surgery to hang-gliding, the bottled water industry needs nationwide regulations that ensure the quality of its product.

The Food and Drug Administration [FDA] has been very slow in issuing regulations that guarantee a particular standard of quality. In fact, the FDA has lagged behind the Environmental Protection Agency [EPA], sometimes by a matter of several years. The net result is that some water companies can legally distribute water that is less healthy than ordinary tap water. This is bad for consumers, bad for honest businesses, and underscores one of the reasons why our Nation is supportive of regulated standards.

I am particularly interested in this amendment because of a Vermont business that has a clear interest in enforceable standards of quality. The Vermont Pure Springs Company of Randolph Center, VT, is one of the great success stories of Vermont's growing specialty food industry. Vermont Pure Springs produces, in my opinion, the best bottled water in the world—Vermont Pure Natural Spring Water. In fact, I invite each of my colleagues to stop by my office to taste this water—I keep about a dozen bottles of Vermont Pure water in my refrigerator.

Each bottle of Vermont Pure Natural Spring Water contains water that is naturally filtered through Vermont mountain rock strata for at least 12 to 20 years. Some of Vermont Pure Springs' competition comes from companies whose water is not only not as pure as Vermont Pure, but may in fact have pollutants that are illegal in tap water. Since its beginning in 1990, Vermont Pure Springs has been seeking the regulatory guidance in this amendment to ensure its water is known throughout the world and guaranteed by our Government as Vermont Pure.

The provisions of this bill ensure that whenever the Environmental Protection Agency issues new standards for drinking water, the FDA will have 180 days to issue regulations that address the same contaminants to the minimum standard required by the EPA. If the FDA does not issue formal regulations, the EPA drinking water standards apply to bottled water. In the case of EPA standards that have already been established and the FDA has not yet acted, the FDA has 1 year to act before the EPA standards automatically apply. This bill allows the FDA to hold bottled water to a stricter standard, but ensures that bottled water will be held to a minimal standard

I appreciate the opportunity to consider this amendment today. I look forward to moving this particular legislation through Congress so that it may be signed by the President.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1549) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, it appears that we cannot get the Hutchison amendment completed and negotiated in a way that is satisfactory to both sides. It is my understanding that the distinguished Senator from Texas is prepared to go to a vote on the amendment. I hope the other side is prepared to do that.

Mr. LEVIN. Well, we had a conversation where it was, I thought, indicated that we were trying to——

Mr. HATCH. I talked to the Senator from Texas and she felt it was not getting done.

Mr. LEVIN. We are awaiting their redraft of the amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. 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. DOLE. Mr. President, we are making some progress. We would like to work through the afternoon.

I had a discussion with the distinguished Democratic leader about there being a number of votes on Monday. We may move the time for the cloture vote, depending on what I hear from the Democratic leader.

I have also indicated that in addition to that cloture vote, if cloture fails, there will be another cloture vote on Tuesday.

CLOTURE MOTION

Mr. DOLE. Mr. President, I send a cloture motion to the desk and ask for its immediate consideration.

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

The assistant legislative clerk read as follows:

CLOTURE MOTION

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

Bob Dole, Bill Roth, Fred Thompson, Spencer Abraham, Kay Bailey Hutchison, Jon Kyl, Chuck Grassley, Craig Thomas, Orrin Hatch, Larry E. Craig, Mitch McConnell, Conrad Burns, Bob Smith, Jesse Helms, Jim Inhofe, Judd Gregg.

Mr. DASCHLE. Mr. President, as the distinguished majority leader indicated, he and I have had the opportunity to discuss this cloture motion.

I will say again, I do not know that cloture motions are even necessary at this point. We have had a very rigorous debate. There have been very few quorum calls and there is not a filibuster going on here.

We are proposing amendments. We will lay down the substitute this afternoon. We are ready to go to additional

votes this afternoon. I hope that we could have a vote on the Hutchison amendment this afternoon. I am sure that is something the majority leader is prepared to do.

I yield to the majority leader for comment on the pending amendment.

Mr. DOLE. As we discussed earlier, obviously, if the amendments on either side are acceptable, that is certainly satisfactory to both the leaders, because some Members are necessarily absent, and there is no need to punish Members who are not here.

On the other hand, if we cannot agree, we ought to have the votes, and everybody was notified there could be votes throughout the afternoon on Friday.

As far as I know, the afternoon does not end at 1 o'clock. It ends much, much later. We will be here. As far as I am concerned, we will have votes. If we reach an impasse, or once I think the major amendments have been laid down on the so-called Glenn amendment—I think that will take considerable debate.

Until that happens, I would hope we would continue to work out some of the amendments.

Mr. DASCHLE. That is my point. I want to emphasize, at least to colleagues on this side of the aisle, there is likely to be additional votes this afternoon, and that Members ought to be prepared to come to the floor to cast those votes.

Let me say in the larger context, that is the reason why, in my view, we do not need a cloture motion, because, as I say, the work is getting done.

This has been a good debate this week on a very, very complex issue. I would hope we could continue to work in good faith and find a way to accommodate Senators who have good amendments, who have reasons to offer these amendments, and do so in a time that accommodates the schedule but also accommodates the Senator.

I appreciate the majority leader's decision, but I hope that at some point we could get beyond the cloture votes and try to finish this bill.

Mr. DOLE. I hope, too. The reason for the cloture motion is to make certain we do finish the bill. If we cannot get cloture, we will not finish the bill on Tuesday. It is my hope we can finish the bill on Tuesday.

Let me again indicate to all my colleagues who are at the majority leader. The August recess is not far away—at least the starting date is not far away. We have a certain number, I think a number of legitimate things we should do before that recess begins.

It may not begin on the 4th of August. It may not begin until the 12th or the 15th, or in that area. That is not a threat, just what may happen.

I put in the RECORD yesterday a proposed schedule which I believe is reasonable, but it depends on finishing this bill and then moving to the next bill, and appropriation bills. We hope to do six appropriation bills before the August recess. We have three major authorization bills: DOD authorization bill, foreign operations, State Department authorization. That will take some time. There will be a lot of amendments. Six appropriation bills, plus welfare reform, plus Bosnia, plus lobbying and gift reform, plus the Ryan White bill.

That is the reason the cloture was filed. Hopefully, if we cannot work it out, we will have a cloture vote on Tuesday, which I hope would be successful. Then we would at least have the end in sight.

Obviously, if we are making progress, and we are going to finish the bill Tuesday in any event, I would be happy to withdraw the cloture motion.

Mr. KERRY. If the distinguished majority leader will yield the floor, would it make sense to set a time certain for a vote on the Hutchison amendment? Should we not work it out?

Obviously as the day goes on, both sides may lose more people and therefore it would punish more not to have a time set in the event we do not work it out.

Mr. DOLE. I have no objection to that. Somebody suggested 30 minutes, if they do not work it out. I will not be that arbitrary, but I think after some reasonable time, 30 to 45 minutes, that would be satisfactory.

Mr. KERRY. I thank the Senator.

Mr. DOLE. I know some of these things are very technical and I do not profess to understand some of these technical provisions. I am not on the committee and have not followed that closely. I know they are meeting as we speak. Hopefully, we can do that.

Mr. COATS. Mr. President, I do not want to interrupt the amendment process. I came to make a statement on the bill. I want to proceed if there are no amendments. I am willing to abbreviate my statement when the managers are ready to move to the next amendment.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, we are grinding away slowly in this process on regulatory reform. I think all Members had hoped we would be able to move much more quickly on this legislation.

The majority leader has just outlined a schedule for the Senate between now and the August—I should say supposed August—recess. It seems to me that schedule will be impossible to meet, given the timeframe and the seriousness of the issues which we will be debating.

Nevertheless, we cannot even begin to get to complete that agenda if we cannot move along on this particular piece of legislation. We are now completing a full week's debate, with amendments. We have had long days and long nights, and there is no end in sight.

I hope that we can continue to make progress. I certainly am not going to be one to delay that process.

Let me say, Mr. President, that during the course of this debate, media reports about activities on the Senate floor, debate on this floor, and general discussion about what is taking place here, have left a misimpression as to what this legislation is designed to achieve.

There have been claims made, by a number of individuals, that if this bill stands as it is and is not drastically changed, the quality of our water and our air will be placed in jeopardy, our environmental treasures will be threatened, our Nation's wildlife will be endangered. There have even been accusations that the result of this legislation would be the increased incidence of contamination of the very food that we eat and the water that we drink.

I think we need to set the record straight on some of these charges. These are disturbing charges because they threaten to undermine a process of reform that I believe is critical to the viability of our economic system. Our current regulatory process is, I believe is complicated beyond the ability of many of our small business people to understand or to comply with. It is punitive in many ways. It is duplicative in many ways. It simply does not provide the efficiency, and in many instances the intended effect of the regulations as they were originally drafted. It drains family income, it chokes small businesses, it denies jobs.

The Small Business Administration has estimated that small business owners spend nearly 1 billion hours a year filling out and completing Government forms. This, at a cost of millions of dollars. Turning this tide, restoring some balance and efficiency to the regulatory process is really what this legislation is all about.

I think it is important we understand what this legislation does and what it does not do. I intend to review that. Before I do, let me provide a couple of examples as to why I think this legislation is necessary.

Perhaps the most important reasons it is necessary is the negative impact the current system has had on our society, on the American family, on those who are seeking to hold meaningful employment. According to a 1993 study conducted by Citizens Against Government Waste, Federal regulations cost the American household $4,000 a year; roughly $400 billion annually. A former OMB official placed the cost even higher, at $500 billion annually, or $5,000 for the average American family.

A popular statistic thrown out in this town every year, particularly in the spring, is how long the average American has to work through the year to pay their Federal and State taxes. The

date is now approximately May 5th. If you add on their share of the regulatory burden, you push that date even farther forward, into mid-July.

Many advocates of the status quo, those who would keep the current system of regulations as they are, rejecting this reform process, argue that this legislation will jeopardize our public health. I do not think this is correct. The legislation we are currently debating, and have debated all week, does not override existing health, safety or environmental law. The cost-benefit requirements of this legislation supplement, not supersede existing law.

This legislation does not seek to overturn the very real progress that has been achieved in many cases of public safety regulation. To the contrary, this legislation seeks to provide procedural reform that will ensure that the rules and regulations efficiently and effectively achieve the very goals they were designed to seek.

So I ask my colleagues, why should we not proceed with an effort to provide some efficiency in implementing regulations that are designed and intended to promote vital health and safety concerns for Americans? That is a goal we ought to embrace, not a goal we should resist.

There have been some charges concerning health emergencies, charges that this legislation would place public health in jeopardy in cases of emergency. The reality is that the cost-benefit analyses and risk assessments are not required if they are impractical due to an emergency or health or safety threat, if they are likely to result in significant harm to the public or to our natural resources. Furthermore, on Tuesday this Senate adopted the Dole amendment by unanimous vote. That clarified the intention, in case there was any doubt, of this legislation to cover food safety emergencies in addition to all public health matters.

The legislation further provides the same protections where environmental management activities are concerned. Let me repeat, cost-benefit procedures do not apply where they would result in an actual or immediate risk to human health and welfare.

Where a petition for alternative compliance is sought, the petition may only be granted where an alternative achieves at least an equivalent level of protection of health, safety and the environment.

So in this Senator's opinion, and I think in the opinion of many Senators, this legislation is not a radical overhaul of Federal regulations. It is a procedural reform that is designed to ensure more effective, more efficient rulemaking. I think that is a common sense approach. I doubt if there is a Member of this Chamber who has not been besieged by his constituents back home, or her constituents back home, or by groups that visit us here in the Senate who point out the duplicative, cost-ineffective, procedural nightmare that they have to go through in complying with Federal regulations. Time and time again it has been pointed out to this Senator how one regulation by one agency countermands a regulation by another agency, leaving the individual to throw up his or her hands, saying which regulation am I supposed to comply with? To comply with one violates the other. It is a nightmare of bureaucracy in terms of filling out forms and complying with injunctions handed down by the various regulatory agencies.

A cost-benefit analysis is not an unreasonable request, to examine the benefit of a proposed regulation versus what will be the cost. It is information we ought to have when we assess the viability of rules and regulations and the procedure that produces those.

There has been a lot of talk by advocates of the status quo about their compassion, about justifying this legislation to constituents back home. I challenge Members to go back home to a town meeting, or local diner, and to stand up and make the argument for why the Federal Government should not engage in reform of its regulatory process. Why it should not impose a cost-benefit analysis in determining the viability of a regulation, Why we should not determine whether what is the most efficient and effective way to spend their tax dollars. I suspect they will run into a little opposition if they try to defend the status quo.

There are many agencies that have been highlighted during the debate this week. There are many that we hear complaints about. Perhaps the one I receive the most complaints about from individuals that I represent is OSHA, the Occupational Safety and Health Administration. Regularly, constituents walk into my office with fistfuls of compliance requests and stories of the nightmare of administrative litigation proceedings, complaining, not only about the process but about the ineffectiveness, the inapplicability, and the duplicative efforts of many of the regulations they are asked to comply with.

A roofing business owner in Indiana wrote to me. He said we have these forms, the material safety data sheets, MSDS's, required by OSHA. He said, and I quote from his letter:

> Materials have an MSDS's that were never intended to be encompassed by the regulatory standards. It has gotten to the point that almost every product in America comes with an MSDS. Products like sand and compressed air, dishwashing detergent, glass cleaner, baby oil, powder, shampoo, all have MSDS's.

To carry this product, to use this product, to manufacture this product, if you store this product, you have to fill out this sheet.

He tells the story about an OSHA compliance officer who illegally searched his foreman's vehicle. He writes: He searched our foreman's vehicle and found a small plumber's propane torch in the vehicle.

It was the employee's personal property. It had nothing to do with the company. This was his personal property. It is not even used in the roofing business. The label had fallen off that propane torch. The foreman tried to explain to the OSHA compliance officer that this was his personal property. He even produced an MSDS sheet. The company was fined $825 because the label had fallen off the propane torch, a product not even used in the business of the employer. Yet, the employer was fined.

Another individual from Indiana talked to me about the fact that they had some chalk stored. I believe they used the chalk for certain purposes not necessarily related to the product that they were manufacturing. Yet, they had to fill out the MSDS forms. It was not acceptable to fill out one MSDS form labeling the chalk. But because the chalk came in red, blue, green, yellow and different colors, they had to have separate forms for each color of chalk.

I can go on and on with these stories. In the interest of time, I will not do that.

But the point is that we have an overzealous, an overregulatory process at work in America today that is placing costs and burdens on business, and particularly small business, that is denying job opportunities and competitive advantage to these businesses.

I think every Member understands how the regulatory process grows and mushrooms and continues to ignore the desire and need for efficiency in imposing what had been determined to be necessary health and safety regulations but imposing it in a way that thwarts the very purpose of the rule in the first place.

Mr. President, I hope that we are not derailed in the process of responding to the very clear call of the American people that we clean up the act of the Federal Government here in Washington. We have been given a somewhat historic opportunity to do that. Items that Americans, our constituents, have been complaining about for decades now have an opportunity to be vented in this Congress and reformed in this Congress.

People have lost faith in our ability to apply commonsense solutions to the problems that they face. They have seen an insensitive, uncaring, ineffective government impose law after law, and regulation after regulation on their livelihoods, on their businesses, on their families, and on society as a whole.

They have lost faith in government which reaches into every corner of their lives, stealing from them the very hard-earned wages that they have worked so long to accumulate. They

have lost faith in a government that is suffocating their access to opportunity and to the American dream, the hope of starting and running a successful business, the opportunity to benefit from the jobs of a strong economy, the opportunity to pass along to their children the hope of a better life than they have had.

This legislation does not accomplish all that we must. But it is a critical start. If we cannot reform the regulatory process that is suffocating America, there is little that we can do to respond to the very genuine calls for a reformed Congress and a reformed way of doing business.

Mr. President, I hope we can move forward. We spent a week now, long days and long nights with no end in sight, with amendment, after amendment, after amendment. But I hope we can expedite this process and move forward. This is an important piece of legislation. It has been discussed, deliberated, and talked about for years. Now is the time that we need to move forward and enact it.

Mr. President, I urge my colleagues to bring this debate to a reasonable close so that we can exercise our final vote on whether or not we believe that the regulatory process needs to be fixed, needs to be reformed, needs to be made more efficient and effective for this Nation.

Mr. President, with that, I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. CRAIG). The Senator from Minnesota.

BOSNIA

Mr. WELLSTONE. Mr. President, I want to take a few moments to take the floor. I do not know quite how to do this. I may not do it very well. I do not know whether my words will accomplish anything. But sometimes, you know, you just feel like you should speak on the floor of the Senate. That is what comes with the honor of being a U.S. Senator.

Mr. President, on the front page of the Washington Post today—this just needs to be recognized on the floor of the Senate—there is a headline, "For Ousted Bosnians, a Trail of Tears."

Under that headline, "Serbs Force Thousands of Muslims in Harrowing Journey."

Then there is a picture of older men, women, and children, a Bosnian woman wheeling what I gather would be, Mr. President, her elderly father in a wheelbarrow. And the first paragraph reads, "Bedraggled, hungry and scared, thousands of Bosnian Muslims flooded into a swelling makeshift refugee camp with little food, water or medicine today after a harrowing journey into Muslim-held territory from the fallen town of Srebrenica, now occupied by Bosnian Serbs reveling in their victory."

Mr. President, another article in the Washington Post is headlined, "Serbs Start Expelling Muslim Civilians From Seized U.N. Conclave," with pictures of women and children herded into refugee camps.

Mr. President, these pictures send chills down my spine. I am the son of a Jewish immigrant born in Odessa in the Ukraine who lived in Siberia in Russia. I am an American Jew, and these pictures send chills down my spine, along with the reports that the Serbs are taking all young men, boys 16 years of age, away from their families. I do not know where they are taking them to. But they are taking them away to find out whether they are guilty of "war crimes."

Mr. President, I do not know exactly what it is the international community should do. But I am convinced the international community has to do something.

Mr. President, it is as if the world has not learned anything in the last half a century. We really are talking about genocide of people.

I will not talk about the position a number of Senators took several years ago in calling for action. I took such a position. Normally, I do not talk about intervention, international military intervention, but several years ago several of us came to the floor and said it had to happen. That is beside the point.

Mr. President, I was thinking about this this morning, and I was talking to my wife, Sheila. We have been debating the regulatory reform bill, and it is extremely important. I have been involved in the debate about the rescissions bill. All of us care about our work, and all of us give everything we have, whether we agree or disagree. The Presiding Officer and I, who are good friends, are good examples; we do not agree on all issues. But I am trying to figure out, for God sake, what in the world is the world going to do? What is the civilized international community going to do? We see people just expelled, expunged, young men taken away from families to see whether they are "guilty of war crimes." Elderly and children, 1-year-olds put on trains—to go where? What is going to happen to these people?

Sometimes, in the history of humankind, silence is betrayal. I do not think we can be silent about it. I wish to God I knew exactly what the international community could do. The fact that there are no good choices does not mean we still should not choose some course of action. I do not mean any easy fix, Mr. President. I do not mean something where we essentially turn our gaze away from the rape and torture and murder of innocent people.

So, Mr. President, I just wanted to take a few minutes to speak to these pictures. If my father, Leon, was alive—he is no longer alive—he would say that there exists on the part of humankind an enormous capacity for good but also, unfortunately, an enormous capacity for evil. It is that parallelism that makes it all so complicated.

I assume that next week in this Chamber we will be talking about what is now happening in the former Yugoslavia. I do not know what the focus of the debate will be. I know there are several resolutions, but I think it has to be more than resolutions and amendments. The international community cannot turn its gaze away from this. This is genocide. We should have learned some lessons over the last half a century. I do not think we can go about our normal business just because it is long distance, somewhere away. These are all of God's children.

I yield the floor.

INHUMANITY IN BOSNIA

Mr. REID. Mr. President, I am on the floor for the same reason that my colleague from the State of Minnesota is here. I have stood silently by for a long time now because I have the same feeling that a lot of us have, one of desperation, despair. I was forced to think about this as a result of the statement given yesterday by the Senator from the State of Arizona [Mr. MCCAIN] a man who understands war, a man who spent more than 5 years as a prisoner of war in Vietnam, a man who spent more than half that time in solitary confinement. So I figure that when Senator MCCAIN talks about war, I should listen. Senator MCCAIN did not use the Washington Post. He used the New York Times as an illustration. I went and looked at the New York Times after he brought it to my attention. It showed a mass of humanity, but if you looked closely at the picture there were uniformed troops in there. Who were those troops? They were U.N. troops. My friend from the State of Minnesota today made the same statement.

Mr. President, each day now brings a whole new series of horrible stories of the inhumanity in Bosnia. I did not know Leon Wellstone. Obviously, with the sensitivity that the Senator from Minnesota has about issues generally, I am sure that Mr. Wellstone was a good teacher and certainly had some wisdom and philosophy about the nature of man as imparted by the Senator from Minnesota.

Mr. Wellstone would, I am sure, stare in amazement, with each day bringing a whole new series of horrible stories of inhumanity in that part of the world. The Bosnian Serbs are conducting offenses on one U.N. safe haven after another, and doing it with remarkable speed, reminding me of the blitzkrieg of 50-odd years ago. Why should they not move with remarkable speed? It is

just like 50-plus years ago when Hitler moved into those areas; he had no opposition basically. They have no opposition basically. So why should they not move quickly?

The safe haven's only protection—and I use that word very loosely—is a small number of lightly armed U.N. troops who are quickly forced to surrender their positions. I think most of the time they are not asked to surrender; they wave the white flags very early, leaving Bosnian civilians defenseless to these aggressors. Srebrenica has fallen and has been ethnically cleansed, by their definition. Zepa is under heavy artillery fire and troops there were given an ultimatum to put down their weapons by what was 8 o'clock this morning local time. The Bosnian Serbs have openly declared that the safe area of Gorazde will be next. And 40,000 civilians were forced out of Srebrenica—40,000, as many people as watched the all-star game. Where were they forced? Anyplace they could go. We have reports of murder, rape, torture. The men are lined up, and those that are of military age are taken one place, the old and infirm are taken someplace else. Women are lined up, some taken away for obvious reasons.

These pictures, stories of human suffering, are heart wrenching. Families are torn apart. We have reports of mothers searching for their children, the elderly succumbing to exhaustion from the heat and lack of water as they are forced to leave on foot.

And we do not see all the pictures. We do not know what else goes on. We can only imagine what else goes on. Given the past cases of ethnic cleansing, atrocities committed by the Bosnian Serbs that have already been documented by human rights groups in Bosnia, we can believe the reports are certainly true; that our imagination is certainly without bound. What is next?

There are about 16,000 civilians in Zepa, civilians who now, no doubt, will undergo the same inhumane treatment that we have seen the last week, the last month, the last several years.

And what about Gorazde? It is the most highly populated area of all, with as many as 60,000 civilians. Are we going to stand by and watch these people fall victim to their captors, just as the people of Srebrenica fell victim?

The United Nations officially declared and demilitarized the safe areas, promising to protect civilians and provide aid. But, surely, no one believes anymore that the United Nations has any hope of protecting safe havens anyplace in Bosnia. News reports, and TV news reports in particular, show the anger of the Bosnian Moslems forced out of Srebrenica at the promises made to them by the United Nations and the West.

A United Nations official is quoted in a New York Times article today:

> We are at that point in the war where there is no peace to keep. We were never equipped or given enough troops to protect these enclaves. The Serbs have called our bluff.

Mr. President, certainly they have called our bluff. The United Nations is not a peacemaker—they are a peacekeeper; they were sent in to keep the peace—and that is something they cannot do and should not be asked to do. The Serbs, in the New York Times article today, certainly have called the United Nations' bluff. The will of the West to take definitive action is weak, and the Bosnian Serbs know it.

Time and time again, United Nations officials have rejected NATO's offer to conduct air strikes. The NATO alliance itself shows signs of disintegration as the alliance members disagree on a course of action and find the U.N. troops are used as tools to blackmail the United Nations and NATO into promises not to conduct the strikes.

And the world watches, as U.N. troops watch, while the Bosnian Moslems fall victim. The United Nations cannot protect the men carted off to an unknown fate. They cannot help those women taken from the group. They cannot help the injured and the dying, and they cannot help mothers find their children.

It is a pitiful sight to see the U.N. forces standing in the background as hundreds of thousands of people have been inhumanly herded away like animals. You would not treat rodeo animals the way these people are treated. Animal rights groups would rise up in anger. Animal protection groups would rise up in anger if you treated animals anywhere like these people are being treated.

The President said yesterday that if the United Nations does not get its act together, its days are numbered in that area. The contact group is formulating a regrouping of U.N. forces, consolidating them in Sarajevo. You can move the players around the board all you want, like chess or checker moves, but they will be no more effective if they cannot do something more than what they have done. The U.N. force has already been badly routed. It has failed to influence any peaceful solution, and it has failed to protect civilians.

The present policy of international reliance on continued peace negotiations and containment has only prolonged Serb aggression against the Bosnians. We must lift the arms embargo.

Mr. President, for me to come on the floor and talk about lifting the arms embargo is not easy. I met with a large group of Pakistani physicians 1½ years ago. They asked me, "What about lifting the arms embargo?"

I said we cannot have more military, that is what caused the problems in the world today. I spoke to those people, who were so agitated about what was going on, and said we should not lift the arms embargo. Well, I was wrong. There is nothing else we can do. It will cause more bloodshed, but what else can we do?

We must allow the Bosnians to defend themselves and defend their families. Frankly, most military experts say it is too late, that by the time they get their act together with new arms, a military force, the Serbs will have run over them.

I do not know if that is the case, but at least they need a chance to defend their families. The U.N. forces should withdraw so they no longer can be used by the Serbs to facilitate Serb goals.

The U.N. forces have not helped the Bosnians. They have helped in recent months the Serbs. The Serbs have confiscated arms, they have taken humanitarian aid and money from U.N. forces. They have taken U.N. troops hostage. We all remember the pathetic pictures of U.N. troops chained to poles. It is time for the United Nations to stop aiding the Serbs in this ruthless pursuit. The Bosnian Serbs hold no regard for the U.N. mission or for finding a peaceful solution to the war.

Mr. President, there is no pain-free solution to what is going on now, but we can predict with more certainty what the future brings. The Serbs will continue their aggression. The Serbs will continue ethnic cleansing. The Serbs will attack U.N. safe havens, and they will respond only to a real threat of force. U.N. forces will not alter this course and may only advance the Serbs' cause by serving as hostages, by supplying the arms that they steal and by surrendering their supplies. The arms embargo should be lifted and the Bosnian people allowed to determine their own fate.

The ranking member of the Armed Services Committee, the former chairman from Georgia said in a recent statement, and I quote: "There will be a high price to be paid once the U.N. forces are withdrawn from Bosnia."

As usual, the senior Senator from Georgia is right. There is no easy way out of this conflict. The Bosnians are aware of the high price to be paid, and they are willing to pay it for the right to defend their country and their families. To them, the status quo is far worse than any alternative brought on by lifting the embargo and, if necessary, withdrawing U.N. troops.

Mr. President, I also say this. I say the United States should send no troops to that part of the world. Why not call upon the nations that have influence in that part of the world? That is in their sphere of influence. Where is France? Where is England? France wants to be a superpower. They are setting off tests in the middle of the ocean. Let them bring in their troops and do something rather than talk. It is in their sphere of influence.

The United States, I say, should, at the most, supply air power and have

the troops withdrawn. I do not think we should commit troops to that part of the world, even though my colleague, the majority leader from Kansas, has said that there should be U.S. troops supplied to help withdraw the U.N. troops. I do not think I can go that far, Mr. President.

What has gone on there is something that should have the world community saying, "At least let's get the U.N. troops out of there, they are only serving the Serbian forces." I say let us have France and England and the European nations join together and let them bring troops into that area. We have done Somalia; we have done Haiti. Have we not done enough, Mr. President? We have done the gulf war. It is time for the United States to step back and let other countries do their share for a change.

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. SPECTER. 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. SPECTER. I ask unanimous consent that I be allowed to speak as in morning business for 5 minutes.

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

DEVELOPMENTS IN THE RUBY RIDGE INCIDENT

Mr. SPECTER. I thank the Chair. Mr. President, I have just received a release from the Federal Bureau of Investigation advising that the FBI Director is transferring Mr. Larry A. Potts from the position of Deputy Director to a position within the FBI's training division.

I have just had an opportunity to discuss this briefly with FBI Director Louis Freeh. I think that this is a very wise move in light of all of the developments on the Ruby Ridge incident, especially the most recent disclosure of this week that documents were destroyed by one of the FBI agents who was involved in the Ruby Ridge incident.

There is a very substantial question, Mr. President, about what was done at Ruby Ridge with respect to the use of deadly force and also with respect to the rules of engagement with Special Agent Glenn, the special agent in charge at the present time of the Salt Lake City office having been at the scene, saying that there had been changes in the rules of engagement, and Mr. Potts having said that there was no change in the rules of engagement and no change on the use of deadly force.

That is a matter of considerable importance. Also, disclosed in the Washington Post yesterday was the task force report of the Department of Justice, indicating that there was excessive force used within the definition of constitutional parameters, and also with the task force exposure as printed in the Washington Post yesterday about the recommendation for consideration of prosecutions, which was rejected by the Department of Justice.

I have raised the issue of the promotion of Mr. Potts with Attorney General Janet Reno when she testified recently at general oversight hearings before the Judiciary Committee, and had raised the issue as to why Mr. Potts was promoted in light of the outstanding questions about Ruby Ridge. The Attorney General was further questioned about the possibility of a criminal prosecution by the prosecuting attorney of Boundary County, ID, of an official whom I talked to had made comments on the Senate floor some time ago. Attorney General Reno said she would not speculate about what local law enforcement would do and was not going to get involved in any way in hindering local law enforcement which was hardly responsive to my question as to why there was a promotion, in light of these issues which were very much in the public domain.

Mr. President, it is my hope that there will yet be oversight hearings by the Senate. I made an extensive statement about this yesterday, calling for those hearings and, in fact, had pressed the issue in a resolution calling for a Senate vote in May, understanding full well that it was highly unlikely to be accepted, considering the prerogatives of chairmen under our Senate procedures. I think it continues to be a matter of the utmost importance. We have had an enormous growth of the militia, as I commented on more extensively yesterday. I can understand and sympathize with people in the United States who are unhappy with what is going on in Government because of the need to hold people accountable at the highest levels.

I think with the reassignment of Mr. Potts today, it has extra emphasis on the need for hearings. Mr. Potts, for one, is entitled to his day in court or his time to have a hearing to see precisely what it was that he did. There is a cloud hanging over Mr. Potts at this time. There is a cloud hanging over the FBI and a cloud hanging over the Department of Justice, as long as these questions remain unanswered. It is the responsibility of the Congress of the United States to have oversight hearings. We are the proper institution to undertake those hearings, and I renew my request that these hearings be held at the earliest possible time.

I note that the Presiding Officer, the senior Senator from Idaho nodding. I will not make any interpretation from his nods of the head, but I do think this is a matter of great importance. And the reassignment of Mr. Potts today underscores the necessity for prompt hearings on this important matter.

I thank the Chair and yield the floor.

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I would like to ask the managers of the bill a question. I would like to make about a 5-minute statement. If you are in the midst of some procedure here, I am reluctant to interrupt it.

Mr. LEVIN. We are very close, we believe, to working something out on the Hutchison amendment. That is not quite ready. So I have no objection, and I do not believe Senator HATCH would either.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, during consideration of this regulatory reform bill, we have heard a litany of horror stories about silly regulations, costly regulations, and useless regulations. Many of these stories have focused on rules and laws that are designed to protect the environment.

It must be remembered, however, that tales of environmental excess do not present the complete story.

I have spoken many times about the tremendous progress we have made in cleaning up our environment over the past 25 years. I think the last 25 years, starting in about 1970, 1972, those were the glory years of environmental legislation. As a result of that legislation, our Nation is far cleaner in its waters and in the air, and far ahead in the preservation of endangered species than we otherwise would have been. In just about every instance, that progress can be attributed directly to environmental rules and regulations and laws that were passed. Surely, there are examples of overly rigid applications of specific rules. But there is no doubt that the world is a better place today precisely because we have stepped in and forced industry to clean up its act.

In today's Washington Post, on page A3, there is a good news, pro-environmental success story. It is a story about environmental "regulation"—that word that everybody seems to rebel against around here. The headline reads, "A Threat to Ozone Layer Diminishes."

Mr. President, I ask unanimous consent that the story from the Washington Post be printed in the RECORD.

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

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A THREAT TO OZONE LAYER DIMINISHES, SCIENTISTS SAY

(By Boyce Rensberger)

One of the chief threats to Earth's protective ozone layer has begun to diminish, an international group of scientists has found. According to their report in today's issue of the journal Science, the concentration of methyl chloroform in the atmosphere peaked in 1990 and has been falling ever since.

"This represents the first actual decrease in atmospheric concentration recorded for any halocarbon [the class of chemicals that attack ozone] restricted under the Montreal Protocol on Substances that Deplete the Ozone Layer," the researchers wrote.

In a related article in the same issue, other researchers confirmed a finding, first reported two years ago, that CFCs have almost stopped increasing in the atmosphere. These substances pose an even bigger threat to the ozone layer and are also regulated by the Montreal protocol. The growth rates of CFC-11 and CFC-12 "are now close to zero," the scientists said.

If trends continue, the researchers said, CFC (chlorofluorocarbon) levels in the atmosphere are expected to peak next year or in 1997 and then begin to decline slowly. Previous estimates of CFC levels projected a peaking around the year 2000.

Scientists also said a fourth ozone depleting substance regulated under the Montreal protocol, carbon tetrachloride, appears to have begun declining but those data have not yet been published.

The Montreal protocol is a 1987 international treaty to phase out production of all major ozone depleting chemicals. It was amended in 1990 and 1992 to speed up the schedule. Although the ban on CFCs was not to take effect until 1996, most manufacturers cut production of the chemicals well in advance of the deadlines.

"This is good news for the atmosphere," said James W. Elkins, of the National Oceanic and Atmospheric Administration's Climate Monitoring and Diagnostics Laboratory in Boulder, Colo. "We're starting to see the first real benefits of regulation."

"The Montreal protocol works," said an author of one of the Science papers, A.R. Ravishankara of NOAA's Aeronomy Laboratory.

Still, both atmospheric scientists said, the decline in overall threat to the ozone will be slow and is not expected to eliminate recurrences of the Antarctic ozone hole until perhaps 2050. Throughout this period, however, the ozone layer is expected to thicken because ozone constantly is being created by the action of sunlight on ordinary oxygen and, within a year or two, the creation rate will exceed the destruction rate. The ozone layer helps screen out much of the sun's ultraviolet radiation, which causes DNA damage leading to increased rates of skin cancer.

A major concern about the Montreal protocol is whether Russia, China and India will also stop production of CFCs when their opportunity to be exempted expires in a few years. Substitutes for CFCs are more expensive and require costly changes in refrigerating equipment.

The decline in methyl chloroform (also called trichloroethane) was reported by Ronald G. Prinn, of the Massachusetts Institute of Technology, and eight colleagues at various institutions in this country, Australia and Britain.

Their report also contains a major correction to the key method used by atmospheric chemists to estimate the ability of chemicals to deplete ozone or to cause global warming. As a result of the correction it is now clear that many synthetic gases are nearly 20 percent less capable of doing harm than was estimated previously. The immediate practical effect of the correction is to lower the ozone depleting potential, or ODP, of some chemicals below the maximum tolerated under the Clean Air Act.

The law says that gases cannot be released to the atmosphere unless their ODP is less than 20 percent that of CFC-11. Because of the correction, new calculations are likely to reveal that several synthetic gases once thought banned are now acceptable.

The correction grew out of new studies by the Prinn group of the amount of hydroxyl radical, or OH, in the air. Prinn had thought the concentration was low and slowly rising. It now turns out that the OH level is higher than thought and has not risen at least since 1978.

"This is good news," Elkins said, "because OH is a natural cleanser in the atmosphere. It removes various ozone depleting substances [including methyl chloroform] and some 'greenhouse' gases."

Unfortunately, OH does not help break down carbon dioxide, one of the chief greenhouse gases, or CFCs, the major ozone depleters.

Mr. CHAFEE. Mr. President, in 1987, under the leadership of our President—who was President? Ronald Reagan was President in 1987—the Environmental Protection Agency convinced the rest of the world to sign onto a treaty known as the Montreal Protocol. That treaty called for a reduction in the production and use of chemicals that scientists predicted and stated were destroying the stratospheric ozone layer.

The stratospheric ozone layer is Earth's shield against harmful ultraviolet radiation. What is the harm with that? Why do we care about ultraviolet radiation? Well, ultraviolet radiation comes in through these holes made in the ozone layer as a result of chemicals such as chlorofluorocarbons. This was first discovered in the mid-1980's, over Antarctica. Scientists told us that there was a class of ozone-destroying chemicals, such as methyl chloroform and CFC's, as I previously mentioned. As a result of the hole in the ozone layer, the ultraviolet radiation came through without being screened, and that is the principal cause of skin cancers in our society today.

In 1987, the Montreal Protocol called for a 50-percent reduction in the production and use of these chemicals by the signatories to the protocol.

In 1990, under the leadership of another Republican President, President Bush, the protocol was amended, and Congress passed the Clean Air Act, and part of that required a complete elimination of these chemicals.

A number of groups opposed those regulatory efforts. They said it was unnecessary. They said it could not be done, that it would cost too much.

What has been the result? As reported in today's newspaper, one of the chief threats to Earth's protective ozone layer has begun to diminish. The concentration of CFC's in the atmosphere is just about at its peak. In other words, when we stop sending up the CFC's, it does not stop just like that, because those that were released years before are winding their way up into the stratosphere. But because of the efforts we took in the mid-1980's, those that we released at the time have just about completed their journey, and we have cut off the supply, and the number of CFC's going into the stratosphere is beginning to diminish. The concentration is just about at its peak and should start to diminish shortly. The concentration of methyl chloroform peaked in 1990 and has been falling ever since.

I have here a quote by James Elkins of the National Oceanic and Atmospheric Administration's Climate Monitoring and Diagnostics Laboratory in Boulder, CO. "This is good news for the atmosphere. * * * We're starting to see the first real benefits of regulation."

Mr. President, the point of highlighting this good news story is to show that sometimes we get it right. All environmental laws and regulations are not the demons some would have us believe. I am certain that the good news of today would not have been possible if the pending bill had been in effect at the time of the Montreal Protocol in 1987 and the Clean Air Act Amendments in 1990.

If this law that we are debating today had been in effect at that time, the first thing we would have spent years doing would be a risk assessment and a cost-benefit analysis. When all of that was completed, because of the judicial review provisions in this statute before the Senate, this act would be on appeal after appeal after appeal. What we accomplished in 1987 we never would have done.

Mr. President, I wish to draw people's attention to, first, that regulations do produce some good effect; second, to point out some of the problems that are incipient in the act before the Senate.

AMENDMENT NO. 1539, AS MODIFIED

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to modify my amendment No. 1539. I send the modification to the desk.

The PRESIDING OFFICER. The Senator has that right. Is there objection? Without objection, it is so ordered.

The amendment (No. 1539), as modified, is as follows:

Insert at the appropriate place:

SECTION 709. AGENCY INTERPRETATIONS IN CIVIL AND CRIMINAL ACTIONS.

"(a) No civil or criminal penalty shall be imposed by a court, and no civil administrative penalty shall be imposed by an agency, for the violation of a rule—

"(1) if the court or agency, as appropriate, finds that the rule, and other information reasonably available to the defendant, failed to give the defendant fair warning of the conduct that the rule prohibits or requires; or

"(2) if the court or agency, as appropriate, finds that the defendant—

"(A) reasonably in good faith determined, based upon the language of the rule published in the Federal Register, and other information reasonably available to the dependent, that the defendant was in compliance with, exempt from, or otherwise not subject to, the requirements of the rule; or

"(B) engaged in the conduct alleged to violate the rule in reasonable reliance upon a written statement issued by an appropriate agency official, or by an appropriate official of a State authority to which had been delegated responsibility for implementing or ensuring compliance with the rule, after the disclosure of the material stating that the facts, action compliance with, or that the defendant was exempt from, or otherwise not subject to, the requirements of the rule.

In making its determination of facts under this subsection, the court or agency shall consider all relevant factors, including, if appropriate: that the defendant sought the advice in good faith; and that he acted in accord with the advice he was given.

"(b) In an action brought to impose a civil or criminal penalty for the violation of a rule, the court, or an agency, as appropriate, shall not give deference for the propose of that action only to any interpretation of such rule relied on by an agency in the action that had not been timely published in the Federal Register, and was to otherwise personally available to the defendant or communicated to the defendant by the method described in paragraph (a)(2) in a timely manner by the agency, or by a state official described in paragraph (a)(2)(B), prior to the commencement of the alleged violation.

"(c) Except as provided in subsection (d), no civil or criminal penalty shall be imposed by a court and no civil administrative penalty shall be imposed by an agency based upon—

"(1) an interpretation of a statute, rule, guidance, agency statement of policy, or license requirement or condition, or

"(2) a written determination of fact made by an appropriate agency official, or state official as described in paragraph (a)(2)(B), after disclosure of the material facts at the time and appropriate review,

if such interpretation or determination is materially different from a prior interpretation or determination made by the agency or the state official described in (a)(2)(B), and if such person, having taken into account all information that was reasonably available at the time of the original interpretation or determination, reasonably relied in good faith upon the prior interpretation or determination.

"(d) Nothing in this section shall be construed to preclude an agency:

"(1) from revising a rule or changing its interpretation of a rule in accordance with sections 552 and 553 of this title, and, subject to the provisions of this section, prospectively enforcing the requirements of such rule as revised or reinterpreted and imposing or seeking a civil or criminal penalty for any subsequent violation of such rule as revised or reinterpreted.

"(2) from making a new determination of fact, and based upon such determination, prospectively applying a particular legal requirement.

"(e) This section shall apply to any action for which a final unappealable judicial order has not been issued prior to the effective date.

Mr. HATCH. Mr. President, are we prepared to move ahead on this?

Mrs. HUTCHISON. I believe we need a couple of minutes of debate, with perhaps 3 minutes to Senator BIDEN and the same for me, if that is acceptable to everyone.

Mr. LEVIN. One minute.

Mr. HATCH. Mr. President, I ask unanimous consent that we have 6 minutes equally divided between the distinguished Senator from Texas and the distinguished Senator from Michigan.

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

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LEVIN. Mr. President, we are willing to have this adopted on a voice vote. If there is a request for a rollcall, as apparently there was, of course, that is the right of folks who want a rollcall.

We are prepared to accept this on a voice vote.

Mr. BIDEN. Will the Senator yield a minute?

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

Mr. BIDEN. I thank the Senator from Texas for her willingness to make the accommodations she has. Because she has operated under such good faith, I will vote for this amendment if there is a vote. I want to make it clear it does not satisfy all of my concerns and objections, nor, I suspect, do the changes satisfy her.

There is an effective date in here that would make this, in effect, retroactive. I think that is bad public policy. I think it is also inconsistent with having a piece of legislation that will take effect as a whole upon passage but one section of it that looks back and is retroactive.

I also am still not satisfied, nor, I suspect, is the Senator from Texas satisfied, with the section allowing, in effect, an individual to be able to say, "I acted in good faith," and not be subject to penalties or not be subject to civil or criminal penalties.

There are a few other things I still have problems with. If we ever get to the point where, in the substitute that the Senator from Ohio is going to offer to this legislation as a whole, I would attempt to put in the language more to the liking of the Senator from Delaware, were that ever to prevail.

Having said that, I sincerely thank the Senator from Texas. This is, from my perspective, a much improved version and meets the vast majority of my concerns that I had relative to the amendment. I yield the floor.

Mr. JOHNSTON. Will the Senator yield?

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

Mr. JOHNSTON. I thank the Senator from Texas for her cooperation in working out on my behest a number of amendments.

I believe this is a well-drawn amendment now. It speaks to a much needed principle of the law, and that is that Federal officials ought to tell the truth. And we ought to be able to rely on them when they do. This amendment carries out that policy. I enthusiastically support it.

Mr. LEVIN. Mr. President, I do not know if I have any time remaining.

The PRESIDING OFFICER. The Senator has 25 seconds.

Mr. LEVIN. That is long enough.

Mr. President, a number of the problems which I saw in this amendment have been corrected. There still remains a problem with it, but I intend to vote for this amendment, and I want to thank the Senator from Texas for introducing it. It is an important point she is making, and the changes she has made have significantly improved the amendment.

Mrs. HUTCHISON. Mr. President, I appreciate very much the cooperation I have had with the Senator from Michigan, the Senator from Delaware, the Senator from Louisiana, and the Senator from Alabama, all of whom on the other side worked very hard, I think, to improve this amendment.

The purpose of my amendment is to make sure there is fair play in the system, that our administrative regulatory agencies give notice to those who are going to rely on it so that they can comply with the regulations. That is the purpose.

I think, frankly, it is a better amendment now. I think there will be fair play on both sides.

I think it is very important that we keep the principle of fairness in this regulatory reform bill. I think we have achieved that with this amendment.

Mr. President, I ask unanimous consent that Senator MURKOWSKI be added as an original cosponsor.

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

Mrs. HUTCHISON. Last, I want to thank the Senator from Utah.

I want to say I have never seen a more patient manager of a bill than the Senator from Utah. This has been a very tough amendment. We have spent most of the day on it. He has been very accommodating to all of the differing views on both side, and has listened patiently. For that reason, I think we have improved this bill.

In the future, there is going to be—I hope—a good working relationship, rather than an adversarial relationship, between the regulators and the regulated. That is the purpose of this bill. I think we have achieved it.

I ask for the support of all of our colleagues for this improved amendment. I look forward to a strong vote. I yield the floor.

Mr. HATCH. I want to commend the distinguished Senator from Texas. It corrects some real injustices. She has worked long and hard to accommodate

everybody, and I hope we will all vote for this amendment.

Mrs. HUTCHISON. I yield back the remaining time, and I ask for the yeas and nays.

Mr. JOHNSTON. Mr. President, I ask the Senator, will this be the last vote today?

Mr. HATCH. I honestly do not know.

Mr. JOHNSTON. The Senator from Michigan had an amendment ready to go. I urged him not to bring it up at this time because I hope we can work it out over the weekend.

Mr. HATCH. I know the distinguished leaders of both sides prefer to press onward, but I am not sure what their decision will be. I think we need to have this vote and go from there.

Mr. LEVIN. Mr. President, we will also be offering the Glenn-Chafee substitute this afternoon.

Mr. JOHNSTON. That would be voted on Monday.

Mr. LEVIN. That will require some significant debate both Monday and perhaps today.

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 bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Missouri [Mr. BOND], the Senator from Montana [Mr. BURNS], the Senator from Colorado [Mr. CAMPBELL], the Senator from Maine [Mr. COHEN], the Senator from Texas [Mr. GRAMM], the Senator from Indiana [Mr. LUGAR], the Senator from Arizona [Mr. MCCAIN], the Senator from Alabama [Mr. SHELBY], and the Senator from Maine [Ms. SNOWE] are necessarily absent.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN], the Senator from California [Mrs. BOXER], the Senator from New Jersey [Mr. BRADLEY], the Senator from Arkansas [Mr. BUMPERS], the Senator from Ohio [Mr. GLENN], the Senator from Iowa [Mr. HARKIN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Maryland [Ms. MIKULSKI], the Senator from Arkansas [Mr. PRYOR], and the Senator from Maryland [Mr. SARBANES] are absent on official business.

The PRESIDING OFFICER (Mr. JEFFORDS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 80, nays 0, as follows:

[Rollcall Vote No. 308 Leg.]

YEAS—80

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

NOT VOTING—20

Bingaman	Cohen	McCain
Bond	Glenn	Mikulski
Boxer	Gramm	Pryor
Bradley	Harkin	Sarbanes
Bumpers	Hollings	Shelby
Burns	Kennedy	Snowe
Campbell	Lugar	

So, the amendment (No. 1539), as modified, was agreed to.

Mr. DOLE. Mr. 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.

POSITION ON VOTE

• Mr. BURNS. Mr. President, I was necessarily absent during the vote on the Hutchison modified amendment to S. 343 today. Had I been present, I would have voted for the amendment. The amendment, which stated that civil and criminal penalties shall not apply if the rule failed to give fair warning of required conduct, clarifies S. 343 and, I believe, is a valuable addition to the bill.

I would like to note that my vote would not have affected the outcome of the vote, which was adopted by the Senate, 80–0.•

The PRESIDING OFFICER. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate there will be no more votes today. I understand that the major amendment on the other side, the so-called Glenn-Chafee, et al, amendment, will be laid down and that will be debated this afternoon, and then on Monday I understand the distinguished Democratic leader would like to change the time of the cloture vote from 5 to 6 p.m.

Mr. DASCHLE. If the leader will yield, that would accommodate a couple of our Members who will be back and ready to vote at 6 o'clock.

Mr. DOLE. I ask unanimous consent that the cloture vote on Monday occur at 6 p.m.

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

Mr. DASCHLE. If the leader will yield, does the leader contemplate votes prior to that?

Mr. DOLE. It is my hope—and we were discussing it earlier—there may be solid debate Monday on the major amendment. If that is the case, then there would not be any votes. If there should be a lull, then we would like to set the amendment aside and take up other amendments. So there could be rollcall votes. I think it is probably less than a 50–50 chance. I would not want anybody to leave here thinking there will not be any votes. There could be a vote. But I think that will be determined by debate on this major amendment, which I assume will probably be extended and continuous.

Mr. DASCHLE. If the leader will yield, that would be my understanding as well. I think there are a number of people who have expressed an interest in speaking on the substitute, but I would say, in fair warning to all of our colleagues, if there is a lull, we are prepared on this side to bring up another amendment, set the substitute aside and have a good debate on the amendment.

Mr. DOLE. I think another suggestion might be that if there were any votes—there probably would not be any more than one or two—they could immediately follow the cloture vote. So let us do it that way, so that we could say the first vote will occur at 6 p.m. and if any other votes are ordered during the afternoon, they will occur immediately following the vote on cloture. The vote on the substitute, I am not certain whether that will come on Monday evening or Tuesday. There is no indication of that yet.

Mr. DASCHLE. At this point, I am not sure we are prepared to come to any agreement on a time certain, but we will have a good debate on the substitute on Monday, and I assume sometime either Monday night or Tuesday we will be prepared for a vote on that, too.

Mr. DOLE. It is still our hope to complete action on this bill on Tuesday. I know there are some amendments on each side. I do not know how many, but I think maybe three or four on this side, maybe three, four, five on the other side.

So I advise Members that it will probably be late on Monday evening and early on Tuesday so that we can complete action on this bill, so we can move on to the next matter on the agenda, so that we can start our August recess sometime in August.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I ask unanimous consent to speak in morning business for no more than 2 minutes.

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

REASSIGNMENT OF DEPUTY FBI DIRECTOR POTTS

Mr. CRAIG. Mr. President, about an hour ago, I had a phone conversation

with the Director of the FBI, Louis Freeh. At that time, he told me that he permanently reassigned Larry Potts, his immediate assistant, Deputy Director, to a new assignment in the FBI pending an investigation that is now underway in the Justice Department as it relates to the performance of certain FBI personnel with the Ruby Ridge incident in Idaho.

For over 2 years, I have pursued open, factual airing of the events of that incident. At the time Mr. Freeh had recommended Potts for his appointment, I asked that be deferred and the man not be considered until such time as the cloud over the FBI was cleared up. It appears we now may be moving in the direction of full public disclosure of this incident and the activities of the Federal agents involved.

I say this on behalf of the FBI and its reputation, which is critically important as the major law enforcement community of our country, Federal law enforcement community, and I also say this for the families of the victims of Ruby Ridge, that it is time we move now openly and publicly with hearings both here, in the Senate, and with the activities of the Justice Department to clear this issue.

Mr. Freeh, in that conversation, pledged full cooperation in all activities that will occur in the Senate and in the House in the hearings that may come about. I certainly hope we can move late this summer or early this fall to full and thorough investigative hearings, oversight hearings on this incident. I think the American people now demand it, and I think it is important we once again reestablish the credibility of the FBI by the cleansing of this issue.

I yield back the remainder of my time.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, I compliment my colleague from the State of Idaho. I probably was nearly as shocked and surprised as he was to hear a few moments ago on national television that the Deputy Director of the FBI has been "reassigned."

It seems to me that the Senator from Idaho has made a very good point. I do not claim to have any inside information with what happened at Idaho. It is entirely possible my colleague from that State knows much more about this than I do.

If I understand it correctly, the Deputy Director of the FBI has been reassigned. I do not know what that means, but I hope that the Senate will move forthwith and speedily for a thorough investigation of this matter. I reserve the right to exercise my final judgment on this after I know more about it than I do at this particular moment.

But I think the Senator from Idaho has put his finger on the matter. The Federal Bureau of Investigation is something that must be beyond reproach. Again, I do not know at this moment what the reason for this was, but as I understand it, the Director of the FBI has determined that, for the good of the service and because Mr. Potts is under some investigation that I believe started in the House of Representatives, that he thought it was best for him to be reassigned.

I do not agree with that matter at all. If Mr. Potts has not done anything wrong, not done anything improper, not violated the law, not violated the Federal Bureau of Investigation rules, then the Director of the FBI and the administration should stand square behind him and fight out the matter.

If, on the other hand, that is not the case and he did do something wrong in any area that I just mentioned, or any other area, he should be fired, because it appears to me that this is a tremendously serious matter. I certainly agree with my colleague from Idaho that I hope the proper committee of jurisdiction, which I assume would be the Judiciary Committee, should move aggressively on this matter in the Senate so we can, too, make sure that we have a full explanation of what is or is not going on.

This is a serious matter that has had a very adverse effect on this Senator's view of the Federal Bureau of Investigation and what it does or does not do properly.

I thank my friend from Idaho for bringing this up. I wish to associate myself with his remarks.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. GORTON. Mr. President, there has been a great deal of discussion on the Delaney clause in connection with S. 343, the regulatory reform bill, with which we are dealing right now. There is a provision in S. 343 that would eliminate the Delaney clause "zero-cancer risk" criterion and replace it with a "negligible risk" criterion when determining the maximum permissible levels of pesticide residues on foods.

The Delaney clause, a provision contained in section 409 of the Federal Food, Drug, and Cosmetic Act of 1958 states that no additive will "be deemed safe if it is found to induce cancer when ingested by man or animal. . . ."

The intention of this law is admirable: To prevent cancer-causing agents from entering our food supply. I do not disagree with this intent, and I am sure that no one else does in this body either. The problem, however, is that in 1958 when the Delaney clause was passed, scientists could not measure additives in parts per billion or parts per quintillion, as they can today. In 1958, scientists could only detect cancer-causing additives in parts per thousands—concentrations that, indeed, often posed legitimate health risks to many Americans.

This 37-year-old Federal law establishing a "zero risk" level for pesticide residues in processed food is outdated and unnecessary and has adverse impacts on almost every farmer in the United States.

In my own State of Washington, more than 200 minor crops are affected by the Delaney clause. Since 1988, our farmers have lost nearly half of all pesticides registered for agricultural use and are currently faced with a shortage of agricultural pesticides because the cost of registration and reregistration is so high.

For example, about 2.6 million acres of crops in the United States rely on Propargite. Propargite, a common pesticide used for mite control, is absolutely necessary to combat mites that feed on apples, grapes, hops, mint, potatoes, alfalfa seeds, and many other crops that are grown not only in my State but in other States as well.

The potential impacts of a Propargite cancellation would be detrimental to agricultural producers in States like California, Idaho, Oregon, and my own State of Washington where crops grown on smaller numbers of acres, like these, are important to the economy.

These potential impacts could cost our farmers hundreds of millions of dollars and would not only unnecessarily increase the price of our food but may well jeopardize food safety itself.

Further, I have always been an advocate for safe, affordable, and abundant foods. Let me be clear, safety for foods will not be threatened because of this provision in S. 343. The specific provision only replaces the "zero-cancer-risk" criterion and replaces it with a negligible risk criterion. This "negligible risk" standard will give the Federal Government the flexibility it needs to permit our farmers to use newer and safer pesticides when they do not provide any significant risk to our foods. The status quo, however, is a threat to our farmers because present technology can measure these commodities in amounts so small as not to have any real impact, other than to bar the use of particular pesticides.

As the Senate prepares to pass legislation that will move us toward a balanced budget in the year 2002, we must make tough choices. In light of reducing price support programs, I believe we should also work extremely hard to eliminate outdated and burdensome regulations that are placed on our farmers, among others. The Delaney clause is such an example of such an

unnecessary regulation, and I am convinced that the Senate should pass legislation that will reduce regulatory burdens that farmers across this country face every day with no true, valid social purpose.

As I travel around my own State, I have listened closely to the comments, suggestions, and concerns of my State's agricultural community. Their message is clear: Reduce the regulatory burdens that restrict our ability to do what we do best—provide healthy, safe, affordable, and abundant food. As Members of Congress, we should do all we can to provide that relief for those who carry out this important and very vital task.

In summary, the science that drove the intent of the Delaney clause 37 years ago is outdated. With today's technology and science, it is right—not only right but necessary—to revise and to revisit that law passed in 1958 and put a new one in its place that will meet its goals and, at the same time, save the ability of our farmers to produce food accurately and well.

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. 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 are prepared to lay down—at least the other side is prepared to lay down—the Glenn-Chafee amendment. So I ask unanimous consent that the pending business be temporarily set aside so that can occur and we can at least begin preliminarily to debate on that.

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

THE TENNESSEE DEBACLE

Mr. HATCH. Mr. President, let me take a minute to state I am going to make an announcement here, in the next half hour or so, about what the Judiciary Committee is going to do about the Tennessee debacle. So I just want to put people on notice that the Judiciary Committee is going to act on that debacle. I am very upset about it. I am upset about the way law enforcement officers have acted. It appears that there may have been—these are allegations, not necessarily facts—may have been ATF agents, FBI agents, perhaps even U.S. attorneys and other officials, there may even have been some Canadian Royal Mounted Police involved in this racist incident.

So I am going to have a few remarks to make, and I am going to set a committee agenda on that before we end today. I just want people to be aware of it because we are not going to sit around and let that type of stuff happen.

Mr. President, I will announce with more specifics what we are going to do. But as of today I am sending out a notice that the Judiciary Committee will hold a hearing next Friday on this matter. We expect top representatives from Justice, Treasury, FBI, ATF, and others to be in attendance and to come and tell us what they are going to do to get to the bottom of this, what kind of action they are going to take, to the extent they can tell us with the investigation as of that date.

So I will talk about it with more specificity before the day is out, but I already have a notice going out. I have consulted with Senator BIDEN, and I have to say I have consulted with the distinguished Senator from Tennessee, Senator THOMPSON, who, representing his State, said that Tennesseans want to get to the bottom of this, they want to resolve it, and that he, representing Tennessee, will want to be involved in it and do everything he can to resolve it as well. He has shown great interest. I want to pay a special tribute to him for his work with me on this matter.

Next Friday there will be an intensive hearing on this matter. We are going to just start to get to the bottom of it, and we are going to make some demands on the leaders of this country to come up with a system that will never permit this to happen again anywhere. We are not going to have law enforcement people, who wear the badge of the public, acting like racists, or being racist, or participating in racist activities.

From what I have heard about this, assuming that it is true—and I have only read newspaper accounts and I have checked with some of these leaders—what I have heard about this, it is abominable. I have to tell you, I have chatted with some of the leaders who confirmed that it is true, that some of our agents have participated in this. Frankly, it is time to put an end, once and for all, to that type of racist activity, and we are going to do it.

I want to personally pay tribute to people in Justice and the FBI and ATF and Treasury who have all indicated to me that they are with me on this, they want to get to the bottom of it, and they are going to handle it with great care and with efficiency.

So we will talk more about it a little bit later. Those hearings are scheduled now for next Friday, and we are going to get to the bottom of this thing as much as we can as of that date. Then we are going to follow up.

Mr. LEVIN. Mr. President, I am sickened by media reports, if they are correct, regarding the so-called "Good O' Boys Roundup" in Tennessee. According to these reports hundreds of law enforcement officials are involved in this whites only event in the spring of each year.

These reports describe events at the gathering, sale of items like T-shirts with a target superimposed over a picture of Rev. Martin Luther King, activities and displays so blatantly racist that I would not want to repeat them on the floor of the Senate. But, I want to make clear that the behavior of these officers, if the reports are true, is reprehensible and cannot be tolerated. They must be condemned if engaged in by anyone. But, if the participants were law enforcement officers sworn to protect the rights of all Americans, such activities are all the more reprehensible.

I am pleased to see that Director John Magaw has ordered an investigation into the involvement of any ATF officers. I would hope that State and local authorities would follow suit. I trust that the ATF investigation will be timely, professional, and thorough, and that a full report will be made to the appropriate committees of Congress, and that officers found to have participated in racist activities should be discharged.

Mr. President, this kind of overt racism is unacceptable and has no place today in American life. It is a sad fact of American history that it has existed at all. I am confident that the American people overwhelmingly reject such behavior, particularly by officers of the law, and will demand that it not be tolerated.

I ask unanimous consent that two articles from the Washington Times be printed in the RECORD.

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

[From the Washington Times, July 11, 1995]

RACIST WAYS DIE HARD AT LAWMEN'S RETREAT—ANNUAL "GOOD O'BOYS ROUNDUP" CITED AS EVIDENCE OF "KLAN ATTITUDE" AT ATF

(By Jerry Seper)

OCOEE, TENN.—They're trying to tone down the racist trappings of the "Good O'Boys Roundup" here in the Tennessee hills east of Chattanooga, where hundreds of federal, state and local law enforcement officers gather every spring to let off steam.

There was a lot to tone down. Gone, for example, are many of the crude signs that once greeted arriving officers, like this one: "Nigger check point."

The "Good O'Boys Roundup" is organized by agents of the Bureau of Alcohol, Tobacco and Firearms, and it was held this year on May 18–20.

Also gone this year was the traditional Saturday-night skit highlighting the Good O'Boys steak dinner." In one skit, an officer in fake Ku Klux Klan garb pulled a dildo from his robe and pretended to sodomize another officer; who was in blackface.

But according to law enforcement officers who attended this year's and other events, a whites-only policy remains in effect.

Still on sale were T-shirts with Martin Luther King's face behind a target, O.J. Simpson in a hangman's noose and white D.C. police officers with a black man sprawled across the hood of their car under the words "Boyz on the Hood."

"Nigger hunting licenses" also were available throughout the compound, consisting of motor homes, trailers, tents and pickups gathered around a large beer truck.

At this year's event, some black officers—including ATF agents—attempted to crash the party and were turned away after having "bitter words" with some of the white officers in attendance, the sources said.

At attempt by roundup organizers to tone down the event's racist activities comes at a time when black agents have charged ATF with discrimination. In a lawsuit pending in U.S. District Court in Washington, they claim ATF supervisors have done little to address complaints of racial slurs, harassment and other job discrimination.

Brought by 15 plaintiffs, the suit alleges that such incidents as "nigger hunting licenses" seen in ATF offices, a Ku Klux Klan card posted in ATF's Oklahoma City office and use of the word "nigger" by white ATF officials have gone unpunished. There are about 200 blacks among the 2,000 agents within ATF, a law enforcement arm of the Treasury Department.

Representing the black agents is lawyer David J. Shaffer of Washington. He said that his clients were aware of the Good O' Boys Roundup and that discovery in the case found that announcements concerning it had been circulated exclusively by and to white agents.

"This is what this lawsuit is about: a Ku Klux Klan attitude among some of the white agents that seriously affects black agents on a day-to-day basis," Mr. Shaffer said.

Trial in the case has been tentatively set for next year before U.S. District Judge Royce C. Lamberth.

The roundup, according to invitations sent out last year, has been coordinated unofficially for the past several years through the ATF office in Greenville, S.C., and is open to "any good o' boy invited to attend." Non-law-enforcement attendees must be sponsored and accompanied by law enforcement officers, and participants wear wristbands to verify that they were invited.

The event coordinator is Gene Rightmyer, a retired ATF agent who previously was assigned to field offices in Tennessee and South Carolina. Mr. Rightmyer did not return telephone messages left for him with ATF for comment.

Roundup invitations show that participants were asked to send their registration fees—ranging from $70 to $90—to the Greenville ATF office, and the office's telephone was listed as the number for any questions concerning the event.

Todd Lockhart, acting agent in charge of the Greenville office, declined comment, referring inquiries to the ATF regional office in Charlotte, NC.

Several ATF agents in Greenville, however, were aware of the roundup, and during interviews they expressed concern and dismay over the annual event.

"I have never attended, nor would I," said one agent, adding that he and others knew about the racist activities and felt the event reflected poorly on the agency.

"I am not surprised about the signs or the other activities, and whether the racism is overt or subtle, it is wrong," said another ATF official. "I cringe on behalf of the agency."

None of the several Greenville agents interviewed volunteered that they had ever attended the event.

Earl Woodham, ATF spokesman in Charlotte, said he was aware of the annual roundup and had been invited on one occasion to attend but declined. He noted that the event was not sanctioned or authorized by ATF.

"The ATF does not and will not tolerate any kind of discrimination," he said. "But what people do on their own time is their business; we cannot control internal morality."

Mr. Woodham said, however, that Mr. Rightmyer used "poor judgment" in using the ATF address and telephone number in his invitation. He said if Mr. Rightmyer were still employed by the agency, he would be subject to "a full review and possible sanctions."

He also suggested that ATF officials who attend the annual event were "a lot of the older agents, spinoffs from the days of the revenuers and moonshine chasers."

"The younger agents just don't have time for this kind of activity," he said.

ATF spokesman Jack Killorin in Washington did not return calls for comment.

The roundup was organized in 1980 by ATF agents in Chattanooga and Knoxville. It began with 58 persons, mostly ATF agents, from Alabama, Georgia, Tennessee, Kentucky and North Carolina. Roundup attendance jumped to 341 last year.

According to Mr. Rightmyer's invitation, there are few rules. Among those listed were no fighting, no fireworks and "what goes on at the roundup stays there."

Jeff Randall, a former Attalla, Ala., policeman who attended this year's event, said that while he would not "condemn" the entire group, there was "an obvious racist overtone" by many of those in attendance.

"People can gather and have fun, and there was a lot of good, clean fun available," he said. "But the obviously racist stuff was just not acceptable."

Mr. Randall also confirmed seeing black agents at this year's event being turned away, saying that some of the program participants were "real mad" that they had tried to get into the compound.

A former Alabama police official who asked not to be identified said entrance to the roundup has in the past been tightly controlled along a one-lane dirt road. He said he personally saw and photographed racially inflammatory signs along that road.

The former police official, who said he attended three of the roundups, said the majority of participants identified themselves as ATF agents. "The roundup has been a place for law enforcement personnel to go and let their hair down," he said. "But some of this overt racism is just inappropriate, plain and simple."

J.T. Lemons, owner of Grumpy's Whitewater Rafting here, whose company sponsored rafting trips at the roundup, said that organizers have "done what they can over the past few years to clean up the racism" and that some overt signs were ordered taken down.

Mr. Lemons confirmed, however, that racially sensitive T-shirts "and other stuff" remained on sale.

Other business owners in this Polk County, Tenn., community—east of Chattanooga, adjacent to the Cherokee National Forest—also confirmed they had seen the signs, T-shirts and other racist trappings but declined to be quoted on the record.

Meetings "designed to keep the White House informed" on the incident, including a listing of administration officials involved in giving or receiving information.

Mr. Clinton and agency heads have pledged to cooperate with the request.

But yesterday, nine days before the hearings are set to open, the joint panel has received documents on "roughly half" of the issues requested, according to a senior GOP source close to the negotiations.

"The Department of Defense has been very helpful, [and] the Treasury Department just sent over 13,000 pages of documents," Mr. Zeliff said. "Some people are trying to help us do our job, and some people aren't."

Justice Department spokesman Carl Stern denied that his agency was stalling. "We've given the committee complete cooperation."

Mr. Mikva's office and the Defense Department did not return calls seeking comment. Treasury Department officials hotly denied they are stalling, saying about 80 percent of the materials requested have been sent to the committee, and "almost all" of the rest will arrive by tomorrow.

Staffers for Mr. Zeliff's subcommittee have requested seven years' worth of personnel records on every ATF agent charged with misconduct. A senior source at the Treasury Department, which oversees ATF, said officials there don't consider records of agents not disciplined for their involvement in the Waco siege to be relevant to the investigation.

But the subcommittee is pressing on with its request, in an effort to "develop a pattern of overreaching on the part of BATF agents," according to the high-level GOP source on the joint panel.

Also yesterday, Sen. Arlen Specter, Pennsylvania Republican and presidential candidate, attacked Mr. Rubin for charging last week that the hearings are politically motivated and that proponents of hearings are "opponents of law enforcement."

In a response yesterday, Mr. Rubin denied saying that and suggested Mr. Specter "misunderstand[s] my views."

APPALLED ATF CHIEF ORDERS PROBE OF AGENTS' ROLE IN RACIST "ROUNDUP"—PLANS DISCIPLINE FOR THOSE INVOLVED

(By Jerry Seper)

The head of the Bureau of Alcohol, Tobacco and Firearms yesterday ordered an investigation into the involvement of ATF agents in a whites-only "Good O' Boys Roundup" in the Tennessee hills, saying he has "zero tolerance" for racism in the agency.

Director John W. Magaw, who took over ATF in October 1993 in the wake of the botched Branch Davidian raid, said he was "appalled" that agents would take part in an event marred by obvious displays of racism.

The Washington Times reported yesterday that ATF agents had organized and helped coordinate the annual roundup since 1980 and that participants, who numbered more than 300 this year, had displayed crude signs bearing racist remarks and sold T-shirts with racist and degrading slogans with depictions.

The Times also reported that, despite efforts in recent years to tone down the roundup's racist trappings, a whites-only policy has remained in effect, and black law enforcement officers, including an AFT agent, were turned away from this year's May 18–20 event.

"I am appalled that an event as the one reported in today's Washington Times would happen in any facet of our society—particularly involving law enforcement officers," Mr. Magaw said in ordering agency officials to find out how many agents were involved and whether ATF property was used to organize the event.

"Everyone at ATF knows of my intolerance for discrimination and harassment," he said. "If an inquiry finds that anyone is involved in these practices, I will do everything in my power to mete out the strongest possible discipline."

An AFT Officer of Inspection inquiry will look into accusations that current and former agents participated, review whether current agents had breached the agency's code of conduct, and try to determine what role former agent Gene Rightmyer played in the roundup.

Mr. Rightmyer, who has not returned telephone messages, has organized the roundup the past several years and, according to a recent letter of invitation, used the address and telephone number of the ATF office in Greenville, S.C., where he was assigned, as the contract point for registration fees and questions about the event.

Mr. Magaw said a preliminary review of the accusations began last month after article from the Gadsden Minutemen Newsletter was posted on the Internet. The Alabama article said racist activities went on at the roundup and that ATF agents were involved.

The preliminary inquiry found that as many as 10 agents had attended and that a black agent who went with two white agents had left after hearing "the racial undercurrents of other participants," Mr. Magaw said.

* * * * *

Roundup attendance jumped to 341 last year.

Two former Alabama police officers who attended the event this year said there were obvious racist overtones and confirmed seeing black officers being turned away. They said the majority of the participants they met identified themselves as ATF agents, an accusation denied by Mr. Magaw.

ATF has come under fire since the Branch Davidian raid in 1992 near Waco, Texas, during which the agency tried to serve an arrest warrant on sect leader David Koresh, resulting in the deaths of four agents and six Davidians. The agency's actions at Waco will be the subject of House hearings beginning next week.

Black ATF agents have charged in a federal lawsuit that agency supervisors have done little to address complaints of racial slurs, harassment and discrimination.

Trial in the case has been tentatively set for next year before U.S. District Judge Royce C. Lamberth. There are about 200 blacks among the 2,000 agents in ATF, an arm of the Treasury Department.

Mr. LEVIN. Mr. President, again I commend Senator HATCH. I know he will find strong bipartisan support for this initiative he is taking. There is a bipartisan determination to go root out this kind of racism in America.

Again, I think he will find very strong support, both in the administration and in those agencies, to root it out, and, I am sure, on the part of both sides of the aisle.

Mr. HATCH. Mr. President, if I could just add one other thing. The Judiciary Committee is going to resolve that problem. But we are also working very hard on the Ruby Ridge situation and also the Waco situation. We are going to resolve those, too. But I want to do it with a full investigation and not halfcocked. I want to get into it and do what has to be done.

With regard to Waco, we also know the House is starting their hearings next week. They have asked us to defer our hearings until after theirs, in other words until September. We have agreed to do it, on Waco.

On Ruby Ridge we are looking at it very, very carefully. We intend to follow through on it. I know the Senators from Idaho have both talked to me many times about this, and I have assured them this is going to happen and it is going to be done thoroughly and it is going to be done well. I just want everybody to understand that aspect as well, but I do think we do need to do some more investigation.

On the ATF matter, or should I say the Tennessee matter that involves ATF, FBI and others, naturally we will not, by next Friday, have all of the investigation done. But next Friday is to make sure we have our top officials in Government come in and tell us what they are going to do about these racist activities and to chat with us on the Judiciary Committee about what we can do to help them.

I have to, preliminarily, tell you, I am very concerned. I think, currently, our leaders over at the ATF and FBI are as good as we can have. John Magaw and Louis Freeh, Judge Freeh, are excellent leaders. They both are jumping right on this. Both of them have done an awful a lot to try to make sure there is no racism within their agencies, and Director Freeh in particular has been making sure that equal opportunity laws are abided by, outreach is being undertaken for African-Americans and other minorities to come into the FBI. And I commend him for it.

I commend him for it. He has been a breath of fresh air ever since he has been there. I feel sorry that he has had to inherit some of these problems. He has inherited Ruby Ridge, and some of the other problems. But nevertheless, I have confidence in him in helping to resolve these problems, and we are going to do everything we can to help him and the others to do the job, as well as our Secretary of the Treasury, our Attorney General, and others to resolve some of these serious problems.

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

AMENDMENT NO. 1575 TO AMENDMENT NO. 1487

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 assistant legislative clerk read as follows:

The Senator from Delaware [Mr. ROTH] proposes an amendment numbered 1575 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:

Add a new section 637 to Subchapter III as follows:

SEC. 637. INTERAGENCY COORDINATION.

"(a) To promote the conduct, application, and practice of risk assessment in a consistent manner and to identify risk assessment data and research needs common to more than 1 Federal agency, the Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy shall—

"(1) periodically survey the manner in which each Federal agency involved in risk assessment is conducting such risk assessment to determine the scope and adequacy of risk assessment practices in use by the Federal Government;

"(2) provide advice and recommendations to the President and Congress based on the surveys conducted and determinations made under paragraph (1);

"(3) establish appropriate interagency mechanisms to promote—

"(A) coordination among Federal agencies conducting risk assessment with respect to the conduct, application, and practice of risk assessment; and

"(B) the use of state-of-the-art risk assessment practices throughout the Federal Government;

"(4) establish appropriate mechanisms between Federal and State agencies to communicate state-of-the-art risk assessment practices; and

"(5) periodically convene meetings with State government representatives and Federal and other leaders to assess the effectiveness of Federal and State cooperation in the development and application of risk assessment.

"(b) The President shall appoint National Peer Review Panels to review every 3 years the risk assessment practices of each covered agency for programs designed to protect human health, safety, or the environment. The Panels shall submit a report to the President and the Congress at least every 3 years containing the results of such review.

Mr. ROTH. Mr. President, my amendment is to promote the use of risk assessment in a consistent manner across agencies because we believe it will clearly improve the intent of S. 343 and will further the bill's intent of improving risk assessment within the Federal Government.

It only makes sense to ensure that the conduct, application, and practice of risk assessment be done as uniformly as possible across agencies. A consistent approach will help to minimize unnecessary bureaucracy, overlap, and duplication, and will lead to a more efficient and effective process of performing risk assessment.

This amendment is pulled directly from the Glenn substitute, and shows our effort to continue this process in a truly bipartisan manner. This amendment would require the Director of OMB, in consultation with the Office of Science and Technology Policy to survey relevant agency risk assessment practices to determine the scope and adequacy of risk assessment practices used by the Federal Government.

The amendment also requires the establishment of interagency mechanisms to promote coordination among

agencies' risk assessment practices, to promote the use of state-of-the-art risk assessment practices throughout the Federal Government, and establish mechanisms to communicate risk assessment practices between Federal and State agencies, as well as to promote Federal and State cooperation in the development and application of risk assessment.

In addition, the amendment requires national peer review panels every 3 years to review risk assessment practices across agencies for programs designed to protect human health, safety, and the environment.

This amendment will ensure that advances in science and technology are continuously incorporated in Federal risk assessment practices and ensure coordination of these practices among Federal and State agencies.

This amendment will, therefore, improve risk assessment practices in the Federal Government, and will result in a more effective and efficient risk assessment process—a process that is the foundation of effective health, safety, and environmental regulations.

Mr. President, I urge adoption of my amendment.

The PRESIDING OFFICER (Mr. KYL). Is there further debate on the amendment?

Mr. HATCH. Mr. President, we are prepared to accept the amendment on this side. We think it is a good amendment. I believe the other side is prepared to accept it.

Mr. LEVIN. Mr. President, we are not only prepared to accept the amendment but we are delighted that it is offered. It is language that actually comes from the Glenn-Chafee substitute. Needless to say, the more of that substitute that we can incorporate in the pending bill the happier we are. We are certainly pleased with this amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from Delaware.

The amendment (No. 1575) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1581 TO AMENDMENT NO. 1487

(Purpose: To reform regulatory procedures, and for other purposes)

Mr. LEVIN. Mr. President, I send to the desk now the so-called Glenn-Chafee substitute. This is on behalf of myself and Senators GLENN, CHAFEE, LIEBERMAN, COHEN, PRYOR, KERRY, LAUTENBERG, DASCHLE, BOXER, KOHL, SIMON, KENNEDY, DODD, MURRAY, AKAKA, JEFFORDS, BIDEN, DORGAN, BAUCUS, and KERREY, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. GLENN, for himself, Mr. CHAFEE, Mr. LEVIN, Mr. LIEBERMAN, Mr. COHEN, Mr. PRYOR, Mr. KERRY, Mr. LAUTENBERG, Mr. DASCHLE, Mrs. BOXER, Mr. KOHL, Mr. SIMON, Mr. KENNEDY, Mr. DODD, Mrs. MURRAY, Mr. AKAKA, Mr. JEFFORDS, Mr. BIDEN, Mr. DORGAN, Mr. BAUCUS, and Mr. KERREY, proposes an amendment numbered 1581 to amendment numbered 1487.

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

Mr. LEVIN. Mr. President, we are going to begin the debate on this substitute today and then continue this on Monday.

This embodies a number of changes that are really significant from the bill that is before us. They are succinctly set forth in a statement of administration policy.

Mr. HATCH. Mr. President, will the Senator yield? I know the Senator is just beginning what really is a very important statement of his position and others on this bill. But could I ask a special favor of the Senator? Senator STEVENS is here. He just needs to speak for about 4 or 5 minutes. I would rather have him do that.

Mr. LEVIN. I understand Senator CHAFEE is on the way to the airport. If the two of them could work out an order, it would be great.

Mr. HATCH. Senator CHAFEE first, and then Senator STEVENS.

Mr. LEVIN. That is fine.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I want to thank the Senator from Alaska very much for permitting me to proceed, and indeed giving me his podium.

Mr. President, I am pleased to join with Senator GLENN and Senator LEVIN and a bipartisan group of cosponsors to put this alternative before the Senate.

First, I want to say something about the pedigree of this amendment we are proposing. It is the bill which was reported unanimously by the Governmental Affairs Committee 15 to nothing. There are other regulatory reform bills before this body. One was reported from a committee on a straight party line vote, Republicans voting one way, the Democrats voting the other. Another was discharged by unanimous consent when the committee could not agree on a procedure for a markup.

In other words, there is tremendous dissension within the committee. But this amendment that we are offering is based on the bill that has the support of all the Republicans, and all of the Democrats on the Governmental Affairs Committee.

There is another point to be made about the history of this amendment. Back in 1982, the Senate passed a regulatory reform bill on a vote of 94 to 0. It is pretty rare that you get a vote like that around here, 94 to 0. A regulatory reform bill was passed just 15 years ago.

Many of the issues that were discussed here on the floor over the past few days were all addressed by that bill; issues such as the role of cost-benefit analysis, judicial review, and setting agency priorities. I invite Members to go back and read that bill. They will find that it has more in common with the amendment that Senator GLENN and I are presenting than it has in common with the underlying substitute.

There was no supermandate in 1982. Cost-benefit analysis did not override other law. There was no prohibition on issuing a rule unless the agency could demonstrate that the benefits justified the cost. Cost-benefit studies were required. Yes; just as they are in this amendment that Senator GLENN and I are presenting. Agencies were asked to determine whether the benefits of a rule justified the cost. But the bill that the Senate adopted unanimously in 1982 did not set cost benefit as the ultimate test that a rule had to pass. That is one of the problems with the bill that we are amending here today.

On judicial review, the 1982 bill specifically precluded judicial review of the substance of cost-benefit studies. The agencies were required to perform them. Yes. They were. But the court challenges to the methods and the assumptions, or the underlying data, could not be used to overturn a rule. This is consistent with judicial review in the provisions we have in the Glenn-Chafee amendment.

Mr. President, the Senate has been down this road before. In 1982 it unanimously adopted a regulatory reform bill. Members ought to read that bill. They will find that the Glenn-Chafee amendment is cut from the same cloth. This year, one committee of the Senate unanimously reported a regulatory reform bill, and that is the Glenn-Chafee amendment.

In addition to the cost-benefit and judicial review benefits, there are other important differences that we will outline in the debate on Monday. I look forward to a spirited discussion.

I wish to thank the Chair and thank the managers of the bill for permitting me to proceed.

I thank the Senator from Alaska.

Mr. STEVENS. Mr. President, I thank my good friend. I will take just a few minutes.

(The remarks of Mr. STEVENS pertaining to the submission of S. Con. Res. 21 are printed in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. LEVIN. Mr. President, the substitute which we offer is basically the same bill as the Roth-Glenn bill, a bipartisan bill, a strong regulatory reform bill that passed Governmental Affairs unanimously.

Our substitute would fundamentally change the way that Federal regulatory agencies do business and would achieve meaningful, responsible regulatory reform.

The Glenn-Chafee substitute would help prevent regulatory agencies from issuing rules that are not based on good science or common sense and that impose costs that are not justified by the benefits of the rule. At the same time, the Glenn-Chafee substitute would not inhibit or prevent agencies from taking the necessary steps to protect public health, safety, and the environment.

The Glenn-Chafee substitute strikes a good balance between reducing the costs and the burdens of Federal regulation while ensuring that needed public protections and benefits are being provided. It would produce better informed decisions without bringing the regulatory process to a standstill or forcing outcomes which are harmful to health and to safety.

Under the Glenn-Chafee substitute, all Federal agencies would be required to perform and publish cost-benefit analyses before issuing major rules. The agencies must compare the costs and benefits of not only the proposed rule but of reasonable alternatives as well, including nonregulatory market-based approaches. The agency must explain whether the expected benefits of the rule justify the costs and whether the rule will achieve the benefits in a more cost-effective manner in the alternative. The cost-benefit analysis must be reviewed by a panel of independent experts and the agency must respond to peer reviewers' concerns.

Under Glenn-Chafee, the major regulatory agencies would be required to perform and issue risk assessments before issuing major rules. The risk assessments must be based on reliable scientific data and must disclose and explain any assumptions and value judgments. The risk assessment must be reviewed by a panel of independent experts and the agency must respond to peer reviewers' concerns.

Under Glenn-Chafee, Federal agencies are required to review all major regulations and eliminate all unnecessary regulations. If an agency had failed to conduct a review within the time required by the schedule, it would be required to issue a notice of proposed rulemaking to repeal the rule rather than to have the rule automatically sunset.

Under Glenn-Chafee, Congress would have 45 days before issuance of any major rule to review the rule and prevent it from taking effect by passing with expedited procedures a joint resolution of disapproval. This would put elected Representatives in a position to assure that agency rules are consistent with Congress' intent, a power that I have fought for since I first ran for the Senate.

Under Glenn-Chafee, agencies would be required to set regulatory priorities to address the risks that are most serious and can be addressed in a cost-effective manner. Agencies would be required to explain and reflect these priorities in their budget requests.

Under Glenn-Chafee, every 2 years the President would be required to report to Congress the costs and the benefits of all regulatory programs and recommendations for reform.

Under Glenn-Chafee, the Office of Management and Budget would be required by law to oversee compliance with the bill, would be required to review all major rules before issuance, and this would strengthen Presidential control over regulatory agencies, particularly the independent agencies.

Now, Mr. President, the substitute which we offer, the Glenn-Chafee substitute, is a strong and a powerful bill. It is an important reform measure which, again, just a few months ago had the unanimous, bipartisan support of Governmental Affairs.

Glenn-Chafee also avoids some problems that are present in the so-called Dole-Johnston bill. And that is why it represents a balance between reform, which we need, because we have all seen excessive regulatory burdens placed on Americans; we need reform, but we also need clean air and clean water, environmental protection, safe workplaces, safe food, and the other things which a regulatory process produces. We have to have both, and we can have both.

There are a number of problems, as I have said, in the Dole-Johnston bill. These problems are quite succinctly set forth in a document which has been produced by the OMB with a large number of agencies who are involved in the regulatory process.

I am going to read briefly from that document and just take a couple of examples from it and then put the remainder of the document in the RECORD.

It is called, from the Executive Office of the President, "Statement of Administration Policy":

> The Administration strongly supports the enactment of cost-benefit analysis and risk assessment legislation that would improve the regulatory system. S. 343, however, is not such a bill. Because the cumulative effect of its provisions would burden the regulatory system with additional paperwork, unnecessary costs, significant delay, and excessive litigation, the Secretaries of Labor, Agriculture, Health and Human Services, Housing and Urban Development, Transportation, the Treasury, and the Interior, the Administrator of the Environmental Protection Agency, and the Director of the Office of Management and Budget would recommend that the President veto S. 343 in its present form.

This letter is dated, by the way, July 10.

> The Administration is particularly concerned that S. 343 could lead to:

And then they list many of the problems with the so-called Dole-Johnston bill. First:

> Unsound Regulatory Decisions. A regulatory reform bill should promote the development of more sensible regulations. S. 343, however, could require agencies to issue unsound regulations. It would force agencies to choose the least costly regulatory alternative available to them, even if spending a few more dollars would yield substantially greater benefits.

I want to stop there and just use an example of what that document is referring to. The language in the bill requires that the rule adopt the least-cost alternative of the reasonable alternatives that are available. That may sound good at first blush. The problem is we do not always want to buy a Yugo. A Yugo may get you to where you are going, but it may be that you want airbags or it may be that you have five kids or it may be that you want other kinds of features that are not available on a Yugo. That is why Yugos are not selling that well, because even though it may be classified as a car, it still does not do what we want to be done, which we need to have done in a cost-efficient way.

I have a chart behind me which gives an example of what I am referring to. Let us assume that we pass a statute which says that we want a certain toxic substance in the air to be reduced to no more than 10 parts per million. That is what our instruction is to the agency. We decide as a Congress no more than 10 parts per million of a certain substance. We also authorize the agency, based on a cost-benefit analysis, waiving the cost of the benefits of going further, that they can be more restrictive than 10, should that cost-benefit analysis indicate to them that it makes common sense and it is cost-effective to do so.

So the agency makes a study, and that study is that for $200 million, you get to 10; for $400 million, you can get to 7. And from that point on, the line becomes kind of flat and you are not going to be really achieving an awful lot more, although you are going to be spending an awful lot more money.

If you can get to 7 parts per million of a toxic substance, the agency may decide that you are going to quadruple the number of lives that you are going to save—not the agency deciding, but it could be a cost-benefit analysis decides—that for the extra dollars you are going to have a huge return.

Do we have to go with the cheapest, even though it might be the statutory requirement? Or could we, for some additional dollars if there is a huge return, allow the agency to impose the additional dollars? If the cost-benefit analysis tells us that for a relatively few percentage points of additional expenditures, we can gain a huge increase in safety or reduce the loss of human lives by a huge percentage, are we going to say, "You can't do that, you

have to go with the cheapest alternative"? Is that what we want to do?

The sponsors of the amendment say there is an escape clause from that. The sponsors of the amendment say that if nonquantifiable benefits to health and safety are such that you can make significant additional gains in health and safety, then you are allowed to go with something more than the least-cost alternative. You are not limited to the cheapest. You do not have to buy the Yugo if the nonquantifiable benefits to health, safety, and the environment make a more costly alternative that achieves the objectives of the statute appropriately.

The problem with that is what happens if the benefits are quantifiable, like on this chart? In my hypothesis, these are not nonquantifiable benefits, these are quantifiable benefits that make it appropriate to go to a more—or might make it more appropriate—to go to a more costly alternative that achieves the objectives of the statute.

Why preclude an agency from using a slightly more expensive alternative if there is a huge benefit? What is cost-benefit all about, except to do that, to analyze cost and benefits? Why are we putting agencies to this requirement, except that we will allow them some flexibility to use the results of the cost-benefit analysis? And if the results of that analysis are that for a relatively small increase in cost we get a relatively large gain, why are we going to say, "Sorry, you can't do that unless the benefits are nonquantifiable"?

We have urged the sponsors of this amendment to make the change to where the benefits are either quantifiable or nonquantifiable. We ought to allow the cost-benefit analysis to be considered, and where a more costly approach will give us a significant gain, we ought to do so.

But we have not been successful in getting an agreement to make that change.

The administration document says that S. 343:

> . . . would also prevent agencies responsible for protecting public health, safety, or the environment from issuing regulations unless they can demonstrate a "significant" reduction in risk . . .

Now, if the cost-benefit analysis that we are requiring, that everybody, I think, in this Chamber wants to require to be done, demonstrates that there is a reduction in the risk for almost no cost, why do we want to put in law that you cannot do that? The reduction has to be significant before it is allowed. Why are we precluding reductions in risk to health, safety, and the environment if the cost-benefit analysis, which we, in both versions of the bill, are requiring to be made indicate that it is worthwhile doing?

Why preclude reductions in risks to our health, our children's health, our children's safety, and our environment unless it rises up to the level of significant if the cost of reduction is minute? I do not see any logic in insisting on the word "significant," once we have a cost-benefit analysis requirement. I think that word should be stricken. We have proposed that it be stricken. In our version, there is no such limitation.

Mr. President, at this point, I ask unanimous consent that the remainder of the statement of administration policy which sets forth many of the problems in the Dole-Johnston bill, be printed in the RECORD.

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

STATEMENT OF ADMINISTRATION POLICY

S. 343—COMPREHENSIVE REGULATORY REFORM ACT OF 1995

The Administration strongly supports the enactment of cost-benefit analysis and risk assessment legislation that would improve the regulatory system. S. 343, however, is not such a bill. Because the cumulative effect of its provisions would burden the regulatory system with additional paperwork, unnecessary costs, significant delay, and excessive litigation, the Secretaries of Labor, Agriculture, Health and Human Services, Housing and Urban Development, Transportation, the Treasury, and the Interior, the Administrator of the Environmental Protection Agency, and the Director of the Office of Management and Budget would recommend that the President veto S. 343 in its present form.

The Administration is particularly concerned that S. 343 could lead to:

Unsound Regulatory Decisions. A regulatory reform bill should promote the development of more sensible regulations. S. 343, however, could require agencies to issue unsound regulations. It would force agencies to choose the least costly regulatory alternative available to them, even if spending a few more dollars would yield substantially greater benefits. It would also prevent agencies responsible for protecting public health, safety, or the environment from issuing regulations unless they can demonstrate a "significant" reduction in risk—even if the benefits from a small reduction in risk exceed the costs. Both of these features would hinder, rather than promote, the development of cost-beneficial, cost-effective regulations. In addition, S. 343 could be construed to constitute a supermandate that would override existing statutory requirements indiscriminately.

Excessive Litigation. While it is appropriate for courts to review final agency action to determine whether, taken as a whole, the action meets the requisite standards, S. 343 would increase opportunities for lawsuits and allow challenges to agency action that is not yet final. Further, by needlessly altering numerous features of the Administrative Procedure Act, S. 343 could engender a substantial number of lawsuits concerning the meaning of changes to well-established law.

A Backdoor Regulatory Moratorium. S. 343 would take effect immediately upon enactment, consequently leading to an unnecessary and time-consuming disruption of the rulemaking process. It would require proposed regulations that have already been through notice and comment, and are based on cost-benefit analysis, to begin the process all over again because of an agency's unknowing failure to follow one of the many new procedures in the bill.

The Unproductive Use of Analytic Resources in Issuing New Rules. Since the mid-1970s, Presidents of both parties have selected $100 million as the line of demarcation between that which warrants full-blown regulatory analysis and that which does not. Because cost-benefit and risk analyses can be costly and time-consuming, the Administration believes that $100 million continues to be the appropriate threshold. S. 343, however, has as its threshold $50 million—a decision that would require agencies to use their resources unproductively and that therefore cannot itself withstand cost-benefit scrutiny.

Agencies Overwhelmed with Petitions and the Lapsing of Effective Regulations. S. 343 creates numerous, often highly-convoluted petition processes that, taken together, could create opportunities for special interests to tie up an agency in additional paperwork and, in the process, waste valuable resources. Several of these processes allow agencies inadequate time to conduct the required analyses and prepare the required responses to petitions; contain inadequate standards against which the adequacy of petitions can be judged; contain inadequate limitations on who may properly file petitions; and contain inadequate safeguards against an agency becoming overwhelmed by large numbers of petitions. These problems are exacerbated by provisions providing for the sunsetting of regulations according to arbitrary deadlines, which could cause effective regulations to lapse without going through the notice and comment process.

Inappropriate Use of Risk Assessment and Peer Review. S. 343's risk assessment and peer review provisions are overly broad in scope and would introduce unnecessary delays into the regulatory process. They would inappropriately subject all health, safety, and environmental regulations to risk assessment and peer review, regardless of whether such regulations are designed to reduce risk or whether a risk assessment and a peer review would, from a scientific perspective, be useful or appropriate.

Slowed Environmental Cleanups. S. 343 could needlessly slow ongoing and planned environmental cleanup activities, including those at military installations necessary to make the installations being made available for productive non-military use. It would also invite attempts to renegotiate cleanup agreements, thereby hampering enforcement efforts and increasing public and private transaction costs.

A Less Accountable and Less Transparent Regulatory Process. Any regulatory reform bill should bring "sunshine" to the regulatory review process. Executive Order No. 12866, "Regulatory Planning and Review," provides both for centralized Executive branch review of proposed regulations and for the disclosure of communications concerning pending rulemakings between persons outside the Executive branch and centralized reviewers. S. 343, however, contains no such sunshine provision and could consequently remove accountability and transparency from the regulatory process.

An Unduly Lengthy Congressional Layover. S. 343 includes a provision for a congressional layover of 60 days that goes beyond the provisions of S. 219, which provided for a 45-day layover. S. 219 passed the Senate by a vote of 100–0, with Administration support.

Unrealistic, Unmanageable Studies. S. 343 would require a comprehensive study of and

report on all risks to health, safety, and the environment addressed by all federal agencies. It would also require the President to produce annually a highly detailed estimate of and report on the costs, benefits, and effects of virtually all existing regulatory programs. Such studies would not only be unmanageable to conduct and costly to produce, but would require scientific and economic analytical techniques that go beyond the state of the art.

Unnecessarily Hindered Enforcement of Regulations and Out of Court Settlements. S. 343 could create disincentives for regulated entities to bring potentially conflicting regulations to the appropriate agencies' attention. It could also make it unnecessarily difficult for agencies to settle litigation out of court.

Significant Changes in Substantive Law Without Proper Consideration. S. 343 goes beyond attempting to reform the regulatory process by making changes in substantive law—altering, for example, the Delaney Clause and the Community Right-to-Know Act. Whether such changes are appropriate should be decided only after full hearings in the committees of jurisdiction and full debate on the merits.

The Administration is as concerned with the cumulative effect of S. 343 as with its particular features. The Administration remains committed, however, to improving the regulatory process, both administratively and through legislation.

Mr. LEVIN. Mr. President, there are major problems in judicial review. It appears as though there are as many as 140 additional items which can be litigated under S. 343 because of some of the language in it beyond items which can be litigated today.

Now, we want to try to fix this thing. We do not want to make it worse. We have a regulatory system which needs to be repaired. We do not want to make it more cumbersome, more confusing, more difficult to operate under. And one of the difficulties with the bill is that it opens the door to so many—indeed over 100, probably—areas of reviewable issues to be litigated. It may be a lawyer's dream, but it is a business person's nightmare, and I think it is a nightmare for the country.

So we have significant problems in the judicial review area, which are also partly set forth in the letter of the administration.

Finally, let me say this: We have worked about a week on this bill. I think we have made some progress this week, and I commend Senator HATCH and others. So many have worked on this during this week, and I thank them for the progress which has been made in the bill.

For instance, in one of the decisional criteria areas, I think we made progress. We added sunshine last night, so that we now have in the underlying Dole-Johnston bill requirements that the process, right up to the OMB, be open, so that when a rule that is going to affect your business or your life is being reviewed in the White House, there is notice in the public file that that is where the review is taking place. It no longer is in the agency; now it is in the White House. An awful lot of people are affected by these rules, and the public has a right to know when it is no longer the agency making the decisions that affect their lives or pocketbooks; it is now the White House and OMB.

Under the sunshine provision, now incorporated in Dole-Johnston and which was part of the Glenn-Chafee bill, we are going to have that kind of sunshine. There have been other improvements in this bill. We have been working on them one by one. This has been time, I think, usefully spent. It is a very serious effort which affects the air we breathe and the water that we drink and commerce and business and everybody's pocketbook. It affects the safety of our children. It affects almost everything that we do. The costs can be immense. We have to try to keep them down. But the losses will be immense to life and safety if we do this thing wrong.

So we have taken some time. It has been time well spent. I thank my friend from Utah and all of the others who have been involved in the last few weeks in trying to work through this process to come up with a bill, if possible, on which there can be a broad consensus and, if not, to at least come up with two alternatives which reflect differences which can be readily understood and voted on profitably by the Members of the body.

(At the request of Mr. LEVIN, the following statement was ordered to be printed in the RECORD.)

• Mr. GLENN. Mr. President, we have talked for many days on the very real need for regulatory reform. While I recognize the tremendous value of many rules in protecting public health, safety, and the environment, I also understand that Federal agencies too often ignore the costs of regulation on businesses, State, and local governments, and individuals. Through sensible, balanced reform, we can restore common sense to government decisions and thereby improve the quality and reduce the burdens of Federal regulations.

Over the past few weeks, and the past few days, we have worked in good faith to explain why we think S. 343 as currently drafted is not the kind of regulatory reform we can support. The majority leader has offered amendments that have indeed made some improvements in his own bill. The threshold for a major rule is now $100 million. We have added in a statement clarifying that the cost-benefit test shall not be construed to override any statutory requirements, including health, safety, and environmental regulations. The provision covering environmental management activities has been dropped.

But these changes alone do not make for balanced regulatory reform. We are still faced with a bill loaded with petitions that would let interested parties tie up agencies in knots. We are still faced with a bill that is a dream for lawyers and special interests. We have stated all of these and other concerns very clearly to the proponents of S. 343. We have worked in good faith to make this a workable bill. In the end, we still feel that there are too many problems with the bill before us. And clearly the proponents of S. 343 also realize the problems with their bill, as shown by the amendments they have been offering themselves to improve their own bill. That is why I am offering the Glenn-Chafee amendment as a substitute for S. 343.

This substitute is based on the bill reported out of the Governmental Affairs Committee on a bipartisan basis, 15 to 0. Like the Governmental Affairs bill, the amendment I am offering to S. 343 has bipartisan support. I am offering the amendment on behalf of myself, Senators CHAFEE, LEVIN, LIEBERMAN, COHEN, PRYOR, KERRY, LAUTENBERG, DASCHLE, BOXER, KOHL, SIMON, KENNEDY, DODD, MURRAY, AKAKA, JEFFORDS, BIDEN, DORGAN, BAUCUS, and KERREY.

I am offering this legislation because I believe the reforms contained in the Dole-Johnston bill are outweighed by the creation of new opportunities to stop environmental and health and safety protections for the American people. It is time to directly compare these proposals and to ask which proposal better fulfills the dual tasks of eliminating unnecessary regulatory burdens on business and individuals while at the same time providing no diminution in the ability of Government to protect the health, safety, and environment of the American people.

I believe that our substitute provides the best answer. It is a very strong reform proposal. It requires cost-benefit analysis, risk assessment, peer review, congressional review of significant rules, and review of existing rules. It provides much-needed reform without paralyzing agencies. Issues—such as how much judicial review is needed and how we should handle existing rules—are critical in this debate.

Our principles for regulatory reform are the following:

First, cost-benefit and risk assessment requirements should apply to only major rules, which has been set at $100 million for executive branch review since President Reagan's time. While S. 343 has increased its threshold to $100 million, it also contains an amendment that was accepted on Monday that would include any rules subject to Regulatory Flexibility analysis as a "major" rule. What we have improved on the one hand by increasing the threshold to $100 million, we have taken away with the other hand by increasing the number of rules that would fall under the requirements of this bill by up to 500 rules. It's too much.

Second, regulatory reform should not become a lawyer's dream, opening up a

multitude of new avenues for judicial review.

Our amendment limits judicial review to determinations of: First, whether a rule is major; and second, whether a final rule is arbitrary or capricious, taking into consideration the whole rulemaking file. Specific procedural requirements for cost-benefit analysis and risk assessment are not subject to judicial review except as part of the whole rulemaking file.

S. 343 will lead to a litigation explosion that will swamp the courts and bog down agencies. It would allow review of steps in risk assessment and cost-benefit analysis, in addition to the determination of a major rule and of agency decisions to grant or deny petitions. It allows interlocutory judicial review for the first time—letting lawyers sue before the final rulemaking. It alters APA standards in ways that undermine legal precedent and invite lawsuits. And it seems to limit agency discretion in ways that will lead inevitably to challenges in court.

Third, this legislation should focus on regulatory procedures and not be a vehicle for special interests seeking to alter specific laws dealing with health, safety, the environment, or other matters.

Our amendment focuses on the fundamentals of regulatory reform and contains no special interest provisions.

S. 343 provides relief to specific business interests that should not be considered in the context of regulatory reform. I am referring to provisions, for example, where the bill restricts the toxic release inventory [TRI], limits the Delaney Clause. Yesterday, the proponents of S. 343 voted once again for the special interests and against the public interest in refusing to protect the TRI.

Fourth, regulatory reform should make Federal agencies more efficient and effective, not tie up agency resources with additional bureaucratic processes.

Our amendment requires cost-benefit analysis and risk assessment for major rules, and requires agencies to review all their major rules by a time certain.

S. 343 covers a much broader scope of rules and has several convoluted petition processes for "interested parties"—for example, to amend or rescind a major rule, and to review politics or guidance. These petitions are judicially reviewable and must be granted or denied by an agency within a specified time frame. The petitions will eat up agency resources and allow the petitioners, not the agencies, to set agency priorities.

Fifth, regulatory reform legislation should improve analysis and allow the agencies to exercise common sense when issuing regulations.

Our amendment requires agencies to explain whether benefits justify costs and whether the rule will be more cost-effective than alternatives.

S. 343 has two separate decisional criteria that control agency decisions—for cost-benefit determinations and for regulatory flexibility analyses. The reg flex override actually conflicts with the cost-benefit decisional criteria. And the cost-benefit test limits agencies to the cheapest rule, not the most cost-effective one.

Sixth, there should be sunshine in the regulatory review process.

I am pleased that my colleagues have accepted my amendment to S. 343 to ensure sunshine in the regulatory review process. I am only sorry that it took so long for the proponents of S. 343 to accept it. We offered it several times in the negotiations, and they rejected it each time. At least now, there will be sunshine.

As I have said before, the text of this alternative bill is almost identical to S. 291, except in three main areas. First, it limits the definition of major rule to $100 million impact this, there is no narrative definition, such as "substantial increase in wages"; second, we have changed the review of rules in a way that makes more sense and that does not automatically sunset rules that have not been reviewed; and, third, it covers only particular programs and agencies for risk assessment requirements and it makes other technical changes in line with the National Academy of Science approach to risk assessment.

In addition, our substitute reflects positive changes that have been arrived at through negotiations on the underlying bill.

I believe this is a very strong and balanced approach to regulatory reform. It passes the two tests I believe any regulatory reform legislation must achieve: First, it will provide regulatory relief for business, State and local governments, and individuals. And, second, at the same time, it protects the health, safety and environment of the American people.

Let me conclude by saying that same progress has been made over the past few weeks in improving S. 343. But let us not leave the impression that the bill is close to being acceptable. This is not the case. There remain substantial issues, which we have communicated on numerous occasions to the proponents of this bill and on which no agreement has been forthcoming. These issues are satisfactorily addressed in the Glenn-Chafee substitute amendment. Accordingly, I urge my colleagues to vote for this amendment as a substitute to S. 343.●

Mr. HATCH. Mr. President, let me spend a few minutes addressing the merits of S. 343 and the Glenn amendment. Let me say that, in our opinion, the Glenn amendment is reg lite. It is a somewhat weaker version of S. 291, which was the compromise bill, and for that reason voted out of the Governmental Affairs Committee under my close friend, BILL ROTH, my comanager on this bill. As Chairman ROTH pointed out, S. 343 is a truly superior vehicle for achieving meaningful and effective regulatory reform than either S. 291 or the Glenn-Chafee substitute.

S. 343, unlike the Glenn bill, is a product of the collective wisdom of three committees—Judiciary, Governmental Affairs, and Energy and Natural Resources—and many Senators, including Senators JOHNSTON, HEFLIN, DOLE, and others in addition. It has undergone 100 substantive and technical changes over the last 4 months. We have tried to cooperate with the White House. Many of the changes have been requested by them, and we have to say we have been very cooperative in the process.

I know that just the Judiciary Committee version of S. 343 encompassed helpful changes suggested by the majority and minority staffs of the committee working as a task force, the administration, and various representatives of Federal agencies after lengthy meetings lasting days. These changes are reflected in the final version of S. 343 that is before this body. So, too, are modifications made to the bill before the July 4 recess, which were the product of fruitful negotiations among Senators KERRY, LEVIN, BIDEN, JOHNSTON, ROTH, NICKLES, MURKOWSKI, BOND, DOLE, and myself.

S. 343, you see, represents the aggregate acumen of many viewpoints. It is a workable, balanced, and fair approach to the nettlesome issue of regulatory reform, and it is far preferable to the Glenn substitute.

Here are just some of the principal reasons why. Both bills contain various elements that are important for effective regulatory reform. S. 343 contains cost-benefit requirements that have substantial effect as to which agencies can be held accountable through an effective decisional requirement section enforced through judicial review.

The Glenn substitute's cost-benefit provision is much weaker, and its judicial review provision is ambiguous at best. The Glenn substitute requires "that the benefits of the rule justify the costs of the rule." And that "the rule will achieve the rulemaking objectives in a more cost-effective manner than the alternatives described in the rulemaking."

However, unlike the Glenn substitute, S. 343 contains a decisional criteria section that is far more sophisticated and efficacious. First of all, the decisional criteria section mandates that no rule shall be promulgated unless the rule complies with this section. That requirement will act as a hammer to assure agency compliance with the standards set forth in the decisional criteria section 624 of S. 343.

Now, some will say that this is overkill, that agencies will abide by cost-benefit standards without section 624's

hammer. Yet, President Clinton's Executive order on regulations contains a hammerless cost-benefit analysis requirement which is routinely ignored by agencies and OMB—very similar to what the Glenn substitute is. According to an April 1995 study by the Institute for Regulatory Policy, of the 222 major EPA rules issued from April to September 1994, only 6 passed cost-benefit analysis muster. The rest were promulgated anyway. In other words, the President's own Executive order is ignored by OMB and other agencies, and the EPA in this particular case.

Of the 510 regulatory actions published during this period, 465 were not even reviewed by OMB, and of the 45 rules that were reviewed, not one was returned to the agency having failed the obligatory cost-benefit analysis test.

They call this regulatory reform? That is what we would get with the Glenn substitute.

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

This does two things. First, it assures that the least burdensome rule will be promulgated; Second, that agencies are not straight jacketed when facing scientific or economic uncertainties, or benefits that cannot be quantified into promulgating a rule based on an option that is only the least costly in the short term.

In the latter situation, agencies may explicitly take these factors into account when considering the least cost alternative when promulgating the rule.

What about the effect on existing law? Section 624 of S. 343 provides that its cost-benefit decisional criteria supplement the decisional criteria for rulemaking applicable under the statute, granting the rulemaking authority, except when such an underlying statute requires that a rule to protect health, safety, or the environment should be promulgated, and the agency cannot apply the standard in the text of the statute, satisfy the cost-benefit criteria.

In such a case, under S. 343, the agency taking action may promulgate the rule but must choose the regulatory alternative meeting the requirements of the underlying statute that imposes the lowest cost.

In this way, agencies are given great latitude in promulgating cost effective rules. Thus, S. 343 strongly supplements existing law but does not embody a supermandate. This was made absolutely clear in a bipartisan amendment adopted just a few days ago.

In contrast, the Glenn amendment only requires agencies to justify costs in those situations where such requirement is not expressly or implicitly "inconsistent with the underlying statute." This allows agencies to select any costly or burdensome option allowable under the underlying statute.

What about judicial review? Could not it be argued that the Glenn bill's judicial review provision assures that agencies will comply with that bill's albeit weak cost-benefit analysis requirement?

While both S. 343 and the Glenn bill basically only allow for APA, the Administrative Procedure Act "arbitrary and capricious" review of the rule, and not independent review of the cost-benefit analysis and a risk assessment.

The Glenn judicial review section contains a provision that could be construed to prohibit a court from considering a faulty cost-benefit analysis or risk assessment in determining if a rule passes arbitrary and capricious muster.

That provision states "If an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conforms to the particular requirements of this chapter."

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

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

For instance, in section 623, the requirement for agency review of existing rules, the petition provision allows for either placing a rule on the agency's schedule for review, or in effect to accelerate agency review of rules already on the agency scheduled for review.

The petitioner has a significant burden to justify that the requested relief is necessary. I might add that this provision was a product of negotiations among Senators KERRY, LEVIN, BIDEN, JOHNSTON, ROTH, NICKLES, MURKOWSKI, BOND, DOLE, and myself.

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

In this way, agencies are given great latitude in promulgating cost-effective rules. In this way, agencies are given great latitude that they need to have.

Moreover, the following provisions of S. 343 are much better than their counterpart provisions in Senator GLENN's, the risk assessment provisions. S. 343 applies its risk assessment and risk characterization principles to all agency major rules. The Glenn amendment limits the applicability of risk assessment and risk characterization principles to major rules promulgated by certain listed agencies, contains no decisional requirements for risk assessments.

Definition of cost of benefits. S. 343 makes absolutely clear that the definition of cost of benefits includes nonquantifiable factors such as health, safety, social, and environmental concerns.

This is extremely important because not all benefits are quantifiable. You may not be able to place numbers on good health or the beauty of a national park, for instance. The Glenn bill, on the other hand, does not make this clear. When a cost-benefit analysis is done under Glenn, these benefits may be undervalued.

Emergency provisions. The Dole-Johnston bill contains exemptions for imposition of the notice and comments, cost-benefit analysis and risk assessment requirements. When an emergency arises or a threat to public health and safety arises, these provisions will allow for a rule that addresses these concerns to promptly go into effect. There is no delay. The Glenn substitute, on the other hand, only contains one exemption for risk assessments.

Is this not ironic? The supporters of the Glenn measure complained endlessly how S. 343 would prevent the agencies from protecting the public for E. coli bacteria present in bad meat, or cryptosporidium in drinking water, and have screamed that rules addressing these problems be exempt from S. 343. Of course, S. 343's emergency provisions adequately deal with these problems. But Glenn does not.

Where are the equivalent provisions in Glenn? Does Glenn exempt these types of rules from cost-benefit analysis? No.

I find it almost disingenuous, the arguments that were made by many on the other side, about how they were trying to protect the health of the public from E. coli and from cryptosporidium, when their own bill did not even provide a means to do so, and our bill does, and has from the beginning.

All of that rhetoric that was used was what we call bull corn in Utah. This bill takes care of it. It is apparent, Mr. President, that the Dole-Johnston measure is a superior vehicle for regulatory reform. I also want to say that I am one who does not spend a lot of time finding fault with the media, although I have from time to time. Naturally all of us have done that, as Senators. But I have to say that there have been some major media presentations this week that have been so scurrilous they do not belong in regular journalism.

One of our networks has put out two of the most scurrilous, indefensible, factually lacking segments that have maligned my colleague, Senator DOLE, in an unjustifiable way that I consider to be despicable.

Talking about despicability, the July 6 Public Citizen news conference in Washington, DC—we are used to the Ralph Nader gang being out of line and using poor judgment and using bludgeoning tactics, and misrepresenting, and not telling the truth, and using the Ethics Committee to malign people. But even they, as low as they stoop all the time, have stooped to one of the lowest points in the history of legislation when, at a news conference, Joan Claybrook said that cost-benefit analysis was akin to what the Nazis did to prisoners in concentration camps during World War II.

Both parties ought to be outraged at this type of irresponsibility. This group of people has been given much too much consideration by the press through the years.

Joan Claybrook said at that conference:

> Recently, in the New York Times, there was a very interesting letter to the editor commenting on this issue of cost and benefit analysis. And it is taken from a table of profits per prisoner that the SS (Nazi Storm Troopers) created in concentration camps, trying to decide whether or not the holding of the prisoners, the use of prisoners, the renting out of the prisoners, and the killing of the prisoners, was cost beneficial to the SS.

Joan Claybrook went on to say:

> That is what I think of cost-benefit analysis, because you never can have the benefits fully developed in terms of the impact on human life, the trauma and the enjoyment of life.

Maybe it was a mistake. I like Miss Claybrook and I know she is very sincere, albeit radical. And I like her personally. But that type of language just does not belong in this debate.

Unfortunately, some of us have been putting up with this for years from this group of people. I just cannot allow it to stand. It has been a matter of, I think, just total bad taste and really a matter of great irritation to anybody who is a fair-thinking person.

With that, I will reserve the remainder of my remarks until we get into this debate on Monday. But it is clear that we have, still, with all the work we have done—and I want to compliment my friend from Michigan, and certainly Senator GLENN, on the other side of this issue, and Senator KERRY has worked on it, Senator BAUCUS has worked on this matter, and others—I want to compliment them for trying to see that we can get together and have a bill that everybody can support. Unfortunately, I do not think we are going to be able to do that, but we have come a long way in trying to accommodate the other side on this bill.

I have worked very long and hard to do that, as have others. I hope we can continue that spirit of bipartisanship up through—hopefully we will have final passage of this bill on Tuesday. And hopefully we will vote sometime, on the substitute, on Monday or early Tuesday. But I have to say I want to compliment the intelligence of my colleagues on the other side of this issue. They know what they are talking about. Even though we differ on some of these points, I have to say it has been very interesting working with them and I appreciate the good faith that they have put forth.

Mr. President, I would like to change the subject if I can. Hopefully that will end the debate. As soon as we can, I would like to wrap up and let everybody go for the day.

I understand Senator MURKOWSKI will be coming over. I assure the other side we are not going to talk any more on this, unless Senator MURKOWSKI is. I do not know. But if he is, it will only be another statement or so.

JUDICIARY HEARING ON THE EVENTS IN TENNESSEE

Mr. HATCH. Mr. President, I informed everybody that I was going to make a statement on the Tennessee situation.

Mr. President, ours is a Nation of laws. We are a Nation that guarantees liberty and justice to all people. Our Nation is only as strong as our commitment to justice is strong. When the public's faith in the arm of Government responsible for safeguarding our liberty and our democratic Government is threatened, then we have to do something about it.

So I rise to announce that 1 week from today, on Friday of next week, the Senate Judiciary Committee will convene a hearing on the appalling events which took place in Tennessee, the so-called "Good Ol' Boys Roundup."

If newspaper reports are accurate, several Federal law enforcement agents from among other agencies, the ATF, FBI, DEA, Secret Service, and Customs participated in a so-called Good Ol' Boys Roundup, an event that is alleged to have involved hateful, racist, ugly conduct.

After consultation with the Judiciary Committee's ranking member, Senator BIDEN, and fellow committee members—especially Senator THOMPSON, who wants to make sure the great State of Tennessee plays a role in resolving this matter—I have decided it would be best for the Senate to move expeditiously on this matter.

Accordingly, I have informed the Directors of the ATF, FBI, and Deputy Attorney General Gorelick—I have personally informed them of my plan to hold a hearing next Friday. Witnesses I plan to call include the Attorney General of the United States, the Secretary of the Treasury, the Directors of the FBI, ATF, DEA, and others. I can only express my outrage and anger that Federal law enforcement officials would allow themselves to be compromised in such a way, and to participate in such conduct. I am sure that the Clinton administration officials that I have mentioned share my contempt for what has gone on. I expect this hearing will provide the American people with an opportunity to hear from our top law enforcement leaders, the plans they have to root out this racism.

Those who engaged in this conduct, who have stood by, knowing of it, and did nothing, must be held accountable. When a person who is clothed with the authority of the people engages in hateful conduct, that conduct must be condemned by the people. I condemn this conduct. The Senate condemns it.

This hearing will, hopefully, provide the American people with an explanation, detailing what the Clinton administration plans to do about it.

Attorney General Reno, Director Louis Freeh, and others have made great strides in improving the efficiency, fairness, and operation of our law enforcement agencies. These acts of prejudice, if true, and I have been led to believe that many of them are true, threaten to undermine the strides they have made to date.

It is in their interests, the interests of African Americans and other people of color, and the public, that we hold these hearings. In fact, it is in the interest of all Americans that we hold these hearings.

We must not stand by while Government officials betray the public's trust. These events, if true, disgraced Federal law enforcement and the United States. It is Congress' obligation. After all, I have to say all of us are directly accountable to the people. But it is Congress' obligation to hold the executive branch accountable. And I intend to do so.

Now, I have to say in conclusion that these leaders have all expressed a desire to clear up this matter and to stop it and to make sure that this never happens again. These are fine people who lead these organizations. They have made strides in some of these areas and I want to continue those strides and we want to stop this type of

offensive, racist, despicable conduct now and we intend to do so, and we hope these hearings will be efficacious in helping us to get there. Having said that, we look forward to those hearings next Friday and I hope all of our Judiciary members will be able to participate.

I see the Senator from Alaska is here.

The PRESIDING OFFICER. The Senator from Alaska.

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. MURKOWSKI. Mr. President, I thank my friend from Utah and wish the Chair a good day. I know it is late in the afternoon. I just wanted to make a few remarks with regard to the status of our regulatory reform debate that has been going on for an extended period of time.

There is no question, Mr. President, that we all want to see regulatory reform legislation passed by this Congress for two very, very important reasons. They are simply fairness and common sense.

As chairman of the Energy and Natural Resources Committee, we passed out a bill that would accomplish fairness and common sense, and in so doing address corrections needed in our regulatory process. We passed a bill that was easily understood. And, as a consequence, we find ourselves immersed now in almost a legal discussion of various types of binding conditions associated with what was generally understood to be a high degree of frustration among the public, a public which was frustrated over policies of the Environmental Protection Agency such as the one that occurred in the largest city of Alaska, Anchorage, AK, where the city was notified that the water that accumulated after rains in the drains that ordinarily went out in Cook Inlet for disposal. Cook Inlet has some 30-foot tides twice a day.

Suddenly, the city was advised that they were in violation because, prior to discharging that water, 30 percent of the organic matter had to be removed. In testing the water they found there was no organic matter to be removed, and they appealed to the Environmental Protection Agency. Surprisingly enough, the EPA simply came back and said, "You are out of compliance and subject to fine." As a consequence, some enterprising member of the city council suggested that they add some fish guts to the drainage system so that they would have something to remove that was organic and, therefore, comply.

Finally, the issue got so much publicity, Mr. President, that the Environmental Protection Agency saw fit to, so-called, "clean their skirts." So they wrote a letter saying, "Yes, these were the circumstances, but they did not make the city of Anchorage put the organic matter, the fish guts, into the water system." People of Alaska understood that. They understood the lack of sense that such a mandate made.

We have these horror stories. We have heard them on the floor.

Another concern that was expressed from time to time was the realization that citizens will not be asked to pay huge amounts of money to have trace amounts of arsenic or radon or chloroform removed from their drinking water when there was absolutely no evidence of any adverse health affects, no scientific proof of any kind.

We heard cases where workers who have rushed to rescue a colleague from a collapsed ditch are subject to fines, subject to penalties for not having a hard hat on in the first place.

We had a situation in Fairbanks—where it does snow occasionally in Fairbanks, AK—where the city was in violation of a wetland permit because they moved the snow off one lot where the city barn is to the next lot which was classified as a wetlands.

These are things people understand. These are issues of frustration that have been expressed time and time again. But we find ourselves embroiled in a controversy on this legislation that has gotten beyond the ability of the general public to grasp why we are not getting on it and making the corrections that are needed.

We passed a bill that would put consistent procedures for risk assessment and cost-benefit analysis in place for all agencies and make agencies accountable for the actions taken in reliance on those agencies.

Why does this procedure lead to fairness and common sense? Very simply, because they ensure that regulations will direct our limited resources to the substance or activities that are most likely to harm us and prevent that harm in a cost-effective way. It is simply that simple.

We find that we have an ally in this process. Let me quote from the statement of the President. I have this chart here, Mr. President, which I will read very briefly. It is from the President. I quote:

> The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for the economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

Those are the words of our President. But in spite of what the President, what the Congress and what the American people all know, this legislation has been bogged down in discussions designed to play on emotions. It has become complex. It has become almost a lawyer's delight to deliberate the application.

We went through it the other day on the issue of the Mammogram Quality Standards Act. We all know that this legislation would not in any way have interfered with the promulgation of the rules under that act.

I have had some familiarity with that, Mr. President, because my wife and a group of women in Fairbanks, AK in the mid-1970's started a breast cancer clinic. They purchased a mammogram machine, and, as a consequence, provided free services to the women of interior Alaska for an extended period of time. However, 2 years ago, under the Mammogram Quality Standards Acts procedure, that particular machine became outdated. And in order to comply with the quality standards, it was necessary that a new machine be ordered.

So a number of us got together and raised approximately $150,000 and bought a new machine. This year we are raising some more money to buy a mobile mammogram machine. This is done without any Federal Government assistance of any kind, and provides the service to the women of the interior who are on the road systems of Alaska, and it will be further extended to the villages because this unit will fit inside the National Guard C–130 aircraft. So when they go into the villages, the vehicle can be backed out and made available to serve women that otherwise would not be available for this type of care.

So the point is, Mr. President, that we have a system under the Mammogram Quality Standards Act that works. Not only does this legislation that we are contemplating have an exemption for health emergencies, but it also specifically recognizes that risk and cost-benefit analysis should only be done at the level of detail necessary, taking the need for expedition into consideration.

So, as a consequence, we found ourselves spending a good deal of time debating whether or not—by not excluding mammograms—we were somehow risking the health of women in the United States. And while that argument was voiced extensively on this floor, there was absolutely no justification in my mind, or others who have examined the application of existing laws and regulations that were covered under this legislation, that indeed these services were in jeopardy.

So what this bill does, Mr. President, under Executive Order 12866 issued in 1983, there is a requirement for cost-benefit analysis for major regulations and the use of risk as a basis for regulating.

There are 25 high priority actions which were initiated this past March to reinvent environmental regulations in recognition that the current regulatory system is broken.

Further, after several years of no action, the Environmental Protection Agency recently decided to change a longstanding food safety policy related to residual levels of pesticides that treated flour and tomato paste as ready to eat. EPA has already compiled a list of obsolete, duplicative, or unnecessary regulations and obtained concurrence from States on planned revisions and terminations that would eliminate 16,000 pages from the Code of Federal Regulations.

The administration is planning a project known as XL that would, for the first time, allow pollutant trading among different media such as air and water, as part of the President's plan to emphasize market-based regulation.

A high-level Clinton administration working group has crafted a far-reaching set of proposed administrative, regulatory and legislative changes to reform cleanups under Superfund and the Resource Conservation and Recovery Act, including provisions that elevate the consideration of risk and cost in cleanup decisions.

EPA has launched a major effort to review, streamline, and offer new flexibility for states in implementing the agency's Clean Water Act Permit Program. This is considered a key proposal in the initiative to modify or delete duplicative, burdensome, or obsolete rules.

EPA is moving to pare back routine inspection and enforcement requirements, particularly for industrial wastewater and hazardous waste disposal facilities, to shift agency resources to focus enforcement efforts on high risk facilities or activities.

EPA has changed its position from a December preproposal and decided not to regulate low-level radioactive waste storage sites already overseen by the Nuclear Regulatory Commission, a position taken by six Senators that such regulation would be a wasteful duplication of effort.

A major Clean Air Act rulemaking was initiated in January to allow States to automatically implement broad trading programs in emission reduction credits on the open market. In addition, a model rule allowing banking of credits is under consideration.

In conclusion, Mr. President, I think it is fair to say that each of these proposals covers areas addressed already in S. 343, so one has to ask why are some Members of this body, why are some of those at the White House fighting this legislation when we all know that we need this bill. The American people know we need this bill. We also know that we should not have to stand here and continually recite day after day, hour after hour, horror stories and examples of regulatory excess to get this legislation passed. We all know it has to be done, and it should be done without further delay.

So it is my hope that the leadership on both sides of the aisle can get a handle on this legislation and recognize that the American people want efficiencies in Government; they want efficiencies in regulation; they want efficiencies in oversight; and they want to be able to understand the process that is occurring. They want it based on fairness, and they want it based on common sense, and they want it now.

I thank the Chair. I wish my colleagues a pleasant weekend.

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

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

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent there now be a period for the transaction of morning business with Senators permitted to speak for up to 5 minutes each.

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

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

REPORT OF THE U.S. ARCTIC RESEARCH PLAN—MESSAGE FROM THE PRESIDENT—PM 66

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 Governmental Affairs.

To the Congress of the United States:

Pursuant to the provisions of the Arctic Research and Policy Act of 1984, as amended (15 U.S.C. 4108(a)), I transmit herewith the fourth biennial revision (1996–2000) to the United States Arctic Research Plan.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *July 14, 1995.*

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–220. A resolution adopted by the Society For Conservation Biology relative to late successional forests; to the Committee on Agriculture, Nutrition, and Forestry.

POM–221. A joint resolution adopted by the General Assembly of the State of Colorado; to the Committee on Agriculture, Nutrition, and Forestry.

"HOUSE JOINT RESOLUTION 95–1012

"Whereas, the United States Congress is considering measures to reauthorize the federal 1990 Farm Bill, which includes the 'Conservation Program Improvements Act' ('Act'), a voluntary, incentive-based, nonregulatory land retirement program through which farmers and ranchers have enrolled up to 45 million acres of highly erodible land nationally and just under 2 million acres in Colorado; and

"Whereas, the Act empowers farmers and ranchers to protect the long-term food producing capability of the United States by reducing land and water erosion of crop land; and

"Whereas, the Act enables farmers and ranchers to provide excellent wildlife habitat for game and nongame species and to improve badly silted fisheries habitat; and

"Whereas, the Act has protected and improved water quality by reducing sedimentation and nonpoint source pollution; and

"Whereas, the Act has reduced federal farm program expenditures for deficiency payments, diversion payments, and commodity loan and storage payments; and

"Whereas, the Act has supplemented the incomes of over 6,376 farmers and ranchers in Colorado in return for setting aside highly erodible lands; and

"Whereas, the United States currently has record surplus crop production and will continue to have such in the foreseeable future; now, therefore,

"*Be It Resolved by the House of Representatives of the Sixtieth General Assembly of the State of Colorado, the Senate concurring herein:* That the Colorado General Assembly hereby requests the United States Congress to fully reauthorize the federal 'Conservation Program Improvements Act', Public Law 101–624.

"*Be It Further Resolved,* That copies of this resolution be sent to the President of the United States, the Secretary of the United States Department of Agriculture, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Colorado's Congressional delegation."

POM–222. A resolution adopted by the House of the General Assembly of the State of Indiana; to the Committee on Armed Services.

"HOUSE RESOLUTION NO. 75

"Whereas, over 27,619 Hoosiers have given their lives for their country in World War I, World War II, the Korean Conflict, the Vietnam War, and the Persian Gulf Conflict, and over 37,510 Hoosiers remain living with service-connected disabilities from injuries inflicted on them while they were serving their country;

"Whereas, those servicemen and servicewomen who have chosen to make a career of

defending their country are integral to the success of our military forces throughout the world;

"Whereas, currently disabled veterans receive compensation proportionate to severity of their injuries; and, military retirees, who have served at least 20 years, accrue retirement pay based on longevity;

"Whereas, federal legislation has been introduced to amend Title 38 of the U.S. Code to eliminate and antiquated inequity which still exists in the federal law applicable to retired career service personnel who also receive service-related disability benefits;

"Whereas, under the 19th century law, these disabled career service personnel are denied concurrent receipt of full retirement pay and disability compensation benefits. They must choose receipt of one or the other or waive an amount of retirement pay equal to the amount of disability compensation benefits;

"Whereas, this discrimination unfairly denies disabled military retirees the longevity pay they have earned by their years of devoted patriotism and loyalty to their country. It, in effect, requires them to pay for their own disability compensation benefits;

"Whereas, many retirees actually returned to active duty to service in Operation Desert Storm and returned home disabled; but, when these loyal Guardsmen and Reservists arrive back home, they were not eligible to receive both VA disability and retirement pay;

"Whereas, no such inequity applies to retired Congress-persons, Federal civil service job-holders, or other retirees who are receiving service-related disability benefits;

"Whereas, America's career service-personnel's commitment to their country-in pursuit of national and international goals—must be matched by their own county's allegiance to them for those sacrifices; and

"Whereas, a statutory change is required to correct this injustice. Now therefore, be it *resolved by the House of Representatives of the General Assembly of the State of Indiana:*

"Section 1. That the General Assembly of the State of Indiana urges the United States Congress to amend the United States Code relating to the computation of retired pay to permit full concurrent receipt of military longevity retired pay and service-connected disability compensation benefits.

"Section 2. That the Principal Clerk of the House of Representatives shall send certified copies of this resolution to the presiding officers and the majority and minority leaders of both houses of the Congress of the United States, to the Secretary of the Senate and the Clerk of the House of Representatives of the Congress of the United States, to the President of the United States, to the Secretary of Defense, and to each member of the Indiana Congressional delegation."

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS ON JULY 13, 1995

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

By Mrs. KASSEBAUM (for herself, Mr. KENNEDY, Mr. FRIST, Mr. DODD, Mr. JEFFORDS, Ms. MIKULSKI, Mr. GREGG, Mr. WELLSTONE, Mr. GORTON, Mr. PELL, Mr. HATCH, Mr. SIMON, Mr. CHAFEE, and Mr. LIEBERMAN):

S. 1028. A bill to provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. SIMPSON (for himself and Mr. BINGAMAN):

S. 1029. A bill to amend the Foreign Assistance Act of 1961 to establish and strengthen policies and programs for the early stabilization of world population through the global expansion of reproductive choice, and for other purposes; to the Committee on Foreign Relations.

By Mr. REID (for himself, Mr. SIMPSON, Mr. WELLSTONE, and Ms. MOSELEY-BRAUN):

S. 1030. A bill entitled the "Federal Prohibition of Female Genital Mutilation Act of 1995"; to the Committee on the Judiciary.

By Mr. THOMAS (for himself, Mr. SIMPSON, Mr. BURNS, Mr. CRAIG, Mr. STEVENS, Mr. KEMPTHORNE, and Mr. HELMS):

S. 1031. A bill to transfer the lands administered by the Bureau of Land Management to the State in which the lands are located; to the Committee on Energy and Natural Resources.

By Mr. ROTH (for himself and Mr. BAUCUS):

S. 1032. A bill to amend the Internal Revenue Code of 1986 to provide nonrecognition treatment for certain transfers by common trust funds to regulated investment companies; to the Committee on Finance.

By Mr. CHAFEE:

S. 1033. An original bill to amend the Federal Water Pollution Control Act to establish uniform national discharge standards for the control of water pollution from vessels of the Armed Forces, and for other purposes; from the Committee on Environment and Public Works; placed on the calendar.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS ON JULY 14, 1995

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

By Mr. BREAUX (for himself and Mr. CHAFEE):

S. 1034. A bill to amend the Internal Revenue Code of 1986 to provide for a moratorium for the excise tax on diesel fuel sold for or used in noncommercial diesel-powered motorboats and to require the Secretary of the Treasury to study the effectiveness of procedures to collect excise taxes on sales of diesel fuel for noncommercial motorboat use; to the Committee on Finance.

By Mr. DASCHLE (for himself, Mr. DOLE, Mr. HARKIN, Mr. HATCH, Mr. GRASSLEY, Mr. PELL, Mr. HATFIELD, Mr. SIMON, and Mr. REID):

S. 1035. A bill to permit an individual to be treated by a health care practitioner with any method of medical treatment such individual requests, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. COHEN (for himself and Mr. KOHL):

S. 1036. A bill to provide for the prevention of crime, and for other purposes; to the Committee on the Judiciary.

By Mr. FORD:

S. 1037. A bill to amend title 49, United States Code, to provide that the requirement that United States government travel be on United States carriers excludes travel on any aircraft that is not owned or leased, and operated, by a United States person; to the Committee on Commerce, Science, and Transportation.

By Mr. HELMS:

S. 1038. A bill to amend the Internal Revenue Code of 1986 to impose a 15 percent tax only on individual taxable earned income and business taxable income, to repeal the estate and gift taxes, to abolish the Internal Revenue Service, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS ON JULY 13, 1995

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself and Mr. DASCHLE):

S. Res. 150. A resolution to authorize testimony by Senate employees and representation by Senate Legal Counsel; considered and agreed to.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS ON JULY 14, 1995

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. STEVENS (for himself, Mr. FORD, Mr. DOLE, Mr. DASCHLE, Mr. HATFIELD, Mr. PELL, Mr. HELMS, Mr. MOYNIHAN, Mrs. KASSEBAUM, Mrs. HUTCHISON, Ms. MIKULSKI, and Mr. D'AMATO):

S. Con. Res. 21. A concurrent resolution directing that the "Portrait Monument" carved in the likeness of Lucretia Mott, Susan B. Anthony, and Elizabeth Cady Stanton, now in the Crypt of the Capitol, be restored to its original state and be placed in the Capitol Rotunda; ordered held at the desk.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BREAUX:

S. 1034. A bill to amend the Internal Revenue Code of 1986 to provide for a moratorium for the excise tax on diesel fuel sold for or used in noncommercial diesel-powered motorboats and to require the Secretary of the Treasury to study the effectiveness of procedures to collect excise taxes on sales of diesel fuel for noncommercial motorboat use; to the Committee on Finance.

DIESEL FUEL EXCISE TAXES LEGISLATION

• Mr. BREAUX. Mr. President, today I am introducing a bill to help solve a problem that has made it difficult for recreational boaters to obtain diesel fuel on our Nation's waterways. This bill would correct the significant unintended problems created by the federally mandated diesel fuel dyeing scheme contained in the Omnibus Budget Reconciliation Act of 1993. These problems are national in scope and affect every area of the country with significant boating activity.

Under the 1993 changes, fuel that is subject to taxation is clear and fuel that is exempt from taxation is dyed. The problem for boaters arises because while most marinas have only one fuel tank, they provide fuel to both recreational and commercial boats. Commercial boat fuel is exempt from any tax and therefore commercial boat operators seek to purchase dyed fuel. Recreational fuel is taxable and recreational boaters want to purchase clear fuel. Diesel fuel retailers have been forced to choose either one, to incur the significant costs and regulatory burdens of having separate fuel storage tanks from which to pump untaxed—dyed—and taxed—undyed—diesel fuel or two, to pump only one type of diesel fuel. Many marina operators can only afford to maintain one storage tank. Most marina operators in my State of Louisiana find that their primary customer base is made up of commercial boaters and they are choosing to sell the dyed fuels. Thus, recreational boaters have no place to purchase the clear fuel.

With diesel fuel unavailable for recreational boaters, there is a serious danger that some of these boaters may run out of fuel and become stranded before they are able to find a marina that sells clear fuel. As a further consequence, many marina operators are finding that their diesel fuel sales have declined significantly because they are not allowed to sell dyed diesel fuel—the only fuel they have—to recreational boaters.

Mr. President, this is a clear case of unintended consequences. The boaters are willing to pay the tax, they simply cannot find a place to buy the fuel and pay the tax. The bill I am introducing today addresses this problem in a practical manner by:

Having the Treasury Department asses the effectiveness of various procedures for collecting excise taxes on diesel fuel sold for use, or used, in recreational boats and report to Congress within 18 months the results of the study, including any recommendations.

Suspending collection of the tax for 2 years while the Treasury Department conducts this study.

Reinstituting the current collection procedure at the end of the 2-year suspension period if Congress has not enacted legislation to create a new collection procedure.

Mr. President, I believe that this legislation is necessary to increase the availability of diesel fuel to recreational boaters across the country. Passage of this legislation will ultimately lead to improved collection of the diesel fuel tax, prevent a potentially dangerous safety hazard to recreational boaters, and improve the economic viability of many marine fuel retailers. I urge my colleagues to join me in moving this bill forward as soon as possible.●

● Mr. CHAFEE. Mr. President, I am pleased to join my colleague from Louisiana, Senator BREAUX, in introducing legislation imposing a 2-year moratorium on the collection of the boat diesel fuel tax. this tax has caused diesel fuel shortages across this country.

The Omnibus budget Reconciliation Act of 1993 changed the collection point for the excise tax on diesel fuel. Imposition of the tax was moved from the producer or importer to the terminal rack—the place in the distribution chain where fuel retailers, for example, service stations and boat docks, get their fuel. This change made collecting the diesel fuel tax similar to the system used for gasoline taxes. The intent in making this change was to improve taxpayer compliance and assist the Internal Revenue Service with administering the diesel fuel tax.

Mr. President, collection the tax at the terminal rack works well for gasoline because all of the uses of that fuel are taxable. That is not true for diesel fuel. Home heating oil, which is essentially diesel fuel, is not taxable. Also, diesel fuel used by commercial boaters is not subject to the tax.

Together with moving the collection point of the tax, a dyeing scheme was set up to differentiate diesel fuel on which tax has been paid from fuel which has not been taxes. Dyeing is an important enforcement tool because of the variety of uses of diesel fuel.

Mr. President, I fully support efforts to increase compliance with our tax laws. However, in administering our tax laws, we must be aware of the problems we create. Let me give you a real life example of the problem this tax has created.

Diesel fuel powers many types of boats, the vast majority being commercial boats—such as fishing vessels. Diesel fuel sold to commercial boaters is exempt from the tax, but the same fuel used in a recreational boat is taxable. Under the current collection scheme, fuel sold to the recreational boater must be clear because tax has been paid on that fuel. Fuel sold to the commercial boater must be dyed to show that no tax has been paid. Under no circumstances may dyed fuel be sold to someone who is subject to the tax, even if the retailer collects the tax and remits it to the Federal Government.

The obvious problem created by this arrangement is that a marina or dock that services both commercial and recreational boaters must have two separate storage tanks to service these customers. It may not be economically feasible to install a new tank, and often it is physically impossible to do so. The marina has few options available to it to get around this problem. One solution is to buy dyed fuel for its commercial boaters and forfeit the pleasure boat business. An alternative is to buy undyed—taxed—fuel, pass the tax on to all of its customers and leave it to those who are exempt from the tax to apply for a refund. Commonly cash flow problems associated with this second option cause undue economic hardship for commercial boaters.

The anecdotal evidence suggests that marinas simply are dropping their recreational boat fuel business, because sales to commercial boaters dominate the market. It is this reality of the marketplace that has sent recreational boaters scrambling to find fuel.

The legislation introduced by Senator BREAUX and me imposes a 2-year moratorium on the collection of the boat diesel excise tax. It also requires the Treasury Department to study the various options for collecting the tax and to report its findings to the Ways and Means and Finance Committees. In performing this study, Treasury is specifically instructed to consult with boat owners and diesel fuel retailers. It is our hope that this study will identify ways to modify the current collection system in a way that will ensure compliance without creating the problems boaters are facing today.

Mr. President, I urge my colleagues to cosponsor this legislation.●

By Mr. DASCHLE (for himself, Mr. DOLE, Mr. HARKIN, Mr. HATCH, Mr. GRASSLEY, Mr. PELL, Mr. HATFIELD, Mr. SIMON, and Mr. REID):

S. 1035. A bill to permit an individual to be treated by a health care practitioner with any method of medical treatment such individual requests, and for other purposes; to the Committee on Labor and Human Resources.

THE ACCESS TO MEDICAL TREATMENT ACT

Mr. DASCHLE. Mr. President, today I am reintroducing the Access to Medical Treatment Act. I am pleased to be joined by Senators DOLE, HARKIN, HATCH, GRASSLEY, PELL, HATFIELD, SIMON, and REID in this effort to allow greater freedom of choice in the realm of medical treatments.

I would be remiss if I did not take a moment to mention one other person, someone who has been instrumental in sparking my interest in this issue. That person is Berkley Bedell, a former congressman from the Sixth District of Iowa. His story was one of the main catalysts in my decision to develop the Access to Medical Treatment Act, and provides powerful testimony to the need for this type of legislation.

As did a number of us in the Senate, I had the privilege of serving with Congressman Bedell for several years in the House of Representatives. During his tenure in the House, he acquired a well-earned reputation for intellectual honesty and commitment to principle, as well as for tilting at the occasional windmill. In more than one instance, he appeared out of step with conventional opinion and subsequently proved to be ahead of his time.

As some may remember, Congressman Bedell was ill with Lyme disease

when he left the House at the end of the 100th Congress. Having tried several unsuccessful rounds of conventional treatment consisting of heavy doses of antibiotics, the cost of which ran in the thousands of dollars, he turned to an alternative treatment that he believes cured his disease. This treatment, which is actually a veterinary treatment, consisted on its most basic level of nothing more than drinking processed whey from a cow's milk. After approximately 2 months of taking regular doses of this processed whey, his symptoms disappeared. He estimates that the total cost for this alternative treatment was a few hundred dollars.

In spite of Congressman Bedell's amazing recovery, and the fact that this same treatment appeared to be effective in some cases of Lyme disease, the treatment can no longer be administered because it has not gone through the FDA approval process.

Not long after he recovered from Lyme disease, Congressman Bedell discovered he had prostate cancer. He again found conventional treatments to be unsuccessful and turned to alternative medicine. This time he had to leave the country to obtain his treatment. Once again, however, alternative therapy appears to have been successful thus far—he has been free of cancer for 5 years.

Mr. President, there are people in our country who are desperate, as was Berkley Bedell, for cures that conventional medicine simply does not seem to be able to provide. It is a tragedy that, in a nation that considers itself a world leader in the area of health care, many potentially helpful alternative treatments remain unavailable to those without the financial resources to seek them out abroad.

The Access to Medical Treatment Act attempts to address this situation. Is intent is twofold: First, to allow increased access to alternative treatments; and second, to allow increased opportunities for the trial of alternative treatments that may prove to be extremely effective.

It will be asked why this legislation is necessary. If a particular alternative treatment is so effective, then why can't it simply go through the standard FDA approval process?

The answer is that the time and expense currently required to gain FDA approval of a treatment makes it very difficult for all but large pharmaceutical companies to undertake such an arduous and costly endeavor. The heavy demands and requirements of the FDA approval process, and the time and expense involved in meeting them, serve to limit access to the potentially innovative contributions of individual practitioners, scientists, smaller companies, and others who do not have the financial resources to traverse the painstakingly detailed path to certification. This system not only forgoes untold potential for exploring life-saving treatments, but also serves to prevent low-cost treatments from gaining access to the market.

I want to be absolutely clear, however, that this legislation will not dismantle the FDA, undermine its authority, or appreciably change current medical practices. It is not meant to attack the FDA or its approval process. It is meant to complement it.

The FDA should—and would under this legislation—remain solely responsible for protecting the health of the Nation from unsafe and impure drugs. The heavy demands and requirements placed upon treatments before they gain FDA approval are important, and I firmly believe that treatments receiving the Federal Government's stamp of approval should be proven safe and effective.

The intent of my legislation is merely to extend freedom of choice to medical consumers under carefully controlled situations. I believe that individuals, especially individuals who face life-threatening afflictions for which conventional treatments have proven ineffective, should have the option of trying an alternative treatment, so long as they have been fully informed of the nature of the treatment and are aware that it has not been approved by the FDA. This is a choice that is rightly left to the consumer, and not dictated by the Federal Government.

The Access to Medical Treatment Act will allow individuals, under certain carefully circumscribed conditions, to obtain medical treatments that have not yet been approved by the FDA. The medical treatments prescribed under this bill cannot be dangerous to the patient. However, given the fact that the very intent of the bill is to allow treatments that have not necessarily undergone extensive testing, it is possible that a treatment administered under the bill could turn out to be a danger to the patient. In such cases, the treatment and its adverse effects must be immediately reported to the Secretary of Health and Human Services, who must disseminate that information, and the treatment cannot be utilized again.

The bill requires full disclosure to the patient of the treatment's contents, potential side effects, and any other information necessary to fully meet FDA informed consent requirements. The patient must also be informed of the fact that the treatment has not been proven safe and effective by the Federal Government, and is required to sign a written statement indicating that he or she has been made aware of this information.

Finally, no advertising claims can be made about the efficacy of a treatment by a manufacturer, distributor, or other seller of the treatment. Claims may be made by the practitioner administering the treatment, but only so long as he or she has not received any financial benefit from the manufacturer, distributor, or other seller of the treatment. Lastly, a statement made by a practitioner about his or her administration of a treatment may not be used by a manufacturer, distributor, or other seller to advance the sale of such treatment. I ask that the text of the bill be placed into the RECORD upon the completion of my remarks.

Concerns have been voiced about how this proposal safeguards consumer protections. I take seriously these concerns. Individuals are often at their most vulnerable when they are in desperate need of medical treatment, and that is why it is absolutely critical that a proposal of this nature include strong protections to ensure that consumers are not subject to charlatans who would prey on their misfortunes and fears for personal gain. The Access to Medical Treatment Act is armed with these protections.

The bill requires that a treatment be administered by a properly licensed health care practitioner who has personally examined the patient. It requires the practitioner to comply fully with FDA informed consent requirements. Most importantly, however, the bill strictly regulates the circumstances under which claims regarding the efficacy of a treatment can be made. It is designed to prohibit all claims by individuals for whom the underlying intent of promoting the treatment might be linked to personal financial gain.

What this means is that there can be no marketing of any treatment administered under this bill. As such, I see very little incentive for anyone to try to use this bill as a bypass to the process of obtaining FDA approval. Also, because only properly licensed practitioners are able to make any claims at all about the efficacy of a treatment, I see very little room for so-called quack medicine. In short, if an individual or a company wants to earn a profit off their product, they would be wise to go through the standard FDA approval process rather than utilizing this legislation.

Mr. President, I fully realize that there will be significant debate over both the concept and content of this legislation. I welcome this debate, and am open to changes. If this bill generates the serious discussion that I believe these issues merit, then we will have made much-needed progress. If that discussion results in action, then I believe we will offer hope to thousands who feel they have run out of options.

In essence, this legislation addresses the fundamental balance between two seemingly irreconcilable interests: The protection of consumers from dangerous treatments and those who would advocate unsafe and ineffective medicine—and the preservation of the

consumer's freedom to choose alternative therapies.

Some may say that reconciling these two interests is an impossible task. I am not convinced of that.

In any case, the complexity of this policy challenge should not discourage us from seeking to solve it. I am convinced that the public good will be served by a serious attempt to reconcile these contradictory interests, and I am hopeful the discussion generated by introduction of this legislation will help point the way to its resolution. I welcome anyone who would like to join me in promoting this important debate to cosponsor this legislation.

Mr. President, I firmly believe that our health care delivery system should be more receptive to alternative treatments. I am also sensitive to the fact that how we accomplish that goal has important ramifications that must be thoroughly explored. It is my hope that the Access to Medical Treatment Act, and the debate it engenders, will serve those ends.

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

S. 1035

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 "Access to Medical Treatment Act".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) ADVERTISING CLAIMS.—The term "advertising claims" means any representations made or suggested by statement, word, design, device, sound, or any combination thereof with respect to a medical treatment.

(2) DANGER.—The term "danger" means any negative reaction that—

(A) causes serious harm;

(B) occurred as a result of a method of medical treatment;

(C) would not otherwise have occurred; and

(D) is more serious than reactions experienced with routinely used medical treatments for the same medical condition or conditions.

(3) DEVICE.—The term "device" has the same meaning given such term in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(4) DRUG.—The term "drug" has the same meaning given such term in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)).

(5) FOOD.—The term "food"—

(A) has the same meaning given such term in section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f)); and

(B) includes a dietary supplement as defined in section 201(ff) of such Act.

(6) HEALTH CARE PRACTITIONER.—The term "health care practitioner" means a physician or another person who is legally authorized to provide health professional services in the State in which the services are provided.

(7) LABEL.—The term "label" has the same meaning given such term in section 201(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(k)).

(8) LABELING.—The term "labeling" has the same meaning given such term in section 201(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(m)).

(9) LEGAL REPRESENTATIVE.—The term "legal representative" means a parent or an individual who qualifies as a legal guardian under State law.

(10) MEDICAL TREATMENT.—The term "medical treatment" means any food, drug, device, or procedure that is used and intended as a cure, mitigation, treatment, or prevention of disease.

(11) SELLER.—The term "seller" means a person, company, or organization that receives payment related to a medical treatment of a patient of a health practitioner, except that this term does not apply to a health care practitioner who receives payment from an individual or representative of such individual for the administration of a medical treatment to such individual.

SEC. 3. ACCESS TO MEDICAL TREATMENT.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (b), an individual shall have the right to be treated by a health care practitioner with any medical treatment (including a medical treatment that is not approved, certified, or licensed by the Secretary of Health and Human Services) that such individual desires or the legal representative of such individual authorizes if—

(1) such practitioner has personally examined such individual and agrees to treat such individual; and

(2) the administration of such treatment does not violate licensing laws.

(b) MEDICAL TREATMENT REQUIREMENTS.—A health care practitioner may provide any medical treatment to an individual described in subsection (a) if—

(1) there is no reasonable basis to conclude that the medical treatment itself, when used as directed, poses an unreasonable and significant risk of danger to such individual;

(2) in the case of an individual whose treatment is the administration of a food, drug, or device that has to be approved, certified, or licensed by the Secretary of Health and Human Services, but has not been approved, certified, or licensed by the Secretary of Health and Human Services—

(A) such individual has been informed in writing that such food, drug, or device has not yet been approved, certified, or licensed by the Secretary of Health and Human Services for use as a medical treatment of the medical condition of such individual; and

(B) prior to the administration of such treatment, the practitioner has provided the patient a written statement that states the following:

"WARNING: This food, drug, or device has not been declared to be safe and effective by the Federal Government and any individual who uses such food, drug, or device, does so at his or her own risk.";

(3) such individual has been informed in writing of the nature of the medical treatment, including—

(A) the contents and methods of such treatment;

(B) the anticipated benefits of such treatment;

(C) any reasonably foreseeable side effects that may result from such treatment;

(D) the results of past applications of such treatment by the health care practitioner and others; and

(E) any other information necessary to fully meet the requirements for informed consent of human subjects prescribed by regulations issued by the Food and Drug Administration;

(4) except as provided in subsection (c), there have been no advertising claims made with respect to the efficacy of the medical treatment by the practitioner;

(5) the label or labeling of a food, drug, or device that is a medical treatment is not false or misleading; and

(6) such individual—

(A) has been provided a written statement that such individual has been fully informed with respect to the information described in paragraphs (1) through (4);

(B) desires such treatment; and

(C) signs such statement.

(c) CLAIM EXCEPTIONS.—

(1) REPORTING BY A PRACTITIONER.—Subsection (b)(4) shall not apply to an accurate and truthful reporting by a health care practitioner of the results of the practitioner's administration of a medical treatment in recognized journals, at seminars, conventions, or similar meetings, or to others, so long as the reporting practitioner has no direct or indirect financial interest in the reporting of the material and has received no financial benefits of any kind from the manufacturer, distributor, or other seller for such reporting. Such reporting may not be used by a manufacturer, distributor, or other seller to advance the sale of such treatment.

(2) STATEMENTS BY A PRACTITIONER TO A PATIENT.—Subsection (b)(4) shall not apply to any statement made in person by a health care practitioner to an individual patient or an individual prospective patient.

(3) DIETARY SUPPLEMENTS STATEMENTS.—Subsection (b)(4) shall not apply to statements or claims permitted under sections 403B and 403(r)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343-2 and 343(r)(6)).

SEC. 4. REPORTING OF A DANGEROUS MEDICAL TREATMENT.

(a) HEALTH CARE PRACTITIONER.—If a health care practitioner, after administering a medical treatment, discovers that the treatment itself was a danger to the individual receiving such treatment, the practitioner shall immediately report to the Secretary of Health and Human Services the nature of such treatment, the results of such treatment, the complete protocol of such treatment, and the source from which such treatment or any part thereof was obtained.

(b) SECRETARY.—Upon confirmation that a medical treatment has proven dangerous to an individual, the Secretary of Health and Human Services shall properly disseminate information with respect to the danger of the medical treatment.

SEC. 5. REPORTING OF A BENEFICIAL MEDICAL TREATMENT.

If a health care practitioner, after administering a medical treatment that is not a conventional medical treatment for a life-threatening medical condition or conditions, discovers that such medical treatment has positive effects on such condition or conditions that are significantly greater than the positive effects that are expected from a conventional medical treatment for the same condition or conditions, the practitioner shall immediately make a reporting, which is accurate and truthful, to the Office of Alternative Medicine of—

(1) the nature of such medical treatment (which is not a conventional medical treatment);

(2) the results of such treatment; and

(3) the protocol of such treatment.

SEC. 6. TRANSPORTATION AND PRODUCTION OF FOOD, DRUGS, DEVICES, AND OTHER EQUIPMENT.

Notwithstanding any other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 et seq.), a person may—

(1) introduce or deliver into interstate commerce a food, drug, device, or any other equipment; and

(2) produce a food, drug, device, or any other equipment,

solely for use in accordance with this Act if there have been no advertising claims by the manufacturer, distributor, or seller.

SEC. 7. VIOLATION OF THE CONTROLLED SUBSTANCES ACT.

A health care practitioner, manufacturer, distributor, or other seller may not violate any provision of the Controlled Substances Act (21 U.S.C. 801 et seq.) in the provision of medical treatment in accordance with this Act.

SEC. 8. PENALTY.

A health care practitioner who knowingly violates any provisions under this Act shall not be covered by the protections under this Act and shall be subject to all other applicable laws and regulations.

Mr. DOLE. Mr. President, I am pleased to be a cosponsor of the Access to Medical Treatment Act. This legislation is very simple—it would allow individuals to access, under certain carefully circumscribed conditions, medical treatments not approved by the FDA.

The Access to Medical Treatment Act gives an individual the freedom to choose any licensed health care practitioner with any method of medical treatment the individual desires as long as the treatment is not dangerous and the patient is fully informed of its side effects.

Other consumer protections in the bill include a prohibition against advertising claims of efficacy. In addition, the labels on the treatment cannot be false or misleading.

Mr. President, this legislation would not dismantle the Food and Drug Administration or allow pharmaceutical companies to circumvent the FDA. The FDA would retain responsibility for certifying treatments as safe and effective. What this legislation does allow is for a bypass for the FDA approval process for alternative medicines that may be the only hope for some individuals.

Mr. President, many times in this Chamber I have applauded the quality of American health care. No doubt about it—it is by far the best in the world. And, although maintaining quality standards is a high priority, there are times when conventional medicine offers limited hope for some life-threatening diseases. While the role of the Government is to ensure quality, denying access to a treatment that may be the only hope for a patient is not the role of the Government.

And, while I support this legislation, I can empathize with those who fear the quality of care will suffer as a result of bypassing the FDA. For this reason, and since there is little data so far on alternative medicines, I would strongly encourage a thorough hearing process on the efficacy of these medical treatments.

Mr. President, no doubt about it, the Food and Drug Administration plays an essential role in evaluating the safety and efficacy of medical treatments to protect our citizens. However, in a free market system, it seems to make sense to make available nonharmful alternative medical treatments to individuals who desire such treatments, without the Federal Government standing in the way.

Mr. HATCH. Mr. President, I am pleased to join with my colleagues today in introducing S. 1035, the new and improved version of a very important bill, the Access to Medical Treatment Act, drafted last year by our colleague, the distinguished minority leader, Senator DASCHLE.

At the outset, let me underscore how committed I am to efforts such as this which will allow Americans the freedom to take advantage of the medical treatments they want and need.

I think that the two big lessons many learned last year from our success on the dietary supplement legislation is that American consumers want the freedom to use products and procedures that improve their health and that we cannot always count on the Food and Drug Administration to foster those freedoms. These consumers spoke out vigorously for their rights.

If any Member doubts this, he or she should simply recall the piles of mail they received on our Dietary Supplement Health and Education Act. I know I received more grassroots constituent communications on this topic than on any other.

I recall a hearing held by our colleague, Senator TOM HARKIN, another leader in the alternative medicine community, last year on the subject of alternative medicine. This was an important hearing; and, as I recall, our colleague Senator DASCHLE took time from his busy schedule to sit in even though he was not a member of the committee.

At that hearing, we heard very compelling testimony from Hon. Berkley Bedell, whose own experience with Lyme disease is quite a testimonial to the need for this legislation. I was very impressed by his knowledge and dedication to this legislation.

However, many of us at the hearing were taken aback, quite frankly, by the FDA's intransigence in refusing to recognize congressional interest in providing Americans with the freedom to choose alternative medicine. Unfortunately, that mindset and lack of leadership at the agency make legislation such as this necessary.

In fact, I recall vividly the testimony of FDA Deputy Commissioner Mary Pendergast—an eloquent spokesperson, albeit one who does not seem to recognize a speeding train when she sees one—when she told the committee that, in essence, all the FDA wanted was for products to be studied. Her concern was that in allowing free use of safe products, the FDA approval—study—process would be circumvented.

Ms. Pendergast's presentation was noticeably lacking in that it did nothing to reassure the committee that FDA has any interest whatsoever in making sure that consumers are able to use these products, or, indeed, in our agenda. The agency was only concerned with the process rather than the outcome.

It is that kind of shortsighted thinking which has made FDA reform increasingly popular on Capitol Hill.

Before I close, I wanted to cite some important modifications that Senator DASCHLE has made to this bill.

First, the new legislation specifically references our work last year and the new dietary supplement law by explicitly stating that the definition of food includes dietary supplements.

I want to commend Senator DASCHLE and his staff for this modification.

Second, the bill now requires the practitioner administering the treatment to personally examine the patient; I think this is an important consumer protection.

Third, the patient must be informed in writing before administration of the treatment that it has not been approved by the Government. Again, I agree that this is important information for consumers.

Fourth, following the precedent we set with dietary supplements, the revised bill prohibits any product labeling which is false or misleading. The FDA, of course, wants to approve each and every label. This is a degree of control which is simply not possible if we are to make alternative treatments available.

Fifth, the language explicitly states that no health care practitioner, manufacturer, or distributor may use this bill to circumvent the Controlled Substances Act. This is a provision I had suggested, and I am glad to see that my colleagues agreed with me that it should be incorporated in the legislation.

Mr. President, in closing, I again want to thank my colleague for his foresight in sponsoring this legislation and for being such an effective advocate for its passage. I am pleased to join him as an original cosponsor.

By Mr. COHEN (for himself and Mr. KOHL):

S. 1036. A bill to provide for the prevention of crime, and for other purposes; to the Committee on the Judiciary.

THE JUVENILE CRIME PREVENTION AND REFORM ACT

• Mr. COHEN. Mr. President, when reflecting upon the condition of American society as we move into the next century, there are few features of our social fabric that give rise to more concern than the violence that is plaguing our major urban centers and creeping into our suburbs and rural areas as well. By far, the most troubling aspect

of our culture of violence is that young people, some not old enough to be called adolescents, are armed, dangerous, and committing heinous crimes at an increasing rate in each passing year.

To make matters worse, as the number of young males aged 14 to 17 grows over the next 5 years, we can expect record levels of juvenile crime. One expert estimates that this demographic trend will produce "a minimum of 30,000 more muggers, murders, and chronic offenders" than we have now.

There is no single Government policy or program that will solve our juvenile crime epidemic in the long or short run. Our approach must be comprehensive. First, punishment for violent crime must be swift and certain. We must dedicate adequate resources for police to catch criminals, for prosecutors to convict them, and for prisons to house them. Violent criminals must remain behind bars for a long time, as this is the only way to ensure that they do not victimize other innocent, law-abiding citizens.

While adequate resources for police, prosecutors, and prisons are vitally necessary, we must acknowledge the limitations of the criminal justice system. For the most part, the criminal justice system is reactive—that is, it only engages after a crime has been committed. Since only a small percentage of crimes actually lead to arrests, and an even smaller percentage lead to conviction and punishment, the extent to which the criminal justice system can actually deter crime is limited.

This is especially true with respect to youth from dysfunctional families living in communities riddled by gangs, guns, and drugs. I do not believe that we can deter these young people from crime merely by increasing criminal penalties and building more prisons. These youth turn to violence because it pervades their environment, because gang leaders are their role models, because their lives are filled with despair and hopelessness, and because life in prison is not such a bad alternative to their violent, drug-infested communities.

Programming designed to prevent at-risk youth from turning to a life of crime is an important complement to our criminal justice system. Well-designed programs that give children constructive alternatives to the streets and provide youth with exposure to positive adult role models have made a difference. Over the years, I have met with numerous young people whose lives have been turned around because someone in the community—be it a school principal, police officer, or program director—has taken an interest in them. Investment in prevention programs can save lives and can reduce crime.

Because I believe we must include prevention programming as part of our comprehensive approach toward crime, today I am introducing, along with Senator KOHL, the Juvenile Crime Prevention and Reform Act.

I am very pleased to be joined by Senator KOHL in this effort. We once served as ranking members of the Juvenile Justice Subcommittee. I know that he continues to share a keen interest in this subject and cares a great deal about America's youth.

The purpose of the legislation we are introducing is to remedy the defects in the prevention title of last year's crime bill, while preserving a meaningful role for prevention programming in our national crime strategy.

The problem with last year's crime bill was that it became a vehicle for an assortment of unproven social programs, many of which were not directly linked to crime prevention. The undisciplined addition of these programs gave rise to the charge the bill was laden with pork and that the programs were nothing more than social experimentation.

The proper response to what happened last year, however, is not to repeal all the juvenile crime prevention programs in the crime bill. Eliminating prevention programming would send the wrong message to children and parents from distressed, crime-ridden communities who are trying the best they can to lead normal, productive lives.

As an alternative, this legislation takes a comprehensive look at both the problems and promise of crime prevention programming.

The heart of the bill is a mandate that every program authorized by the legislation be subjected to a rigorous scientific evaluation. This is the only way that Congress and the States can begin to determine which prevention strategies work and which do not.

In addition, we require the administration to develop a proposal to consolidate and rationalize the scores of Federal programs designed to provide assistance to at-risk youth. Preliminary results from a study I requested from GAO indicate that there are over 128 Federal programs that target at-risk youth. Most of these programs have tiny budgets and overlapping missions. Savings can be gained by consolidating redundant programs and repealing programs that have not proven to be effective or have outlived their usefulness.

Third, we start the process of trimming the number of overlapping and redundant programs by repealing 12 programs from last year's crime bill and other statutes. These repeals result in over $1 billion in savings.

Finally, we preserve and streamline four core prevention programs, each of which is carefully targeted to address the needs of communities that have been ravaged by crime:

One program will provide assistance in the form of a block grant directly to local governments where the most creative prevention work is being done. Local governments are given wide latitude as to how these funds should be spent, so long as they are dedicated to programs to prevent juvenile violence and delinquency.

Second, the bill authorizes funding for the Weed and Seed Program, a Bush administration initiative, which requires local police, prosecutors, correctional officers, schools, and community organizations to integrate law enforcement efforts and prevention programming.

Third, the bill preserves the bipartisan Community Schools Program, which provides funding to keep school and other community facilities open in the afternoon, weekends, and summers, to serve as community centers. This program is designed to meet what a school principal from Westbrook, ME has described to me as "our young people's desperate need for quality after-school programs that address both their academic, social, and recreational development."

Finally, the bill will address the pervasive problem of youth gangs by consolidating the Federal Government's fragmented gang intervention efforts and creating a unified antigang program with sufficient funding to have an impact.

The total cost of the four programs is $3 billion, approximately $1 billion less than the amount of funds dedicated to youth prevention programming in last year's crime bill.

One of the Nation's leading experts on crime, James Q. Wilson has testified this year that "I believe we should continue to test promising crime prevention strategies, building on such leads as we now possess and subjecting each strategy to rigorous, external evaluation." That is exactly what this bill accomplishes.

This package is comprehensive, it addresses both the strengths and weaknesses of the Federal Government's crime prevention efforts, and it is sensitive to the genuine needs of our communities.

We owe it to the Nation's youth to continue searching for ways to effectively prevent crime and make our communities safer. I urge my colleagues to support this important legislation.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 1036

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 "Juvenile Crime Prevention and Reform Act of 1995".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Purposes.
Sec. 4. Repeals.

TITLE I—EVALUATION OF CRIME PREVENTION PROGRAMS AND DEVELOPMENT OF NATIONAL CRIME PREVENTION RESEARCH AND EVALUATION STRATEGY

Sec. 101. Definition.
Sec. 102. Evaluation of crime prevention programs.
Sec. 103. National crime prevention research and evaluation strategy.
Sec. 104. Evaluation and research criteria.
Sec. 105. Compliance with evaluation mandate.
Sec. 106. Reservation of funds for evaluation and research.

TITLE II—LOCAL CRIME PREVENTION BLOCK GRANT PROGRAM

Sec. 201. Local crime prevention block grant program.

TITLE III—WEED AND SEED COMMUNITY ANTI-CRIME PROGRAM

Sec. 301. Statement of purpose.
Sec. 302. Executive Office for Weed and Seed Programs.
Sec. 303. Grant authorization.
Sec. 304. Priority.
Sec. 305. Use of funds.
Sec. 306. Applications.
Sec. 307. Evaluation and inspection.
Sec. 308. Authorization of appropriations.
Sec. 309. Coordination of Department of Justice programs.

TITLE IV—COMMUNITY SCHOOLS AND SAFE PLACES GRANT PROGRAM

Sec. 401. Community Schools and Safe Places Grant Program.

TITLE V—CONSOLIDATION OF GANG PREVENTION PROGRAMS

Sec. 501. Repeal of existing gang prevention programs.
Sec. 502. Establishment of unified gang prevention and intervention program.
Sec. 503. Application for grants and contracts.
Sec. 504. Approval of applications.

TITLE VI—FURTHER CONSOLIDATION OF PROGRAMS FOR AT-RISK YOUTH

Sec. 601. Further consolidation of programs for at-risk youth.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to consolidate, streamline, and more carefully target Federal crime prevention programs; and

(2) to mandate rigorous outcome evaluation of Federal crime prevention programs and other promising crime prevention strategies.

SEC. 4. REPEALS.

The following provisions of law are repealed:

(1) Sections 30102, 30103, and 30104, subtitle C, section 30402, and subtitles H, J, K, O, S, and X of title III of the Violent Crime Control and Law Enforcement Act of 1994.

(2) Part G of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (relating to mentoring).

(3) Section 682 of the Community Services Block Grant Act (42 U.S.C. 9910c) (relating to the National Youth Sports Program).

TITLE I—EVALUATION OF CRIME PREVENTION PROGRAMS AND DEVELOPMENT OF NATIONAL CRIME PREVENTION RESEARCH AND EVALUATION STRATEGY

SEC. 101. DEFINITION.

For purposes of this title, the term "Secretary" means the Secretary of Health and Human Services.

SEC. 102. EVALUATION OF CRIME PREVENTION PROGRAMS.

The Attorney General, with respect to the programs in titles II, III, and V, and the Secretary, with respect to the program in title IV, shall provide, directly or through grants and contracts, for the comprehensive and thorough evaluation of the effectiveness of each program established by this Act and the amendments made by this Act.

SEC. 103. NATIONAL CRIME PREVENTION RESEARCH AND EVALUATION STRATEGY.

(a) STRATEGY.—Not later than 9 months after the date of enactment of this Act, the Attorney General and the Secretary shall formulate and publish a unified national crime prevention research and evaluation strategy that will result in timely reports to Congress, and to State and local governments, regarding the impact and effectiveness of crime and violence prevention initiatives.

(b) STUDIES.—Consistent with the strategy developed pursuant to subsection (a), the Attorney General or Secretary may use crime prevention research and evaluation funds reserved under section 106 to conduct studies and demonstrations regarding the effectiveness of crime prevention programs and strategies that are designed to achieve the same purposes as the programs under this Act, without regard to whether such programs receive Federal funding.

SEC. 104. EVALUATION AND RESEARCH CRITERIA.

(a) INDEPENDENT EVALUATIONS AND RESEARCH.—Evaluations and research studies conducted pursuant to this title shall be independent in nature, and shall employ rigorous and scientifically recognized standards and methodologies.

(b) CONTENT OF EVALUATIONS.—Evaluations conducted pursuant to this title shall include measures of—

(1) reductions in delinquency, juvenile crime, youth gang activity, youth substance abuse, and other high risk factors;

(2) reductions in risk factors in young people that contribute to juvenile violence, including academic failure, excessive school absenteeism, and dropping out of school;

(3) reductions in risk factors in the community, schools, and family environments that contribute to juvenile violence; and

(4) the increase in the protective factors that reduce the likelihood of delinquency and criminal behavior.

SEC. 105. COMPLIANCE WITH EVALUATION MANDATE.

The Attorney General and the Secretary may require the recipients of Federal assistance under programs under this Act to collect, maintain, and report information considered to be relevant to any evaluation conducted pursuant to section 102, and to conduct and participate in specified evaluation and assessment activities and functions.

SEC. 106. RESERVATION OF FUNDS FOR EVALUATION AND RESEARCH.

(a) IN GENERAL.—The Attorney General, with respect to titles II, III, and V, the Secretary, with respect to title IV, shall reserve not less than 3 percent, and not more than 5 percent, of the amounts appropriated pursuant to such titles and the amendments made by such titles in each fiscal year to carry out the evaluation and research required by this title.

(b) ASSISTANCE TO GRANTEES AND EVALUATED PROGRAMS.—To facilitate the conduct and defray the costs of crime prevention program evaluation and research, the Attorney General and the Secretary shall use funds reserved under this section to provide compliance assistance to—

(1) grantees under this title who are selected to participate in evaluations pursuant to section 105; and

(2) other agencies and organizations that are requested to participate in evaluations and research pursuant to section 103(b).

TITLE II—LOCAL CRIME PREVENTION BLOCK GRANT PROGRAM

SEC. 201. LOCAL CRIME PREVENTION BLOCK GRANT PROGRAM.

Subtitle B of title III of the Violent Crime Control and Law Enforcement Act of 1994 is amended to read as follows:

"Subtitle B—Local Crime Prevention Block Grant Program

"SEC. 30201. DEFINITIONS.

"For purposes of this subtitle:

"(1) The term 'at-risk youth' means a juvenile who—

"(A) is at risk of academic failure;

"(B) has drug or alcohol dependency problems;

"(C) has come into contact with the juvenile justice system;

"(D) is at least 1 year behind the expected grade level for the age of the juvenile;

"(E) is a gang member; or

"(F) has dropped out of school or has high absenteeism rates in school.

"(2) The term 'juvenile' means a person who is not younger than 5 and not older than 18 years old.

"(3) The term 'part 1 violent crime' means murder, non-negligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports.

"(4) The term 'payment period' means each 1-year period beginning on October 1 of the years 1996 through 2000.

"(5) The term 'poverty line' means the income official poverty line, as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), applicable to a family of the size involved.

"(6) The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, except that—

"(A) American Samoa, Guam, and the Northern Mariana Islands shall be considered as one State; and

"(B) for purposes of section 30205(a), 33 percent of the amounts allocated shall be allocated to American Samoa, 50 percent to Guam, and 17 percent to the Northern Mariana Islands.

"(7) The term 'unit of general local government' means—

"(A) a county, township, city, or political subdivision of a county, township, or city, that is a unit of general local government as determined by the Secretary of Commerce for general statistical purposes; and

"(B) the District of Columbia and the recognized governing body of an Indian tribe or Alaska Native village that carries out substantial governmental duties and powers.

"SEC. 30202. PAYMENTS TO LOCAL GOVERNMENTS.

"(a) USE.—Amounts paid to a unit of general local government under this subtitle shall be used to fund programs to prevent and diminish juvenile violence and delinquency, juvenile gang activity, and the sale and use of illegal drugs by juveniles, including but not limited to—

"(1) programs aimed at preventing children from becoming involved in gangs;

"(2) programs aimed at preventing children from becoming involved with drugs, such as the drug abuse resistance education programs described in section 5122(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3192(c));

"(3) programs providing substance abuse treatment to at-risk youth;

"(4) programs establishing safe havens to prevent the violent victimization of juveniles and to provide children with appropriate education, and recreational and vocational opportunities;

"(5) programs based on community service corps models that use community service activities to teach skills, discipline, and responsibility;

"(6) programs providing mentoring, tutoring, and intensive remedial education to at-risk youth;

"(7) programs for abused children who are at risk of juvenile delinquency, including programs or group homes for children who have been placed outside or removed from the home of the parents as a result of abuse or neglect; and

(8) programs providing at-risk youth with vocational life skills training to improve employment opportunities.

"(b) TIMING OF PAYMENTS.—Each State shall distribute amounts allocated to such State under this subtitle to units of general local government for a payment period not later than the later of—

"(1) 90 days after the date the amount is available; or

"(2) if the unit of general local government has made the certification under section 30204(a), the first day of the payment period.

"(c) REPAYMENT OF UNEXPENDED AMOUNTS.—

"(1) REPAYMENT REQUIRED.—A unit of general local government shall repay to a State, not later than 15 months after receipt from the State, any amount that is—

"(A) paid to the unit from amounts appropriated pursuant to section 30209; and

"(B) not expended by the unit within 1 year after receipt from the State.

"(2) PENALTY FOR FAILURE TO REPAY.—The State shall reduce payments in each future payment period in an amount equal to any amount required to be repaid under paragraph (1) that was not repaid.

"(3) DEPOSIT OF AMOUNTS REPAID.—Amounts received by a State as repayments under this subsection shall be deposited into a fund designated for future payments to units of general local government.

"(d) NONSUPPLANTING REQUIREMENT.—Funds made available pursuant to section 30209 to units of general local government shall not be used to supplant State or local funds, but shall be used to increase the amount of funds that would, in the absence of funds under this subtitle, be made available from State or local sources.

"SEC. 30203. TECHNICAL ASSISTANCE.

"The Ounce of Prevention Council established under section 30101 may provide technical assistance to units of general local government receiving payments under this subtitle, including—

"(1) assistance to communities seeking information regarding crime prevention programs and strategies;

"(2) assistance in the implementation of crime prevention programs and strategies; and

"(3) assistance in the integration and streamlining of community crime prevention functions and activities.

"SEC. 30204. QUALIFICATION FOR PAYMENT.

"(a) GENERAL REQUIREMENTS FOR QUALIFICATION.—A unit of general local government qualifies for a payment under this subtitle for a payment period only if the unit certifies that—

"(1) the government will establish a trust fund in which the government will deposit all payments received under this subtitle;

"(2) the government will use amounts in the trust fund (including interest) during a reasonable period;

"(3) the government will expend the payments received under this subtitle in accordance with the laws and procedures that are applicable to the expenditure of revenues of the government;

"(4) the government will use accounting, audit, and fiscal procedures that conform to guidelines prescribed by the Attorney General after consultation with the Comptroller General of the United States;

"(5) as applicable, amounts received under this subtitle will be audited in compliance with the Single Audit Act of 1984;

"(6) after reasonable notice to the government, the government will make available to the Attorney General and the Comptroller General of the United States, with the right to inspect, records the Attorney General reasonably requires to review compliance with this subtitle or the Comptroller General of the United States reasonably requires to review compliance and operations;

"(7) the government will make reports the Attorney General reasonably requires, in addition to the annual reports required under this subtitle; and

"(8) the government has complied with subsection (b).

"(b) REPORTING REQUIREMENTS.—

"(1) IN GENERAL.—To facilitate the evaluation of the programs and activities funded under this subtitle, each unit of local government, before receiving payments under this subtitle in any fiscal year, shall submit to the Attorney General a report describing the programs, activities, and functions that will be assisted with such payments.

"(2) REGULATIONS.—The Attorney General shall issue regulations defining the nature and timing of the reporting requirement specified in paragraph (1).

"(c) EFFECT OF NONCOMPLIANCE.—

"(1) IN GENERAL.—If the Attorney General determines that a unit of general local government has not complied substantially with subsection (a) or regulations prescribed under subsection (a), the Attorney General shall notify the noncomplying government. The notice shall state that if the government does not take corrective action by the 60th day after the date the government receives the notice, the Attorney General will withhold additional payments to the State for the current payment period and later payment periods until the Attorney General is satisfied that the local government—

"(A) has taken the appropriate corrective action; and

"(B) will comply with subsection (a) and regulations prescribed under subsection (a).

"(2) NOTICE.—Before giving notice under paragraph (1), the Attorney General shall give the chief executive officer of the unit of general local government reasonable notice and an opportunity for comment.

"(3) PAYMENT CONDITIONS.—The Attorney General may make a payment to a State encompassing a unit of general local government notified under paragraph (1) only if the State government has certified to the Attorney General's satisfaction that the local government—

"(A) has taken the appropriate corrective action; and

"(B) will comply with subsection (a) and regulations prescribed under subsection (a).

"SEC. 30205. ALLOCATION AND DISTRIBUTION OF FUNDS.

"(a) STATE DISTRIBUTION.—

"(1) IN GENERAL.—Of the total amounts appropriated pursuant to section 30209 for each payment period, the Attorney General shall allocate to each State the sum of—

"(A) subject to paragraph (2), an amount that bears the same relation to one-third of such total as the population in the State bears to the population in all States;

"(B) an amount that bears the same relation to one-third of the amount remaining after the operation of subparagraph (A) as the number of juveniles in the State bears to the number of juveniles in all States;

"(C) an amount that bears the same relation to one-third of the amount remaining after the operation of subparagraph (A) as the number of juveniles from families with incomes below the poverty line in the State bears to the number of such juveniles in all States; and

"(D) an amount that bears the same relation to the amount remaining after the operation of subparagraph (A) as the average annual number of part 1 violent crimes reported by the State to the Federal Bureau of Investigation for the 3 most recent calendar years for which such data are available, bears to the number of part 1 violent crimes reported by all States to the Federal Bureau of Investigation for such years.

"(2) MINIMUM REQUIREMENT.—Each State shall receive not less than .35 percent of one-third of the total amount appropriated pursuant to section 30209 for each payment period.

"(b) LOCAL DISTRIBUTION.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), each State shall allocate among its units of general local government the amount allocated under subsection (a) in a manner consistent with the factors identified in that subsection, and with the relative burdens and expenditures assumed by each unit of general local government with respect to crime prevention functions and activities.

"(2) QUALIFICATION.—A State may distribute funds allocated under paragraph (1) to a unit of general local government only after establishing to the satisfaction of the Attorney General that the unit of general local government is qualified to receive payments in accordance with subsections (a) and (b) of section 30204.

"(3) MINIMUM REQUIREMENT.—If under the formula established by a State pursuant to paragraph (1), a unit of general local government would receive less than $5,000 for the payment period, the amount allocated shall be transferred to the Governor of the State who shall equitably distribute the allocation to all such units or consortia thereof.

"(c) UNAVAILABILITY OF INFORMATION.—For purposes of this section, if data regarding the measures governing allocation of funds under subsections (a) and (b) in any State are unavailable or substantially inaccurate, the Attorney General and the State shall

utilize the best available comparable data for the purposes of allocation of any funds under this subtitle.

"SEC. 30206. UTILIZATION OF PRIVATE SECTOR.

"Funds or a portion of funds allocated under this subtitle may be used to contract with private nonprofit entities or community-based organizations or community development corporations to carry out the uses specified under section 30202(a).

"SEC. 30207. PUBLIC PARTICIPATION.

"A unit of general local government expending payments under this subtitle shall hold at least one public hearing on the proposed use of the payment in relation to its entire budget. At the hearing, persons shall be given an opportunity to provide written and oral views to the governmental authority responsible for enacting the budget and to ask questions about the entire budget and the relation of the payment to the entire budget. The government shall hold the hearing at a time and a place that allows and encourages public attendance and participation.

"SEC. 30208. ADMINISTRATIVE PROVISIONS.

"The administrative provisions of part H of the Omnibus Crime Control and Safe Streets Act of 1968 shall apply to the Attorney General for purposes of carrying out this subtitle.

"SEC. 30209. AUTHORIZATION OF APPROPRIATIONS.

"(a) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this subtitle $300,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

"(2) AVAILABILITY.—Amounts appropriated pursuant to this subsection shall remain available until expended.

"(b) ADMINISTRATIVE COSTS.—Not more than 1.5 percent of the amount made available pursuant to subsection (a) shall be used by the Attorney General for administrative costs.

"(c) TECHNICAL ASSISTANCE.—Not more than 1 percent of funds made available pursuant to this section in any fiscal year shall be available to the Ounce of Prevention Council for the provision of technical assistance under section 30203.".

TITLE III—WEED AND SEED COMMUNITY ANTI-CRIME PROGRAM

SEC. 301. STATEMENT OF PURPOSE.

The purpose of the Weed and Seed Program is to facilitate—

(1) the formation of effective anti-crime and anti-drug partnerships in high crime neighborhoods and communities that involve the participation and cooperation of law enforcement agencies, community groups, volunteer organizations, public and private human service providers, civic and religious organizations, and the business community; and

(2) the creation of comprehensive anti-crime initiatives in high crime neighborhoods and communities that are designed to—

(A) weed out violent crime, gang crime, and drug trafficking by employing intensive community policing strategies and maximizing the coordination and integration of Federal, State, and local law enforcement and criminal justice functions; and

(B) seed targeted geographical areas with an array of crime and drug prevention programs, human service agency resources, and economic revitalization and neighborhood restoration strategies to prevent crime.

SEC. 302. EXECUTIVE OFFICE FOR WEED AND SEED PROGRAMS.

(a) ESTABLISHMENT.—There is established in the Department of Justice an Executive Office for Weed and Seed Programs, under the authority of the Assistant Attorney General for the Office of Justice Programs.

(b) DUTIES.—The Executive Office for Weed and Seed Programs shall, in consultation with the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Secretary of Health and Human Services, implement and administer a multidisciplinary approach to weeding out crime and seeding services and activities that promotes—

(1) safety and security;

(2) the prevention of crime and juvenile delinquency; and

(3) community revitalization.

(c) POWERS.—The Executive Office for Weed and Seed Programs shall have all the necessary powers to implement Weed and Seed Program activities, including the authority to—

(1) make grants and awards;

(2) enter into contracts and cooperative agreements;

(3) reimburse and transfer funds to appropriation accounts of the Department of Justice and other Federal agencies; and

(4) execute Weed and Seed Program functions.

SEC. 303. GRANT AUTHORIZATION.

(a) IN GENERAL.—The Attorney General may award grants to units of general local government (as defined in section 30201 of the Violent Crime Control and Law Enforcement Act of 1994 (as amended by section 201)), State and local agencies, and private nonprofit agencies and organizations to implement Weed and Seed Program activities.

(b) WEEDING ACTIVITIES.—Weeding activities include the following activities and functions, implemented in a manner consistent with the community-based plan described in section 306(b)(2):

(1) Intensifying law enforcement efforts to investigate, prosecute, and punish violent and drug-related crime in targeted communities.

(2) Integrating and coordinating the efforts and resources of Federal, State, and local law enforcement agencies, including Federal, State, and local prosecutors.

(3) Implementing intensive community policing strategies designed to enhance public safety by increasing—

(A) the street patrol presence of law enforcement officers in high-crime neighborhoods; and

(B) the interaction and cooperation between law enforcement officers and residents in neighborhoods experiencing high-intensity, high-frequency violent and drug-related crime.

(4) Programs that enhance home security procedures and the security procedures of public and private housing developments.

(c) SEEDING ACTIVITIES.—Seeding activities include the following activities and functions, implemented in a manner consistent with the community-based plan described in section 306(b)(2):

(1) The coordinated collaborative efforts of law enforcement agencies, human service agencies, the private sector, and community groups to concentrate a broad array of crime prevention programs such as drug treatment, family services, and youth services in targeted neighborhoods and communities to—

(A) create an environment where crime cannot thrive;

(B) instill discipline and responsibility in at-risk youth; and

(C) develop positive community attitudes toward combating violence and drug trafficking.

(2) Efforts to revitalize distressed neighborhoods by integrating Federal, State, local, and private sector resources to facilitate the development of safe and secure housing and economic opportunities in targeted neighborhoods.

(3) Programs that engineer low-cost physical improvements within neighborhoods.

(4) Programs that increase the safety and security of communities through environmental design and modification.

SEC. 304. PRIORITY.

In awarding grants under section 303, the Attorney General shall give priority to applications that—

(1) are innovative in approach to the implementation of a coordinated Weed and Seed strategy;

(2) are innovative in approach to the prevention of crime in a specific area;

(3) contain component programs and activities that have clearly defined goals, objectives, and evaluation designs;

(4) vary in approach to ensure that the effectiveness of different anti-crime strategies may be evaluated;

(5) demonstrate the financial and organizational commitment of State and local public and private resources to support specific Weed and Seed activities; and

(6) coordinate crime prevention programs and activities funded under this title with other existing Federal, State, local, and private programs and activities operating in the targeted Weed and Seed geographic area.

SEC. 305. USE OF FUNDS.

(a) IN GENERAL.—Funds awarded under this title may be used only to implement Weed and Seed activities consistent with this title and described in an approved application.

(b) GUIDELINES.—The Attorney General shall issue guidelines that describe suggested purposes for which Weed and Seed grant awards may be used.

(c) EQUITABLE DISTRIBUTION.—In distributing funds under this title, the Attorney General shall target funds to communities that have been severely distressed by crime and delinquency but shall also ensure the equitable distribution of awards on a geographic basis.

SEC. 306. APPLICATIONS.

(a) IN GENERAL.—Each applicant seeking a grant under this title shall prepare and submit to the Attorney General an application in such form, at such time, and in accordance with such procedures, as the Attorney General shall establish.

(b) CONTENTS OF APPLICATION.—Each application for assistance under this section shall include—

(1) a description of the distinctive factors that contribute to chronic violent and drug-related crime within the area proposed to be served by the grant;

(2) a comprehensive community-based plan to attack intensively the principal factors identified in paragraph (1), including a description of—

(A) the specific weeding and seeding purposes and activities for which grant funds are to be used;

(B) how law enforcement agencies, other State and local government agencies, private nonprofit organizations, civic and religious organizations, business organizations, and interested members of the community will cooperate in carrying out the purposes of the grant, and the various activities and programs to be funded by the grant; and

(C) how seeding activities proposed under the plan are coordinated with, or related to, any other crime-, gang-, and violence-prevention programs or activities funded by

Federal, State, or local government in the geographic area targeted by the application;

(3) an assurance that funds received under this title shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for programs and activities funded under this title;

(4) an assurance that the recipients of funding under this title will maintain separate and complete accounting records for Weed and Seed Program activities;

(5) an assurance that a community that seeks funding under this title has convened a steering committee to supervise and facilitate development of the community plan described in paragraph (2) and the implementation of Weed and Seed Program activities, and that such body—

(A) is comprised of high-level officials from relevant State and local agencies, law enforcement and prosecutorial authorities, public and private human service and youth development providers, representatives from the business sector, and members of the applicant community; and

(B) includes the United States Attorney for the District in which the applicant community is located; and

(6) an assurance that residents of the geographic area that will be served by the grant have been involved in the formulation of the community plan, and will be involved in its implementation through volunteer activities and organizations.

SEC. 307. EVALUATION AND INSPECTION.

(a) IN GENERAL.—The Attorney General shall provide for the rigorous and independent evaluation of the Weed and Seed Program in accordance with title I of this Act.

(b) COLLECTION OF INFORMATION.—The Attorney General may require grant recipients under this title to collect, maintain, and report information relevant to any evaluation conducted pursuant to subsection (a), and to conduct and participate in specified evaluation and assessment activities and functions.

(c) INVESTIGATIONS AND INSPECTIONS.—The Attorney General may conduct such investigations and inspections as may be necessary to ensure compliance with this title.

SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

(a) ALLOCATION OF COPS ON THE BEAT FUNDING FOR WEEDING ACTIVITIES.—Section 1001(a)(11)(B) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended by inserting after the third sentence the following new sentence: "In each fiscal year, the Attorney General may allocate up to $100,000,000 for grants to support weeding activities under the Weed and Seed Program under title III of the Juvenile Crime Prevention and Reform Act of 1995 consistent with the purposes specified in part Q.".

(b) SEEDING ACTIVITIES.—There are authorized to be appropriated to carry out seeding activities under this title, $100,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

SEC. 309. COORDINATION OF DEPARTMENT OF JUSTICE PROGRAMS.

Funds allocated to other Department of Justice appropriations accounts and designated by the Congress through legislative language or through policy guidance for Weed and Seed Program activities shall be managed and coordinated by the Attorney General through the Executive Office for Weed and Seed Programs. The Attorney General may direct the use of other Department of Justice funds and personnel in support of Weed and Seed Program activities after notifying the Committees on Appropriations of the Senate and House of Representatives.

TITLE IV—COMMUNITY SCHOOLS AND SAFE PLACES GRANT PROGRAM

SEC. 401. COMMUNITY SCHOOLS AND SAFE PLACES GRANT PROGRAM.

(a) GRANT PROGRAM.—Section 30401 of the Violent Crime Control and Law Enforcement Act of 1994 is amended to read as follows:

"SEC. 30401. COMMUNITY SCHOOLS AND SAFE PLACES PROGRAM.

"(a) SHORT TITLE.—This section may be cited as the 'Community Schools and Safe Places Grant Program Act of 1995'.

"(b) DEFINITIONS.—For purposes of this section—

"(1) the term 'youth' means a person who is not younger than 5 and not older than 18 years old;

"(2) the term 'community-based organization' means a private, locally initiated organization that—

"(A) is a nonprofit organization, as defined in section 103(23) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603(23)); and

"(B) involves the participation, as appropriate, of members of the community and community institutions including—

"(i) business and civic leaders actively involved in providing employment and business development opportunities in the community;

"(ii) educators;

"(iii) religious organizations (which shall not provide any religious instruction or religious worship in connection with an activity funded under this title);

"(iv) law enforcement agencies; or

"(v) other interested parties;

"(3) the term 'eligible community' means an area identified pursuant to subsection (e);

"(4) the term 'Indian tribe' means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

"(5) the term 'poverty line' means the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved;

"(6) the term 'public school' means a public elementary school, as defined in section 1201(i) of the Higher Education Act of 1965 (20 U.S.C. 1141(i)), and a public secondary school, as defined in section 1201(d) of such Act (42 U.S.C. 1141(d));

"(7) the term 'Secretaries' means the Secretary of Health and Human Services and the Secretary of Education acting jointly, in consultation and coordination with the Attorney General; and

"(8) the term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

"(c) PROGRAM AUTHORITY.—

"(1) IN GENERAL.—

"(A) ALLOCATIONS FOR STATES AND INDIAN TRIBES.—(i) For any fiscal year in which the sums appropriated to carry out this section equal or exceed $20,000,000, from the sums appropriated to carry out this section, the Secretaries shall allocate for grants under subparagraph (B) to community-based organizations or public schools in each State, an amount bearing the same ratio to such sums as the number of children in the State who are members of families with incomes below the poverty line bears to the number of children in all States who are members of families with incomes below the poverty line.

"(ii) The Secretaries shall allocate an appropriate amount of funds available under this section for grants to Indian tribes.

"(B) GRANTS TO COMMUNITY-BASED ORGANIZATIONS AND PUBLIC SCHOOLS FROM ALLOCATIONS.—For each fiscal year described in subparagraph (A), the Secretaries may award grants from the appropriate State or Indian tribe allocation determined under subparagraph (A) on a competitive basis to eligible community-based organizations and public schools to pay for the Federal share of assisting eligible communities develop and carry out programs in accordance with this section.

"(C) REALLOCATION.—If, at the end of such a fiscal year, the Secretaries determine that funds allocated for a particular State or Indian tribe under subparagraph (B) remain unobligated, the Secretaries shall use such funds to award grants to eligible community-based organizations or public schools in another State or Indian tribe to pay for the Federal share of assisting eligible communities develop and carry out programs in accordance with this section. In awarding such grants, the Secretaries shall consider the need to maintain geographic diversity among the recipients of grants.

"(D) AVAILABILITY OF FUNDS.—Amounts made available through under this paragraph grants shall remain available until expended.

"(2) OTHER FISCAL YEARS.—For any fiscal year in which the sums appropriated to carry out this section are less than $20,000,000, the Secretaries may award grants on a competitive basis to eligible community-based organizations or public schools to pay for the Federal share of assisting eligible communities develop and carry out programs in accordance with this section.

"(3) ADMINISTRATIVE COSTS.—The Secretaries shall not use more than 2 percent of the funds appropriated to carry out this section in any fiscal year for administrative costs, including training and technical assistance.

"(d) PROGRAM REQUIREMENTS.—

"(1) LOCATION.—A community-based organization or public school that receives a grant under this section shall ensure that the program is carried out—

"(A) when appropriate, in the facilities of a public school during nonschool hours; or

"(B) in another appropriate local facility that is—

"(i) in a location easily accessible to children in the community; and

"(ii) in compliance with all applicable State and local ordinances.

"(2) USE OF FUNDS.—A community-based organization or public school that receives funds under this section—

"(A) shall use the funds to provide to children in the eligible community services and activities that include extracurricular and academic programs that are offered—

"(i) after school and on weekends and holidays, during the school year; and

"(ii) as daily full-day programs (to the extent available resources permit) or as part-day programs, during the summer months;

"(B) may use the funds for incidental expenses related to authorized programs, including the purchase of equipment, repair or minor renovation of facilities, transportation, staffing, health services, substance abuse treatment, and family counseling for program participants;

"(C) shall use not more than 5 percent of the funds to pay for the administrative costs of the program;

"(D) shall not use the funds to provide religious worship or religious instruction; and

"(E) may not use the funds for the general operating costs of public schools.

"(e) ELIGIBLE COMMUNITY IDENTIFICATION.—

"(1) IDENTIFICATION.—To be eligible to receive a grant under this section, a community-based organization or public school shall identify an eligible community to be assisted under this section.

"(2) CRITERIA.—Such eligible community shall be an area that meets such criteria as the Secretary may by regulation establish, including criteria relating to poverty, juvenile delinquency, and crime.

"(f) COMMUNITY PARTICIPATION.—To be eligible to receive a grant under this section, a community-based organization or public school submitting an application shall demonstrate that the projects and activities it seeks to fund involve the participation, when feasible and appropriate, of—

"(1) parents, family members, and other members of the community being served;

"(2) civic and religious organizations;

"(3) local school officials and teachers employed at schools within the eligible community;

"(4) public housing resident organizations; and

"(5) public and private nonprofit organizations and organizations serving youth that provide education, child protective services, or other human services to low-income, at-risk children and their families.

"(g) APPLICATIONS.—

"(1) REQUIREMENT.—To be eligible to receive a grant under this section, a community-based organization or public school shall submit an application to the Secretaries at such time, in such manner, and accompanied by such information, as the Secretaries may reasonably require, and obtain approval of such application.

"(2) CONTENTS OF APPLICATION.—Each application submitted pursuant to paragraph (1) shall—

"(A) describe the activities and services to be provided through the program for which the grant is sought;

"(B) contain a comprehensive plan for the program that is designed to achieve identifiable goals for children in the eligible community;

"(C) specify measurable goals and outcomes for the program that—

"(i)(I) will make a public school the focal point of the eligible community; or

"(II) will make a local facility described in subsection (d)(1)(B) a focal point of the community; and

"(ii) include reducing the percentage of children in the eligible community that enter the juvenile justice system, increasing the graduation rates, school attendance, and academic success of children in the eligible community, and improving the skills of program participants;

"(D) contain an assurance that the community-based organization or public school will use grant funds received under this section to provide children in the eligible community with activities and services consistent with subsection (d)(2)(A);

"(E) demonstrate the manner in which the community-based organization or public school will make use of the resources, expertise, and commitment of private entities in carrying out the program for which the grant is sought;

"(F) include an estimate of the number of children in the eligible community expected to be served under the program;

"(G) include a description of charitable private resources, and all other resources, that will be made available to achieve the goals of the program;

"(H) contain an assurance that the community-based organization or public school will comply with any evaluation under subsection (k), any research effort authorized under Federal law, and any investigation by the Secretaries;

"(I) contain an assurance that the community-based organization or public school will prepare and submit to the Secretaries an annual report regarding any program conducted under this section;

"(J) contain an assurance that the program for which the grant is sought will, to the maximum extent practicable, incorporate services that are provided solely through non-Federal private or nonprofit sources; and

"(K) contain an assurance that the community-based organization or public school will maintain separate accounting records for the program.

"(3) PRIORITY.—In awarding grants to carry out programs under this section, the Secretaries shall give priority to community-based organizations and public schools that submit applications that demonstrate the greatest local support for the programs they seek to fund.

"(h) ELIGIBILITY OF PARTICIPANTS.—

"(1) IN GENERAL.—To the extent practicable, each youth who resides in an eligible community shall be eligible to participate in a program carried out in such community that receives assistance under this section.

"(2) ELIGIBILITY.—For a youth to be eligible to participate in a program, the grantee shall obtain the consent of a parent or guardian, unless it is not feasible to do so.

"(3) NONDISCRIMINATION.—In selecting children to participate in a program that receives assistance under this section, a community-based organization or school shall not discriminate on the basis of race, color, religion, sex, national origin, or disability.

"(i) INVESTIGATIONS AND INSPECTIONS.—The Secretaries may conduct such investigations and inspections as may be necessary to ensure compliance with this section.

"(j) PAYMENTS; FEDERAL SHARE; NON-FEDERAL SHARE.—

"(1) PAYMENTS.—The Secretaries shall, subject to the availability of appropriations, pay to each community-based organization or public school submitting an application under subsection (g) the Federal share of the costs of developing and carrying out programs described in subsection (c).

"(2) FEDERAL SHARE.—The Federal share of the costs of a program under this section shall be not more than—

"(A) 75 percent for each of the first 2 years of a grant's duration;

"(B) 70 percent for the third year of a grant's duration; and

"(C) 60 percent for each year thereafter.

"(3) NON-FEDERAL SHARE.—

"(A) IN GENERAL.—The non-Federal share of the costs of a program under this section may be in cash or in kind, fairly evaluated, including plant, equipment, and services (including the services described in subsection (d)(2)(B)). Federal funds appropriated for the activity of any agency of an Indian tribal government or the Bureau of Indian Affairs on any Indian lands may be used to provide the non-Federal share of the costs of programs or projects funded under this section.

"(B) SPECIAL RULE.—Not less than 15 percent of the non-Federal share of the costs of a program under this section shall be provided from private or nonprofit sources.

"(k) EVALUATION.—In accordance with title I of the Juvenile Crime Prevention and Reform Act of 1995, the Secretaries shall conduct a thorough evaluation of the programs assisted under this section.".

(b) CONTINUATION OF CERTAIN GRANTS.—Notwithstanding section 4, the Secretaries may continue grants or fund applications under subtitle D of title III of the Violent Crime Control and Law Enforcement Act of 1994 for which an application has been submitted on or before the date of enactment of this Act.

(c) FUNDING.—Section 30403 of the Violent Crime Control and Law Enforcement Act of 1994 Act is amended to read as follows:

"SEC. 30403. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Department of Health and Human Services to carry out this subtitle, $160,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.".

TITLE V—CONSOLIDATION OF GANG PREVENTION PROGRAMS

SEC. 501. REPEAL OF EXISTING GANG PREVENTION PROGRAMS.

(a) IN GENERAL.—The following provisions of law are repealed:

(1) Sections 3501, 3502, 3503, 3504, and 3505 of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801, 11802, 11803, 11804, 11805).

(2) Sections 281, 281A, 282, and 282A of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5667, 5667-1, 5667a, 5667a-1).

(b) CONTINUATION OF PROGRAMS.—Notwithstanding subsection (a), the Administrator of the Office of Juvenile Justice and Delinquency Prevention and the Assistant Secretary for Children and Families of the Department of Health and Human Services (referred to in this title as the "Administrator" and the "Assistant Secretary", respectively) may continue grants awarded under the provision referred to in subsection (a) on or before the date of enactment of this Act.

SEC. 502. ESTABLISHMENT OF UNIFIED GANG PREVENTION AND INTERVENTION PROGRAM.

The Administrator and the Assistant Secretary may jointly make grants to public agencies and private nonprofit agencies, organizations, and institutions to—

(1) prevent and reduce the participation of juveniles in the illegal activities of gangs;

(2) promote the involvement of juveniles who are at risk of gang involvement in constructive, productive, lawful alternatives to illegal gang activities;

(3) support local law enforcement agencies in conducting educational outreach activities in communities in which gangs commit drug-related and violent crimes;

(4) prevent gang-related activities from endangering and disrupting the learning environment in elementary and secondary schools;

(5) support the coordination and integration of the gang prevention and intervention activities of local education, juvenile justice, employment and social service agencies, and community-based organizations with a proven record of providing juvenile gang prevention and intervention services in an effective and efficient manner;

(6) provide treatment and rehabilitation services to members of juvenile gangs who abuse drugs; and

(7) provide services to prevent juveniles who have come into contact with the juvenile justice system as a result of gang-related activity from repeating or continuing such conduct.

SEC. 503. APPLICATION FOR GRANTS AND CONTRACTS.

(a) SUBMISSION OF APPLICATIONS.—Any agency, organization, or institution seeking to receive a grant, or to enter into a contract, under this title shall submit an application at such time, in such manner, and containing such information as the Administrator and Assistant Secretary may jointly prescribe.

(b) CONTENTS OF APPLICATION.—Each application for assistance under this title shall—

(1) specify a project or activity for carrying out 1 or more of the purposes specified in section 502 and identify the purpose that such project or activity is designed to carry out;

(2) provide that such project or activity shall be administered by, or under the supervision of, the applicant;

(3) describe how such program or activity is coordinated with, or relates to, any other crime, gang, or violence prevention programs or activities funded by Federal, State, or local government—

(A) in which the applicant participates; and

(B) in the geographic area targeted by the application;

(4) provide that regular reports on such project or activity shall be submitted to the Administrator and Assistant Secretary; and

(5) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper distribution, and accurate accounting of funds received under this title.

SEC. 504. APPROVAL OF APPLICATIONS.

In jointly selecting among applications submitted under section 503, the Administrator and the Assistant Secretary shall give priority to applications that—

(1) substantially involve, or are broadly supported by, community-based organizations experienced in providing services to juveniles; and

(2) support projects and activities in geographical areas in which juvenile gang-related crime is frequent and serious.

"SEC. 505. AMOUNT OF GRANT.

The amount of a grant under this title shall not exceed 75 percent of the total costs of the program described in the application submitted under section 503 for the fiscal year for which the program receives assistance.

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Justice to carry out this title $25,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

TITLE VI—FURTHER CONSOLIDATION OF PROGRAMS FOR AT-RISK YOUTH

SEC. 601. FURTHER CONSOLIDATION OF PROGRAMS FOR AT-RISK YOUTH.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Ounce of Prevention Council shall submit to Congress a report regarding the elimination of duplication and inefficiency in the structure and operation of Federal juvenile crime and delinquency prevention programs.

(b) REQUIREMENTS.—The report required under subsection (a) shall—

(1) discuss the extent to which programs in different Federal agencies serve similar purposes and target populations;

(2) discuss whether multiple Federal program structures, each receiving limited appropriations, deliver services to at-risk youth (as defined in section 30201(1) of the Violent Crime Control and Law Enforcement Act of 1994 (as amended by section 201)) in an optimal, cost-effective fashion; and

(3) make specific recommendations regarding the elimination, consolidation, and modification of crime and delinquency prevention programs in all Federal agencies and departments.

JUVENILE CRIME PREVENTION AND REFORM ACT OF 1995

Sections 1-2. Short Title and Table of Contents.

Section 3. Purposes. The Act is intended to consolidate and streamline juvenile crime prevention programs under the 1994 Crime Act and other authorizing statutes. These programs include the following:

Ounce of Prevention Grant Program.

Model Intensive Grants.

Family and Community Endeavor Schools (FACES).

Police Recruitment Grants.

Local Partnership Act.

National Community Economic Partnership.

Urban Recreation.

Family Unity Demonstration.

Gang Resistance Education and Training (GREAT).

Juvenile Mentoring Program.

National Youth Sports.

HHS Youth Drug/Gang Prevention Grant Program (repealed in Sec. 501 of the Act).

TITLE I—EVALUATION OF PROGRAMS AND DEVELOPMENT OF NATIONAL CRIME PREVENTION AND RESEARCH STRATEGY

This title requires that the Attorney General (with respect to Titles II, III, and V of the Act) and the Secretary of Health and Human Services (with respect to Title IV) evaluate all programs funded under the Act. They are also responsible for formulating a comprehensive national evaluation strategy.

The Act requires rigorous, independent evaluation of each and every prevention program funded by the Act, and grantees must collect the data necessary for thorough evaluations to occur. These evaluations will be funded with 3-5% of the moneys allocated for each program.

TITLE II—LOCAL CRIME PREVENTION BLOCK GRANT PROGRAM

This title amends subtitle B of Title III of the Crime Bill (the Local Crime Prevention Block Grant Program) to increase funding over five years to $1.5 billion (from $377 million), by reallocating Local Partnership Act funding. By consolidating these block grants, significant savings are achieved.

Under the new block grant program, the Ounce of Prevention Council is authorized to provide technical assistance to local governments that receive payments.

TITLE III—WEED AND SEED COMMUNITY ANTI-CRIME PROGRAM

This title funds targeted anti-crime and anti-drug partnerships between law enforcement agencies and schools, social service providers and community organizations. These programs are designed to mobilize communities in a joint effort to weed out violent crime and drug crime through community policing and coordinated law enforcement, while seeding targeted areas with crime and drug prevention programs.

Through an Executive Office of Weed and Seed, the Attorney General is responsible for making grants to State and local governments, as well as private non-profit organizations. Funding for weeding activities is provided through the Omnibus Crime Control and Safe Streets Act of 1968, while funding for seeding is provided through this Act, at $500 million over five years.

TITLE IV—COMMUNITY SCHOOLS AND SAFE PLACES GRANT PROGRAM

The Act retains the bi-partisan (Danforth-Bradley) Community Schools program which helps communities maintain "safe havens" in high risk neighborhoods. The community centers funding by the Act will provide children at-risk of violent victimization with shelter and support after school, on weekends, and during the summer. The program is jointly administered by the Secretaries of HHS and Education, who provide grants in consultation with the Attorney General. The proposed funding is $800 million over five years.

TITLE V—CONSOLIDATION OF GANG PREVENTION PROGRAMS

The Act consolidates three distinct gang prevention programs currently in the federal budget—one in HHS and two in DOJ—creating, instead, one comprehensive federal anti-gang effort administered jointly by the Office of Juvenile Justice and Delinquency Prevention and HHS. By placing this component within the prevention compromise, the federal government's anti-gang effort will be subject to the research and accountability provisions of the Evaluation Mandate. The proposed funding level is $125 million over five years.

TITLE VI—FURTHER CONSOLIDATION OF PROGRAMS FOR AT-RISK YOUTH

Under this title, the Ounce of Prevention Council is charged with providing Congress with a report regarding the elimination of duplication and inefficiency in the structure and operation of Federal juvenile crime and delinquency programs, including specific recommendations for eliminating these problems.

• Mr. KOHL. Mr. President, I introduce the Juvenile Crime Prevention and Reform Act of 1995, which I am proud to cosponsor with my friend and colleague, Senator COHEN. Our legislation offers the middle ground: it will help stop violence before it starts, and make Federal prevention programs work more efficiently and effectively.

The good news, Mr. President, is that overall crime rates have bucked this trend. So we need more police officers on the streets, and more certainty of punishment. Nevertheless, prevention must also be part of our strategy—because we cannot afford to lay aside any weapons in the battle for safe streets. After all—what kind of reasonable society would pay billions for prisons, while doing nothing to prevent crime in the first place?

Prevention is essential because there is empirical evidence indicating that many prevention programs now on the chopping block do stop crime before it happens. For example, a Milwaukee program, called "Summer Stars," combining recreation, employment counseling and coaching resulted in a 27-percent decrease in robberies and a 40-percent reduction in auto thefts in targeted areas. And in Madison, WI, President Bush's "weed and seed" program reduced serious crime by almost 20 percent. Moreover, Lansing MI found that

crime fell by 60 percent in two troubled neighborhoods after a cooperative effort among local law enforcement officers, schools, and social service agencies began.

Yet despite the success of crime prevention efforts—and past bipartisan support led by Senator BIDEN—the 1995 prevention debate has been skewed by overblown rhetoric. While some opponents of prevention have simplistically labeled all programs "pork," some defenders of prevention have fought only for the status quo, without answering the legitimate questions about whether each prevention program actually works—and whether all programs target those most in need.

Mr. President, neither side is right. While we must not reject all prevention, there is considerably more research to be done before we can confidently assert exactly which prevention strategies work best. And there is waste and duplication among prevention programs created and expanded upon in the crime act.

Our proposal takes the sensible middle ground. While preserving essential prevention programs, the bill also consolidates and eliminates others, and requires all prevention programs to prove themselves. Specifically, the bill will achieve these results in three ways.

First, because there is much more we need to know about prevention programs, the evaluation mandate in our bill requires rigorous, independent evaluation of each and every prevention program funded in the compromise package; and it will require grantees to collect the data necessary for thorough evaluations to occur. In other words, you don't collect the data, you don't get the funds.

Second, too much duplication has resulted in a multitude of programs where fewer could do the job. For example, the local partnership act funds largely the same kinds of programs as the local crime prevention block grant. By consolidating these programs, and eliminating the administrative structure for the local partnership act, we can save millions of dollars.

Finally, in an effort to target at-risk juveniles, and in recognition of our responsibility to the American taxpayer, this legislation will either eliminate or consolidate 12 Federal crime prevention programs. The remaining programs are redirected to one of four core prevention initiatives. The net fiscal result: a cut of more than $1 billion from current crime act prevention funding levels. While I am not entirely happy about pursuing this cut in prevention funds, I propose it only as a reasonable alternative to the Republican plan for outright elimination of crime prevention funding.

Mr. President, I reject the elimination of prevention because we must not give up on our young people, and resign ourselves to more victims, more criminals, and more prisons. We must ensure community safety, but merely building more prisons is like paying billions for ambulances at the bottom of a cliff yet spending nothing to build guardrails at the top. That just doesn't make sense.

We must also be sure, however, that the guardrails we invest in do the job efficiently and effectively. While continuing the fight to prevent crime, our legislation will also give us more bang for our crime prevention buck. I hope that my colleagues will join Senator COHEN and myself in this effort.●

By Mr. FORD:

S. 1037. A bill to amend title 49, United States Code, to provide that the requirement that U.S. Government travel be on U.S. carriers excludes travel on any aircraft that is not owned or leased, and operated, by a U.S. person; to the Committee on Commerce, Science, and Transportation.

THE FLY AMERICA AMENDMENTS ACT OF 1995

Mr. FORD. Mr. President, today I am introducing the Fly America Amendments Act of 1995. As the workers of our country know, the Fly America Act is an indispensable element of American aviation policy. The act was intended to ensure that to the extent service is available on U.S. carriers, employees of the Federal Government must use that service.

On May 3, 1994, the General Services Administration issued a request for proposals [RFP] for 1 year requirement contracts for carriers to provide air transportation services to Government employees traveling on U.S. official Government business. The RFP contained more than 5,000 city-pairs, of which approximately 1,114 involved international routes. American Airlines protested, because the RFP allowed U.S. carriers to bid on routes where the services was actually being provided by a foreign airlines under a code-sharing arrangement.

On December 29, 1994, the Comptroller General of the United States held that code-sharing did not violate the Fly America Act. What the decision means is that a U.S. airline may submit the bid to GSA for an international route, but the actual travel is on a foreign airline. To put this more directly, Lufthansa is the designated provider of United States Government travel from Atlanta to Germany. Lufthansa and United Airlines are code-sharing partners, and United won the Atlanta bid. As far as I can tell, Lufthansa is not a United States citizen, is not a United States flag carrier, does not participate in the civil reserve air fleet [CRAF] program, and but for the Comptroller General misinterpretation, would not be able to bid on carrying United States Government employees on United States Government business.

The bill I am introducing today essentially overturns the Comptroller's misinterpretation. The bill will restore the requirement that U.S. Government travel be provided on an aircraft that is owned or leased by a U.S. citizen and operated by a U.S. citizen.

I urge my colleagues to support the bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1037

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fly America Amendments Act of 1995".

SEC. 2. UNITED STATES AIRCRAFT.

(a) TRAVEL PREFERENCE FOR AIRCRAFT OWNED AND OPERATED BY UNITED STATES CITIZENS.—Section 40118(a) of title 49, United States Code, is amended by inserting after "title" the following: "on an aircraft that is owned or leased by a United States citizen and operated by a United States citizen".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to transportation originating more than 90 days after the date of enactment of this Act.

By Mr. HELMS:

S. 1038. A bill to amend the Internal Revenue Code of 1986 to impose a 15-percent tax only on individual taxable earned income and business taxable income, to repeal the estate and gift taxes, to abolish the Internal Revenue Service, and for other purposes; to the Committee on Finance.

THE FLAT TAX CUT OF 1995

Mr. HELMS. Mr. President, in sending to the desk a bill entitled "The Flat Tax Act of 1995," my hope is that this legislation will help stimulate further interest and understanding regarding the replacing of the present cumbersome and complex Tax Code with a simple 15-percent flat tax. It also, by the way, provides a standard deduction of $10,000 for individuals and an extra $5,000 for each child.

This means that a family of four would not pay taxes on its first $30,000 of income.

The bill also requires a 15 percent across-the-board reduction in Federal spending; it cuts foreign aid by 50 percent; and eliminates the IRS entirely, thereby giving millions of taxpayers a tax cut and sharply reducing Federal spending at the same time.

Now, the flat tax has been discussed many, many times. Thus far, it has not advanced to any extent measurable, but it is fair, it is simple, and it will eliminate the myriad of loopholes that presently riddle the Tax Code. In contrast to the existing system, a flat tax would save billions of dollars each year in time and paperwork. It will spur massive economic growth.

Mr. President, I believe that Congress absolutely must overhaul the

Federal income tax system and, at the same time, overhaul the Federal Government. Any flat tax proposed must be based on three fundamental principles: First, it must be simple and pure—there should be no exceptions or deductions other than a standard personal deduction; second, it should provide Americans with a tax cut; third, it should be coupled with a meaningful cut in spending.

On the first point, it is abundantly clear that the Federal tax laws are too complex, unfair, and unworkable. There are more than 480 tax forms confronting the taxpayers of the United States. I have copies of all of the tax forms at my desk, and I ask Senators, at some convenient time, to contrast that pile of forms to the flat tax postcard which I have in my hand.

Incidentally, I ask unanimous consent that this proposed tax postal card be printed in the RECORD.

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

HELMS 15 PERCENT FLAT TAX

FORM 1—INDIVIDUAL WAGE TAX—1995

Your first name and initial (if joint return also give spouse's name and initial), last name.

Your social security number.

Home address (number and street including apartment number or rural route).

Spouse's social security number.

City, town, or post office, state and ZIP code.

1. Wages, Salaries, and Pensions.

2. Personal Exemptions: a. $20,000 for married filing jointly, b. $10,000 for singles, c. $15,000 for single head of household.

3. Number of Dependents, not including spouse.

4. Personal Exemptions for Dependents (line 3 multiplied by $5,000).

5. Total Personal allowances (line 2 plus line 4).

6. Taxable Wages (line 1, less line 5, if positive, otherwise zero).

7. Tax (15% of line 6).

8. Tax already paid.

9. Tax due (line 7 less line 8, if positive).

10. Refund due (line 8 less line 7, if positive).

Mr. HELMS. Mr. President, U.S. taxpayers spend 5.4 billion hours and $192 billion every year trying to fill out these tax forms. One can only imagine how easy it would be simply to submit this postcard in lieu of the existing paperwork.

Mr. President, taxpayers spend a lot of money trying to comply with or to avoid the tax laws. We all know that.

A study by James Payne of Lytton Research estimates that the Tax Code costs $593 million every year, which includes tax avoidance, tax compliance, paperwork, and lost production. The flat tax would save taxpayers an enormous amount of time and money.

Now, the second benefit of the flat tax proposal that I just sent to the desk would provide millions of Americans with a tax cut. Over the years, taxpayers have been taken to the cleaners by the Federal Government, a government which has taken more and more money away from the American workers every year.

I noticed in a report from the Heritage Foundation recently that in 1948 the average family of four paid 2 percent of its income to the Federal Government. In 1992, that same family of four would pay 24.5 percent of its income to Uncle Sam. That is only Federal taxes.

Third, we should dramatically reduce the size of the Federal Government by eliminating every dollar of Federal spending that is not absolutely essential. Entire programs should be abolished or reformed, including the Internal Revenue Service itself. With a flat tax, those countless thousands of IRS agents would no longer be justified in harassing the taxpayers.

A General Accounting Office study, by the way, Mr. President, disclosed one-half of the 10 million notices sent out by the IRS are—quoting the General Accounting Office— "incorrect, unresponsive, unclear, or incomplete." I might add, or all four.

Mr. President, the flat tax would have a profound effect on the economy. It will promote growth by increasing incentives for work and investment and production. It will eliminate the double taxation of interest and dividends and the taxation of capital gains, which will increase savings, of course, and investments, and obviously it will stimulate growth and create jobs.

The economists have said that a flat tax would increase work output by 3 percent, and an additional 3 percent from capital formation. That translates into about $1,900 extra for every American worker by the year 2002.

Furthermore, increased savings will push interest rates down and thus reduce the cost of capital and the cost of homes, cars, and college educations for American families.

Finally, Mr. President, this bill provides a transition rule for home mortgage. I thought about this a lot. I came to the conclusion that those families who have existing home mortgages should be allowed to deduct the interest for the duration of that existing mortgage. This is only a transition rule and applies only to existing home mortgages.

Now, I recognize that the concept of flat tax is not new. As a matter of fact, I offered my first flat tax bill, S. 2200, back in 1982, March 15. It called for a 10-percent flat tax.

Needless to say, I commend Representative ARMEY for his having put forward a solid proposal. He is doing the Nation a great service and I plan to support his version, cosponsor it, when it comes over to the Senate.

Our tax system has become so complex and so economically unproductive, outmoded, and riddled with exceptions that it is no wonder that the American people have lost faith in their Government to such a high degree.

Mr. President, a flat tax is based on equity, efficiency, and simplicity. I think the American people want a flat tax because they understand that it is fair. They understand that it will save billions of dollars and that it will be a spark plug for the economy.

ADDITIONAL COSPONSORS

S. 25

At the request of Mr. HELMS, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 25, a bill to stop the waste of taxpayer funds on activities by Government agencies to encourage its employees or officials to accept homosexuality as a legitimate or normal lifestyle.

S. 304

At the request of Mr. SANTORUM, the names of the Senator from Connecticut [Mr. LIEBERMAN] and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 317

At the request of Mr. HELMS, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 317, a bill to stop the waste of taxpayer funds on activities by Government agencies to encourage its employees or officials to accept homosexuality as a legitimate or normal lifestyle.

S. 678

At the request of Mr. AKAKA, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from North Dakota [Mr. DORGAN], the Senator from South Carolina [Mr. THURMOND], and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of S. 678, a bill to provide for the coordination and implementation of a national aquaculture policy for the private sector by the Secretary of Agriculture, to establish an aquaculture development and research program, and for other purposes.

S. 877

At the request of Mrs. HUTCHISON, the name of the Senator from South Dakota [Mr. PRESSLER] 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. 928

At the request of Mr. INHOFE, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 928, a bill to enhance the safety of air travel through a more effective Federal Aviation Administration, and for other purposes.

S. 979

At the request of Mrs. BOXER, the name of the Senator from Montana

[Mr. BAUCUS] was added as a cosponsor of S. 979, a bill to protect women's reproductive health and constitutional right to choice, and for other purposes.

S. 986

At the request of Mr. D'AMATO, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 986, a bill to amend the Internal Revenue Code of 1986 to provide that the Federal income tax shall not apply to United States citizens who are killed in terroristic actions directed at the United States or to parents of children who are killed in those terroristic actions.

S. 1000

At the request of Mr. BURNS, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 1000, a bill to amend the Internal Revenue Code of 1986 to provide that the depreciation rules which apply for regular tax purposes shall also apply for alternative minimum tax purposes, to allow a portion of the tentative minimum tax to be offset by the minimum tax credit, and for other purposes.

SENATE RESOLUTION 146

At the request of Mr. JOHNSTON, the names of the Senator from Utah [Mr. HATCH], the Senator from Indiana [Mr. LUGAR], and the Senator from Georgia [Mr. NUNN] were added as cosponsors 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

At the request of Mr. AKAKA, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of Senate Resolution 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.

AMENDMENT NO. 1539

At the request of Mrs. HUTCHISON the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of amendment No. 1539 proposed to S. 343, a bill to reform the regulatory process, and for other purposes.

SENATE CONCURRENT RESOLUTION 21—RELATIVE TO THE PORTRAIT MONUMENT

Mr. STEVENS (for himself, Mr. FORD, Mr. DOLE, Mr. DASCHLE, Mr. HATFIELD, Mr. PELL, Mr. HELMS, Mr. MOYNIHAN, Mrs. KASSEBAUM, Mrs. HUTCHISON, Ms. MIKULSKI, and Mr. D'AMATO) submitted the following concurrent resolution; ordered to be held at the desk:

S. CON. RES. 21

Whereas in 1995, women of America are celebrating the 75th anniversary of their right to participate in our government through suffrage;

Whereas Lucretia Mott, Elizabeth Cady Stanton, and Susan B. Anthony were pioneers in the movement for women suffrage and the pursuit of equal rights; and

Whereas, the relocation of the "Portrait Monument" to a place of prominence and esteem in the Capitol Rotunda would serve to honor and reserve the contribution of thousands of women: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Architect of the Capitol shall restore the "Portrait Monument" to its original state and place it in the Rotunda of the United States Capitol.

Mr. STEVENS. Mr. President, I want to call attention to the Senate that on August 26, Americans will celebrate the 75th anniversary of women's suffrage.

On August 26, 1920, the 19th amendment to the U.S. Constitution granting women the right to vote was ratified in the State legislatures of the country after having been sent to the States by the Congress of the United States.

Alaska was in the forefront of the suffrage movement. Few people know that during the mining days that preceded this century, in the last part of the last century and the early part of this century, women voted in the mining camps in the organization of local governments in our territory.

As a matter of fact, the first act of the first territorial legislature in Alaska was to grant women the right to vote. That 1913 resolution said that:

In all elections that are now or may hereafter be authorized by law in the Territory of Alaska or any subdivision or municipality thereof, the elective franchise is hereby extended to such women as have the qualifications of citizens required of male electors.

It just so happens that E.B. Collins, who was my first senior partner when I went to Alaska and practiced in Fairbanks, was the speaker of the first house of representatives in that territorial legislature. He said to me that he felt like giving women the right to vote was one of his greatest victories in the days of the Territory of Alaska. I am sure he would be pleased to know today, that his position as speaker of the State of Alaska is held by an Alaskan woman, Gail Phillips of Homer, AK, and the president of our Alaska State Senate is Drue Pearce, another successful Alaska woman.

Unfortunately, history has not fully recognized the role that these courageous suffragists have played in our history. While a statue was commissioned to honor those women involved in the process, it has been relegated to the basement of the Capitol and faces a back wall. At one time, the inscription was actually painted over with whitewash.

In our Rotunda, most of the statues honor Presidents, and as we know, all to date have been men. Someday I hope the Rotunda will be graced with a statue of the first female President. Until then, it is my hope to honor the role women have played by moving the women's suffrage statue up to the place of honor it should have in the Rotunda. So today I am sending to the desk a resolution directing the Architect of the Capitol to move the women's statue from the basement into the Rotunda before August 26.

Mr. President, this concurrent resolution is cosponsored by Senators DOLE, FORD, HATFIELD, PELL, HELMS, MOYNIHAN, KASSEBAUM, HUTCHISON, and MIKULSKI.

I ask unanimous consent that it be held at the desk until the close of business Monday so all Senators who may wish to do so may cosponsor it, and then having cleared this with the minority and majority, I ask that it be held on the calendar until such time as the leadership will bring it to a vote, which I hope will be very soon.

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

Mr. STEVENS. Mr. President, I thank this young lady, Sherry Little, who works on the Rules Committee staff, who brought this statue to my attention.

I thank the Senator from Michigan for his courtesy.

AMENDMENTS SUBMITTED

THE COMPREHENSIVE REGULATORY REFORM ACT OF 1995

HARKIN AMENDMENT NO. 1541

(Ordered to lie on the table.)

Mr. HARKIN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill (S. 343) to reform the regulatory process, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . DIRECTIVE TO THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY CONCERNING REGULATION OF FISHING LURES.

(a) FINDINGS.—Congress finds that—

(1) millions of Americans of all ages enjoy recreational fishing; fishing is one of the most popular sports;

(2) lead and other types of metal sinkers and fishing lures have been used by Americans for fishing for hundreds of years;

(3) the Administrator of the Environmental Protection Agency has proposed to issue a rule under section 6 of the Toxic Substances Control Act, to prohibit the manufacturing, processing, and distribution in commerce in the United States, of certain smaller size fishing sinkers containing lead and zinc, and mixed with other substances, including those made of brass;

(4) the Environmental Protection Agency has based its conclusions that lead fishing sinkers of a certain size present an unreasonable risk of injury to human health or the environment on less than definitive scientific data, conjecture, and anecdotal information;

(5) alternative forms of sinkers and fishing lures are considerably more expensive than

those made of lead; consequently, a ban on lead sinkers would impose additional costs on millions of Americans who fish;

(6) in the absence of more definitive evidence of harm to the environment, the Federal Government should not take steps to restrict the use of lead sinkers; and

(7) alternative measures to protect waterfowl from lead exposure should be carefully reviewed.

(b) FISHING SINKERS AND LURES.—

(1) DIRECTIVE.—The Administrator of the Environmental Protection Agency shall not, under purported authority of section 6 of the Toxic Substances Control Act (15 U.S.C. 2605), take action to prohibit or otherwise restrict the manufacturing, processing, distributing, or use of any fishing sinkers or lures containing lead, zinc, or brass.

(2) FURTHER ACTION.—If the Administrator obtains a substantially greater amount of evidence of risk of injury to health or the environment than the evidence that was adduced in the rulemaking proceedings described in the proposed rule dated February 28, 1994 (59 Fed. Reg. 11122 (March 9, 1994)), the Administrator shall report those findings to Congress, with any recommendation that the Administrator may have for further action.

HARKIN (AND LUGAR) AMENDMENT NO. 1542

(Ordered to lie on the table.)

Mr. HARKIN (for himself and Mr. LUGAR) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 96, between lines 20 and 21, insert the following:

SEC. . EDIBLE OIL REGULATORY REFORM.

(a) DEFINITIONS.—In this section:

(1) ANIMAL FAT.—The term "animal fat" means each type of animal fat, oil, or grease (including fat, oil, or grease from fish or a marine mammal), including any fat, oil, or grease referred to in section 61(a)(2) of title 13, United States Code.

(2) VEGETABLE OIL.—The term "vegetable oil" means each type of vegetable oil (including vegetable oil from a seed, nut, or kernel), including any vegetable oil referred to in section 61(a)(1) of title 13, United States Code.

(b) DIFFERENTIATION AMONG FATS, OILS, AND GREASES.—

(1) IN GENERAL.—In issuing or enforcing a regulation, an interpretation, or a guideline relating to a fat, oil, or grease under a Federal law, the head of a Federal agency shall—

(A) differentiate between and establish separate categories for—

(i)(I) animal fats; and

(II) vegetable oils; and

(ii) other oils, including petroleum oil; and

(B) apply different standards to different classes of fat and oil as provided in paragraph (2).

(2) CONSIDERATIONS.—In differentiating between the classes of animal fats and vegetable oils referred to in paragraph (1)(A)(i) and the classes of oils described in paragraph (1)(A)(ii), the head of the Federal agency shall consider differences in physical, chemical, biological, and other properties, and in the effects on human health and the environment, of the classes.

(c) FINANCIAL RESPONSIBILITY.—

(1) LIMITS ON LIABILITY.—Section 1004(a)(1) of the Oil Pollution Act of 1990 (33 U.S.C. 2704(a)(1)) is amended by striking "for a tank vessel," and inserting "for a tank vessel carrying oil in bulk as cargo or cargo residue (except a tank vessel on which the only oil carried is an animal fat or vegetable oil, as those terms are defined in section 2 of the Edible Oil Regulatory Reform Act),".

(2) FINANCIAL RESPONSIBILITY.—The first sentence of section 1016(a) of the Act (33 U.S.C. 2716(a)) is amended by striking ", in the case of a tank vessel, the responsible party could be subject under section 1004(a)(1) or (d) of this Act, or to which, in the case of any other vessel, the responsible party could be subjected under section 1004(a)(2) or (d)" and inserting "the responsible party could be subjected under section 1004(a) or (d) of this Act".

KENNEDY AMENDMENT NO. 1543

Mr. KENNEDY proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra, as follows:

On page 46, insert between lines 4 and 5 the following:

"§ 629A. Inapplicability to occupational safety and health and mine safety and health regulations

"This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to—

"(1) occupational safety and health; or

"(2) mine safety and health.

On page 50, insert between lines 15 and 16 the following new paragraph:

"(4) This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to—

"(A) occupational safety and health; or

"(B) mine safety and health.

On page 96, insert between lines 20 and 21 the following new sections:

SEC. ___. OCCUPATIONAL SAFETY AND HEALTH REGULATIONS.

(a) PRIORITY FOR ESTABLISHING STANDARDS.—Section 6(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(g)) is amended—

(1) by striking "(g) In" and inserting "(g)(1) Notwithstanding any provision of the Comprehensive Regulatory Reform Act of 1995, in"; and

(2) by adding at the end the following new paragraph:

"(2) Notwithstanding any provision of the Comprehensive Regulatory Reform Act of 1995, in determining the priority for establishing standards relating to toxic materials or harmful physical agents, the Secretary shall consider the number of workers exposed to such materials or agents, the nature and severity of potential impairment, and the likelihood of such impairment.".

(b) RISK ASSESSMENTS FOR FINAL STANDARD.—Section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) is amended by adding at the end the following new subsection:

"(h)(1) In promulgating any final occupational safety and health regulation or standard, the Secretary shall publish in the Federal Register—

"(A) an estimate, calculated with as much specificity as practicable, of the risk to the health and safety of employees addressed by such regulation or standard, the affect of such regulation or standard on human health or the environment, and the costs associated with the implementation of, and compliance with, such regulation or standard;

"(B) a comparative analysis of the risk addressed by such regulation or standard relative to other risks to which employees are exposed; and

"(C) a certification that—

"(i) the estimate under subparagraph (A) and the analysis under subparagraph (B) are—

"(I) based upon a scientific evaluation of the risk to the health and safety of employees and to human health or the environment; and

"(II) supported by the best available scientific data;

"(ii) such regulation or standard will substantially advance the purpose of protecting employee health and safety or the environment against the specified identified risk; and

"(iii) such regulation or standard will produce benefits to employee health and safety or the environment that will justify the cost to the Federal Government and the public of the implementation of and compliance with such regulation or standard.

"(2) If the Secretary cannot make the certification required under paragraph (1)(C), the Secretary shall—

"(A) notify the Congress concerning the reasons why such certification cannot be made; and

"(B) publish a statement of such reasons with the final regulation or standard.

"(3) Nothing in this subsection shall be construed to grant a cause of action to any person.".

SEC. . MINE SAFETY AND HEALTH REGULATIONS.

The Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) is amended by inserting after section 101 the following new section:

"RISK ASSESSMENTS FOR FINAL STANDARDS

"SEC. 101a. (a) In promulgating any final mine safety and health regulation or standard, the Secretary shall publish in the Federal Register—

"(1) an estimate, calculated with as much specificity as practicable, of the risk to the health and safety of employees addressed by such regulation or standard, the affect of such regulation or standard on human health or the environment, and the costs associated with the implementation of, and compliance with, such regulation or standard;

"(2) a comparative analysis of the risk addressed by such regulation or standard relative to other risks to which employees are exposed; and

"(3) a certification that—

"(A) the estimate under paragraph (1) and the analysis under paragraph (2) are—

"(i) based upon a scientific evaluation of the risk to the health and safety of employees and to human health or the environment; and

"(ii) supported by the best available scientific data;

"(B) such regulation or standard will substantially advance the purpose of protecting employee health and safety or the environment against the specified identified risk; and

"(C) such regulation or standard will produce benefits to employee health and safety or the environment that will justify the cost to the Federal Government and the public of the implementation of and compliance with such regulation or standard.

"(b) If the Secretary cannot make the certification required under subsection (a)(3), the Secretary shall—

"(1) notify the Congress concerning the reasons why such certification cannot be made; and

"(2) publish a statement of such reasons with the final regulation or standard.

"(c) Nothing in this section shall be construed to grant a cause of action to any person.".

CAMPBELL AMENDMENT NO. 1544

(Ordered to lie on the table.)

Mr. CAMPBELL submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 19, line 5, strike "or".

On page 19, line 7, strike the period and insert "; or".

On page 19, between lines 7 and 8, insert the following:

"(xiii) a rule that approves, in whole or in part, a plan or program that provides for the implementation, maintenance, or enforcement of Federal standards or requirements adopted by an individual State.

FEINGOLD (AND OTHERS) AMENDMENT NO. 1545

(Ordered to lie on the table.)

Mr. FEINGOLD (for himself, Mr. MCCAIN, Mrs, FEINSTEIN, Mr. JEFFORDS, Mr. WELLSTONE, Mr. BRADLEY, Mr SIMON, Mr. BIDEN, Mr. LEAHY, Mr. AKAKA, and Mr. GRAHAM) submitted an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . CAMPAIGN FINANCE REFORM.

(a) FINDINGS.—The Congress finds that—

(1) the current system of campaign finance has led to public perceptions that political contributions and their solicitation have unduly influenced the official conduct of elected officials;

(2) the failure to limit campaign expenditures in any way has caused individuals elected to the United States Senate to spend an increasing portion of their time in office raising campaign funds, interfering with the ability of the Senate to carry out its constitutional responsibilities;

(3) the public faith and trust in Congress as an institution has eroded to dangerously low levels and public support for comprehensive congressional reforms in overwhelming; and

(4) reforming our election laws should be a high legislative priority of the 104th Congress.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that as soon as possible before the conclusion of the 104th Congress, the United States Senate should consider comprehensive campaign finance reform legislation that will increase the competitiveness and fairness of elections to the United States Senate.

DORGAN AMENDMENT NO. 1546

(Ordered to lie on the table.)

Mr. DORGAN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 16, strike out lines 12 through 14.

SIMON (AND WELLSTONE) AMENDMENT NO. 1547

Mr. SIMON (for himself and Mr. WELLSTONE) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 25, between lines 22 and 23, insert the following:

"(g) EXEMPTION FOR THE PROTECTION OF CHILDREN.—None of the provisions of this subchapter shall apply to agency rules or actions intended to protect children against poisoning, including a rule—

"(1) relating to iron toxicity poisoning;

"(2) relating to lead poisoning from food products; or

"(3) promulgated under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.).

On page 49, line 21, strike "or".

On page 50, line 2, strike the period at the end and insert "; or".

On page 50, between lines 2 and 3, insert the following:

"(F) a rule or agency action a purpose of which is to protect children from poisoning, including a rule—

"(i) relating to iron toxicity poisoning;

"(ii) relating to lead poisoning from food products; or

"(iii) promulgated under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.).

THOMAS AMENDMENT NO. 1548

Mr. HATCH (for Mr. THOMAS) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place, insert the following:

SEC. . RENEWAL OF PERMITS FOR GRAZING ON NATIONAL FOREST LANDS.

Notwithstanding any other law, at the request of an applicant for renewal of a permit that has expired before, on, or after the date of enactment of this Act for grazing on land located in a unit of the National Forest System for which a land and resource management plan under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) is in effect, if all action required under the National Environmental Policy Act of 1969 with respect to the land and resource management plan has been taken, the Secretary of Agriculture shall reinstate, if necessary, and extend the term of the permit until the date on which the Secretary of Agriculture completes action on the application, including action required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) This section shall apply only to permits that were not renewed solely because the action required under the National Environmental Policy Act had not been completed.

SNOWE (AND OTHERS) AMENDMENT NO. 1549

Mr. HATCH (for Ms. SNOWE for herself, Mr. KEMPTHORNE, Mr. COHEN, Mr. LEAHY, and Mr. LIEBERMAN) proposed an amendment 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 the 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 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 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.".

BROWN AMENDMENT NO. 1550

Mr. BROWN proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place in the Dole substitute, No. 1487, insert the following:

SEC. . EXECUTIVE PREEMPTION OF STATE LAW.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by inserting after section 559 the following new section:

"§ 560. Preemption of State law

"(a) No agency shall construe any authorization in a statute for the issuance of regulations as authorizing preemption of State law by rulemaking or other agency action, unless—

"(1) the statute expressly authorizes issuance of preemptive regulations;

"(2) there is clear and convincing evidence that the Congress intended to delegate to the agency the authority to issue regulations preempting State law; or

"(3) the agency concludes that the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

"(b) Any regulatory preemption of State law shall be narrowly tailored to achieve the objectives of the statute pursuant to which the regulations are promulgated.

"(c) When an agency proposes to act through rulemaking or other agency action to preempt State law, the agency shall provide all affected States actual notice and an opportunity for appropriate participation in the proceedings under sections 553 and 554.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by adding after the item for section 559 the following:

"560. Preemption of State law.".

(c) APPLICATION.—The amendments made by this section shall apply to rulemaking initiated on or after the date of enactment of this section.

SHELBY (AND OTHERS) AMENDMENTS NOS. 1551-1552

(Ordered to lie on the table.)

Mr. SHELBY (for himself, Mr. FRIST, Mrs. HUTCHISON, Mr. LOTT, Mr. HELMS, Mr. COCHRAN, and Mr. GRAMS) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1551

At the appropriate place in the Dole substitute amendment 1487 add the following new section:

SEC. . SMALL BUSINESS REGULATORY BILL OF RIGHTS.

(a) SHORT TITLE.—This section may be cited as the "Small Business Regulatory Bill of Rights Act".

(b) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF RIGHTS

"§ 597. Definition

"For purposes of this subchapter, the term 'small business' has the same meaning given such term in section 601(3).

"§ 597a. Rights of small businesses prior to enforcement act

"Except as provided in section 597c, each agency shall ensure that its regulatory enforcement program includes—

"(1) a no-fault compliance audit program in which no penalties may be assessed against a small business upon voluntary application by the business to the agency or a licensed private sector business for a compliance audit;

"(2) a publicized, coherent compliance assistance program available to regulated small businesses under the agency's jurisdiction that provides technical and other compliance related assistance to small businesses upon request of a small business;

"(3) a method to enforce regulations in a uniform, consistent, and nonarbitrary manner nationwide; and

"(4) an abatement period of not less than 60 days to allow the small business to correct any violations before a penalty is assessed.

"§ 597b. Rights after investigative or enforcement action

"Except as provided in section 597c, each small business that has been found in violation of a regulation and was subject to an enforcement action or penalty shall have the right—

"(1) to be free from inspections for 180 days after the date on which the small business obtains certification from the agency that the small business is in compliance with the regulation;

"(2) to have ability to pay factored into the assessment of penalties through flexible payment plans with reduced installments that reflect the business's long-term ability to pay (taking into account cashflow and long-term profitability); and

"(3) to not have fines paid be used to finance the inspecting agency, but instead credited to the General Treasury of the United States, to be used for reduction of the Federal deficit.

"§ 597c. Exceptions and limitation

"(a) A provision of this subchapter shall not apply if compliance with such provision of this subchapter would—

"(1) substantially delay responding to an imminent danger to person or property;

"(2) substantially or unreasonably impede a criminal investigation; or

"(3) enable any small business to knowingly disregard applicable regulations, except a request for a non-fault compliance audit shall not constitute prima facie evidence of knowingly disregarding applicable regulations.

"(b) A small business shall not be entitled to the benefit of a no-fault compliance audit program under section 597a(1) regarding a particular enforcement issue for 60 days after the business has had an agency-initiated contact regarding such issue.

"(c) This subchapter shall not apply to any rule or regulation described under section 621(9)(B)(i).".

(c) TECHNICAL AMENDMENT.—The analysis for chapter 5 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF RIGHTS

"Sec.

"597. Definition.

"597a. Rights of small businesses prior to enforcement action.

"597b. Rights after investigative or enforcement action.

"597c. Exceptions and limitation.".

(d) REPORTS TO CONGRESS.—The Director of the Office of Management and Budget shall submit an annual report to Congress on the progress of the agencies in complying with this Act and the amendments made by this Act.

AMENDMENT NO. 1552

At the appropriate place in the Dole Substitute 1487 add the following new section:

SEC. . SMALL BUSINESS REGULATORY BILL OF RIGHTS.

(a) SHORT TITLE.—This section may be cited as the "Small Business Regulatory Bill of Rights Act".

(b) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF RIGHTS

"§ 597. Definition

"For purposes of this subchapter, the term 'small business' has the same meaning given such term in section 601(3).

"§ 597a. Rights of small businesses prior to enforcement action

"(a) Except as provided in section 597c, each agency shall ensure that its regulatory enforcement program includes—

"(1) implementation of a no-fault compliance audit program;

"(2) a publicized, coherent compliance assistance program available to regulated small businesses under the agency's jurisdiction that provides technical and other compliance related assistance to small businesses upon request of a small business;

"(3) a method to enforce regulations in a uniform, consistent, and nonarbitrary manner nationwide;

"(4) an abatement period of not less than 60 days to allow the small business to correct any violations before a penalty is assessed; and

"(5) a grace period of not less than 180 days to allow the small business to correct any violation discovered through participation in the programs created under paragraph (1) or (2).

"(b) No penalties or enforcement actions will be assessed or taken if such violations are corrected during the grace period described under subsection (a)(5), so long as the business has not engaged in a pattern of intentional misconduct.

"§ 597b. Rights after investigative or enforcement action

"Except as provided in section 597c, each small business that has been found in violation of a regulation and was subject to an enforcement action or penalty shall have the right—

"(1) to be free from inspections for 180 days after the date on which the small business obtains certification from the agency that the small business is in compliance with the regulation;

"(2) to have ability to pay factored into the assessment of penalties through flexible payment plans with reduced installments that reflect the business's long-term ability to pay (taking into account cash-flow and long-term profitability); and

"(3) to not have fines paid be used to finance the inspecting agency, but instead credited to the General Treasury of the United States, to be used for reduction of the Federal deficit.

"§ 597c. Exceptions and limitation

"(a) A provision of this subchapter shall not apply if compliance with such provision of this subchapter would—

"(1) substantially delay responding to an imminent danger to person or property;

"(2) substantially or unreasonably impede a criminal investigation; or

"(3) enable any small business to knowingly disregard applicable regulations, except a request for a no-fault compliance audit shall not constitute prima facie evidence of knowingly disregarding applicable regulations.

"(b) A small business shall not be entitled to the benefit of a no-fault compliance audit program under section 597a(1) regarding a particular enforcement issue for 60 days after the business has had an agency-initiated contact regarding such issue.

"(c) This subchapter shall not apply to any rule or regulation described under section 621(9)(B)(i).".

(c) TECHNICAL AMENDMENT.—The analysis for chapter 5 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF RIGHTS

"Sec.
"597. Definition.
"597a. Rights of small businesses prior to enforcement action.
"597b. Rights after investigative or enforcement action.
"597c. Exceptions and limitation.".

(d) RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—

(1) COORDINATION.—The Director of the Office of Management and Budget shall coordinate the implementation of this section and establish a schedule for bringing all affected agencies into full compliance by the effective date of this section. Agencies may be brought into partial compliance before such date.

(2) REPORT.—The Director of the Office of Management and Budget shall submit an annual report to Congress on the progress of the agencies in complying with this section and the amendments made by this section.

(e) EFFECTIVE DATE.—This section shall take effect on the earlier of the date designated by the President or January 1, 1998.

HEFLIN AMENDMENT NO. 1553

(Ordered to lie on the table.)

Mr. HEFLIN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 76, insert immediately before line 10 the following:

(c) COURT OF FEDERAL CLAIMS.—Section 1491(a) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(4) In proceedings within the jurisdiction of the Court of Federal Claims which constitute judicial review of agency action (rather than de novo proceedings), the provisions of section 706 of title 5 shall apply.".

HATCH AMENDMENTS NOS. 1554–1555

(Ordered to lie on the table.)

Mr. HATCH submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1554

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Regulatory Reform Act of 1995".

SEC. 2. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking "this subchapter" and inserting "this chapter and chapters 7 and 8";

(2) in paragraph (13), by striking "and";

(3) in paragraph (14), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following new paragraph:

"(15) 'Director' means the Director of the Office of Management and Budget.".

SEC. 3. RULEMAKING.

Section 553 of title 5, United States Code, is amended to read as follows:

"§ 553. Rulemaking

"(a) APPLICABILITY.—This section applies to every rulemaking, according to the provisions thereof, except to the extent that there is involved—

"(1) a matter pertaining to a military or foreign affairs function of the United States;

"(2) a matter relating to the management or personnel practices of an agency;

"(3) an interpretive rule, general statement of policy, guidance, or rule of agency organization, procedure, or practice, unless such rule, statement, or guidance has general applicability and substantially alters or creates rights or obligations of persons outside the agency; or

"(4) a rule relating to the acquisition, management, or disposal by an agency of real or personal property, or of services, that is promulgated in compliance with otherwise applicable criteria and procedures.

"(b) NOTICE OF PROPOSED RULEMAKING.—General notice of proposed rulemaking shall be published in the Federal Register, unless all persons subject thereto are named and either personally served or otherwise have actual notice of the proposed rulemaking in accordance with law. Each notice of proposed rulemaking shall include—

"(1) a statement of the time, place, and nature of public rulemaking proceedings;

"(2) a succinct explanation of the need for and specific objectives of the proposed rule, including an explanation of the agency's determination of whether or not the rule is a major rule within the meaning of section 621(5);

"(3) a succinct explanation of the specific statutory basis for the proposed rule, including an explanation of—

"(A) whether the interpretation is clearly required by the text of the statute; or

"(B) if the interpretation is not clearly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and an explanation why the interpretation selected by the agency is the agency's preferred interpretation;

"(4) the terms or substance of the proposed rule;

"(5) a summary of any initial analysis of the proposed rule required to be prepared or issued pursuant to chapter 6;

"(6) a statement that the agency seeks proposals from the public and from State and local governments for alternative methods to accomplish the objectives of the rulemaking that are more effective or less burdensome than the approach used in the proposed rule; and

"(7) a statement specifying where the file of the rulemaking proceeding maintained pursuant to subsection (j) may be inspected and how copies of the items in the file may be obtained.

"(c) PERIOD FOR COMMENT.—The agency shall give interested persons not less than 60 days after providing the notice required by subsection (b) to participate in the rulemaking through the submission of written data, views, or arguments.

"(d) GOOD CAUSE EXCEPTION.—Unless notice or hearing is required by statute, a final rule may be adopted and may become effective without prior compliance with subsections (b) and (c) and (e) through (g) if the agency for good cause finds that providing notice and public procedure thereon before the rule becomes effective is impracticable, unnecessary, or contrary to the public interest. If a rule is adopted under this subsection, the agency shall publish the rule in the Federal Register with the finding and a succinct explanation of the reasons therefor.

"(e) PROCEDURAL FLEXIBILITY.—To collect relevant information, and to identify and elicit full and representative public comment on the significant issues of a particular rulemaking, the agency may use such other procedures as the agency determines are appropriate, including—

"(1) the publication of an advance notice of proposed rulemaking;

"(2) the provision of notice, in forms which are more direct than notice published in the Federal Register, to persons who would be substantially affected by the proposed rule but who are unlikely to receive notice of the proposed rulemaking through the Federal Register;

"(3) the provision of opportunities for oral presentation of data, views, information, or rebuttal arguments at informal public hearings, meetings, and round table discussions, which may be held in the District of Columbia and other locations;

"(4) the establishment of reasonable procedures to regulate the course of informal public hearings, meetings, and round table discussions, including the designation of representatives to make oral presentations or engage in direct or cross-examination on behalf of several parties with a common interest in a rulemaking, and the provision of transcripts, summaries, or other records of all such public hearings and summaries of meetings and round table discussions;

"(5) the provision of summaries, explanatory materials, or other technical information in response to public inquiries concerning the issues involved in the rulemaking; and

"(6) the adoption or modification of agency procedural rules to reduce the cost or complexity of the procedural rules.

"(f) PLANNED FINAL RULE.—If the provisions of a final rule that an agency plans to adopt are so different from the provisions of the original notice of proposed rulemaking that the original notice did not fairly apprise the public of the issues ultimately to be resolved in the rulemaking or of the substance of the rule, the agency shall publish in the Federal Register a notice of the final rule the agency plans to adopt, together with the information relevant to such rule that is required by the applicable provisions of this section and that has not previously been

published in the Federal Register. The agency shall allow a reasonable period for comment on such planned final rule prior to its adoption.

"(g) STATEMENT OF BASIS AND PURPOSE.—An agency shall publish each final rule it adopts in the Federal Register, together with a concise statement of the basis and purpose of the rule and a statement of when the rule may become effective. The statement of basis and purpose shall include—

"(1) an explanation of the need for, objectives of, and specific statutory authority for, the rule;

"(2) a discussion of, and response to, any significant factual or legal issues presented by the rule, or raised by the comments on the proposed rule, including a description of the reasonable alternatives to the rule proposed by the agency and by interested persons, and the reasons why such alternatives were rejected;

"(3) a succinct explanation of whether the specific statutory basis for the rule is expressly required by the text of the statute, or if the specific statutory interpretation upon which the rule is based is not expressly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and why the agency has rejected other interpretations proposed in comments to the agency;

"(4) an explanation of how the factual conclusions upon which the rule is based are substantially supported in the rulemaking file; and

"(5) a summary of any final analysis of the rule required to be prepared or issued pursuant to chapter 6.

"(h) NONAPPLICABILITY.—In the case of a rule that is required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 shall apply in lieu of subsections (c), (e), (f), and (g).

"(i) EFFECTIVE DATE.—An agency shall publish the final rule in the Federal Register not later than 60 days before the effective date of such rule. An agency may make a rule effective in less than 60 days after publication in the Federal Register if the rule grants or recognizes an exemption, relieves a restriction, or if the agency for good cause finds that such a delay in the effective date would be contrary to the public interest and publishes such finding and an explanation of the reasons therefor, with the final rule.

"(j) RULEMAKING FILE.—(1) The agency shall maintain a file for each rulemaking proceeding conducted pursuant to this section and shall maintain a current index to such file.

"(2) Except as provided in subsection (k), the file shall be made available to the public not later than the date on which the agency makes an initial publication concerning the rule.

"(3) The rulemaking file shall include—

"(A) the notice of proposed rulemaking, any supplement to, or modification or revision of, such notice, and any advance notice of proposed rulemaking;

"(B) copies of all written comments received on the proposed rule;

"(C) a transcript, summary, or other record of any public hearing conducted on the rulemaking;

"(D) copies, or an identification of the place at which copies may be obtained, of factual and methodological material that pertains directly to the rulemaking and that was considered by the agency in connection with the rulemaking, or that was submitted to or prepared by or for the agency in connection with the rulemaking; and

"(E) any statement, description, analysis, or other material that the agency is required to prepare or issue in connection with the rulemaking, including any analysis prepared or issued pursuant to chapter 6.

The agency shall place each of the foregoing materials in the file as soon as practicable after each such material becomes available to the agency.

"(k) CONFIDENTIAL TREATMENT.—The file required by subsection (j) need not include any material described in section 552(b) if the agency includes in the file a statement that notes the existence of such material and the basis upon which the material is exempt from public disclosure under such section. The agency may not substantially rely on any such material in formulating a rule unless it makes the substance of such material available for adequate comment by interested persons. The agency may use summaries, aggregations of data, or other appropriate mechanisms to protect the confidentiality of such material to the maximum extent possible.

"(*l*) RULEMAKING PETITION.—(1) Each agency shall give an interested person the right to petition—

"(A) for the issuance, amendment, or repeal of a rule;

"(B) for the amendment or repeal of an interpretive rule or general statement of policy or guidance; and

"(C) for an interpretation regarding the meaning of a rule, interpretive rule, general statement of policy, or guidance.

"(2) The agency shall grant or deny a petition made pursuant to paragraph (1), and give written notice of its determination to the petitioner, with reasonable promptness, but in no event later than 18 months after the petition was received by the agency.

"(3) The written notice of the agency's determination shall include an explanation of the determination and a response to each significant factual and legal claim that forms the basis of the petition.

"(m) JUDICIAL REVIEW.—(1) The decision of an agency to use or not to use procedures in a rulemaking under subsection (e) shall not be subject to judicial review.

"(2) The rulemaking file required under subsection (j) shall constitute the rulemaking record for purposes of judicial review.

"(3) No court shall hold unlawful or set aside an agency rule based on a violation of subsection (j), unless the court finds that such violation has precluded fair public consideration of a material issue of the rulemaking taken as a whole.

"(4)(A) Judicial review of compliance or noncompliance with subsection (j) shall be limited to review of action or inaction on the part of an agency.

"(B) A decision by an agency to deny a petition under subsection (*l*) shall be subject to judicial review immediately upon denial, as final agency action under the statute granting the agency authority to carry out its action.

"(n) CONSTRUCTION.—(1) Notwithstanding any other provision of law, this section shall apply to and supplement the procedures governing informal rulemaking under statutes that are not generally subject to this section.

"(2) Nothing in this section authorizes the use of appropriated funds available to any agency to pay the attorney's fees or other expenses of persons intervening in agency proceedings.".

SEC. 4. ANALYSIS OF AGENCY RULES.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER II—ANALYSIS OF AGENCY RULES

"§ 621. Definitions

"For purposes of this subchapter—

"(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

"(2) the term 'benefit' means the reasonably identifiable significant favorable effects, quantifiable and nonquantifiable, including social, environmental, health, and economic effects, that are expected to result directly or indirectly from implementation of a rule or other agency action;

"(3) the term 'cost' means the reasonably identifiable significant adverse effects, quantifiable and nonquantifiable, including social, environmental, health, and economic effects that are expected to result directly or indirectly from implementation of a rule or other agency action;

"(4) the term 'cost-benefit analysis' means an evaluation of the costs and benefits of a rule, quantified to the extent feasible and appropriate and otherwise qualitatively described, that is prepared in accordance with the requirements of this subchapter at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition;

"(5) the term 'major rule' means—

"(A) a rule or set of closely related rules that the agency proposing the rule, the Director, or a designee of the President determines is likely to have a gross annual effect on the economy of $50,000,000 or more in reasonably quantifiable increased costs; or

"(B) a rule that is otherwise designated a major rule by the agency proposing the rule, the Director, or a designee of the President (and a designation or failure to designate under this clause shall not be subject to judicial review);

"(6) the term 'market-based mechanism' means a regulatory program that—

"(A) imposes legal accountability for the achievement of an explicit regulatory objective on each regulated person;

"(B) affords maximum flexibility to each regulated person in complying with mandatory regulatory objectives, which flexibility shall, where feasible and appropriate, include, but not be limited to, the opportunity to transfer to, or receive from, other persons, including for cash or other legal consideration, increments of compliance responsibility established by the program; and

"(C) permits regulated persons to respond to changes in general economic conditions and in economic circumstances directly pertinent to the regulatory program without affecting the achievement of the program's explicit regulatory mandates;

"(7) the term 'performance-based standards' means requirements, expressed in terms of outcomes or goals rather than mandatory means of achieving outcomes or goals, that permit the regulated entity discretion to determine how best to meet specific requirements in particular circumstances;

"(8) the term 'reasonable alternatives' means the range of reasonable regulatory options that the agency has authority to consider under the statute granting rulemaking authority, including flexible regulatory options of the type described in section 622(c)(2)(C)(iii), unless precluded by the statute granting the rulemaking authority; and

"(9) the term 'rule' has the same meaning as in section 551(4), and—

"(A) includes any statement of general applicability that substantially alters or creates rights or obligations of persons outside the agency; and

"(B) does not include—

"(i) a rule that involves the internal revenue laws of the United States, or the assessment and collection of taxes, duties, or other revenues or receipts;

"(ii) a rule or agency action that implements an international trade agreement to which the United States is a party;

"(iii) a rule or agency action that authorizes the introduction into commerce, or recognizes the marketable status, of a product;

"(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 (as defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k))), credit unions, Federal Home Loan Banks, government sponsored housing enterprises, farm credit institutions, foreign banks that operate in the United States and their affiliates, branches, agencies, commercial lending companies, or representative offices, (as those terms are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101));

"(ix) a rule relating to the payment system or the protection of deposit insurance funds or the farm credit insurance fund;

"(x) any order issued in a rate or certificate proceeding by the Federal Energy Regulatory Commission, or a rule of general applicability that the Federal Energy Regulatory Commission certifies would increase reliance on competitive market forces or reduce regulatory burdens;

"(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 (15 U.S.C. 78a et seq.) or emergency action taken under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or a rule relating to the protection of the Securities Investor Protection Corporation, that is promulgated under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); or

"(xii) a rule that involves the international trade laws of the United States.

"§ 622. Rulemaking cost-benefit analysis

"(a) DETERMINATIONS FOR MAJOR RULE.—Prior to publishing a notice of proposed rulemaking for any rule (or, in the case of a notice of proposed rulemaking that has been published but not issued as a final rule on or before the date of enactment of this subchapter, not later than 30 days after such date of enactment), each agency shall determine—

"(1) whether the rule is or is not a major rule within the meaning of section 621(5)(A)(i) and, if it is not, whether it should be designated as a major rule under section 621(5)(B); and

"(2) if the agency determines that the rule is a major rule, or otherwise designates it as a major rule, whether the rule requires or does not require the preparation of a risk assessment under section 632(a).

"(b) DESIGNATION.—(1) If an agency has determined that a rule is not a major rule within the meaning of section 621(5)(A) and has not designated the rule as a major rule within the meaning of section 621(5)(B), the Director or a designee of the President may, as appropriate, determine that the rule is a major rule or designate the rule as a major rule not later than 30 days after the publication of the notice of proposed rulemaking for the rule (or, in the case of a notice of proposed rulemaking that has been published on or before the date of enactment of this subchapter, not later than 1 year after such date of enactment).

"(2) Such determination or designation shall be published in the Federal Register, together with a succinct statement of the basis for the determination or designation.

"(c) INITIAL COST-BENEFIT ANALYSIS.—(1)(A) When the agency publishes a notice of proposed rulemaking for a major rule, the agency shall issue and place in the rulemaking file an initial cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

"(B)(i) When an agency, the Director, or a designee of the President has published a determination or designation that a rule is a major rule after the publication of the notice of proposed rulemaking for the rule, the agency shall promptly issue and place in the rulemaking file an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

"(ii) Following the issuance of an initial cost-benefit analysis under clause (i), the agency shall give interested persons an opportunity to comment in the same manner as if the initial cost-benefit analysis had been issued with the notice of proposed rulemaking.

"(2) Each initial cost-benefit analysis shall contain—

"(A) a succinct analysis of the benefits of the proposed rule, including any beneficial effects that cannot be quantified, and an explanation of how the agency anticipates such benefits will be achieved by the proposed rule, including a description of the persons or classes of persons likely to receive such benefits;

"(B) a succinct analysis of the costs of the proposed rule, including any costs that cannot be quantified, and an explanation of how the agency anticipates such costs will result from the proposed rule, including a description of the persons or classes of persons likely to bear such costs;

"(C) a succinct description (including an analysis of the costs and benefits) of reasonable alternatives for achieving the objectives of the statute, including, where such alternatives exist, alternatives that—

"(i) require no government action, where the agency has discretion under the statute granting the rulemaking authority not to promulgate a rule;

"(ii) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply;

"(iii) employ performance-based standards, market-based mechanisms, or other flexible regulatory options that permit the greatest flexibility in achieving the regulatory result that the statutory provision authorizing the rule is designed to produce; or

"(iv) employ voluntary standards;

"(D) in any case in which the proposed rule is based on one or more scientific evaluations, scientific information, or a risk assessment, or is subject to the risk assessment requirements of subchapter III, a description of the actions undertaken by the agency to verify the quality, reliability, and relevance of such scientific evaluation, scientific information, or risk assessment; and

"(E) an explanation of how the proposed rule is likely to meet the decisional criteria of section 624.

"(d) FINAL COST-BENEFIT ANALYSIS.—(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking file a final cost-benefit analysis, and shall include a summary of the analysis in the statement of basis and purpose.

"(2) Each final cost-benefit analysis shall contain—

"(A) a description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule described in the rulemaking record, including flexible regulatory options of the type described in subsection (c)(2)(C)(iii), and a description of the persons likely to receive such benefits and bear such costs; and

"(B) an analysis, based upon the rulemaking record considered as a whole, of how the rule meets the decisional criteria in section 624.

"(3) In considering the benefits and costs, the agency, when appropriate, shall consider the benefits and costs incurred by all of the affected persons or classes of persons (including specially affected subgroups).

"(e) REQUIREMENTS FOR COST-BENEFIT ANALYSES.—(1)(A) The description of the benefits and costs of a proposed and a final rule required under this section shall include, to the extent feasible, a quantification or numerical estimate of the quantifiable benefits and costs.

"(B) The quantification or numerical estimate shall—

"(i) be made in the most appropriate unit of measurement, using comparable assumptions, including time periods;

"(ii) specify the ranges of predictions; and

"(iii) explain the margins of error involved in the quantification methods and the uncertainties and variabilities in the estimates used.

"(C) An agency shall describe the nature and extent of the nonquantifiable benefits and costs of a final rule pursuant to this section in as precise and succinct a manner as possible.

"(D) The agency evaluation of the relationship of benefits to costs shall be clearly articulated.

"(E) An agency shall not be required to make such evaluation primarily on a mathematical or numerical basis.

"(F) Nothing in this subsection shall be construed to expand agency authority beyond the delegated authority arising from the statute granting the rulemaking authority.

"(2) Where practicable and when understanding industry-by-industry effects is of central importance to a rulemaking, the description of the benefits and costs of a proposed and final rule required under this section shall describe such benefits and costs on an industry by industry basis.

"(f) HEALTH, SAFETY, OR EMERGENCY EXEMPTION FROM COST-BENEFIT ANALYSIS.—(1)

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 that is likely to result in significant harm to the public or natural resources; and

"(B) the agency publishes in the Federal Register, together with such finding, a succinct statement of the basis for the finding.

"(2) Not later than 180 days after the promulgation of a final major rule to which this section applies, the agency shall comply with the provisions of this subchapter and, as thereafter necessary, revise the rule.

"§ 623. Agency regulatory review

"(a) PRELIMINARY SCHEDULE FOR RULES.—(1) Not later than 1 year after the date of the enactment of this section, and every 5 years thereafter, the head of each agency shall publish in the Federal Register a notice of proposed rulemaking under section 553 that contains a preliminary schedule of rules selected for review under this section by the head of the agency and in the sole discretion of the head of the agency, and request public comment thereon, including suggestions for additional rules warranting review. The agency shall allow at least 180 days for public comment.

"(2) In selecting rules for the preliminary schedule, the head of the agency shall consider the extent to which, in the judgment of the head of the agency—

"(A) a rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

"(B) a rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

"(C) a rule could be revised in a manner allowed by the statute authorizing the rule so as to—

"(i) substantially decrease costs;

"(ii) substantially increase benefits; or

"(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii).

"(3) The preliminary schedule under this subsection shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years from the date of publication of the preliminary schedule.

"(4) Any interpretive rule, general statement of policy, or guidance that has the force and effect of a rule under section 621(9) shall be treated as a rule for purposes of this section.

"(b) SCHEDULE.—(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), and subject to subsection (c), the head of each agency shall publish a final rule that establishes a schedule of rules to be reviewed by the agency under this section.

"(2) The schedule shall establish a deadline for completion of the review of each rule listed on the schedule, taking into account the criteria in subsection (d) and comments received in the rulemaking under subsection (a). Each such deadline shall occur not later than 11 years from the date of publication of the preliminary schedule.

"(3) The schedule shall contain, at a minimum, all rules listed on the preliminary schedule.

"(4) The head of the agency shall modify the agency's schedule under this section to reflect any change ordered by the court under subsection (e) or subsection (g)(3) or contained in an appropriations Act under subsection (f).

"(c) PETITIONS AND COMMENTS PROPOSING ADDITION OF RULES TO THE SCHEDULE.—(1) Notwithstanding section 553(*l*), a petition to amend or repeal a major rule or an interpretative rule, general statement of policy, or guidance on grounds arising under this subchapter may only be filed during the 180-day comment period under subsection (a) and not at any other time. Such petition shall be reviewed only in accordance with this subsection.

"(2) The head of the agency shall, in response to petitions received during the rulemaking to establish the schedule, place on the final schedule for the completion of review within the first 3 years of the schedule any rule for which a petition, on its face, together with any relevant comments received in the rulemaking under subsection (a), establishes that there is a substantial likelihood that, considering the future impact of the rule—

"(A) the rule is a major rule under section 621(5)(A); and

(B) the head of the agency would not be able to make the findings required by section 624 with respect to the rule.

"(3) For the purposes of paragraph (2), the head of the agency may consolidate multiple petitions on the same rule into 1 determination with respect to review of the rule.

"(4) The head of the agency may, at the sole discretion of the head of the agency, add to the schedule any other rule suggested by a commentator during the rulemaking under subsection (a).

"(d) CRITERIA FOR ESTABLISHING DEADLINES FOR REVIEW.—The schedules in subsections (a) and (b) shall establish deadlines for review of each rule on the schedule that take into account—

"(1) the extent to which, for a particular rule, the preliminary views of the agency are that—

"(A) the rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

"(B) the rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

"(C) the rule could be revised in a manner allowed by the statute authorizing the rule so as to meet the decisional criteria under section 624 and to—

"(i) substantially decrease costs;

"(ii) substantially increase benefits; or

"(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii);

"(2) the importance of each rule relative to other rules being reviewed under this section; and

"(3) the resources expected to be available to the agency under subsection (f) to carry out the reviews under this section.

"(e) JUDICIAL REVIEW.—(1) Notwithstanding section 625 and except as provided otherwise in this subsection, agency compliance or noncompliance with the requirements of this section shall be subject to judicial review in accordance with section 706 of this title.

"(2) The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to review agency action pursuant to subsections (a), (b), and (c).

"(3) A petition for review of final agency action under subsection (b) or subsection (c) shall be filed not later than 60 days after the agency publishes the final rule under subsection (b).

"(4) The court upon review, for good cause shown, may extend the 3-year deadline under subsection (c)(2) for a period not to exceed 1 additional year.

"(5) The court shall remand to the agency any schedule under subsection (b) only if final agency action under subsection (b) is arbitrary or capricious. Agency action under subsection (d) shall not be subject to judicial review.

"(f) ANNUAL BUDGET.—(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

"(A) identify as a separate sum the amount requested to be appropriated for implementation of this section during the upcoming fiscal year; and

"(B) include a list of rules which may terminate during the year for which the budget proposal is made.

"(2) Amendments to the schedule under subsection (b) that change a deadline for review of a rule may be included in annual appropriations Acts for the relevant agencies. An authorizing committee with jurisdiction may submit, to the House of Representatives or Senate appropriations committee (as the case may be), amendments to the schedule published by an agency under subsection (b) that change a deadline for review of a rule. The appropriations committee to which such amendments have been submitted shall include or propose the amendments in the annual appropriations Act for the relevant agency. Each agency shall modify its schedule under subsection (b) to reflect such amendments that are enacted into law.

"(g) REVIEW OF RULE.—(1) For each rule on the schedule under subsection (b), the agency shall—

"(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be continued, amended, or repealed;

"(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

"(i) addresses public comments generated by the notice in subparagraph (A);

"(ii) contains a preliminary analysis provided by the agency of whether the rule is a major rule, and if so, whether it satisfies the decisional criteria of section 624;

"(iii) contains a preliminary determination as to whether the rule should be continued, amended, or repealed; and

"(iv) solicits public comment on the preliminary determination for the rule; and

"(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

"(i) addresses public comments generated by the notice in subparagraph (B); and

"(ii) contains a final determination of whether to continue, amend, or repeal the rule; and

"(iii) if the agency determines to continue the rule and the rule is a major rule, contains findings necessary to satisfy the decisional criteria of section 624; and

"(iv) if the agency determines to amend the rule, contains a notice of proposed rulemaking under section 553.

"(2) If the final determination of the agency is to continue or repeal the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(C).

"(3) An interested party may petition the U.S. Court of Appeals for the District of Columbia Circuit to extend the period for review of a rule on the schedule for up to two

years and to grant such equitable relief as is appropriate, if such petition establishes that—

"(A) the rule is likely to terminate under subsection (i);

"(B) the agency needs additional time to complete the review under this subsection;

"(C) terminating the rule would not be in the public interest; and

"(D) the agency has not expeditiously completed its review.

"(h) DEADLINE FOR FINAL AGENCY ACTION ON MODIFIED RULE.—If an agency makes a determination to amend a major rule under subsection (g)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years of the date of publication of the notice in subsection (g)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a major rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

"(i) TERMINATION OF RULES.—If the head of an agency has not completed the review of a rule by the deadline established in the schedule published or modified pursuant to subsection (b) and subsection (c), the head of the agency shall not enforce the rule, and the rule shall terminate by operation of law as of such date.

"(j) FINAL AGENCY ACTION.—(1) The final determination of an agency to continue or repeal a major rule under subsection (g)(1)(C) shall be considered final agency action.

"(2) Failure to promulgate an amended major rule or to make other decisions required by subsection (h) by the date established under such subsection shall be considered final agency action.

"§ 624. Decisional criteria

"(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law.

"(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

"(1) the benefits from the rule justify the costs of the rule;

"(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

"(3)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieve the objectives of the statute; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

"(4) if a risk assessment is required by section 632—

"(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

"(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

"(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

"(2)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieve the objectives of the statute; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest, and the agency head provides an explanation of those consideration, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

"(3) if a risk assessment is required by section 632—

"(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

"(d) PUBLICATION OF REASONS FOR NONCOMPLIANCE.—If an agency promulgates a rule to which subsection (c) applies, the agency head shall prepare a written explanation of why the agency was required to promulgate a rule that does not satisfy the criteria of subsection (b) and shall transmit the explanation with the final cost-benefit analysis to Congress when the final rule is promulgated.

"§ 625. Jurisdiction and judicial review

"(a) REVIEW.—Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall be subject to judicial review only in accordance with this section.

"(b) JURISDICTION.—(1) Except as provided in subsection (e), subject to paragraph (2), each court with jurisdiction under a statute to review final agency action to which this title applies, has jurisdiction to review any claims of noncompliance with this subchapter and subchapter III.

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

"(c) RECORD.—Any analysis or review required under this subchapter or subchapter III shall constitute part of the rulemaking record of the final agency action to which it pertains for the purposes of judicial review.

"(d) STANDARDS FOR REVIEW.—In any proceeding involving judicial review under section 706 or under the statute granting the rulemaking authority, failure to comply with this subchapter or subchapter III 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 (or unsupported by substantial evidence where that standard is otherwise provided by law).

"(e) INTERLOCUTORY REVIEW.—(1) The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review—

"(A) an agency determination that a rule is not a major rule pursuant to section 622(a); and

"(B) an agency determination that a risk assessment is not required pursuant to section 632(a).

"(2) A petition for review of agency action under paragraph (1) shall be filed within 60 days after the agency makes the determination or certification for which review is sought.

"(3) Except as provided in this subsection, no court shall have jurisdiction to review any agency determination or certification specified in paragraph (1).

"§ 626. Deadlines for rulemaking

"(a) STATUTORY.—All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 2 years after the date of the applicable deadline.

"(b) COURT-ORDERED.—All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 2 years after the date of the applicable deadline.

"(c) OBLIGATION TO REGULATE.—In any case in which the failure to promulgate a rule by a deadline occurring during the 5-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 2 years after the date of the applicable deadline.

"§ 627. Special rule

"Notwithstanding any other provision of the Comprehensive Regulatory Reform Act of 1995, or the amendments made by such Act, for purposes of this subchapter and subchapter IV, the head of each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act), the National Credit Union Administration, the Federal Housing Finance Board, the Office of Federal Housing Enterprise Oversight, and the Farm Credit Administration, shall have authority with respect to such agency that otherwise would be provided under such subchapters to the Director, a designee of the President, Vice President, or any officer designated or delegated with authority under such subchapters.

"§ 628. Requirements for major environmental management activities

"(a) DEFINITION.—For purposes of this section, the term 'major environmental management activity' means—

"(1) a corrective action requirement under the Solid Waste Disposal Act;

"(2) a response action or damage assessment under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(3) the treatment, storage, or disposal of radioactive or mixed waste in connection with site restoration activity; and

"(4) Federal guidelines for the conduct of such activity, including site-specific guidelines,

the expected costs, expenses, and damages of which are likely to exceed, in the aggregate, $10,000,000.

"(b) APPLICABILITY.—A major environmental management activity is subject to this section unless construction has commenced on a significant portion of the activity, and—

"(1) it is more cost-effective to complete construction of the work than to apply the provisions of this subchapter; or

"(2) the application of the provisions of this subchapter, including any delays caused thereby, will result in an actual and immediate risk to human health or welfare.

"(c) REQUIREMENT TO PREPARE RISK ASSESSMENT.—(1) For each major environmental management activity or significant unit thereof that is proposed by the agency after the date of enactment of this subchapter, is pending on the date of enactment of this subchapter, or is subject to a granted petition for review pursuant to section 623, the head of an agency shall prepare—

"(A) a risk assessment in accordance with subchapter III; and

"(B) a cost-benefit analysis equivalent to that which would be required under this subchapter, if such subchapter were applicable.

"(2) In conducting a risk assessment or cost-benefit analysis under this section, the head of the agency shall incorporate the reasonably anticipated probable future use of the land and its surroundings (and any associated media and resources of either) affected by the environmental management activity.

"(3) For actions pending on the date of enactment of this section or proposed during the year following the date of enactment of this section, in lieu of preparing a risk assessment in accordance with subchapter III or cost-benefit analysis under this subchapter, an agency may use other appropriately developed analyses that allow it to make the judgments required under subsection (d).

"(d) REQUIREMENT.—The requirements of this subsection shall supplement, and not supersede, any other requirement provided by any law. A major environmental management activity under this section shall meet the decisional criteria under section 624 as if it is a major rule under such section.

"§ 629. Petition for alternative method of compliance

"(a) Except as provided in subsection (e), or unless prohibited by the statute authorizing the rule, any person subject to a major rule may petition the relevant agency to modify or waive the specific requirements of the major rule (or any portion thereof) and to authorize such person to demonstrate compliance through alternative means not otherwise permitted by the major rule. The petition shall identify with reasonable specificity the requirements for which the waiver is sought and the alternative means of compliance being proposed.

"(b) The agency shall grant the petition if the petition shows that there is a reasonable likelihood that the proposed alternative means of compliance—

"(1) would achieve the identified benefits of the major rule with at least an equivalent level of protection of health, safety, and the environment as would be provided by the major rule; and

"(2) would not impose an undue burden on the agency that would be responsible for enforcing such alternative means of compliance.

"(c) A decision to grant or to deny a petition under this subsection shall be made not later than 180 days after the petition is submitted, but in no event shall agency action taken pursuant to this section be subject to judicial review.

"(d) Following a decision to grant or deny a petition under this section, no further petition for such rule, submitted by the same person, shall be granted unless such petition pertains to a different facility or installation owned or operated by such person or unless such petition is based on a significant change in a fact, circumstance, or provision of law underlying or otherwise related to the rule occurring since the initial petition was granted or denied, that warrants the granting of such petition.

"(e) If the statute authorizing the rule which is the subject of the petition provides procedures or standards for an alternative method of compliance the petition shall be reviewed solely under the terms of the statute.

"SUBCHAPTER III—RISK ASSESSMENTS

"§ 631. Definitions

"For purposes of this subchapter—

"(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

"(2) the term 'exposure assessment' means the scientific determination of the intensity, frequency and duration of actual or potential exposures to the hazard in question;

"(3) the term 'hazard assessment' means the scientific determination of whether a hazard can cause an increased incidence of one or more significant adverse effects, and a scientific evaluation of the relationship between the degree of exposure to a perceived cause of an adverse effect and the incidence and severity of the effect;

"(4) the term 'major rule' has the meaning given such term in section 621(5);

"(5) the term 'risk assessment' means the systematic process of organizing and analyzing scientific knowledge and information on potential hazards, including as appropriate for the specific risk involved, hazard assessment, exposure assessment, and risk characterization;

"(6) the term 'risk characterization' means the integration and organization of hazard and exposure assessment to estimate the potential for specific harm to an exposed population or natural resource including, to the extent feasible, a characterization of the distribution of risk as well as an analysis of uncertainties, variabilities, conflicting information, and inferences and assumptions in the assessment;

"(7) the term 'screening analysis' means an analysis using simple conservative postulates to arrive at an estimate of upper bounds as appropriate, that permits the manager to eliminate risks from further consideration and analysis, or to help establish priorities for agency action; and

"(8) the term 'substitution risk' means an increased risk to human health, safety, or the environment reasonably likely to result from a regulatory option.

"§ 632. Applicability

"(a) IN GENERAL.—Except as provided in subsection (c), for each proposed and final major rule, a primary purpose of which is to protect human health, safety, or the environment, or a consequence of which is a substantial substitution risk, that is proposed by an agency after the date of enactment of this subchapter, or is pending on the date of enactment of this subchapter, the head of each agency shall prepare a risk assessment in accordance with this subchapter.

"(b) APPLICATION OF PRINCIPLES.—(1) Except as provided in subsection (c), the head of each agency shall apply the principles in this subchapter to any risk assessment conducted to support a determination by the agency of risk to human health, safety, or the environment, if such determination would be likely to have an effect on the United States economy equivalent to that of a major rule.

"(2) In applying the principles of this subchapter to risk assessments other than those in subsections (a), (b)(1), and (c), the head of each agency shall publish, after notice and public comment, guidelines for the conduct of such other risk assessments that adapt the principles of this subchapter in a manner consistent with section 633(a)(4) and the risk assessment and risk management needs of the agency.

"(3) An agency shall not, as a condition for the issuance or modification of a permit, conduct, or require any person to conduct, a risk assessment, except if the agency finds that the risk assessment meets the requirements of section 633 (a) through (f).

"(c) EXCEPTIONS.—(1) This subchapter shall not apply to risk assessments performed with respect to—

"(A) a situation for which the agency finds good cause that conducting a risk assessment is impracticable due to an emergency or health and safety threat that is likely to result in significant harm to the public or natural resources;

"(B) a rule or agency action that authorizes the introduction into commerce, or initiation of manufacture, of a substance, mixture, or product, or recognizes the marketable status of a product;

"(C) a human health, safety, or environmental inspection, an action enforcing a statutory provision, rule, or permit, or an individual facility or site permitting action, except to the extent provided by subsection (b)(3);

"(D) a screening analysis clearly identified as such; or

"(E) product registrations, reregistrations, tolerance settings, and reviews of premanufacture notices under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

"(2) An analysis shall not be treated as a screening analysis for the purposes of paragraph (1)(D) if the result of the analysis is used—

"(A) as the basis for imposing a restriction on a previously authorized substance, product, or activity after its initial introduction into manufacture or commerce; or

"(B) as the basis for a formal determination by the agency of significant risk from a substance or activity.

"(3) This subchapter shall not apply to any food, drug, or other product label or labeling, or to any risk characterization appearing on any such label.

"§ 633. Principles for risk assessments

"(a) IN GENERAL.—(1) The head of each agency shall design and conduct risk assessments in a manner that promotes rational and informed risk management decisions and informed public input into the process of making agency decisions.

"(2) The head of each agency shall establish and maintain a distinction between risk assessment and risk management.

"(3) An agency may take into account priorities for managing risks, including the types of information that would be important in evaluating a full range of alternatives, in developing priorities for risk assessment activities.

"(4) In conducting a risk assessment, the head of each agency shall employ the level of detail and rigor considered by the agency as appropriate and practicable for reasoned decisionmaking in the matter involved, proportionate to the significance and complexity of the potential agency action and the need for expedition.

"(5) An agency shall not be required to repeat discussions or explanations in each risk assessment required under this subchapter if there is an unambiguous reference to a relevant discussion or explanation in another reasonably available agency document that was prepared consistent with this section.

"(b) ITERATIVE PROCESS.—(1) Each agency shall develop and use an iterative process for risk assessment, starting with relatively inexpensive screening analyses and progressing to more rigorous analyses, as circumstances or results warrant.

"(2) In determining whether or not to proceed to a more detailed analysis, the head of the agency shall take into consideration whether or not use of additional data or the analysis thereof would significantly change the estimate of risk and the resulting agency action.

"(c) DATA QUALITY.—(1) The head of each agency shall base each risk assessment only on the best reasonably available scientific data and scientific understanding, including scientific information that finds or fails to find a correlation between a potential hazard and an adverse effect, and data regarding exposure and other relevant physical conditions that are reasonably expected to be encountered.

"(2) The agency shall select data for use in a risk assessment based on a reasoned analysis of the quality and relevance of the data, and shall describe such analysis.

"(3) In making its selection of data, the agency shall consider whether the data were published in the peer-reviewed scientific literature, or developed in accordance with good laboratory practice or published or other appropriate protocols to ensure data quality, such as the standards for the development of test data promulgated pursuant to section 4 of the Toxic Substances Control Act (15 U.S.C. 2603), and the standards for data requirements promulgated pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a), or other form of independent evaluation.

"(4) Subject to paragraph (3), relevant scientific data submitted by interested parties shall be reviewed and considered by the agency in the analysis under paragraph (2).

"(5) When conflicts among scientific data appear to exist, the risk assessment shall include a discussion of all relevant information including the likelihood of alternative interpretations of the data and emphasizing—

"(A) postulates that represent the most reasonable inferences from the supporting scientific data; and

"(B) when a risk assessment involves an extrapolation from toxicological studies, data with the greatest scientific basis of support for the resulting harm to affected individuals, populations, or resources.

"(6) The head of an agency shall not automatically incorporate or adopt any recommendation or classification made by any foreign government, the United Nations, any international governmental body or standards-making organization, concerning the health effects value of a substance, except as provided in paragraph (2) of this subsection. Nothing in this paragraph shall be construed to affect the implementation or application of any treaty or international trade agreement to which the United States is a party.

"(d) USE OF POLICY JUDGMENTS.—(1) An agency shall not use policy judgments, including default assumptions, inferences, models or safety factors, when relevant and adequate scientific data and scientific understanding, including site-specific data, are available. The agency shall modify or decrease the use of policy judgments to the extent that higher quality scientific data and understanding become available.

"(2) When a risk assessment involves choice of a policy judgment, the head of the agency shall—

"(A) identify the policy judgment and its scientific or policy basis, including the extent to which the policy judgment has been validated by, or conflicts with, empirical data;

"(B) explain the basis for any choices among policy judgments; and

"(C) describe reasonable alternative policy judgments that were not selected by the agency for use in the risk assessment, and the sensitivity of the conclusions of the risk assessment to the alternatives, and the rationale for not using such alternatives.

"(3) An agency shall not inappropriately combine or compound multiple policy judgments.

"(4) The agency shall, subject to notice and opportunity for public comment, develop and publish guidelines describing the agency's default policy judgments and how they were chosen, and guidelines for deciding when and how, in a specific risk assessment, to adopt alternative policy judgments or to use available scientific information in place of a policy judgment.

"(e) RISK CHARACTERIZATION.—In each risk assessment, the agency shall include in the risk characterization, as appropriate, each of the following:

"(1) A description of the hazard of concern.

"(2) A description of the populations or natural resources that are the subject of the risk assessment.

"(3) An explanation of the exposure scenarios used in the risk assessment, including an estimate of the corresponding population at risk and the likelihood of such exposure scenarios.

"(4) A description of the nature and severity of the harm that could plausibly occur.

"(5) A description of the major uncertainties in each component of the risk assessment and their influence on the results of the assessment.

"(f) PRESENTATION OF RISK ASSESSMENT CONCLUSIONS.—(1) To the extent feasible and scientifically appropriate, the head of an agency shall—

"(A) express the overall estimate of risk as a range or probability distribution that reflects variabilities, uncertainties and data gaps in the analysis;

"(B) provide the range and distribution of risks and the corresponding exposure scenarios, identifying the reasonably expected risk to the general population and, where appropriate, to more highly exposed or sensitive subpopulations; and

"(C) where quantitative estimates of the range and distribution of risk estimates are not available, describe the qualitative factors influencing the range of possible risks.

"(2) When scientific data and understanding that permits relevant comparisons of risk are reasonably available, the agency shall use such information to place the nature and magnitude of risks to human health, safety, and the environment being analyzed in context.

"(3) When scientifically appropriate information on significant substitution risks to human health, safety, or the environment is reasonably available to the agency, or is contained in information provided to the agency by a commentator, the agency shall describe such risks in the risk assessments.

"(g) PEER REVIEW.—(1) Each agency shall provide for peer review in accordance with this section of any risk assessment subject to the requirements of this subchapter that forms that basis of any major rule or a major environmental management activity.

"(2) Each agency shall develop a systematic program for balanced, independent, and external peer review that—

"(A) shall provide for the creation or utilization of peer review panels, expert bodies, or other formal or informal devices that are balanced and comprised of participants selected on the basis of their expertise relevant to the sciences involved in regulatory decisions and who are independent of the agency program that developed the risk assessment being reviewed;

"(B) shall not exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential interest in the outcome, if such interest is fully disclosed to the agency, and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person;

"(C) shall provide for a timely completed peer review, meeting agency deadlines, that contains a balanced presentation of all considerations, including minority reports and agency response to all significant peer review comments; and

"(D) shall provide adequate protections for confidential business information and trade secrets, including requiring panel members to enter into confidentiality agreements.

"(3) Each peer review shall include a report to the Federal agency concerned detailing the scientific and technical merit of data and the methods used for the risk assessment, and shall identify significant peer review comments. Each agency shall provide a written response to all significant peer review comments. All peer review comments, conclusions, composition of the panels, and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

"(4)(A) The Director of the Office of Science and Technology Policy shall develop a systematic program to oversee the use and quality of peer review of risk assessments.

"(B) The Director or the designee of the President may order an agency to conduct peer review for any risk assessment or cost-benefit analysis that is likely to have a significant impact on public policy decisions, or that would establish an important precedent.

"(5) The proceedings of peer review panels under this section shall not be subject to the Federal Advisory Committee Act.

"(h) PUBLIC PARTICIPATION.—The head of each agency shall provide appropriate opportunities for public participation and comment on risk assessments.

"§ 634. Petition for review of a major free-standing risk assessment

"(a) Any interested person may petition an agency to conduct a scientific review of a risk assessment conducted or adopted by the agency, except for a risk assessment used as the basis for a major rule or a site-specific risk assessment.

"(b) The agency shall utilize external peer review, as appropriate, to evaluate the

claims and analyses in the petition, and shall consider such review in making its determination of whether to grant the petition.

"(c) The agency shall grant the petition if the petition establishes that there is a reasonable likelihood that—

"(1)(A) the risk assessment that is the subject of the petition was carried out in a manner substantially inconsistent with the principles in section 633; or

"(B) the risk assessment that is the subject of the petition does not take into account material significant new scientific data and scientific understanding;

"(2) the risk assessment that is the subject of the petition contains significantly different results than if it had been properly conducted pursuant to subchapter III; and

"(3) a revised risk assessment will provide the basis for reevaluating an agency determination of risk, and such determination currently has an effect on the United States economy equivalent to that of major rule.

"(d) A decision to grant, or final action to deny, a petition under this subsection shall be made not later than 180 days after the petition is submitted.

"(e) If the agency grants the petition, it shall complete its review of the risk assessment not later than 1 year after its decision to grant the petition. If the agency revises the risk assessment, in response to its review, it shall do so in accordance with section 633.

"§ 635. Comprehensive risk reduction

"(a) SETTING PRIORITIES.—The head of each agency with programs to protect human health, safety, or the environment shall set priorities for the use of resources available to address those risks to human health, safety, and the environment, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

"(b) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each agency in subsection (a) shall incorporate the priorities identified under subsection (a) 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 using the priorities set under subsection (a), the basis for that determination, and explicitly identify how the agency's requested budget and regulatory agenda reflect those priorities.

"(c) REPORTS BY THE NATIONAL ACADEMY OF SCIENCES.—(1) Not later than 6 months after the date of enactment of this section, the Director of the Office of Science and Technology Policy shall enter into an arrangement with the National Academy of Sciences to investigate and report on comparative risk analysis. The arrangement shall provide, to the extent feasible, for—

"(A) 1 or more reports evaluating methods of comparative risk analysis that would be appropriate for agency programs related to human health, safety, and the environment to use in setting priorities for activities; and

"(B) a report providing a comprehensive and comparative analysis of the risks to human health, safety, and the environment that are addressed by agency programs to protect human health, safety, and the environment, along with companion activities to disseminate the conclusions of the report to the public.

"(2) The report or reports prepared under paragraph (1)(A) shall be completed not later than 3 years after the date of enactment of this section. The report under paragraph (1)(B) shall be completed not later than 4 years after the date of enactment of this section, and shall draw, as appropriate, upon the insights and conclusions of the report or reports made under paragraph (1)(A). The companion activities under paragraph (1)(B) shall be completed not later than 5 years after the date of enactment of this section.

"(3)(A) The head of an agency with programs to protect human health, safety, and the environment shall incorporate the recommendations of reports under paragraph (1) in revising any priorities under subsection (a).

"(B) The head of the agency shall submit a report to the appropriate Congressional committees of jurisdiction responding to the recommendations from the National Academy of Sciences and describing plans for utilizing the results of comparative risk analysis in agency budget, strategic planning, regulatory agenda, enforcement, and research and development activities.

"(4) Following the submission of the report in paragraph (2), for the next 5 years, the head of the agency shall submit, with the budget request submitted to Congress under section 1105(a) of title 31, a description of how the requested budget of the agency and the strategic planning activities of the agency reflect priorities determined using the recommendations of reports issued under subsection (a). The head of the agency shall include in such description—

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

"(B) recommendation on the modification or elimination of statutory or judicially mandated deadlines,

that would assist the head of the agency to set priorities in activities to address the risks to human health, safety, or the environment that incorporate the priorities developed using the recommendations of the reports under subsection (a), resulting in more cost-effective programs to address risk.

"(5) For each budget request submitted in accordance with paragraph (4), the Director shall submit an analysis of ways in which resources could be reallocated among Federal agencies to achieve the greatest overall net reduction in risk.

"§ 636. Rule of construction

"Nothing in this subchapter shall be construed to—

"(1) preclude the consideration of any data or the calculation of any estimate to more fully describe or analyze risk, scientific uncertainty, or variability; or

"(2) require the disclosure of any trade secret or other confidential information.

"SUBCHAPTER IV—EXECUTIVE OVERSIGHT

"§ 641. Procedures

"(a) IN GENERAL.—The Director or a designee of the President shall—

"(1) establish and, as appropriate, revise procedures for agency compliance with this chapter; and

"(2) monitor, review, and ensure agency implementation of such procedures.

"(b) PUBLIC COMMENT.—Procedures established pursuant to subsection (a) shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

"(c) TIME FOR REVIEW.—(1) If procedures established pursuant to subsection (a) include review of any initial or final analyses of a rule required under chapter 6, the time for any such review of any initial analysis shall not exceed 90 days following the receipt of the analysis by the Director, or a designee of the President.

"(2) The time for review of any final analysis required under chapter 6 shall not exceed 90 days following the receipt of the analysis by the Director, a designee of the President.

"(3)(A) The times for each such review may be extended for good cause by the President or by an officer to whom the President has delegated his authority pursuant to section 642 for an additional 45 days. At the request of the head of an agency, the President or such an officer may grant an additional extension of 45 days.

"(B) Notice of any such extension, together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

"§ 642. Delegation of authority

"(a) IN GENERAL.—The President may delegate the authority granted by this subchapter to an officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate.

"(b) NOTICE.—Notice of any delegation, or any revocation or modification thereof shall be published in the Federal Register.

"§ 643. Judicial review

"The exercise of the authority granted under this subchapter by the Director, the President, or by an officer to whom such authority has been delegated under section 642 and agency compliance or noncompliance with the procedure under section 641 shall not be subject to judicial review.

"§ 644. Regulatory agenda

"The head of each agency shall provide, as part of the semiannual regulatory agenda published under section 602—

"(1) a list of risk assessments subject to subsection 632 (a) or (b)(1) under preparation or planned by the agency;

"(2) a brief summary of relevant issues addressed or to be addressed by each listed risk assessment;

"(3) an approximate schedule for completing each listed risk assessment;

"(4) an identification of potential rules, guidance, or other agency actions supported or affected by each listed risk assessment; and

"(5) the name, address, and telephone number of an agency official knowledgeable about each listed risk assessment.".

(b) REGULATORY FLEXIBILITY ANALYSIS.—

(1) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) Except as provided in paragraph (2), no final rule for which a final regulatory flexibility analysis is required under this section shall be promulgated unless the agency finds that the final rule minimizes significant economic impact on small entities to the maximum extent possible, consistent with the purposes of this subchapter, the objectives of the rule, and the requirements of applicable statutes.

"(2) If an agency determines that a statute requires a rule to be promulgated that does not satisfy the criterion of paragraph (1), the agency shall—

"(A) include a written explanation of such determination in the final regulatory flexibility analysis; and

"(B) transmit the final regulatory flexibility analysis to Congress when the final rule is promulgated.".

(2) JUDICIAL REVIEW.—Section 611 of title 5, United States Code, is amended to read as follows:

"§ 611. Judicial review

"(a)(1) For any rule described in section 603(a), and with respect to which the agency—

"(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities;

"(B) prepared a final regulatory flexibility analysis pursuant to section 604; or

"(C) did not prepare an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604 except as permitted by sections 605 and 608,

an affected small entity may petition for the judicial review of such certification, analysis, or failure to prepare such analysis, in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction over such petition.

"(2)(A) Notwithstanding any other provision of law, an affected small entity shall have 1 year after the effective date of the final rule to challenge the certification, analysis or failure to prepare an analysis required by this subchapter with respect to any such rule.

"(B) If an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection may be filed not later than 1 year after the date the analysis is made available to the public.

"(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be subject to the provisions of, or otherwise required to comply with, the final rule.

"(4) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

"(5)(A) Notwithstanding section 605, if the court determines, on the basis of the court's review of the rulemaking record, that there is substantial evidence that the rule would have a significant economic impact on a substantial number of small entities, the court shall order the agency to prepare a final regulatory flexibility analysis that satisfies the requirements of section 604.

"(B) If the agency prepared a final regulatory flexibility analysis, the court shall order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the court's review of the rulemaking record, that the final regulatory flexibility analysis does not satisfy the requirements of section 604.

"(6) The court shall stay the rule and grant such other relief as the court determines to be appropriate if, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5), the agency fails, as appropriate—

"(A) to prepare the analysis required by section 604; or

"(B) to take corrective action consistent with section 604.

"(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

"(c) Except as otherwise required by the provisions of this subchapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct the rulemaking.".

(c) REVISION OF CERTAIN PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT RELATING TO TESTING.—In applying section 409(c)(3)(A), 512(d)(1), or 721(b)(5)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A), 360b(d)(1), 379e(b)(5)(B)), the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency shall not prohibit or refuse to approve a substance or product on the basis of safety, where the substance or product presents a negligible or insignificant foreseeable risk to human health resulting from its intended use.

(d) TOXIC RELEASE INVENTORY REVIEW.—Section 313(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(d)) is amended—

(1) in paragraph (2) by inserting after "epidemiological or other population studies," the following: "and on the rule of reason, including a consideration of the applicability of such evidence to levels of the chemical in the environment that may result from reasonably anticipated releases"; and

(2) in subsection (e)(1), by inserting before "Within 180 days" the following: "The Administrator shall grant any petition that establishes substantial evidence that the criteria in subparagraph (A) either are or are not met.".

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—Part I of title 5, United States Code, is amended by striking the chapter heading and table of sections for chapter 6 and inserting the following:

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"SUBCHAPTER I—REGULATORY ANALYSIS

"Sec.
"601. Definitions.
"602. Regulatory agenda.
"603. Initial regulatory flexibility analysis.
"604. Final regulatory flexibility analysis.
"605. Avoidance of duplicative or unnecessary analyses.
"606. Effect on other law.
"607. Preparation of analysis.
"608. Procedure for waiver or delay of completion.
"609. Procedures for gathering comments.
"610. Periodic review of rules.
"611. Judicial review.
"612. Reports and intervention rights.

"SUBCHAPTER II—ANALYSIS OF AGENCY RULES

"621. Definitions.
"622. Rulemaking cost-benefit analysis.
"623. Agency regulatory review.
"624. Decisional criteria.
"625. Jurisdiction and judicial review.
"626. Deadlines for rulemaking.
"627. Special rule.
"628. Requirements for major environmental management activities.

"SUBCHAPTER III—RISK ASSESSMENTS

"631. Definitions.
"632. Applicability.
"633. Principles for risk assessments.
"634. Petition for review of a major free-standing risk assessment.
"635. Comprehensive risk reduction.
"636. Rule of construction.

"SUBCHAPTER IV—EXECUTIVE OVERSIGHT

"641. Procedures.
"642. Delegation of authority.
"643. Judicial review.
"644. Regulatory agenda.".

(2) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

"SUBCHAPTER I—REGULATORY ANALYSIS".

SEC. 5. JUDICIAL REVIEW.

(a) IN GENERAL.—Chapter 7 of title 5, United States Code, is amended—

(1) by striking section 706; and

(2) by adding at the end the following new sections:

"§ 706. Scope of review

"(a) To the extent necessary to reach a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

"(1) compel agency action unlawfully withheld or unreasonably delayed; and

"(2) hold unlawful and set aside agency action, findings and conclusions found to be—

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"(B) contrary to constitutional right, power, privilege, or immunity;

"(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

"(D) without observance of procedure required by law;

"(E) unsupported by substantial evidence in a proceeding subject to sections 556 and 557 or otherwise reviewed on the record of an agency hearing provided by statute;

"(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, in the case of a rule adopted in a proceeding subject to section 553; or

"(G) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

"(b) In making the determinations set forth in subsection (a), the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

"§ 707. Consent decrees

"In interpreting any consent decree in effect on or after the date of enactment of this section that imposes on an agency an obligation to initiate, continue, or complete rulemaking proceedings, the court shall not enforce the decree in a way that divests the agency of discretion clearly granted to the agency by statute to respond to changing circumstances, make policy or managerial choices, or protect the rights of third parties.

"§ 708. Affirmative defense

"Notwithstanding any other provision of law, it shall be an affirmative defense in any enforcement action brought by an agency that the regulated person or entity reasonably relied on and is complying with a rule, regulation, adjudication, directive, or order of such agency or any other agency that is incompatible, contradictory, or otherwise cannot be reconciled with the agency rule, regulation, adjudication, directive, or order being enforced.".

(b) TECHNICAL AMENDMENT.—The analysis for chapter 7 of title 5, United States Code, is amended by striking the item relating to section 706 and inserting the following new items:

"706. Scope of review.
"707. Consent decrees.
"708. Affirmative defense.".

SEC. 6. CONGRESSIONAL REVIEW.

(a) FINDING.—The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the implementation of certain significant final rules is imposed in order to provide Congress an opportunity for review.

(b) IN GENERAL.—Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"801. Congressional review.
"802. Congressional disapproval procedure.
"803. Special rule on statutory, regulatory, and judicial deadlines.
"804. Definitions.
"805. Judicial review.
"806. Applicability; severability.
"807. Exemption for monetary policy.

"§ 801. Congressional review

"(a)(1)(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule; and

"(iii) the proposed effective date of the rule.

"(B) The Federal agency promulgating the rule shall make available to each House of Congress and the Comptroller General, upon request—

"(i) a complete copy of the cost-benefit analysis of the rule, if any;

"(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

"(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

"(iv) any other relevant information or requirements under any other Act and any relevant Executive orders, such as Executive Order No. 12866.

"(C) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each committee with jurisdiction.

"(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction to each House of the Congress by the end of 12 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

"(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

"(3) A major rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

"(A) the later of the date occurring 60 days after the date on which—

"(i) the Congress receives the report submitted under paragraph (1); or

"(ii) the rule is published in the Federal Register;

"(B) if the Congress passes a joint resolution of disapproval described under section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

"(i) on which either House of Congress votes and fails to override the veto of the President; or

"(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

"(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

"(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

"(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

"(b) A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 802.

"(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this chapter may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

"(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

"(A) necessary because of an imminent threat to health or safety or other emergency;

"(B) necessary for the enforcement of criminal laws;

"(C) necessary for national security; or

"(D) issued pursuant to a statute implementing an international trade agreement.

"(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

"(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, section 802 shall apply to such rule in the succeeding Congress.

"(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

"(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

"(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a final rule can take effect.

"(3) A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

"(e)(1) Section 802 shall apply in accordance with this subsection to any major rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on November 20, 1994, through the date on which the Comprehensive Regulatory Reform Act of 1995 takes effect.

"(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

"(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of enactment of the Comprehensive Regulatory Reform Act of 1995; and

"(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

"(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

"(g) If the Congress does not enact a joint resolution of disapproval under section 802, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

"§ 802. Congressional disapproval procedure

"(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced during the period beginning on the date on which the report referred to in section 801(a) is received by Congress and ending 60 days thereafter, the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ___ relating to ___, and such rule shall have no force or effect.'. (The blank spaces being appropriately filled in.)

"(b)(1) A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

"(2) For purposes of this subsection the term 'submission or publication date' means the later of the date on which—

"(A) the Congress receives the report submitted under section 801(a)(1); or

"(B) the rule is published in the Federal Register.

"(c) If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such resolution in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

"(d)(1) When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion

to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

"(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

"(3) Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

"(e) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

"(1) The resolution of the other House shall not be referred to a committee.

"(2) With respect to a resolution described in subsection (a) of the House receiving the resolution—

"(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

"(B) the vote on final passage shall be on the resolution of the other House.

"(f) This section is enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"§ 803. Special rule on statutory, regulatory, and judicial deadlines

"(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

"(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

"§ 804. Definitions

"(a) For purposes of this chapter—

"(1) the term 'Federal agency' means any agency as that term is defined in section 551(1) (relating to administrative procedure);

"(2) the term 'major rule' has the same meaning given such term in section 621(5); and

"(3) the term 'final rule' means any final rule or interim final rule.

"(b) As used in subsection (a)(3), the term 'rule' has the meaning given such term in section 551, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

"§ 805. Judicial review

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

"§ 806. Applicability; severability

"(a) This chapter shall apply notwithstanding any other provision of law.

"(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

"§ 807. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.".

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect on the date of enactment of this Act and shall apply to any rule that takes effect as a final rule on or after such effective date.

(d) TECHNICAL AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

SEC. 7. REGULATORY ACCOUNTING.

(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) MAJOR RULE.—The term "major rule" has the same meaning as defined in section 621(5)(A)(i) of title 5, United States Code. The term shall not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) regulations issued with respect to a military or foreign affairs function of the United States or a statute implementing an international trade agreement; or

(C) regulations related to agency organization, management, or personnel.

(2) AGENCY.—The term "agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

(A) the General Accounting Office;

(B) the Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b) ACCOUNTING STATEMENT.—

(1) IN GENERAL.—(A) The President shall be responsible for implementing and administering the requirements of this section.

(B) Not later than June 1, 1997, and each June 1 thereafter, the President shall prepare and submit to Congress an accounting statement that estimates the annual costs of major rules and corresponding benefits in accordance with this subsection.

(2) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

(3) TIMING AND PROCEDURES.—(A) The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

(B) The President shall propose the first accounting statement under this subsection not later than 2 years after the date of enactment of this Act and shall issue the first accounting statement in final form not later than 3 years after such effective date. Such statement shall cover, at a minimum, each of the fiscal years beginning after the date of enactment of this Act.

(4) CONTENT OF ACCOUNTING STATEMENT.—(A) Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this paragraph. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

(B)(i) An accounting statement shall estimate the costs of major rules by setting forth, for each year covered by the statement—

(I) the annual expenditure of national economic resources for major rules, grouped by regulatory program; and

(II) such other quantitative and qualitative measures of costs as the President considers appropriate.

(ii) For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

(I) Private sector costs.

(II) Federal sector costs.

(III) State and local government administrative costs.

(C) An accounting statement shall estimate the benefits of major rules by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(c) ASSOCIATED REPORT TO CONGRESS.—

(1) IN GENERAL.—At the same time as the President submits an accounting statement under subsection (b), the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an "associated report"). The associated report shall contain, in accordance with this subsection—

(A) analyses of impacts; and

(B) recommendations for reform.

(2) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(A) Analyses prepared by the President of the cumulative impact of major rules in Federal regulatory programs covered in the accounting statement on the following:

(i) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(ii) Small business.

(iii) Productivity.

(iv) Wages.

(v) Economic growth.

(vi) Technological innovation.

(vii) Consumer prices for goods and services.

(viii) Such other factors considered appropriate by the President.

(B) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(3) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(A) A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(B) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

(d) GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers, provide guidance to agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to sections 3 and 7 of this Act, including—

(A) detailed guidance on estimating the costs and benefits of major rules; and

(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

(2) to standardize the format of the accounting statements.

(e) RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.—After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving accounting statements prepared pursuant to this section, including recommendations on level of detail and accuracy; and

(2) for improving associated reports prepared pursuant to this section, including recommendations on the quality of analysis.

(f) JUDICIAL REVIEW.—No requirements under this section shall be subject to judicial review in any manner.

SEC. 8. STUDIES AND REPORTS.

(a) RISK ASSESSMENTS.—The Administrative Conference of the United States shall—

(1) develop and carry out an ongoing study of the operation of the risk assessment requirements of subchapter III of chapter 6 of title 5, United States Code (as added by section 4 of this Act); and

(2) submit an annual report to the Congress on the findings of the study.

(b) ADMINISTRATIVE PROCEDURE ACT.—Not later than December 31, 1996, the Administrative Conference of the United States shall—

(1) carry out a study of the operation of the Administrative Procedure Act (as amended by section 3 of this Act); and

(2) submit a report to the Congress on the findings of the study, including proposals for revision, if any.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) EFFECTIVE DATE.—Except as otherwise provided, this Act and the amendments made by this Act shall take effect on the date of enactment.

(b) SEVERABILITY.—If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

AMENDMENT NO. 1555

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Regulatory Reform Act of 1995".

SEC. 2. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking "this subchapter" and inserting "this chapter and chapters 7 and 8";

(2) in paragraph (13), by striking "and";

(3) in paragraph (14), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following new paragraph:

"(15) 'Director' means the Director of the Office of Management and Budget.".

SEC. 3. RULEMAKING.

Section 553 of title 5, United States Code, is amended to read as follows:

"§ 553. Rulemaking

"(a) APPLICABILITY.—This section applies to every rulemaking, according to the provisions thereof, except to the extent that there is involved—

"(1) a matter pertaining to a military or foreign affairs function of the United States;

"(2) a matter relating to the management or personnel practices of an agency;

"(3) an interpretive rule, general statement of policy, guidance, or rule of agency organization, procedure, or practice, unless such rule, statement, or guidance has general applicability and substantially alters or creates rights or obligations of persons outside the agency; or

"(4) a rule relating to the acquisition, management, or disposal by an agency of real or personal property, or of services, that is promulgated in compliance with otherwise applicable criteria and procedures.

"(b) NOTICE OF PROPOSED RULEMAKING.—General notice of proposed rulemaking shall be published in the Federal Register, unless all persons subject thereto are named and either personally served or otherwise have actual notice of the proposed rulemaking in accordance with law. Each notice of proposed rulemaking shall include—

"(1) a statement of the time, place, and nature of public rulemaking proceedings;

"(2) a succinct explanation of the need for and specific objectives of the proposed rule, including an explanation of the agency's determination of whether or not the rule is a major rule within the meaning of section 621(5);

"(3) a succinct explanation of the specific statutory basis for the proposed rule, including an explanation of—

"(A) whether the interpretation is clearly required by the text of the statute; or

"(B) if the interpretation is not clearly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and an explanation why the interpretation selected by the agency is the agency's preferred interpretation;

"(4) the terms or substance of the proposed rule;

"(5) a summary of any initial analysis of the proposed rule required to be prepared or issued pursuant to chapter 6;

"(6) a statement that the agency seeks proposals from the public and from State and local governments for alternative methods to accomplish the objectives of the rulemaking that are more effective or less burdensome than the approach used in the proposed rule; and

"(7) a statement specifying where the file of the rulemaking proceeding maintained pursuant to subsection (j) may be inspected and how copies of the items in the file may be obtained.

"(c) PERIOD FOR COMMENT.—The agency shall give interested persons not less than 60 days after providing the notice required by subsection (b) to participate in the rulemaking through the submission of written data, views, or arguments.

"(d) GOOD CAUSE EXCEPTION.—Unless notice or hearing is required by statute, a final rule may be adopted and may become effective without prior compliance with subsections (b) and (c) and (e) through (g) if the agency for good cause finds that providing notice and public procedure thereon before the rule becomes effective is impracticable, unnecessary, or contrary to the public interest. If a rule is adopted under this subsection, the agency shall publish the rule in the Federal Register with the finding and a succinct explanation of the reasons therefor.

"(e) PROCEDURAL FLEXIBILITY.—To collect relevant information, and to identify and elicit full and representative public comment on the significant issues of a particular rulemaking, the agency may use such other procedures as the agency determines are appropriate, including—

"(1) the publication of an advance notice of proposed rulemaking;

"(2) the provision of notice, in forms which are more direct than notice published in the Federal Register, to persons who would be substantially affected by the proposed rule but who are unlikely to receive notice of the proposed rulemaking through the Federal Register;

"(3) the provision of opportunities for oral presentation of data, views, information, or rebuttal arguments at informal public hearings, meetings, and round table discussions, which may be held in the District of Columbia and other locations;

"(4) the establishment of reasonable procedures to regulate the course of informal public hearings, meetings and round table discussions, including the designation of representatives to make oral presentations or engage in direct or cross-examination on behalf of several parties with a common interest in a rulemaking, and the provision of transcripts, summaries, or other records of all such public hearings and summaries of meetings and round table discussions;

"(5) the provision of summaries, explanatory materials, or other technical information in response to public inquiries concerning the issues involved in the rulemaking; and

"(6) the adoption or modification of agency procedural rules to reduce the cost or complexity of the procedural rules.

"(f) PLANNED FINAL RULE.—If the provisions of a final rule that an agency plans to adopt are so different from the provisions of the original notice of proposed rulemaking that the original notice did not fairly apprise the public of the issues ultimately to be resolved in the rulemaking or of the substance of the rule, the agency shall publish in the Federal Register a notice of the final rule the agency plans to adopt, together with the information relevant to such rule that is required by the applicable provisions of this section and that has not previously been published in the Federal Register. The agency shall allow a reasonable period for comment on such planned final rule prior to its adoption.

"(g) STATEMENT OF BASIS AND PURPOSE.—An agency shall publish each final rule it adopts in the Federal Register, together with a concise statement of the basis and purpose of the rule and a statement of when the rule may become effective. The statement of basis and purpose shall include—

"(1) an explanation of the need for, objectives of, and specific statutory authority for, the rule;

"(2) a discussion of, and response to, any significant factual or legal issues presented by the rule, or raised by the comments on the proposed rule, including a description of the reasonable alternatives to the rule proposed by the agency and by interested persons, and the reasons why such alternatives were rejected;

"(3) a succinct explanation of whether the specific statutory basis for the rule is expressly required by the text of the statute, or if the specific statutory interpretation upon which the rule is based is not expressly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and why the agency has rejected other interpretations proposed in comments to the agency;

"(4) an explanation of how the factual conclusions upon which the rule is based are substantially supported in the rulemaking file; and

"(5) a summary of any final analysis of the rule required to be prepared or issued pursuant to chapter 6.

"(h) NONAPPLICABILITY.—In the case of a rule that is required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 shall apply in lieu of subsections (c), (e), (f), and (g).

"(i) EFFECTIVE DATE.—An agency shall publish the final rule in the Federal Register not later than 60 days before the effective date of such rule. An agency may make a rule effective in less than 60 days after publication in the Federal Register if the rule grants or recognizes an exemption, relieves a restriction, or if the agency for good cause finds that such a delay in the effective date would be contrary to the public interest and publishes such finding and an explanation of the reasons therefor, with the final rule.

"(j) RULEMAKING FILE.—(1) The agency shall maintain a file for each rulemaking proceeding conducted pursuant to this section and shall maintain a current index to such file.

"(2) Except as provided in subsection (k), the file shall be made available to the public not later than the date on which the agency makes an initial publication concerning the rule.

"(3) The rulemaking file shall include—

"(A) the notice of proposed rulemaking, any supplement to, or modification or revision of, such notice, and any advance notice of proposed rulemaking;

"(B) copies of all written comments received on the proposed rule;

"(C) a transcript, summary, or other record of any public hearing conducted on the rulemaking;

"(D) copies, or an identification of the place at which copies may be obtained, of factual and methodological material that pertains directly to the rulemaking and that was considered by the agency in connection with the rulemaking, or that was submitted to or prepared by or for the agency in connection with the rulemaking; and

"(E) any statement, description, analysis, or other material that the agency is required to prepare or issue in connection with the rulemaking, including any analysis prepared or issued pursuant to chapter 6.

The agency shall place each of the foregoing materials in the file as soon as practicable after each such material becomes available to the agency.

"(k) CONFIDENTIAL TREATMENT.—The file required by subsection (j) need not include any material described in section 552(b) if the agency includes in the file a statement that notes the existence of such material and the basis upon which the material is exempt from public disclosure under such section. The agency may not substantially rely on any such material in formulating a rule unless it makes the substance of such material available for adequate comment by interested persons. The agency may use summaries, aggregations of data, or other appropriate mechanisms to protect the confidentiality of such material to the maximum extent possible.

"(*l*) RULEMAKING PETITION.—(1) Each agency shall give an interested person the right to petition—

"(A) for the issuance, amendment, or repeal of a rule;

"(B) for the amendment or repeal of an interpretive rule or general statement of policy or guidance; and

"(C) for an interpretation regarding the meaning of a rule, interpretive rule, general statement of policy, or guidance.

"(2) The agency shall grant or deny a petition made pursuant to paragraph (1), and give written notice of its determination to the petitioner, with reasonable promptness, but in no event later than 18 months after the petition was received by the agency.

"(3) The written notice of the agency's determination shall include an explanation of the determination and a response to each significant factual and legal claim that forms the basis of the petition.

"(m) JUDICIAL REVIEW.—(1) The decision of an agency to use or not to use procedures in a rulemaking under subsection (e) shall not be subject to judicial review.

"(2) The rulemaking file required under subsection (j) shall constitute the rulemaking record for purposes of judicial review.

"(3) No court shall hold unlawful or set aside an agency rule based on a violation of subsection (j), unless the court finds that such violation has precluded fair public consideration of a material issue of the rulemaking taken as a whole.

"(4)(A) Judicial review of compliance or noncompliance with subsection (j) shall be limited to review of action or inaction on the part of an agency.

"(B) A decision by an agency to deny a petition under subsection (*l*) shall be subject to judicial review immediately upon denial, as final agency action under the statute granting the agency authority to carry out its action.

"(n) CONSTRUCTION.—(1) Notwithstanding any other provision of law, this section shall apply to and supplement the procedures governing informal rulemaking under statutes that are not generally subject to this section.

"(2) Nothing in this section authorizes the use of appropriated funds available to any agency to pay the attorney's fees or other expenses of persons intervening in agency proceedings.".

SEC. 4. ANALYSIS OF AGENCY RULES.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER II—ANALYSIS OF AGENCY RULES

"§ 621. Definitions

"For purposes of this subchapter—

"(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

"(2) the term 'benefit' means the reasonably identifiable significant favorable effects, quantifiable and nonquantifiable, including social, environmental, health, and economic effects, that are expected to result directly or indirectly from implementation of a rule or other agency action;

"(3) the term 'cost' means the reasonably identifiable significant adverse effects, quantifiable and nonquantifiable, including social, environmental, health, and economic effects that are expected to result directly or indirectly from implementation of a rule or other agency action;

"(4) the term 'cost-benefit analysis' means an evaluation of the costs and benefits of a rule, quantified to the extent feasible and appropriate and otherwise qualitatively described, that is prepared in accordance with the requirements of this subchapter at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition;

"(5) the term 'major rule' means—

"(A) a rule or set of closely related rules that the agency proposing the rule, the Director, or a designee of the President determines is likely to have a gross annual effect on the economy of $50,000,000 or more in reasonably quantifiable increased costs; or

"(B) a rule that is otherwise designated a major rule by the agency proposing the rule, the Director, or a designee of the President (and a designation or failure to designate under this clause shall not be subject to judicial review);

"(6) the term 'market-based mechanism' means a regulatory program that—

"(A) imposes legal accountability for the achievement of an explicit regulatory objective on each regulated person;

"(B) affords maximum flexibility to each regulated person in complying with mandatory regulatory objectives, which flexibility shall, where feasible and appropriate, include, but not be limited to, the opportunity to transfer to, or receive from, other persons, including for cash or other legal consideration, increments of compliance responsibility established by the program; and

"(C) permits regulated persons to respond to changes in general economic conditions

and in economic circumstances directly pertinent to the regulatory program without affecting the achievement of the program's explicit regulatory mandates;

"(7) the term 'performance-based standards' means requirements, expressed in terms of outcomes or goals rather than mandatory means of achieving outcomes or goals, that permit the regulated entity discretion to determine how best to meet specific requirements in particular circumstances;

"(8) the term 'reasonable alternatives' means the range of reasonable regulatory options that the agency has authority to consider under the statute granting rulemaking authority, including flexible regulatory options of the type described in section 622(c)(2)(C)(iii), unless precluded by the statute granting the rulemaking authority; and

"(9) the term 'rule' has the same meaning as in section 551(4), and—

"(A) includes any statement of general applicability that substantially alters or creates rights or obligations of persons outside the agency; and

"(B) does not include—

"(i) a rule that involves the internal revenue laws of the United States, or the assessment and collection of taxes, duties, or other revenues or receipts;

"(ii) a rule or agency action that implements an international trade agreement to which the United States is a party;

"(iii) a rule or agency action that authorizes the introduction into commerce, or recognizes the marketable status, of a product;

"(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 (as defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k))), credit unions, Federal Home Loan Banks, government sponsored housing enterprises, farm credit institutions, foreign banks that operate in the United States and their affiliates, branches, agencies, commercial lending companies, or representative offices, (as those terms are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101));

"(ix) a rule relating to the payment system or the protection of deposit insurance funds or the farm credit insurance fund;

"(x) any order issued in a rate or certificate proceeding by the Federal Energy Regulatory Commission, or a rule of general applicability that the Federal Energy Regulatory Commission certifies would increase reliance on competitive market forces or reduce regulatory burdens;

"(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 (15 U.S.C. 78a et seq.) or emergency action taken under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or a rule relating to the protection of the Securities Investor Protection Corporation, that is promulgated under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); or

"(xii) a rule that involves the international trade laws of the United States.

"§ 622. Rulemaking cost-benefit analysis

"(a) DETERMINATIONS FOR MAJOR RULE.—Prior to publishing a notice of proposed rulemaking for any rule (or, in the case of a notice of proposed rulemaking that has been published but not issued as a final rule on or before the date of enactment of this subchapter, not later than 30 days after such date of enactment), each agency shall determine—

"(1) whether the rule is or is not a major rule within the meaning of section 621(5)(A)(i) and, if it is not, whether it should be designated as a major rule under section 621(5)(B); and

"(2) if the agency determines that the rule is a major rule, or otherwise designates it as a major rule, whether the rule requires or does not require the preparation of a risk assessment under section 632(a).

"(b) DESIGNATION.—(1) If an agency has determined that a rule is not a major rule within the meaning of section 621(5)(A) and has not designated the rule as a major rule within the meaning of section 621(5)(B), the Director or a designee of the President may, as appropriate, determine that the rule is a major rule or designate the rule as a major rule not later than 30 days after the publication of the notice of proposed rulemaking for the rule (or, in the case of a notice of proposed rulemaking that has been published on or before the date of enactment of this subchapter, not later than 1 year after such date of enactment).

"(2) Such determination or designation shall be published in the Federal Register, together with a succinct statement of the basis for the determination or designation.

"(c) INITIAL COST-BENEFIT ANALYSIS.—(1)(A) When the agency publishes a notice of proposed rulemaking for a major rule, the agency shall issue and place in the rulemaking file an initial cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

"(B)(i) When an agency, the Director, or a designee of the President has published a determination or designation that a rule is a major rule after the publication of the notice of proposed rulemaking for the rule, the agency shall promptly issue and place in the rulemaking file an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

"(ii) Following the issuance of an initial cost-benefit analysis under clause (i), the agency shall give interested persons an opportunity to comment in the same manner as if the initial cost-benefit analysis had been issued with the notice of proposed rulemaking.

"(2) Each initial cost-benefit analysis shall contain—

"(A) a succinct analysis of the benefits of the proposed rule, including any beneficial effects that cannot be quantified, and an explanation of how the agency anticipates such benefits will be achieved by the proposed rule, including a description of the persons or classes of persons likely to receive such benefits;

"(B) a succinct analysis of the costs of the proposed rule, including any costs that cannot be quantified, and an explanation of how the agency anticipates such costs will result from the proposed rule, including a description of the persons or classes of persons likely to bear such costs;

"(C) a succinct description (including an analysis of the costs and benefits) of reasonable alternatives for achieving the objectives of the statute, including, where such alternatives exist, alternatives that—

"(i) require no government action, where the agency has discretion under the statute granting the rulemaking authority not to promulgate a rule;

"(ii) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply;

"(iii) employ performance-based standards, market-based mechanisms, or other flexible regulatory options that permit the greatest flexibility in achieving the regulatory result that the statutory provision authorizing the rule is designed to produce; or

"(iv) employ voluntary standards;

"(D) in any case in which the proposed rule is based on one or more scientific evaluations, scientific information, or a risk assessment, or is subject to the risk assessment requirements of subchapter III, a description of the actions undertaken by the agency to verify the quality, reliability, and relevance of such scientific evaluation, scientific information, or risk assessment; and

"(E) an explanation of how the proposed rule is likely to meet the decisional criteria of section 624.

"(d) FINAL COST-BENEFIT ANALYSIS.—(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking file a final cost-benefit analysis, and shall include a summary of the analysis in the statement of basis and purpose.

"(2) Each final cost-benefit analysis shall contain—

"(A) a description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule described in the rulemaking record, including flexible regulatory options of the type described in subsection (c)(2)(C)(iii), and a description of the persons likely to receive such benefits and bear such costs; and

"(B) an analysis, based upon the rulemaking record considered as a whole, of how the rule meets the decisional criteria in section 624.

"(3) In considering the benefits and costs, the agency, when appropriate, shall consider the benefits and costs incurred by all of the affected persons or classes of persons (including specially affected subgroups).

"(e) REQUIREMENTS FOR COST-BENEFIT ANALYSES.—(1)(A) The description of the benefits and costs of a proposed and a final rule required under this section shall include, to the extent feasible, a quantification or numerical estimate of the quantifiable benefits and costs.

"(B) The quantification or numerical estimate shall—

"(i) be made in the most appropriate unit of measurement, using comparable assumptions, including time periods;

"(ii) specify the ranges of predictions; and

"(iii) explain the margins of error involved in the quantification methods and the uncertainties and variabilities in the estimates used.

"(C) An agency shall describe the nature and extent of the nonquantifiable benefits

and costs of a final rule pursuant to this section in as precise and succinct a manner as possible.

"(D) The agency evaluation of the relationship of benefits to costs shall be clearly articulated.

"(E) An agency shall not be required to make such evaluation primarily on a mathematical or numerical basis.

"(F) Nothing in this subsection shall be construed to expand agency authority beyond the delegated authority arising from the statute granting the rulemaking authority.

"(2) Where practicable and when understanding industry-by-industry effects is of central importance to a rulemaking, the description of the benefits and costs of a proposed and final rule required under this section shall describe such benefits and costs on an industry by industry basis.

"(f) HEALTH, SAFETY, OR EMERGENCY EXEMPTION FROM COST-BENEFIT ANALYSIS.—(1) 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 that is likely to result in significant harm to the public or natural resources; and

"(B) the agency publishes in the Federal Register, together with such finding, a succinct statement of the basis for the finding.

"(2) Not later than 180 days after the promulgation of a final major rule to which this section applies, the agency shall comply with the provisions of this subchapter and, as thereafter necessary, revise the rule.

"§ 623. Agency regulatory review

"(a) PRELIMINARY SCHEDULE FOR RULES.—(1) Not later than 1 year after the date of the enactment of this section, and every 5 years thereafter, the head of each agency shall publish in the Federal Register a notice of proposed rulemaking under section 553 that contains a preliminary schedule of rules selected for review under this section by the head of the agency and in the sole discretion of the head of the agency, and request public comment thereon, including suggestions for additional rules warranting review. The agency shall allow at least 180 days for public comment.

"(2) In selecting rules for the preliminary schedule, the head of the agency shall consider the extent to which, in the judgment of the head of the agency—

"(A) a rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

"(B) a rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

"(C) a rule could be revised in a manner allowed by the statute authorizing the rule so as to—

"(i) substantially decrease costs;

"(ii) substantially increase benefits; or

"(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii).

"(3) The preliminary schedule under this subsection shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years from the date of publication of the preliminary schedule.

"(4) Any interpretive rule, general statement of policy, or guidance that has the force and effect of a rule under section 621(9) shall be treated as a rule for purposes of this section.

"(b) SCHEDULE.—(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), and subject to subsection (c), the head of each agency shall publish a final rule that establishes a schedule of rules to be reviewed by the agency under this section.

"(2) The schedule shall establish a deadline for completion of the review of each rule listed on the schedule, taking into account the criteria in subsection (d) and comments received in the rulemaking under subsection (a). Each such deadline shall occur not later than 11 years from the date of publication of the preliminary schedule.

"(3) The schedule shall contain, at a minimum, all rules listed on the preliminary schedule.

"(4) The head of the agency shall modify the agency's schedule under this section to reflect any change ordered by the court under subsection (e) or subsection (g)(3) or contained in an appropriations Act under subsection (f).

"(c) PETITIONS AND COMMENTS PROPOSING ADDITION OF RULES TO THE SCHEDULE.—(1) Notwithstanding section 553(*l*), a petition to amend or repeal a major rule or an interpretative rule, general statement of policy, or guidance on grounds arising under this subchapter may only be filed during the 180-day comment period under subsection (a) and not at any other time. Such petition shall be reviewed only in accordance with this subsection.

"(2) The head of the agency shall, in response to petitions received during the rulemaking to establish the schedule, place on the final schedule for the completion of review within the first 3 years of the schedule any rule for which a petition, on its face, together with any relevant comments received in the rulemaking under subsection (a), establishes that there is a substantial likelihood that, considering the future impact of the rule—

"(A) the rule is a major rule under section 621(5)(A); and

(B) the head of the agency would not be able to make the findings required by section 624 with respect to the rule.

"(3) For the purposes of paragraph (2), the head of the agency may consolidate multiple petitions on the same rule into 1 determination with respect to review of the rule.

"(4) The head of the agency may, at the sole discretion of the head of the agency, add to the schedule any other rule suggested by a commentator during the rulemaking under subsection (a).

"(d) CRITERIA FOR ESTABLISHING DEADLINES FOR REVIEW.—The schedules in subsections (a) and (b) shall establish deadlines for review of each rule on the schedule that take into account—

"(1) the extent to which, for a particular rule, the preliminary views of the agency are that—

"(A) the rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

"(B) the rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

"(C) the rule could be revised in a manner allowed by the statute authorizing the rule so as to meet the decisional criteria under section 624 and to—

"(i) substantially decrease costs;

"(ii) substantially increase benefits; or

"(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii);

"(2) the importance of each rule relative to other rules being reviewed under this section; and

"(3) the resources expected to be available to the agency under subsection (f) to carry out the reviews under this section.

"(e) JUDICIAL REVIEW.—(1) Notwithstanding section 625 and except as provided otherwise in this subsection, agency compliance or noncompliance with the requirements of this section shall be subject to judicial review in accordance with section 706 of this title.

"(2) The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to review agency action pursuant to subsections (a), (b), and (c).

"(3) A petition for review of final agency action under subsection (b) or subsection (c) shall be filed not later than 60 days after the agency publishes the final rule under subsection (b).

"(4) The court upon review, for good cause shown, may extend the 3-year deadline under subsection (c)(2) for a period not to exceed 1 additional year.

"(5) The court shall remand to the agency any schedule under subsection (b) only if final agency action under subsection (b) is arbitrary or capricious. Agency action under subsection (d) shall not be subject to judicial review.

"(f) ANNUAL BUDGET.—(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

"(A) identify as a separate sum the amount requested to be appropriated for implementation of this section during the upcoming fiscal year; and

"(B) include a list of rules which may terminate during the year for which the budget proposal is made.

"(2) Amendments to the schedule under subsection (b) that change a deadline for review of a rule may be included in annual appropriations Acts for the relevant agencies. An authorizing committee with jurisdiction may submit, to the House of Representatives or Senate appropriations committee (as the case may be), amendments to the schedule published by an agency under subsection (b) that change a deadline for review of a rule. The appropriations committee to which such amendments have been submitted shall include or propose the amendments in the annual appropriations Act for the relevant agency. Each agency shall modify its schedule under subsection (b) to reflect such amendments that are enacted into law.

"(g) REVIEW OF RULE.—(1) For each rule on the schedule under subsection (b), the agency shall—

"(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be continued, amended, or repealed;

"(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

"(i) addresses public comments generated by the notice in subparagraph (A);

"(ii) contains a preliminary analysis provided by the agency of whether the rule is a major rule, and if so, whether it satisfies the decisional criteria of section 624;

"(iii) contains a preliminary determination as to whether the rule should be continued, amended, or repealed; and

"(iv) solicits public comment on the preliminary determination for the rule; and

"(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

"(i) addresses public comments generated by the notice in subparagraph (B); and

"(ii) contains a final determination of whether to continue, amend, or repeal the rule; and

"(iii) if the agency determines to continue the rule and the rule is a major rule, contains findings necessary to satisfy the decisional criteria of section 624; and

"(iv) if the agency determines to amend the rule, contains a notice of proposed rulemaking under section 553.

"(2) If the final determination of the agency is to continue or repeal the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(C).

"(3) An interested party may petition the U.S. Court of Appeals for the District of Columbia Circuit to extend the period for review of a rule on the schedule for up to two years and to grant such equitable relief as is appropriate, if such petition establishes that—

"(A) the rule is likely to terminate under subsection (i);

"(B) the agency needs additional time to complete the review under this subsection;

"(C) terminating the rule would not be in the public interest; and

"(D) the agency has not expeditiously completed its review.

"(h) DEADLINE FOR FINAL AGENCY ACTION ON MODIFIED RULE.—If an agency makes a determination to amend a major rule under subsection (g)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years of the date of publication of the notice in subsection (g)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a major rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

"(i) TERMINATION OF RULES.—If the head of an agency has not completed the review of a rule by the deadline established in the schedule published or modified pursuant to subsection (b) and subsection (c), the head of the agency shall not enforce the rule, and the rule shall terminate by operation of law as of such date.

"(j) FINAL AGENCY ACTION.—(1) The final determination of an agency to continue or repeal a major rule under subsection (g)(1)(C) shall be considered final agency action.

"(2) Failure to promulgate an amended major rule or to make other decisions required by subsection (h) by the date established under such subsection shall be considered final agency action.

"§ 624. Decisional criteria

"(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law.

"(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

"(1) the benefits from the rule justify the costs of the rule;

"(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

"(3)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieve the objectives of the statute; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

"(4) if a risk assessment is required by section 632—

"(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

"(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

"(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

"(2)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieve the objectives of the statute; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest, and the agency head provides an explanation of those consideration, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

"(3) if a risk assessment is required by section 632—

"(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

"(d) PUBLICATION OF REASONS FOR NONCOMPLIANCE.—If an agency promulgates a rule to which subsection (c) applies, the agency head shall prepare a written explanation of why the agency was required to promulgate a rule that does not satisfy the criteria of subsection (b) and shall transmit the explanation with the final cost-benefit analysis to Congress when the final rule is promulgated.

"§ 625. Jurisdiction and judicial review

"(a) REVIEW.—Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall be subject to judicial review only in accordance with this section.

"(b) JURISDICTION.—(1) Except as provided in subsection (e), subject to paragraph (2), each court with jurisdiction under a statute to review final agency action to which this title applies, has jurisdiction to review any claims of noncompliance with this subchapter and subchapter III.

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

"(c) RECORD.—Any analysis or review required under this subchapter or subchapter III shall constitute part of the rulemaking record of the final agency action to which it pertains for the purposes of judicial review.

"(d) STANDARDS FOR REVIEW.—In any proceeding involving judicial review under section 706 or under the statute granting the rulemaking authority, failure to comply with this subchapter or subchapter III 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 (or unsupported by substantial evidence where that standard is otherwise provided by law).

"(e) INTERLOCUTORY REVIEW.—(1) The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review—

"(A) an agency determination that a rule is not a major rule pursuant to section 622(a); and

"(B) an agency determination that a risk assessment is not required pursuant to section 632(a).

"(2) A petition for review of agency action under paragraph (1) shall be filed within 60 days after the agency makes the determination or certification for which review is sought.

"(3) Except as provided in this subsection, no court shall have jurisdiction to review any agency determination or certification specified in paragraph (1).

"§ 626. Deadlines for rulemaking

"(a) STATUTORY.—All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 2 years after the date of the applicable deadline.

"(b) COURT-ORDERED.—All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 2 years after the date of the applicable deadline.

"(c) OBLIGATION TO REGULATE.—In any case in which the failure to promulgate a rule by a deadline occurring during the 5-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 2 years after the date of the applicable deadline.

"§ 627. Special rule

"Notwithstanding any other provision of the Comprehensive Regulatory Reform Act of 1995, or the amendments made by such Act, for purposes of this subchapter and subchapter IV, the head of each appropriate

Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act), the National Credit Union Administration, the Federal Housing Finance Board, the Office of Federal Housing Enterprise Oversight, and the Farm Credit Administration, shall have authority with respect to such agency that otherwise would be provided under such subchapters to the Director, a designee of the President, Vice President, or any officer designated or delegated with authority under such subchapters.

"§ 628. Requirements for major environmental management activities

"(a) DEFINITION.—For purposes of this section, the term 'major environmental management activity' means—

"(1) a corrective action requirement under the Solid Waste Disposal Act;

"(2) a response action or damage assessment under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(3) the treatment, storage, or disposal of radioactive or mixed waste in connection with site restoration activity; and

"(4) Federal guidelines for the conduct of such activity, including site-specific guidelines,

the expected costs, expenses, and damages of which are likely to exceed, in the aggregate, $10,000,000.

"(b) APPLICABILITY.—A major environmental management activity is subject to this section unless construction has commenced on a significant portion of the activity, and—

"(1) it is more cost-effective to complete construction of the work than to apply the provisions of this subchapter; or

"(2) the application of the provisions of this subchapter, including any delays caused thereby, will result in an actual and immediate risk to human health or welfare.

"(c) REQUIREMENT TO PREPARE RISK ASSESSMENT.—(1) For each major environmental management activity or significant unit thereof that is proposed by the agency after the date of enactment of this subchapter, is pending on the date of enactment of this subchapter, or is subject to a granted petition for review pursuant to section 623, the head of an agency shall prepare—

"(A) a risk assessment in accordance with subchapter III; and

"(B) a cost-benefit analysis equivalent to that which would be required under this subchapter, if such subchapter were applicable.

"(2) In conducting a risk assessment or cost-benefit analysis under this section, the head of the agency shall incorporate the reasonably anticipated probable future use of the land and its surroundings (and any associated media and resources of either) affected by the environmental management activity.

"(3) For actions pending on the date of enactment of this section or proposed during the year following the date of enactment of this section, in lieu of preparing a risk assessment in accordance with subchapter III or cost-benefit analysis under this subchapter, an agency may use other appropriately developed analyses that allow it to make the judgments required under subsection (d).

"(d) REQUIREMENT.—The requirements of this subsection shall supplement, and not supersede, any other requirement provided by any law. A major environmental management activity under this section shall meet the decisional criteria under section 624 as if it is a major rule under such section.

"§ 629. Petition for alternative method of compliance

"(a) Except as provided in subsection (e), or unless prohibited by the statute authorizing the rule, any person subject to a major rule may petition the relevant agency to modify or waive the specific requirements of the major rule (or any portion thereof) and to authorize such person to demonstrate compliance through alternative means not otherwise permitted by the major rule. The petition shall identify with reasonable specificity the requirements for which the waiver is sought and the alternative means of compliance being proposed.

"(b) The agency shall grant the petition if the petition shows that there is a reasonable likelihood that the proposed alternative means of compliance—

"(1) would achieve the identified benefits of the major rule with at least an equivalent level of protection of health, safety, and the environment as would be provided by the major rule; and

"(2) would not impose an undue burden on the agency that would be responsible for enforcing such alternative means of compliance.

"(c) A decision to grant or to deny a petition under this subsection shall be made not later than 180 days after the petition is submitted, but in no event shall agency action taken pursuant to this section be subject to judicial review.

"(d) Following a decision to grant or deny a petition under this section, no further petition for such rule, submitted by the same person, shall be granted unless such petition pertains to a different facility or installation owned or operated by such person or unless such petition is based on a significant change in a fact, circumstance, or provision of law underlying or otherwise related to the rule occurring since the initial petition was granted or denied, that warrants the granting of such petition.

"(e) If the statute authorizing the rule which is the subject of the petition provides procedures or standards for an alternative method of compliance the petition shall be reviewed solely under the terms of the statute.

"SUBCHAPTER III—RISK ASSESSMENTS

"§ 631. Definitions

"For purposes of this subchapter—

"(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

"(2) the term 'exposure assessment' means the scientific determination of the intensity, frequency and duration of actual or potential exposures to the hazard in question;

"(3) the term 'hazard assessment' means the scientific determination of whether a hazard can cause an increased incidence of one or more significant adverse effects, and a scientific evaluation of the relationship between the degree of exposure to a perceived cause of an adverse effect and the incidence and severity of the effect;

"(4) the term 'major rule' has the meaning given such term in section 621(5);

"(5) the term 'risk assessment' means the systematic process of organizing and analyzing scientific knowledge and information on potential hazards, including as appropriate for the specific risk involved, hazard assessment, exposure assessment, and risk characterization;

"(6) the term 'risk characterization' means the integration and organization of hazard and exposure assessment to estimate the potential for specific harm to an exposed population or natural resource including, to the extent feasible, a characterization of the distribution of risk as well as an analysis of uncertainties, variabilities, conflicting information, and inferences and assumptions in the assessment;

"(7) the term 'screening analysis' means an analysis using simple conservative postulates to arrive at an estimate of upper bounds as appropriate, that permits the manager to eliminate risks from further consideration and analysis, or to help establish priorities for agency action; and

"(8) the term 'substitution risk' means an increased risk to human health, safety, or the environment reasonably likely to result from a regulatory option.

"§ 632. Applicability

"(a) IN GENERAL.—Except as provided in subsection (c), for each proposed and final major rule, a primary purpose of which is to protect human health, safety, or the environment, or a consequence of which is a substantial substitution risk, that is proposed by an agency after the date of enactment of this subchapter, or is pending on the date of enactment of this subchapter, the head of each agency shall prepare a risk assessment in accordance with this subchapter.

"(b) APPLICATION OF PRINCIPLES.—(1) Except as provided in subsection (c), the head of each agency shall apply the principles in this subchapter to any risk assessment conducted to support a determination by the agency of risk to human health, safety, or the environment, if such determination would be likely to have an effect on the United States economy equivalent to that of a major rule.

"(2) In applying the principles of this subchapter to risk assessments other than those in subsections (a), (b)(1), and (c), the head of each agency shall publish, after notice and public comment, guidelines for the conduct of such other risk assessments that adapt the principles of this subchapter in a manner consistent with section 633(a)(4) and the risk assessment and risk management needs of the agency.

"(3) An agency shall not, as a condition for the issuance or modification of a permit, conduct, or require any person to conduct, a risk assessment, except if the agency finds that the risk assessment meets the requirements of section 633 (a) through (f).

"(c) EXCEPTIONS.—(1) This subchapter shall not apply to risk assessments performed with respect to—

"(A) a situation for which the agency finds good cause that conducting a risk assessment is impracticable due to an emergency or health and safety threat that is likely to result in significant harm to the public or natural resources;

"(B) a rule or agency action that authorizes the introduction into commerce, or initiation of manufacture, of a substance, mixture, or product, or recognizes the marketable status of a product;

"(C) a human health, safety, or environmental inspection, an action enforcing a statutory provision, rule, or permit, or an individual facility or site permitting action, except to the extent provided by subsection (b)(3);

"(D) a screening analysis clearly identified as such; or

"(E) product registrations, reregistrations, tolerance settings, and reviews of premanufacture notices under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

"(2) An analysis shall not be treated as a screening analysis for the purposes of paragraph (1)(D) if the result of the analysis is used—

"(A) as the basis for imposing a restriction on a previously authorized substance, product, or activity after its initial introduction into manufacture or commerce; or

"(B) as the basis for a formal determination by the agency of significant risk from a substance or activity.

"(3) This subchapter shall not apply to any food, drug, or other product label or labeling, or to any risk characterization appearing on any such label.

"§ 633. Principles for risk assessments

"(a) IN GENERAL.—(1) The head of each agency shall design and conduct risk assessments in a manner that promotes rational and informed risk management decisions and informed public input into the process of making agency decisions.

"(2) The head of each agency shall establish and maintain a distinction between risk assessment and risk management.

"(3) An agency may take into account priorities for managing risks, including the types of information that would be important in evaluating a full range of alternatives, in developing priorities for risk assessment activities.

"(4) In conducting a risk assessment, the head of each agency shall employ the level of detail and rigor considered by the agency as appropriate and practicable for reasoned decisionmaking in the matter involved, proportionate to the significance and complexity of the potential agency action and the need for expedition.

"(5) An agency shall not be required to repeat discussions or explanations in each risk assessment required under this subchapter if there is an unambiguous reference to a relevant discussion or explanation in another reasonably available agency document that was prepared consistent with this section.

"(b) ITERATIVE PROCESS.—(1) Each agency shall develop and use an iterative process for risk assessment, starting with relatively inexpensive screening analyses and progressing to more rigorous analyses, as circumstances or results warrant.

"(2) In determining whether or not to proceed to a more detailed analysis, the head of the agency shall take into consideration whether or not use of additional data or the analysis thereof would significantly change the estimate of risk and the resulting agency action.

"(c) DATA QUALITY.—(1) The head of each agency shall base each risk assessment only on the best reasonably available scientific data and scientific understanding, including scientific information that finds or fails to find a correlation between a potential hazard and an adverse effect, and data regarding exposure and other relevant physical conditions that are reasonably expected to be encountered.

"(2) The agency shall select data for use in a risk assessment based on a reasoned analysis of the quality and relevance of the data, and shall describe such analysis.

"(3) In making its selection of data, the agency shall consider whether the data were published in the peer-reviewed scientific literature, or developed in accordance with good laboratory practice or published or other appropriate protocols to ensure data quality, such as the standards for the development of test data promulgated pursuant to section 4 of the Toxic Substances Control Act (15 U.S.C. 2603), and the standards for data requirements promulgated pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a), or other form of independent evaluation.

"(4) Subject to paragraph (3), relevant scientific data submitted by interested parties shall be reviewed and considered by the agency in the analysis under paragraph (2).

"(5) When conflicts among scientific data appear to exist, the risk assessment shall include a discussion of all relevant information including the likelihood of alternative interpretations of the data and emphasizing—

"(A) postulates that represent the most reasonable inferences from the supporting scientific data; and

"(B) when a risk assessment involves an extrapolation from toxicological studies, data with the greatest scientific basis of support for the resulting harm to affected individuals, populations, or resources.

"(6) The head of an agency shall not automatically incorporate or adopt any recommendation or classification made by any foreign government, the United Nations, any international governmental body or standards-making organization, concerning the health effects value of a substance, except as provided in paragraph (2) of this subsection. Nothing in this paragraph shall be construed to affect the implementation or application of any treaty or international trade agreement to which the United States is a party.

"(d) USE OF POLICY JUDGMENTS.—(1) An agency shall not use policy judgments, including default assumptions, inferences, models or safety factors, when relevant and adequate scientific data and scientific understanding, including site-specific data, are available. The agency shall modify or decrease the use of policy judgments to the extent that higher quality scientific data and understanding become available.

"(2) When a risk assessment involves choice of a policy judgment, the head of the agency shall—

"(A) identify the policy judgment and its scientific or policy basis, including the extent to which the policy judgment has been validated by, or conflicts with, empirical data;

"(B) explain the basis for any choices among policy judgments; and

"(C) describe reasonable alternative policy judgments that were not selected by the agency for use in the risk assessment, and the sensitivity of the conclusions of the risk assessment to the alternatives, and the rationale for not using such alternatives.

"(3) An agency shall not inappropriately combine or compound multiple policy judgments.

"(4) The agency shall, subject to notice and opportunity for public comment, develop and publish guidelines describing the agency's default policy judgments and how they were chosen, and guidelines for deciding when and how, in a specific risk assessment, to adopt alternative policy judgments or to use available scientific information in place of a policy judgment.

"(e) RISK CHARACTERIZATION.—In each risk assessment, the agency shall include in the risk characterization, as appropriate, each of the following:

"(1) A description of the hazard of concern.

"(2) A description of the populations or natural resources that are the subject of the risk assessment.

"(3) An explanation of the exposure scenarios used in the risk assessment, including an estimate of the corresponding population at risk and the likelihood of such exposure scenarios.

"(4) A description of the nature and severity of the harm that could plausibly occur.

"(5) A description of the major uncertainties in each component of the risk assessment and their influence on the results of the assessment.

"(f) PRESENTATION OF RISK ASSESSMENT CONCLUSIONS.—(1) To the extent feasible and scientifically appropriate, the head of an agency shall—

"(A) express the overall estimate of risk as a range or probability distribution that reflects variabilities, uncertainties and data gaps in the analysis;

"(B) provide the range and distribution of risks and the corresponding exposure scenarios, identifying the reasonably expected risk to the general population and, where appropriate, to more highly exposed or sensitive subpopulations; and

"(C) where quantitative estimates of the range and distribution of risk estimates are not available, describe the qualitative factors influencing the range of possible risks.

"(2) When scientific data and understanding that permits relevant comparisons of risk are reasonably available, the agency shall use such information to place the nature and magnitude of risks to human health, safety, and the environment being analyzed in context.

"(3) When scientifically appropriate information on significant substitution risks to human health, safety, or the environment is reasonably available to the agency, or is contained in information provided to the agency by a commentator, the agency shall describe such risks in the risk assessments.

"(g) PEER REVIEW.—(1) Each agency shall provide for peer review in accordance with this section of any risk assessment subject to the requirements of this subchapter that forms that basis of any major rule or a major environmental management activity.

"(2) Each agency shall develop a systematic program for balanced, independent, and external peer review that—

"(A) shall provide for the creation or utilization of peer review panels, expert bodies, or other formal or informal devices that are balanced and comprised of participants selected on the basis of their expertise relevant to the sciences involved in regulatory decisions and who are independent of the agency program that developed the risk assessment being reviewed;

"(B) shall not exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential interest in the outcome, if such interest is fully disclosed to the agency, and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person;

"(C) shall provide for a timely completed peer review, meeting agency deadlines, that contains a balanced presentation of all considerations, including minority reports and agency response to all significant peer review comments; and

"(D) shall provide adequate protections for confidential business information and trade secrets, including requiring panel members to enter into confidentiality agreements.

"(3) Each peer review shall include a report to the Federal agency concerned detailing the scientific and technical merit of data and the methods used for the risk assessment, and shall identify significant peer review comments. Each agency shall provide a written response to all significant peer review comments. All peer review comments,

conclusions, composition of the panels, and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

"(4)(A) The Director of the Office of Science and Technology Policy shall develop a systematic program to oversee the use and quality of peer review of risk assessments.

"(B) The Director or the designee of the President may order an agency to conduct peer review for any risk assessment or cost-benefit analysis that is likely to have a significant impact on public policy decisions, or that would establish an important precedent.

"(5) The proceedings of peer review panels under this section shall not be subject to the Federal Advisory Committee Act.

"(h) PUBLIC PARTICIPATION.—The head of each agency shall provide appropriate opportunities for public participation and comment on risk assessments.

"§ 634. Petition for review of a major free-standing risk assessment

"(a) Any interested person may petition an agency to conduct a scientific review of a risk assessment conducted or adopted by the agency, except for a risk assessment used as the basis for a major rule or a site-specific risk assessment.

"(b) The agency shall utilize external peer review, as appropriate, to evaluate the claims and analyses in the petition, and shall consider such review in making its determination of whether to grant the petition.

"(c) The agency shall grant the petition if the petition establishes that there is a reasonable likelihood that—

"(1)(A) the risk assessment that is the subject of the petition was carried out in a manner substantially inconsistent with the principles in section 633; or

"(B) the risk assessment that is the subject of the petition does not take into account material significant new scientific data and scientific understanding;

"(2) the risk assessment that is the subject of the petition contains significantly different results than if it had been properly conducted pursuant to subchapter III; and

"(3) a revised risk assessment will provide the basis for reevaluating an agency determination of risk, and such determination currently has an effect on the United States economy equivalent to that of major rule.

"(d) A decision to grant, or final action to deny, a petition under this subsection shall be made not later than 180 days after the petition is submitted.

"(e) If the agency grants the petition, it shall complete its review of the risk assessment not later than 1 year after its decision to grant the petition. If the agency revises the risk assessment, in response to its review, it shall do so in accordance with section 633.

"§ 635. Comprehensive risk reduction

"(a) SETTING PRIORITIES.—The head of each agency with programs to protect human health, safety, or the environment shall set priorities for the use of resources available to address those risks to human health, safety, and the environment, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

"(b) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each agency in subsection (a) shall incorporate the priorities identified under subsection (a) 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 using the priorities set under subsection (a), the basis for that determination, and explicitly identify how the agency's requested budget and regulatory agenda reflect those priorities.

"(c) REPORTS BY THE NATIONAL ACADEMY OF SCIENCES.—(1) Not later than 6 months after the date of enactment of this section, the Director of the Office of Science and Technology Policy shall enter into an arrangement with the National Academy of Sciences to investigate and report on comparative risk analysis. The arrangement shall provide, to the extent feasible, for—

"(A) 1 or more reports evaluating methods of comparative risk analysis that would be appropriate for agency programs related to human health, safety, and the environment to use in setting priorities for activities; and

"(B) a report providing a comprehensive and comparative analysis of the risks to human health, safety, and the environment that are addressed by agency programs to protect human health, safety, and the environment, along with companion activities to disseminate the conclusions of the report to the public.

"(2) The report or reports prepared under paragraph (1)(A) shall be completed not later than 3 years after the date of enactment of this section. The report under paragraph (1)(B) shall be completed not later than 4 years after the date of enactment of this section, and shall draw, as appropriate, upon the insights and conclusions of the report or reports made under paragraph (1)(A). The companion activities under paragraph (1)(B) shall be completed not later than 5 years after the date of enactment of this section.

"(3)(A) The head of an agency with programs to protect human health, safety, and the environment shall incorporate the recommendations of reports under paragraph (1) in revising any priorities under subsection (a).

"(B) The head of the agency shall submit a report to the appropriate Congressional committees of jurisdiction responding to the recommendations from the National Academy of Sciences and describing plans for utilizing the results of comparative risk analysis in agency budget, strategic planning, regulatory agenda, enforcement, and research and development activities.

"(4) Following the submission of the report in paragraph (2), for the next 5 years, the head of the agency shall submit, with the budget request submitted to Congress under section 1105(a) of title 31, a description of how the requested budget of the agency and the strategic planning activities of the agency reflect priorities determined using the recommendations of reports issued under subsection (a). The head of the agency shall include in such description—

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

"(B) recommendation on the modification or elimination of statutory or judicially mandated deadlines,

that would assist the head of the agency to set priorities in activities to address the risks to human health, safety, or the environment that incorporate the priorities developed using the recommendations of the reports under subsection (a), resulting in more cost-effective programs to address risk.

"(5) For each budget request submitted in accordance with paragraph (4), the Director shall submit an analysis of ways in which resources could be reallocated among Federal agencies to achieve the greatest overall net reduction in risk.

"§ 636. Rule of construction

"Nothing in this subchapter shall be construed to—

"(1) preclude the consideration of any data or the calculation of any estimate to more fully describe or analyze risk, scientific uncertainty, or variability; or

"(2) require the disclosure of any trade secret or other confidential information.

"SUBCHAPTER IV—EXECUTIVE OVERSIGHT

"§ 641. Procedures

"(a) IN GENERAL.—The Director or a designee of the President shall—

"(1) establish and, as appropriate, revise procedures for agency compliance with this chapter; and

"(2) monitor, review, and ensure agency implementation of such procedures.

"(b) PUBLIC COMMENT.—Procedures established pursuant to subsection (a) shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

"(c) TIME FOR REVIEW.—(1) If procedures established pursuant to subsection (a) include review of any initial or final analyses of a rule required under chapter 6, the time for any such review of any initial analysis shall not exceed 90 days following the receipt of the analysis by the Director, or a designee of the President.

"(2) The time for review of any final analysis required under chapter 6 shall not exceed 90 days following the receipt of the analysis by the Director, a designee of the President.

"(3)(A) The times for each such review may be extended for good cause by the President or by an officer to whom the President has delegated his authority pursuant to section 642 for an additional 45 days. At the request of the head of an agency, the President or such an officer may grant an additional extension of 45 days.

"(B) Notice of any such extension, together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

"§ 642. Delegation of authority

"(a) IN GENERAL.—The President may delegate the authority granted by this subchapter to an officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate.

"(b) NOTICE.—Notice of any delegation, or any revocation or modification thereof shall be published in the Federal Register.

"§ 643. Judicial review

"The exercise of the authority granted under this subchapter by the Director, the President, or by an officer to whom such authority has been delegated under section 642 and agency compliance or noncompliance with the procedure under section 641 shall not be subject to judicial review.

"§ 644. Regulatory agenda

"The head of each agency shall provide, as part of the semiannual regulatory agenda published under section 602—

"(1) a list of risk assessments subject to subsection 632 (a) or (b)(1) under preparation or planned by the agency;

"(2) a brief summary of relevant issues addressed or to be addressed by each listed risk assessment;

"(3) an approximate schedule for completing each listed risk assessment;

"(4) an identification of potential rules, guidance, or other agency actions supported or affected by each listed risk assessment; and

"(5) the name, address, and telephone number of an agency official knowledgeable about each listed risk assessment.".

(b) REGULATORY FLEXIBILITY ANALYSIS.—

(1) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) Except as provided in paragraph (2), no final rule for which a final regulatory flexibility analysis is required under this section shall be promulgated unless the agency finds that the final rule minimizes significant economic impact on small entities to the maximum extent possible, consistent with the purposes of this subchapter, the objectives of the rule, and the requirements of applicable statutes.

"(2) If an agency determines that a statute requires a rule to be promulgated that does not satisfy the criterion of paragraph (1), the agency shall—

"(A) include a written explanation of such determination in the final regulatory flexibility analysis; and

"(B) transmit the final regulatory flexibility analysis to Congress when the final rule is promulgated.".

(2) JUDICIAL REVIEW.—Section 611 of title 5, United States Code, is amended to read as follows:

"§ 611. Judicial review

"(a)(1) For any rule described in section 603(a), and with respect to which the agency—

"(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities;

"(B) prepared a final regulatory flexibility analysis pursuant to section 604; or

"(C) did not prepare an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604 except as permitted by sections 605 and 608,

an affected small entity may petition for the judicial review of such certification, analysis, or failure to prepare such analysis, in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction over such petition.

"(2)(A) Notwithstanding any other provision of law, an affected small entity shall have 1 year after the effective date of the final rule to challenge the certification, analysis or failure to prepare an analysis required by this subchapter with respect to any such rule.

"(B) If an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection may be filed not later than 1 year after the date the analysis is made available to the public.

"(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be subject to the provisions of, or otherwise required to comply with, the final rule.

"(4) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

"(5)(A) Notwithstanding section 605, if the court determines, on the basis of the court's review of the rulemaking record, that there is substantial evidence that the rule would have a significant economic impact on a substantial number of small entities, the court shall order the agency to prepare a final regulatory flexibility analysis that satisfies the requirements of section 604.

"(B) If the agency prepared a final regulatory flexibility analysis, the court shall order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the court's review of the rulemaking record, that the final regulatory flexibility analysis does not satisfy the requirements of section 604.

"(6) The court shall stay the rule and grant such other relief as the court determines to be appropriate if, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5), the agency fails, as appropriate—

"(A) to prepare the analysis required by section 604; or

"(B) to take corrective action consistent with section 604.

"(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

"(c) Except as otherwise required by the provisions of this subchapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct the rulemaking.".

(c) REVISION OF CERTAIN PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT RELATING TO TESTING.—In applying section 409(c)(3)(A), 512(d)(1), or 721(b)(5)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A), 360b(d)(1), 379e(b)(5)(B)), the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency shall not prohibit or refuse to approve a substance or product on the basis of safety, where the substance or product presents a negligible or insignificant foreseeable risk to human health resulting from its intended use.

(d) TOXIC RELEASE INVENTORY REVIEW.—Section 313(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(d)) is amended—

(1) in paragraph (2) by inserting after "epidemiological or other population studies," the following: "and on the rule of reason, including a consideration of the applicability of such evidence to levels of the chemical in the environment that may result from reasonably anticipated releases"; and

(2) in subsection (e)(1), by inserting before "Within 180 days" the following: "The Administrator shall grant any petition that establishes substantial evidence that the criteria in subparagraph (A) either are or are not met.".

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—Part I of title 5, United States Code, is amended by striking the chapter heading and table of sections for chapter 6 and inserting the following:

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"SUBCHAPTER I—REGULATORY ANALYSIS

"Sec.
"601. Definitions.
"602. Regulatory agenda.
"603. Initial regulatory flexibility analysis.
"604. Final regulatory flexibility analysis.
"605. Avoidance of duplicative or unnecessary analyses.
"606. Effect on other law.
"607. Preparation of analysis.
"608. Procedure for waiver or delay of completion.
"609. Procedures for gathering comments.
"610. Periodic review of rules.
"611. Judicial review.
"612. Reports and intervention rights.

"SUBCHAPTER II—ANALYSIS OF AGENCY RULES

"621. Definitions.
"622. Rulemaking cost-benefit analysis.
"623. Agency regulatory review.
"624. Decisional criteria.
"625. Jurisdiction and judicial review.
"626. Deadlines for rulemaking.
"627. Special rule.
"628. Requirements for major environmental management activities.

"SUBCHAPTER III—RISK ASSESSMENTS

"631. Definitions.
"632. Applicability.
"633. Principles for risk assessments.
"634. Petition for review of a major free-standing risk assessment.
"635. Comprehensive risk reduction.
"636. Rule of construction.

"SUBCHAPTER IV—EXECUTIVE OVERSIGHT

"641. Procedures.
"642. Delegation of authority.
"643. Judicial review.
"644. Regulatory agenda.".

(2) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

"SUBCHAPTER I—REGULATORY ANALYSIS".

SEC. 5. JUDICIAL REVIEW.

(a) IN GENERAL.—Chapter 7 of title 5, United States Code, is amended—

(1) by striking section 706; and

(2) by adding at the end the following new sections:

"§ 706. Scope of review

"(a) To the extent necessary to reach a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

"(1) compel agency action unlawfully withheld or unreasonably delayed; and

"(2) hold unlawful and set aside agency action, findings and conclusions found to be—

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"(B) contrary to constitutional right, power, privilege, or immunity;

"(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

"(D) without observance of procedure required by law;

"(E) unsupported by substantial evidence in a proceeding subject to sections 556 and 557 or otherwise reviewed on the record of an agency hearing provided by statute;

"(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, in the case of a rule adopted in a proceeding subject to section 553; or

"(G) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

"(b) In making the determinations set forth in subsection (a), the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

"§ 707. Consent decrees

"In interpreting any consent decree in effect on or after the date of enactment of this section that imposes on an agency an obligation to initiate, continue, or complete rulemaking proceedings, the court shall not enforce the decree in a way that divests the agency of discretion clearly granted to the agency by statute to respond to changing circumstances, make policy or managerial choices, or protect the rights of third parties.

"§ 708. Affirmative defense

"Notwithstanding any other provision of law, it shall be an affirmative defense in any enforcement action brought by an agency that the regulated person or entity reasonably relied on and is complying with a rule, regulation, adjudication, directive, or order of such agency or any other agency that is incompatible, contradictory, or otherwise cannot be reconciled with the agency rule, regulation, adjudication, directive, or order being enforced.".

(b) TECHNICAL AMENDMENT.—The analysis for chapter 7 of title 5, United States Code, is amended by striking the item relating to section 706 and inserting the following new items:

"706. Scope of review.
"707. Consent decrees.
"708. Affirmative defense.".

SEC. 6. CONGRESSIONAL REVIEW.

(a) FINDING.—The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the implementation of certain significant final rules is imposed in order to provide Congress an opportunity for review.

(b) IN GENERAL.—Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"801. Congressional review.
"802. Congressional disapproval procedure.
"803. Special rule on statutory, regulatory, and judicial deadlines.
"804. Definitions.
"805. Judicial review.
"806. Applicability; severability.
"807. Exemption for monetary policy.

"§ 801. Congressional review

"(a)(1)(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule; and

"(iii) the proposed effective date of the rule.

"(B) The Federal agency promulgating the rule shall make available to each House of Congress and the Comptroller General, upon request—

"(i) a complete copy of the cost-benefit analysis of the rule, if any;

"(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

"(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

"(iv) any other relevant information or requirements under any other Act and any relevant Executive orders, such as Executive Order No. 12866.

"(C) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each committee with jurisdiction.

"(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction to each House of the Congress by the end of 12 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

"(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

"(3) A major rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

"(A) the later of the date occurring 60 days after the date on which—

"(i) the Congress receives the report submitted under paragraph (1); or

"(ii) the rule is published in the Federal Register;

"(B) if the Congress passes a joint resolution of disapproval described under section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

"(i) on which either House of Congress votes and fails to override the veto of the President; or

"(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

"(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

"(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

"(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

"(b) A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 802.

"(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this chapter may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

"(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

"(A) necessary because of an imminent threat to health or safety or other emergency;

"(B) necessary for the enforcement of criminal laws;

"(C) necessary for national security; or

"(D) issued pursuant to a statute implementing an international trade agreement.

"(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

"(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, section 802 shall apply to such rule in the succeeding Congress.

"(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

"(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

"(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a final rule can take effect.

"(3) A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

"(e)(1) Section 802 shall apply in accordance with this subsection to any major rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on November 20, 1994, through the date on which the Comprehensive Regulatory Reform Act of 1995 takes effect.

"(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

"(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of enactment of the Comprehensive Regulatory Reform Act of 1995; and

"(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

"(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

"(g) If the Congress does not enact a joint resolution of disapproval under section 802, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

"§ 802. Congressional disapproval procedure

"(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced during the period beginning on the date on which the report referred to in section 801(a) is received by Congress and ending 60 days thereafter, the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ___ relating to ___, and such rule shall have no force or effect.'. (The blank spaces being appropriately filled in.)

"(b)(1) A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

"(2) For purposes of this subsection the term 'submission or publication date' means the later of the date on which—

"(A) the Congress receives the report submitted under section 801(a)(1); or

"(B) the rule is published in the Federal Register.

"(c) If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such resolution in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

"(d)(1) When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

"(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

"(3) Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

"(e) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

"(1) The resolution of the other House shall not be referred to a committee.

"(2) With respect to a resolution described in subsection (a) of the House receiving the resolution—

"(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

"(B) the vote on final passage shall be on the resolution of the other House.

"(f) This section is enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"§ 803. Special rule on statutory, regulatory, and judicial deadlines

"(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

"(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

"§ 804. Definitions

"(a) For purposes of this chapter—

"(1) the term 'Federal agency' means any agency as that term is defined in section 551(1) (relating to administrative procedure);

"(2) the term 'major rule' has the same meaning given such term in section 621(5); and

"(3) the term 'final rule' means any final rule or interim final rule.

"(b) As used in subsection (a)(3), the term 'rule' has the meaning given such term in section 551, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

"§ 805. Judicial review

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

"§ 806. Applicability; severability

"(a) This chapter shall apply notwithstanding any other provision of law.

"(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

"§ 807. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.".

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect on the date of enactment of this Act and shall apply to any rule that takes effect as a final rule on or after such effective date.

(d) TECHNICAL AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

SEC. 7. REGULATORY ACCOUNTING.

(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) MAJOR RULE.—The term "major rule" has the same meaning as defined in section 621(5)(A)(i) of title 5, United States Code. The term shall not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) regulations issued with respect to a military or foreign affairs function of the United States or a statute implementing an international trade agreement; or

(C) regulations related to agency organization, management, or personnel.

(2) AGENCY.—The term "agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

(A) the General Accounting Office;

(B) the Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b) ACCOUNTING STATEMENT.—

(1) IN GENERAL.—(A) The President shall be responsible for implementing and administering the requirements of this section.

(B) Not later than June 1, 1997, and each June 1 thereafter, the President shall prepare and submit to Congress an accounting statement that estimates the annual costs of major rules and corresponding benefits in accordance with this subsection.

(2) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

(3) TIMING AND PROCEDURES.—(A) The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

(B) The President shall propose the first accounting statement under this subsection not later than 2 years after the date of enactment of this Act and shall issue the first accounting statement in final form not later than 3 years after such effective date. Such statement shall cover, at a minimum, each of the fiscal years beginning after the date of enactment of this Act.

(4) CONTENT OF ACCOUNTING STATEMENT.—(A) Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this paragraph. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

(B)(i) An accounting statement shall estimate the costs of major rules by setting forth, for each year covered by the statement—

(I) the annual expenditure of national economic resources for major rules, grouped by regulatory program; and

(II) such other quantitative and qualitative measures of costs as the President considers appropriate.

(ii) For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

(I) Private sector costs.

(II) Federal sector costs.

(III) State and local government administrative costs.

(C) An accounting statement shall estimate the benefits of major rules by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(c) ASSOCIATED REPORT TO CONGRESS.—

(1) IN GENERAL.—At the same time as the President submits an accounting statement under subsection (b), the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an "associated report"). The associated report shall contain, in accordance with this subsection—

(A) analyses of impacts; and

(B) recommendations for reform.

(2) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(A) Analyses prepared by the President of the cumulative impact of major rules in Federal regulatory programs covered in the accounting statement on the following:

(i) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(ii) Small business.

(iii) Productivity.

(iv) Wages.

(v) Economic growth.

(vi) Technological innovation.

(vii) Consumer prices for goods and services.

(viii) Such other factors considered appropriate by the President.

(B) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(3) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(A) A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(B) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

(d) GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers, provide guidance to agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to sections 3 and 7 of this Act, including—

(A) detailed guidance on estimating the costs and benefits of major rules; and

(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

(2) to standardize the format of the accounting statements.

(e) RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.—After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving accounting statements prepared pursuant to this section, including recommendations on level of detail and accuracy; and

(2) for improving associated reports prepared pursuant to this section, including recommendations on the quality of analysis.

(f) JUDICIAL REVIEW.—No requirements under this section shall be subject to judicial review in any manner.

SEC. 8. STUDIES AND REPORTS.

(a) RISK ASSESSMENTS.—The Administrative Conference of the United States shall—

(1) develop and carry out an ongoing study of the operation of the risk assessment requirements of subchapter III of chapter 6 of title 5, United States Code (as added by section 4 of this Act); and

(2) submit an annual report to the Congress on the findings of the study.

(b) ADMINISTRATIVE PROCEDURE ACT.—Not later than December 31, 1996, the Administrative Conference of the United States shall—

(1) carry out a study of the operation of the Administrative Procedure Act (as amended by section 3 of this Act); and

(2) submit a report to the Congress on the findings of the study, including proposals for revision, if any.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) EFFECTIVE DATE.—Except as otherwise provided, this Act and the amendments made by this Act shall take effect on the date of enactment.

(b) SEVERABILITY.—If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SPECTER AMENDMENT NO. 1556

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 2, insert between lines 3 and 4 the following:

(2) in paragraph (1) by inserting "(including the President)" after "Government of the United States";

HATCH AMENDMENTS NOS. 1557–1558

(Ordered to lie on the table.)

Mr. HATCH submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1557

At page 37, strike lines 9–18 (Sec. 624(c)(2)(B)) and insert the following in lieu thereof:

(b)(3)(B) if scientific, technical, or economic uncertainties or benefits to health, safety, or the environment identified by the agency in the rulemaking record makes a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or *adopts the greater net benefits of the type that achieves the objectives of the statute for identified benefits to health, safety, or the environment.*

AMENDMENT NO. 1558

At page 36, strike lines 1–10 (Sec. 624(6)(3)(B)) and insert the following:

(b)(3)(B) if scientific, technical, or economic uncertainties or benefits to health, safety, or the environment identified by the agency in the rulemaking record makes a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or *adopts the greater net benefits of the type that achieves the objectives of the statute for identified benefits to health, safety, or the environment.*

GRAHAM AMENDMENTS NOS. 1559–1560

(Ordered to lie on the table.)

Mr. GRAHAM submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1559

On page 92, line 19, insert "including, if appropriate, the achievement of any performance-based standards," after "statement,".

AMENDMENT NO. 1560

On page 7, line 18, insert "including, if appropriate, any performance-based standards," after "of,".

DORGAN AMENDMENT NO. 1561

(Ordered to lie on the table.)

Mr. DORGAN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 96, insert between lines 20 and 21 the following new section:

SEC. . REPORT BY BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "Board" means the Board of Governors of the Federal Reserve System; and

(2) the term "Committee" means the Federal Open Market Committee established under section 12A of the Federal Reserve Act.

(b) REPORT REQUIRED.—No later than 30 days after the Board or the Committee takes any action to change the discount rate or the Federal funds rate, the Board shall submit a report to the Congress and to the President which shall include a detailed analysis of the projected costs of that action, and the projected costs of any associated changes in market interest rates, during the 5-year period following that action.

(c) CONTENTS.—The report required by subsection (b) shall include an analysis of the costs imposed by such action on—

(1) Federal, State, and local government borrowing, including costs associated with debt service payments; and

(2) private sector borrowing, including costs imposed on—

(A) consumers;

(B) small businesses;

(C) homeowners; and

(D) commercial lenders.

GRASSLEY AMENDMENT NO. 1562

(Ordered to lie on the table.)

Mr. GRASSLEY submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place in the amendment add the following:

(a) Each final cost benefit analysis shall contain an analysis, to the extent practicable, of the effect of the rule on the cumulative financial burden of compliance with the rule and other related existing regulations on persons complying with it.

BROWN AMENDMENT NO. 1563

(Ordered to lie on the table.)

Mr. BROWN submitted an amendment intended to be proposed by him to the bill S. 343, supra; as follows:

At the appropriate place insert the following:

SEC. 709. AGENCY INTERPRETATIONS IN CIVIL AND CRIMINAL ACTIONS.

(a) In any civil or criminal action to enforce a regulation, and in which the government must prove that the party acted willfully, the factfinder shall consider in making that determination by a federal agency charged with enforcement of the regulation, or a state agency to which enforcement authority has been delegated, that the defendant was in compliance with, was exempt from, or was otherwise not in violation of the rule. The defendant must show:

(1) that he sought advice in good faith;

(2) that he did so prior to taking action;

(3) that he fully and accurately disclosed all material facts to the agency official; and

(4) that he acted in accord with the advice he was given.

(b) In making the determinations necessary in (a), the court shall consider:

(1) the sophistication of the defendant; and

(2) whether the governmental representative had the authority to make the determination.

(c) If the factfinder determines that a rule or agency interpretive material failed to give the defendant fair warning of the conduct the rule prohibits or requires, no civil or criminal penalty shall be imposed.

(d)(1) In any civil or criminal action to enforce a regulation, seeking the retroactive application of a requirement against any person that is based upon—

(A) an interpretation of a statute, rule, guidance, agency statement of policy, or license requirement or condition; or

(B) a determination of fact;

if such determination is different from a prior interpretation or determination by the agency, and if such person reasonably relied upon the prior interpretation or determination.

(2) The defendant must show:

(1) that he sought advice in good faith;

(2) that he did so prior to taking action;

(3) that he fully and accurately disclosed all material facts to the agency official; and

(4) that he acted in accord with the advice he was given.

(3) In making the determinations necessary in (d)(2), the court shall consider:

(1) the sophistication of the defendant; and

(2) whether the governmental representative had the authority to make the determination.

(4) This section shall apply to any civil or criminal action initiated on or after the date of enactment of this section.

(e) Nothing in this section shall require any agency to issue advisory opinions or rulings.

GRAMM AMENDMENT NO. 1564

(Ordered to lie on the table.)

Mr. GRAMM submitted an amendment intended to be proposed by him to the bill S. 343, supra; as follows:

At the appropriate place, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Rights Restoration Act.".

SEC. 2. PRIVATE PROPERTY RIGHTS RESTORATION.

(a) CAUSE OF ACTION.—(1) The owner of any real property shall have a cause of action against the United States if—

(A) the application of a statute, regulation, rule, guideline, or policy of the United States restricts, limits, or otherwise takes a right to real property that would otherwise exist in the absence of such application; and

(B) such application described under subparagraph (A) would result in a discrete and non-negligible reduction in the fair market value of the affected portion of real property.

(2) Notwithstanding paragraph (1)(B), a prima facie case against the United States shall be established if the Government action described under paragraph (1)(A) results in a temporary or permanent diminution of fair market value of the affected portion of real property of the lesser of—

(A) 25 percent or more; or

(B) $10,000 or more.

(b) JURISDICTION.—An action under this Act shall be filed in the United States Court of Federal Claims which shall have exclusive jurisdiction.

(c) RECOVERY.—In any action filed under this Act, the owner may elect to recover—

(1) a sum equal to the diminution in the fair market value of the portion of the property affected by the application of a statute, regulation, rule, guideline, or policy described under subsection (a)(1)(A) and retain title; or

(2) the fair market value of the affected portion of the regulated property prior to the government action and relinquish title to the portion of property regulated.

(d) PUBLIC NUISANCE EXCEPTION.—(1) No compensation shall be required by virtue of this Act if the owner's use or proposed use of the property amounts to a public nuisance as commonly understood and defined by background principles of nuisance and property law, as understood under the law of the State within which the property is situated.

(2) To bar an award of damages under this Act, the United States shall have the burden of proof to establish that the use or proposed use of the property is a public nuisance as defined under paragraph (1) of this subsection.

SEC. 3. APPLICATION; STATUTE OF LIMITATIONS.

(a) APPLICATION.—This Act shall apply to the application of any statute, regulation, rule, guideline, or policy to real property, if such application occurred or occurs on or after January 1, 1994.

(b) STATUTE OF LIMITATIONS.—The statute of limitations for actions brought under this Act shall be six years from the application of any statute, regulation, rule, guideline, or policy of the United States to any affected parcel of property under this Act.

SEC. 4. AWARD OF COSTS; LITIGATION COSTS.

(a) IN GENERAL.—The court, in issuing any final order in any action brought under this Act, shall award costs of litigation (including reasonable attorney and expert witness) to any prevailing plaintiff.

(b) PAYMENT.—All awards or judgments for plaintiff, including recovery for damages and costs of litigation, shall be paid out of funds of the agency or agencies responsible for issuing the statute, regulation, rule, guideline or policy affecting the reduction in the fair market value of the affected portion of property. Payments shall not be made from a judgment fund.

SEC. 5. CONSTITUTIONAL OR STATUTORY RIGHTS NOT RESTRICTED.

Nothing in this Act shall restrict any remedy or any right which any person (or class of persons) may have under any provision of the United States Constitution or any other law.

GRAMM AMENDMENT NO. 1565

(Ordered to lie on the table.)

Mr. GRAMM submitted an amendment intended to be proposed by him to the bill, S. 343, supra; as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Property Rights Act of 1995".

TITLE I—FINDINGS AND PURPOSES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the private ownership of property is essential to a free society and is an integral part of the American tradition of liberty and limited government;

(2) the framers of the United States Constitution, in order to protect private property and liberty, devised a framework of Government designed to diffuse power and limit Government;

(3) to further ensure the protection of private property, the fifth amendment to the United States Constitution was ratified to prevent the taking of private property by the Federal Government, except for public use and with just compensation;

(4) the purpose of the takings clause of the fifth amendment of the United States Constitution, as the Supreme Court stated in Armstrong v. United States, 364 U.S. 40, 49 (1960), is "to bar Government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole";

(5) the Federal Government has singled out property holders to shoulder the cost that should be borne by the public, in violation of the just compensation requirement of the takings clause of the fifth amendment of the United States Constitution;

(6) there is a need both to restrain the Federal Government in its overzealous regulation of the private sector and to protect private property, which is a fundamental right of the American people; and

(7) the incremental, fact-specific approach that courts now are required to employ in the absence of adequate statutory language to vindicate property rights under the fifth amendment of the United States Constitution has been ineffective and costly and

there is a need for Congress to clarify the law and provide an effective remedy.

SEC. 102. PURPOSE.

The purpose of this Act is to encourage, support, and promote the private ownership of property by ensuring the constitutional and legal protection of private property by the United States Government by—

(1) the establishment of a new Federal judicial claim in which to vindicate and protect property rights;

(2) the simplification and clarification of court jurisdiction over property right claims;

(3) the establishment of an administrative procedure that requires the Federal Government to assess the impact of government action on holders of private property;

(4) the minimization, to the greatest extent possible, of the taking of private property by the Federal Government and to ensure that just compensation is paid by the Government for any taking; and

(5) the establishment of administrative compensation procedures involving the enforcement of the Endangered Species Act of 1973 and section 404 of the Federal Water Pollution Control Act.

TITLE II—PROPERTY RIGHTS LITIGATION RELIEF

SEC. 201. FINDINGS.

The Congress finds that—

(1) property rights have been abrogated by the application of laws, regulations, and other actions by the Federal Government that adversely affect the value of private property;

(2) certain provisions of sections 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act), that delineate the jurisdiction of courts hearing property rights claims, complicates the ability of a property owner to vindicate a property owner's right to just compensation for a governmental action that has caused a physical or regulatory taking;

(3) current law—

(A) forces a property owner to elect between equitable relief in the district court and monetary relief (the value of the property taken) in the United States Court of Federal Claims;

(B) is used to urge dismissal in the district court on the ground that the plaintiff should seek just compensation in the Court of Federal Claims; and

(C) is used to urge dismissal in the Court of Federal Claims on the ground that plaintiff should seek equitable relief in district court;

(4) property owners cannot fully vindicate property rights in one court;

(5) property owners should be able to fully recover for a taking of their private property in one court;

(6) certain provisions of section 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act) should be amended, giving both the district courts of the United States and the Court of Federal Claims jurisdiction to hear all claims relating to property rights; and

(7) section 1500 of title 28, United States Code, which denies the Court of Federal Claims jurisdiction to entertain a suit which is pending in another court and made by the same plaintiff, should be repealed.

SEC. 202. PURPOSES.

The purposes of this title are to—

(1) establish a clear, uniform, and efficient judicial process whereby aggrieved property owners can obtain vindication of property rights guaranteed by the fifth amendment to the United States Constitution and this Act;

(2) amend the Tucker Act, including the repeal of section 1500 of title 28, United States Code;

(3) rectify the constitutional imbalance between the Federal Government and the States; and

(4) require the Federal Government to compensate property owners for the deprivation of property rights that result from State agencies' enforcement of federally mandated programs.

SEC. 203. DEFINITIONS.

For purposes of this title the term—

(1) "agency" means a department, agency, independent agency, or instrumentality of the United States, including any military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the United States Government;

(2) "agency action" means any action or decision taken by an agency that—

(A) takes a property right; or

(B) unreasonably impedes the use of property or the exercise of property interests;

(3) "just compensation"—

(A) means compensation equal to the full extent of a property owner's loss, including the fair market value of the private property taken and business losses arising from a taking, whether the taking is by physical occupation or through regulation, exaction, or other means; and

(B) shall include compounded interest calculated from the date of the taking until the date the United States tenders payment;

(4) "owner" means the owner or possessor of property or rights in property at the time the taking occurs, including when—

(A) the statute, regulation, rule, order, guideline, policy, or action is passed or promulgated; or

(B) the permit, license, authorization, or governmental permission is denied or suspended;

(5) "private property" or "property" means all property protected under the fifth amendment to the Constitution of the United States, any applicable Federal or State law, or this Act, and includes—

(A) real property, whether vested or unvested, including—

(i) estates in fee, life estates, estates for years, or otherwise;

(ii) inchoate interests in real property such as remainders and future interests;

(iii) personalty that is affixed to or appurtenant to real property;

(iv) easements;

(v) leaseholds;

(vi) recorded liens; and

(vii) contracts or other security interests in, or related to, real property;

(B) the right to use water or the right to receive water, including any recorded lines on such water right;

(C) rents, issues, and profits of land, including minerals, timber, fodder, crops, oil and gas, coal, or geothermal energy;

(D) property rights provided by, or memorialized in, a contract, except that such rights shall not be construed under this title to prevent the United States from prohibiting the formation of contracts deemed to harm the public welfare or to prevent the execution of contracts for—

(i) national security reasons; or

(ii) exigencies that present immediate or reasonably foreseeable threats or injuries to life or property;

(E) any interest defined as property under State law; or

(F) any interest understood to be property based on custom, usage, common law, or mutually reinforcing understandings sufficiently well-grounded in law to back a claim of interest;

(6) "State agency" means any State department, agency, political subdivision, or instrumentality that—

(A) carries out or enforces a regulatory program required under Federal law;

(B) is delegated administrative or substantive responsibility under a Federal regulatory program; or

(C) receives Federal funds in connection with a regulatory program established by a State,

if the State enforcement of the regulatory program, or the receipt of Federal funds in connection with a regulatory program established by a State, is directly related to the taking of private property seeking to be vindicated under this Act; and

(7) "taking of private property", "taking", or "take"—

(A) means any action whereby private property is directly taken as to require compensation under the fifth amendment to the United States Constitution or under this Act, including by physical invasion, regulation, exaction, condition, or other means; and

(B) shall not include—

(i) a condemnation action filed by the United States in an applicable court; or

(ii) an action filed by the United States relating to criminal forfeiture.

SEC. 204. COMPENSATION FOR TAKEN PROPERTY.

(a) IN GENERAL.—No agency or State agency, shall take private property except for public use and with just compensation to the property owner. A property owner shall receive just compensation if—

(1) as a consequence of an action of any agency, or State agency, private property (whether all or in part) has been physically invaded or taken for public use without the consent of the owner; and

(2)(A) such action does not substantially advance the stated governmental interest to be achieved by the legislation or regulation on which the action is based;

(B) such action exacts the owner's constitutional or otherwise lawful right to use the property or a portion of such property as a condition for the granting of a permit, license, variance, or any other agency action without a rough proportionality between the stated need for the required dedication and the impact of the proposed use of the property;

(C) such action results in the property owner being deprived, either temporarily or permanently, of all or substantially all economically beneficial or productive use of the property or that part of the property affected by the action without a showing that such deprivation inheres in the title itself;

(D) such action diminishes the fair market value of the affected portion of the property which is the subject of the action by 33 percent or more with respect to the value immediately prior to the governmental action; or

(E) under any other circumstance where a taking has occurred within the meaning of the fifth amendment of the United States Constitution.

(b) NO CLAIM AGAINST STATE OR STATE INSTRUMENTALITY.—No action may be filed under this section against a State agency for carrying out the functions described under section 203(6).

(c) BURDEN OF PROOF.—(1) The Government shall bear the burden of proof in any action described under—

(A) subsection (a)(2)(A), with regard to showing the nexus between the stated governmental purpose of the governmental interest and the impact on the proposed use of private property;

(B) subsection (a)(2)(B), with regard to showing the proportionality between the exaction and the impact of the proposed use of the property; and

(C) subsection (a)(2)(C), with regard to showing that such deprivation of value inheres in the title to the property.

(2) The property owner shall have the burden of proof in any action described under subsection (a)(2)(D), with regard to establishing the diminution of value of property.

(d) COMPENSATION AND NUISANCE EXCEPTION TO PAYMENT OF JUST COMPENSATION.—(1) No compensation shall be required by this Act if the owner's use or proposed use of the property is a nuisance as commonly understood and defined by background principles of nuisance and property law, as understood within the State in which the property is situated, and to bar an award of damages under this Act, the United States shall have the burden of proof to establish that the use or proposed use of the property is a nuisance.

(2) Subject to paragraph (1), if an agency action directly takes property or a portion of property under subsection (a), compensation to the owner of the property that is affected by the action shall be either the greater of an amount equal to—

(A) the difference between—

(i) the fair market value of the property or portion of the property affected by agency action before such property became the subject of the specific government regulation; and

(ii) the fair market value of the property or portion of the property when such property becomes subject to the agency action; or

(B) business losses.

(e) TRANSFER OF PROPERTY INTEREST.—The United States shall take title to the property interest for which the United States pays a claim under this Act.

(f) SOURCE OF COMPENSATION.—Awards of compensation referred to in this section, whether by judgment, settlement, or administrative action, shall be promptly paid by the agency out of currently available appropriations supporting the activities giving rise to the claims for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

SEC. 205. JURISDICTION AND JUDICIAL REVIEW.

(a) IN GENERAL.—A property owner may file a civil action under this Act to challenge the validity of any agency action that adversely affects the owner's interest in private property in either the United States District Court or the United States Court of Federal Claims. This section constitutes express waiver of the sovereign immunity of the United States. Notwithstanding any other provision of law and notwithstanding the issues involved, the relief sought, or the amount in controversy, each court shall have concurrent jurisdiction over both claims for monetary relief and claims seeking invalidation of any Act of Congress or any regulation of an agency as defined under this Act affecting private property rights. The plaintiff shall have the election of the court in which to file a claim for relief.

(b) STANDING.—Persons adversely affected by an agency action taken under this Act shall have standing to challenge and seek judicial review of that action.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—(1) Section 1491(a) of title 28, United States Code, is amended—

(A) in paragraph (1) by amending the first sentence to read as follows: "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States for monetary relief founded either upon the Constitution or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, in cases not sounding in tort, or for invalidation of any Act of Congress or any regulation of an executive department that adversely affects private property rights in violation of the fifth amendment of the United States Constitution";

(B) in paragraph (2) by inserting before the first sentence the following: "In any case within its jurisdiction, the Court of Federal Claims shall have the power to grant injunctive and declaratory relief when appropriate."; and

(C) by adding at the end thereof the following new paragraphs:

"(4) In cases otherwise within its jurisdiction, the Court of Federal Claims shall also have ancillary jurisdiction, concurrent with the courts designated in section 1346(b) of this title, to render judgment upon any related tort claim authorized under section 2674 of this title.

"(5) In proceedings within the jurisdiction of the Court of Federal Claims which constitute judicial review of agency action (rather than de novo proceedings), the provisions of section 706 of title 5 shall apply.".

(2)(A) Section 1500 of title 28, United States Code, is repealed.

(B) The table of sections for chapter 91 of title 28, United States Code, is amended by striking out the item relating to section 1500.

SEC. 206. STATUTE OF LIMITATIONS.

The statute of limitations for actions brought under this title shall be 6 years from the date of the taking of private property.

SEC. 207. ATTORNEYS' FEES AND COSTS.

The court, in issuing any final order in any action brought under this title, shall award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff.

SEC. 208. RULES OF CONSTRUCTION.

Nothing in this title shall be construed to interfere with the authority of any State to create additional property rights.

SEC. 209. EFFECTIVE DATE.

The provisions of this title and amendments made by this title shall take effect on the date of the enactment of this Act and shall apply to any agency action that occurs after such date.

TITLE III—ALTERNATIVE DISPUTE RESOLUTION

SEC. 301. ALTERNATIVE DISPUTE RESOLUTION.

(a) IN GENERAL.—Either party to a dispute over a taking of private property as defined under this Act or litigation commenced under title II of this Act may elect to resolve the dispute through settlement or arbitration. In the administration of this section—

(1) such alternative dispute resolution may only be effectuated by the consent of all parties;

(2) arbitration procedures shall be in accordance with the alternative dispute resolution procedures established by the American Arbitration Association; and

(3) in no event shall arbitration be a condition precedent or an administrative procedure to be exhausted before the filing of a civil action under this Act.

(b) COMPENSATION AS A RESULT OF ARBITRATION.—The amount of arbitration awards shall be paid from the responsible agency's currently available appropriations supporting the agency's activities giving rise to the claim for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

(c) REVIEW OF ARBITRATION.—Appeal from arbitration decisions shall be to the United States District Court or the United States Court of Federal Claims in the manner prescribed by law for the claim under this Act.

(d) PAYMENT OF CERTAIN COMPENSATION.—In any appeal under subsection (c), the amount of the award of compensation shall be promptly paid by the agency from appropriations supporting the activities giving rise to the claim for compensation currently available at the time of final action on the appeal. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

TITLE IV—PRIVATE PROPERTY TAKING IMPACT ANALYSIS

SEC. 401. FINDINGS AND PURPOSE.

The Congress finds that—

(1) the Federal Government should protect the health, safety, welfare, and rights of the public; and

(2) to the extent practicable, avoid takings of private property by assessing the effect of government action on private property rights.

SEC. 402. DEFINITIONS.

For purposes of this title the term—

(1) "agency" means an agency as defined under section 203 of this Act, but shall not include the General Accounting Office;

(2) "rule" has the same meaning as such term is defined under section 551(4) of title 5, United States Code; and

(3) "taking of private property" has the same meaning as such term is defined under section 203 of this Act.

SEC. 403. PRIVATE PROPERTY TAKING IMPACT ANALYSIS.

(a) IN GENERAL.—(1) The Congress authorizes and directs that, to the fullest extent possible—

(A) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies under this title; and

(B) subject to paragraph (2), all agencies of the Federal Government shall complete a private property taking impact analysis before issuing or promulgating any policy, regulation, proposed legislation, or related agency action which is likely to result in a taking of private property.

(2) The provisions of paragraph (1)(B) shall not apply to—

(A) an action in which the power of eminent domain is formally exercised;

(B) an action taken—

(i) with respect to property held in trust by the United States; or

(ii) in preparation for, or in connection with, treaty negotiations with foreign nations;

(C) a law enforcement action, including seizure, for a violation of law, of property for forfeiture or as evidence in a criminal proceeding;

(D) a study or similar effort or planning activity;

(E) a communication between an agency and a State or local land-use planning agency concerning a planned or proposed State or local activity that regulates private property, regardless of whether the communication is initiated by an agency or is undertaken in response to an invitation by the State or local authority;

(F) the placement of a military facility or a military activity involving the use of solely Federal property;

(G) any military or foreign affairs function (including a procurement function under a military or foreign affairs function), but not including the civil works program of the Army Corps of Engineers; and

(H) any case in which there is an immediate threat to health or safety that constitutes an emergency requiring immediate response or the issuance of a regulation under section 553(b)(B) of title 5, United States Code, if the taking impact analysis is completed after the emergency action is carried out or the regulation is published.

(3) A private property taking impact analysis shall be a written statement that includes—

(A) the specific purpose of the policy, regulation, proposal, recommendation, or related agency action;

(B) an assessment of the likelihood that a taking of private property will occur under such policy, regulation, proposal, recommendation, or related agency action;

(C) an evaluation of whether such policy, regulation, proposal, recommendation, or related agency action is likely to require compensation to private property owners;

(D) alternatives to the policy, regulation, proposal, recommendation, or related agency action that would achieve the intended purposes of the agency action and lessen the likelihood that a taking of private property will occur; and

(E) an estimate of the potential liability of the Federal Government if the Government is required to compensate a private property owner.

(4) Each agency shall provide an analysis required under this section as part of any submission otherwise required to be made to the Office of Management and Budget in conjunction with a proposed regulation.

(b) GUIDANCE AND REPORTING REQUIREMENTS.—

(1) The Attorney General of the United States shall provide legal guidance in a timely manner, in response to a request by an agency, to assist the agency in complying with this section.

(2) No later than 1 year after the date of enactment of this Act and at the end of each 1-year period thereafter, each agency shall submit a report to the Director of the Office of Management and Budget and the Attorney General of the United States identifying each agency action that has resulted in the preparation of a taking impact analysis, the filing of a taking claim, or an award of compensation under the just compensation clause of the fifth amendment of the United States Constitution. The Director of the Office of Management and Budget and the Attorney General of the United States shall publish in the Federal Register, on an annual basis, a compilation of the reports of all agencies submitted under this paragraph.

(c) PUBLIC AVAILABILITY OF ANALYSIS.—An agency shall—

(1) make each private property taking impact analysis available to the public; and

(2) to the greatest extent practicable, transmit a copy of such analysis to the owner or any other person with a property right or interest in the affected property.

(d) PRESUMPTIONS IN PROCEEDINGS.—For the purpose of any agency action or administrative or judicial proceeding, there shall be a rebuttable presumption that the costs, values, and estimates in any private property takings impact analysis shall be outdated and inaccurate, if—

(1) such analysis was completed 5 years or more before the date of such action or proceeding; and

(2) such costs, values, or estimates have not been modified within the 5-year period preceding the date of such action or proceeding.

SEC. 404. DECISIONAL CRITERIA AND AGENCY COMPLIANCE.

(a) IN GENERAL.—No final rule shall be promulgated if enforcement of the rule could reasonably be construed to require an uncompensated taking of private property as defined by this Act.

(b) COMPLIANCE.—In order to meet the purposes of this Act as expressed in section 401 of this title, all agencies shall—

(1) review, and where appropriate, re-promulgate all regulations that result in takings of private property under this Act, and reduce such takings of private property to the maximum extent possible within existing statutory requirements;

(2) prepare and submit their budget requests consistent with the purposes of this Act as expressed in section 401 of this title for fiscal year 1997 and all fiscal years thereafter; and

(3) within 120 days of the effective date of this section, submit to the appropriate authorizing and appropriating committees of the Congress a detailed list of statutory changes that are necessary to meet fully the purposes of section 401 of this title, along with a statement prioritizing such amendments and an explanation of the agency's reasons for such prioritization.

SEC. 405. RULES OF CONSTRUCTION.

Nothing in this title shall be construed to—

(1) limit any right or remedy, constitute a condition precedent or a requirement to exhaust administrative remedies, or bar any claim of any person relating to such person's property under any other law, including claims made under this Act, section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(2) constitute a conclusive determination of—

(A) the value of any property for purposes of an appraisal for the acquisition of property, or for the determination of damages; or

(B) any other material issue.

SEC. 406. STATUTE OF LIMITATIONS.

No action may be filed in a court of the United States to enforce the provisions of this title on or after the date occurring 6 years after the date of the submission of the applicable private property taking impact analysis to the Office of Management and Budget.

TITLE V—PRIVATE PROPERTY OWNERS ADMINISTRATIVE BILL OF RIGHTS

SEC. 501. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) a number of Federal environmental programs, specifically programs administered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), have been implemented by employees, agents, and representatives of the Federal Government in a manner that deprives private property owners of the use and control of property;

(2) as Federal programs are proposed that would limit and restrict the use of private property to provide habitat for plant and animal species, the rights of private property owners must be recognized and respected;

(3) private property owners are being forced by Federal policy to resort to extensive, lengthy, and expensive litigation to protect certain basic civil rights guaranteed by the United States Constitution;

(4) many private property owners do not have the financial resources or the extensive commitment of time to proceed in litigation against the Federal Government;

(5) a clear Federal policy is needed to guide and direct Federal agencies with respect to the implementation of environmental laws that directly impact private property;

(6) all private property owners should and are required to comply with current nuisance laws and should not use property in a manner that harms their neighbors;

(7) nuisance laws have traditionally been enacted, implemented, and enforced at the State and local level where such laws are best able to protect the rights of all private property owners and local citizens; and

(8) traditional pollution control laws are intended to protect the general public's health and physical welfare, and current habitat protection programs are intended to protect the welfare of plant and animal species.

(b) PURPOSES.—The purposes of this title are to—

(1) provide a consistent Federal policy to encourage, support, and promote the private ownership of property; and

(2) to establish an administrative process and remedy to ensure that the constitutional and legal rights of private property owners are protected by the Federal Government and Federal employees, agents, and representatives.

SEC. 502. DEFINITIONS.

For purposes of this title the term—

(1) "the Acts" means the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(2) "agency head" means the Secretary or Administrator with jurisdiction or authority to take a final agency action under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(3) "non-Federal person" means a person other than an officer, employee, agent, department, or instrumentality of—

(A) the Federal Government; or

(B) a foreign government;

(4) "private property owner" means a non-Federal person (other than an officer, employee, agent, department, or instrumentality of a State, municipality, or political subdivision of a State, acting in an official capacity or a State, municipality, or subdivision of a State) that—

(A) owns property referred to under paragraph (5) (A) or (B); or

(B) holds property referred to under paragraph (5)(C);

(5) "property" means—

(A) land;

(B) any interest in land; and

(C) the right to use or the right to receive water; and

(6) "qualified agency action" means an agency action (as that term is defined in section 551(13) of title 5, United States Code) that is taken—

(A) under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); or

(B) under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 503. PROTECTION OF PRIVATE PROPERTY RIGHTS.

(a) IN GENERAL.—In implementing and enforcing the Acts, each agency head shall—

(1) comply with applicable State and tribal government laws, including laws relating to private property rights and privacy; and

(2) administer and implement the Acts in a manner that has the least impact on private property owners' constitutional and other legal rights.

(b) FINAL DECISIONS.—Each agency head shall develop and implement rules and regulations for ensuring that the constitutional and other legal rights of private property owners are protected when the agency head makes, or participates with other agencies in the making of, any final decision that restricts the use of private property in administering and implementing this Act.

SEC. 504. PROPERTY OWNER CONSENT FOR ENTRY.

(a) IN GENERAL.—An agency head may not enter privately owned property to collect information regarding the property, unless the private property owner has—

(1) consented in writing to that entry;

(2) after providing that consent, been provided notice of that entry; and

(3) been notified that any raw data collected from the property shall be made available at no cost, if requested by the private property owner.

(b) NONAPPLICATION.—Subsection (a) does not prohibit entry onto property for the purpose of obtaining consent or providing notice required under subsection (a).

SEC. 505. RIGHT TO REVIEW AND DISPUTE DATA COLLECTED FROM PRIVATE PROPERTY.

An agency head may not use data that is collected on privately owned property to implement or enforce the Acts, unless—

(1) the agency head has provided to the private property owner—

(A) access to the information;

(B) a detailed description of the manner in which the information was collected; and

(C) an opportunity to dispute the accuracy of the information; and

(2) the agency head has determined that the information is accurate, if the private property owner disputes the accuracy of the information under paragraph (1)(C).

SEC. 506. RIGHT TO AN ADMINISTRATIVE APPEAL OF WETLANDS DECISIONS.

Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) is amended by adding at the end the following new subsection:

"(u) ADMINISTRATIVE APPEALS.—

"(1) The Secretary or Administrator shall, after notice and opportunity for public comment, issue rules to establish procedures to allow private property owners or their authorized representatives an opportunity for an administrative appeal of the following actions under this section:

"(A) A determination of regulatory jurisdiction over a particular parcel of property.

"(B) The denial of a permit.

"(C) The terms and conditions of a permit.

"(D) The imposition of an administrative penalty.

"(E) The imposition of an order requiring the private property owner to restore or otherwise alter the property.

"(2) Rules issued under paragraph (1) shall provide that any administrative appeal of an action described in paragraph (1) shall be heard and decided by an official other than the official who took the action, and shall be conducted at a location which is in the vicinity of the property involved in the action.

"(3) An owner of private property may receive compensation, if appropriate, subject to the provisions of section 508 of the Emergency Property Owners Relief Act of 1995.".

SEC. 507. RIGHT TO ADMINISTRATIVE APPEAL UNDER THE ENDANGERED SPECIES ACT OF 1973.

Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding at the end the following new subsection:

"(i) ADMINISTRATIVE APPEALS.—

"(1) The Secretary shall, after notice and opportunity for public comment, issue rules to establish procedures to allow private property owners or their authorized representatives an opportunity for an administrative appeal of the following actions:

"(A) A determination that a particular parcel of property is critical habitat of a listed species.

"(B) The denial of a permit for an incidental take.

"(C) The terms and conditions of an incidental take permit.

"(D) The finding of jeopardy in any consultation on an agency action affecting a particular parcel of property under section 7(a)(2) or any reasonable and prudent alternative resulting from such finding.

"(E) Any incidental 'take' statement, and any reasonable and prudent measures included therein, issued in any consultation affecting a particular parcel of property under section 7(a)(2).

"(F) The imposition of an administrative penalty.

"(G) The imposition of an order prohibiting or substantially limiting the use of the property.

"(2) Rules issued under paragraph (1) shall provide that any administrative appeal of an action described in paragraph (1) shall be heard and decided by an official other than the official who took the action, and shall be conducted at a location which is in the vicinity of the parcel of property involved in the action.

"(3) An owner of private property may receive compensation, if appropriate, subject to the provisions of section 508 of the Emergency Property Owners Relief Act of 1995.".

SEC. 508. COMPENSATION FOR TAKING OF PRIVATE PROPERTY.

(a) ELIGIBILITY.—A private property owner that, as a consequence of a final qualified agency action of an agency head, is deprived of 33 percent or more of the fair market value, or the economically viable use, of the affected portion of the property as determined by a qualified appraisal expert, is entitled to receive compensation in accordance with the standards set forth in section 204 of this Act.

(b) TIME LIMITATION FOR COMPENSATION REQUEST.—No later than 90 days after receipt of a final decision of an agency head that deprives a private property owner of fair market value or viable use of property for which compensation is required under subsection (a), the private property owner may submit in writing a request to the agency head for compensation in accordance with subsection (c).

(c) OFFER OF AGENCY HEAD.—No later than 180 days after the receipt of a request for compensation, the agency head shall stay the decision and shall provide to the private property owner—

(1) an offer to purchase the affected property of the private property owner at a fair market value assuming no use restrictions under the Acts; and

(2) an offer to compensate the private property owner for the difference between the fair market value of the property without those restrictions and the fair market value of the property with those restrictions.

(d) PRIVATE PROPERTY OWNER'S RESPONSE.—(1) No later than 60 days after the date of receipt of the agency head's offers under subsection (c) (1) and (2) the private property owner shall accept one of the offers or reject both offers.

(2) If the private property owner rejects both offers, the private property owner may submit the matter for arbitration to an arbitrator appointed by the agency head from a list of arbitrators submitted to the agency head by the American Arbitration Association. The arbitration shall be conducted in accordance with the real estate valuation arbitration rules of that association. For purposes of this section, an arbitration is binding on—

(A) the agency head and a private property owner as to the amount, if any, of compensation owed to the private property owner; and

(B) whether the private property owner has been deprived of fair market value or viable use of property for which compensation is required under subsection (a).

(e) JUDGMENT.—A qualified agency action of an agency head that deprives a private property owner of property as described under subsection (a), is deemed, at the option of the private property owner, to be a taking under the United States Constitution and a judgment against the United States if the private property owner—

(1) accepts the agency head's offer under subsection (c); or

(2) submits to arbitration under subsection (d).

(f) PAYMENT.—An agency head shall pay a private property owner any compensation required under the terms of an offer of the agency head that is accepted by the private property owner in accordance with subsection (d), or under a decision of an arbitrator under that subsection, out of currently available appropriations supporting the activities giving rise to the claim for compensation. The agency head shall pay to the extent of available funds any compensation under this section not later than 60 days after the date of the acceptance or the date of the issuance of the decision, respectively. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

(g) FORM OF PAYMENT.—Payment under this section, as that form is agreed to by the agency head and the private property owner, may be in the form of—

(1) payment of an amount equal to the fair market value of the property on the day before the date of the final qualified agency action with respect to which the property or interest is acquired; or

(2) a payment of an amount equal to the reduction in value.

SEC. 509. PRIVATE PROPERTY OWNER PARTICIPATION IN COOPERATIVE AGREEMENTS.

Section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended by adding at the end the following new subsection:

"(j) Notwithstanding any other provision of this section, when the Secretary enters into a management agreement under subsection (b) with any non-Federal person that establishes restrictions on the use of property, the Secretary shall notify all private

property owners or lessees of the property that is subject to the management agreement and shall provide an opportunity for each private property owner or lessee to participate in the management agreement.".

SEC. 510. ELECTION OF REMEDIES.

Nothing in this title shall be construed to—

(1) deny any person the right, as a condition precedent or as a requirement to exhaust administrative remedies, to proceed under title II or III of this Act;

(2) bar any claim of any person relating to such person's property under any other law, including claims made under section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(3) constitute a conclusive determination of—

(A) the value of property for purposes of an appraisal for the acquisition of property, or for the determination of damages; or

(B) any other material issue.

TITLE VI—MISCELLANEOUS

SEC. 601. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 602. EFFECTIVE DATE.

Except as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment and shall apply to any agency action of the United States Government after such date.

PRESSLER (AND OTHERS) AMENDMENT NO. 1566

(Ordered to lie on the table.)

Mr. PRESSLER (for himself, Mr. FAIRCLOTH, Mr. BURNS, and Mr. THOMAS) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

At the appropriate place in the Dole substitute amendment No. 1487, insert the following:

SEC. . WAIVER OF PENALTIES WHEN FEDERAL WATER POLLUTION CONTROL ACT COMPLIANCE PLANS ARE IN EFFECT.

Section 309 of the Federal Water Pollution Control Act (33 U.S.C. 1319) is amended by adding at the end the following:

"(h) WAIVER OF PENALTIES WHEN COMPLIANCE PLANS ARE IN EFFECT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of this Act, no civil or administrative penalty may be imposed under this Act against a unit of local government for a violation of a provision of this Act (including a violation of a condition of a permit issued under this Act)—

"(A) if the unit of local government has entered into an agreement with the Administrator, the Secretary of the Army (in the case of a violation of section 404), or the State to carry out a compliance plan with respect to a prior violation of the provision by the unit of local government; and

"(B) during the period—

"(i) beginning on the date on which the unit of local government and the Administrator, the Secretary of the Army (in the case of a violation of section 404), or the State enter into the agreement; and

"(ii) ending on the date on which the unit of local government is required to be in compliance with the provision under the plan.

"(2) REQUIREMENT OF GOOD FAITH.—Paragraph (1) shall not apply during any period in which the Administrator, the Secretary of the Army (in the case of a violation of section 404), or the State determines that the unit of local government is not carrying out the compliance plan in good faith.

"(3) OTHER ENFORCEMENT.—A waiver of penalties provided under paragraph (1) shall not apply with respect to a violation of any provision of this Act other than the provision that is the subject of the agreement described in paragraph (1)(A).".

SIMON AMENDMENT NO. 1567

(Ordered to lie on the table.)

Mr. SIMON submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 96, strike lines 22 through 24 and insert the following:

(a) EFFECTIVE DATE.—Notwithstanding any other provision of this Act, this Act and the amendments made by this Act shall take effect 45 days after the date on which Congress enacts legislation specifying the laws and proposed and existing regulations that will be affected by this Act and the amendments made by this Act.

SIMON (AND OTHERS) AMENDMENT NO. 1568

(Ordered to lie on the table.)

Mr. SIMON (for himself, Mr. HATFIELD, and Mr. REID) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

At the appropriate place, insert the following new section;

SEC. . REPEAL OF PROHIBITIONS AGAINST POLITICAL RECOMMENDATIONS RELATING TO FEDERAL EMPLOYMENT.

(a) IN GENERAL.—(1) Section 3303 of title 5, United States Code, is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The table of sections for chapter 33 of title 5, United States Code, is amended by striking out the item relating to section 3303.

(2) Section 2302(b)(2) of title 5, United States Code, is amended to read as follows:

"(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

"(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

"(B) an evaluation of the character, loyalty, or suitability of such individual;".

SIMON AMENDMENTS NOS. 1569–1571

(Ordered to lie on the table.)

Mr. SIMON submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1569

On page 34, strike lines 20 through 25 and insert the following:

"(i) FAILURE TO COMPLETE REVIEW.—If an agency has not completed review of the rule by the deadline established under subsection (b), the agency shall immediately commence a rulemaking action pursuant to section 553 to repeal the rule.

AMENDMENT NO. 1570

On page 34, strike lines 20 through 25 and insert the following:

"(i) FAILURE TO COMPLETE REVIEW.—If the head of the agency has not completed the review of a rule by the deadline established in the schedule published or modified pursuant to subsection (b) or (c), any person may file a civil action against the head of the agency for injunctive relief to compel the completion of such review by a date certain. The United States District Court for the District of Columbia shall have exclusive jurisdiction to grant such relief. The judge to whom any such case is referred shall hold a hearing on the case at the earliest practicable date and shall expedite the case in every way.

AMENDMENT NO. 1571

On page 34, strike lines 20 through 25.

HATCH AMENDMENT NO. 1572

(Ordered to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 1, strike lines 3 and 4 and insert: "This Act may be cited as the 'Dole-Johnston Regulatory Reform Act of 1995'."

BOND (AND ROBB) AMENDMENT NO. 1573

(Ordered to lie on the table.)

Mr. BOND (for himself and Mr. ROBB) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 44, line 15, strike everything after "Section 629" through page 46 line 4 and replace with the following:

"PETITION FOR ALTERNATIVE MEANS OF COMPLIANCE.

"(a) IN GENERAL.—Any person may petition an agency to modify or waive one or more rules or requirements applicable to one or more facilities owned or operated by such person. The agency is authorized to enter into an enforceable agreement establishing methods of compliance, not otherwise permitted by such rules or requirements, to be complied with in lieu of such rules or requirements. The petition shall identify with reasonable specificity, each facility for which an alternative means of compliance is sought, the rules and requirements for which a modification or waiver is sought and the proposed alternative means of compliance and means to verify compliance and for communication with the public. Where a State has delegated authority to operate a federal program within the State, or is authorized to operate a state program in lieu of an otherwise applicable federal program, the relevant agency shall delegate, if the state so requests, its authority under its authority under this section to the state.

"(b) STANDARDS.—The agency shall grant the petition if the state in which the facility is located agrees to any alternative means of compliance with respect to rules or requirements over which such State has delegated

authority to operate a federal program, or is authorized to operate a State program in lieu of an otherwise applicable federal program, and the agency determines that there is a reasonable likelihood that the alternative means of compliance—

(1) would achieve an overall level of protection of health, safety and the environment at least substantially equivalent to or exceeding the level of protection provided by the rules or requirements subject to the petition;

(2) would provide a degree of public access to information, and of accountability and enforceability, at least substantially equivalent to the degree provided by the rules and requirements subject to the petition; and

(3) would not impose an undue burden on the agency responsible for enforcing the agreement entered into pursuant to subsection (f).

"(c) OTHER PROCEDURES.—If the statute authorizing a rule subject to a petition under this section provides specific available procedures or standards allowing an alternative means of compliance for such rule, such petition shall be reviewed consistent with such procedures or standards, unless the head of the agency for good cause finds that reviewing the petition in solely accordance with subsection (b) is in the public interest.

"(d) PUBLIC NOTICE AND INPUT.—No later than the date on which the petitioner submits the petition to the agency, the petitioner shall inform the public of the submission of such petition (including a brief description of the petition) through publication of a notice in the newspapers of general circulation in the area in which the facility or facilities are located. Agencies may authorize or require petitioners to use additional or alternative means of informing the public of the submission of such petitions. If the agency proposes to grant the petition, the agency shall provide public notice and opportunity to comment.

"(e) DEADLINE AND LIMITATION ON SUBSEQUENT PETITIONS.—A decision to grant or deny a petition under this subsection shall be made no later than 180 days after a complete petition is submitted. Following a decision to deny a petition under this section, no petition, submitted by the same person, may be granted unless it applies to a different facility, or it is based on a change in a fact, circumstance, or provision of law underlying or otherwise related to the rules or requirements subject to the petition.

"(f) AGREEMENT.—Upon granting a petition under this section, the agency shall propose to the petitioner an enforceable agreement establishing alternative methods of compliance for the facility in lieu of the otherwise applicable rules or requirements and identifying such rules and requirements. Not withstanding any other provision of law, such enforceable agreement may modify or waive the terms of any rule or requirement, including any standard, limitation, permit, order, regulations or other requirement issued by the agency consistent with the requirements of subsection (b) and (c), provided that the state in which the facility is located agrees to any modification or waiver of a rule or requirement over which such state has delegated authority to operate a federal program within the state, or is authorized to operate a state program in lieu of an otherwise applicable federal program. If accepted by the petitioner, compliance with such agreement shall be deemed to be compliance with the laws and rules identified in the agreement. The agreement shall contain appropriate mechanisms to assure compliance including money damages and injunctive relief, for violations of the agreement. The agreement may provide the state in which the facility is located with rights equivalent to the agency with respect to one or more provisions of the agreement.

"(g) NEPA NONAPPLICABILITY.—Approval of an alternative means of compliance under this section by an agency shall not be considered a major Federal action for purposes of the National Environmental Policy Act.

LAUTENBERG AMENDMENT NO. 1574

(Ordered to lie on the table.)

Mr. LAUTENBERG submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 72, strike lines 1 through page 73 line 5 and insert the following:

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—Part I of title 5, United States Code, is amended by striking the chapter heading and table of sections for chapter 6 and inserting the following

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"SUBCHAPTER I—REGULATORY ANALYSIS

"601. Definitions.
"602. Regulatory agenda.
"603. Initial regulatory flexibility analysis.
"604. Final regulatory flexibility analysis.
"605. Avoidance of duplicative or unnecessary analyses.
"606. Effect on other law.
"607. Preparation of analysis.
"608. Procedures for waiver or delay of completion.
"609. Procedures for gathering comments.
"610. Periodic review of rules.
"611. Judicial review.
"612. Reports and intervention rights.

"SUBCHAPTER II—ANALYSIS AGENCY RULES

"621. Definitions.
"622. Rulemaking cost-benefit analysis.
"623. Agency regulatory review.
"624. Decisional criteria.
"625. Jurisdiction and judicial review.
"626. Deadlines for rulemaking.
"627. Special rule.
"628. Requirements for major environmental management activities.

"SUBCHAPTER III—RISK ASSESSMENTS

"631. Definitions.
"632. Applicability.
"633. Principles for risk assessments.
"634. Petition for review of a major free-standing risk assessment.
"635. Comprehensive risk reduction.
"636. Rule of construction.

"SUBCHAPTER IV—EXECUTIVE OVERSIGHT

"641. Procedures.
"642. Delegation of authority.
"643. Judicial review.
"644. Regulatory agenda.".

(2) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

"SUBCHAPTER I—REGULATORY ANALYSIS".

(3) This subsection will be effective one day after enactment.

ROTH AMENDMENT NO. 1575

Mr. ROTH proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

Add a new section 637 to Subchapter III as follows:

SEC. 637. INTERAGENCY COORDINATION.

"(a) To promote the conduct, application, and practice of risk assessment in a consistent manner and to identify risk assessment data and research needs common to more than 1 Federal agency, the Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall—

"(1) periodically survey the manner in which each Federal agency involved in risk assessment is conducting such risk assessment to determine the scope and adequacy of risk assessment practices in use by the Federal Government;

"(2) provide advice and recommendations to the President and Congress based on the surveys conducted and determinations made under paragraph (1);

"(3) establish appropriate interagency mechanisms to promote—

"(A) coordination among Federal agencies conducting risk assessment with respect to the conduct, application, and practice of risk assessment; and

"(B) the use of state-of-the-art risk assessment practices throughout the Federal Government;

"(4) establish appropriate mechanisms between Federal and State agencies to communicate state-of-the-art risk assessment practices; and

"(5) periodically convene meetings with State government representatives and Federal and other leaders to assess the effectiveness of Federal and State cooperation in the development and application of risk assessment.

"(b) The President shall appoint National Peer Review Panels to review every 3 years the risk assessment practices of each covered agency for programs designated to protect human health, safety, or the environment. The Panels shall submit a report to the President and the Congress at least every 3 years containing the results of such review."

DODD AMENDMENTS NOS. 1576–1580

(Ordered to lie on the table.)

Mr. DODD submitted five amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1576

On page 14, between lines 16 and 17, insert the following:

"(6) the term 'major rule' does not include a rule the primary purpose of which is to protect the health and safety of children."

AMENDMENT NO. 1577

On page 50, line 2, strike the period at the end and insert "; or".

AMENDMENT NO. 1578

On page 49, line 21, strike "or".

AMENDMENT NO. 1579

On page 50, between lines 2 and 3, insert the following:

"(F) a rule or agency action the primary purposes of which is to protect the health or safety of children."

AMENDMENT NO. 1580

On page 88, strike lines 15 through 19 and insert the following:

"§ 807. Exemptions.

"Nothing in this chapter shall apply to rules—

"(1) that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee; or

"(2) the primary purposes of which is to protect the health or safety of children.".

GLENN (AND OTHERS) AMENDMENT NO. 1581

Mr. LEVIN (for Mr. GLENN, for himself, Mr. CHAFEE, Mr. LEVIN, Mr. LIEBERMAN, Mr. COHEN, Mr. PRYOR, Mr. KERRY, Mr. LAUTENBERG, Mr. DASCHLE, Mrs. BOXER, Mr. KOHL, Mr. SIMON, Mr. KENNEDY, Mr. DODD, Mrs. MURRAY, Mr. AKAKA, Mr. JEFFORDS, Mr. BIDEN, Mr. DORGAN, Mr. BAUCUS, and Mr. KERREY) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulatory Procedures Reform Act of 1995".

SEC. 2. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in paragraph (13), by striking out "; and" and inserting in lieu thereof a semicolon;

(2) in paragraph (14), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(15) 'Director' means the Director of the Office of Management and Budget.".

SEC. 3. ANALYSIS OF AGENCY RULES.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER II—ANALYSIS OF AGENCY RULES

"§ 621. Definitions

"For purposes of this subchapter the definitions under section 551 shall apply and—

"(1) the term 'benefit' means the reasonably identifiable significant favorable effects, quantifiable and nonquantifiable including social, environmental, and economic benefits, that are expected to result directly or indirectly from implementation of or compliance with, a rule or an alternative to a rule;

"(2) the term 'cost' means the reasonably identifiable significant adverse effects, quantifiable and nonquantifiable including social, environmental, and economic effects that are expected to result directly or indirectly from implementation of, or compliance with, a rule or an alternative to a rule;

"(3) the term 'cost-benefit analysis' means an evaluation of the costs and benefits of a rule, quantified to the extent feasible and appropriate and otherwise qualitatively described, that is prepared in accordance with the requirements of this subchapter at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition;

"(4)(A) the term 'major rule' means a rule or a group of closely related rules that the agency proposing the rule, the Director, or a designee of the President reasonably determines is likely to have a gross annual effect on the economy of $100,000,000 or more in reasonably quantifiable costs and this limit may be adjusted periodically by the Director, at his or her sole discretion, to account for inflation; and

"(B) the term 'major rule' shall not include—

"(i) a rule that involves the internal revenue laws of the United States;

"(ii) a rule or agency action that authorizes the introduction into, or removal from, commerce, or recognizes the marketable status, of a product; or

"(iii) a rule exempt from notice and public comment procedure under section 553 of this title;

"(5) the term 'market-based mechanism' means a regulatory program that—

"(A) imposes legal accountability for the achievement of an explicit regulatory objective, including the reduction of environmental pollutants or of risks to human health, safety, or the environment, on each regulated person;

"(B) affords maximum flexibility to each regulated person in complying with mandatory regulatory objectives, and such flexibility shall, where feasible and appropriate, include the opportunity to transfer to, or receive from, other persons, including for cash or other legal consideration, increments of compliance responsibility established by the program; and

"(C) permits regulated persons to respond at their own discretion in an automatic manner, consistent with subparagraph (B), to changes in general economic conditions and in economic circumstances directly pertinent to the regulatory program without affecting the achievement of the program's explicit regulatory mandates under subparagraph (A);

"(6) the term 'performance standard' means a requirement that imposes legal accountability for the achievement of an explicit regulatory objective, such as the reduction of environmental pollutants or of risks to human health, safety, or the environment, on each regulated person;

"(7) the term 'risk assessment' has the same meaning as such term is defined under section 631(5); and

"(8) the term 'rule' has the same meaning as in section 551(4) of this title, and shall not include—

"(A) a rule of particular applicability that approves or prescribes for the future rates, wages, prices, services, corporate or financial structures, reorganizations, mergers, acquisitions, accounting practices, or disclosures bearing on any of the foregoing;

"(B) a rule relating to monetary policy proposed or promulgated by the Board of Governors of the Federal Reserve System or by the Federal Open Market Committee;

"(C) a rule relating to the safety or soundness of federally insured depository institutions or any affiliate of such an institution (as defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)); credit unions; the Federal Home Loan Banks; government-sponsored housing enterprises; a Farm Credit System Institution; foreign banks, and their branches, agencies, commercial lending companies or representative offices that operate in the United States and any affiliate of such foreign banks (as those terms are defined in the International Banking Act of 1978 (12 U.S.C. 3101)); or a rule relating to the payments system or the protection of deposit insurance funds or Farm Credit Insurance Fund;

"(D) a rule issued by the Federal Election Commission or a rule issued by the Federal Communications Commission pursuant to sections 312(a)(7) and 315 of the Communications Act of 1934 (47 U.S.C. 312(a)(7) and 315); or

"(E) a rule required to be promulgated at least annually pursuant to statute.

"§ 622. Rulemaking cost-benefit analysis

"(a) Before publishing notice of a proposed rulemaking for any rule, each agency shall determine whether the rule is or is not a major rule. For the purpose of any such determination, a group of closely related rules shall be considered as one rule.

"(b)(1) If an agency has determined that a rule is not a major rule, the Director or a designee of the President may, as appropriate, determine that the rule is a major rule no later than 30 days after the close of the comment period for the rule.

"(2) Such determination shall be published in the Federal Register, together with a succinct statement of the basis for the determination.

"(c)(1)(A) When the agency publishes a notice of proposed rulemaking for a major rule, the agency shall issue and place in the rulemaking file an initial cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

"(B)(i) When the Director or a designee of the President has published a determination that a rule is a major rule after the publication of the notice of proposed rulemaking for the rule, the agency shall promptly issue and place in the rulemaking file an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

"(ii) Following the issuance of an initial cost-benefit analysis under clause (i), the agency shall give interested persons an opportunity to comment pursuant to section 553 in the same manner as if the draft cost-benefit analysis had been issued with the notice of proposed rulemaking.

"(2) Each initial cost-benefit analysis shall contain—

"(A) an analysis of the benefits of the proposed rule, including any benefits that cannot be quantified, and an explanation of how the agency anticipates that such benefits will be achieved by the proposed rule, including a description of the persons or classes of persons likely to receive such benefits;

"(B) an analysis of the costs of the proposed rule, including any costs that cannot be quantified, and an explanation of how the agency anticipates that such costs will result from the proposed rule, including a description of the persons or classes of persons likely to bear such costs;

"(C) an identification (including an analysis of costs and benefits) of an appropriate number of reasonable alternatives allowed under the statute granting the rulemaking authority for achieving the identified benefits of the proposed rule, including alternatives that—

"(i) require no government action;

"(ii) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply; and

"(iii) employ voluntary programs, performance standards, or market-based mechanisms that permit greater flexibility in achieving the identified benefits of the proposed rule and that comply with the requirements of subparagraph (D);

"(D) an assessment of the feasibility of establishing a regulatory program that operates through the application of market-based mechanisms;

"(E) an explanation of the extent to which the proposed rule—

"(i) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply; and

"(ii) employs voluntary programs, performance standards, or market-based mechanisms that permit greater flexibility in achieving the identified benefits of the proposed rule;

"(F) a description of the quality, reliability, and relevance of scientific or economic evaluations or information in accordance with the cost-benefit analysis and risk assessment requirements of this chapter;

"(G) if not expressly or implicitly inconsistent with the statute under which the agency is proposing the rule, an explanation of the extent to which the identified benefits of the proposed rule justify the identified costs of the proposed rule, and an explanation of how the proposed rule is likely to substantially achieve the rulemaking objectives in a more cost-effective manner than the alternatives to the proposed rule, including alternatives identified in accordance with subparagraph (C); and

"(H) if a major rule subject to subchapter III addresses risks to human health, safety, or the environment—

"(i) a risk assessment in accordance with this chapter; and

"(ii) for each such proposed or final rule, an assessment of risk reduction or other benefits associated with each significant regulatory alternative considered by the agency in connection with the rule or proposed rule.

"(d)(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking file a final cost-benefit analysis, and shall include a summary of the analysis in the statement of basis and purpose.

"(2) Each final cost-benefit analysis shall contain—

"(A) a description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule described in the rulemaking, including the market-based mechanisms identified under subsection (c)(2)(C)(iii); and

"(B) if not expressly or implicitly inconsistent with the statute under which the agency is acting, a reasonable determination, based upon the rulemaking file considered as a whole, whether—

"(i) the benefits of the rule justify the costs of the rule; and

"(ii) the rule will achieve the rulemaking objectives in a more cost-effective manner than the alternatives described in the rulemaking, including the market-based mechanisms identified under subsection (c)(2)(C)(iii).

"(e)(1) The analysis of the benefits and costs of a proposed and a final rule required under this section shall include, to the extent feasible, a quantification or numerical estimate of the quantifiable benefits and costs. Such quantification or numerical estimate shall be made in the most appropriate units of measurement, using comparable assumptions, including time periods, shall specify the ranges of predictions, and shall explain the margins of error involved in the quantification methods and in the estimates used. An agency shall describe the nature and extent of the nonquantifiable benefits and costs of a final rule pursuant to this section in as precise and succinct a manner as possible. An agency shall not be required to make such evaluation primarily on a mathematical or numerical basis.

"(2)(A) In evaluating and comparing costs and benefits and in evaluating the risk assessment information developed under subchapter III, the agency shall rely on cost, benefit, or risk assessment information that is accompanied by data, analysis, or other supporting materials that would enable the agency and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to such information.

"(B) The agency evaluations of the relationships of the benefits of a proposed and final rule to its costs shall be clearly articulated in accordance with this section.

"(f) As part of the promulgation of each major rule that addresses risks to human health, safety, or the environment, the head of the agency or the President shall make a determination that—

"(1) the risk assessment and the analysis under subsection (c)(2)(H) are based on a scientific evaluation of the risk addressed by the major rule and that the conclusions of such evaluation are supported by the available information; and

"(2) the regulatory alternative chosen will reduce risk in a cost-effective and, to the extent feasible, flexible manner, taking into consideration any of the alternatives identified under subsection (c)(2) (C) and (D).

"(g) The requirements of this subchapter shall not alter the criteria for rulemaking otherwise applicable under other statutes.

"§ 623. Judicial review

"(a) Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall not be subject to judicial review except in connection with review of a final agency rule and according to the provisions of this section.

"(b) Any determination by a designee of the President or the Director that a rule is, or is not, a major rule shall not be subject to judicial review in any manner.

"(c) The determination by an agency that a rule is, or is not, a major rule shall be set aside by a reviewing court only upon a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time the agency made the determination.

"(d) If the cost-benefit analysis or risk assessment required under this chapter has been wholly omitted for any major rule, a court shall vacate the rule and remand the case for further consideration. If an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.

"(e) Any cost-benefit analysis or risk assessment prepared under this chapter shall not be subject to judicial consideration separate or apart from review of the agency action to which it relates. When an action for judicial review of an agency action is instituted, any analysis or assessment for such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action.

"§ 624. Deadlines for rulemaking

"(a) All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

"(b) All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

"(c) In any case in which the failure to promulgate a rule by a deadline occurring during the 2-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

On page 15, beginning with line 23, strike out all through line 18 on page 21 and insert in lieu thereof the following:

"§ 625. Agency regulatory review

"(a) PRELIMINARY SCHEDULE FOR RULES.—(1) Not later than 1 year after the date of the enactment of this section, and every 5 years thereafter, the head of each agency shall publish in the Federal Register a notice of proposed rulemaking under section 553 that contains a preliminary schedule of rules selected for review under this section by the head of the agency and in the sole discretion of the head of the agency, and request public comment thereon, including suggestions for additional rules warranting review. The agency shall allow at least 180 days for public comment.

"(2) The preliminary schedule under this subsection shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years from the date of publication of the preliminary schedule.

"(3) In selecting rules and establishing deadlines for the preliminary schedule, the head of the agency shall consider the extent to which, in the judgment of the head of the agency—

"(A) a rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

"(B) the benefits of the rule do not justify its costs or the rule does not achieve the rulemaking objectives in a cost-effective manner;

"(C) a rule could be revised in a manner allowed by the statute authorizing the rule so as to—

"(i) substantially decrease costs;

"(ii) substantially increase benefits; or

"(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii);

"(D) the importance of each rule relative to other rules being reviewed under this section; or

"(E) the resources expected to be available to the agency to carry out the reviews under this section.

"(b) SCHEDULE.—(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), the head of each agency shall publish a final rule that establishes a schedule of rules to be reviewed by the agency under this section.

"(2) The schedule shall establish a deadline for completion of the review of each rule listed on the schedule, taking into account the criteria in subsection (a)(3) and comments received in the rulemaking under subsection (a). Each such deadline shall occur not later than 11 years from the date of publication of the preliminary schedule.

"(3) The head of the agency shall modify the agency's schedule under this section to reflect any change contained in an appropriations Act under subsection (d).

"(c) JUDICIAL REVIEW.—(1) Notwithstanding section 623 and except as provided otherwise in this subsection, judicial review of agency action taken pursuant to the requirements of this section shall be limited to review of compliance or noncompliance with the requirements of this section.

"(2) Agency decisions to place, or decline to place, a rule on the schedule, and the deadlines for completion of a rule, shall not be subject to judicial review.

"(d) ANNUAL BUDGET.—(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

"(A) identify as a separate sum the amount requested to be appropriated for implementation of this section during the upcoming fiscal year; and

"(B) include a list of rules which may be subject to subsection (e)(3) during the year for which the budget proposal is made.

"(2) Amendments to the schedule under subsection (b) to place a rule on the schedule for review or change a deadline for review of a rule may be included in annual appropriations Acts for the relevant agencies. An authorizing committee with jurisdiction may recommend, to the House of Representatives or Senate appropriations committee (as the case may be), such amendments. The appropriations committee to which such amendments have been submitted may include the amendments in the annual appropriations Act for the relevant agency. Each agency shall modify its schedule under subsection (b) to reflect such amendments that are enacted into law.

"(e) REVIEW OF RULE.—(1) For each rule on the schedule under subsection (b), the agency shall—

"(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be continued, amended, or repealed;

"(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

"(i) addresses public comments generated by the notice in subparagraph (A);

"(ii) contains a preliminary analysis provided by the agency of whether the rule is a major rule, and if so, whether the benefits of the rule justify its costs;

"(iii) contains a preliminary determination as to whether the rule should be continued, amended, or repealed; and

"(iv) solicits public comment on the preliminary determination for the rule; and

"(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

"(i) addresses public comments generated by the notice in subparagraph (B); and

"(ii) contains a final determination of whether to continue, amend, or repeal the rule;

"(iii) if the agency determines to continue the rule and the rule is a major rule, describes a final analysis as to whether the benefits of the rule justify its costs; and

"(iv) if the agency determines to amend or repeal the rule, contains a notice of proposed rulemaking under section 553.

"(2) If the final determination of the agency is to continue the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(C).

"(3) If the final determination of the agency is to continue the rule, and the agency has concluded that the benefits do not justify the costs, the agency shall transmit to the appropriate committees of Congress the cost-benefit analysis and a statement of the agency's reasons for continuing the rule.

"(f) DEADLINE FOR FINAL AGENCY ACTION ON MODIFIED RULE.—If an agency makes a determination to amend or repeal a major rule under subsection (e)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years of the date of publication of the notice in subsection (e)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a major rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

"(g) COMPLETION OF REVIEW OR REPEAL OF RULE.—If an agency has not completed review of the rule by the deadline established under subsection (b), the agency shall immediately commence a rulemaking action pursuant to section 553 of this title to repeal the rule and shall complete such rulemaking within 2 years of the deadline established under subsection (b).

"(h) FINAL AGENCY ACTION.—(1) The final determination of an agency to continue a rule under subsection (e)(1)(C) shall be considered final agency action.

"(2) Failure to promulgate an amended major rule or to make other decisions required by subsection (g) by the date established under such subsection shall be subject to judicial review pursuant to section 706(1) of this title.".

"§ 626. Public participation and accountability

"In order to maximize accountability for, and public participation in, the development and review of regulatory actions each agency shall, consistent with chapter 5 and other applicable law, provide the public with opportunities for meaningful participation in the development of regulatory actions, including—

"(1) seeking the involvement, where practicable and appropriate, of those who are intended to benefit from and those who are expected to be burdened by any regulatory action;

"(2) providing in any proposed or final rulemaking notice published in the Federal Register—

"(A) a certification of compliance with the requirements of this chapter, or an explanation why such certification cannot be made;

"(B) a summary of any regulatory analysis required under this chapter, or under any other legal requirement, and notice of the availability of the regulatory analysis;

"(C) a certification that the rule will produce benefits that will justify the cost to the Government and to the public of implementation of, and compliance with, the rule, or an explanation why such certification cannot be made; and

"(D) a summary of the results of any regulatory review and the agency's response to such review, including an explanation of any significant changes made to such regulatory action as a consequence of regulatory review;

"(3) identifying, upon request, a regulatory action and the date upon which such action was submitted to the designated officer to whom authority was delegated under section 644 for review;

"(4) disclosure to the public, consistent with section 633(3), of any information created or collected in performing a regulatory analysis required under this chapter, or under any other legal requirement; and

"(5) placing in the appropriate rulemaking record all written communications received from the Director, other designated officer, or other individual or entity relating to regulatory review.

At the appropriate place in the bill, insert the following new section:

SEC. 627. CONFLICT OF INTEREST RELATING TO COST-BENEFIT ANALYSES AND RISK ASSESSMENTS.

(a) INFORMATION BEARING ON POSSIBLE CONFLICT OF INTEREST.—

(1) DEFINITION.—For purposes of this section, the term "contract" means any contract, agreement, or other arrangement, whether by competitive bid or negotiation, entered into with a Federal agency for the conduct of research, development, evaluation activities, or for technical and management support services relating to any cost-benefit analyses or risk assessment under subchapter II or III of chapter 6 of title 5, United States Code (as added by section 4(a) of this Act). This section shall not apply to the provisions of section 635.

(2) IN GENERAL.—When an agency proposes to enter into a contract with a person or entity, such person shall provide to the agency before entering into such contract all relevant information, as determined by the agency, bearing on whether that person has a possible conflict of interest with respect to being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons.

(3) SUBCONTRACTOR INFORMATION.—A person entering into a contract shall ensure, in accordance with regulations prescribed by the head of the agency, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract of more than $10,000.

(b) REQUIRED FINDING THAT NO CONFLICT OF INTEREST EXISTS OR THAT CONFLICTS HAVE BEEN AVOIDED; MITIGATION OF CONFLICT WHEN CONFLICT IS UNAVOIDABLE.—

(1) IN GENERAL.—Subject to paragraph (2), the head of an agency shall not enter into any contract unless the agency head finds, after evaluating all information provided under subsection (a) and any other information otherwise made available that—

(A) it is unlikely that a conflict of interest would exist; or

(B) such conflict has been avoided after appropriate conditions have been included in such contract.

(2) EXCEPTION.—If the head of an agency determines that a conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions in the contract, the agency head may enter into such contract if the agency head—

(A) determines that it is in the best interests of the United States to enter into the contract; and

(B) includes appropriate conditions in such contract to mitigate such conflict.

(c) RULES AND REGULATIONS.—No later than 240 days after the date of the enactment of this Act, the Federal Acquisition Review Council shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code, without regard to subsection (a) of such section.

"SUBCHAPTER III—RISK ASSESSMENTS

"§ 631. Definitions

"For purposes of this subchapter, the definitions under sections 551 and 621 shall apply, and—

"(1) the term 'covered agency' means each agency required to comply with this subchapter, as provided in section 632;

"(2) the term 'emergency' means an imminent or substantial endangerment to public health, safety, or the environment if no action is taken;

"(3) the term 'exposure assessment' means the scientific determination of the intensity, frequency, and duration of exposures to the hazard in question;

"(4) the term 'hazard assessment' means the scientific determination of whether a hazard can cause an increased incidence of one or more significant adverse effects, and a scientific evaluation of the relationship between the degree of exposure to a perceived cause of an adverse effect and the incidence and severity of the effect;

"(5) the term 'risk assessment' means the systematic process of organizing and analyzing scientific knowledge and information on potential hazards, including as appropriate for the specific risk involved, hazard assessment, exposure assessment, and risk characterization;

"(6) the term 'risk characterization' means the integration and organization of hazard and exposure assessment to estimate the potential for specific harm to an exposed individual population or natural resource including, to the extent feasible, a characterization of the distribution of risk as well as an analysis of uncertainties, variabilities, conflicting information, and inferences and assumptions in the assessment;

"(7) the term 'screening analysis' means an analysis using simple conservative postulates to arrive at an estimate of upper and lower bounds as appropriate; and

"(8) the term 'substitution risk' means an increased risk to human health, safety, or the environment reasonably likely to result from a regulatory option.

"§ 632. Applicability

"(a) Except as provided in subsection (c), this subchapter shall apply to all risk assessments and risk characterizations prepared in connection with a major rule addressing health, safety, and environmental risks by—

"(1) the Secretary of Defense, for major rules relating to the programs and responsibilities of the United States Army Corps of Engineers;

"(2) the Secretary of the Interior, for major rules relating to the programs and responsibilities of the Office of Surface Mining Reclamation and Enforcement;

"(3) the Secretary of Agriculture, for major rules relating to the programs and responsibilities of—

"(A) the Animal and Plant Health Inspection Service;

"(B) the Grain Inspection, Packers, and Stockyards Administration;

"(C) the Food Safety and Inspection Service;

"(D) the Forest Service; and

"(E) the Natural Resources Conservation Service;

"(4) the Secretary of Commerce, for major rules relating to the programs and responsibilities of the National Marine Fisheries Service;

"(5) the Secretary of Labor, for major rules relating to the programs and responsibilities of—

"(A) the Occupational Safety and Health Administration; and

"(B) the Mine Safety and Health Administration;

"(6) the Secretary of Health and Human Services, for major rules relating to the programs and responsibilities assigned to the Food and Drug Administration;

"(7) the Secretary of Transportation, for major rules relating to the programs and responsibilities assigned to—

"(A) the Federal Aviation Administration; and

"(B) the National Highway Traffic Safety Administration;

"(8) the Secretary of Energy, for major rules relating to nuclear safety, occupational safety and health, and environmental restoration and waste management;

"(9) the Chairman of the Consumer Product Safety Commission;

"(10) the Administrator of the Environmental Protection Agency; and

"(11) the Chairman of the Nuclear Regulatory Commission.

"(b)(1) No later than 18 months after the effective date of this section, the President, acting through the Director of the Office of Management and Budget, shall determine whether other Federal agencies should be considered covered agencies for the purposes of this subchapter. Such determination, with respect to a particular Federal agency, shall be based on the impact of risk assessment documents and risk characterization documents on—

"(A) regulatory programs administered by that agency; and

"(B) the communication of risk information by that agency to the public.

"(2) If the President makes a determination under paragraph (1), this subchapter shall apply to any agency determined to be a covered agency beginning on a date set by the President. Such date may be no later than 6 months after the date of such determination.

"(c)(1) This subchapter shall not apply to risk assessments or risk characterizations performed with respect to—

"(A) an emergency determined by the head of an agency;

"(B) a health, safety, or environmental inspection, compliance or enforcement action, or individual facility permitting action; or

"(C) a screening analysis.

"(2) This subchapter shall not apply to any food, drug, or other product label, or to any risk characterization appearing on any such label.

"§ 633. Savings provisions

"Nothing in this subchapter shall be construed to—

"(1) modify any statutory standard or requirement designed to protect human health, safety, or the environment; or

"(2) require the disclosure of any trade secret or other confidential information.

"§ 634. Principles for risk assessments

"(a)(1) The head of each agency shall design and conduct risk assessments in a manner that promotes rational and informed risk management decisions and informed public input into the process of making agency decisions.

"(2) The head of each agency shall establish and maintain a distinction between risk assessment and risk management.

"(3) An agency may take into account priorities for managing risks, including the types of information that would be important in evaluating a full range of alternatives, in developing priorities for risk assessment activities.

"(4) An agency shall not be required to repeat discussions or explanations in each risk assessment required under this subchapter if there is an unambiguous reference to a relevant discussion or explanation in another reasonably available agency document that meets the requirements of this section.

"(5)(A) In conducting a risk assessment, the head of each agency shall employ the level of detail and rigor appropriate and practicable for reasoned decisionmaking in the matter involved, proportionate to the significance and complexity of the potential agency action and the need for expedition.

"(B)(i) Each agency shall develop and use an iterative process for risk assessment, starting with relatively inexpensive screening analyses and progressing to more rigorous analyses, as circumstances or results warrant.

"(ii) In determining whether or not to proceed to a more detailed analysis, the head of the agency shall take into consideration whether or not use of additional data or the analysis thereof would significantly change the estimate of risk.

"(b)(1) The head of each agency shall consider in each risk assessment sound, reasonably available scientific information, including scientific information that finds or fails to find a correlation between a potential hazard and an adverse effect, and data regarding exposure and other relevant physical conditions.

"(2) The head of an agency shall select data for use in the assessment based on an appropriate consideration of the quality and relevance of the data, and shall describe the basis for selecting the data.

"(3) In making its selection of data, the head of an agency shall consider whether the data were developed in accordance with good scientific practice or other appropriate protocols to ensure data quality.

"(4) Subject to paragraph (3), relevant scientific data submitted by interested parties shall be reviewed and considered in the analysis by the head of an agency under paragraph (2).

"(5) When material conflicts among scientific data appear to exist, the risk assessment shall include a discussion of all relevant information, including the likelihood of alternative interpretations of data.

"(c)(1) To the maximum extent practicable, the head of each agency shall use postulates, including default assumptions, inferences, models, or safety factors, when relevant and adequate scientific data and understanding, including site-specific data, are lacking.

"(2) When a risk assessment involves choice of a postulate, the head of the agency shall—

"(A) identify the postulate and its scientific or policy basis, including the extent to which the postulate has been validated by, or conflicts with, empirical data;

"(B) explain the basis for any choices among postulates; and

"(C) describe reasonable alternative postulates that were not selected by the agency for use in the risk assessment, and the sensitivity for the conclusions of the risk assessment to the alternatives, and the rationale for not using such alternatives.

"(3) An agency shall not inappropriately combine or compound multiple postulates.

"(4) The head of each agency shall develop a procedure and publish guidelines for choosing default postulates and for deciding when and how in a specific risk assessments to adopt alternative postulates or to use available scientific information in place of a default postulate.

"(d) The head of each agency shall provide appropriate opportunities for public participation and comment on risk assessments.

"(e) In each risk assessment supporting a major rule, the head of each agency shall include in the risk characterization, as appropriate, each of the following:

"(1) A description of the hazard of concern.

"(2) A description of the populations or natural resources that are the subject of the risk assessment.

"(3) An explanation of the exposure scenarios used in the risk assessment, including an estimate of the corresponding population at risk and the likelihood of such exposure scenarios.

"(4) A description of the nature and severity of the harm that could plausibly occur.

"(5) A description of the major uncertainties in each component of the risk assessment and their influence on the results of the assessment.

"(f) To the extent feasible and scientifically appropriate, the head of an agency shall—

"(1) express the overall estimate of risk as a range or probability distribution that reflects variabilities and uncertainties in the analysis;

"(2) provide the range and distribution of risks and the corresponding exposure scenarios, identifying the range and distribution of risk to the general population and, where appropriate, to more highly exposed or sensitive subpopulations; and

"(3) where quantitative estimates of the range and distribution of risk estimates are not available, describe the qualitative factors influencing the range of possible risks.

"(g) The head of an agency shall place the nature and magnitude of risks to human health, safety, and the environment being analyzed in context, including appropriate comparisons with other risks that are familiar to, and routinely encountered by, the general public. Such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks.

"(h) In any notice of proposed or final regulatory action subject to this subchapter, the head of an agency shall describe significant substitution risks to human health or safety identified by the agency or contained in information provided to the agency by a commentator.

"§ 635. Peer review

"(a) The head of each covered agency shall develop a systematic program for independent and external peer review required under subsection (b). (1) Such program shall be applicable throughout each covered agency and—

"(A) shall provide for the creation or utilization of peer review panels, expert bodies, or other formal or informal devices that are balanced and that consist of members with expertise relevant to the sciences involved in regulatory decisions and who are independent of the covered agency; and

"(B) be broadly representative and balanced and, to the extent relevant and appropriate, may include persons affiliated with Federal, State, local, or tribal governments, small businesses, other representatives of industry, universities, agriculture, labor consumers, conservation organizations, or other public interest groups and organizations;

"(2) may exclude any person with substantial and relevant expertise as a panel member on the basis that such person represents an entity that may have a potential financial interest in the outcome, or may include such person if such interest is fully disclosed to the agency, and in the case of a regulatory decision affecting a single entity, no peer reviewer representing such entity may be included on the panel;

"(3) shall provide for a timely completed peer review, meeting agency deadlines, that contains a balanced presentation of all considerations, including minority reports and an agency response to all significant peer review comments; and

"(4) shall provide adequate protections for confidential business information and trade secrets, including requiring panel members to enter into confidentiality agreements.

"(b)(1)(A) Except as provided under subparagraph (B), each covered agency shall provide for peer review in accordance with this section of any risk assessment or cost-benefit analysis that forms the basis of any major rule that addresses risks to the environment, health, or safety.

"(B) Subparagraph (A) shall not apply to a rule or other action taken by an agency to authorize or approve any individual substance or product.

"(2) The Director of the Office of Management and Budget may order that peer review be provided for any risk assessment or cost-benefit analysis that is likely to have a significant impact on public policy decisions or would establish an important precedent.

"(c) Each peer review under this section shall include a report to the Federal agency concerned with respect to the scientific and technical merit of data and methods used for the risk assessments or cost-benefit analyses.

"(d) The head of the covered agency shall provide a written response to all significant peer review comments.

"(e) All peer review comments or conclusions and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

"(f) No peer review shall be required under this section for any data, method, document, or assessment, or any component thereof, which has been previously subjected to peer review.

"(g) The requirements of this subsection shall not apply to a specific rulemaking where the head of an agency has published a determination, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, and notified the Congress, that the agency is unable to comply fully with the peer review requirements of this subsection and that the rulemaking process followed by that agency provides sufficient opportunity for scientific or technical review of risk assessments or cost-benefit analysis required by this subchapter."

"§ 636. Guidelines, plan for assessing new information, and report

"(a)(1)(A) As soon as practicable and scientifically feasible, each covered agency shall adopt, after notification and opportunity for public comment, guidelines to implement the risk assessment principles under section 634, as well as the cost-benefit analysis requirements under section 622, and shall provide a format for summarizing risk assessment results.

"(B) No later than 12 months after the effective date of this section, the head of each covered agency shall issue a report on the status of such guidelines to the Congress.

"(2) The guidelines under paragraph (1) shall—

"(A) include guidance on use of specific technical methodologies and standards for acceptable quality of specific kinds of data;

"(B) address important decisional factors for the risk assessment, risk characterization, and cost-benefit analysis at issue; and

"(C) provide procedures for the refinement and replacement of policy-based default assumptions.

"(b) The guidelines, plan and report under this section shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State agencies and local governments, and such other departments and agencies, organizations, or persons as may be advisable.

"(c) The President shall review the guidelines published under this section at least every 4 years.

"(d) The development, issuance, and publication of risk assessment and risk characterization guidelines under this section shall not be subject to judicial review.

"§ 637. Research and training in risk assessment

"(a) The head of each covered agency shall regularly and systematically evaluate risk assessment research and training needs of the agency, including, where relevant and appropriate, the following:

"(1) Research to reduce generic data gaps, to address modelling needs (including improved model sensitivity), and to validate default options, particularly those common to multiple risk assessments.

"(2) Research leading to improvement of methods to quantify and communicate uncertainty and variability among individuals, species, populations, and, in the case of ecological risk assessment, ecological communities.

"(3) Emerging and future areas of research, including research on comparative risk analysis, exposure to multiple chemicals and other stressors, noncancer endpoints, biological markers of exposure and effect, mechanisms of action in both mammalian and nonmammalian species, dynamics and probabilities of physiological and ecosystem exposures, and prediction of ecosystem-level responses.

"(4) Long-term needs to adequately train individuals in risk assessment and risk assessment application. Evaluations under this paragraph shall include an estimate of the resources needed to provide necessary training.

"(b) The head of each covered agency shall develop a strategy and schedule for carrying out research and training to meet the needs identified in subsection (a).

"§ 638. Interagency coordination

"(a) To promote the conduct, application, and practice of risk assessment in a consistent manner and to identify risk assessment data and research needs common to more than 1 Federal agency, the Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall—

"(1) periodically survey the manner in which each Federal agency involved in risk assessment is conducting such risk assessment to determine the scope and adequacy of risk assessment practices in use by the Federal Government;

"(2) provide advice and recommendations to the President and Congress based on the surveys conducted and determinations made under paragraph (1);

"(3) establish appropriate interagency mechanisms to promote—

"(A) coordination among Federal agencies conducting risk assessment with respect to the conduct, application, and practice of risk assessment; and

"(B) the use of state-of-the-art risk assessment practices throughout the Federal Government;

"(4) establish appropriate mechanisms between Federal and State agencies to communicate state-of-the-art risk assessment practices; and

"(5) periodically convene meetings with State government representatives and Federal and other leaders to assess the effectiveness of Federal and State cooperation in the development and application of risk assessment.

"(b) review every 3 years the risk assessment practices of each covered agency for programs designed to protect human health, safety, or the environment and submit a report to the President and the Congress at least every 3 years containing the results of such review.

"§ 639. Plan for review of risk assessments

"(a) No later than 18 months after the effective date of this section, the head of each covered agency shall publish a plan to review and revise any risk assessment published before the expiration of such 18-month period if the covered agency determines that significant new information or methodologies are available that could significantly alter the results of the prior risk assessment.

"(b) A plan under subsection (a) shall—

"(1) provide procedures for receiving and considering new information and risk assessments from the public; and

"(2) set priorities and criteria for review and revision of risk assessments based on such factors as the agency head considers appropriate.

"§ 640. Judicial review

"The provisions of section 623 relating to judicial review shall apply to this subchapter.

"§ 640a. Deadlines for rulemaking

"The provisions of section 624 relating to deadlines for rulemaking shall apply to this subchapter.

"SUBCHAPTER IV—EXECUTIVE OVERSIGHT

"§ 641. Definition

"For purposes of this subchapter, the definitions under sections 551 and 621 shall apply.

"§ 642. Procedures

"The Director or other designated officer to whom authority is delegated under section 644 shall—

"(1) establish procedures for agency compliance with this chapter; and

"(2) monitor, review, and ensure agency implementation of such procedures.

"§ 643. Promulgation and adoption

"(a) Procedures established pursuant to section 642 shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

"(b)(1) If procedures established pursuant to section 642 include review of any initial or final analyses of a rule required under this chapter, the time for any such review of any initial analysis shall not exceed 60 days following the receipt of the analysis by the Director, a designee of the President, or by an officer to whom the authority granted under section 642 has been delegated pursuant to section 644.

"(2) The time for review of any final analysis required under this chapter shall not exceed 60 days following the receipt of the analysis by the Director, a designee of the President, or such officer.

"(3)(A) The times for each such review may be extended for good cause by the President or such officer for an additional 30 days.

"(B) Notice of any such extension, together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

"§ 644. Delegation of authority

"(a) The President shall delegate the authority granted by this subchapter to the Director or to another officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate.

"(b) Notice of any delegation, or any revocation or modification thereof shall be published in the Federal Register.

"§ 645. Public disclosure of information

"The Director or other designated officer to whom authority is delegated under section 644, in carrying out the provisions of section 642, shall establish procedures (covering all employees of the Director or other designated officer) to provide public and agency access to information concerning regulatory review actions, including—

"(1) disclosure to the public on an ongoing basis of information regarding the status of regulatory actions undergoing review;

"(2) disclosure to the public, no later than publication of, or other substantive notice to the public concerning a regulatory action, of—

"(A) all written communications, regardless of form or format, including drafts of all proposals and associated analyses, between the Director or other designated officer and the regulatory agency;

"(B) all written communications, regardless of form or format, between the Director or other designated officer and any person not employed by the executive branch of the Federal Government relating to the substance of a regulatory action;

"(C) a record of all oral communications relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

"(D) a written explanation of any review action and the date of such action; and

"(3) disclosure to the regulatory agency, on a timely basis, of—

"(A) all written communications between the Director or other designated officer and any person who is not employed by the executive branch of the Federal Government;

"(B) a record of all oral communications, and an invitation to participate in meetings, relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

"(C) a written explanation of any review action taken concerning an agency regulatory action.

"§ 646. Judicial review

"The exercise of the authority granted under this subchapter by the Director, the President, or by an officer to whom such authority has been delegated under section 644 shall not be subject to judicial review in any manner.".

(b) REGULATORY FLEXIBILITY ANALYSIS.—

(1) IN GENERAL.—Section 611 of title 5, United States Code, is amended to read as follows:

"§ 611. Judicial review

"(a)(1) Except as provided in paragraph (2), no later than 1 year after the effective date of a final rule with respect to which an agency—

"(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities; or

"(B) prepared a final regulatory flexibility analysis pursuant to section 604,

an affected small entity may petition for the judicial review of such certification or analysis in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 of this title or under any other provision of law shall have jurisdiction to review such certification or analysis.

"(2)(A) Except as provided in subparagraph (B), in the case of a provision of law that requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period provided in paragraph (1), such lesser period shall apply to a petition for the judicial review under this subsection.

"(B) In a case in which an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection shall be filed no later than—

"(i) 1 year; or

"(ii) in a case in which a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period provided in paragraph (1), the number of days specified in such provision of law,

after the date the analysis is made available to the public.

"(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be adversely affected by the final rule.

"(4) Nothing in this subsection shall be construed to affect the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

"(5)(A) In a case in which an agency certifies that such rule would not have a significant economic impact on a substantial number of small entities, the court may order the agency to prepare a final regulatory flexibility analysis pursuant to section 604 if the court determines, on the basis of the rulemaking record, that the certification was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(B) In a case in which the agency prepared a final regulatory flexibility analysis, the court may order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the rulemaking record, that the final regulatory flexibility analysis was prepared by the agency without complying with section 604.

"(6) If, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5) (or such longer period as the court may provide), the agency fails, as appropriate—

"(A) to prepare the analysis required by section 604; or

"(B) to take corrective action consistent with section 604 of this title,

the court may stay the rule or grant such other relief as it deems appropriate.

"(7) In making any determination or granting any relief authorized by this subsection, the court shall take due account of the rule of prejudicial error.

"(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the effective date of this Act, except that the judicial review authorized by section 611(a) of title 5, United States Code (as added by subsection (a)), shall apply only to final agency rules issued after such effective date.

(c) PRESIDENTIAL AUTHORITY.—Nothing in this Act shall limit the exercise by the President of the authority and responsibility that the President otherwise possesses under the Constitution and other laws of the United States with respect to regulatory policies, procedures, and programs of departments, agencies, and offices.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Part I of title 5, United States Code, is amended by striking out the chapter heading and table of sections for chapter 6 and inserting in lieu thereof the following:

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"SUBCHAPTER I—REGULATORY ANALYSIS

"Sec.
"601. Definitions.
"602. Regulatory agenda.
"603. Initial regulatory flexibility analysis.
"604. Final regulatory flexibility analysis.
"605. Avoidance of duplicative or unnecessary analyses.
"606. Effect on other law.
"607. Preparation of analysis.
"608. Procedure for waiver or delay of completion.
"609. Procedures for gathering comments.
"610. Periodic review of rules.
"611. Judicial review.
"612. Reports and intervention rights.

"SUBCHAPTER II—ANALYSIS OF AGENCY RULES

"621. Definitions.
"622. Rulemaking cost-benefit analysis.
"623. Judicial review.
"624. Deadlines for rulemaking.
"625. Agency review of rules.
"626. Public participation and accountability.

"SUBCHAPTER III—RISK ASSESSMENTS

"631. Definitions.
"632. Applicability.
"633. Savings provisions.
"634. Principles for risk assessment.
"635. Peer review.
"636. Guidelines, plan for assessing new information, and report.
"637. Research and training in risk assessment.
"638. Interagency coordination.
"639. Plan for review of risk assessments.
"640. Judicial review.
"640a. Deadlines for rulemaking.

"SUBCHAPTER IV—EXECUTIVE OVERSIGHT

"641. Definition.
"642. Procedures.
"643. Promulgation and adoption.
"644. Delegation of authority.
"645. Public disclosure of information.
"646. Judicial review.".

(2) Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

"SUBCHAPTER I—REGULATORY ANALYSIS".

SEC. 4. CONGRESSIONAL REVIEW.

(a) IN GENERAL.—Part I of title 5, United States Code, is amended by inserting after chapter 7 the following new chapter:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"§ 801. Congressional review of agency rulemaking

"(a) For purposes of this chapter, the term—

"(1) 'major rule' means a major rule as defined under section 621(4) of this title and as determined under section 622 of this title; and

"(2) 'rule' (except in reference to a rule of the Senate or House of Representatives) is a reference to a major rule.

"(b)(1) Upon the promulgation of a final major rule, the agency promulgating such rule shall submit to the Congress a copy of the rule, the statement of basis and purpose for the rule, and the proposed effective date of the rule.

"(2) A rule submitted under paragraph (1) shall not take effect as a final rule before the latest of the following:

"(A) The later of the date occurring 45 days after the date on which—

"(i) the Congress receives the rule submitted under paragraph (1); or

"(ii) the rule is published in the Federal Register.

"(B) If the Congress passes a joint resolution of disapproval described under subsection (i) relating to the rule, and the President signs a veto of such resolution, the earlier date—

"(i) on which either House of Congress votes and fails to override the veto of the President; or

"(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President.

"(C) The date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under subsection (i) is approved).

"(c) A major rule shall not take effect as a final rule if the Congress passes a joint resolution of disapproval described under subsection (i), which is signed by the President or is vetoed and overridden by the Congress.

"(d)(1) Notwithstanding any other provision of this section (except subject to paragraph (2)), a major rule that would not take effect by reason of this section may take effect if the President makes a determination and submits written notice of such determination to the Congress that the major rule should take effect because such major rule is—

"(A) necessary because of an imminent threat to health or safety, or other emergency;

"(B) necessary for the enforcement of criminal laws; or

"(C) necessary for national security.

"(2) An exercise by the President of the authority under this subsection shall have no effect on the procedures under subsection (i) or the effect of a joint resolution of disapproval under this section.

"(e)(1) Subsection (i) shall apply to any major rule that is promulgated as a final rule during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes.

"(2) For purposes of subsection (i), a major rule described under paragraph (1) shall be treated as though such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date the succeeding Congress first convenes.

"(3) During the period between the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, a rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law.

"(f) Any rule that takes effect and later is made of no force or effect by the enactment of a joint resolution under subsection (i) shall be treated as though such rule had never taken effect.

"(g) If the Congress does not enact a joint resolution of disapproval under subsection (i), no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such major rule, related statute, or joint resolution of disapproval.

"(h) If the agency fails to comply with the requirements of subsection (b) for any rule, the rule shall cease to be enforceable against any person.

"(i)(1) For purposes of this subsection, the term 'joint resolution' means only a joint resolution introduced after the date on which the rule referred to in subsection (b) is received by Congress the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the _____ relating to _____, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in.)

"(2)(A) In the Senate, a resolution described in paragraph (1) shall be referred to the committees with jurisdiction. Such a resolution shall not be reported before the eighth day after its submission or publication date.

"(B) For purposes of this subsection, the term 'submission or publication date' means the later of the date on which—

"(i) the Congress receives the rule submitted under subsection (b)(1); or

"(ii) the rule is published in the Federal Register.

"(3) In the Senate, if the committee to which a resolution described in paragraph (1) is referred has not reported such resolution (or an identical resolution) at the end of 20 calendar days after its submission or publication date, such committee may be discharged on a petition approved by 30 Senators from further consideration of such resolution and such resolution shall be placed on the Senate calendar.

"(4)(A) In the Senate, when the committee to which a resolution is referred has reported, or when a committee is discharged (under paragraph (3)) from further consideration of, a resolution described in paragraph (1), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Senator to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) shall be waived. The motion shall be privileged in the Senate and shall not be debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the Senate until disposed of.

"(B) In the Senate, debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall be in order and shall not be debatable. An amendment to, or a motion to postpone, or a motion to proceed

to the consideration of other business, or a motion to recommit the resolution shall not be in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order.

"(C) In the Senate, immediately following the conclusion of the debate on a resolution described in paragraph (1), and a single quorum call at the conclusion of the debate if requested in accordance with the Senate rules, the vote on final passage of the resolution shall occur.

"(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

"(5) If, before the passage in the Senate of a resolution described in paragraph (1), the Senate receives from the House of Representatives a resolution described in paragraph (1), then the following procedures shall apply:

"(A) The resolution of the House of Representatives shall not be referred to a committee.

"(B) With respect to a resolution described in paragraph (1) of the Senate—

"(i) the procedure in the Senate shall be the same as if no resolution had been received from the other House; but

"(ii) the vote on final passage shall be on the resolution of the other House.

"(6) This subsection is enacted by Congress—

"(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed to be a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in paragraph (1), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"(j) No requirements under this chapter shall be subject to judicial review in any manner.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting after the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

SEC. 5. STUDIES AND REPORTS.

(a) RISK ASSESSMENTS.—The Administrative Conference of the United States shall—

(1) develop and carry out an ongoing study of the operation of the risk assessment requirements of subchapter III of chapter 6 of title 5, United States Code (as added by section 3 of this Act); and

(2) submit an annual report to the Congress on the findings of the study.

(b) ADMINISTRATIVE PROCEDURE ACT.—No later than December 31, 1996, the Administrative Conference of the United States shall—

(1) carry out a study of the operation of chapters 5 and 6 of title 5, United States Code (commonly referred to as the Administrative Procedure Act), as amended by section 3 of this Act; and

(2) submit a report to the Congress on the findings of the study, including proposals for revision, if any.

SEC. 6. 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 a nationally recognized scientific institution or scholarly organization—

(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.—The Director shall ensure the arrangements under paragraph (1) provide 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 including opportunity for public to submit views, data, and analyses and to provide public comments on the results before making them final.

(C) the analysis is conducted by a balanced group of individuals with relevant expertise, including toxicologists, biologists, engineers and experts in medicine, industrial hygiene and environmental effects and the selection of members for such study committee shall be at the discretion of the scientific body;

(D) the analysis is conducted, to the extent feasible and relevant, consistent with the risk assessment and risk characterization principles in section 634 of this title;

(E) the methodologies and principal scientific determinations made in the analysis are subjected to independent 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); 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.

(G) Nothing in this subsection shall be construed to prevent the Director from entering into a sole-source arrangement with a nationally recognized scientific institution or scholarly organization.

(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.

SEC. 7. REGULATORY ACCOUNTING.

(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) AGENCY.—The term "agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

(A) the General Accounting Office;

(B) the Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(2) REGULATION.—The term "regulation" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedures or practice requirements of an agency. The term shall not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) regulations issued with respect to a military or foreign affairs function of the United States; or

(C) regulations related to agency organization, management, or personnel.

(b) ACCOUNTING STATEMENT.—

(1) IN GENERAL.—(A) The President shall be responsible for implementing and administering the requirements of this section.

(B) Every 2 years, no later than June of the second year, the President shall prepare and submit to Congress an accounting statement that estimates the annual costs of Federal regulatory programs and corresponding benefits in accordance with this subsection.

(2) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

(3) TIMING AND PROCEDURES.—(A) The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

(B) The President shall propose the first accounting statement under this subsection no later than 2 years after the effective date of this Act and shall issue the first accounting statement in final form no later than 3 years after such effective date. Such statement shall cover, at a minimum, each of the fiscal years beginning after the effective date of this Act.

(4) CONTENT OF ACCOUNTING STATEMENT.—(A) Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this paragraph. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

(B)(i) An accounting statement shall estimate the costs of Federal regulatory programs by setting forth, for each year covered by the statement—

(I) the annual expenditure of national economic resources for each regulatory program; and

(II) such other quantitative and qualitative measures of costs as the President considers appropriate.

(ii) For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

(I) Private sector costs.

(II) Federal sector costs.

(III) State and local government costs.

(C) An accounting statement shall estimate the benefits of Federal regulatory programs by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in human health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(c) ASSOCIATED REPORT TO CONGRESS.—

(1) IN GENERAL.—At the same time as the President submits an accounting statement under subsection (b), the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an "associated report"). The associated report shall contain, in accordance with this subsection—

(A) analyses of impacts; and

(B) recommendations for reform.

(2) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(A) The cumulative impact on the economy of Federal regulatory programs covered in the accounting statement. Factors to be considered in such report shall include impacts on the following:

(i) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(ii) Small business.

(iii) Productivity.

(iv) Wages.

(v) Economic growth.

(vi) Technological innovation.

(vii) Consumer prices for goods and services.

(viii) Such other factors considered appropriate by the President.

(B) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(3) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(A) A summary of recommendations of the President for reform or elimination of any

Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(B) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

(d) GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers and the agencies, develop guidance for the agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to this section and section 3 of this Act, including—

(A) detailed guidance on estimating the costs and benefits of major rules; and

(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

(2) to standardize the format of the accounting statements.

(e) RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.—After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving accounting statements prepared pursuant to this section, including recommendations on level of detail and accuracy; and

(2) for improving associated reports prepared pursuant to this section, including recommendations on the quality of analysis.

(f) JUDICIAL REVIEW.—No requirements under this section shall be subject to judicial review in any manner.

SEC. 8. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act shall take effect 180 days after the date of the enactment of this Act, but shall not apply to any agency rule for which a general notice of proposed rulemaking is published on or before such date.

DOMENICI AMENDMENT NO. 1582

(Ordered to lie on the table.)

Mr. DOMENICI submitted an amendment intended to be proposed by him to amendment no. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

At page 77, line 8, after "rule" and before ";" insert the following: ", including whether it is a major rule".

At page 77, line 11, after "available" and before "to" insert the following: "to the Comptroller General, and, upon request,".

At page 77, line 11, after "Congress", strike the following: "and the Comptroller General, upon request".

At page 78, line 12, after "information" and before "relevant" insert the following: "the Comptroller General determines to be".

At page 78, line 13, after "subparagraph (A)" and before "." insert the following: "at such times and in such form as the Comptroller General prescribes".

At page 82, after line 12, insert the following new subsection:

"(4) The Comptroller General shall not be required to report on a rule described under paragraph (1) of this subsection unless so requested by a committee of jurisdiction of either House of Congress."

ROTH AMENDMENTS NOS. 1583–1587

(Ordered to lie on the table.)

Mr. ROTH submitted five amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1583

On page 65, strike all from line 1 through line 15 on page 66 and insert in lieu thereof the following (and thereafter, renumber subsequent sections accordingly):

SUBCHAPTER IV—EXECUTIVE OVERSIGHT

§641. Procedures

(a) IN GENERAL.—The President shall, to the extent permitted by law—

(1) establish a process for the centralized review and coordination of Federal agency regulatory actions; and

(2) monitor, review, and ensure agency compliance with such process. Such review shall be conducted by and be the responsibility of the Director of the Office of Management and Budget, except to the extent that the President designates another reviewing entity to resolve conflicts, as provided under subsection (e).

(b) REGULATORY REVIEW.—For the purpose of carrying out the review established under subsection (a), the Director, not later than 12 months after the date of enactment of this subchapter, shall—

(1) develop and oversee uniform regulatory policies and procedures, including guidelines by which each agency shall prepare the cost-benefit analyses and risk assessments required by subchapter II and III. The guidelines shall—

(A) ensure that evaluations are consistent with subchapters II and III and, to the extent feasible, represent realistic and plausible estimates;

(B) be adopted following public notice and adequate opportunity for comment; and

(C) be used consistently by all agencies covered by this subchapter; and

(D) be reviewed, and when appropriate, revised at least every 4 years by the Director or designee of the President; and

(2) develop policies and procedures for regulatory review, including those by which the Director shall—

(A) designate current regulatory actions or existing rules for analysis and review in accordance with section 623; and

(B) review agency regulatory actions to ensure that they are consistent with applicable law, the purposes of this chapter, and the policies or actions of other agencies, including authority of the Director to—

(i) identify any agency regulatory actions that are duplicative, conflicting, or otherwise inconsistent with any law or policy or with the purposes of this chapter; and

(ii) return to the agency for further consideration any regulatory action in order to minimize or eliminate duplication, conflict, or inconsistency with any law or policy or with the purposes of this chapter.

(c) COMPLIANCE IN EMERGENCY SITUATIONS.—In emergency situations or when an agency is obligated by law to act more quickly than review procedures allow, the agency shall notify the Director or other reviewing entity as soon as possible and, to the extent practicable, comply with the requirements of this section. For those regulatory actions that are governed by a statutory or court imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for the Director or other reviewing entity to comply with the requirements of this section.

(d) REGULATORY ACTION REVIEW BEFORE PUBLIC AVAILABILITY.—Except to the extent required by law, each agency shall not publish or otherwise issue to the public any regulatory action that is subject to review under this section until whichever of the following occurs first—

(1) the Director or other reviewing entity has waived review of the action, has completed review without any requests for further consideration under subsection (b)(2)(B), or otherwise approved publication; or

(2) the time period in Section 642(b) expires without the Director or other reviewing entity having notified the agency that it is returning the regulatory action for further consideration under subsection (b)(2)(B).

(e) RESOLUTION OF AGENCY CONFLICTS.—To the extent permitted by law, disagreements or conflicts between or among agencies or between the Director and an agency regarding regulatory actions or regulatory review that cannot be resolved by the Director, shall be resolved by the President, or by a reviewing entity designated by the President, as provided under subsection (a). Any review undertaken as provided under this subsection shall be in accordance with other requirements of law.

§642. Promulgation and adoption

(a) PUBLIC COMMENT.—Procedures established pursuant to section 641 shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

(b) TIME FOR REVIEW.—(1) If procedures established pursuant to section 641 include review of any initial or final analyses of a rule required under chapter 6, the time for any such review of any initial analysis shall not exceed 90 days following the receipt of the analysis by the Director, a designee of the President, or by an officer to whom the authority granted under section 641 has been delegated pursuant to section 643.

(2) The time for review of any final analysis required under chapter 6 shall not exceed 90 days following the receipt of the analysis by the Director, a designee of the President, or such officer.

(3)(A) To the extent permitted by law and any applicable schedule issued under section 623, the times for each such review may be extended for good cause by the Director for a definite period of time.

(B) Notice of any such extension together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

AMENDMENT NO. 1584

Add a new section 637 to Subchapter III as follows:

SEC. 637. INTERAGENCY COORDINATION.

"(a) To promote the conduct, application, and practice of risk assessment in a consistent manner and to identify risk assessment data and research needs common to more than 1 Federal agency, the Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall—

"(1) periodically survey the manner in which each Federal agency involved in risk assessment is conducting such risk assessment to determine the scope and adequacy of risk assessment practices in use by the Federal Government;

"(2) provide advice and recommendations to the President and Congress based on the surveys conducted and determinations made under paragraph (1);

"(3) establish appropriate interagency mechanisms to promote—

"(A) coordination among Federal agencies conducting risk assessment with respect to the conduct, application, and practice of risk assessment; and

"(B) the use of state-of-the-art risk assessment practices throughout the Federal Government;

"(4) establish appropriate mechanisms between Federal and State agencies to communicate state-of-the-art risk assessment practices; and

"(5) periodically convene meetings with State government representatives and Federal and other leaders to assess the effectiveness of Federal and other leaders to assess the effectiveness of Federal and State cooperation in the development and application of risk assessment.

"(b) The President shall appoint National Peer Review Panels to review every 3 years the risk assessment practices of each covered agency for programs designed to protect human health, safety, or the environment. The Panels shall submit a report to the President and the Congress at least every 3 years containing the results of such review.

AMENDMENT NO. 1585

On page 35, line 23, after "(3)", strike "(A)";

On page 35, line 23, strike "least cost" and insert in lieu thereof "most cost-effective";

On page 35, line 25, strike "; or" and insert in lieu thereof a period;

On page 36, strike lines 1 through 21 in their entirety.

On page 37, line 6, after "(2)", strike "(A)";

On page 37, line 6, strike "least cost" and insert in lieu thereof "most cost-effective";

On page 37, line 8, strike "; or" and insert in lieu thereof a period;

On page 37, strike lines 9 through page 38, line 5.

AMENDMENT NO. 1586

On page 35, line 23, strike lines 23 through 25 and insert in lieu thereof "the rule adopts the alternative with greater net benefits than the reasonable alternatives that achieve the objectives of the statute.

On page 36, strike lines 1 through 21 in their entirety.

On page 37, insert "and" at the end of line 5.

On page 37, strike lines 6 through 8 and insert in lieu thereof "the rule adopts the alternative with the least net cost of the reasonable alternatives that achieve the objectives of the statute."

AMENDMENT NO. 1587

On page 21, between lines 10 and 11, insert the following:

"(A)(i) if a risk assessment is required under subchapter III, the analysis shall summarize the nature and magnitude of the risk identified pursuant to subchapter III and explain how and to what extent such risk is reduced by the proposed rule;".

On page 21, line 11, strike "(A)" and insert in lieu thereof "(A)(ii)".

CHAFEE AMENDMENT NO. 1588

(Ordered to lie on the table.)

Mr. CHAFEE submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

Beginning on page 75, line 1, strike the following:

"(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, in the case of a rule adopted in a proceeding subject to section 553; or"

and redesignate the following subparagraph as "(F)".

On page 75, after line 12, insert the following:

"(c) In making a finding under subsection (a)(2)(A) of this section, the court shall determine whether the factual basis of a rule adopted in a proceeding subject to section 553 of this title is without substantial support in the rulemaking file."

ROTH AMENDMENT NO. 1589

(Ordered to lie on the table.)

Mr. ROTH submitted an amendment intended to be proposed by him to amendment no. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

Beginning on page 75, line 1, strike the following:

"(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, in the case of a rule adopted in a proceeding subject to section 553; or" and redesignate the following subparagraph as "(F)".

CHAFEE AMENDMENTS NOS. 1590–1591

(Ordered to lie on the table.)

Mr. CHAFEE submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1590

Beginning on page 59, line 10, strike all through page 60, line 23 (the proposed section 634 on petition for review of a major free-standing risk assessment).

AMENDMENT NO. 1591

On page 40, line 11, strike "5-year" and insert "2-year".

On page 40, line 16, strike "2 years" and insert "6 months".

On page 40, line 21, strike "5-year" and insert "2-year".

On page 41, line 1, strike "2 years" and insert "6 months".

On page 41, line 5, strike "5-year" and insert "2-year".

On page 41, line 11, strike "2 years" and insert "6 months".

CHAFEE (AND LIEBERMAN) AMENDMENT NO. 1592

(Ordered to lie on the table.)

Mr. CHAFEE (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

Beginning on page 38, line 14, strike all through page 40, line 7 (the proposed section 625 on jurisdiction and judicial review), and insert in lieu thereof the following:

SEC. 625. JUDICIAL REVIEW.

"(a) Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall not be subject to judicial review except in connection with review of a final agency rule and according to the provisions of this section.

"(b) Any determination by a designee of the President or the Director that a rule is, or is not, a major rule shall not be subject to judicial review in any manner.

"(c) The determination by an agency that a rule is, or is not, a major rule shall be set aside by a reviewing court only upon a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time the agency made the determination.

"(d) If the cost-benefit analysis or risk assessment required under this chapter has been wholly omitted for any major rule, a court shall vacate the rule and remand the case for further consideration. If an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.

"(e) Any cost-benefit analysis or risk assessment prepared under this chapter shall not be subject to judicial consideration separate or apart from review of the agency action to which it relates. When an action for judicial review of an agency action is instituted, any analysis or assessment for such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action.".

CHAFEE AMENDMENTS NOS. 1593–1595

(Ordered to lie on the table.)

Mr. CHAFEE submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1593

Amend section 621 of title 5, United States Code, as added by section 4(a) by inserting after paragraph (5), the following new paragraph:

"(6) The term 'major rule' does not include a rule that approves, in whole or in part, a plan or program adopted by a State that provides for the implementation, maintenance, or enforcement of Federal standards or requirements;".

AMENDMENT NO. 1594

On page 36, beginning at line 11, strike all through line 21 (the proposed paragraph (4) on reducing risks).

Beginning on page 37, line 19, strike all through page 38, line 5 (the proposed paragraph (3) on reducing risks).

AMENDMENT NO. 1595

On page 25, after line 6, insert the following new paragraph:

"(3) No numerical estimate of benefits prepared pursuant to this subchapter shall in any way discount the value of benefits expected to be experienced in the future."

CHAFEE AMENDMENT NO. 1596

(Ordered to lie on the table.)

Mr. CHAFEE submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

Beginning on page 35, line 9, strike all through page 38, line 13 (the proposed section 624 on decisional criteria) and insert in lieu thereof the following:

"SECTION 624. DECISIONAL CRITERIA.

"(a) CONSTRUCTION WITH OTHER LAWS.—If, with respect to any action to be taken by a

Federal agency, it is not possible for the agency to comply both with the provisions of this section and the provisions of other law, the provisions of this section shall not apply to the action.

"(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

"(1) the benefits from the rule justify the costs of the rule;

"(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(iii); and

"(3)(A) there is no other reasonable alternative that provides equal or greater benefits at less cost; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits.

"(c) ALTERNATIVE REQUIREMENTS.—If an agency head has a nondiscretionary duty to promulgate a rule that cannot satisfy one or more of the criteria established by subsection (b), the agency head shall promulgate the rule ensuring that the remaining criteria of subsection (b) are satisfied.

"(d) PUBLICATION OF THE REASONS FOR NONCOMPLIANCE.—If an agency promulgates a rule to which subsection (c) applies, the agency head shall prepare a written explanation of why the agency is required to promulgate a rule that does not satisfy the criteria of subsection (b) and shall transmit the explanation with the final cost-benefit analysis to Congress when the final rule is promulgated."

STEVENS AMENDMENTS NOS. 1597–1603

(Order to lie on the table.)

Mr. STEVENS submitted seven amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1597

On page 19, strike lines 5 through 7 and insert in lieu thereof the following:

"78aaa et seq.);

"(xii) a rule that involves the international trade laws of the United States;

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

"(xiv) a rule that allocates resources or promotes competition among industry sectors, such as a rule to establish catch limits pursuant the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) or to require interconnection among common carriers pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

"(xv) a rule that involves hunting under the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).

AMENDMENT NO. 1598

On page 19, beginning on line 16, strike all through page 20, line 6, and insert in lieu thereof the following:

"(1) whether the rule is or is not a major rule within the meaning of section 621(5)(A)(i) or 621(5)(C), or has been designated a major rule under section 621(5); and

"(2) if the agency determines that the rule is a major rule, whether the rule requires or does not require the preparation of a risk assessment under section 632(a).

"(b) DESIGNATION.—(1) If an agency has determined that a rule is not a major rule within the meaning of section 621(5)(A)(i) or 621(5)(C), the President may determine that the rule is a major rule or designate".

AMENDMENT NO. 1599

On page 20, beginning on line 23, strike all through page 21, line 4, and insert in lieu thereof the following:

"(B)(i) When the President has published a determination or designation that a rule is a major rule after the publication of the notice of proposed rulemaking for the rule, the agency shall promptly issue and place in the rulemaking file an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis."

AMENDMENT NO. 1600

On page 14, strike lines 3 through 17 and insert in lieu thereof the following:

plexity of the decision and any need for expedition.

"(5) the term 'major rule' means—

"(A) a rule or set of closely related rules that the agency proposing the rule or the President determines is likely to have a gross annual effect on the economy of $100,000,000 or more in reasonably quantifiable increased costs (and this limit my be adjusted periodically by the Director, at the Director's sole discretion, to account for inflation);

"(B) a rule that is otherwise designated a major rule by the President (and designation or failure to designate under this clause shall not be subject to judicial review); or

"(C) any rule or set of closely related rules, not determined to be a major rule pursuant to subparagraph (A) or (B), that the agency proposing the rule determines will have a significant economic impact on a substantial number of small businesses, pursuant to subchapter I;

"(6) the term 'market-based mechanism' means—.

AMENDMENT NO. 1601

On page 3, line 7, strike "dures." and insert in lieu thereof "dures established by law or practice for the internal procurement or administrative functions of that agency."

AMENDMENT NO. 1602

On page 12, beginning with "(1)" on line 13, strike all through "(2)" on line 18.

AMENDMENT NO. 1603

On page 48, line 7, strike "this subchapter." and insert in lieu thereof "this subchapter. For the purposes of this subchapter, the term 'protection of the environment' shall not include any rule to manage the harvest of fish or game.".

HATCH AMENDMENTS NOS. 1604–1608

(Order to lie on the table.)

Mr. HATCH submitted five amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1604

On page 38, strike lines 6 through 13, and insert in lieu thereof the following:

"(d) To the maximum extent possible, and consistent with the policy goals of this subchapter, agency discretion under existing statutes shall be construed broadly to require the agency to identify and select reasonable alternatives that satisfy subsection (b) and maximize net benefits.

"(e) PUBLICATION OF REASONS FOR NONCOMPLIANCE.—If an agency promulgates a rule to which subsection (c) applies, the agency head shall prepare a written explanation of why the agency was required to promulgate a rule that does not satisfy the criteria of subsection (b) and shall transmit the explanation with the final cost-benefit analysis to Congress when the final rule is promulgated.".

AMENDMENT NO. 1605

On page 35, strike lines 23 through 25 and insert in lieu thereof the following:

"(3)(A) the rule adopts the alternative that achieves the greater net benefits of the reasonable alternatives that achieve the objectives of the statute; or".

AMENDMENT NO. 1606

On page 36, strike lines 1 through 21.

AMENDMENT NO. 1607

On page 37, strike lines 6 through 8, and insert in lieu thereof the following:

"(2)(A) the rule adopts the alternative that achieves the least net cost of the reasonable alternatives that achieve the objectives of the statute; or".

AMENDMENT NO. 1608

On page 37, strike lines 9 through 25 and on page * * *, lines 1 through 5.

CRAIG AMENDMENTS NOS. 1609–1610

(Ordered to lie on the table.)

Mr. HATCH (for Mr. CRAIG) submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1609

On page 27, line 20, strike the number "11", and insert the number "7".

AMENDMENT NO. 1610

On page 27, line 5, strike the number "11", and insert the number "7".

LIEBERMAN AMENDMENT NO. 1611

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 44, beginning with line 14, strike all through line 4 on page 46 and insert in lieu thereof the following:

"§ 629. Petition for alternative method of compliance

"(a) Except as provided in subsection (j) or unless prohibited by the statute authorizing a rule, any person subject to a rule may petition the relevant agency implementing the rule to modify or waive the specific requirements of a rule and to authorize an alternative compliance strategy satisfying the criteria of subsection (b).

"(b) Any petition submitted under subsection (a) shall—

"(1) identify with reasonable specificity the requirements for which the modification or waiver is sought and the alternative compliance strategy being proposed;

"(2) identify the facility to which the modification or waiver would pertain;

"(3) considering all the significant applicable human health, safety, and environmental benefits intended to be achieved by the rule, demonstrate that the alternative compliance strategy, from the standpoint of the applicable human health, safety, and environmental benefits, taking into account an environmental media, will achieve—

"(A) a significantly better result than would be achieved through compliance with the rule; or

"(B) an equivalent result at significantly lower compliance costs than would be achieved through compliance with the rule; and

"(4) demonstrate that the proposed alternative compliance strategy provides a degree of accountability, enforceability, and public and agency access to information at least equal to that of the rule.

"(c) No later than the date on which the petitioner submits the petition to the agency, the petitioner shall inform the public of the submission of such petition (including a brief description of the petition) through publication of a notice in newspapers of general circulation in the area in which the facility is located. The agency may authorize or require petitioners to use additional or alternative means of informing the public of the submission of such petitions. If the agency proposes to grant the petition, the agency shall provide public notice and opportunity to comment.

"(d) The agency may approve the petition upon determining that the proposed alternative compliance strategy—

"(1) considering all the significant applicable human health, safety, and environmental benefits intended to be achieved by the rule, from the standpoint of the applicable public health, safety, and environmental benefits, taking into account all environmental media, will achieve—

"(A) a significantly better result than would be achieved through compliance with the rule; or

"(B) an equivalent result at significantly lower compliance costs than would be achieved through compliance with the rule;

"(2) will provide a degree of accountability, enforceability, and public and agency access to information at least equal to that provided by the rule;

"(3) will not impose an undue burden on the agency that would be responsible for administering and enforcing such alternative compliance strategy; and

"(4) satisfies any other relevant factors.

"(e) Where relevant, the agency shall give priority to petitions with alternative compliance strategies using pollution prevention approaches.

"(f) In making determinations under subsection (d), the agency shall take into account any relevant cross-media effects of the proposed alternative compliance strategy, and whether the proposed alternative compliance strategy would transfer any significant health, safety, or environmental effects to other geographic locations, future generations, or classes of people.

"(g) Any alternative compliance strategy for which a petition is granted under this section shall be enforceable as if it were a provision of the rule being modified or waived.

"(h) The grant of a petition under this section shall be judicially reviewable as if it were the issuance of an amendment to the rule being modified or waived. The denial of a petition shall not be subject to judicial review.

"(i) No agency may grant more than 30 petitions per year under this section.

"(j) If the statute authorizing the rule that is the subject of the petition provides procedures or standards for an alternative method of compliance, the petition shall be reviewed solely under the terms of the statute.

CHAFEE (AND LIEBERMAN) AMENDMENT NO. 1612

(Ordered to lie on the table.)

Mr. CHAFEE (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 23, strike lines 1 through 3.

On page 23, strike lines 17 through 19, and insert in lieu thereof:

"(B) if not expressly or implicitly inconsistent with the statute under which the agency is acting, a reasonable determination, based on the rulemaking file considered as a whole, whether—

"(i) the benefits of the rule justify the costs of the rule; and

"(ii) the rule will achieve the rulemaking objectives in a more cost-effective manner than the alternatives described in the rulemaking, including the market-based mechanisms identified under subsection (c)(2)(C)(iii)".

On page 25, insert between lines 22 and 23:

"(g) CERTIFICATION OF ANALYSIS.—Each agency shall, consistent with Chapter 5 and other applicable law, provide in any proposed or final rulemaking notice published in the Federal Register—

"(1) a certification of compliance with the requirements of this chapter, or an explanation why such certification cannot be made; and

"(2) a certification that the rule will produce benefits that will justify the cost to the Government and to the public implementation of, and compliance with, the rule, or an explanation why such certification cannot be made.

On page 26, lines 16–17, strike "the decisional criteria of section 624" and insert in lieu thereof: "the determination made in section 622(d)(2)(B)".

On page 28, line 22, strike "the findings required by section 624" and insert in lieu thereof: "the determination made in section 622(d)(2)(B)".

On page 29, lines 22 through 23, strike "the decisional criteria under section 624" and insert in lieu thereof: "the determination made in section 622(d)(2)(B)".

On page 32, line 18, strike "the decisional criteria of section 624" and insert in lieu thereof: "the determination made in section 622(d)(2)(B)".

On page 33, lines 11 through 12, strike "the decisional criteria of section 624" and insert in lieu thereof: "the determination made in section 622(d)(2)(B)".

On page 35, line 9, through page 38, line 13, strike entire section 624, and renumber sections accordingly.

On page 44, strike lines 8 through 13.

LIEBERMAN (AND CHAFEE) AMENDMENT NO. 1613

(Ordered to lie on the table.)

Mr. LIEBERMAN (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 97, after line 7, insert the following:

"SEC. 10. HUMAN HEALTH, SAFETY AND THE ENVIRONMENT.—Nothing in this Act shall be construed to revise, amend or in any fashion weaken the requirements or criteria of any statute protecting human health, safety or the environment, including the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act or the Resource Conservation and Recovery Act, or any amendments thereto."

KENNEDY AMENDMENT NOS. 1614–1626

(Ordered to lie on the table.)

Mr. KENNEDY submitted 13 amendments intended to be proposed by him to amendment no. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1614

On page 71, strike out lines 13 through 23.

AMENDMENT NO. 1615

On page 71, strike out lines 13 through 23 and insert in lieu thereof the following new subsection:

(c) SENSE OF THE SENATE REGARDING REFORM OF THE DELANEY CLAUSE.—It is the sense of the Senate that—

(1) the Delaney Clause in the Federal Food, Drug, and Cosmetic Act governing carcinogens in foods must be reformed;

(2) any such reform of the Delaney Clause—

(A) should reflect the care and deliberativeness due to a subject as important as whether and to what extent infants and children shall be exposed to carcinogens through the food they consume; and

(B) should not undermine other safety standards.

(3) advances in science and technology since the Delaney Clause was originally enacted in 1958 have prompted the need to refine the standards in current law with respect to pesticide residues, and may have limited the appropriateness of such standards with respect to food additives and animal drugs;

(4) the Delaney Clause should be replaced by a contemporary health-based standard that takes into account—

(A) the right of the American people to safe food;

(B) the conclusions of the National Academy of Sciences concerning the special susceptibility of infants and children to the effects of pesticide chemicals and the cumulative effect of the residues of such pesticide chemicals on human health;

(C) the importance of a stable food supply and a sound agricultural economy; and

(D) the interests of consumers, farmers, food manufacturers, and other interested parties; and

(5) prior to the end of the first session of the 104th Congress, after appropriate consideration by the committees of jurisdiction, the Senate should enact legislation to reform the Delaney Clause.

AMENDMENT NO. 1616

On page 71, strike out lines 13 through 23 and insert in lieu thereof the following new subsection:

(c) REVISION OF CERTAIN PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT RELATING TO THE SAFETY OF FOOD.—

(1) TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES.—Section 408(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(b)) is amended—

(A) by striking "and (3) to the opinion" and inserting "(3) to the opinion"; and

(B) by striking the period at the end of the second sentence and inserting the following: "; and (4) to the susceptibility of infants and children to the effects of pesticide chemicals and the residues of such pesticide chemicals.".

(2) FOOD ADDITIVES.—

(A) IN GENERAL.—Section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)) is amended to read as follows:

"(A) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe: *Provided*, That no additive shall be deemed to be safe if such additive is found to induce cancer when ingested by man or animal, or if such additive is found, after tests that are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal, except that this proviso shall not apply with respect to—

"(i) the use of a substance as an ingredient of feed for animals that are raised for food production if the Secretary finds that—

"(I) under the conditions of use and feeding specified in the proposed labeling, and reasonably certain to be followed in practice, such additive will not adversely affect the animal for which such feed is intended; and

"(II) there are no residues of the additive as defined by the Secretary (when tested by methods of examination prescribed or approved by the Secretary by regulation, which regulations shall not be subject to subsections (f) and (g)) in any edible portion of such animal after slaughter or in any food derived from the living animal;

"(ii) the use of any substance in food (except the use of a substance as an ingredient of feed for animals that are raised for food production) that the Secretary, by regulation (which regulations shall not be subject to subsections (f) and (g)) finds that the petitioner has shown, based on clear and convincing scientifically valid data, that—

"(I) the amount of the additive that is present in food as a result of the intended uses of such additive will be insignificant; and

"(II) the amount of the additive that is present in food as a result of the intended uses of such additive will present no risk to the public health;

"(iii) the use of any substance in food if the Secretary finds that the petitioner has shown, based on clear and convincing scientifically valid data, that the additive induces cancer in animals through mechanisms that do not operate in humans and, therefore, that the additive would be reasonably anticipated not to cause cancer in humans; or

"(iv) a residue of a pesticide chemical; or".

(B) ADDITIONAL ASSESSMENT CONSIDERATIONS.—Section 409(c)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(5)), as amended by subparagraph (A), is further amended—

(i) in subparagraph (B), by striking "and" at the end thereof;

(ii) in subparagraph (C), by striking the period at the end thereof and inserting "; and"; and

(iii) by adding at the end thereof the following new subparagraph:

"(D) the susceptibility of infants and children to the effects of residues of pesticide chemicals.".

(3) NEW ANIMAL DRUGS.—Section 512(d)(1)(I) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(d)(1)) is amended to read as follows:

"(I) such drug induces cancer when ingested by man or animal, or, after tests that are appropriate for the evaluation of the safety of such drug, induces cancer in man or animal, except that this subparagraph shall not apply with respect to—

"(i) such drug if the Secretary finds that—

"(I) under the conditions of use and feeding specified in the proposed labeling, and reasonably certain to be followed in practice, such drug will not adversely affect the animal for which such drug is intended; and

"(II) there are no residues of such drug as defined by the Secretary (when tested by methods of examination prescribed or approved by the Secretary by regulation, which regulations shall not be subject to subsections (f) and (g)) in any edible portion of such animal after slaughter or in any food derived from the living animal; or

"(ii) such drug if the Secretary finds that the applicant has shown, based on clear and convincing scientifically valid data, that such drug or the residues of such drug induce cancer in animals through mechanisms that do not operate in humans and, therefore, that neither such drug nor the residues of such drug would be reasonably anticipated to cause cancer in humans;".

AMENDMENT NO. 1617

On page 71, strike out lines 13 through 23 and insert in lieu thereof the following new subsection:

(c) REVISION OF CERTAIN PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT RELATING TO THE SAFETY OF FOOD.—

(1) FOOD ADDITIVES.—

(A) IN GENERAL.—Section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)) is amended to read as follows:

"(A) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe: *Provided*, That no additive shall be deemed to be safe if such additive is found to induce cancer when ingested by man or animal, or if such additive is found, after tests that are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal, except that this proviso shall not apply with respect to—

"(i) the use of a substance as an ingredient of feed for animals that are raised for food production if the Secretary finds that—

"(I) under the conditions of use and feeding specified in the proposed labeling, and reasonably certain to be followed in practice, such additive will not adversely affect the animal for which such feed is intended; and

"(II) there are no residues of the additive as defined by the Secretary (when tested by methods of examination prescribed or approved by the Secretary by regulation, which regulations shall not be subject to subsections (f) and (g)) in any edible portion of such animal after slaughter or in any food derived from the living animal;

"(ii) the use of any substance in food (except the use of a substance as an ingredient of feed for animals that are raised for food production) that the Secretary, by regulation (which regulations shall not be subject to subsections (f) and (g)) finds that the petitioner has shown, based on clear and convincing scientifically valid data, that—

"(I) the amount of the additive that is present in food as a result of the intended uses of such additive will be insignificant; and

"(II) the amount of the additive that is present in food as a result of the intended uses of such additive will present no risk to the public health;

"(iii) the use of any substance in food if the Secretary finds that the petitioner has shown, based on clear and convincing scientifically valid data, that the additive induces cancer in animals through mechanisms that do not operate in humans and, therefore, that the additive would be reasonably anticipated not to cause cancer in humans; or

"(iv) a residue of a pesticide chemical; or".

(B) ADDITIONAL ASSESSMENT CONSIDERATIONS.—Section 409(c)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(5)), as amended by subparagraph (A), is further amended—

(i) in subparagraph (B), by striking "and" at the end thereof;

(ii) in subparagraph (C), by striking the period at the end thereof and inserting "; and"; and

(iii) by adding at the end thereof the following new subparagraph:

"(D) the susceptibility of infants and children to the effects of residues of pesticide chemicals.".

(2) NEW ANIMAL DRUGS.—Section 512(d)(1)(I) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(d)(1)) is amended to read as follows:

"(I) such drug induces cancer when ingested by man or animal, or, after tests that are appropriate for the evaluation of the safety of such drug, induces cancer in man or animal, except that this subparagraph shall not apply with respect to—

"(i) such drug if the Secretary finds that—

"(I) under the conditions of use and feeding specified in the proposed labeling, and reasonably certain to be followed in practice, such drug will not adversely affect the animal for which such drug is intended; and

"(II) there are no residues of such drug as defined by the Secretary (when tested by methods of examination prescribed or approved by the Secretary by regulation, which regulations shall not be subject to subsections (f) and (g)) in any edible portion of such animal after slaughter or in any food derived from the living animal; or

"(ii) such drug if the Secretary finds that the applicant has shown, based on clear and convincing scientifically valid data, that such drug or the residues of such drug induce cancer in animals through mechanisms that do not operate in humans and, therefore, that neither such drug nor the residues of such drug would be reasonably anticipated to cause cancer in humans;".

AMENDMENT NO. 1618

On page 19, between lines 7 and 8, insert the following new clause:

"( ) a rule or agency action relating to performance standards for electrical wires that connect patients to medical devices".

AMENDMENT NO. 1619

On page 44, after line 13, strike section 629.

AMENDMENT NO. 1620

On page 14, between lines 16 and 17, insert the following:

"(6) the term 'major rule' does not include a rule the primary purpose of which is to protect the special health needs of women.

On page 49, line 21, strike "or".

On page 50, line 2, strike the period at the end and insert "; or".

On page 50, between lines 2 and 3, insert the following:

"(F) a rule or agency action the primary purposes of which is to protect the special health needs of women.

On page 88, strike lines 15 through 19 and insert the following:

"§ 807. Exemptions.

"Nothing in this chapter shall apply to rules—

"(1) that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee; or

"(2) the primary purposes of which is to protect the special health needs of women.".

AMENDMENT NO. 1621

On page 14, between lines 16 and 17, insert the following:

"(6) the term 'major rule' does not include a rule the primary purpose of which is to protect the health and safety of children.

On page 49, line 21, strike "or".

On page 50, line 2, strike the period at the end and insert "; or".

On page 50, between lines 2 and 3, insert the following:

"(F) a rule or agency action the primary purposes of which is to protect the health or safety of children.

On page 88, strike lines 15 through 19 and insert the following:

"§ 807. Exemptions.

"Nothing in this chapter shall apply to rules—

"(1) that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee; or

"(2) the primary purposes of which is to protect the health or safety of children".

AMENDMENT NO. 1622

On page 16, line 16, insert "or removal from" after "into".

AMENDMENT NO. 1623

On page 49, line 12, insert "or removal from" after "into".

AMENDMENT NO. 1624

On page 49, line 17, insert "compliance activities, educational and guidance documents," after "permit,".

AMENDMENT NO. 1625

On page 46, insert between lines 4 and 5 the following:

"§ 629A. Inapplicability to mine safety and health regulations

"This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to mine safety and health.

On page 50, insert between lines 15 and 16 the following new paragraph:

"(4) This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to mine safety and health.

On page 96, insert between lines 20 and 21 the following new section:

SEC. . MINE SAFETY AND HEALTH REGULATIONS.

The Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) is amended by inserting after section 101 the following new section:

"RISK ASSESSMENTS FOR FINAL STANDARDS

"SEC. 101a. (a) In promulgating any final mine safety and health regulation or standard, the Secretary shall publish in the Federal Register—

"(1) an estimate, calculated with as much specificity as practicable, of the risk to the health and safety of employees addressed by such regulation or standard, the affect of such regulation or standard on human health or the environment, and the costs associated with the implementation of, and compliance with, such regulation or standard;

"(2) a comparative analysis of the risk addressed by such regulation or standard relative to other risks to which employees are exposed; and

"(3) a certification that—

"(A) the estimate under paragraph (1) and the analysis under paragraph (2) are—

"(i) based upon a scientific evaluation of the risk to the health and safety of employees and to human health or the environment; and

"(ii) supported by the best available scientific data;

"(B) such regulation or standard will substantially advance the purpose of protecting employee health and safety or the environment against the specified identified risk; and

"(C) such regulation or standard will produce benefits to employee health and safety or the environment that will justify the cost to the Federal Government and the public of the implementation of and compliance with such regulation or standard.

"(b) If the Secretary cannot make the certification required under subsection (a)(3), the Secretary shall—

"(1) notify the Congress concerning the reasons why such certification cannot be made; and

"(2) publish a statement of such reasons with the final regulation or standard.

"(c) Nothing in this section shall be construed to grant a cause of action to any person.".

AMENDMENT NO. 1626

On page 25, between lines 22 and 23, insert the following:

"(g) EXEMPTION FOR RULE OR AGENCY ACTION RELATING TO THE SAFETY OR BLOOD SUPPLY.—None of the provisions of this subchapter or subchapter III shall apply to any rule or agency action intended to ensure the safety, efficacy, or availability of blood, blood products, or blood-derived products.

LEVIN AMENDMENTS NOS. 1627–1649

(Ordered to lie on the table.)

Mr. LEVIN submitted 23 amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1627

On page 75, strike lines 1 through 5 and renumber accordingly.

On page 8, line 12, strike "substantially."

AMENDMENT NO. 1628

On page 19, between lines 7 and 8, insert the following new subparagraph:

"(xiii) a rule or agency action of the Federal Election Commission or a rule or agency action issued under section 315 and section 312(a)(7) of the Federal Communications Act of 1934."

AMENDMENT NO. 1629

On page 3, line 2, strike "or".

On page 3, line 7, strike the period and insert the following: "; or

"(5) a rule relating to government loans, grants or benefits."

AMENDMENT NO. 1630

On page 57, line 25, strike "such person;" and insert "such person or an employer of such person;"

AMENDMENT NO. 1631

On page 21, line 25, insert between "of" and "reasonable" the following: "a reasonable number of".

On page 23, line 11, insert between "and of" and "the" the following: "a reasonable number of".

AMENDMENT NO. 1632

On page 39, line 18, strike subsection (e).

AMENDMENT NO. 1633

On page 36, line 2, strike "nonquantifiable".

On page 36, line 10, strike "; and" and substitute ".".

On page 36, line 11, strike paragraph (4).

On page 37, line 10, strike "nonquantifiable".

On page 37, at the end of line 5, insert "and".

On page 37, line 18, strike "; and" and insert ".".

On page 37, line 19, strike paragraph (3).

AMENDMENT NO. 1634

On page 22, line 19, after "scientific evaluations," insert "cost estimates,".

On page 22, line 24, after "scientific evaluation," insert "cost estimate,".

AMENDMENT NO. 1635

On page 16, lines 15 and 16, strike "a rule or agency action that authorizes the introduction into" and substitute "the introduction into or removal from".

On page 16, line 25, strike "or that provides relief, in whole or in part, from a statutory prohibition," and all that follows through page 17, line 4.

On page 49, line 11, strike "a rule or agency action that authorizes the introduction into" and substitute "the introduction into or removal from".

AMENDMENT NO. 1636

On page 8, line 12, strike "substantially".

AMENDMENT NO. 1637

On page 3, line 25, strike "text of".

On page 4, line 2, strike "text of".

On page 8, line 3, strike "text of".

On page 8, line 5, strike "text of".

AMENDMENT NO. 1638

On page 57, line 11, insert after the word "panels" the following: "or reports which have been subject to peer review".

AMENDMENT NO. 1639

On page 58, line 24, strike everything through page 59, line 3.

AMENDMENT NO. 1640

On page 57, line 11, insert after the word "panels" the following: "or reports which have been subject to peer review".

AMENDMENT NO. 1641

On page 40, line 8, strike everything through page 41, line 12, and insert the following:

SEC. 626. DEADLINES FOR RULEMAKING.

"(a) All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

"(b) All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

"(c) In any case in which the failure to promulgate a rule by a deadline occurring during the 2-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

AMENDMENT NO. 1642

On page 75, strike lines 1 through 5 and renumber accordingly.

AMENDMENT NO. 1643

On page 57, line 25, strike "such person;" and insert "such person or an employer of such person;"

AMENDMENT NO. 1644

On page 14, strike out line 11 and all that follows through line 18 and substitute the following:

"(B) any other rule that is—

"(i) otherwise designated a major rule by the agency proposing the rule, the Director, or a designee of the President; or

"(ii) designated a major rule by the Chief Counsel for Advocacy of the Small Business Administration with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, or solely by the Administrator of the Office of Information and Regulatory Affairs, pursuant to the designation procedures established in paragraphs (e)(2) and (3) of section 623,

provided that a designation or failure to designate under this clause shall not be subject to judicial review;

"(6) the term 'market-based mechanism' means a regulatory program that—".

AMENDMENT NO. 1645

On page 33, at the end of line 13, insert "or repeal".

On page 33, line 17, strike "or repeal".

On page 34, line 11, after "to amend", insert "or repeal".

On page 34, line 17, after "modify" insert "or repeal".

On page 34, line 24, strike "the head of the agency" and all that follows through the end of the sentence and insert in lieu thereof the following:

"the rule shall be subject to the congressional disapproval procedure under section 802 as of the date of the deadline, and shall terminate by operation of law upon the enactment of a joint resolution of disapproval pursuant to such section.".

AMENDMENT NO. 1646

On page 15, line 18, strike paragraph (8) and substitute the following:

"(8) the term 'reasonable alternatives' means a reasonable number of significant alternatives proposed by the agency or by persons commenting on a proposed rule, which the agency has authorization to consider under its permissible interpretation of the statute, including flexible regulatory options described in section 622(c)(2)(c)(iii), unless precluded by the statute granting the rulemaking authority."

AMENDMENT NO. 1647

On page 25, beginning with line 23, strike out all through line 8 on page 35 and insert in lieu thereof the following:

"§ 623. Agency regulatory review

"(a) PRELIMINARY SCHEDULE FOR RULES.—(1) Not later than 1 year after the date of the enactment of this section, and every 5 years thereafter, the head of each agency shall publish in the Federal Register a notice of proposed rulemaking under section 553 that contains a preliminary schedule of rules selected for review under this section by the head of the agency and in the sole discretion of the head of the agency, and request public comment thereon, including suggestions for additional rules warranting review. The agency shall allow at least 180 days for public comment.

"(2) The preliminary schedule under this subsection shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years from the date of publication of the preliminary schedule.

"(3) In selecting rules and establishing deadlines for the preliminary schedule, the head of the agency shall consider the extent to which, in the judgment of the head of the agency—

"(A) a rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

"(B) the benefits of the rule do not justify its costs or the rule does not achieve the rulemaking objectives in a cost-effective manner;

"(c) a rule could be revised in a manner allowed by the statute authorizing the rule so as to—

"(i) substantially decrease costs;

"(ii) substantially increase benefits; or

"(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii);

"(D) the importance of each rule relative to other rules being reviewed under this section; or

"(E) the resources expected to be available to the agency to carry out the reviews under this section.

"(b) SCHEDULE.—(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), the head of each agency shall publish a final rule that establishes a schedule of rules to be reviewed by the agency under this section.

"(2) The schedule shall establish a deadline for completion of the review of each rule listed on the schedule, taking into account the criteria in subsection (a)(3) and comments received in the rulemaking under subsection (a). Each such deadline shall occur not later than 11 years from the date of publication of the preliminary schedule.

"(3) The head of the agency shall modify the agency's schedule under this section to reflect any change contained in an appropriations Act under subsection (d).

"(c) JUDICIAL REVIEW.—(1) Notwithstanding section 623 and except as provided otherwise in this subsection, judicial review of agency action taken pursuant to the requirements of this section shall be limited to review of compliance or noncompliance with the requirements of this section.

"(2) Agency decisions to place, or decline to place, a rule on the schedule, and the deadlines for completion of a rule, shall not be subject to judicial review.

"(d) ANNUAL BUDGET.—(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

"(A) identify as a separate sum the amount requested to be appropriated for implementation of this section during the upcoming fiscal year; and

"(B) include a list of rules which may be subject to subsection (e)(3) during the year for which the budget proposal is made.

"(2) Amendments to the schedule under subsection (b) to place a rule on the schedule for review or change a deadline for review of a rule may be included in annual appropriations Acts for the relevant agencies. An authorizing committee with jurisdiction may recommend, to the House of Representatives or Senate appropriations committee (as the case may be), such amendments. The appropriations committee to which such amendments have been submitted may include the amendments in the annual appropriations Act for the relevant agency. Each agency shall modify its schedule under subsection (b) to reflect such amendments that are enacted into law.

"(e) REVIEW OF RULE.—(1) For each rule on the schedule under subsection (b), the agency shall—

"(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be continued, amended, or repealed;

"(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

"(i) addresses public comments generated by the notice in subparagraph (A);

"(ii) contains a preliminary analysis provided by the agency of whether the rule is a major rule, and if so, whether the benefits of the rule justify its costs;

"(iii) contains a preliminary determination as to whether the rule should be continued, amended, or repealed; and

"(iv) solicits public comment on the preliminary determination for the rule; and

"(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

"(i) addresses public comments generated by the notice in subparagraph (B); and

"(ii) contains a final determination of whether to continue, amend, or repeal the rule;

"(iii) if the agency determines to continue the rule and the rule is a major rule, describes a final analysis as to whether the benefits of the rule justify its costs; and

"(iv) if the agency determines to amend or repeal the rule, contains a notice of proposed rulemaking under section 553.

"(2) If the final determination of the agency is to continue the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(C).

"(3) If the final determination of the agency is to continue the rule, and the agency has concluded that the benefits do not justify the costs, the agency shall transmit to

the appropriate committees of Congress the cost-benefit analysis and a statement of the agency's reasons for continuing the rule.

"(f) DEADLINE FOR FINAL AGENCY ACTION ON MODIFIED RULE.—If an agency makes a determination to amend or repeal a major rule under subsection (e)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years of the date of publication of the notice in subsection (e)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a major rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

"(g) COMPLETION OF REVIEW OR REPEAL OF RULE.—If an agency has not completed review of the rule by the deadline established under subsection (b), the agency shall immediately commence a rulemaking action pursuant to section 553 of this title to repeal the rule and shall complete such rulemaking within 2 years of the deadline established under subsection (b).

"(h) FINAL AGENCY ACTION.—(1) The final determination of an agency to continue a rule under subsection (e)(1)(C) shall be considered final agency action.

"(2) Failure to promulgate an amended major rule or to make other decisions required by subsection (g) by the date established under such subsection shall be subject to judicial review pursuant to section 706(1) of this title.".

AMENDMENT NO. 1648

On page 11, strike lines 5 through line 19.

On page 12, strike line 9 through line 12.

On page 59, strike lines 10 and all that for follows through page 60, line 23.

On page 44, strike line 14 and all that follows through page 46, line 4.

AMENDMENT NO. 1649

On page 39, lines 11 and 12, strike "failure to comply with" and insert in lieu thereof "any analysis or assessment pursuant to".

GLENN AMENDMENTS NOS. 1650–1652

(Ordered to lie on the table.)

Mr. GLENN submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1650

On page 1, line 5, through page 12, line 21, strike all text.

AMENDMENT NO. 1651

Strike page 67, lines 1–18.

AMENDMENT NO. 1652

On page 35, strike out all from line 10 through page 38, line 5, and insert in lieu thereof the following:

"(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisions criteria otherwise provided by law, and in the event of conflict, the statute under which the rule is promulgated shall govern.

"(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

"(1) the benefits from the rule justify the costs of the rule;

"(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

"(3)(A) there is no other reasonable alternative that provides equal or greater benefits at less cost that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, or the achievement of constitutional rights of individuals, or the achievement of statutory rights that prohibit discrimination identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute, necessary to take into account such uncertainties or benefits; and

"(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

"(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

"(2)(A) there is no other reasonable alternative that provides equal or greater benefits at less cost that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, or the achievement of constitutional rights of individuals, or the achievement of statutory rights that prohibit discrimination identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute, necessary to take into account such uncertainties or benefits."

GLENN (AND LEVIN) AMENDMENTS NOS. 1653–1658

(Ordered to lie on the table.)

Mr. GLENN (for himself and Mr. LEVIN) submitted six amendments intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1653

On page 52:

Lines 9 through 10, strike "that are reasonably expected to be encountered".

Strike line 4 and insert in lieu thereof, "shall consider in each risk assessment sound, reasonably"

Line 15 insert ", where appropriate," after "consider".

On page 53:

Line 4, insert "material" before "conflicts".

Line 7, strike "emphasizing" and insert "including".

Line 8, strike "the most".

Lines 12 through 13, strike "the greatest" and insert in lieu thereof "sound".

On page 54, line 1, after "(1)" insert "To the extent feasible and scientifically appropriate."

On page 56, line 10, strike "the reasonably expected risk" and insert in lieu thereof "the range and distribution of risk".

AMENDMENT NO. 1654

On page 16, line 16, insert "or removal from" after "the introduction into".

On page 49, line 12, insert "or removal from" after "the introduction into".

On page 50, strike lines 6 through 9.

AMENDMENT NO. 1655

On page 46 between lines 11 and 12, insert the following:

"(2) the term "covered agency" means—

"(A) the Secretary of Defense, for major rules relating to the programs and responsibilities of the United States Army Corps of Engineers;

"(B) the Secretary of the Interior, for major rules relating to the programs and responsibilities of the Office of Surface Mining Reclamation and Enforcement;

"(C) the Secretary of Agriculture, for major rules relating to the programs and responsibilities of—

"(i) the Animal and Plant Health Inspection Service;

"(ii) the Grain Inspection, Packers, and Stockyards Administration;

"(iii) the Food Safety and Inspection Service;

"(iv) the Forest Service; and

"(v) the Natural Resources Conservation Service;

"(D) the Secretary of Commerce, for major rules relating to the programs and responsibilities of the National Marine Fisheries Service;

"(E) the Secretary of Labor, for major rules relating to the programs and responsibilities of—

"(i) the Occupational Safety and Health Administration; and

"(ii) the Mine Safety and Health Administration;

"(F) the Secretary of Health and Human Services, for major rules relating to the programs and responsibilities assigned to the Food and Drug Administration;

"(G) the Secretary of Transportation, for major rules relating to the programs and responsibilities assigned to—

"(i) the Federal Aviation Administration; and

"(ii) the National Highway Traffic Safety Administration;

"(H) the Secretary of Energy, for major rules relating to nuclear safety, occupational safety and health, and environmental restoration and waste management;

"(I) the Chairman of the Consumer Product Safety Commission;

"(J) the Administrator of the Environmental Protection Agency; and

"(K) the Chairman of the Nuclear Regulatory Commission.

On page 48, line 3, strike "an" and insert "a covered";

On page 48, line 9, after "each" insert "covered";

On page 48, line 18, after "each" insert "covered".

AMENDMENT NO. 1656

On page 67, beginning on line 19, strike out all through page 71, line 12, and insert in lieu thereof—

(b) REGULATORY FLEXIBILITY ACT JUDICIAL REVIEW.—Section 611 of title 5, United States Code, is amended to read as follows:

"SEC. 611. JUDICIAL REVIEW.

"(a)(1) Except as provided in paragraph (2), not later than the end of the 120 day period beginning on the date of publication of a final rule with respect to which an agency—

"(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities; or

"(B) prepared a final regulatory analysis pursuant to section 604;

an affected small entity may petition for the judicial review of such certification, or analysis in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction over such petition.

"(2)(A) Except as provided in subparagraph (B), in the case where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 120-day period provided in paragraph (1), such lesser period shall apply to a petition for judicial review under this subsection.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this title, a petition for judicial review under this subsection shall be filed not later than—

"(i) 120 days after the date the analysis is made available to the public; or

"(ii) in the case where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 120-day period provided in paragraph (1), the number of days specified in such provision of law that is after the date the analysis is made available to the public.

"(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be adversely affected by the final rule.

"(4) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

"(5)(A) In the case where the agency certified that such rule would not have a significant economic impact on a substantial number of small entities, the court may order the agency to prepare a final regulatory flexibility analysis pursuant to section 604 of this title if the court determines, on the basis of the rulemaking record, that the certification was arbitrary, capricious, or an abuse of discretion.

"(B) If the agency prepared a final regulatory flexibility analysis, the court shall order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the court's review of the rulemaking record, that the final regulatory flexibility analysis does not satisfy the requirements of section 604.

"(6) The court may stay the rule or grant such other relief as the court determines to be appropriate if, by the end of the 90-day period (or such longer period as the court may provide) beginning on the date of the order of the court pursuant to paragraph (5), the agency fails, as appropriate—

"(A) to prepare an analysis required by section 604; or

"(B) to take corrective action consistent with section 604.

"(7) In making any determination or granting any relief authorized by this subsection, the court shall take due account of the rule of prejudicial error.

"(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5) shall constitute part of the whole record of agency action in connection with such review.

"(c) Except as otherwise required by the provisions of this subchapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct the rulemaking.".

AMENDMENT NO. 1657

On page 96, line 24, strike out "on the date of enactment" and insert in lieu thereof "'180 days after the date of enactment of this Act, but shall not apply to any agency rule for which a general notice of proposed rulemaking is published on or before such date".

AMENDMENT NO. 1658

On page 75, strike out lines 13 through 21.

On page 75, line 22, strike out "708" and insert in lieu thereof "707".

GLENN AMENDMENT NO. 1659

(Ordered to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On Page 59 strike out lines 4 through 6.

GLENN (AND LEVIN) AMENDMENT NO. 1660

(Ordered to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 35, strike out all from line 10 through page 38, line 5, and insert in lieu thereof the following:

"(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law, and in the event of conflict, the statute under which the rule is promulgated shall govern.

"(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

"(1) the benefits from the rule justify the costs of the rule;

"(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

"(3)(A) the rule adopts the most cost-effective of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, or the achievement of constitutional rights of individuals, or the achievement of statutory rights that prohibit discrimination identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute, necessary to take into account such uncertainties or benefits; and

"(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

"(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

"(2)(A) the rule adopts the most cost-effective of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, or the achievement of constitutional rights of individuals, or the achievement of statutory rights that prohibit discrimination identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the rulemaking as specified by the agency head and consistent with the statute, necessary to take into account such uncertainties or benefits."

GLENN (AND LEVIN) AMENDMENT NO. 1661

(Ordered to lie on the table.)

Mr. GLENN (for himself and Mr. LEVIN) submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 23, strike lines 20 through 23.

LEVIN AMENDMENT NO. 1662

(Ordered to lie on the table.)

Mr. LEVIN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 39, strike lines 18 through line 7 on page 40.

DORGAN AMENDMENT NO. 1663

(Ordered to lie on the table.)

Mr. DORGAN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 17, beginning on line 8, strike out "mergers, acquisitions,".

BIDEN AMENDMENTS NOS. 1664–1665

(Ordered to lie on the table.)

Mr. BIDEN submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1664

On page 75, lines 24 through 26 delete "it shall be an affirmative defense in any enforcement action brought by an agency that" and insert "no civil or criminal penalty shall be imposed if".

AMENDMENT NO. 1665

Delete from page 35 line 23 to page 37 line 18 and insert in lieu thereof the following:

"§ 624. Decisional criteria

"(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law.

"(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

"(1) the benefits from the rule justify the costs of the rule;

"(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

"(3)(A) the rule adopts a cost-effective choice among the reasonable alternatives that achieve the objectives of the statute; or

"(4) if a risk assessment is required by section 632—

"(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

"(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

"(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

"(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

"(2)(A) the rule adopts a cost-effective choice among the reasonable alternatives that achieve the objectives of the statute; or

GLENN AMENDMENT NO. 1666

(Ordered to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

Delete from page 38, line 15 to page 39, line 17 and insert the following:

"(a) Compliance or noncompliance by a agency with the provisions of this subchapter and subchapter III shall not be subject to judicial review except in connection with review of a final agency rule and according to the provisions of this section.

"(b) Any determination by a designee of the President or the Director that a rule is, or is not, a major rule shall not be subject to judicial review in any manner.

"(c) The determination by an agency that a rule is, or is not, a major rule shall be set aside by a reviewing court only upon a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time the agency made the determination.

"(d) If the cost-benefit analysis or risk assessment required under this chapter has been wholly omitted for any major rule, a court shall vacate the rule and remand the case for further consideration. If an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.

"(e) Any cost-benefit analysis or risk assessment prepared under this chapter shall not be subject to judicial consideration separate or apart from review of the agency action to which it relates. When an action for judicial review of an agency action is instituted, any analysis or assessment for such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action."

BOXER AMENDMENTS NOS. 1667–1678

(Ordered to lie on the table.)

Mrs. BOXER submitted 12 amendment intended to be proposed by her to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1667

On page 96, insert between lines 20 and 21 the following new section:

SEC. . RULE OF CONSTRUCTION RELATING TO THE COMMUNITY RIGHT TO KNOW ACT.

Nothing in this Act (including any amendment made by this Act) shall be construed to revise, amend, weaken or delay in any way, the requirements or criteria under the Community Right to Know Act.

AMENDMENT NO. 1668

On page 96, insert between lines 20 and 21 the following new section:

SEC. . RULE OF CONSTRUCTION RELATING TO THE CLEAN AIR ACT.

Nothing in this Act (including any amendment made by this Act) shall be construed to revise, amend, weaken or delay in any way, the requirements or criteria under the Clean Air Act.

AMENDMENT NO. 1669

In section 621(9)(B), strike clause (xii) and renumber accordingly.

AMENDMENT NO. 1670

In section 621(9)(B), strike clause (xi) and renumber accordingly.

AMENDMENT NO. 1671

In section 621(9)(B), strike clause (x) and renumber accordingly.

AMENDMENT NO. 1672

In section 621(9)(B), strike clause (vi) and renumber accordingly.

AMENDMENT NO. 1673

In section 621(9)(B), strike clause (iii) and renumber accordingly.

AMENDMENT NO. 1674

In section 621(9)(B), strike clause (ii) and renumber accordingly.

AMENDMENT NO. 1675

On page 25, between lines 22 and 23, insert the following:

"(g) EXEMPTION FOR RULE OR AGENCY ACTION RELATING TO THE SAFETY OF BLOOD SUPPLY.—None of the provisions of this subchapter or subchapter III shall apply to any rule or agency action intended to ensure the safety, efficacy, or availability of blood, blood products, or blood-derived products.

AMENDMENT NO. 1676

On page 96, insert between lines 20 and 21 the following new section:

SEC. . RULE OF CONSTRUCTION RELATING TO THE SAFE DRINKING WATER ACT.

Nothing in this Act (including any amendment made by this Act) shall be construed to revise, amend, weaken, or delay in any way, the requirements or criteria under title XIV of the Public Health Service Act (42 U.S.C. 300f et seq.) (commonly known as the "Safe Drinking Water Act").

AMENDMENT NO. 1677

On page 96, insert between lines 20 and 21 the following new section:

SEC. . RULE OF CONSTRUCTION RELATING TO THE COASTAL ZONE MANAGEMENT ACT OF 1972 AND THE OIL POLLUTION ACT OF 1990.

Nothing in this Act (including any amendment made by this Act) shall be construed to revise, amend, weaken, or delay in any way, the requirements or criteria under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) and the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

AMENDMENT NO. 1678

At the end of section 621, add the following:

"(xiv) a rule or other action taken in connection with the safety of aviation."

CRAIG (AND HELFIN) AMENDMENT NO. 1679

(Ordered to lie on the table.)

Mr. CRAIG (for himself and Mr. HEFLIN) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 96, between lines 20 and 21, insert the following:

SEC. . REGULATORY AGREEMENTS.

(a) IN GENERAL.—Subchapter II of chapter 5 of title 5, United States Code, is amended by adding at the end of the following:

"§ 557a. Regulatory agreements

"(a) DEFINITION.—In this section, the term 'regulatory agreement' means an agreement entered into under this section.

"(b) GENERAL AUTHORITY.—An agency that is authorized or directed by law to issue a rule (with or without a hearing on the record) that would govern an activity of any person, may, prior to commencing a proceeding to issue such a rule or an amendment to such a rule under the rulemaking procedure that would otherwise apply under that law or this subchapter—

"(1) enter into a regulatory agreement with a person or group of persons engaged in those activities; or

"(2) enter into separate regulatory agreements with different persons or groups of persons engaged in the activity if the agency determines that separate agreements are appropriate in view of different circumstances that apply to different persons or groups of persons.

"(c) REQUEST FOR NEGOTIATIONS.—Negotiations for a regulatory agreement may be commenced—

"(1) at the instance of a person or group of persons engaged in the activity to be regulated by the submission to the agency by

such a person or group of persons of a request for negotiations, which may be accompanied by a proposed form of regulatory agreement or by a general description of the proposed terms of a regulatory agreement; or

"(2) at the instance of the agency by publication in the Federal Register of a request to persons engaged in the activity to participate in negotiations, which may be accompanied by a proposed form of regulatory agreement or by a general description of the proposed terms of a regulatory agreement and which shall specify a closing date by which such persons shall notify the agency of their willingness to participate in negotiations.

"(d) DETERMINATION WHETHER TO PROCEED WITH NEGOTIATIONS.—

"(1) IN GENERAL.—Not later that 60 days after receiving a request for negotiations under subsection (c)(1) or after the closing date specified in a request for negotiations under subsection (c)(2), an agency shall publish in the Federal Register a determination whether to conduct negotiations for a regulatory agreement, accompanied by a statement of reasons for the determination.

"(2) CRITERIA.—An agency may determine not to conduct negotiations for a regulatory agreement under this section—

"(A) if the agency finds that the number of persons that have expressed willingness to participate in negotiations, as a proportion of the number of persons whose activity would be governed by the rule, is not sufficient to justify negotiation of a regulatory agreement in addition to issuance of a rule that would govern other persons engaged in the activity; or

"(B) for any other reason, within the sole discretion of the agency.

"(3) NO JUDICIAL REVIEW.—A determination under paragraph (1) shall not be subject to judicial review by any court.

"(d) TERMS AND CONDITIONS.—A regulatory agreement shall contain terms and conditions that—

"(1) in the judgment of the agency, accomplish a degree of control, protection, and regulation of the activity to be regulated that is equivalent to the degree that would be accomplished under a rule issued under the rulemaking procedure that would otherwise apply;

"(2) provide for the addition as parties to the regulatory agreement, with or without a reopening of negotiations, of persons that did not participate in the negotiations;

"(3) provide for renegotiation of the regulatory agreement, at a stated date or from time to time, as renegotiation may become appropriate in view of changed circumstances or for any other reason; and

"(4) specify the provisions of law for the purposes of which the regulatory agreement shall, or shall not, be treated as a rule issued under section 553 or sections 556 and 557, as the case may be.

"(e) ENFORCEMENT.—A regulatory agreement shall provide for injunctive relief and penalties for noncompliance that—

"(1) shall, in the judgment of the agency, adequately deter parties from noncompliance; and

"(2) may be greater or lesser in severity than relief or penalties authorized under the law under authority of which a rule would have been issued.

"(f) CONSIDERATION OF COMMENT BY THE GENERAL PUBLIC.—

"(1) NOTICE.—Before executing a regulatory agreement, an agency shall publish a notice of the terms of the agreement in the Federal Register and solicit comments on the regulatory agreement for a period of not less than 60 days.

"(2) DECISION.—Not later than 60 days after the close of the comment period, an agency shall publish in the Federal Register a decision that includes—

"(1) a response to all comments received; and

"(2) an explanation of the agency's decision to—

"(A) enter into the regulatory agreement as agreed on in negotiations or as modified in response to public comment; or

"(B) decline to enter into the regulatory agreement.

"(h) RULEMAKING.—After publication of a decision under subsection (f)(2), an agency shall commence a rulemaking proceeding to govern the activity of—

"(1) all persons engaged in the activity in question, if the agency declined to enter into a regulatory agreement; or

"(2) if the agency entered into regulatory agreement with fewer than all of the persons engaged in the activity in question, all persons engaged in the activity that are not party to the regulatory agreement.

"(i) JURISDICTION.—The United States district courts shall have jurisdiction to enforce a regulatory agreement in accordance with the terms of the regulatory agreement.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 5 of title 5, United States Code, is amended by inserting after the item for section 557 the following:

"Sec. 557a. Regulatory agreements.".

JOHNSTON AMENDMENTS NOS. 1680–1693

(Ordered to lie on the table.)

Mr. JOHNSTON submitted 14 amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1680

On page 28 after line 23 insert "and may place such rule on the final schedule for the completion of review within the first 3 years of the schedule if the rule was included on the schedule under subsection (b)(1).

AMENDMENT NO. 1681

On page 28 at the end of line 14 after the word "rule" insert "that had not been included on the schedule under subsection (b)(1) by the head of the agency".

AMENDMENT NO. 1682

On page 79, strike lines 22 and 23 and insert: "final rule, if a joint resolution of disapproval is enacted under section 802."

AMENDMENT NO. 1683

On page 31, line 23 strike out "shall" and insert "may".

AMENDMENT NO. 1684

On page 37, line 24 through page 38, line 5, strike out subparagraph (B) and insert in lieu thereof the following new subparagraph:

"(B) if scientific, technical, or economic uncertainties preclude making the finding under subparagraph (A), or if a more cost-effective approach to risk reduction is possible, or if net benefits to health, safety, or the environment make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest, promulgating the rule is nevertheless justified for such reasons, stated in writing in such finding."

AMENDMENT NO. 1685

On page 36, line 15 through 21, strike out subparagraph (B) and insert in lieu thereof the following new subparagraph:

"(B) if scientific, technical, or economic uncertainties preclude making the finding under subparagraph (A), or if a more cost-effective approach to risk reduction is possible, or if net benefits to health, safety, or the environment make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest, promulgating the rule is nevertheless justified for such reasons, stated in writing in such finding."

AMENDMENT NO. 1686

On page 36, line 16 strike out the word "nonquantifiable".

AMENDMENT NO. 1687

On page 36, line 2 strike out the word "nonquantifiable".

AMENDMENT NO. 1688

On page 37, line 10 strike out the word "nonquantifiable".

AMENDMENT NO. 1689

On page 37, line 25 strike out the word "nonquantifiable".

AMENDMENT NO. 1690

On page 96, starting at line 21, strike section 9 and insert in lieu thereof the following new section:

"SEC. 9. EFFECTIVE DATES AND SEVERABILITY.

"(a) Except as otherwise provided, this Act and the amendments made by this Act shall take effect on the date of enactment.

"(b) Section 3 of this Act shall take effect on the date that is 90 days after the date of enactment.

"(c)(1) Except as provided in paragraph (2), section 4 of this Act shall take effect on the date that is 60 days after the date of enactment.

"(2) For final major rule that is promulgated after the effective date of section 4 but not later than 2 years after the date of enactment of this Act, in lieu of preparing a cost-benefit analysis under section 622 or a risk assessment under section 633, an agency may use other appropriately developed analyses that allow it to make the findings required by section 624.

"(d) If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby."

AMENDMENT NO. 1691

On page 73, between lines 5 and 6, insert the following new paragraph:

"(3) Conformance of Administrative Procedure Requirements in the Department of Energy Organization Act with Section 553 of Title 5, As amended.—

"(A) Subsections (b) through (e) of section 501 of the Department of Energy Organization Act (42 U.S.C. 7191 (b) through (e)) are hereby repealed.

"(B) Subsections (f) and (g) of section 501 of the Department of Energy Organization Act (42 U.S.C. 7191 (f) and (g)) are hereby redesignated as subsections (b) and (c)."

AMENDMENT NO. 1692

On page 41, line 22, before the comma insert the following: "and the Nuclear Regulatory Commission".

AMENDMENT NO. 1693

On page 22, between lines 17 and 18, insert the following new subparagraph and redesignate the following subparagraph accordingly:

"(D) a succinct comparison of the estimated costs of the proposed major rule and the annual expenditure of national economic resources reported for the regulatory program issuing the major rule, as reported in the most recent report issued pursuant to section 7(b)(4)(B)(i) of the Comprehensive Regulatory Reform Act of 1995."

SIMON AMENDMENTS NOS. 1694–1695

(Ordered to lie on the table.)

Mr. SIMON submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1694

On page 71, strike out lines 13 through 23 and insert in lieu thereof the following new subsection:

(c) SENSE OF THE SENATE REGARDING REFORM OF THE DELANEY CLAUSE.—It is the sense of the Senate that—

(1) the Delaney Clause in the Federal Food, Drug, and Cosmetic Act governing carcinogens in foods must be reformed;

(2) any such reform of the Delaney Clause—

(A) should reflect the case and deliberativeness due to a subject as important as whether and to what extent infants and children shall be exposed to carcinogens through the food they consume; and

(B) should not undermine other safety standards.

(3) advances in science and technology since the Delaney Clause was originally enacted in 1958 have prompted the need to refine the standards in current law with respect to pesticide residues, and may have limited the appropriateness of such standards with respect to food additives and animal drugs;

(4) the Delaney Clause should be replaced by a contemporary health-based standard that takes into account—

(A) the right of the American people to safe food;

(B) the conclusions of the National Academy of Sciences concerning the special susceptibility of infants and children to the effects of pesticide chemicals and the cumulative effect of the residues of such pesticide chemicals on human health;

(C) the importance of a stable food supply and a sound agricultural economy; and

(D) the interests of consumers, farmers, food manufacturers, and other interested parties; and

(5) prior to the end of the first session of the 104th Congress, after appropriate consideration by the committees of jurisdiction, the Senate should enact legislation to reform the Delaney Clause.

AMENDMENT NO. 1695

On page 71, strike out lines 13 through 23.

NUNN (AND COVERDELL) AMENDMENTS NOS. 1696–1700

(Ordered to lie on the table.)

Mr. NUNN (for himself and Mr. COVERDELL) submitted five amendments intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1696

On page 68, strike line 23 and all that follows through page 71, line 13, and insert the following:

"(B) prepared an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604; or

"(C) did not prepare an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604 except as permitted by sections 605 and 608,

an affected small entity may petition for the judicial review of such certification, analysis, or failure to prepare such analysis, in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction over such petition, except that the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to review such certification, analysis, or failure to prepare such analysis in connection with a general notice of proposed rulemaking.

"(2)(A) Notwithstanding any other provision of law, an affected small entity shall, beginning on the date of publication of the final rule, have 1 year after the effective date of the final rule to challenge the certification, analysis or failure to prepare an analysis required by this subchapter with respect to any such final rule.

"(B) If an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection may be filed not later than 1 year after the date the analysis is made available to the public.

"(C) Notwithstanding any other provision of law, an affected small entity shall file a petition for review of a certification, analysis, or failure to prepare an analysis required by this subchapter in connection with a general notice of proposed rulemaking not later than 90 days after the publication of such general notice of proposed rulemaking.

"(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be subject to the provisions of, or otherwise required to comply with, the final rule.

"(4) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law, or to grant any other relief in addition to the requirements of this section.

"(5)(A) Notwithstanding section 605, if the court determines, on the basis of the court's review of the rulemaking record as a whole, that there is substantial evidence that the rule would have a significant economic impact on a substantial number of small entities, the court shall order the agency to prepare an initial regulatory flexibility analysis that satisfies the requirements of section 603, or a final regulatory flexibility analysis that satisfies the requirements of section 604.

"(B)(i) If the court determines, on the basis of the court's review of the whole rulemaking record, that an initial regulatory flexibility analysis prepared by an agency does not satisfy the requirements of section 603, the court shall order the agency to prepare an initial regulatory flexibility analysis that satisfies the requirements of such section.

"(ii) If the court determines, on the basis of the court's review of the rulemaking record, that a final regulatory flexibility analysis prepared by an agency does not satisfy the requirements of section 604, the court shall order the agency to prepare a final regulatory flexibility analysis that satisfies the requirements of such section.

"(6) The court shall stay the rule and grant such other relief as the court determines to be appropriate if, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5), the agency fails, as appropriate—

"(A) to prepare the analysis required by section 603 or 604; or

"(B) to take corrective action consistent with section 604.

"(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

"(c) Except as otherwise required by the provisions of this subchapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct the rulemaking.".

(c) CERTIFICATIONS.—Section 605(b) of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of the general notice of proposed rulemaking for the rule or at the time of publication of the final rule, as appropriate, and a succinct statement providing the factual basis for such certification, and shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.".

AMENDMENT NO. 1697

On page 39, amend section (e)(1), as notified by amendment No. 1491, to read as follows:

"(e) INTERLOCUTORY REVIEW.—(1) The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction in review—

"(A) an agency determination that a rule is not a major rule pursuant to section 622(a); and

"(B) an agency determination that a risk assessment is not required pursuant to section 632(a).

AMENDMENT NO. 1698

On page 14, amend subparagraph (C), as added by the amendment No. 1491, to read as follows:

"(C) solely for purposes of subchapter II, any rule or set of closely related rules, not determined to be a major rule pursuant to subparagraph (A) or (B), that the agency proposing the rule determines will have a significant economic impact on a substantial number of small businesses, pursuant to subchapter I;

AMENDMENT NO. 1699

On page 39, amend section (e)(1), as modified by the amendment No. 1491, is deemed to be as follows:

(e) INTERLOCUTORY REVIEW.—(1) the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review—

"(A) an agency determination that a rule is not a major rule pursuant to section 622(a); and

"(B) an agency determination that a risk assessment is not required pursuant to section 632(a).

AMENDMENT NO. 1700

On page 14, amend subparagraph (C), as added by the amendment No. 1491, is deemed to be as follows:

"(C) solely for purposes of subchapter II, any rule or set of closely related rules, not determined to be a major rule pursuant to subparagraph (A) or (B), that the agency proposing the rule determines will have a significant economic impact on a substantial number of small businesses, pursuant to subchapter I;

JOHNSTON AMENDMENT NO. 1701

(Ordered to lie on the table.)

Mr. JOHNSTON submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the end of subchapter III add the following new section:

"§ 637. Research and training in risk assessment

"(a) The head of each covered agency in section 635 shall regularly and systematically evaluate risk assessment research and training needs of the agency, including, where relevant and appropriate, the following:

"(1) Research to reduce generic data gaps, to address modelling needs (including improved model sensitivity), and to validate default options, particularly those common to multiple risk assessments.

"(2) Research leading to improvement of methods to quantify and communicate uncertainty and variability among individuals, species, populations, and, in the case of ecological risk assessment, ecological communities.

"(3) Emerging and future areas of research, including research on comparative risk analysis, exposure to multiple chemicals and other stressors, noncancer endpoints, biological markers of exposure and effect, mechanisms of action in both mammalian and nonmamalian species, dynamics and probabilities of physiological and ecosystem exposures, and prediction of ecosystem-level responses.

"(4) Long-term needs to adequately train individuals in risk assessment and risk assessment application. Evaluations under this paragraph shall include an estimate of the resources needed to provide necessary training.

"(b) The head of each covered agency in section 635 shall develop a strategy and schedule for carrying out research and training to meet the needs identified in subsection (a).

LEVIN AMENDMENTS NOS. 1702–1707

(Ordered to lie on the table.)

Mr. LEVIN submitted six amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, as follows:

AMENDMENT NO. 1702

On page 78, line 17, strike "60" and insert "45".

On page 80, line 23, strike "60" and insert "45".

AMENDMENT NO. 1703

On page 40, line 8, strike everything through page 41, line 12, and insert the following:

SECTION 626. DEADLINES FOR RULEMAKING.

"(a) All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

"(b) All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

"(c) In any case in which the failure to promulgate a rule by a deadline occurring during the 2-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

"(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

AMENDMENT NO. 1704

On page 22, line 19, after "scientific evaluations," insert "cost estimates,"

On page 22, line 24, after "scientific evaluation," insert "cost estimate,".

AMENDMENT NO. 1705

On page 3, line 2, strike "or".

On page 3, line 7, strike the period and insert the following: "; or

"(5) a rule relating to government loans, grants or benefits."

AMENDMENT NO. 1706

On page 23, line 11, insert between "and of" and "the" the following: "a reasonable number of".

AMENDMENT NO. 1707

On page 21, line 25, insert between "of" and "reasonable" the following: "a reasonable number of".

BIDEN AMENDMENTS 1708–1710

(Ordered to lie on the table.)

Mr. BIDEN submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1708

On page 19, line 7, strike the period and insert the following: "; or (xiii) a rule intended to protect the blood supply of the United States from communicable diseases or other threats to public health."

AMENDMENT NO. 1709

On page 49, line 12, after "into," insert: "or removal from".

AMENDMENT NO. 1710

On page 16, line 16, after "into," insert: "or removal from".

DASCHLE AMENDMENTS NOS. 1711–1712

(Ordered to lie on the table.)

Mr. DASCHLE submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1711

On page 50, add after line 2 the following new paragraph:

"(F) a rule or agency action intended to enhance fish and seafood safety through the use of Hazard Analysis Critical Control Point principles, including the rulemaking proposed by the Food and Drug Administration (Department of Health and Human Services) in the Federal Register on January 28, 1994."

AMENDMENT NO. 1712

On page 25, add after line 22 the following new provision:

"(3) None of the provisions of this subchapter shall apply to any rule or agency action intended to enhance fish and seafood safety through the use of Hazard Analysis Critical Control Point principles, including the rulemaking proposed by the Food and Drug Administration (Department of Health and Human Services) in the Federal Register on January 28, 1994."

ASHCROFT AMENDMENT NO. 1713

(Ordered to lie on the table.)

Mr. ASHCROFT submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the end, add the following new title:

"TITLE II—URBAN REGULATORY RELIEF ZONES

SECTION 201. SHORT TITLE.

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

SEC. 202. FINDINGS.

The Congress finds that—

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

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

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

(B) adversely impact economic stability;

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

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

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

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

SEC. 203. PURPOSES.

The purposes of this tile are to—

(1) empower qualifying cities to obtain selective relief from Federal regulations that

undermine economic stability and development in distressed areas within the city; and

(2) authorize Federal agencies to waive the application of specific Federal regulations in distressed urban areas—

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

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

SEC. 204. ELIGIBILITY FOR WAIVERS

(a) ELIGIBLE CITIES.—The mayor or chief executive officer of a city may establish an Economic Development Commission to carry out the purposes of section 205 if—

(1) the city has a population greater than 200,000 according to the U.S. Census Bureau's latest estimates for city populations.

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

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

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

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

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

SEC. 205. ECONOMIC DEVELOPMENT COMMISSIONS.

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

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

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

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

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

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

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

SEC. 206. LOCAL PARTICIPATION

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

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

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

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

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

(3) an explanation of the reasons that the waiver of a regulation would economically benefit the city and the data supporting such a determination.

SEC. 207. WAIVER OF FEDERAL REGULATIONS.

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

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

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

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

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

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

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

(2) Such request shall—

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

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

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

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

(1) review the request for waiver;

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

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

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

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

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

(e) WAIVER DETERMINATION.—No later than 60 days after receiving a request for waiver under subsection (c) from the Office of Management and Budget, a Federal agency shall—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 208. DEFINITIONS.

For purposes of this Act, the term—

(1) "regulation" means—

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

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

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

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

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

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

MOYNIHAN AMENDMENTS NOS. 1714–1718

(Ordered to lie on the table.)

Mr. MOYNIHAN submitted five amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1714

On page 2, strike lines 15 through 25; on page 3, strike lines 1 through 7 and insert in lieu thereof, the following:

"(a) APPLICABILITY.—This section applies to every rulemaking according to the provisions thereof, except to the extent that there is involved—

"(1) a matter pertaining to an auxiliary or foreign affairs function of the United States;

"(2) a matter relating to the management or personnel practices of an agency;

"(3) an interpretative rule, general statement of policy, guidance, or rule of an agency, organization, procedure, or practice unless such rule, statement, or guidance has general applicability and substantially alters or * * * rights or obligations of persons outside the agency;" strike "or;

"(4) a rule relating to the acquisition, arrangements, or disposal by an agency of real or personal property, or of services; these are promulgated in compliance with otherwise applicable criteria and procedures; or

"(5) an interpretative rule involving the internal revenue laws of the United States other than an interpretative regulation."

AMENDMENT NO. 1715

On page 12, line 9: after "petition", insert "(other than a petition relating to a rule described in section 621(9)(B)(i))".

AMENDMENT NO. 1716

On page 68, line 18: insert "(other than a rule described in section 621(9)(B)(i))" after "rule".

AMENDMENT NO. 1717

On page 9, line 5: insert "Nothing in this section shall be interpreted to limit the application of 26 U.S.C. 7805."

AMENDMENT NO. 1718

On page 13, line 4: insert "(or as otherwise provided)" after "subchapter".

On page 16, line 8: insert "for purposes of this chapter" after "(i)".

PACKWOOD AMENDMENTS NOS. 1719–1723

(Ordered to lie on the table.)

Mr. PACKWOOD submitted five amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMEMDMENT NO. 1719

Strike page 2: line 15 through page 3: line 7 and add at page 2: line 15, the following:

"(a) APPLICABILITY—(1) In General.—This section applies to every rulemaking, according to the provisions thereof, except to the extent there is involved—

"(i) A matter pertaining to a military or foreign affairs function of the United States;

"(ii) A matter relative to the management or personnel practices of an agency;

"(iii) An interpretive rule, general statement of policy, guidance, or rule of agency organization, procedures or practices, unless such rule, statement, or guidance has general applicability and substantially alters or creates rights or obligations of persons outside the agency.

"(iv) A rule relating to the acquisition, management, or disposal by an agency of real or personal property, or of services, that is promulgated in compliance with otherwise applicable criteria and procedures.

"(2) APPLICATION TO THE DEPARTMENT OF THE TREASURY.—In the case of Rulemaking of the Department of the Treasury, this section applies to Treasury Regulations.

AMENDMENT NO. 1720

On page 13, line 4: insert "(or as otherwise provided)" after "subchapter".

On page 16, line 8 insert "for purposes of this chapter" after "(i)".

AMENDMENT NO. 1721

On page 9, line 5, insert "Nothing in this section shall be interpreted to limit the application of 26 U.S.C. 7805."

AMENDMENT NO. 1722

On page 68, line 18, insert "(other than a rule described in section 621(9)(B)(i))" after "rule."

AMENDMENT NO. 1723

On page 12, line 9: after "petition", insert: "(other than a petition relating to a rule described in section 621(9)(B)(i))".

GLENN (AND LEVIN) AMENDMENTS NO. 1724–1725

(Ordered to lie on the table.)

Mr. GLENN (for himself and Mr. LEVIN) submitted two amendments intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1724

On page 57, at the end of paragraph (1), insert:

"The requirements of this subsection shall not apply to a specific rulemaking where the head of an agency has published a determination, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, and notified the Congress, that the agency is unable to comply fully with the peer review requirements of this subsection and that the rulemaking process followed by that agency provides sufficient opportunity for scientific or technical review of risk assessments required by this subchapter."

AMENDMENT NO. 1725

On page 21, line 25, insert between "of" and "reasonable" the following: "a reasonable number of".

On page 23, line 11, insert between "and of" and "the" the following: "a reasonable number of".

NOTICE OF HEARING CANCELLATION

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that the hearing on S. 871, the Hanford Land Management Act, previously scheduled before the full Committee on Energy and Natural Resources for Thursday, July 20 at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC, has been canceled. For further information, please call Maureen Koetz at 202–224–0765 or David Garman at 202–224–7933.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. NICKLES. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Friday, July 14, 1995, to conduct a hearing on Mexico and the exchange stabilization fund.

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

ADDITIONAL STATEMENTS

B–2 BOMBERS

• Mr. NUNN. Mr. President, I am disappointed that the Senate Armed Services Committee did not include funding for additional B–2 bombers in the National Defense authorization bill that was filed yesterday. In my view, this was a short-sighted decision, one which I hope can be reversed. Today, Mr. President, I want to enter into the RECORD two recent editorials and a letter, all of which, I believe, help Members to understand the importance of continuing the B–2 program.

The first editorial comment was authorized by Paul Wolfowitz, and appeared in the June 12 edition of the Wall Street Journal. Mr. Wolfowitz points out that the DOD–IDA bomber study had assumed enough warning time for over 500 U.S. tactical aircraft and many other assets to arrive before the war started. He notes, and I quote, "Not surprisingly, the contribution of additional B–2's would not be cost-effective in those hypothetical circumstances." Mr. Wolfowitz goes on posit the importance of the B–2 bomber in less favorable scenarios and circumstances, noting its independence from foreign bases; its value in possible East Asian scenarios, where neither land-based nor carrier air have the needed range; and its ability both to deter and to retaliate while placing few Americans in harm's way. After noting the advantages of stealth, Mr. Wolfowitz goes on to note, and I quote:

> With more than 30 wings of traditional fighter aircraft and only one wing of B–2's and two wings of F–117's it could hardly be said that the U.S. is overemphasizing stealthy attack capability.

The second editorial comment is by Charles Krauthammer, and is in today's Washington Post. Mr. Krauthammer notes that, and I quote:

> There are three simple, glaringly obvious facts about this new era: (1) America is coming home; (2) America cannot endure casualties; (3) America's next war will be a surprise. * * *

He goes on to note that the B–2 is not a partisan project, that today it is supported by,

> Seven Secretaries of Defense representing every administration going back to 1969.

They support it because it is the perfect weapon for the post-cold war world.

Mr. Krauthammer goes on to note that the so-called Republican cheap hawks, concerned about high costs, hold the future of the program in their hands. He notes, and I quote,

But the dollar cost of a weapon is too narrow a calculation of its utility. The more important calculation is cost in American lives. The reasons are not sentimental, but practical. Weapons cheap in dollars but costly in lives are, in the current and coming environment, useless. A country that so values the life of every Captain O'Grady is a country that cannot keep blindly relying on nonstealthy aircraft over enemy territory.

My third submission, Mr. President, is a letter to me from recently retired Air Force Gen. Chuck Horner, who was the overall air commander during Operation Desert Storm. He begins by noting that his career was spent in operations and that in his entire career, he had never advocated buying any specific weapons system. Having said that, General Horner begins by saying, and I quote:

As the former commander of Operation Desert Storm, I feel a duty to put the B-2 debate in perspective, and sound a warning on any recommendation to stop production of this aircraft. To put it bluntly, halting this Nation's B-2 production capability is dangerously short-sighted, and would lead ultimately to the extinction of the long-range bomber force, at the very time when bombers are emerging as America's most critical 21st Century military asset.

General Horner goes on to note that the B-2 program and America's bomber production capability are one and the same, and that starting a new bomber program a few years hence would require 10 to 15 years to field, and cost countless billions to develop. He further notes that even if a new bomber were started a few years hence, most of our nonstealthy bombers would be obsolete. He then writes, and I quote:

The next Desert Storm Air Commander could be sending Americans into war aboard a 70-year-old bomber, an act I find unconscionable.

General Horner goes on to discuss the value of the combination of long-range, large-payload, precision weapons, and stealth, and concludes by stating, and I quote:

It is important to understand the long-term national and international security ramifications of the quantum leap in military capabilities offered by the B-2. If we don't, it may disappear when we need it most, and can buy it most cheaply. Make no mistake about this: the B-2 is designed to extend America's defense capabilities into the next century. Can we afford to do less?

Mr. President, I ask that these three items be printed in the RECORD. I commend the substance of all three of these thoughtful pieces to my colleagues. I yield the floor.

The material follows:

[From the Wall Street Journal, June 12, 1995]

A BOMBER FOR UNCERTAIN TIMES

(By Paul Wolfowitz)

It has been nearly 30 years since Robert McNamara left the Pentagon. Yet, from what has been made public about the systems analysis behind the decision to halt production of the B-2 bomber, one can only conclude that Mr. McNamara's influence lingers.

As Congress deliberates the question of whether to halt production of the B-2 bomber, it needs to have a healthy respect for the fundamental uncertainty of the world of the next century.

Just one year before the Iraqi invasion of Kuwait, Adm. William Crowe, the chairman of the Joint Chiefs of Staff, had proposed eliminating the Persian Gulf from U.S. Military planning on the grounds that the Soviet threat to the region had gone away. In the end, Secretary of Defense Richard Cheney and Gen. Colin Powell overruled the Joint Staff and directed the military to begin planning instead for an Iraqi threat to the Arabian Peninsula. Yet no one expected such a threat to materialize as quickly as it did.

In fact, none of the major threats we have faced in this century were foreseen even five years before they appeared. None of the smaller wars we have fought for the past 50 years were foreseen clearly even one year before. Certainly no one would have dreamed of suggesting in 1945 that five years later we would almost be driven off the Korean Peninsula by a third- or fourth-ranked military power.

A MC NAMARA TECHNIQUE

In an old joke, a befuddled drunk searches for his keys under the street light even though he knows he dropped them somewhere else, because "that's where the light is." So it is with the Pentagon's decision to stop production of the B-2, which can deliver precise conventional weapons with great accuracy at extraordinary distances, with surprise, and with unprecedented safety for its crew of two pilots.

In an apparent inability to take account of uncertainty, the Defense Department justifies its decision based on a systems analysis of a hypothetical future war with Iraq. Systems analysis—a technique that Mr. McNamara so proudly introduced to the Pentagon and which I, myself, have had many occasions to use—is a powerful tool for certain limited purposes but useless for others. Sometimes, like a bright light in a murky room, its very power leads analysts to focus on those questions that the technique can illuminate, whether or not they are the right ones.

According to congressional testimony, the Defense Department analysis assumes that there would be enough warning, and sufficient bases made available in the region, to enable the U.S. to deploy 500 tactical aircraft before the war begins and before our bases come under attack. Not surprisingly, the contribution of additional B-2s would not be cost-effective in those hypothetical circumstances.

Not only are the analysts refighting the last war, but they are making assumptions about warning time and the availability of bases that did not apply in the Gulf five years ago and may no longer be valid five years from now. Worst of all, those assumptions may bear little relation to the much broader range of unpredictable circumstances that could confront us in a post-Cold War world—contingencies in which the B-2 would be uniquely valuable:

The B-2's exceptionally long range makes it much less dependent on access to overseas bases. Even after Iraq invaded Kuwait, it took the Saudis several days to decide to permit American use of their bases—and they agreed only because of their high level of confidence in President Bush. A future president may need to act unilaterally. In fact, we are more likely to get multilateral cooperation if we have that ability—a paradox still poorly understood by many in Washington.

The B-2 can attack nuclear and other high-value targets. In an era of nuclear proliferation, this capability appears particularly important. In a letter to President Clinton, seven former secretaries of defense—of both Democratic and Republican administrations—urged the continuation of low-rate production of the B-2, calling it "the most cost-effective means of rapidly projecting forces over great distances," able "to reach any point on earth" within hours, "to destroy numerous time-sensitive targets in a single sortie," and do so "without fear of interception."

The B-2's range would be invaluable in large regions, such as East Asia, where the potential distances are far greater than the effective range of conventional fighter aircraft. Though it is hard at the moment to envision an Asian scenario (outside of Korea) requiring long-range conventional strike capability, the point is that by the time such requirements become clear, it would almost certainly be too late to acquire the capabilities.

The B-2 is effective for deterrence and retaliation. Forces may be used not only to defend but, for example, to punish or deter acts of state terrorism against the U.S. or its citizens. The B-2's range and stealth characteristics make it a particularly useful instrument of deterrence.

The B-2 can operate from secure bases. Future aggressors may draw a lesson from the Gulf War and attack nearby bases from the outset, perhaps even using ballistic missiles and chemical weapons. In those circumstances, additional B-2 bombers, operating from bases beyond the reach of enemy missiles or aircraft, would be far more valuable than they were in the Pentagon study.

No systems analysis can assess the value of the B-2's enormous flexibility. Nor can a systems analysis assess the importance of the B-2 for maintaining the U.S. lead in a revolutionary new technology. Being the first country to develop stealth technology does not guarantee continued American leadership. In the further development of both tactics and technology, of counter-measures and counter-counter-measures, the U.S. needs to capitalize on its lead in stealth development.

With more than 30 wings of traditional fighter aircraft and only one wing of B-2s planned (in addition to two wings of the shorter-range, first generation F-117s), it could hardly be said that the U.S. is overemphasizing stealthy attack capability.

It is difficult to imagine any other country, having developed an advanced capability like the B-2, halting production after just 20 aircraft because of an unwillingness to allocate 1% of its defense budget or 5% of its combat aircraft budget for the next few years. It is a system that excels in two dimensions that are hard or impossible to evaluate in a systems analysis, but that are of central importance for defense planning in the post-Cold War world: flexibility to deal with a world that has become even more unpredictable; and innovation to deal with the consequences of revolutionary technological change.

CONGRESSIONAL INTERVENTION

Only through congressional intervention was Adm. Hyman Rickover able to build the nuclear submarine program that eventually became the pride of the Navy. At a later

time, when the military was more interested in the development of manned aircraft, congressional pressure kept U.S. conventional cruise missile options from being given away in arms-control negotiations, thus protecting the extraordinary capability for accurate long-range conventional delivery that the Tomahawk cruise missile demonstrated during the Gulf War. And, were it not for the intervention of Sen. Sam Nunn and the House and Senate Armed Service committees, the U.S. would have had only one squadron of F-117 bombers in that war, rather than two.

Let us hope that Congress intervenes again. As the seven former defense secretaries said: "It is already apparent that the end of the Cold War was neither the end of history nor the end of danger. We hope it will also not be the end of the B-2."

[From the Washington Post, July 13, 1995]

THE B-2 AND THE "CHEAP HAWKS"

(By Charles Krauthammer)

We hear endless blather about how new and complicated the post-Cold War world is. Hence the endless confusion about what weapons to build, forces to deploy, contingency to anticipate. But there are three simple, glaringly obvious facts about this new era:

(1) America is coming home. The day of the overseas base is over. In 1960, the United States had 90 major Air Force bases overseas. Today, we have 17. Decolonization is one reason. Newly emerging countries like the Philippines do not want the kind of Big Brother domination that comes with facilities like Clark Air Base and Subic Bay. The other reason has to do with us: With the Soviets gone, we do not want the huge expense of maintaining a far-flung global military establishment.

(2) America cannot endure casualties. It is inconceivable that the United States, or any other Western country, could ever again fight a war of attrition like Korea or Vietnam. One reason is the CNN effect. TV brings home the reality of battle with a graphic immediacy unprecedented in human history. The other reason, as strategist Edward Luttwak has pointed out, is demographic: Advanced industrial countries have very small families, and small families are less willing than the large families of the past to risk their only children in combat.

(3) America's next war will be a surprise. Nothing new here. Our last one was too. Who expected Saddam to invade Kuwait? And even after he did, who really expected the United States to send a half-million man expeditionary force to roll him back? Then again, who predicted Pearl Harbor, the invasion of South Korea, the Falklands War?

What kind of weapon, then, is needed by a country that is losing its foreign basis, is allergic to casualties and will have little time to mobilize for tomorrow's unexpected provocation?

Answer: A weapon that can be deployed at very long distances from secure American bases, is invaluable to enemy counterattack and is deployable instantly. You would want, in other words, the B-2 stealth bomber.

We have it. Yet, amazingly, Congress may be on the verge of killing it. After more than $20 billion in development costs—costs irrecoverable whether we build another B-2 or not—the B-2 is facing a series of crucial votes in Congress that could dismantle its assembly lines once and for all.

The B-2 is not a partisan project. Its development was begun under Jimmy Carter. And, as an urgent letter to President Clinton makes clear, it is today supported by seven secretaries of defense representing every administration going back to 1969.

They support it because it is the perfect weapon for the post-Cold War world. It has a range of about 7,000 miles. It can be launched instantly—no need to beg foreign dictators for base rights; no need for weeks of advance warning, mobilization and forward deployment of troops. And because it is invisible to enemy detection, its two pilots are virtually invulnerable.

This is especially important in view of the B-2's very high cost, perhaps three-quarters to a billion dollars a copy. The cost is, of course, what has turned swing Republican votes—the so-called "cheap hawks"—against the B-2.

But the dollar cost of a weapon is too narrow a calculation of its utility. The more important calculation is cost in American lives. The reasons are not sentimental but practical. Weapons cheap in dollars but costly in lives are, in the current and coming environment, literally useless: We will not use them. A country that so values the life of every Capt. O'Grady is a country that cannot keep blindly relying on non-stealthy aircraft over enemy territory.

Stealth planes are not just invulnerable themselves. Because they do not need escort, they spare the lives of the pilots of the fighters and radar suppression planes that ordinarily accommodate bombers. Moreover, if the B-2 is killed, we are stuck with our fleet of B-52s of 1950s origin. According to the undersecretary of defense for acquisition, the Clinton administration assumes the United States will rely on B-52s until the year 2030—when they will be 65 years old.

In the Persian Gulf War, the stealthy F-117 fighter flew only 2 percent of the missions but hit 40 percent of the targets. It was, in effect, about 30 times as productive as non-stealthy planes. The F-117, however, has a short range and thus must be deployed from forward bases. The B-2 can take off from home. Moreover, the B-2 carries about eight times the payload of the F-117. Which means that one B-2 can strike, without escort and with impunity, as many targets as vast fleets of conventional aircraft. Factor in these costs, and the B-2 becomes cost-effective even in dollar terms.

The final truth of the post-Cold War world is that someday someone is going to attack some safe haven we feel compelled to defend, or invade a country whose security is important to us, or build an underground nuclear bomb factory that threatens to kill millions of Americans. We are going to want a way to attack instantly, massively and invisibly. We have the weapon to do it, a weapon that no one else has and that no one can stop. Except a "cheap hawk," shortsighted Republican Congress.

SHALIMAR, FL, *June 22, 1995.*

Hon. SAM NUNN,

U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR NUNN: Earlier this month I wrote to your colleagues in the House of Representatives about the need to continue the B-2 program. The debate has now shifted to the Senate and my concern with our future security compels me to share the same thoughts with you. This is a difficult letter for me to write as in more than thirty years of service in the Air Force, I have always concentrated on military operations, and refrained from commenting on issues such as whether or not to purchase a specific aircraft. However, the Pentagon recently released a study based on assumptions, constraints, and methodology that can lead to the conclusion that the United States can safely terminate B-2 stealth bomber production at 20 aircraft. As the former Air Commander of the Desert Shield/Desert Storm Air Forces. I feel a duty to put the B-2 debate in perspective, and sound a warning on any recommendation to stop production of this aircraft. To put it bluntly, halting this nation's B-2 production capability is dangerously short-sighted and would lead ultimately to the extinction of the long-range bomber force, at the very time when bombers are emerging as America's most critical 21st Century military asset.

Since the B-2 is the only bomber in production or development, and the Pentagon has no plans for a new bomber program in the future, the B-2 program and America's bomber production capability are one and the same. If this sole remaining bomber capability is lost, replacing our aging bombers will become unaffordable. Inevitably, the nation may lose its manned bomber force, and the unique capabilities it provides. A new bomber would take from 15-20 years to go from the drawing board to the battlefield and cost tens of billions of dollars just to design. With the current administration balking at spending a fraction of this amount on a finished, proven product, there is little likelihood of a future government sinking many times that amount into a new program. Even if a new program was initiated in the near term, most of our existing bombers would be obsolete before the first "B-3" entered service. The next Desert Storm Air Commander could be sending Americans into war aboard a 70-year old bomber, an act I find unconscionable.

In my opinion, the B-2 is now more important than ever. Heavy bombers have always possessed two capabilities—long range and large payload—not found in other elements of our military forces. As we base more and more of our forces in our homeland, the bomber's inter-continental range enables us to respond immediately to regional aggression with a rapid, conclusive military capability. Just as important, this capability may deter aggressors even as the bombers sit on the air base parking ramps in the United States. In war, the large bomber payloads provide a critical punch throughout the conflict—just ask General Schwarzkopf what he wanted from the Air Force when he was under attack in Vietnam, or whenever our ground forces faced danger during Desert Storm.

What the B-2 adds to this equation are two revolutionary capabilities not available in any other long-range bomber—precision and stealth. The Gulf War showed how precision weapons delivery from stealthy platforms provides a devastating military capability. The F-117 stealth fighter proved its effectiveness on the first day of the war when 36 aircraft flew just 2.5% of the sorties, but attacked almost 31% of the targets.

In the past, employing bombers for critical missions against modern air defenses required large, costly packages of air escort and defense suppression aircraft. The B-2's unmatched survivability reduces the need for escorts and defense suppression aircraft. As we found in the Gulf War with the F-117, stealth allows the U.S. to strike any target with both surprise and near impunity. Analysis of the Gulf War air campaign reveals that each F-117 sortie was worth approximately eight non-stealth sorties. To put B-2 capabilities into perspective, consider that the B-2 carries eight times the precision payload of the F-117, has up to six times the

range, and will be able to accurately deliver its weapons through clouds or smoke. What does all of this mean? It means that a single B-2 can accomplish missions that required dozens of non-stealthy aircraft in the past.

Many may wonder why the Department of Defense would advocate terminating the most advanced weapon system ever developed. The B-2 program was cut by the Bush Administration for budget-related political reasons, and some concern that the program would not meet expectations. Since then, delivered aircraft have demonstrated, without qualification, that the B-2 is a superb weapon system—performing even better than expected.

Yet, defense spending has declined, bomber expertise has been funded out of the Air Force, and people's careers have been vested in other programs. Unfortunately, some in the Army and Navy believe the B-2's revolutionary capability is a threat to their own services' continuing relevancy. Just the opposite is true, long-range, survivable bombers will contribute to the effectiveness of the shorter range carrier air by striking those targets which pose the greatest threat to our ships. The troops on the ground have long recognized the value of air support, especially the tremendous impact that large bomb loads have on enemy soldiers. This was again demonstrated by the B-52 strikes used to demoralize the Iraqi Army. If anyone needs B-2s, it's our soldiers and sailors. Some people harp on the issue of the B-2's cost. The Air Force, at times, seems at odds about asking for this much needed aircraft because they fear it could endanger their number one priority program, the F-22. All miss the point. True the B-2 has a high initial cost, but its capabilities allow it to accomplish mission objectives at a lower total cost than other alternatives. And keep in mind, the true cost of any weapons system is how many or how few lives of our service personnel are lost. The B-2 lowers the risk to our men and women. The B-2 will allow us to accept lower levels of overall military spending without compromising our security.

As we approach this year's critical defense budget decisions, it is important that we understand the long-term national and international security ramifications of the quantum leap in military capabilities offered by the B-2. If we don't, it may disappear when we need it most, and can buy it most cheaply. Make no mistake about this: the B-2 is designed to extend America's defense capabilities into the next Century. Can we afford to do less?

Sincerely,

CHARLES A. HORNER,
General, USAF (Ret.).•

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD.)

JAMES SMITH

• Mr. LUGAR. Mr. President, on this Friday morning, many of my close friends and fellow members of Saint Luke's United Methodist Church are gathering in Indianapolis, IN, to honor the life of a very special public servant and leader in our State.

The untimely loss of James Smith on July 10, 1995, will be felt throughout Indiana, just as his personal energy impacted so many people during his remarkable life.

I enjoyed working with Jim during his early years of service to our State, when he worked as an assistant to Gov. Otis Bowen. His effective leadership in several roles in Indiana's State government throughout the 1970's earned the praise and support of both Governor Bowen and his successor, Governor Robert Orr.

He won respect from all who followed his activities, both before and after he left State government. I was not surprised to see the law firm he helped found quickly develop into one of the largest firms in Indiana.

I was proud to count Jim Smith as a friend ever since our early association. I will miss the enrichment I received from our visits together.

My thoughts this morning, especially, are with his wife Susan, who not only served as Jim's partner professionally in Governor Bowen's administration and in their law firm, but also in their home raising five beautiful children. My prayers are for her renewed strength and courage as she faces most difficult times ahead.•

75th BIRTHDAY OF EDWIN ZEHNDER

• Mr. LEVIN. Mr. President, I rise today to honor one of the leaders of the community of Frankenmuth, MI. Edwin Zehnder is owner of Zehnder's of Frankenmuth restaurant, one of the top ten independent restaurants in total sales in the United States. July 25, 1995 will mark Edwin's 75th birthday. The city of Frankenmuth will be honoring Edwin on his birthday by naming a park located near his restaurant in his honor. This event is especially significant because 1995 also marks the 150th anniversary of the city of Frankenmuth. It is only fitting that this great citizen's 75th birthday happens to coincide with the 150th anniversary of the community to which he has given so much.

Frankenmuth is a unique community and one of Michigan's largest tourist attractions. It is a quaint Bavarian village which maintains a festival atmosphere year-round. Everything from its authentic architecture to the popular Frankenmuth Bavarian and Oktoberfest celebrations make this community a special place to live in and visit. At the center of it all is Zehnder's of Frankenmuth restaurant. The restaurant serves traditional Bavarian cuisine as well as American fare. However, most visitors come to Zehnder's for its famous Frankenmuth-style chicken dinners.

Edwin and his wife Marion have four children—L. Susan, Albert, Catherine, and Martha. Family has always been an important part of this gentleman's life. The family business was started in 1927, when Edwin's father, William, bought the circa 1856 Exchange Hotel. The Zehnder family then began work on building the restaurant into the institution it is today. Edwin and his wife Marion assumed ownership of the family business in 1965. The couple were able to cater to the growing numbers of tourists visiting the city by continually expanding the restaurant. They added a retail gift store, retail food store, and a coffee shop in 1977. In 1983, the family broke ground for a 5,000-square-foot addition which now houses a bakery. Zehnder's of Frankenmuth today is a 84,000 square-foot, 1,500 seat establishment.

Edwin Zehnder graduated from Valparaiso University in 1942, and later went on to do graduate work at the University of Chicago and the University of Michigan. Edwin served his country in World War II with the U.S. Navy. Edwin was stationed in the Marshall Islands in the South Pacific.

Edwin maintained his commitment to service after the war by becoming a vital member of the community. He is a member of St. Lorenz Lutheran Church and sits as a member of the board of Concordia Theological Seminary in Fort Wayne, IN. He was also director of the Michigan State Chamber of Commerce and has served as president and director of the Frankenmuth Chamber of Commerce. In 1982, he received the 4-H Friend Award, which is the highest award given by the organization for support of its many causes.

On the basis of his expertise in restaurant management, he was elected director of the Michigan Restaurant Association and the National Restaurant Association. He has also served as a circuit speaker for the Michigan and National Restaurant Associations. In 1975, he received the Excellency Award of the restaurant association.

I know thousands of people in Michigan and around the Nation join me in congratulating Edwin Zehnder for the fine work he has done and also in wishing him a happy 75th birthday.•

REGULATORY REFORM DISTORTIONS

Mr. DOLE. Mr. President, in their ongoing efforts to frighten the American people, the opponents of regulatory reform continue to spread their distortions through the media.

Last night, in a report on ABC's "World News Tonight," President Clinton's EPA Administrator, Carol Browner, made the following outrageous statement about our regulatory reform bill. That is the one we are considering right now.

> If these provisions had been in place over the last 10 years, EPA would not have been able to ban lead in gasoline, and a whole generation of children would have suffered real and permanent brain damage.

Now, that is a catchy sound bite, but it is flatly false, and it went unchallenged in the report.

Here are the facts viewers did not get last night. When a rule on lead phase-out was being considered in 1982, EPA

resisted doing a cost-benefit analysis. However, when a cost-benefit analysis was performed, it demonstrated the benefits outweighed the costs of eliminating lead from gasoline. Only then did EPA issue a rule providing for quick phaseout of lead. And in fact, as a result of that analysis, EPA issued a tougher standard than it would have previously. So getting lead out of gasoline occurred precisely because a cost-benefit analysis supported doing so.

Rather than undermining our reform effort, as Ms. Browner suggests, this example actually validates it.

This is not the first time we have heard this phony story from the administration. Even though we have set the record straight on that point during this debate, the EPA and some folks in the media do not seem to notice.

Mr. President, I am hardly the only one who has been disappointed by the spread of distortions about this bill.

I ask unanimous consent to have printed in the RECORD a letter I received from the Governor of Ohio, George Voinovich, and the Governor of Iowa, Terry Branstad, taking exception to another ABC report last night that framed the debate on environmental regulations in Washington-knows-best terms.

Mr. President, this is certainly a complicated piece of legislation, but sometimes the facts are very simple. And dealing in facts is not too much to ask even for the media.

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

JULY 14, 1995.

Hon. BOB DOLE,
Senate Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR DOLE: As strong supporters of your efforts to pass regulatory reform legislation, we were very disappointed with an ABC News report last night on environmental regulation.

We are dismayed by the suggestion that enhanced flexibility for states in making environmental and regulatory decisions would inherently harm the environment. In essence, their coverage seems to propose that regulatory reform should not be pursued because states cannot be trusted as regulators. As you well know, Mr. Majority Leader, states and local governments already are responsible for implementing and overseeing these laws.

ABC is correct in noting that "dirty air travels." However, the proposition that regulatory and environmental reform supported by governors would allow states to "set their own environmental standards" is patently false. Governors and other state and local officials do not seek to set our own environmental standards, nor would pending legislation permit us to do so. rather, we support enhanced flexibility to implement remedies specific to our states and communities to meet federally established standards.

EPA Administrator Carol Browner's assertion that reforms would lead states to "race to lower standards" is particularly insulting. It is typical beltway arrogance to presume that state and local elected officials are somehow less interested in protecting the environment than officials in Washington. We are truly puzzled that a former state environmental director would say such a thing.

We also want to point out that environmental reform is a partisan issue only in Washington. Across the country Republican and Democrat governors, state legislators, county officials, and mayors support environmental and regulatory reform legislation to provide greater flexibility and unfunded mandate relief for states and local governments. In fact, a bipartisan meeting of state and local government officials last month in Baltimore determined that environmental reform legislation is the top priority of the state-local government coalition in the 104th Congress.

Thank you for your leadership in support of environmental and regulatory reform. We look forward to continuing to work with you to enact reform legislation that ensures that new regulations justify their costs and provides states and local governments with enhanced flexibility to meet the federal standards.

Sincerely,

GEORGE V. VOINOVICH,
Governor of Ohio.
TERRY E. BRANSTAD,
Governor of Iowa.

IN MEMORY OF WHITE EAGLE

Mr. DASCHLE. My State of South Dakota is small in population but large in spirit. This is particularly true of the native American population that calls South Dakota home. Indian people have blazed their way into American history in countless ways. Even their names convey poetry and magic: from great leaders like Sitting Bull, Crazy Horse, and Black Elk, to modern day role models like Billy Mills and Jim Thorpe.

White Eagle—Wanblee Ska—was a Rosebud Sioux who soared on the wings of classical music. Last week, at his parents' home in Mission, SD, White Eagle died at the age of 43. In spite of his untimely death, he left a legacy that will live on for generations.

In a State where country/western music is heard on most radios, White Eagle turned his natural gift for song into a polished operatic tenor talent. He sang for the inauguration of a President and at Carnegie Hall. Despite his relative youth, he had already been enshrined in the South Dakota Hall of Fame at the time of his death.

Dennis Holub, director of the South Dakota Arts Council, says that White Eagle was "the epitome of a great artist * * * [he] sang in some of the world's finest halls but also brought his songs home so South Dakotans could enjoy them, too."

But it was not only his gift of song that made White Eagle rise on currents of critical and public acclaim. It was his courage in overcoming obstacles and misfortune, his ability to make himself continually better while remaining utterly human, that made him an inspiration to the people of South Dakota.

Although he began singing as a child and achieved some success as a church soloist and musical performer, he stopped singing after developing nodes on his vocal cords. Nevertheless, when he was subsequently asked by a friend to help out the Mile High Opera Workshop after the company lost its tenor, it became clear that White Eagle had found his true vocation.

His 30th birthday was already behind him when he began voice lessons. He continued his studies and graduated from the San Francisco Opera's Merola Opera Program. He went on to work in New York City, and with the Pennsylvania Opera Theater, the Cleveland Opera, and others.

White Eagle developed AIDS in the late 1980's. In a State where AIDS is even rarer than classical concerts, he became the human face of the disease. He could have hidden; instead, he became a powerful force for understanding and compassion.

White Eagle overcame many obstacles in his tragically short life. He succeeded, but fate decreed he would not have enough time to fully savor his success. Nor did we have enough time to enjoy his gift.

But White Eagle left an enduring legacy. Many who otherwise might not have been exposed to classical music became devotees because of White Eagle's gift. Many who might never have seen the human face of AIDS gained understanding through his courage and dignity.

My connection to White Eagle stems not only from my love of his music, but also from the fact that his brother, Robert Moore, is a former member of my Washington staff. I know I speak for my office, and all of South Dakota, as I offer our condolences and prayers of support for his family in this difficult time. We join them in mourning the untimely death of White Eagle. But, even as we mourn, we celebrate his life and his gift of music, and we remember his courage and compassion.

White Eagle will be missed, but he will not be forgotten, for the spirit of his gifts will endure for generations to come.

UNFUNDED MANDATES UNDER SENATE FINANCE WELFARE BILL

Mr. DASCHLE. Mr. President, yesterday we had a very productive meeting with the President, a number of my colleagues here in the Senate, Governor Carper, Mayor Archer of Detroit, County Executive Rick Phelps of Dane County, WI, and Bill Purcell, majority leader of the Tennessee House of Representatives.

It is clear that the Work First Coalition is growing. Government leaders at all levels agree that we need to move forward with welfare reform—that we can't let extremists hold this very important reform hostage.

We have a plan. It is about work. It is about ending the cycle of dependency

and helping single mothers and unemployed fathers become self-sufficient and stay that way.

The bill that was reported from the Finance Committee is not about work. It's a huge unfunded mandate to the States.

In fact, the head of the bipartisan U.S. Conference of Mayors may have put it best when he called the Republican welfare reform plan the "mother of all unfunded mandates."

It's ironic that S. 1, the first bill the Republican leadership introduced this Congress, was a bill to stop unfunded mandates. Now they want to dump a $35 billion unfunded mandate on the States.

Why is the welfare reform bill as reported from the Finance Committee an unfunded mandate? The reason is simple.

The bill as reported by the committee freezes Federal funding to the States at the fiscal year 1994 level in each of the next 7 years. At the same time, the bill requires an increasing percentage of welfare recipients to participate in the current-law JOBS Program, which offers education or training or other work opportunities to welfare recipients.

But, participation in the JOBS Program is not free. There is a cost to providing education or job training. In addition, when we talk about welfare recipients, we are usually talking about single mothers raising children, many of them small children or infants.

To enable a single parent to participate in an education or training program, someone has to care for her child during that time period. She may be lucky; perhaps a relative will watch her child for free. But, chances are, she will not be lucky. She, like the majority of working parents today, will have to pay for child care—will have to pay someone to take care of her child while she is away from home.

The cost of child care is not cheap. In fact, today the cost of child care is often a low-income family's largest expense—larger even than rent.

And, the problem for parents of very young children is that the cost of child care is greatest for toddlers and infants.

Certainly, if we want to put the parents of these young children to work—if we want them to stay in the workforce and become truly self-sufficient—then we need to help them afford quality day care.

I do not think any Member of the Senate would suggest that we promote a policy that would result in infants and toddlers being left home alone—even in the name of requiring parents to work or participate in the JOBS Program. I do not believe any Senator truly wants that.

However, it needs to be clearly understood that, in order to avoid that result and, at the same time, comply with the participation rates in the Finance Committee bill, States will have to pay for increased JOBS Program participation and child care to enable mothers to participate. Otherwise, participation in the JOBS Program simply won't happen, and/or mothers will be forced to leave young children and infants alone.

The Finance Committee bill provides no funds to help States comply with this mandate.

What will States have to pay? About $35 billion over the next 7 years.

Now, one begins to understand why this bill has been called the mother of all unfunded mandates.

Who will pay that $35 billion? I'll tell you if you haven't already figure it out. The States. The counties. The cities. And, last, but certainly not least, the local taxpayers will have to pay. That's who.

If a mandate is enacted and resources aren't provided to facilitate compliance with that mandate, someone will have to foot the bill. That's a simple fact that we cannot afford to overlook in the welfare debate.

I ask unanimous consent that two charts I have be printed in the RECORD.

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

Unfunded mandates to the States (or counties, cities, local taxpayers) under the Senate Finance Committee welfare bill

[Fiscal years 1996–2002 in millions of dollars]

	Additional 7-year cost passed on to States in order to comply with the Senate finance bill
Alabama	299.4
Alaska	82.6
Arizona	565.8
Arkansas	207.7
California	5,290.0
Colorado	288.9
Connecticut	434.7
Delaware	86.3
District of Columbia	206.5
Florida	1,978.4
Georgia	1,066.3
Hawaii	156.7
Idaho	58.5
Illinois	1,622.6
Indiana	579.7
Iowa	241.8
Kansas	147.5
Kentucky	553.5
Louisiana	682.6
Maine	182.4
Maryland	672.9
Massachusetts	946.0
Michigan	1,470.0
Minnesota	543.0
Mississippi	403.6
Missouri	761.8
Montana	74.7
Nebraska	25.8
Nevada	108.1
New Hampshire	69.8
New Jersey	953.2
New Mexico	235.7
New York	3,399.5
North Carolina	687.3
North Dakota	49.1
Ohio	1,747.6
Oklahoma	412.2
Oregon	238.5
Pennsylvania	1,631.6
Rhode Island	160.6
South Carolina	361.3
South Dakota	20.5
Tennessee	841.0
Texas	2,270.2
Utah	17.8
Vermont	85.2
Virginia	550.8
Washington	638.7
West Virginia	247.4
Wisconsin	415.2
Wyoming	20.6
Total	34,791.6

Notes:

Analysis prepared by staff of the Democratic Policy Committee based on HHS/ASPE data.

Estimates assume that States maintain the number of participants in the JOBS program projected under current law and keep current law exemptions through FY 1998, and comply with participation rates required under the Senate Finance Committee welfare bill for years FY 1996–FY 2002. Expected average national costs per countable participant for JOBS/work and child care: FY 1999 $5,700; FY 2000 $5,900; FY 2001 $6,200; FY 2002 $6,400. [For example, the Finance Committee bill freezes funding at the FY 1994 level through FY 2002. Therefore the seven-year costs are derived by subtracting FY 1994 JOBS participants from the number of participants expected to be required to participate in each year to find the number of net new recipients required to participate in JOBS in each year to comply with the Finance Committee bill. The net new number of participants each year has then been multiplied by the average cost to fulfill JOBS requirements and cover day care costs to enable parents to participate for 20 hours per week.]

The top 10 States with the largest unfunded mandates under the Senate Finance Committee welfare bill

[In millions of dollars]

	Additional 7-year cost passed on to States in order to comply with the Senate Finance bill
1. California	5,290.0
2. New York	3,399.5
3. Texas	2,270.2
4. Florida	1,978.4
5. Ohio	1,747.6
6. Pennsylvania	1,631.6
7. Illinois	1,622.6
8. Michigan	1,470.0
9. Georgia	1,066.3
10. New Jersey	953.2

Note: Analysis prepared by staff of the Democratic Policy Committee based on HHS/ASPE data.

Mr. DASCHLE. Mr. President, the first chart, entitled, "Unfunded Mandates to the States (or Counties, Cities, Local Taxpayers) Under the Senate Finance Committee Welfare Bill (FY 1966–FY2002)." is a State-by-State breakdown of the unfunded mandates under the legislation over the next 7 years.

The analysis was prepared by the staff of the Democratic Policy Committee based on HHS data on JOBS participation and the cost of such participation.

The second chart is entitled, "The Top Ten States With the Largest Unfunded Mandates Under the Senate Finance Committee Welfare Bill."

South Dakota didn't make the top 10 list, but anyone in our small State will tell you that an unfunded mandate of $20.5 million is a lot of money. I suspect people in the other 39 States facing similar shortfalls would react the same way.

I am disappointed that so few Members have focused on the unfunded mandate aspect of this legislation. Instead, they have chosen to focus on the size of the slice of pie they expect to get.

During the last several weeks, I have read on numerous occasions that one of the largest reasons the Senate Republicans have not brought the legislation to the floor for consideration is that there is a formula fight brewing in their caucus.

What's the fight about? The distribution of money. Under a frozen block grant as proposed in the Finance Committee bill, funds are really frozen. Despite your circumstances, that's it. You get one piece of the pie each year.

The problem is that a number of Members have looked ahead and seen their slice of the frozen pie, and they don't know if they're so hungry for block grants anymore. What about population growth? What about times of recession or economic downturn? Unemployment? Natural disaster?

Perhaps there ought to be adjustments they say. Adjustments for these uncontrollable things or events. Southern States don't want to be punished just because their populations are growing.

Mr. President, I agree with them. That's why our plan isn't a frozen pie that locks States into the same size piece each year for the next 7 years.

Our plan abolishes AFDC, but continues a matching share partnership with the States so that, as need rises, the Federal Government will be there to remain a partner. So we don't have a formula fight over our plan.

We recognize that, to put welfare recipients to work, to end the cycle of dependency, we must first make some initial investments to get welfare recipients into the work force.

Our plan cuts existing welfare programs and re-invests those funds in the effort to putting welfare recipients to work, and in day care to enable these mothers to go to work without abandoning their children.

I have said it before and I'll say it again. Senate Democrats are ready to debate welfare. Senate Republicans have delayed that debate time and again. I call on the other side not to let extremists hold welfare reform hostage. Join with us. Work with us. It's not too late.

We can enact a bipartisan welfare reform plan. A plan that is truly about putting welfare recipients to work and enabling them to become self-sufficient.

We support that. Able-bodied welfare recipients ought to work. As some have said, they need to get out of the cart and help pull it. But, babies and toddlers shouldn't be thrown out of the cart. That kind of extremism aims at the mother and hits the child.

We believe the Senate can enact a welfare reform plan that is not extreme, but that is fair and requires work and personal responsibility. Rhetoric is fine, but the reality is that a small minority support the extreme approach and are using their power to block real reform.

If the rest of us join together, we can have a pragmatic, sensible, realistic plan to reform welfare.

RECENT ACHIEVEMENTS OF STUDENTS FROM THE SOUTH DAKOTA SCHOOL OF MINES AND TECHNOLOGY

Mr. PRESSLER. Mr. President, today, I would like to commend the recent accomplishments of the innovative students at the South Dakota School of Mines and Technology, SDSM&T, in Rapid City, SD. On Thursday, June 29, the SDSM&T solar motion team placed 16th in Sunrayce '95, a solar-powered car race from Indianapolis, IN to Golden, CO. Then, on July 1, SDSM&T engineering students captured the national title at the eighth annual National Concrete Canoe Competition here in Washington, DC.

Sunrayce '95 was a 10-day, 1,150-mile cross-country race. Despite the cloudy and rainy conditions they experienced, the SDSM&T team still managed to better all other rookie teams with their solar-powered car, the Solar Rolar. On the last day of the meet, the team finished the 53-mile race in seventh place, passing several top-ranked rivals. The teamwork and endurance demonstrated by this first-year team is admirable. They are sure to be contenders in the years to come.

Last month, I had the privilege to visit with the SDSM&T concrete canoe team before their competition. The school was represented by a group of hard-working and dedicated individuals. After last year's fourth-place finish in the competition, these engineering students devoted much time to training and fine-tuning their 92 pound canoe, the Predator. Their efforts paid off as they competed in various divisions against 21 other colleges from across the country.

Taking the first-place trophy was not all fun and games for the South Dakota team. The recent flooding which took place in Virginia sent debris floating down the Potomac River. The Predator was struck by a log and sustained minor damage, but repairs were made and the canoe remained in the competition.

Muscle and boat design were not the only factors that determined the final outcome of the competition. A majority of team points were captured in verbal and written presentations about the canoe. When all was said and done, the South Dakota School of Mines and Technology team accumulated the most team points, receiving a $5,000 scholarship for their efforts.

Mr. President, I am extremely proud of the students from the School of Mines and Technology. They have proven that South Dakota students can compete—and be front-runners—in the field of civil engineering. A July 5, 1995, Rapid City Journal editorial praised the teams for their accomplishments and I ask that a copy of the editorial be printed at the end of my remarks.

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

(See exhibit 1.)

Mr. PRESSLER. Mr. President, again I congratulate the administrators, teachers, and students of the South Dakota School of Mines and Technology for their great work. They have given added meaning to the South Dakota work ethic. I wish them continued success in the future.

EXHIBIT 1

[From the Rapid City Journal, July 5, 1995]

A BANNER WEEK FOR TECH

Teams from the South Dakota School of Mines & Technology displayed the quality of the schools's technical expertise and people.

Last week, people across America, particularly those in circles of higher education, were finding out something that people in our community already know but sometimes take for granted:

South Dakota School of Mines & Technology is an outstanding institution of higher learning that attracts quality students and faculty.

On Saturday, Tech won the 8th annual National Concrete Canoe Race put on in Washington, D.C., by the American Society of Civil Engineers. Among the 22 competing schools, Tech was the champion.

On Thursday, Tech's Solar Motion team finished 16th in the grueling Sunrayce '95, a solar-powered vehicle race from Indianapolis, Ind., to Golden, Colo.

On Friday, Tech's effort in Sunrayce '95 was rewarded with a pair of honors that typify the best of Tech.

The quality of the school's engineering expertise was recognized in the awarding of a plaque and a $1,000 cash prize for the best overall use of technology in its Sunrayce vehicle.

The quality of the school's people was recognized in a humanitarian award to Ragnar Toennessen, race manager for Solar Motion, for going above and beyond the call of duty. On the race's final leg, Toennessen and communications specialist Zach Spencer left Tech's chase vehicle to help Iowa State team members after their car blew a tire and wrecked. Toennessen was still directing traffic around the wrecked vehicle when Tech's entry crossed the finish line almost an hour later.

Tech's efforts in both the concrete canoe race and Sunrayce '95 showed that the school is achieving its mission to prepare students to meet the demands of the coming century—demands that will require not only a high level of technical expertise but also a sensitivity for human needs.

Thanks to the work of these two teams, more people across America now know what

people here have known for a long time: Tech is an outstanding school.

CHINA AND VIETNAM

Mr. KENNEDY. Mr. President, last month, William Ketter, vice president and editor of the Patriot Ledger of Quincy, MA, traveled to China and Vietnam to observe first hand the rapid economic and social changes taking place in those countries. At this crucial juncture in our relations with both nations, Mr. Ketter's articles provide interesting insights into China and Vietnam. I ask unanimous consent that his articles may be printed in the RECORD, along with his editorial on the importance of normalizing relations with Vietnam.

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

[From the Patriot Ledger, June 19, 1995]

YOUNG WANT A BETTER LIFE

(By William B. Ketter)

Buoyed by the opportunity to practice his English, the Beijing University graduate student reeled in his year-of-the-pig kite from high above Tiananmen Square and motioned for me to step closer.

"The most important thing to young people in China today is a better economic future—for themselves, for their family, for their friends," he whispered. "Politics is politics. . . . We don't try to influence it."

Our conversation occurred a few days before the sixth anniversary of the anti-government uprising of workers and students in this very square, a convulsive episode in the 46-year history of communist China.

Yet this young man, who identifies himself as Li Zeng, a 23-year-old master of science student, appeared uninspired by the significance of that defining event. What's more, he seemed to represent the prevailing mood in today's China: a changed attitude that places the pursuit of material well-being over the fight for democracy.

"How can I put it? Li Zeng continued, "Protesting in the streets, yelling slogans, causing rebellion doesn't work. We are more interested in buying a car and getting ahead. There's no future in worrying about what happens after Deng Xiaoping or what Premier Li Peng and President Jiang Zeming might think."

His predication that few people would gather in Tiananmen Square of June 4 to mourn the massacre of 500 demonstrators on that fateful day in 1989 proves correct. The cry for political reform in China has been muted by the heavy hand of the government (a dozen dissidents were detained in advance of the anniversary) and by the sprouting riches of a market economy.

Marxism is still central to the political process, but it is fading fast from the economic scene as farmers and city dwellers are encouraged to improve their individual lot and not to rely entirely on the state. Free market offer everything from antique furniture to bicycles to exquisitely carved Buddha statues to fresh turnips.

Furthermore, there is evidence this strange mix of political communism and market capitalism is working, at least to some degree. Gone are the drab-looking Mao suits nearly everybody wore eight years ago when I was last in China. Designer jeans, Western suits, formfitting skirts, and Italian shoes are the dress of the day.

Gone too, is the sight of boulevards filed only with bicycles.

Motorscooters and motorcycles are quickly becoming the Great Wheels in China. There are also many more cars on the road, especially taxicabs. The consequence: cramjammed streets and rush-hour gridlock.

High-rise apartments, office buildings and hotels are multiplying as fast as you can say Mao Tse-tung, creating dazzling towers of steel, glass and chrome over the dusty plains of Beijing.

"Does all this surprise you?" asked Li Jianping, deputy director of the U.S. Division of the Chinese People's Association for Friendship with Foreign Countries. He was host to the group of American newspaper editors I joined for a week in China as part of an Asia tour.

"It shouldn't," he continued. "We even have a McDonald's and a Hard Rock Cafe not far from Tiananmen Square."

A BUCK FOR A BIG MAC

A visit to both confirms that the Chinese are no different than Americans when it comes to Big Macs and ear-numbing music. Only the prices are lower: 25 cents for a plain hamburger, $1 for the Big Mac, and Beijing beer goes for 75 cents a glass at the Hard Rock. Save The Planet T-shirts sell for $6.

The disco in the China World Hotel features American songs, strobe lights and hip-hop dancers. So, too, the hottest nightspot in Beijing, The NASA. It features a helicopter jutting from the wall and prostitutes that slink after businessmen on expense accounts. The hookers make more in a week ($500) than the average person takes home in a year. But if they get caught, the penalty is an automatic year in jail for first-time offenders, longer for repeaters.

One club-hopping beauty, who identified herself only as "Winnie," said the risk is worth it. "I can buy what I want: clothes, makeup, CD-player, color TV," she said. "I live the good life."

And if the long arm of the law should tap her bare shoulder, she has cash reserves to pay off the police. "They like money, too," Winnie laughed.

Indeed they do. Corruption and nepotism are widespread in China despite efforts to curtail them. The daughter and son of Deng Xiaoping, the ailing paramount leader, who is 90, hold high government jobs, as so the children of most other senior officials.

It is nearly impossible, government leaders admit, to keep track of the multitude of underpaid bureaucrats who approve licenses and the cadres that enforce loose laws in the overpopulated cities and provinces. They consider gifts and payoffs part of their compensation. So do some high government officials because of the system of low pay. The premier and president of China make only $125 per month in salary. The perks are generous, however. Free food, housing, transportation, medical services and vacations.

Taxi drivers aren't as fortunate, and so they regularly overcharge unsuspecting foreigners by speeding up their meters or driving around in circles. A 10-mile ride from my hotel in Central Beijing to visit a friend on the northern edge of the capital cost $3 out, $7 back. Complaining to the Beijing Taxi Control Bureau brings a shrug and the excuse that there aren't enough inspectors to control the 60,000 licensed cabs on the streets of Beijing.

And while China has eliminated the two-currency system—one for foreigners, another for natives—that encouraged black market money dealers, outsiders still pay inflated prices for many goods and services.

ETHICS RULES FOR OFFICIALS

Vice Premier Lo Lanqing, a dour hardliner, stiffened at the suggestion that China's move to a market economy has created greater corruption and brought Western vices to the land known as the Middle Kingdom.

"Oh, yes, we have (corruption) problems with some people," he said during an interview in the Great Hall of the People overlooking Tiananmen Square. "Our problems, though, are no greater than others, and we are dealing with them through reform. Certainly your country has this problem."

Among the reforms are new rules requiring government and party officials to disclose their sources of income and banning gifts and favors that might influence their decisions. The regulations even apply to the children of senior party leaders.

Disclosing sources of income and prohibiting conflict-of-interest gift-giving "will keep clean and honest organizations of the Communist Party and government bodies and strengthen their ties with the people," the official New China News Agency declared.

The unanswered question is whether the government will ever enforce the new ethics rules. Similar crackdowns in years' past were never fully implemented.

Vice Premier Lanqing was more forthcoming when the conversation turned to Chinese-American relations. He said China needs U.S. technical know-how and access to our markets to develop into a world economic power.

"We have a long way to go to catch up to the United States, and we may not even be able to do so by the end of the next century," he said. "You are our most important international trading partner. We only wish you would see us that way."

U.S.-China trade currently amounts to $50 billion per year, with imports from China accounting for 65 percent of the total. China's major exports to the United States are electrical machinery, footwear, clothing, toys and sports equipment. The fastest growing U.S. exports to China are aircraft, cotton, fertilizer and wood pulp.

One thing Lanqing does not want from America is "your violent and pornographic culture of movies and music. This is bad for our people, and we won't allow it."

The reality is that what Lanquing fears is already there. Hollywood movies and music are pirated by unscrupulous businesses and sold on the black market throughout China. So, too, computer software, textbooks, sneakers and watches. They're called knockoffs, and they are a major concern of corporate America.

Lanquing admitted that piracy of American goods occurs, but he said U.S. business interests in southern China, not Chinese nationals, are primarily responsible for the illegal activity.

"We have courts to deal with this," he said, pointing out that China recently established a copyright law designed to punish knockoff manufacturers and distributors.

And, in fact, during our visit a Beijing court issued a verdict under the new law against three Chinese publishing houses that had published a series of Disney-character children's books without permission from the Walt Disney Company.

The court fined the defendants $26,100, ordered them to stop selling the books, and required them to issue an apology to Disney through the news media.

Mickey Mouse punishment for years of profit at the expense of the Disney Company, but an American official in Beijing said it

was an important step toward establishing some semblance of legal protection against trademark counterfeiters.

"We would like to see greater punishment of these knockoff artists," the U.S. official said. "But something is better than nothing, and it does appear the Chinese government is trying to stop the piracy."

CURBING THE BIRTHRATE

It is also trying to stop the runaway birthrate—without great success. China is now home to 1.2 billion or one-fifth of the world's people. And the population is growing at the rate of 15 million a year. That's more than twice the population of Massachusetts.

Thus there's enormous pressure on the women of China to have just one child, and abort subsequent pregnancies, even up to the eighth month. But the Confucian tradition of "the more sons, the more blessings" dies hard in the countryside, where 80 percent of China's population lives. There the government allows two children; many families have five or more.

There are substantial economic incentives to restrict family size. One-child families get priority in new housing, medical care for children, and education. Mothers who sign a pledge to have only one baby get generous maternity leave.

But first you must apply to the government for permission to have a child. If approved, you are given 12 months to get pregnant or go to the back of the line. Permission is denied to anyone who is not married. Or if you are under 25 years old.

Divorce is legal in China, but not an easy option out of an unhappy marriage. Chinese culture frowns on divorce and less than 1 percent of the marriages are dissolved. Yet our guide, Li Jianping, conceded that more than half the couples would probably call it quits if Chinese attitudes on marriage were similar to those in the United States.

"I would guess that one-third of the families are happy, one-third want a divorce now, and one-third have at least thought about divorce," he said. "It is not a simple social question now. Maybe it will change in time."

CREDIT CARDS UNWANTED

Like the use of credit cards. They were unknown in China until recently. Now, ordinary folk can apply for one from the Bank of China. All you need is proof of employment, an above-average income, and a person of means to vouch for your trustworthiness.

"Image the potential for the credit card companies," smiled Jianping. "More than a billion prospective card holders. But they shouldn't hold their breath waiting or they'll turn blue. This is not something we want or need."

The reason: Save and pay-as-you-go remain valued economic traits among the Chinese masses, a holdover tradition from the days of a managed economy and central control of their lives.

And the millions of unemployed, unskilled peasants who roam the big cities are obviously not candidates for credit cards. They are desperate for work. But the Chinese economy struggles to keep up with the crush of population growth and the ranks of the jobless grow ever more crowded. Some experts estimate that 200 million Chinese will be unemployed within the next 5 years.

In an effort to create more jobs, the government recently changed the work week from 60 hours over six days to 40 hours in five days. The change applies to everyone but doctors, nurses and other medical personnel; they still work six and sometimes seven days per week.

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"We don't have enough medical people to handle the country's medical needs," Jianping explained. "Training more doctors and nurses has become a priority."

COLLEGES NEED CASH

But huge obstacles lie between that goal and the desired result. Only 5 percent of China's high school graduates are allowed to go on to college because of limited classroom capacity. The elite are chosen through a rigorous series of tests. Those who don't pass are sent to vocational schools or left to fend for themselves.

If the University of International Business and Economics in Beijing is typical, the colleges of China need an infusion of cash. A visit to the campus turned up outdated equipment, tattered textbooks, sweltering classrooms, and too few faculty members. Even university President Sun Weiyan is required to teach four hours a week. He doesn't complain. Nor do the students. They're just happy to be in school.

Small wonder. During China's Cultural Revolution of 1966–76, the university was closed down. Millions of Chinese scholars, including President Weiyan, were exiled from their life's work. Many had to work on farms and in factories. He was relegated to teaching English to Vietnamese students in a rural high school and tending to a flock of ducks after classes.

Now, he speaks optimistic of the future. "The leaders of the country are very much aware that education is critical to progress," he said. "They are planning to broaden the higher education system. This can and will happen as we move toward a socialist market economy."

Just who are the leaders of China now that Deng Xiaoping, the resilient compatriot of the late Chairman Mao, has been incapacitated by advanced Parkinson's disease and no longer holds sway?

No one knows for sure. Chinese political experts look for a generational change in leadership over the next several years and the shifting of more authority to the National People's Congress, or national legislature. The Communist Party, while gradually losing membership, will continue to set the agenda, including any political reform that might occur.

President Jiang Zemin, at 69, has been consolidating his power since Deng's illness forced him to curtail his role two years ago. He was Deng's choice as his successor. But there has been growing criticism of Deng's reform movement lately, and Zemin, who is also general secretary of the party, has been among the principal detractors.

"He's trying to assert himself as his own leader," an American official in Beijing said. "If he gets the support of the army, he will be the next Deng Xiaoping."

Prime Minister Li Peng, 66, is perhaps the best known senior Chinese official to the outside world. His future was clouded by his role in the Tiananmen massacre, and China experts say he does not enjoy the support of economic reformers.

Such is political life in today's China. Even Chairman Mao, who overthrew Chiang Kai-shek in 1949 and made China a communist nation, is falling from favor. His massive statue at the entry to Beijing University has been removed. The only prominent image left of the once ubiquitous Great Helmsman, who died in 1976, hangs in Tiananmen Square. Only foreigners bother to photograph it.

"Mao represents the past," said the Beijing University graduate student in Tiananmen Square. "We're more interested in the future—and with making money—than the teachings of Mao."

In these and other ways, China is undergoing transformation from a command-and-control government to a land of economic opportunity. That, one can hope, will also eventually result in a Western-style political system.

[From the Patriot Ledger, June 20, 1995]

IN VIETNAM, ONLY THE FUTURE MATTERS

(By William B. Ketter)

The story of Miss Saigon, that popular musical about doomed romance between a Vietnamese bar girl and an American soldier, has taken a new and happy twist on Vietnam's real-life stage.

Miss Saigon of 1995, Nguyen My Hanh, dances for tips in a karaoke bar by night, scoots to college and modeling gigs on her Honda Dream motorcycle by day, and cheerfully flips pizza dough at her family's hole-in-the-wall eatery "Manhattan" on weekends.

She doesn't have time to pine for anyone—and certainly not a GI lover. At 19, she wasn't even born when American troops fought in Vietnam. Nor does she ask her mother and father about that sorry era.

"Why bother?" she asks. "That's the past. I have other, more important things to do. These are exciting times."

Welcome to today's Vietnam, where more than half the population is under 30 and too young to know or care about the war that still haunts the American psyche. Economic success through individual ingenuity is Vietnam's top priority—and no wonder. The average income is only $450 a year in this ancient land of mythical dragons.

"Oh, yes, our history courses cover the American war, and all the other wars against Vietnam, from the perspective of our long struggle for liberation," Hanh says.

"I've seen the American war movies. You know, 'Deer Hunter,' 'Platoon,' 'Born on the Fourth of July.' But that's about it. No big deal. OK?"

And so it goes during a week of talking with government leaders, military heroes, journalists, businessmen and ordinary people. Twenty years after their civil war ended, the Vietnamese give the impression they are not bitter; they just want to get on with improving their lot.

"Well, we like Americans," smiled Nguyen The Quynh, vice director of the official Vietnam News Agency. "You come from a rich and successful country. You won't find hard feelings. You will find people who want to get ahead . . . to be successful—like you."

With that goal in mind, communist Vietnam has initiated a radical economic development program called doi moi, or renewal. It is designed to breathe life into this enfeebled socialist society by loosening restrictions on free enterprise and introducing the profit principle to state-owned industries.

Slowly, a tradition-bound culture is acceding to modern ways. On city streets you see hip, fashion-conscious young people bustling by old women in conical hats sweeping sidewalks with twig-bundle brooms. At night the streets come alive with heavy-metal music and T-shirted rogues peddling fake American dog tags. At dawn aging war veterans practice tai chi and play badminton in the parks. In the cities motorcycles rule the road; in the country the water buffalo is still king.

Will a new age of prosperity for Vietnam emerge from this paradoxical blend of the old and the new?

Perhaps.

Office buildings, hotels and restaurants are sprouting like rice grass in Hanoi, the national capital and home to 3 million people.

Even the notorious Hoa Lo prison, known to American prisoners of war as the Hanoi Hilton, is changing into an office building-hotel complex. A small section will be preserved for a monument to the most famous prisoner, U.S. Sen. John McCain, R-Ariz. He spent 5½ years there after parachuting into Hanoi's West Lake from his disabled Navy fighter jet on Oct. 26, 1967.

Construction cranes also loom over Saigon, which is officially called Ho Chi Minh City but which everybody refers to by its old name. Rooms at the Floating Hotel on the Saigon River go for $200 a night. Small merchants do a brisk business, selling their wares at free markets and in street stalls. Whole blocks boast tinseled stores displaying TV sets, stereos, VCRs.

But beggars and pickpockets also roam the streets, and malnutrition afflicts 40 percent of the nation's children, many of whom wander about hawking stamps, gum, postcards. Anything they can get their hands on.

And boat people still set sail for refugee camps in Hong Kong and Malaysia, fleeing not from political oppression but rather from starvation, even though Vietnam is the world's third-largest producer of rice.

FRENCH, U.S. MOVIES POPULAR

Economic liberalization is fast changing the colonial character of Hanoi, the drab citadel of communism. Movie theaters feature French and American fare, including "True Lies" and "The Fugitive." A national TV channel plays pop music videos a la MTV. Karaoke clubs thrive, as do the attractive young ladies who gladly dance and sing with the patrons for $5 an hour and tips. Prostitution has become a national worry because of a dramatic increase in AID—20,000 cases reported last year alone. Breweries work overtime to keep up with the consumption of Tiger and "333" beer.

Much of this buzz is old hat to Saigon, a larger, more colorful and livelier city. It experienced free-wheeling commercialism during the American presence in Vietnam and obviously hasn't forgotten how to enjoy it. Successful enterprises from the war years are back in business, sharing their expertise and helping to stimulate economic growth.

But the centerpiece of national reverence is not the American dollar or the Vietnamese dong. It is Ho Chi Minh's waxen body, lying in serene attentiveness in a neo-Stalinist marble mausoleum in the heart of Hanoi. Lines of people file into the tomb, paying respects to the whispy-bearded man who brought communism to Vietnam. His remains are mechanically raised from a freezer for viewing in a glass-enclosed casket, then lowered again at night. Once a year the body is shipped to Moscow for touching up. Russia, home to Lenin's tomb in Red Square, is apparently the expert on embalmed patriots.

A Sunday visitor to Ho's tomb allowed that he would surely roll over in his grave—If he were in one—at the thought of the government touting his body and modest nearby home as prime tourist shrines. Yet every cent counts in a cash-poor Third World country.

More than anything, the doi moi policy is aimed at enticing foreign investors and tourists to Vietnam. And the primary target in America.

"Vietnam needs many things from the United States—technology, machinery, medicine, consumer goods," acknowledged Luu Van Dat, a government trade expert. "We are a poor, backward country. You are the most advanced nation in the world."

And what can Vietnam offer in return?

"The short answer is cheap labor," Dat said. "We also have rice, seafood, leather goods. And we do have some of the best beaches in the world."

So good that an American company, BBI Investment Group of Chevy Chase, Md., plans to build a $250 million resort and golf complex on China Beach along the South China Sea near the spot where the U.S. Marines first landed in 1965. And Coca-Cola and Pepsi-Cola fight for the soft drink market. The Boston-based Gillette Company sees gold in the faces and legs of 75 million Vietnamese.

"There are encouraging signs of real progress," reports Nguyen Xuan Oanh, the Harvard-educated Saigon businessman, who was the chief architect of doi moi.

"Inflation is under control. And the reform policy has transformed Vietnam into a market mechanism that's allowed to operate freely and efficiently. The growth rate, which has been some 3 percent for several decades, has jumped to 9 and 10 percent per year. What's more, the best is yet to come."

U.S. COMPANIES CAUTIOUS

Oanh's optimism springs from his personal experience. Twice the acting prime minister of South Vietnam, he was placed under house arrest for "re-education" when the communist North captured Saigon in 1975. But later he emerged as the principal economic adviser to the unified government, was allowed to set up an international management and finance company, and eventually became a millionaire again.

"I gambled (by not fleeing Vietnam), and I won," he said. "My message to American business is you can also win."

Still, most U.S. companies are cautious about investing in Vietnam right now. For one thing, we do not have full diplomatic ties with the government. The 19-year American embargo was lifted 15 months ago, and this has led to the opening of diplomatic liaison offices in Hanoi and Washington. But further thawing of relations could be delayed by the American presidential campaign.

There are other concerns, too—trademark and patent protections, an uncertain legal environment, inadequate infrastructure, and rampant corruption among government officials. Bribery is the best way to fast-track an application to do business in Vietnam. But American companies are prohibited by U.S. law from offering money or gifts in return for regulatory favors.

U.S. business interests, with an aggregate outlay of $525 million per year, rank eighth among Vietnam's foreign investors. Taiwan is No. 1 at $2.5 billion. Hong Kong, Singapore, South Korea, Japan, Australia and Malaysia rank ahead of us.

All of which frustrates the Vietnamese leaders to no end.

"We want to close the past with America, and build cooperatively with you for a better future," said Communist Party General Secretary Do Muoi during an interview of his Hanoi headquarters, a lifesize bust of Ho Chi Minh casting a shadow in the background.

"Why can't you do that? Why does your government put up roadblocks? This is not helpful to you or to us—and we both know we need each other for economic opportunity."

ATTITUDE CALLED WRONG-HEADED

Muoi, considered Vietnam's shrewdest senior official, noted that the United States has been reluctant to normalize ties with Vietnam until more progress is made on accounting for the 1,648 American military listed as missing in action in Vietnam.

To him, and other Vietnamese leaders, this is wrong-headed.

But the question persists: Are there still any American MIAs living in Vietnam?

"No," replied retired Gen. Nguyen Giap. "If there were, we would have turned them over to your government long ago. The war is over. We have no reason to hold anyone against their will."

Furthermore, Muoi said, Vietnam has "cooperated completely" with U.S. officials in searching for the remains of the MIAs, including turning over military records and digging up grave sites.

Vietnam, he said, long ago gave up looking for its 300,000 missing soldiers.

"This is not entirely a humanitarian issue with the United States," the 78-year-old Muoi said. "This is linked to politics—and we are very sad about that."

To underscore his point, he mentions that the United States had thousands of MIAs in Korea and World War II and "no similar conditions were placed on diplomatic relations with Germany and Japan."

Because of the MIA issue, Vietnam has been deliberately downplaying the military side of the war of late. That includes renaming the House of American War Crimes in Saigon to simply the War Museum.

But the reminders of horror have not been toned down. An oversized Life magazine photograph of the March 16, 1968, My Lai massacre that shocked the conscience of America adorns one wall. Other photos show the deforming effects of U.S. bombs and the defoliant Agent Orange on the women and children of Vietnam.

There are, of course, no similar photos of the hurt and sorrow caused by the North Vietnamese military. To the victor goes the privilege of selecting which images of war's hell go on public display.

American planes, tanks, bombs and other war materials captured or abandoned prominently occupy the museum grounds and viewing rooms.

WHY WE LOST THE WAR

Such an impressive collection of modern-day weaponry begs the question of how we could lose a war against a lesser-armed enemy. The answer comes into focus the next day during a trip to the famous Cu Chi tunnels. Communist North Vietnam used narrow passageways—just 3 feet high and across—to wage a relentless guerrilla war that baffled, enraged and ultimately defeated the U.S.-backed South Vietnamese government.

More than 100 miles of the underground network stretch from northwest to Saigon to the Cambodian border and functioned as subterranean Viet Cong villages—with kitchens, dormitories, hospitals and command posts.

They were cleverly defended: Americans small enough to descend into them were often trap-doored to death over pits of razor-sharp poles.

Burrowed three stories deep into rock-like soil, the tunnels were the most bombed, gassed and defoliated section of Vietnam. Yet they withstood the heavy assault and serve as a monument to man over machine.

Gen Giap, the mastermind of the communist victories over the French and the Americans, said it was far more than tunnel soldiers that resulted in America's defeat in the only war it has ever lost. Resiliency, a history of nationalism and the will to win at any cost were the real keys to victory, he said.

"Our weapons were not as good as yours," the 84-year-old general said in an interview. "But your human factor was not as good as ours. We had a popular patriotic cause; you had confusion over why you were in Vietnam. We had patience; you wanted instant victory."

Now Vietnam is counting on that same purposeful spirit and unswerving focus to win its economic struggle. But no one really expects significant progress until the government invests billions of dollars in highways, bridges, railroads, commercial port facilities—and public education.

Five decades of war have left Vietnam with a large unskilled labor force and growing illiteracy. The population is exploding and the school system is ill-equipped to respond. Even health care is a touch-and-go matter.

As the deputy minister of education, Tran Xuan Nhi, put it: "We are learning the lessons of the free market, and one of those is the need to train and educate our people so we can build our country into an industrialized society. The future will belong to the educated."

Like Miss Saigon 1995, who is driven by a passion "to study and learn so I can make more money and buy the things I want. OK?"

TIES THAT BIND US TO VIETNAM

Fifteen months ago, President Clinton lifted the trade embargo against Vietnam. Now he should establish full diplomatic relations with this important Southeast Asia country.

Twenty years have passed since the Vietnam war ended. It is time to replace bitterness and recrimination with peace and reconciliation.

Private visits and business relationships are pushing the process along. Just this week, a Massachusetts trade delegation led by Lt. Gov. Paul Cellucci is talking business in Vietnam—business that can create local jobs. And the U.S. already has opened a diplomatic liaison office in Hanoi.

The next logical step is to exchange ambassadors, and there's little to be gained by waiting. The sooner we open an embassy, the better we'll be positioned to expand trade, investment and influence in this vibrant nation of 75 million.

Vietnam is a young, eager and changing society which harbors no grudge against the United States despite our decade-long involvement in their civil war. That's over, as far as most Vietnamese are concerned. And that's the word from the top: "We want to close the past with America, and build cooperatively with you for a better future," Communist Party General Secretary Do Muoi recently told a group of visiting American editors.

The welcome mat is out and the timing is fortuitous. Vietnam has launched a radical economic development program that relaxes restrictions on free enterprise and encourages state industries to be profitable. Political change will surely follow.

Vietnam, moreover, wants and needs American know-how and investment in order to modernize and raise living standards. This is a process in which the United States, with its sizable Vietnamese population and experience in the region, should want to participate. But we need to get going to make the most of the opportunity. American business ranks only eighth among foreign investors there. Establishing full diplomatic ties would give U.S. companies greater support and confidence in doing business with Vietnam. It also would put us in a better position to influence Vietnam's policies.

Normalizing relations does not mean abandoning our efforts to get as full an accounting as possible from Vietnam about Americans still listed as missing from the war years. And, in fact, the Vietnamese are trying to help us do that. They have no real reason to detain Americans against their will or withhold information about MIAs.

Congressman Bill Richardson, D-N.M., for one, is convinced that's the case. He recently returned from Vietnam with more than 100 pages of material relating to American MIAs, and found no traces of alleged underground prisons or other places of detainment. He thinks it's time to normalize relations. So does U.S. Secretary of State Warren Christopher.

So President Clinton should act now—and avoid the risk of making recognition a political football in next year's election campaign. Hesitating can only work against our interests in the region, leaving other countries to gain from Vietnam's budding economy at our expense.

GEORGE SELDES

Mr. LEAHY. Mr. President, George Seldes, who died Sunday in Vermont at the age of 104, was literally, a Witness to a Century—the title of his autobiography.

A true investigative reporter who refused to accept the subtle pressures imposed upon journalists by publishers, editors, and advertisers—he was uncompromising in reporting what he saw and heard, and printed those observations in his own independent publication—In Fact.

Izzy Stone called Seldes the "granddaddy" of investigative reporters—high praise from another great independent journalist of our century.

My visits and frequent correspondence with George rank among the highlights of my Senate career. He never intruded, but did on occasion offer some very good advice to this Senator—and most times, I was smart enough to recognize good counsel when I heard it. I had the great pleasure of joining him at his 100th birthday party in Vermont—an event that became a public celebration of his life.

Here was a man who interviewed William Jennings Bryan, Theodore Roosevelt, Eddie Rickenbacker, Generals Pershing, Patton, and MacArthur; a personal observer of Lenin and Mussolini and a confidant of Picasso, Ernest Hemingway, and Sinclair Lewis.

One of the great lives of our century has passed—but George Seldes left behind a recorded history to guide our understanding of the turbulent time.

I attach an editorial that appeared in the July 8, 1995 edition of The Burlington Free Press, and a column written by Colman McCarthy that appeared in the July 11 edition of The Washington Post.

They capture the spirit and dogged pursuit of truth that marked George Seldes' lasting contribution to journalism and the history of our age. I ask unanimous consent that they be printed in the RECORD.

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

[From the Burlington Free Press, July 8, 1995]

A CONTRARY VOICE

George Seldes, who died Sunday at 104, was a journalist and harsh critic of mainstream journalists who might be best remembered by Vermont newspaper editors and reporters from an appearance before the Vermont and New Hampshire Press Associations in the late 1980s.

Except for a slowed step and a bit of a stoop, nothing in Seldes' appearance betrayed his exceptional age, nor hints of any mellowing on matters he found important—beginning and invariably ending with a journalist's responsibility to tell it straight.

What bothered this long-time resident of Hartland Four Corners most during his 86 years of covering historic events was not so much what got into newspapers of his day but what didn't—especially immediately preceding and following World War II. Errors of omission.

It was a time when some journalists doubled as government informers for U.S. intelligence agencies as a gesture of patriotism; when the Washington Press Corps kept many elected officials' personal foibles and peccadillos a secret; and powerful publishers ran newspapers more like personal fiefdoms in pursuit of selective causes than purveyors of the larger truth.

Like I.F. Stone, Seldes figured if mainstream newspapers wouldn't print what he wrote for fear of riling advertisers or powerful news sources, he would print it in his own publication. In Fact, it was called, and it took on, among many powerful interests, the tobacco industry and its ability to keep damaging health data out of newspapers—a consequence, Seldes was never shy about charging, or newspapers' heavy reliance on cigarette advertising.

In some cases, he was acting on tips from mainstream reporters who knew their own papers would never print what they'd dug up. They would leak the news to Seldes who would print it. In other cases, In Fact became a more reliable source of news for mainstream newspapers than their own sources—the ultimate flattery for any newspaper person, and ultimate indictment of those who missed the news.

In his later years, Seldes was always careful to note improvements in the objectivity of today's newspapers—while holding firm to the belief that when newspapers forget their responsibility to truth, they risk retreat into those bad old days.

Nor was his burr-under-the-saddle style without fault—his muckraking, make-waves narrowness of vision caused him to miss some of the bigger picture, too; a heavy dose of Seldes at this prime could be hard for any average reader with broader interests to take.

What seemed most striking about his comments at that appearance in Hanover, N.H. however—just as it does now—is the diminished capacity of contrary voices like his to be heard today in the din of the modern information age.

Today, so many loud, contrary voices compete for listeners' ears, with so many public outlets for spreading their views, the problem is no longer an absence of facts, in some cases it's too many facts—and too few people taking the time to make sense of them.

More big-picture wisdom and few disconnected facts in every type of media today would go a long way—a need that's grown wider with George Seldes' passing.

[From the Washington Post, July 11, 1995]

GEORGE SELDES: GIANT OF JOURNALISM

(By Colman McCarthy)

As a traveling companion, George Seldes didn't believe in letting you rest. In the spring of 1982 when he was 91 and in New

York to collect a George Polk Award for a lifetime of contribution to journalism, I took the Fifth Avenue bus with him for a 30-block ride between the ceremony and his nephew's apartment. We would have taken a cab but he preferred the bus: a better way to get the feel of the city and its people.

Along the jostling way, Seldes threw at me a half-dozen story ideas, mingled with sidebars of his opinions, plus advice on how not merely to gather facts but to cull the useless from the useful, and then a string of mirthful recollections from his newspapering days going back eight decades. If we were the boys on the bus, George Seldes was some boy.

He died on July 2, in his 104th year and only a half-decade or so after retiring from a reporting career that began in 1909 with the Pittsburgh Leader.

It's well within the bounds of accuracy to say of Seldes—and this isn't the kind of gassy praise that's the customary sendoff for the deceased—that for much of the 20th century he stood as a giant and a pilar of journalism, a reporter's reporter. He had the subverse notion that investigating the press—the money-saving schemings of the publishers of his day, editors cowering before advertisers, reporters fraternizing with the pashas they write about—should be as vital a beat as skeptically covering politicians.

At the Polk ceremony, the citation of the awards committee succinctly summarized the spirit of intellectual independence Seldes committed himself to: "By mutual agreement, George Seldes belonged not to the journalism establishment, nor was he tethered to any political philosophy. With a gimlet eye ever fixed upon transgressors, he soared above the conventions of his time—a lone eagle, unafraid and indestructible. He is 91 now and still a pretty tough bird."

Seldes lived in Hartland Four Corners, Vt. Until recently, he was self-sufficient at home and ever delighted to receive such pilgrims as Ralph Nader, Morton Mintz and Rick Goldsmith, a California filmmaker who is completing a documentary on Seldes's life. The film will include references to I.F. Stone, who credited Seldes' newsletter "In Fact"—which had 176,000 subscribers for a time in the 1940's—as the model for his own carefully researched I.F. Stone's Weekly."

The titles of some of Seldes's books give a hint of the fires that burned within him: "You Can't Print That: The Truth Behind the News" (1928), "Never Tire of Protesting" (1986), "Tell the Truth and Run" (1953), "Lords of the Press" (1935). In the 1980s, he wrote his memoir "Witness to a Century" and edited "The Great Thoughts," the latter a thick and rich collection of ideas Seldes had gathered throughout a lifetime of reading and listening.

"Sometimes in isolated phrase or paragraph," he said of his selections from Abelard to Zwingli and from Ability to Zen, "will work on the reader's imagination more forcefully than it might when buried in a possibly difficult text. Each time a quotation in this book makes a reader think in a new way, I shall have achieved my aim."

As a reporter and press critic, Seldes was more than an iconoclastic outsider, as worthy and rare as that calling is. His newsgathering and analysis were ethics-based. Omitting the news is as vile a sin as slanting the news, he believed. Too many papers avoid stories that might upset the powerful or the majority, while printing news on safe subjects and editorializing to bloodless conclusions.

In "freedom of the Press," Seldes recalled how he was compromised while covering World War I: "The journals back home that printed our stories boasted that their correspondents had been at the fighting front. I now realize that we were told tonight but buncombe, that we were shown nothing of the realities of the war, that we were, in short, merely part of the Allied propaganda machine whose purpose was to sustain morale at all costs and help drag unwilling America into the slaughter. . . We all more or less lied about the war."

If so, that was to be the last time Seldes shied from getting the whole story. For the rest of his long life, his reporting on what were often no-no subjects—workers' rights, public health and safety, press sellouts, corporate and government lies—was the essence of truth-telling. Like his life, the telling had fullness.

ACDA ANNUAL REPORT IS INFORMATIVE, CLEAR-HEADED EFFORT

Mr. PELL. Mr. President. Yesterday, the President transmitted to the Senate the annual report for 1994 of the Arms Control and Disarmament Agency. In addition to detailing the Agency's many activities during 1994, the report includes a major section on the adherence by the United States to its arms control obligations and the compliance of other nations with their arms control obligations.

This compliance report, which was provided in both classified and unclassified versions, is the most detailed annual compilation of arms control issues available to us. It has been required of the agency for a number of years, and it is particularly thorough and detailed in this year's iteration. I believe that my fellow Senators should avail themselves of the opportunity to obtain the report from ACDA and to review both the Agency's activities and the numerous arms control compliance questions addressed in the report.

This year's unclassified report is remarkably open with regard to the kind of problems that we must address, and it represents a serious effort by ACDA Director, John Holum, and his staff to be informative and clear-headed in their analysis and judgments.

Let me give you several examples of the kind of information included in the report:

With regard to Russia's compliance with the 1972 Biological and Toxin Weapons Convention, the report says:

Previous assessments of Russian compliance have highlighted the dichotomy between what appears to be the commitment from President Yeltsin and other members of the Russian leadership in attempting to resolve BWC issues and the continued involvement of "old hands" in trilateral BW discussions and in what Russia describes as a defensive BW program.

With regard to former Soviet biological weapons related facilities, some research and production facilities are being deactivated and many have taken severe personnel and funding cuts. However, some facilities, in addition to being engaged in legitimate activity, may be maintaining the capability to produce biological warfare agents. The Russian Federation's 1993 and 1994 BWC data declaration contained no new information and its 1992 declaration was incomplete and misleading in certain areas. With regard to the trilateral process that began in 1992, while there has been progress towards achieving the openness intended in the Joint Statement, the progress has not resolved all U.S. concerns.

NEXT STEPS

The United States remains actively engaged in efforts to work with the Russian leadership to ensure complete termination of the illegal program and to pursue a number of measures to build confidence in Russian compliance with the BWC.

With regard to the 1972 Biological and Toxin Weapons Convention and China, the report says:

The United States believes that China had an offensive BW program prior to 1984 when it became a Party to the BWC.

FINDING

The United States Government believes that based on available evidence, China maintained an offensive BW program throughout most of the 1980s. The offensive BW program included the development, production, stockpiling or other acquisition or maintenance of biological warfare agents. China's CBM mandated declarations have not resolved U.S. concerns about this program and there are strong indications that China probably maintains its offensive program. The United States Government, therefore, believes that in the years after its accession to the BWC, China was not in compliance with its BWC obligations and that it is highly probable that it remains noncompliant with these obligations.

The report is quite forthcoming and realistic with regard to some of the serious problems regarding compliance with the Nuclear Non-proliferation Treaty. For example, the report says this about the Iraqi situation:

Iraq's nuclear weapons program violated Article 11's requirement that Parties not * * * manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not * * * seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices. Iraq's construction of secret facilities, including its construction of a facility for nuclear weapons development and assembly, contributed to its violation of Article 11. Iraq's failure to apply safeguards to its clandestine program also constituted a violation of Article 111, which requires that safeguards be applied with a view to preventing diversion of nuclear energy from peaceful purposes to nuclear weapons or other nuclear explosive devices.

The war and inspections have significantly set back Iraq's program to develop a nuclear weapon. Nonetheless, Iraq almost certainly intends to continue nuclear weapons related activities and to build a nuclear weapon as soon as domestic and international circumstances permit.

FINDING

The United States Government has determined that Iraq violated its Safeguards Agreement when it pursued an active nuclear weapons development program and that this program violated its obligations under Article 11 and 111 of the NPT. The United States Government has further determined that Baghdad is continuing its effort to undermine the UNSCOM/IAEA inspection

process by withholding relevant information, and to preserve as much nuclear-related technology as possible for a renewed weapons effort.

NEXT STEPS

The United States plans to continue to support UNSCOM/IAEA inspections in Iraq and the long-term monitoring of Iraq's nuclear program in accordance with UNSCR 687 and 715.

Mr. President, I have something of an ulterior motive in bringing this report to the Senate's attention at this time. As most of you know, there is a movement afoot to abolish the Arms Control and Disarmament Agency and make it a part of the Department of State. I have opposed that effort in the Committee on Foreign Relations, and I intend to oppose it on the floor when the relevant legislation is before the Senate. I am not going to make a case here for ACDA because I deeply believe that any Senator reading this report and getting a sense of the tenacity and seriousness that ACDA brings to these crucially important national security issues is quite likely to reach the judgment that the modest number of dollars necessary to keep ACDA as an independent agency are among the best spent dollars in the Federal budget.

Mr. President, I ask unanimous consent that the letter from President Clinton transmitting the ACDA annual report be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, July 13, 1995.

Hon. JESSE HELMS,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to transmit the 1994 Annual Report of the United States Arms Control and Disarmament Agency (ACDA).

The ACDA was established in 1961 in part because Dean Rusk, Secretary of State at that time, believed the President needed access to unfiltered arms control analysis.

After a comprehensive review in 1993 and a second review in early 1995, it is clear to me that Secretary Rusk was correct: sound arms control and nonproliferation policy requires an independent, specialized, and technically competent arms control and nonproliferation agency.

In the absence of such an agency, neither I nor any future President could count on receiving independent arms control advice, unfiltered by other policy considerations. A President would thus at times have to make the most consequential national security decisions without the benefit of vigorous advocacy of the arms control point-of view.

Moreover, I have found that ACDA's unique combination of single-mission technical expertise with its painstakingly developed capability for multilateral negotiation and implementation of the most intricate arms control and nonproliferation agreements could not be sustained with equal effectiveness outside of a dedicated arms control agency.

The ACDA's first major success was the establishment of the Nuclear Non-Proliferation Treaty. Twenty-five years later, its most recent major success is its long-term effort culminating in permanent and unconditional extension of that same Treaty. On both counts, America and the world are far more secure because of the ability and dedication of ACDA's leadership and professional staff.

I have therefore decided that ACDA will remain independent and continue its central role in U.S. arms control and nonproliferation policy.

Whether the issue is nuclear nonproliferation, nuclear missile reduction, chemical weapons elimination, or any of the other growing arms control and nonproliferation challenges America faces, ACDA is an essential national security asset.

In that spirit, I commend this report to you.

Sincerely,

WILLIAM J. CLINTON.

WAS CONGRESS IRRESPONSIBLE? LOOK AT THE ARITHMETIC

Mr. HELMS. Mr. President, as of the close of business yesterday, Thursday, July 13, the Federal debt stood at $4,933,342,394,729.43. On a per capita basis, every man, woman, and child in America owes $18,727.05 as his or her share of that debt.

TRIBUTE TO FRANCES B. TURNAGE

Mr. THURMOND. Mr. President, I rise today to pay tribute to a woman who was well known and liked in the city of Charleston, South Carolina, Mrs. Frances Baker Allen Turnage, who passed away last month at the age of 70.

Charleston ladies are known for their graciousness, hospitality, and elegance, and Mrs. Turnage was certainly a lady of Charleston in every manner. Born in the city, she was graduated from both the prestigious prepatory school Ashley Hall and Chevy Chase Junior College, and she attended the College of Charleston. A dedicated member of her community, Mrs. Turnage was active in a number of civic organizations, including the Junior League; the Ivy Garden Club; the Association of the Blind; and Grace Episcopal Church. Her efforts and work greatly benefitted her hometown and helped to make it such a special place to live.

Mrs. Turnage led a full and rewarding life. She will be greatly missed by all those who had the pleasure of knowing her and my condolences go out to her husband, retired Maj. Gen. Benjamin O. Turnage, Jr.; her children, C.M. "Chipper" Allen, Ann A. Harris, Frances A. Sadler, Robin A. Rodenberg; her stepsons, Col. John O. Turnage and Rev. Benjamin W. Turnage; and numerous grandchildren and stepgrandchildren. They may all take solace in knowing their mother and grandmother was a very special lady.

ORDERS FOR MONDAY, JULY 17, 1995

Mr. DOLE. Mr. President, I ask unanimous consent when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. on Monday, July 17, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders be reserved for their use later in the day, and there then be a period for morning business until 10 a.m., with Senators permitted to speak up to 5 minutes each; further, that at the hour of 10 a.m., the Senate immediately resume consideration of S. 343, the regulatory reform bill.

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

MANDATORY LIVE QUORUM WAIVED—S. 343

Mr. DOLE. I now ask unanimous consent that the mandatory live quorum for the cloture vote on the substitute amendment be waived.

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

PROGRAM

Mr. DOLE. So, Mr. President, for the information of all Senators, the Senate will resume consideration of the regulatory reform bill at 10 a.m. on Monday. Pending to the bill is a Glenn substitute amendment which is expected to be debated throughout the day.

Under the previous order, there will be a cloture vote on the Dole-Johnston substitute amendment at 6 p.m. Any other votes ordered on or in relation to additional amendments will be stacked to begin following that 6 p.m. cloture vote. Senators should be aware that the first vote on Monday will occur at 6 p.m.

As a reminder to all Senators, under the provisions of rule XXII, any second-degree amendments must be filed by 5 p.m. on Monday. Further, the majority leader has filed a second cloture motion today. Therefore, Members may file first-degree amendments with respect to the second cloture motion up until 1 p.m. on Monday.

ORDER FOR RECESS

Mr. DOLE. The only other business to come before the Senate is a statement by Senator HELMS. I ask unanimous consent that when he completes that statement, the Senate stand in recess under the previous order.

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

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

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

The Senator from North Carolina is recognized.

(The remarks of Mr. HELMS pertaining to the introduction of S. 1038 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

RECESS UNTIL 9:30 A.M. MONDAY, JULY 17, 1995

Mr. HELMS. 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 5:44 p.m., recessed until Monday, July 17, 1995, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate July 14, 1995:

DEPARTMENT OF THE TREASURY

DARCY E. BRADBURY, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE HOLLIS S. MCLOUGHLIN, RESIGNED.

DEPARTMENT OF THE INTERIOR

MICHAEL P. DOMBECK, OF WISCONSIN, TO BE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT, VICE JIM BACA.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

JEANNE R. FERST, OF GEORGIA, TO BE A MEMBER OF THE NATIONAL MUSEUM SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 1999, VICE ROY L. SHAFER, TERM EXPIRED.

DEPARTMENT OF AGRICULTURE

JILL L. LONG, OF INDIANA, TO BE UNDER SECRETARY OF AGRICULTURE FOR RURAL ECONOMIC AND COMMUNITY DEVELOPMENT (NEW POSITION).

FEDERAL DEPOSIT INSURANCE CORPORATION

JOSEPH H. NEELY, OF MISSISSIPPI, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION FOR A TERM OF 6 YEARS, VICE C.C. HOPE, JR.

FEDERAL MARITIME COMMISSION

JOE SCROGGINS, JR., OF FLORIDA, TO BE A FEDERAL MARITIME COMMISSIONER FOR THE TERM EXPIRING JUNE 30, 2000 (REAPPOINTMENT).

DEPARTMENT OF STATE

CHARLES H. TWINING, OF MARYLAND, 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 CAMEROON.