people want the Brady law to keep saving lives.

The American people will fight to keep it.

SAVE THE SCHOOL LUNCH PROGRAM

(Mr. GENE GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GENE GREEN of Texas. Mr. Speaker, obviously I am not going to talk about the Brady bill, being from Texas.

But let me talk about school lunch programs and the importance of making sure that we save that program.

In the Houston Independent School District next year we would lose a half-million dollars for the school lunch and breakfast program. In the State of Texas, we would lose $261 million in a 4-percent cut. The first round of cuts included the school breakfast and lunch programs. The second round of cuts last week from the Committee on Appropriations included funding for safe and drug-free schools.

I think this is a war on schools and a war on education and a war on children, and I would hope that we would then look at this Contract With America and see whether providing increased funding, including $11 million for two new airplanes the Army did not request, $20 million for a new runway for a base that is on the Base Closure Commission, $1 million for a bike trail in North Miami Beach, I think we see the priorities have changed.

We are taking money away from breakfast and lunch programs and providing it in this new Contract on America.

PROVIDING VFW MEMBERSHIP ELIGIBILITY TO VETERANS WHO SERVED IN SOUTH KOREA

Mr. HYDE. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 257) to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. MONTGOMERY. Mr. Speaker, reserving the right to object, and I shall not object at a later time, I yield to the gentleman from Illinois [Mr. HYDE], the chairman of the Committee on the Judiciary, for an explanation of the bill.

Mr. HYDE. Mr. Speaker, this is genuinely noncontroversial legislation. S. 257 would amend the Federal charter of incorporation granted by Congress to the Veterans of Foreign Wars in 1936. Specifically, this legislation would amend the eligibility requirements for membership in the VFW, so as to include those servicemen and servicewomen who served ''honorably on the Korean peninsula or in its territorial waters for not less than 30 consecutive days, or a total of 60 days, after June 30, 1949.'' This would recognize the heroic service and sacrifice of the American troops who have served in Korea, including those stationed in the demilitarized zone between North and South Korea.

This measure has already passed the other body on February 10, 1995. The principal sponsors of the counterpart House bill (H.R. 623) are the gentleman from Arizona [Mr. STUMP], the distinguished chairman of the Veterans' Affairs Committee; the gentleman from New York [Mr. SOLOMON], the distinguished chairman of the Rules Committee; and the gentleman from Mississippi [Mr. MONTGOMERY], the distinguished former chairman of the Veterans' Affairs Committee. All of these colleagues have been instrumental in moving this legislation forward.

Mr. MONTGOMERY. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Arizona [Mr. STUMP], the distinguished chairman of the Committee on Veterans' Affairs.

Mr. STUMP. Mr. Speaker, I rise in strong support of S. 257, a bill to amend the congressional charter of the Veterans of Foreign Wars. Recently, I introduced identical legislation in the House, H.R. 623, along with my good friends, SONNY MONTGOMERY and JERRY SOLOMON.

This legislation would allow virtually all veterans who have served in Korea to be eligible for VFW membership. We are all familiar with the extremely dangerous nature of duty along the DMZ and the constant threat of war in Korea. Clearly, those veterans of Korean service after June 30, 1949, who served honorably for not less than 30 days or a total of 60 days, should be able to belong to the VFW.

But under the VFW's current charter, only veterans who received an expeditionary badge are eligible to belong to the VFW. Many veterans who served honorably in Korea cannot belong to the VFW because they did not receive the required expeditionary badge due to restrictive DOD eligibility criteria. The VFW's initiative to include these veterans of Korean service among its membership is most commendable.

Mr. Speaker, today I mostly want to take time to thank the distinguished chairman of the Judiciary Committee, HENRY HYDE, and his staff for their expeditious consideration of this bill.

The Judiciary Committee has been working extremely long hours for several weeks. I sincerely appreciate their taking the additional time to consider this matter of great importance to the VFW.

Mr. MONTGOMERY. Mr. Speaker, further reserving the right to object, I rise in support of this measure and commend the gentleman from Illinois [Mr. HYDE] and the gentleman from Michigan [Mr. CONYERS] for expediting the vote on this measure.

As they are well aware, I joined the gentleman from Arizona [Mr. STUMP] and the gentleman from New York [Mr. SOLOMON] in sponsoring this bill which is now before us.

Mr. Speaker, the Veterans of Foreign Wars is one of the most highly regarded of the many veterans' service organizations that exist today. The VFW is a volunteer organization, and this bill would simply make more veterans who served overseas in Korea eligible to join the organization.

Mr. Speaker, with that brief statement, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 257

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act of May 28, 1936 (36 U.S.C. 115), is amended to read as follows:

''SEC. 5. A person may not be a member of the corporation created by this Act unless that person—

''(1) served honorably as a member of the Armed Forces of the United States in a foreign war, insurrection, or expedition, which service has been recognized as campaign-medal service and is governed by the authorization of the award of a campaign badge by the Government of the United States; or

''(2) while a member of the Armed Forces of the United States, served honorably on the Korean peninsula or in its territorial waters for not less than 30 consecutive days, or a total of 60 days, after June 30, 1949.''

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RISK ASSESSMENT AND COST-BENEFIT ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 96 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1022.

☐ 1145

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1022) to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes, with Mr. HASTINGS of Washington in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, February 27, 1995, the amendment offered by the gentleman from Idaho [Mr. CRAPO] had been disposed of and the bill was open for amendment at any point.

Six hours and fifty-six minutes remain for consideration of amendments under the 5-minute rule.

Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT: At the end of section 106 (page 18, line 25), add after the period the following:

For the purposes of this section, the term ''non-United States-based entity'' means—

(1) any foreign government and its agencies;

(2) the United Nations or any of its subsidiary organizations;

(3) any other international governmental body or international standards-making organization; or

(4) any other organization or private entity without a place of business located in the United States or its territories.

Mr. TRAFICANT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. TRAFICANT. Mr. Chairman, this is a compromise version of my amendment that fits in with the intent of the committee. I agree with the Chair that we must identify what in fact a non-United States-based entity is. I believe that that definition should be in the bill itself as we did with the gentleman from Idaho, Mr. CRAPO's, piece of legislation.

So, with that, what I am saying is a non-United States-based entity is any foreign nation or government and its agencies, United Nations or any of its subsidiary organizations, other international governmental bodies or standards-making organizations or any other organization or private entity without a place of business located in the United States or its territories.

That, basically, I think, captures the intent of the committee and defines the parameters that are safe enough for our country and for the world to understand.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the distinguished gentleman from Pennsylvania [Mr. WALKER], chairman of the committee.

Mr. WALKER. I thank the gentleman for yielding.

Mr. Chairman, the gentleman has in fact provided, I think, a very useful clarifying amendment. The amendment does track language that was in the report in a manner similar to what the gentleman from Idaho [Mr. CRAPO] presented last evening on emergencies.

I think the amendment offered by the gentleman from Ohio [Mr. TRAFICANT] is very helpful. I congratulate the gentleman for his vigor in pursuing this issue, he pursued it in committee. I think he has come up with language which is very helpful, and we are prepared to accept the gentleman's amendment.

Mr. TRAFICANT. I thank the gentleman from Pennsylvania and his staff for the assistance we have received on their side of the aisle.

Mr. BILIRAKIS. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the distinguished gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. I thank the gentleman for yielding to me.

Mr. Chairman, on behalf of the Committee on Commerce, the amendment is accepted. I too want to commend the gentleman from Ohio for his wisdom and diligence, really. It takes some diligence sometimes because there is no question that we were not able to afford as much time to this legislation as we ordinarily would like. Without the gentleman's amendment, who knows what the future might bode in terms of the definition of what was meant by the intent of the legislators.

So I commend the gentleman and thank him for his contribution.

Mr. TRAFICANT. I thank the gentleman, and also the fact his discussions on the World Health Organization and some of those other bodies makes an awful lot of sense.

Mr. Chairman, I urge support of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. OXLEY

Mr. OXLEY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. OXLEY: Page 37, after line 2, insert:

(b) STATE, LOCAL, AND TRIBAL PRIORITIES.—In identifying national priorities, the President shall consider priorities developed and submitted by State, local, and tribal governments.

Page 37, line 12, after ''report'' insert ''and priorities developed and submitted by State, local, and tribal governments.''.

Mr. OXLEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Chairman, this would merely add to the priority-setting provision in title VI of the bill to require the President to consider public health priorities developed by State and local governments.

The National Governors' Association recommended this amendment to me after it reviewed the bill.

It gets the priority-setting process closer to where the priorities really are, at the State and local levels.

This is noncontroversial amendment that I think improves the bill and is supported by the State governments.

In support of my amendment, I would point out some language that exists currently in the bill in section 17, where we talk about guidelines in consultation with State and local governments, in section 109, study participants may include people from State and local governments, and then in section 202, no final rule shall be promulgated unless the incremental risk reduction would be likely to jeopardize the incremental costs incurred by State and local governments.

I think, Mr. Chairman, you can see from the tenor of the language already in the bill that the amendment fits very well into the goals of the legislation where we take into consideration State and local governments.

As I indicated, the National Governors' Association asked me to offer the amendment on their behalf, which I have done.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman has offered a very worthwhile amendment, it is a good addition to the priority section and will ensure Federal officials are not operating in a vacuum.

Mr. Chairman, I am prepared to accept the amendment.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. I thank the gentleman for yielding to me

Mr. Chairman, we have viewed this amendment on our side, and we see that it makes some valuable contributions to the legislation, and we are happy to accept it. We note the good contributions from my friend, the gentleman from Ohio [Mr. OXLEY], with the President considering the priorities developed at the State and local levels.

Mr. Chairman, we accept the amendment.

Mr. OXLEY. I thank the gentleman.

Mr. CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. OXLEY].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ROEMER

Mr. ROEMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROEMER: Strike section 401 (page 34, lines 2 through 19) and insert the following:

SEC. 401. JUDICIAL REVIEW.

Nothing in this Act creates any right to judicial or administrative review, nor creates

any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. If an agency action is subject to judicial or administrative review under any other provision of law, the adequacy of any certification or other document prepared pursuant to this Act, and any alleged failure to comply with this Act, may not be used as grounds for affecting on invalidating such agency action, but statements and information prepared pursuant to this title which are otherwise part of the record may be considered as part of the record for the judicial or administrative review conducted under such other provision of law.

Strike section 202(b)(2) (page 29, line 24 through page 30, line 6) relating to substantial evidence and strike ''(1) IN GENERAL.—'' in section 202(b) (page 29, line 18).

Mr. ROEMER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. ROEMER. Mr. Chairman, I offer this amendment on behalf of myself and the gentleman from New York [Mr. BOEHLERT] as a bipartisan amendment to provide commonsense legal reform.

I rise as someone who has been a strong supporter of risk assessment, somebody who believes that, with diminishing resources at the Federal level, that we need to apply those diminished resources, monetary resources, in the most commonsense way possible to promote new public policies, especially as they relate to the environment and to other rulemaking procedures through our Federal agencies.

We are at a time, Mr. Chairman, where we do not have the ability nor the resources to go about throwing money at all kinds of problems, whether it be attaining clean air or clean water, and where we have attained 95 percent clean air or clean water and then mandating that we go ahead and clean up the remaining 2, 3, 4 percent and finding that that did not have a substantial risk to the population and that the money involved in cleaning that air or water would have been a substantial waste of taxpayers' money.

That simply is what we are trying to so in passing risk assessment cost-benefit analysis. It provides some common sense to rulemaking and to public policy-making at the Federal level.

Mr. Chairman, I strongly support this amendment.

Mr. Chairman, I strongly supported this legislation as a member of the majority last year when we had to fight the rules put forward by our own party that were considering elevating the EPA, and many of us made the argument if you are going to elevate EPA and give them more authority and more money, let us make sure they apply risk assessment and cost-benefit analysis procedures. We fought against rules proposed by our side.

So I am a very strong supporter of this legislation. However, the judicial review section of this bill opens up the legal process to all new forms of litigation. Just as we were arguing, Mr. Chairman, that because you can regulate does not mean it makes common sense to regulate, we apply the same standard with the Roemer-Boehlert amendment to legal reform, that because you can sue does not mean you should go forward and sue.

This bill opens up judicial review to a host of new rulemaking processes, not just at the end of the rulemaking, where we would like to keep it and maintain it, but it allows you several bites out of the apple now, not just one bite of litigation at the end but several bites during the rulemaking process.

This will hurt businesses, it will hurt environmental groups, it will cost more money, and it runs counter to the very kinds of things we are trying to do in this bill by using common sense.

If we are going to use common sense in rulemaking and limit regulations, let us use common sense in legal reform.

Now, if you love the Superfund bill and you think that makes consultants and the lobbyists rich, you are going to love this part of judicial review. This could be called the Full Employment Bill for Lawyers and Lobbyists, if this provision on judicial review is maintained.

Let me explain in two areas why I think this should be changed and would be changed by the Roemer-Boehlert bipartisan amendment.

First of all, the new standard established under this bill is substantial evidence of compliance. Now, I am not a lawyer, but merely reading those words in the bill, ''substantial evidence,'' on pages 29 and 30, shows you have a new threshold and criterion to establish. Right now, we have the threshold of it simply being not arbitrary and capricious. That is what the court would rule on, not arbitrary and capricious.

Now, when you set this new standard of substantial evidence of compliance and open this up throughout the rulemaking process, we have the courts then taking over in science, in rulemaking, in regulation, delaying this process all throughout the course of litigation.

The CHAIRMAN. The time of the gentleman from Indiana [Mr. ROEMER] has expired.

(By unanimous consent, Mr. ROEMER was allowed to proceed for 2 additional minutes.)

Mr. ROEMER. This drives up costs, diverts scarce resources that we are trying to maintain with the sensible cost-benefit analysis, and it builds in hosts of delays that could in fact hurt businesses.

Let me give you my second example. Not only is there a new higher standard that will allow all kinds of litigation, but let us say you are a business and you are applying through the Food and Drug Administration for a new pharmaceutical patent, and you are 2 years ahead of your competitor. Instead of waiting for the Food and Drug Administration to promulgate at the end their final rule, which would now be under the current law under judicial review, under this bill's judicial review, a competitor of that business, a competitor could delay the Food and Drug Administration from considering that business's application, delay this process, and hurt what was a natural advantage established by the private sector in developing that patent; it would delay them unfairly, catch up with them through the delay of 2 years and really use judicial review in a sense that we do not want to see it utilized.

So, Mr. Chairman, let me conclude by saying this is a bipartisan amendment. This received Republican votes in committee. The issue is common sense to the real reform process, not just as I have supported in the past, common sense on effectiveness and risk assessment; and finally, it uses the standard of not arbitrary and capricious, which is a much better standard than substantial evidence of compliance which this bill would establish.

Do not create a new cottage industry of lawyers in this town. Please support the bipartisan amendment offered by myself and the gentleman from New York [Mr. BOEHLERT].

Mr. BOEHLERT. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, today's debate on judicial review is really a debate about Congress abrogating its responsibilities to the courts and, in so doing creating what can only be characterized, as my coauthor of this amendment has described, a full employment opportunity for lawyers.

As we did with such litigation nightmares like Superfund, we are creating potential for litigation that will choke our Nation's courtrooms and cost the American taxpayers and the Federal Government millions of dollars.

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The Congressional Budget Office has estimated that the implementation of this legislation will cost in the neighborhood of $250 million. By keeping the current judicial review language that is found in H.R. 1022 in place, our society will likely spend far more than this on unnecessary litigation. To date billions of dollars have been spent on Superfund litigation, more than has actually been spent on cleaning up Superfund sites. We do not want to duplicate that.

If we do not adopt the Roemer-Boehlert amendment, we will end up spending more of the taxpayers' dollars and industry's resources on litigation than we are spending on doing risk assessments—once again, shades of Superfund. And, incidentally, who is going to pick up the tab? It is going to be the consumer who will pay the ultimate price.

Under current law the Administrative Procedures Act provides the regulated community with a clear and often-used tool for seeking relief from poorly crafted regulations.

If an agency has overstepped its bounds in writing regulations, this Congress through oversight committees and the control of every nickel that an agency receives has at its fingertips the ability to ensure that agencies promulgate reasonable regulations. But through H.R. 1022 we are saying that we cannot control, or will not make the effort to control, Federal agencies that are disregarding congressional intent. We are failing to do our job, so we are going to pass the burden of being vigilant on to the courts and the American people. I do not think that is the appropriate way to proceed.

Such an approach will clog Federal courtrooms, costing taxpayers millions of dollars and delaying actions on other activities that are of real importance to the safety of the American people. H.R. 1022 would create over 50 new specific procedures that will be reviewable by the courts.

This legislation was introduced to reduce burdens and relieve gridlock. We certainly want to reduce burdens and relieve gridlock, but the judicial review provisions here fly in the face of these very worthy goals.

The Roemer-Boehlert amendment, while maintaining current judicial review procedures for final agency actions, holds that risk assessments guidelines under this act are not reviewable. Without this clarification, H.R. 1022 can be manipulated by those with a vested interest in a particular regulatory proposal to impede the regulatory process.

Regulations, many of which are critical to the health and safety of every American, could be delayed for years in a quagmire of endless litigation. Judges should be engaged in making legal decisions and scientists should be making decisions on issues of science. A vote for the Roemer-Boehlert amendment preserves those roles and ensures that our courtrooms do not become a forum for regulatory delay.

The American people want timely, well-reasoned, cost-effective decisions on how regulations should be used. Dumping the burden of sorting out what regulations should go forward on the courts achieves none of these goals.

The need to prevent H.R. 1022 from generating mountains of frivolous litigation is an issue important to Members on both sides of the aisle, as evidenced by a ''Dear Colleague'' on this issue sent out by the gentleman from Louisiana [Mr. HAYES], myself, and 18 other distinguished Members of this body. This was a true bipartisan effort.

Mr. Chairman, a vote for the Roemer-Boehlert amendment is a vote to prevent the costly, unnecessary proliferation of litigation that the American people have expressed their unhappiness with.

Mr. Chairman, let me close by adding something here that I think is very important. We are always looking for legitimate case studies, examples that we can point to and say, ''This is how it works.'' Let me share this with my colleagues.

Had H.R. 9 been in effect 25 years ago, it would have barred one of the most effective environmental health initiatives ever undertaken anywhere—the removal of lead from gasoline.

The CHAIRMAN. The time of the gentleman from New York [Mr. BOEHLERT] has expired.

(By unanimous consent, Mr. BOEHLERT was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, the phaseout of lead is widely accepted to have had tremendous benefits for our society, with children's average blood levels falling about 75 percent since the phaseout began in the mid-1970's. But substantial evidence of the relationship between lead and gasoline in our children's blood became available as a result of phaseout rules. It did not exist when the regulations were being developed. If the regulations had not been imposed, lead levels would not have fallen, creating a vicious circle of continued exposure and regulatory paralysis. In addition, the manufacturers of leaded gasoline additives could have delayed the regulation almost indefinitely by arguing that reducing lead exposure from other sources would have been more flexible.

Mr. Chairman, I am a strong supporter of risk assessment and the knowledge that it is an idea whose time has come. When we talk about billions of dollars being spent across this country for regulation, for the implementation of regulations, that is right, we do spend billions of dollars to implement regulations to guarantee the safety of our food supply, to make sure that the air we breathe is reasonably clear, and to make sure the water we drink is reasonably pure. We have had too many horror stories out there across America where things go wrong, and we do not want things to go wrong when we are dealing with the public's health and safety.

So I think we have a reasonable amendment here on the subject of judicial review and I urge my colleagues to give it the very serious consideration that it deserves.

Mr. Chairman, I might point out that in a bipartisan way, Republicans and Democrats alike have analyzed this, and there is a growing body of us on both sides of the aisle who think this amendment should go forward and that it would be a constructive addition to the bill.

Ms. HARMAN. Mr. Chairman, I move to strike the last word, and I rise in support of the Roemer-Boehlert amendment.

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Chairman, I am proud to cosponsor this amendment and would identify precisely with the comments of my colleague from New York, Mr. BOEHLERT. It feels very good to have a Member from the other side reach for some of us here who have been supporting much of the program of the contract but who feel that some of it needs some correction. In the area of judicial review I feel very strongly a correction is needed to this bill, and I would say that many of us who support risk assessment would be extremely comforted if this correction were made. It would make it much easier for us to support the legislation on final passage.

Mr. Chairman, I have been a lawyer for over 26 years, most of that time in private practice, and I know that H.R. 1022's judicial review provisions will quickly turn regulatory reform, which we all support, into a lawyer's paradise by providing for interim judicial review. And that is what we are talking about here, interim judicial review of risk assessment and cost-effective analyses. H.R. 1022 will allow any individual to cause regulatory gridlock. This is any individual, as I say.

While one of the bill's goals is to improve the science underlying risk assessment, it is ironic that ultimately judges, not scientists, as the last speaker has pointed out, will become the final arbiters of cutting-edge risk-assessment science.

Some Members argue that H.R. 1022's judicial review provisions are necessary to guarantee enforcement of the bill. Mr. Chairman, nothing could be further from the truth. We in Congress, a Republican-controlled Congress, continue to have oversight of Federal regulatory agencies. This Member is not ready to abdicate that responsibility.

While the Roemer-Boehlert amendment would prohibit interim judicial challenges, it does nothing to alter the Administrative Procedures Act, which provides for judicial review of final agency actions.

Let me point out that legal review will still be possible at the right time in the process, even with the passage of the Roemer-Boehlert amendment. Under such review, risk assessment and cost-benefit analyses will continue to be part of the record and will, therefore, be subject to court scrutiny.

Mr. Chairman, without the Roemer-Boehlert amendment, H.R. 1022 will soon become, as the gentleman from Indiana [Mr. ROEMER] has said, the ''Full Employment for Lawyers and Lobbyists Act,'' and ultimately the taxpayers will be left footing the legal bills.

Mr. Chairman, let us adopt this bipartisan, good-spirited, and very sensible course correction to a risk analysis bill that many of us would like to support.

Mr. OXLEY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, let me first say that I have great respect for the two gentlemen offering the amendment, but I have to say that, based on the debate we had last night, this is more of the same. This bill, not the amendment but the bill, is about accountability. It is about making the regulators accountable to somebody.

The reason we are here today is because the regulators over these last 40 years have been essentially unanswerable to anybody when these regulations come pouring out of the Federal Register. So the bill is about trying to get some accountability in the process, and I fear, and I know, that this amendment basically strips away that accountability and allows those regulators to run roughshod over businesses and industry in this country that are trying to create jobs and trying to create products.

My friend, the gentleman from Indiana, I think, is in error and totally misrepresents or misreads the bill or the provisions in the bill when he says that we are going to provide more than one bite of the apple.

Let me refer the gentleman to the language in title IV under Judicial Review, the section he seeks to amend. I quote as follows from line 7:

''The court with jurisdiction to review final agency action under the statute granting the agency authority to act shall have jurisdiction to review.* * *'' Then it goes on in line 13 again to talk about final agency action, and that indeed is the target here that we are trying to emphasize.

This is really a business-as-usual amendment for the bureaucrats, and I am sure that most of the Members have probably gotten some entreaties from the bureaucrats asking them to support this amendment.

By the way, Mr. Chairman, this amendment was offered by the gentleman from Illinois [Mr. RUSH] in our committee. It was defeated on a bipartisan vote.

I think this amendment, if it were to be adopted, would essentially gut this bill. It would make it unenforceable and would provide no particular accountability. There is no hammer for some kind of regulation unless we have judicial review. Judicial review is really at the heart of what we are talking about.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I am pleased to yield to my friend, the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, the gentleman, I think, misrepresents both the intent and the effect of this amendment. Certainly if the Roemer-Boehlert amendment was adopted, judicial review would be alive and well. It just is not pervasive through the process.

What we are saying is that we still have OMB's ability for oversight, we have congressional oversight, and we have the Administrative Procedures Act. All this is still intact. We just do not want to see the expansion of new thresholds put in, and the ability to litigate throughout the rulemaking process.

Mr. OXLEY. Mr. Chairman, if I could take back my time, I guess essentially the gentleman says that he is satisfied with the status quo and what is going on in terms of what is happening out in the regulatory world. This bill is designed to limit and to get some common sense back in this regulatory process. If the gentleman would concede to me that he is willing to allow the existing regime to take place in all those statutes he has mentioned, I would say, fine, let us have an argument about that.

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But do not try to essentially gut this particular bill and say we are going to rely on the existing statutes, when in fact those existing statutes, particularly the regulations that have emanated from them, have been a tragedy, have gone far beyond even the necessity for what the bill called for, the original bill called for, and in my estimation your amendment really does damage the bill.

Mr. ROEMER. If the gentleman will further yield, just as it would be a tragedy, as the gentleman from Ohio knows, to continue to let regulations tie up this country in terms of its scarce resources and its public policy debate, it is an equal travesty not to use common sense to reform the legal aspect here and to allow litigation to proliferate and explode.

That is what the bill will allow to happen. We are trying to prevent that. Let us use common sense both in limiting bureaucracy and regulation, and in applying common sense to legal reform.

Mr. OXLEY. Reclaiming my time, Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding. The gentleman from Indiana has referred to common sense. Common sense tells you that using OMB for the last 20 years or so has been disastrous.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. OXLEY] has expired.

(By unanimous consent, Mr. OXLEY was allowed to proceed for 2 additional minutes.)

Mr. OXLEY. Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. WALKER. Common sense will tell you using OMB for the last 20 years or so has not worked. Congressional oversight over the last 40 years has not worked. If we want to provide common-sense standards, look at what is happening. Common sense tells you the standards that the gentleman wants us to rely upon have not worked. We have ended up with a regulatory nightmare, and the gentleman wants to preserve that nightmare.

His admonition here just a moment ago is that those are what would be available to us if, in fact, his amendment passes. The fact is, even some of the standards under present law would not be available to us under the gentleman's amendment.

Mr. OXLEY. Mr. Chairman, reclaiming my time, the gentleman from Pennsylvania is absolutely right. This is a status quo amendment. If you are happy with the existing status quo as far as regulations are concerned, then you want to support this amendment. But let me read the language of the Roemer amendment: ''Nothing in this act creates any right to judicial or administrative review, nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.''

Then it goes on to say, ''If any agency action is subject to judicial or administrative review under any other provision of law, the adequacy of any certification or other document prepared pursuant to this Act, and any alleged failure to comply with this Act, may not be used as grounds for affecting or invalidating such agency action * * *.''

It essentially means bureaucrats, keep on turning out those regulations, and we do not have any way if this amendment passes to have any accountability whatsoever. I think that is a travesty. We basically have rejected this argument last night in the Brown amendment, and I think that this is essentially part of the Brown substitute. It should be rejected just like the Brown substitute was last night, and I yield back the balance of my time.

Mr. MINGE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there is really a deep problem with the legislation and the provision that we are considering at this point in time, and that is a question of judicial review. Historically, in this country the courts have vacillated between micromanaging administrative agencies in rare circumstances, and adopting an essentially hands-off approach. The standards for judicial review of rulemaking has essentially been one that grants very substantial deferences to the agency process. This is review of rulemaking as opposed to adjudicatory procedures within the agency.

The legislation that we are considering extends the requirements for rulemaking to include peer review, to include risk analysis, cost-benefit analysis. These are very far-reaching extensions. And the question that is before the body is if we have such far-reaching extensions, what is the role of judicial review in this context? Because essentially what we have now are three different documents that the court could review. First, it would have the rule itself and whatever agency explanation there is for the rule. Second, there would be the risk assessment. Third, there would be the peer review.

Now, assuming that all of these steps, all of these documents are necessary as a part of the process, the question is should we take this to its logical extreme and have the courts then comparing the rule with the risk analysis and with the peer review process, and the courts ultimately deciding how should that peer review process and the risk analysis be interpreted by the agency in the preparation of the final rule.

I submit that at this point we are taking historic action to begin with by extending the risk analysis and the peer review process to all agency rulemaking. To take this to the further point of having full and complete judicial review of how that risk assessment and peer review was conducted and how it was considered by the agency, would in my opinion result in the courts' micromanaging the administrative process.

Now, you may say this is desirable, because we feel the agencies have defaulted. I submit that that fails to recognize at least two critical considerations. First of all, most of the agency rulemaking that is so controversial in this country did not come full-blown from the heads of the agencies themselves. Instead, these rules can be traced back to acts of Congress which in amazing detail told the agencies what they were supposed to do. And if we only would look at what we did in Congress, we would better understand why the American public is so frustrated with what our administrative agencies have done.

Second, we fail to recognize that this tool of judicial review can be used and abused by every interest group in our society that is unhappy with the rule, both to challenge the rule on the merits and to delay its implementation. Litigation quite often is an exercise in delay. Litigation is quite often used by the loser, who decides that that group or he or she cannot win in the political process, so now they will resort to the courts.

Sometimes these group are environmental, consumer, conservation and similar groups. Other times they are business groups. And if we provide full opportunity for any group that feels aggrieved by a rule to relitigate the rulemaking process in court, we are going to find that we have hamstrung effective decisionmaking in the executive branch of government.

Now, this may, indeed, be the goal of some Members of this body, but I know that in my visits with the business and financial community in my district, that they find that a very significant part of the rulemaking process is important for the well-being of their industry, and they want Government that works and works effectively and is fair, but they do not want Government that is ineffective and incompetent.

So I urge that this amendment be adopted, that we take a go-slow approach, and not take this to the opposite extreme where the pendulum will simply be returning in the other direction and we will be revisiting this only a regular basis.

Mr. GILCHREST. Mr. Chairman, I move to strike the requisite number of words.

(Mr. GILCHREST asked and was given permission to revise and extend his remarks.)

Mr. GILCHREST. Mr. Chairman, I rise in support of the amendment. The rigid discussion here is about who has the responsibility of overzealous regulators and who has defaulted on that responsibility, has it been the regulators or has it been Congress? Who has not taken the accountable, responsible position to follow the law through the regulatory process to see how it has impacted on business, on industry, on the private sector, on environmental regulations, on all of these things? Who has reneged on their responsibility?

I would tell you in this room today that it is the Congress that has reneged on the responsibility to follow through, to see where the regulations have gone too far.

Who should the regulators be responsible to then? Should they be responsible to the courts, or should they be responsible to us, Members of Congress? And I would tell you emphatically that the regulators who we appoint, who we give responsibility to, who we determine what their latitude is, ultimately the responsibility of the regulators is not the courts, it is the Congress.

Mr. Chairman, if there is an irony here in this bill, it is that at the same time that the House committees are considering legislation to deal with the real problem of excessive litigation in our society, we are about to pass a bill which is going to throw final decisions of resolving these problems in the courts. The defendant will be the Government, and the legal bills will be paid by the taxpayer.

I am not opposed to efforts to put cost-benefit analysis into the regulatory process. I am not opposed to that, and I may very well support this bill with some of the modifications, including this. But allowing parties to challenge final regulations on the benefit of cost-benefit is certainly not a step toward more efficient government.

Opponents of this amendment will argue that judicial review is the only way to force the agencies to implement risk assessment. I disagree. We, the Congress, through the oversight responsibilities of these regulatory agencies, are eminently capable of making the agencies do exactly what we want them to do, and it is our ultimate responsibility, we, Members of Congress, and not the courts.

I know the supporters of the bill included the amendment out of fear, and this is real fear and this is historical fear, this is the real thing, that the agencies would simply ignore the requirements of the bill, and I am sure that judicial review language is well-intentioned.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I just wanted to go back. I do not want the gentleman to get too far away from the point he made earlier. Are final agency rules available for judicial review now? Under existing law, when final rules are made, are they eligible for judicial review at the present time?

Mr. GILCHREST. The answer is yes, but it has not been done sufficiently enough so the idea that we should have judicial review in this context for cost-benefit analysis is appropriate.

Mr. WALKER. If the gentleman will yield further, I am confused. The gentleman says we are going to add a whole new wave of litigation. The fact is the exact standard in the bill, that final agency regulations and rules are in fact subject to judicial review is in fact the law right now. If we do not do it in this bill, that backtracks from where the law is right now. The gentleman appears to be looking to backtrack.

Mr. GILCHREST. Mr. Chairman, reclaiming my time, the judicial review section of this bill is in my judgment a much more onerous requirement that has not been in the law in the past.

Mr. WALKER. If the gentleman would yield further, could the gentleman tell me where this is more onerous than the present law is?

Mr. GILCHREST. Let me give an example of the practical effect of this provision as it now exists and has not existed in the past. This provision will provide parties who are opposed to regulatory actions with the means to delay or stop them, regardless of whether the agency complied with the bill. Anyone opposed to a regulation need merely challenge the propriety of the cost-benefit analysis to tie the regulation up in court, and every analysis would be subject to challenge.

There are 60 different ways that this challenge can be litigated. Just let me read some of the proposed challenges. Does risk assessment appropriately address the reasonable range of scientific uncertainties? If no single best estimate to risk is given, does risk assessment include an appropriate discussion of multiple estimates? If a risk assessment includes multiple estimates of risks, are the assumptions, inferences, and models associated with such multiple estimates equally plausible? There are 60 of these things.

Mr. Chairman, I would request the Members support the Roemer-Boehlert substitute.

Mr. BILIRAKIS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. The other side has made an awful lot of arguments in support of the amendment, trying to defeat the judicial review provisions of the bill. One of the arguments that was

made was that it takes two bites from the apple.

I would like to read maybe pertinent sentences, if you will, of section 401, Judicial Review. ''Compliance or noncompliance by a Federal agency with the requirements of this Act shall be reviewable pursuant to the statute granting the agency authority to act or, as applicable, that statute and the Administrative Procedure Act. The court with jurisdiction to review final agency action,'' underlined, ''final agency action under the statute granting the agency authority to act shall have jurisdiction to review, as the same time, the agency's compliance with the requirements of this Act. When a significant risk assessment document or risk characterization document subject to title I is part of the administrative record in a final agency action,'' and then it goes on.

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The point of the matter is that if we had underlined final agency action, maybe the point would have gotten across. There is not any attempt under this legislation to have more than one bite at the apple. It is the final agency action that is reviewable and only that.

I would go further here. It was said by my very close friend, my colleague, we came into the Congress together, we are very close friends, disagree on this issue, the gentleman from New York [Mr. BOEHLERT], he is my close friend, but anyhow basically he referred to the environmental revolution, I suppose, that has taken place over the last 20 years and how many of those good things would not have taken place were this type of language in effect at that point in time.

He used the illustration of the lead gasoline ban. In truth, a recent article published by the Harvard Center for Risk Analysis shows that risk assessment and cost-benefit analysis, the same procedures, the same procedures required in our bill were central to the EPA's lead gasoline ban.

I quote,

EPA chose not to use the traditional methods of regulatory toxicology and instead employed modern methods of risk assessment in phasing out lead in gasoline.

The point I think is that this is considered to be such a terrible, radical way to go. In all of our hearings, in all of our markups, throughout all of our days of markups, the other side who opposed this legislation basically got up and said, well, we agree with risk analysis, with risk assessment, with cost-benefit analysis. The gentleman from Maryland just made the same comment. Well, if there is an agreement, then what is wrong with this bill?

I would suggest to Members that it is very possible that if we had this legislation in effect at that point in time, that quite a few, if not all of the environmental radical revolutions that took place over the years probably would have taken place in any case.

A point that I guess was not made as yet is that the gentleman's amendment would remove the substantial evidence test. Under the Administrative Procedures Act, final agency action as we know is only overturned when it is arbitrary and capricious. Of course, that is, I think most everyone would agree, very deferential to the agency because of the very high burden for people to bear to prove that an agency is acting in an arbitrary and capricious manner.

Of course. The legislation applies a substantial evidence test, which means that an agency must present substantial evidence that it complied with the act. I see nothing wrong with that. The bill substitutes a substantial evidence test for the arbitrary and capricious test so that the agencies must really demonstrate to a court that they are complying with the act's cost-benefit requirements.

Mr. Chairman, for all of those reasons I oppose the amendment.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BILIRAKIS. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, just reading through the report, it certainly appears from the report language that such things as risk assessment guidelines, are they subject to judicial review under this new language?

Mr. BILIRAKIS. In terms of the final agency action, yes.

Mr. ROEMER. So that is new, that does expand the scope.

Mr. DOYLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Indiana [Mr. ROEMER] cosponsored by the gentleman from New York [Mr. BOEHLERT] and also cosponsored by myself and several other of us who serve on the Science Committee.

This amendment is necessary to ensure that the regulatory process does not become an eternal playground for lawyers. In asking agencies to use the tool of risk assessment, we are trying to ensure that regulation is based on sound science. As currently written, passage of this bill will allow any party to litigate agency actions before they have even been completed. Judicial review can be used to interfere in the scientific process and delay timely consideration of new medicines and other products.

Currently, the courts can review a final agency action on the basis of whether the action was arbitrary and capricious. In this law, we are requiring agencies to use over 50 new specific procedures in carrying out risk assessment and cost-benefit analysis. If an agency's action does not meet these new criteria, that error will be considered by the courts as part of their review of a final agency action.

I believe that our Nation needs to use risk assessment and cost-benefit analysis, but they are relatively new processes which will undoubtedly be refined with the passage of time. The inclusion in the bill of a National Peer Review Board and Office of Management and Budget review of risk assessment and cost-benefit analysis will provide adequate guidance and oversight to ensure that these tools are being properly utilized. The idea that lawyers and judges are somehow equipped to assess the quality of scientific procedures is almost humorous.

Without this amendment, we will permit any party to engage in dilatory tactics by going to court to force an agency to provide substantial evidence that it is complying with each criteria outlined in this bill. If we demand that an agency justify its action before it has completed that action, nothing will ever get accomplished. In order to move our economy forward with new medicines, chemicals, pesticides, and other products, we will have to assign an attorney to every Federal bureaucrat because everything we try to do to improve our economic well-being and our overall quality of life will be litigated to death before the process gets off the ground.

Under this amendment, judicial review will still exist, but it will occur at the end of the process. And as a gentleman from the Republican side pointed out during our consideration of this amendment in the Science Committee, this is the same arrangement that was agreed on for the unfunded mandates legislation. So if you supported the judicial review provisions of the unfunded mandates bill, you should be able to support this amendment.

I am not a scientist or a lawyer, but I can assure you that litigation is not an essential component of the scientific process. Let us keep the lawyers out of the laboratories and judges from gauging the quality of science. Let the professionals make scientific and technical determinations. Once their action is complete, there will still be plenty of opportunity for the lawyers to work their magic. Vote for this amendment and stop the insanity.

Mr. MCINTOSH. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I believe that the judicial review provision of this bill is one of the key features in protecting the regulated community, average Americans, from the threat of over regulations and regulations that do not meet the test of good science and cost-benefit analysis.

The question has been raised about whether we will create a plethora of legal actions and increase the problem in the United States of too many lawsuits. The key difference here is that what this provision does is allow citizens to challenge the Government when they have not followed their own law and their own requirements. It is very different from a situation where we are creating lawsuits between citizens in the private sector.

Historically, if we look at two acts that had very broad general application, the NEPA Act and the Regulatory Flexibility Act, NEPA contained a judicial review provision which allowed members of the private sector to require agencies to do an environmental impact statement. Now, only when that was established as a matter of law did that law become effective. Government agencies had to determine what their actions would do to affect the environment. It has become a very successful act in terms of requiring Government to be responsive to environmental concerns.

The Regulatory Flexibility Act, however, did not contain a judicial review provision and for years now agencies have had routine boilerplate that says, yes, we have complied with the regulatory flexibility provisions that require us to give small business special consideration in reducing regulatory burdens.

The clear examples that these two show is that without judicial enforcement, without allowing citizens to be able to keep a check on their government agencies, provisions that they have to live by will be ignored at least in their intent, if not in fact.

So for that reason, I strongly support the judicial review provisions in this bill and would urge all of my colleagues to vote against the amendment.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment offered by my good friend, the gentleman from Indiana [Mr. ROEMER], and urge its defeat. The amendment and the bill have one thing in common. The amendment and the bill refer to the judicial review that is already available in the statutes that create the regulatory authority that is affected by this bill.

Currently the law permits judicial review of agency actions across a broad span of regulatory authority. That judicial review occurs at the final option of the agency. Nothing has changed in this bill in that regard.

There is still a judicial review provided by the current law for agency actions at the end when the agency makes a final determination.

The only difference between this amendment and the bill is where this amendment says that in that agency action judicial review no question can be raised regarding the adequacy of certification or other documents prepared pursuant to this act. And here is the most important and relevant part, and any alleged failure to comply with this act may not be used as grounds for affecting or invalidating the rule.

What this amendment says, in effect, is that you can have judicial review of the agency's action but the agency's failure to follow this law is not grounds in that judicial review for affecting or invalidating the rulemaking by the agency. In short, this amendment says it is OK for the agency to violate the law, not to follow risk assessment and cost-benefit analysis, to ignore the will of this Congress, the will of the people of this country expressed in its representative body, to ignore it completely and do what they have been doing for years and that is never do a proper risk assessment, cost-benefit analysis.

What purpose is there in passing such an amendment, if it is not to defeat the very purposes of the bill? If an agency never has to answer in court for its failure to follow the law in this country, what on earth are we here doing passing laws requiring agencies to follow the law? If we, in the same law we pass, say it is OK not to follow the law, what are we doing here? The bottom line is, if you believe in this law, if you believe that agencies ought to do relevant and important risk analysis, risk characterizations, and they do what all of us hope this Nation will begin to do, consider cost in the equation and look for the least-cost alternatives by which we regulate our society and in all these important areas, if you really believe in that principle, how can you possibly vote for an amendment that says in the judicial review of whether or not the statute has been followed, it does not matter whether the agency followed the statue, it will have no effect upon the judicial interpretation of the rulemaking by the agency?

If on the other hand you believe in this bill, you must defeat this amendment, because this amendment literally defeats the bill.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, I would just say to the gentleman from Louisiana, who I know is a strong supporter of this legislation, what the Roemer-Boehlert amendment concentrates on is the final action, the substance of what that agency finally promulgates as a rule, not all the little piddly procedures that go into making that rule that this bill opens up as possible action on judicial review. We are focused on the final action and the substance, not the procedure and the processes.

Mr. TAUZIN. Reclaiming my time, the gentleman's amendment does not just say do not look at the procedure. The gentleman's amendment says that the alleged failure to comply with this act, the alleged failure to conduct risk assessment, the alleged failure to do a cost-benefit analysis has nothing to do with the court's ability to say that this rulemaking is invalid.

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Mr. Chairman, the gentleman's amendment says it does not matter whether you did not even follow any procedure, whether you ignore this law completely, the rulemaking is still going to be valid because the judicial department cannot review the agency's failure to follow this act. That is what the gentleman's amendment does.

If it did only what the gentleman said, I might understand this amendment. It goes well beyond that. It says clearly ''any alleged failure to comply with this act.'' What does a common, normal reading of that mean? It means if you did not follow the act, if you did not do risk assessment cost analysis at all, by any procedure, the alleged failure to follow this act does not make any difference. Therefore, the agency can ignore this law and go on its way, and no judicial review will ever happen.

Mr. Chairman, if we want that effect in this bill, just vote against the bill, do not ask us to pass this amendment.

Mr. BILBRAY. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, I oppose this amendment. We have an amendment that is trying to say that we will not enforce the regulations, or not allow the citizens to enforce the process to be able to identify what is true risk, what is true benefit. I think one of the concerns I have is that if we applied this amendment to every environmental regulation and every environmental law in this country, I think both sides of the aisle would agree that it would gut the public health protection aspects of the laws of this Nation. I think that that is the intent of this amendment, is to gut this bill, not to protect it, not to enhance it.

Mr. Chairman, all I have to say is that those who stood in this House and spoke about the concerns about the lawyer full employment act, I sure hope to see them standing in line to support us as we get into tort reform. I think that is a problem. I agree with my colleagues that that is a major problem, one we must address, but this is not the source of the problem. That is going to be another day, another battle, another agenda.

The source of the problem here is that we need that dose of reality in our environmental and public health strategy to make sure we protect the public health. What this amendment will do is say that the public would not have the right to be able to draw on the facts of the process to come to conclusions; that the judicial system would not be able to consider the fact that flawed data causes flawed results.

Mr. Chairman, garbage in, garbage out. If the science that goes into making the conclusion is not sound, then the result is not going to be sound, and we have to look at the process as we get into it. I think the result is absolutely essential. I agree with my colleague that the result is what really matters.

However, to judge the result we have to look at the evidence as it was being developed. If we ignore good science in the development of a strategy, we are ignoring the public's health and we are ignoring good public strategy. Therefore, Mr. Chairman, I ask strongly that

this amendment either be defeated or we have the guts to stand up and say ''This is what we want to do across the board, we want to do this with all our environmental regulations, we want to eliminate judicial review and deny the public the ability to look at how bureaucrats come to these conclusions,'' but do not do it just with this bill. Have the guts to do it with all the bills that have been passed for the last 40 years through this House, because without that then we are picking up this alone.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BILBRAY. I yield to the gentleman from Indiana.

Mr. ROEMER. I just want to say, Mr. Chairman, the gentleman is impugning that many of us are saying we want to gut this bill. Much before this gentleman entered this body, Members on this side were working to pass this legislation last year. We do not intend to gut this bill. We have been working hard in a bipartisan way to pass risk assessment.

Second, Mr. Chairman, the gentleman's comments are very interesting in that they admit that the gentleman wants evidence from the rulemaking process entered into judicial review. That is what we are saying should not happen. We are saying, look at the substance in the final rule, not all the evidence that goes in through the past 3 or 4 years in the rulemaking.

Last, I would just say to the gentleman that we are not eliminating judicial review. We still have OMB oversight, we have peer review, substantial peer review and sunshine. We have congressional oversight. We still have the Administrative Procedures Act.

All that will make sure that that process works. We are not eliminating judicial review.

Mr. BILBRAY. Reclaiming my time, Mr. Chairman, on the items that are being used to make the determination, the gentleman is. The trouble is when we eliminate that judicial review of the merits of the components to come to the conclusion, we are then denying all the facts to be on the table when these things are being considered.

I would just like to say to my colleague, I am not impugning his intention. I am pointing out the fault of his strategy when it comes down to this, that the fact is that we do have a judicial system that is part of the environmental strategies of this country. It has always been, right from the beginning.

Without that review you will then be saying that one group of environmental strategy will have judicial muscle throughout the entire process and one part from now on will not be allowed to flex that muscle, will not have access to that.

Mr. ROEMER. Mr. Chairman, will the gentleman further yield?

Mr. BILBRAY. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, is the gentleman then saying, in terms of evidence, did a certain agency read a scientific review article; were the laboratories in sufficient cleanliness or shape for this rule to be promulgated?

Are we really trying to open up this kind of minutiae for judicial review of the evidence put together in the final rulemaking? We are going to see an explosion of litigation.

The CHAIRMAN. The time of the gentleman from California [Mr. BILBRAY] has expired.

(By unanimous consent, Mr. BILBRAY was allowed to proceed for 1 additional minute.)

Mr. BILBRAY. Mr. Chairman, what we are saying is if and when those details are considered, they should be considered to see if that is minutiae that would have determined or could determine fact from fantasy.

If the gentleman is scared of judicial review looking at that fact or fantasy, then please understand that every other environmental law that we have on the books goes through the same process in the courts one way or the other. The trouble is it does not look at the cost-effectiveness, it just looks at how the process was followed going towards the execution of the law.

What has happened now is we are trying to add this reasonable clause in, that it is a mandate that Government not only try to do something, it tries to do it intelligently. That is all we are asking.

Mr. OLVER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the Boehlert-Roemer amendment, and to assert in the strongest possible terms that this is not an attempt to gut the bill. It is not the intent to gut the bill.

Mr. Chairman, I think this issue is really very simple: Do we want more lawyers and more litigation at every state of the creation of Federal regulations, or do we want better science involved in our risk assessment program.

I am one of that half a handful of physical scientists among this membership, and I can tell the Members that scientists are really not meant to be exhibit A in a court battle as to what the precise level is at which a given chemical may cause cancer, chemical or any substance may cause cancer. Science is not capable of telling what that level is.

One of the purposes of this bill, I think, is to point out that there are uncertainties over what the exact risks of a given substance or activity may be. In fact, Dr. Graham, from the Harvard Center for Risk Analysis, while he was testifying in favor of this bill, nevertheless said, and I quote, ''We are not able to validate or know for sure whether or not the prediction of the model in fact proved to be correct.''

Even after the fact, we cannot know the right answer for a given cost-benefit analysis.

Mr. Chairman, with the bill without the amendment offered by the gentleman from Indiana [Mr. ROEMER] and the gentleman from New York [Mr. BOEHLERT] what we would have, on court battles on cost-benefit analysis and risk assessments, and we would have thousands of those court battles, both sides are going to be able to find legitimate scientists, perhaps armies of them, who are willing to contest the validity of a single cost-benefit analysis.

By encouraging the judicial review of every one of these cost-benefit analyses, this bill makes the court the final arbiter of disagreements within the scientific community, while the Roemer-Boehlert amendment brings a measure of sanity by saying, Yes, the courts will review the entire, the final, the whole record, but should not get into the minutiae of the scientific debates involved in the risk assessment and the cost-benefit analysis.

Mr. Chairman, I do not believe that this amendment weakens the bill. In fact, I would assert it does not weaken the bill. Lawsuits under the bill can just as well increase regulation as to decrease it, and certainly colleagues from California would know that it was not the EPA that decided to impose the Clean Air Act, the Federal implementation plan in that State.

EPA was forced to do so as a result of a review in Federal court by environmental organizations, and there are going to be a great many public interest groups willing to sue individuals, public interest groups willing to sue the Federal Government, to require implementation of even stronger regulations.

What we are going to end up with, Mr. Chairman, is a great deal of expenditure of time and money and energy, and to what purpose? Who will be better off for spending all of that money on the individual points in the final regulation, in the final rule that is being made? Certainly not Americans who want to see reasonable cleanups without endless wrangling.

Mr. Chairman, I do not think industry will benefit, since they will lack any ability to rely on agency decisions and plans for the impact of regulations that are subject to incessant court challenges and court reviews.

I submit, Mr. Chairman, that the only beneficiaries are really going to be the lawyers, the lawyers on both sides of these issues, who are surely going to be the beneficiaries if we do not adopt the Boehlert-Roemer amendment.

Mr. Chairman, let us limit the fun that the lawyers have in this process and support the Roemer-Boehlert amendment.

Mrs. MORELLA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Roemer-Boehlert amendment. H.R. 1022 contains new, expansive language on court review which was actually not in the Committee on Science markup.

This language would direct the courts to examine the scientific basis of the risk assessment. They would have to follow section 104 and 105, which would hold the rules unlawful if they did not do that.

Mr. Chairman, the courts, I believe, lack the expertise. They are not scientific experts. They lack the expertise; they lack the time; they lack the interest, also, to do this for hundreds of regulations which would come before them.

Mr. Chairman, in the Committee on Science markup, the gentleman from Pennsylvania [Mr. WALKER] promoted the sort of one-bite-at-the-apple concept, and saying that the Administrative Procedures Act would apply. The Roemer-Boehlert amendment I think would make this the case explicitly, that only final action is reviewable.

Therefore, Mr. Chairman, I rise in support of the amendment.

Mr. WALKER. Mr. Chairman, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, there is no difference in the bill than what we did in the committee. We have expanded the language to some extent, simply to spell out what we were doing in terms of the Administrative Procedures Act, but we are doing exactly what the Administrative Procedures Act now requires agencies to do under the bill, so I would say to the gentlewoman that I worked very hard to protect the Committee on Science's position with regard to judicial review.

I think we have done that. I think the Committee on Commerce and the Committee on Science are very much in agreement on this.

Mr. Chairman, I simply would not want it on the record that what we have done here is in any way different from what the Committee on Science decided to do. That is not the case.

Mrs. MORELLA. Mr. Chairman, the gentleman did a great job in committee. My understanding is, however, that what we are saying is that the Administrative Procedures Act would apply, would be lawful, unless there are arbitrary and capricious, unlawful statements that occur.

Right now in the bill the agency would have to prove with substantial evidence that the activity was environmentally risky.

Mr. WALKER. If the gentlewoman will continue to yield, substantial evidence is in the Administrative Procedures Act.

Mrs. MORELLA. Yes, arbitrary and capricious.

Mr. WALKER. If the gentlewoman will continue to yield, if I understand the gentlewoman, Mr. Chairman, what she is objecting to is if the agency takes arbitrary and capricious action, she does not believe that that should be subject to somebody's review?

Mrs. MORELLA. Mr. Chairman, that should be subject to review.

Mr. WALKER. Mr. Chairman, if the gentlewoman will yield further, the Roemer amendment prevents that. It says specifically—and I will read, ''* * * any alleged failure to comply with this Act, may not be used as a grounds for affecting or invalidating such agency action''—it does not matter how egregious it is.

The Roemer amendment wipes it out. The Roemer amendment says you cannot do it.

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Mr. BOEHLERT. Will the gentlewoman yield?

Mrs. MORELLA. I believe it relies on the APA. I yield to the gentleman from New York, one of the sponsors.

Mr. BOEHLERT. We have got the Administrative Procedures Act. We know that. That is the vehicle to challenge any final rulemaking, and we have got the arbitrary and capricious standard. What this would do is subject the whole risk assessment process to judicial review, which means we would be tied up—talk about the full employment act for lawyers, we would be tied up in courts forevermore at a cost of millions and millions and millions of dollars for everybody involved. That is why we so strongly object to it. I thank the gentlewoman for yielding.

Mrs. MORELLA. Already over $100 million is going to be exhaustively peer-reviewed. So we certainly, I think, need the Roemer-Boehlert amendment.

Mr. WALKER. Mr. Chairman, will the gentlewoman yield again?

Mrs. MORELLA. I yield to the gentleman from Pennsylvania.

Mr. WALKER. One of the problems is, what we have just heard from everybody is they do not want the Administrative Procedures Act to apply to this act. They want the Administrative Procedures Act to be out there applying to other things, but they do not want the Administrative Procedures Act to apply to this act.

Mrs. MORELLA. The final action.

Mr. WALKER. The standard we have set is a standard which is exactly similar to the Administrative Procedures Act.

Mr. BOEHLERT. Mr. Chairman, if the gentlewoman will yield further, what we want is we want the Administrative Procedures Act to apply to the final rule. We want to have a system where a final rule which is wacko, which does not make any sense, does not pass the commonsense test, we want to have a way to challenge that.

But we do not want to have a way—all through this risk assessment process, if an agency comes up with a rule that makes sense, that addresses public health and public concerns, we do not want to be able to throw out that rule because somewhere along the process somebody did not fill out a form on page 12, line 3, section 2.

The CHAIRMAN. The time of the gentlewoman from Maryland [Mrs. MORELLA] has expired.

(At the request of Mr. WALKER and by unanimous consent, Mrs. MORELLA was allowed to proceed for 2 additional minutes.)

Mrs. MORELLA. I continue to yield to the gentleman from Pennsylvania.

Mr. WALKER. The fact is that the language in the bill says substantially comply so that we can deal with the problem, but the gentleman seems to be ignoring the language of his own amendment.

I simply would point out that the language within the Roemer amendment says any alleged failure to comply with this act may not be used as grounds for affecting or invalidating the agency action.

You cannot even get to where the gentleman says he wants to be under the amendment that you have before us.

Mr. ROEMER. Mr. Chairman, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Indiana.

Mr. ROEMER. It has been said over and over and over again, there is nothing in the Roemer-Boehlert amendment that would erode the Administrative Procedures Act. If that is passed and put into effect and we try to mitigate the litigation that is going to simply explode as a result of this new expansion under judicial review, there is no risk to this doing any kind of threat to the Administrative Procedures Act, and you still have the ability of OMB, peer review panels, and a host of other sunshine to be shone upon the regulations in the final action.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think it is important that we clear up some of the argument that is being made here today, and perhaps we ought to start by reading the amendment, itself. I understand the reading of the amendment was suspended earlier.

But if we want to find our whether this amendment eliminates judicial review entirely, whether this amendment basically guts the bill, let's read the amendment.

It says, ''Nothing in this act creates any right to judicial or administrative review, nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.''

It goes on to say, ''If an agency action is subject to judicial or administrative review under any other provision of law, the adequacy of any certification or other document prepared pursuant to this Act and any alleged failure to comply with this Act may not be used as grounds for affecting or invalidating such agency action.''

I do not know how you can more clearly state that you are saying we are passing this bill but it cannot be

enforced, it creates no rights for judicial review, and if there does happen to be judicial review under some other law, nothing in this act shall give anybody any rights for any protection under the very provisions which we are putting into effect.

The fact is that this statute is critical. It is a process that America has needed badly to require our administrative agencies to review the effectiveness of their conduct. They must assess the risk which they are addressing, assess the cost of meeting that risk in their regulation, and determine whether the cost is justified by the benefit that is intended to be gained.

If we cannot put that into law and then require that the agencies meet that test when they are promulgating regulation, then we are truly fooling the American people when we tell them that we are trying to somehow bring the agencies under control in the rulemaking process.

If that is not enough, the amendment goes on to say that it strikes the substantial evidence standard in the judicial review that this act contains.

Let's clarify what we are talking about here. If we do not have the substantial evidence standard in this legislation, that means that when there is judicial review, and, by the way, I will back up a minute.

It has been argued that we do not want to open up the opportunity for the courts to look at the entire administrative record and see what has gone on.

Ladies and gentlemen, that is exactly what happens right now, under the administrative review that is given to each rule as it is reviewed under the previous statutes that authorized those rules.

What we are saying is that in final agency action, not at each stage but in final agency action, when the rule is already being reviewed, when the entire administrative record is already being reviewed, it must also be reviewed for purposes of cost-benefit analysis.

We are going further to say that the standard of review shall be substantial evidence. The court must look to see whether the agency acting had substantial evidence to document its claim that there was or was not a cost-benefit to the rule which it is enforcing.

What this amendment seeks to do is to make it so the agency can get by with whatever it wants if it can simply meet an arbitrary and capricious standard.

That means that all the court has to do is to say that there was a little slim piece of evidence in this record that justified what the agency wanted to do and so it was not arbitrary or it was not capricious, but it does not have to look further to see whether the weight of the evidence was on one side or the other.

There is already going to be the administrative review of these agency rules under the Administrative Procedures Act which governs the statute which generate the rules themselves. What this statute does is say that when that review takes place, then there must be administrative review also of the cost-benefit analysis and that cost-benefit analysis must be justified by substantial evidence in the record that is already under review.

That is eminently reasonable, and all you have to do is read the words in this amendment to see that it is clearly a killing amendment. It is saying, ''We've got a right here, we are creating a great statute that allows us to have cost-benefit analysis, but we don't want any agency to have to be forced to follow it, we don't want any person in America to have any right created under this statute to have the agency follow this legislation, and we want to be darned sure that it is not enforceable if anybody goes to court.''

Last, there has been the argument made here that this is going to generate mounds and mounds of additional litigation across the country. Again, this legislation authorizes judicial review only when there is final agency action under a rulemaking which is already under way under a previous statute.

That means that there is already going to be agency review under each review required by this statute. It is not going to increase litigation.

Mr. WALKER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, this is the ultimate old order amendment. This is an attempt to step back to the idea that big government has solutions to all of our problems and if we would only listen to big government, big government will always tell us the right things to do.

This is an amendment by people who do not want to see middle-class Americans use the law against the Government but are perfectly happy to see the Government use the law against middle-class Americans. That is exactly the effect of adopting the Roemer amendment.

You adopt the Roemer amendment, you say the lawyers of the Government can go out and pound the middle-class Americans all they want, but middle-class Americans are not allowed to in any way use the law to protect themselves against Government. I think that is the reverse of what we should be doing.

First of all, let me tell you, anyone who tells you that they are for risk assessment and they are for cost-benefit analysis and then supports this amendment is trying to make a fool of you. There is no way that you can say that you are for risk assessment and you are for doing all these things but, ''Oh, by the way, let's not make it enforceable.''

Because the ultimate effect of this amendment is to say, ''Let's not have any enforcement of it.''

To suggest that judicial review is being able to take it to OMB or being able to take it to the Congress, that is not judicial review. It does not even fit the title. All that says is that you can take it back into the political establishment in hopes that the politicians will always be too nervous to do anything that is real.

What we have done here is we have tracked the Administrative Procedures Act, we know what the effect of this would be, and we do not believe that there is any way here of exploding litigation. That is not what we are seeking to do at all. But we do believe that there needs to be some kind of assurance that when agencies are doing the procedures necessary for risk assessment and cost-benefit analysis, they in fact do what they are supposed to do under the law.

This idea that minor flaws in the process will bring about major litigation is just absolutely clearly wrong. The proponents of this amendment have not bothered to read what is under the judicial review section on page 34 of the bill, because what it says is that the documents, if they do not substantially comply, then the fact is that there is no judicial review. We have a substantial compliance test under the bill.

This idea that we are going to explode a whole bunch of litigation on minor points, it is completely dealt with. No minor discrepancies are in fact going to be the cause for litigation.

I would also go back to pointing out that the legislative language that the gentleman from Indiana and the gentleman from New York bring us here, maybe it does not do what they intended it to do, but the fact is that it is misdrafted and it is a bad amendment.

Because if in fact they are clear in what they are saying here on the floor, their amendment is specifically opposite of that. Their amendment is meant, by words, to wipe out any chance whatsoever to have even the most egregious procedural flaw nonreviewable.

The agency can do anything they want. They can disobey the law, they can completely set the law aside, they can go ahead and do anything they want, and under the language of your amendment, what you say is that that cannot be used as a grounds for affecting or invalidating such agency action.

I cannot believe that you are standing up saying you are for risk assessment and then offering an amendment that says that you can do all these things in an agency and so on, you can violate the law in any way you want, and nobody can ask you about it. Nobody can review it. Nobody can change it.

''Go ahead, bureaucrats. Do your thing. Whatever it is you bureaucrats want to do, it's OK with us. It's fine. We love it. Just continue to regulate like you've been regulating. Continue

to pound America the way you've been pounding America. Continue to wipe out the small businessmen the way you've been wiping out the small businessmen because they shouldn't have any rights under this act at all.''

If that is what you want to do, your language certainly accomplishes it.

I would suggest, also, that the gentleman from New York told us that if H.R. 9 had been in effect, we would not be able to do the things that we have done in the past such as the Clean Air Act. That is specifically refuted by John D. Graham who is director of the Center for Risk Analysis at Harvard School of Public Health. He makes a statement in this morning's newspaper indicating that both the air bag standard for automobiles and the phaseout of lead in gasoline, each of which transpired during Republican administrations, involved substantial uncertainty yet both were approved after cost-benefit analysis.

The fact is that the standards under this bill would have been used in those instances and it would have resulted in regulation.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from New York.

Mr. BOEHLERT. I would point out that with lead particularly——

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. WALKER was allowed to proceed for 3 additional minutes.)

Mr. WALKER. I continue to yield to the gentleman from New York.

Mr. BOEHLERT. I would suggest that the substantial evidence test would not have been passed and that is why we would have had the problem today with lead in gasoline, for example.

The substantial evidence did not come until after we had the test to prove the point.

Mr. WALKER. Substantial compliance is in the legislation we have before us.

Mr. BOEHLERT. The substantial evidence test is, yes, but the substantial evidence test was not applicable 25 years ago and had this legislation that you are proposing right now been applicable 25 years ago, we would not have had that standard.

Mr. WALKER. We have substantial compliance in the bill that is before you. That is exactly my point.

Under the bill that is before us, we have substantial compliance in here which is exactly what the gentleman is suggesting.

Mr. BOEHLERT. But what I point out to the gentleman is this. That we are after the final rule. If the final rule does not pass the commonsense test, there is a way to do with it under the Administrative Procedures Act.

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What the gentleman is suggesting is all during the risk assessment process the lawyers would just line up one behind the other and challenge everything that happens during the risk assessment process.

Mr. WALKER. The gentleman is specifically wrong. If he goes and checks he will find out that ours applies to the final agency action. That is where our judicial review takes place, is with final agency action as well. It does not allow judicial review at each phase along the way; it simply says there is review possible on the final agency action.

Read the amendment; read what is the judicial review in the bill.

Mr. BOEHLERT. That is where we are, and the gentleman makes my point, and he makes it in a very glib way, I might add. The fact of the matter is the gentleman wants to challenge the risk assessment process every step of the way. We are saying we will challenge the final rule if it does not make sense, it is not cost-effective, and if it does not protect women, infants and children, we will check that.

Mr. WALKER. The gentleman is specifically wrong. The gentleman is absolutely and specifically wrong. There are no challenges all the way along the way. Under our amendment it is involved with the final agency rule. The final agency rule is what we try to do.

The gentleman whips out even the ability to even review the final agency rule. The gentleman from Indiana is shaking his head. Read your amendment, read your amendment. It says in the legislation, failure to comply with this Act ''may not be used as grounds for affecting or invalidating such agency action.'' That is the final rules the gentleman is talking about. You cannot invalidate it even if the agency has absolutely disobeyed the rule. The gentleman is knocking out the ability to do this thing, so you have totally obliterated the ability for judicial review.

Do not tell us that you have not done it; it is specific to your language.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, we are talking about the final rule on the risk assessment, not the regulation, which is what we want to challenge, the final regulation if it does not pass the common-sense test.

Mr. WALKER. But the gentleman should read his own amendment.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has again expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. WALKER was allowed to proceed for 2 additional minutes.)

Mr. WALKER. Mr. Chairman, let me read to the gentleman his own bill. His own amendment says, ''If an agency action is subject to judicial or administrative review under any other provision of law, the adequacy of any certification or other document prepared pursuant to this Act, and any alleged failure to comply with this Act, may not be used as grounds for affecting or invalidating such agency action.'' That is exactly the opposite of what the gentleman just told us.

Mr. BOEHLERT. Mr. Chairman, there again we both agree we are reading the same thing, but if the gentleman says what I am saying is wrong often enough, that does not mean he is right. The fact of the matter is we want final review of the regulation, not the risk assessment.

Mr. WALKER. I am saying to the gentleman from New York I am simply reading back his own words to him that he would commit to law.

Mr. BOEHLERT. I agree 100 percent, the words are exactly as the gentleman read them, but his interpretation is wrong.

Mr. WALKER. My interpretation is not wrong because I will tell the gentleman the bottom line is what this would do. The bottom line is what this would do is it would assure that we would have even weaker laws than we do right now. The fact is because of what the gentleman is going to do here he would wipe out the ability that people now have to take action. And so, he is invalidating law. What he is saying is with regard to this particular compliance law, we simply will not allow the public in, that the agencies can have all of the lawyers that they want on their side but the public cannot have any lawyers on their side; the people cannot bring actions against the Government, but the Government can continue to bring action against the people. That is what the amendment is all about.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, I think it is important to point out, as the chairman has pointed out, that the regulatory action we were talking about in this bill occurs only when the final rule has been promulgated and the rule is already under review. I read from the judicial review portion of this statute. It says, ''The court with jurisdiction to review the final agency action under the statute granting the agency authority to act.'' That is the authority to issue the rule, ''shall have jurisdiction to review, at the same time, the agency's compliance with the requirements of this Act.''

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has again expired.

Mr. CRAPO. Mr. Chairman, I ask unanimous consent the gentleman from Pennsylvania be allowed to proceed for 2 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Idaho?

Mr. BROWN of California. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard by the gentleman from California.

Mr. BROWN of California. I have been sorely tempted by the inaccuracies that have been forthcoming. But I withdraw my objection for the time being.

The CHAIRMAN. Is there objection to the request of the gentleman from Idaho?

There was no objection.

The CHAIRMAN. The gentleman from Pennsylvania is recognized for 2 additional minutes.

Mr. CRAPO. Mr. Chairman, if the gentleman will continue to yield, the legislation we are debating goes further to say that ''When a significant risk assessment document or characterization document subject to title I is part of the administrative record in a final agency action, in addition to any other matters that the court may consider in deciding whether the agency's action was lawful, the court shall consider the agency action unlawful if such significant risk assessment document or significant risk characterization document does not substantially comply with the requirements of this section.''

The point is when agencies promulgate a rule it does so under statutory authority. When it has finalized its statutory authority and has promulgated a rule, then and only then does this allow the requirements of this statute to be brought in under administrative review. It does not allow a piece-by-piece administrative review and does not increase litigations by one case over what is already the situation in current law.

Mr. WALKER. The gentleman is absolutely correct.

Mr. BOEHLERT. Mr. Chairman, will the gentleman from Pennsylvania yield?

Mr. WALKER. I am happy to yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, let me stress, I want to add this for about the 16th time, the rule is reviewable, but the risk assessment process is not. that is what we want to have accomplished as a result of what we are doing today.

Mr. WALKER. But the gentleman is not tracking his own language in that. We want in fact the rule and that is what we want to do. But the agency cannot, the agency is not allowed under our procedure to totally violate all of the procedures. Under what the gentleman is suggesting they are allowed to violate all of their procedures and, oh, by the way, then you can have a review.

That is not possible. That makes no sense, and I would suggest to the gentleman that that is exactly where his amendment takes us.

So, I would simply point out that under the Administrative Procedures Act this is something which would be backtracked on.

Mr. BROWN of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am reminded of an old legal adage which goes something like this: If the facts are on your side, you pound on the facts; if the law is on your side, you pound on the law; if neither are on your side, you pound on the table. And I sense an awful lot of pounding on the table going on here.

I agree with the gentleman from New York [Mr. BOEHLERT] that the gentleman from Pennsylvania [Mr. WALKER] is extremely glib in his exposition and he is also extremely emphatic and does a lot of pounding on the table.

I would like to call all of my colleagues' attention to an article in the Post this morning which describes in great detail some of the aspects of this legislation, and the point that it particularly makes is that a great deal of the risk assessment, risk characterization, cost-benefit analysis is very tenuous in its scientific basis. It is difficult and in some cases impossible to characterize risk, to assess risk or to make cost-benefit analyses that come anywhere close to the mark. You can be a thousand percent off, and one reason that you do not want all of these processes, assessment characterization and cost-benefit analysis subjected to judicial review is exactly that. You can tie up the process for ages on something that there is no answer to. And it would be extremely undesirable to have that happen.

It is the intention of this amendment to preclude that kind of an effect from happening. It is perfectly okay to review the adequacy of these various processes at the time of the final rule, but I call to Members' attention the fact that the agency itself has the right to waive many of these things when it finds that there is no way of achieving it.

For the court to be able to review the adequacy of something that could be and may have already been waived because there is no way to achieve it is just a ridiculous waste of time.

I do not want to belabor this. I think there has been adequate attention to it. But I am disturbed at the frequent repetition of nonfacts as horror stories.

I had hand delivered to me on the floor a few minutes ago a letter from the Administrator of the EPA which states her concern over some of the misstatements made yesterday. I am not going to read it. I will include the letter and the examples in the RECORD.

In addition to that, I have another half a dozen which I have personally investigated, and I attempted yesterday to respond to some of the more obvious ones on the floor, but was unable to cover them. I have another half dozen, and I will place those in the RECORD after the Administrator's letter outlining the ones that she was concerned about.

I urge upon all of my colleagues not to pound on the table quite so much, and to be a little bit more assured of the facts as we proceed with what has otherwise been what I consider to be a very helpful debate.

The material referred to follows:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, February 28, 1995.

Hon. JOHN D. DINGELL,
Hon. GEORGE E. BROWN JR.,
House of Representatives,
Washington, DC.

DEAR CONGRESSMEN DINGELL AND BROWN: I am concerned that during the course of the Floor debate on H.R. 1022, The Risk Assessment and Cost-Benefit Act of 1995, there have been mischaracterizations of policies and actions taken by the Environmental Protection Agency. I am writing in an effort to ensure that the debate before Congress is based on full facts. I will address several of the issues that have been used in this debate.

First, I would like to point out that I have already changed the way EPA does business. EPA has instituted major reforms in its rulemaking processes and programs. Since coming to EPA, I have worked diligently to instill common sense into the Agency's efforts to protect public health and the environment, by moving beyond one-size-fits-all regulatory approaches. This commitment has been translated to concrete action by our Common Sense Initiative. It addresses comprehensively a new, more cost effective framework for six leading industrial sectors. A further demonstration of this change is our Brownfields effort to turn contaminated urban areas into productive redevelopment sites. The very practical approach that we've taken in resolving implementation issues in the Clean Air Act also demonstrates the new EPA. These administrative solutions we have developed in partnerships with State and local governments for implementing the Clean Air Act show our success.

I am committed to flexibility and consensus—driven by firm public health protection goals, but flexible means for achieving them. EPA has made major improvements to its science program through directing its research program toward risk reduction and new policies to assure peer review of science used in decision making. And the Clinton Administration has made it clear we would support risk assessment legislation that is fair, effective and affordable.

Unfortunately the proponents of H.R. 1022 have not only failed to recognize these improvements, but in floor debate have put forth as the rationale for H.R. 1022 a series of examples that purport to represent EPA's decision making processes as severely flawed. In fact, these tales are fraught with misinformation and sometime involve decisions made over a decade ago—many are flatly wrong. Among the numerous misstatements these proponents have made are:

It was stated that EPA set a drinking water standard at 2–3 parts per billion (ppb) of arsenic in drinking water, while shrimp has a level of 30 ppb.

This is not the standard that EPA set. EPA set a standard for arsenic in drinking water of 50 ppb. And the arsenic in shrimp is not scientifically comparable to that in drinking water. The arsenic in drinking water is toxic—the type in shrimp is not.

A ''Dear Colleague'' letter stated that someone would need to drink 38 bathtubs of water to experience a risk from atrazine in drinking water.

This is inaccurate. Even at the standard set by the EPA, drinking just two liters of water per day results in a one in 100,000 cancer risk, which is equivalent to a projected 2600 additional cancers. Not only are people exposed to atrazine through drinking water,

but through ingestion of pesticide residues as well, thereby potentially increasing the risks of exposure. In addition, two other pesticides found on food and in drinking water may cause risks to farmworkers and consumers via the same mechanism, and their risks should be considered collectively.

It was said on the floor that EPA requires the City of Anchorage, because its wastewater is already so clean, to add fish wastes so that its sewerage can achieve sufficient reductions to meet Clean Water Act requirements.

This is incorrect. EPA has never required Anchorage to do this. Anchorage already has a lower reduction requirement because it has been granted a waiver from the stricter reduction limits. Anchorage now successfully meets this standard with existing equipment and would be required to add extra capacity only if it faces an increase in population, as would any city. Anchorage chose to accept fish waste at the request of fish processors because it is a more cost effective way to manage these wastes.

It was alleged that EPA regulates ''white out'' correction fluid and caused extensive record-keeping problems for a small business in California as a result.

This is wrong. EPA has never regulated ''white out''. The State of California did require warning labels on products that contain certain chemicals through a Proposition.

Despite these inaccuracies, I am hopeful that the House debate on risk can focus on our common goals. We are working to be strong proponents of quality science and prioritizing government resources toward the most significant public health and environmental problems. Our concern is that this legislation, in its current form, will undermine these laudatory goals by elevating simplistic slogans to unworkable public policy—a policy that will instead freeze science, lead to tremendous regulatory gridlock, impulsively sweep away carefully thought through health and environmental frameworks, and empower the courts to resolve fundamental public policy issues.

I appreciate your efforts to focus discussions on H.R. 1022 on the significant issues this proposal presents.

Sincerely,

CAROL M. BROWNER,
Administrator.

RESPONSE TO CONGRESSMAN WALKER ON ASBESTOS

Congressman Walker alleged that children have a 1 in 2 and one half million lifetime cancer risk from asbestos. He further alleged that EPA required removal of asbestos from schools and that it would have made more common sense to allow management in place.

The Congressman is misinformed: EPA did take a risk based approach to the problem of asbestos in schools.

Lets look at the history of this rule. EPA's approach to asbestos in schools has evolved with the science:

As early as 1982 EPA, required removal of friable asbestos, or asbestos that is crumbling and therefore releasing fibers that could be breathed into children's lung where they could cause cancer. The Agency offered other approaches like encapsulation for intact asbestos.

In 1985 EPA provided updated guidance (the ''purple book'') which placed more emphasis on ''management in place,'' but also recommended removal.

From 1987–1990 EPA conducted new studies based on a new method (electron microsposy) for monitoring asbestos before, during, and after removal.

As the science improved, EPA's approach evolved:

In 1990, based on EPA's studies, EPA released new guidance (''purple book'') which recommended management in place whenever possible and removal only to prevent exposure in building renovation and remodeling (the NESHAP regulation).

In 1992 EPA completed a study of the asbestos-in-schools bill (AHERA). The vast majority of asbestos actions (85%) involved management in place, not removal.

RESPONSE TO ALLEGATION FROM CONGRESSMAN BILIRAKIS ON MSWLF BENEFITS

I would like to respond to Congressman Bilirakis's allegation that the recent revised criteria for Municipal Solid Waste Landfills cost $19.1 trillion per life saved. This is an unsound manipulation of EPA's analysis, presents an exaggerated and one sided view of the benefits of the regulation, and is a good example of precisely why the use of net benefits in this way is be misleading.

First, the cost per cancer case avoided was inflated by using economic maneuvering to minimize lives saved in the future by discounting. If you refer to EPA's analysis, you'll see that for one set of landfills (which would provide disposal to our nation for 30 years), EPA estimated that 2 cancer cases would be avoided at a present value cost of $5.7 trillion.

Second, and more importantly, Bilirakas's estimate completely disregards other benefits associated with the rule. EPA identified a very important other benefit from the Municipal Landfill regulation: that of avoided permanent contamination of one of our nation's precious natural resources, i.e., groundwater. Even with EPA's conservative cost estimates, which did not include remediation of contaminated groundwater, but simply importing water from another source, EPA estimated that without the regulation, US taxpayers would spend a present value of $270 million to import water to replace groundwater which had been contaminated by one set of landfills.

RESPONSE TO CONGRESSMAN LONGLEY ON MAINE INSPECTION/MAINTENANCE PROGRAM

Rep. Longley asserted that EPA imposed a requirement for motor vehicle inspection and maintenance (I/M) program for Maine without conducting the required scientific studies and in violation of the law.

EPA in fact violated no laws relating to the imposition of the I/M program in Maine. Maine is a part of the Northeast Ozone Transport Region established by Sec. 184 of the Clean Air Act. Congress determined in Sec. 184 that ozone in the U.S. northeast is a regional, not a local, problem, and that certain measures should be adopted throughout that region regardless of the particular local air quality conditions.

In particular, the Congress mandated that each metropolitan area with a population greater than 100,000 adopt and implement an enhanced I/M program. As with all other areas in the region, EPA required Maine to adopt enhanced I/M for its larger metropolitan areas.

RESPONSE TO CONGRESSMAN SOLOMON'S ALLEGATION THAT EPA WILL SHUT DOWN THE PULP AND PAPER INDUSTRY

In debate on the House floor Congressman Solomon alleged that EPA's rule to reduce dioxin emissions from the Pulp and Paper Industry will shut down the industry because of the high cost of complying with the rule.

This is untrue:

EPA proposed this rule in 1992. After reviewing the extensive public comments, the EPA is now extensively revising its original approach. The rule now regulates no one because it has not yet been finalized. How can any one say its shutting anyone down? In addition, EPA is listening to the industry and working to resolve these problems before the final rule comes out. I think that's a healthy sign of the way rules should be developed: As the President said last week: Consultation—not confrontation, as the increased judicial review in this bill will cause.

Just as the comment period envisions, the Agency has since, for well over a year, pursued an extensive and exhaustive process of consultation with all affected stakeholders, including industry and environmentalists to respond to substantial evidence presented to it of the need to change the proposed rule.

The pulp and paper industry, including the industry's trade association and individual paper companies, have been active and much-listened-to participants in these revisions.

The proposed pulp and paper Cluster Rule is being specifically revised in response and in recognition of the many concerns, comments and factual data brought to the Agency by numerous participants in this consultation process.

This process of proposal, public comment and revision in response to important data brought to regulatory agencies by the outside participants is exactly the way the regulatory process is supposed to work. To cite a proposal that is likely to be dramatically different from the final product of this process, as if that proposal was actually being imposed on that regulated community as the final product, is a grossly misleading characterization.

RESPONSE TO CONGRESSMAN BILIRAKIS' ALLEGATION CONCERNING ALAR AND APPLES

In debate on the House floor, Congressman Bilirakis stated that Alar was never shown to be carcinogenic in either mice or rats, and that only UDMH, a breakdown product had ever been shown to cause cancer. Furthermore, he stated that one would have to drink 19,000 quarts of apple juice daily to be at risk.

This is mistaken:

UDMH, a potent carcinogen, is formed from Alar both in the fruit (apples), and when Alar is ingested by people. It is formed in the body, and is carried by the blood stream throughout the body, where it can wreak its toxic effects.

It is only sensible that such highly toxic breakdown products should be considered when assessing whether or not a chemical can cause cancer in humans. Doing this is well established scientifically, and is recognized as valid by toxicologists, as well as by scientists from many other disciplines.

In the case of Alar and UDMH, it is not necessary to ingest 19,000 quarts of apple juice to increase the risk of cancer, a much smaller amount was calculated to be risky. This is particularly important, because it is young children who often drink large quantities of apple juice, and whose young, growing bodies, may be particularly sensitive.

Clearly, we do not want ourselves or our children to be exposed to doses of a chemical that have been shown to be overtly toxic and capable of causing cancer. As a result, we use scientifically accepted principles to extrapolate to levels at which risk assessments indicate that the risk is less.

Finally, it should be pointed out that the economic impact of the Alar crisis was caused not by an EPA regulation or decision, but rather, by a public interest group publishing its concerns about these exposures.

RESPONSE TO ALLEGATION FROM CONGRESSMAN BILIRAKIS ON BENEFITS OF WOOD PRESERVING

I would like to respond to Congressman Bilirakis's allegation that the wood preserving hazardous waste listing resulted in a cost of $7 trillion per life saved. The 7 trillion dollar per statistical life associated with the wood preserving listing is a perfect example the distortion and misinformation that cost benefit analysis can impose on the regulatory development process. EPA's estimates of the cost effectiveness were nowhere near this amount—remember there are many ways to calculate cost/benefit ratios and there is no clear consensus on the proper method.

What is of greatest concern is that the 7 trillion number ignore noncancer health benefits which could include avoidance of liver disease or birth defects. The 7 trillion also ignore adverse water quality impacts on ecosystems such as wetlands, rivers, and lakes that the agency determined would be severely impacted if wood preserving wastes continued to be uncontrolled.

What is also of interest is that the Agency in developing this rule was particularly concerned about small business impacts; worked with the SBA; did extensive analysis of the industry; and between proposal and final worked closely with the wood preserving industry and others to carefully tailor the regulation to achieve a sound environmental outcome with minimal economic impact. In fact, most telling of EPAs work in this regard was this rule stands as one of the few rules promulgated under RCRA that the agency was not sued on! Cost benefit outcomes are clearly no measure of and in fact often misstate regulatory quality, environmental outcome, or economic impact.

RESPONSE TO REP. SALMON'S COMMENTS ON ARIZONA'S AUTOMOBILE INSPECTION/MAINTENANCE PROGRAM

Claim 1: States have no discretion in implementation of the ''I/M 240'' auto inspection/maintenance program.

Response: This is not true. States have a great deal of flexibility and discretion in the design of auto inspection/maintenance programs.

Arizona was not required to adopt the high-end I/M 240 program but chose to do so.

Arizona chose I/M 240 because the State found the program extremely cost-effective and preferable to putting tighter controls on factories, and other stationary sources.

I/M 240 controls pollution at $500/ton, where controls on other sources cost $2000–10,000/ton.

Claim 2: People had to wait in line 4–5 times as long.

Response: This problem has gone away. Waiting lines were a problem only during the first week of the program in December. There are no long lines now.

Claim 3: Program increased costs 4 times.

Response: The old Arizona program cost consumers $6 per year. The new program costs $24 every 2 years, or $12 per year.

Bottom line: The new program is more effective, more convenient, less frequent, only $6 more per year, and clearly preferable to putting more expensive controls on other sources.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BROWN of California. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, I would like to say we are all arguing back and forth as legislators and attorneys about our interpretation of this amendment. The gentleman from Pennsylvania [Mr. WALKER] just cited John Graham, the director of the Center for Risk Analysis at Harvard School of Public Health, and I think he is a good referee. He just cited him saying good things about this legislation. Here is what Dr. Graham said in the Post this morning: ''I'm not too crazy about this idea of opening up all regulations to judicial challenge.''

Now, that is somebody that the gentleman from Pennsylvania [Mr. WALKER] cited. That is precisely what we are trying to do with this amendment, is not open up all of these things to judicial review, have one bite of the apple at the end of the process, just as the Administrative Procedures Act does right now. And I think the distinguished ranking member for yielding.

Mr. ROHRABACHER. Mr. Chairman, I move to strike the requisite number of words.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to my colleague from Pennsylvania.

Mr. WALKER. Mr. Chairman, I think that it is interesting to note that if we read Dr. Graham's statement, he says he is not too crazy about the idea of opening up all regulations to judicial challenge. The fact is we are not opening all of it up to judicial challenge. I think what he is probably referring to is all of the past regulations and so on. We are not doing that, this bill does not do that at all.

Second, it seems somewhat interesting to me that we now have the argument that if we have no knowledge about things we ought to go ahead and regulate, but because we have no knowledge we ought not be able to do risk analysis and do the cost-benefit analysis; that the lack of knowledge should increase our ability to regulate, but should not increase our ability to review.

That strikes me as exactly the opposite of what the public has been saying now for some time. They would like us to regulate on the basis of knowledge. And to have the argument on the floor that the lack of knowledge means that the regulations should go forward is to me the inverse of what we ought to be endorsing in the U.S. Congress.

Mr. ROHRABACHER. Mr. Chairman, we should not lose sight of what this is all about. What has happened is that the American people over the last 10 years, and over the last 20 years, have seen that enormous power has been granted to unelected officials in Washington, DC. What we have seen is that Washington, DC, has absorbed and centralized enormous powers and it is not in the hands of elected officials, but instead in the hands of the bureaucracy, in the hands of people who never put themselves before the electorate.

This is an attempt to try to readdress or to redress that issue, to bring some balance back to Washington, DC, to the democratic process, to respect the rights of our people who feel that they are being basically ordered around, that they are being driven out of business, that they are being damaged by the mandates of people who have never been elected.

If a citizen believes that he or she is being hurt or suffering damage because an unelected official, someone in an agency has not followed the new rule that we are setting down which says they should be basing their decisions on good science, there should be peer review of the decisions, we should make sure that there is a risk assessment and that there is a cost-benefit analysis. If an agency is not following those rules, and one of our citizens feels that the decision that they have made is hurting them, we are just saying they should have redress.

☐ 1330

This is the way citizens have protected their rights throughout our country's history. If the Government is not following the law, whether it is the bureaucracy or elected officials, our citizens have felt they could go to the courts to seek a solution to their problems to prevent themselves from being hurt and being damaged by an agency that is not following the rules as set down by the Congress. This makes all the sense in the world.

Gutting this from the Republican proposal is a way to basically restore the power to the bureaucracy to do whatever they damn well want to do because they have got the best motives and the best intentions. Well, best of intentions do not cut it. The American people know what the best intentions of the bureaucracy are all about. The best of intentions of the bureaucracy are to say we have got to rip the asbestos out of the walls of our schools to protect our children, and find out that tens of billions of dollars have been wasted that should have gone to the education of our children instead of having gone and been spent by public officials with the best of intentions, directing our people to do exactly the opposite thing they should be doing.

We expect a procedure to be followed. We expect there to be cost-benefit, risk-benefit analysis. We expect there to be peer review. That is what is in the legislation, and we expect that if the unelected official, the bureaucracy, is not following the law as we are setting it down, the citizens of this country will have a right to appeal that through the judicial process. That is what this debate is all about.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I want to say to the gentleman you have stated, I think very well, some of the same objectives that I share. Certainly I want peer review.

The CHAIRMAN. The time of the gentleman from California [Mr. ROHRABACHER] has expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. ROHRABACHER was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, if the gentleman will yield further, I want peer review. I am not sure I would want O.J. sitting on his own jury, for example, so we have some questions about that. There are a number of questions we have, but in the final analysis, we want what you want.

But I am concerned. I am thinking of offering an amendment requiring a cost-benefit analysis on the entire bill, because I do not think anyone has the first clue on how much this is going to cost in terms of litigation.

I am wondering if there is anyone, the gentleman or anyone advocating passage of this legislation as is, if anyone has an idea how much is this going to cost American industry, American families, in terms of dollars and cents.

Mr. ROHRABACHER. Reclaiming my time to answer, we know how many hundreds of billions of dollars are being wasted right now. We do know in California, because of unreasonable regulation by unelected officials, hundreds of homes were burned down because, why, they were not permitted to clear the brush away from their homes because it might hurt the habitat of a few little birdies, and those birdies, by the way, flew away, and their homes were burned as well. We think that that type of regulation, we need a cost-benefit analysis of that regulation, and if, indeed, that cost-benefit analysis is not given by the agency, that the homeowner who might lose his home has a right to appeal this to the courts, and the fact is, by the way, in terms of O.J., we do expect every citizen in this country to be judged by his peers, and that includes maybe having people who are O.J. Simpsons or whoever it is, peers, to be able to be part of the decisionmaking process. That is what democracy is. That is what our Government has been all about.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, the specter of the cost of this is often raised by people who simply do not want to do it. The fact is there is just as good a chance that we will, in fact, end up saving money, because we will have higher-quality legislation based upon good science and based upon a cost-benefit analysis before we do it. So you get higher quality regulation, and it costs you a little bit less, it costs you less money.

The CHAIRMAN. The time of the gentleman from California [Mr. ROHRABACHER] has again expired.

(By unanimous consent, Mr. ROHRABACHER was allowed to proceed for 2 additional minutes.)

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to my friend, the gentleman from Maryland.

Mr. GILCHREST. This is an extraordinary period of time where all of us are almost to the point of agreeing that regulations have been too onerous in the past.

But the gentleman made a comment about people in California that were not able to get the brush away from their homes because of a rat that was placed under the Endangered species Act, and I have heard that argument before on the floor. It simply is not true. The Fish and Wildlife and the State game people worked with the people in the area that happened to be the most flammatory, most fire-prone area on the face of the Earth. They allowed them to clear the brush up to a point even sometimes 1,000 feet away from the house. The point is during that fire, a year or so ago, flaming cinders were flying at 80 miles an hour more that a mile away, so the argument you had to protect the endangered species in lieu of their houses burning down simply is not true.

Mr. ROHRABACHER. Well, if I could just answer that by saying in the particular case you are talking about, that may or may not have been the case. You may be accurate in that sense.

We have had lots of brushfires in California, and we are very aware of the nonsense that comes down from regulators in the name of protecting endangered species, maybe not in that particular case, but I will tell you there are numerous cases in the Laguna Beach fire, and I am not sure if that is the one you are referring to or not, the people who have had their homes burned down believed that a nonsensical rulemaking process by unelected officials caused them to lose their homes. We think there should be a judicial application of that.

Mr. GILCHREST. That is the area where they could clear the brush. That is what I was referring to.

Mr. ROHRABACHER. In fact, in Laguna Beach, we feel, the way I read it, is they could not.

Mr. BILBRAY. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentleman from California.

Mr. BILBRAY. There has been a major problem in trying to clear and grub around residential areas. Now, the incidence of wind, homes were lost. That may be debatable. But the fact is there has been obstructionism to the protection of homes through the firebreaks, and the coastal sage shrub, because it has been identified as an endangered species habitat, is a major problem.

Mr. ROHRABACHER. If people are going to lose their homes, they should be able to go to court to challenge those people making those decisions. That is what this debate is about.

The CHAIRMAN. The time of the gentleman from California [Mr. ROHRABACHER] has again expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. ROHRABACHER was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. If the gentleman will yield further, I have great regard for the gentleman. We serve on the committee together. We oftentimes agree. But it concerns me when we have stories, apocryphal stories, that are told. You know, I think President Reagan, and I love him dearly, is still searching the country for that welfare queen who was driving around in a Cadillac living high on the hog.

Mr. ROHRABACHER. She was actually living in the bureaucracy.

Mr. BOEHLERT. The story told is simply not so.

The General Accounting Office concluded,

> The loss of homes during the California fire was not related, not related to the prohibition of disking in areas inhabited by the Stephens kangaroo rat.

I can go on at great length, and it is more than we would care to hear about on that story.

Mr. ROHRABACHER. The gentleman is talking about one fire at one time. We in California know there are lots of fires, and many of them have been attributed because people cannot clear the brush.

Mr. BOEHLERT. I understand. It is very clever to sort of give a story. Everybody thinks we are just heartless if you are for the Roemer-Boehlert amendment, that you are against women, infants, and children and everything under the Sun. It simply is not so. We are for the American people. What we are trying to prevent is endless litigation.

We want the ability to challenge rules that do not pass the commonsense test. But we do not want to challenge the process. Some bureaucrat screws up on a bad day and go in and challenge the whole rule simply because something happens during the risk-assessment process, that we do not find acceptable, and that is what we are saying.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentleman from Pennsylvania.

Mr. WALKER. There is nothing in the legislation as it is that says if some bureaucrat has a bad day that it is going to foul up the whole process, because again, if you read, unless there is substantial compliance and so on, that the requirements of section 104–105, it just does not apply.

Mr. ROHRABACHER. The bureaucracy, basically there is a feeling out in America, that the bureaucracy people whom they do not elect are making decisions that in the end may impact on whether they will be able to feed their families, whether they can live in their home safely or not, and if we determine today, and that is what we are talking about, today, that they should be able to appeal to a court if those unelected officials are not doing their job as is laid out by elected officials.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana [Mr. ROEMER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ROEMER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 192, noes 231, not voting 11, as follows:

[Roll No. 177]

AYES—192

Abercrombie
Ackerman
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bishop
Blute
Boehlert
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Castle
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
Davis
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Klug
LaFalce
Lantos
Leach
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pomeroy
Porter
Poshard
Rahall
Ramstad
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roukema
Roybal-Allard
Sabo
Sanders
Sawyer
Saxton
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Vento
Visclosky
Volkmer
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—231

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bevill
Bilbray
Bilirakis
Bliley
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Chabot
Chambliss
Chapman
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Goodlatte
Goodling
Goss
Greenwood
Gunderson
Gutknecht
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Oxley
Packard
Parker
Paxon
Petri
Pickett
Pombo
Portman
Pryce
Quillen
Quinn
Radanovich
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Royce
Salmon
Sanford
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—11

Chenoweth
Duncan
Gonzalez
Graham
Hunter
Lipinski
Miller (CA)
Rush
Smith (WA)
Velazquez
Ward

☐ 1357

The Clerk announced the following pairs:

On this vote:

Mr. Rush for, with Mrs. Chenoweth against.

Mr. Ward for, Mrs. Smith of Washington against.

Mr. LEWIS of California changed his vote from ''aye'' to ''no.''

Mr. SKAGGS changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments?

AMENDMENT OFFERED BY MR. SMITH OF MICHIGAN

Mr. SMITH of Michigan. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SMITH of Michigan: Page 5, after line 18, insert the following new section:

SEC. 5. AVAILABILITY OF INFORMATION AMONG FEDERAL AGENCIES

Covered Federal agencies shall make existing databases and information developed under this Act available to other Federal agencies, subject to applicable confidentiality requirements, for the purpose of meeting the requirements of this Act. Within 15 months after the date of enactment of this Act, the President shall issue guidelines for Federal agencies to comply with this section.

☐ 1400

Mr. SMITH of Michigan. Mr. Chairman, the amendment before this body is simply an amendment calling on the different agencies that might be working on associated risk assessment to share that information and for the President to develop the guidelines on the basis for which they share that information.

I would just like to mention that, as a former Michigan OSHA commissioner, 1 of 9 commissioners, I was tremendously frustrated as a member of that commission on having the direction to sit around a table and develop all of the things we could think of to make the workplace safer.

Let me just say that risk assessment has been supported by both sides of this aisle, Democrats and Republicans, for several years. I am delighted it is coming to a culmination. I am offering an amendment to bring the best available information for risk assessments and cost-benefit analysis to the decisionmakers.

A quick look though at the Federal Government directory reveals that there are dozens of Federal offices whose purpose is to collect statistics, and data, and information, and the Members here may think that Federal agencies already share information, but I have found that this is not the case. Recently negotiations between the U.S. Department of Agriculture and the EPA were fruitless, and the individual Administrators were unwilling to share that information, and it ended up having to go to the Secretaries to demand the kind of relationship where one agency would share basic database information with another agency, and in that particular case it was on pesticides, and we ended up showing the information that USDA had ended up showing EPA that the risks were much lower than they assumed. It seems to me this gets to the heart of H.R. 1022's objective of common sense regulation.

Mr. Chairman, I hope this body will support this amendment.

Mr. BROWN of California. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Michigan. I yield to the gentleman from California.

Mr. BROWN of California. Mr. Chairman, I want to commend the gentleman for his excellent amendment. I can assure him from long experience there is a breakdown in data sharing quite frequently amongst the agencies.

This should help correct it, and on our side we would be glad to see it.

Mr. SMITH of Michigan. Mr. Chairman, I thank the gentleman from California.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Michigan. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, the gentleman from Michigan [Mr. SMITH] has identified what is a very relevant problem, has corrected it, I think, with the wording of his amendment, and we are pleased to accept the amendment as well.

Mr. SMITH of Michigan. Mr. Chairman, I thank the gentleman.

I have quite a bit of experience in the need for regulatory reform.

As a former Michigan OSHA commissioner, I cannot begin to explain the frustration I had being a member of the OSHA who were continually asked to think of additional safety measures.

The group was asked to develop recommendations not based on safety needs—but on a continuous volume of safety regulations.

I fully support H.R. 1022's efforts to bring realistic risk and economic information into regulatory decisions.

In addition, I am offering an amendment to bring the best available information for risk assessments and cost-benefit analyses to the decisionmakers. A quick look at the Federal Government Directory reveals that there are dozens of Federal offices whose purpose is to collect statistics, data, and information.

You may think that Federal agencies already share information but I have found that this is not the case.

Recently negotiations were needed just to get USDA and EPA to share agricultural data. This data was needed to refine risk assessments—to show that pesticide use was actually much lower than EPA had assumed. How can we expect better regulation if agencies refuse to share taxpayer funded research?

This gets to the heart of H.R. 1022's objective of commonsense regulation.

This amendment takes into account that some information is confidential for business and security reasons. But if we are to be assured good regulation, we must have the Federal agencies share crucial information.

H.R. 1022 requires agencies to consider all of the pertinent information for commonsense regulation—my amendment makes sure they get that information.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. SMITH].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MARKEY

Mr. MARKEY. Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. MARKEY: Page 31, strike line 23 and all that follows down through line 5 on page 32 (all of section 301(a)(3)) and insert:

(3) shall exclude peer reviewers who are associated with entities that may have a financial or other interest in the outcome unless such interest is disclosed to the agency and the agency has determined that such interest will not reasonably be expected to create a bias in favor of obtaining an outcome that is consistent with such interest.

Mr. MARKEY. Mr. Chairman, this is a quite simple amendment, and it goes towards the objective of curing what is a very glaring error which has been built in.

Mr. Chairman, the problem with this legislation is that it, unbelievably, allows for the corporate insiders, the lobbyists, the scientists, of companies that are, in fact, with financial interest in the regulation which is being considered, to be able to sit on the peer review group which is going to be evaluating that risk, that regulation which will be put on the books.

Here is the language from H.R. 1022 that we are considering out here on the floor today. Here is what it says. It says that peer review panels, quote, shall not exclude peer reviewers merely because they represent entities that may have a potential interest in the outcome, provided that interest is fully disclosed to the agency.

Well, what that means, my colleagues, is that the Gucci-clad lobbyists that are surrounding this building right now wondering how the legislation is going to turn out will have the capacity to actually serve on the peer review panels. So, after they get done sitting in our committees, listening to and lobbying on the legislation itself, they are then able to put themselves on the peer review panel and ultimately insert their views into the record, and, if they are unsuccessful, to then turn over to their own corporate lawyers their dissents that can be used as the basis for an appeal in the courts if they are unhappy with the regulations.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, I ask the gentleman, ''Do you think that's why they call this the job creation and wage enhancement act? Is this a full employment act for lobbyists to serve on peer review committees in those rare times when we're not meeting?''

Mr. MARKEY. There is absolutely no question that right now law firms all across this country are looking at new real estate space to hire the new junior attorneys who are going to have to come on board in order to begin the process of appealing each and every part of this process and for their service on the peer review panels for every regulation which is going to be put on the books.

Now let us take this example. Let us look at the example of a nuclear power plant that is very concerned that a new regulation might go on the books which will ensure that all cracked or rotting pipes in nuclear power plants are, in fact, replaced so that the pipes do not break, and the water is lost, and the nuclear core is exposed without proper water.

Now under this regulation the nuclear industry will be able to put their own doctor, Dr. Pangloss in fact; Dr. Pangloss will be placed on the panel, and Dr. Pangloss of course always wears his rose-colored glasses when he is looking at regulatory changes that could impact on the nuclear industry. Well, Dr. Pangloss would, in the words of Voltaire, say, ''Well, all is for the best in that this is the best of all possible worlds. There is nothing wrong with our industry, and therefore no new regulations need to be placed upon the nuclear industry.''

Now, Mr. Chairman, all of his fellow Dr. Panglosses on the panel, all the other nuclear scientists on the panel, will agree, of course, with Dr. Pangloss.

Now should the regulators proceed with the adoption of the regulation notwithstanding the objection of Dr. Pangloss and all of the other nuclear scientists who have been present on this panel, notwithstanding their obvious conflict of interest? The nuclear industry lawyers who are hired can then sue the agency using the Panglossian dissent as exhibit A in their lawsuits saying that the regulation should be invalidated.

Now this conflict of interest is so obvious and at such odds with the whole history of peer review panels in the history of our country that it should be removed.

The entire process here has other problems as well. It excludes automatically an industry lobbyist if, in fact, there is only one company that is being reviewed for a regulatory change. That would be such an obvious conflict of interest. However, the lobbyists and the scientists for its competitors can serve on the peer review panel, so if the regulation is put in place, and it may hurt the competitors or it may help the competitors if this one company is now restrained, they serve on the——

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(By unanimous consent, Mr. MARKEY was allowed to proceed for 2 additional minutes.)

Mr. MARKEY. Now although a single company with a hundred percent cannot put a hundred percent interest in that particular regulation, cannot have its lobbyist serve on the panel, what if there are two companies and one company happens to be 90 percent of the entire industry, and one other company 10 percent? In that instance, the industry lobbyists and scientists for that company with 90 percent control can put their own lobbyist on the peer review group as this scientific evaluation is going on. Absolutely unnecessary and in fact something which is going to compromise the integrity of any evaluation that is going to be made.

Now let us think about, as we move down the line as well, why we should not do it. Quite simply because on the books right now there is a law. There is a law. It is 18 U.S.C. 208 which includes penalty of 2 years, or imprisonment, or

a $10,000 fine if, in fact, peer reviewers who participate personally and substantially in Government decisions have a conflict of interest unless that conflict is explicitly waived by the agency.

That is the law today. It has served our country very well. We do not want these peer review panels to be packed with the very people who have a financial conflict of interest.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Texas.

Mr. DOGGETT. I ask, Do you mean to tell me that you can get 2 years of hard time right now for doing what this piece of legislation now authorizes and approves as a conflict of interest, a conflict of interest that, I gather from your remarks, is mandated by this statute?

Mr. MARKEY. Right now under the law any person who has this kind of a conflict is absolutely prohibited, and if they try to get around it without getting an exemption, then they do face the penalty of 2 years in jail or a $10,000 fine, and I think that changing that kind of a law that has protected our country quite well from conflict of interest is something that we should very seriously deliberate on before the vote this afternoon.

□ 1415

Mr. OXLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition of the amendment. We had a long debate about this provision and this amendment in the committee. It was defeated handily on a bipartisan vote. This is nothing else but a smokescreen, a red herring. Essentially it says, if the Markey amendment were to be adopted, then if you know anything at all about the subject matter at hand, then you cannot be on the peer review panel. You are essentially eliminated because you know something. It kinds of reminds me, Mr. Chairman, of the First Lady's Health Care Task Force, where to be qualified you did not know anything about health care or be a participant in any of the health care delivery systems.

I would suggest to my friend from Massachusetts that the language of the bill is very clear on peer review. Let me read it to my friend. Peer review panels ''shall be broadly representative and balanced and to the extent relevant and appropriate, may include representatives of State, local, and tribal governments, small businesses, other representatives of industry, universities, agriculture, labor, consumers, conservation organizations, or other public interest groups and organizations.''

That is a pretty broad category that is included.

Now, we had testimony from a Professor Lave from Carnegie Mellon who has served on numerous peer review panels. I asked the professor directly during the testimony exactly what happens to those folks who would be perceived as using that information to their own benefit or their company's benefit, and Professor Lave said ''We simply beat the H out of them.''

The point is that we, that the people who testified, virtually every individual who testified told our committee that the peer review process under this bill makes common sense, it allows people who know what they are talking about to participate in this, and that in fact this is the most appropriate way to get the broadest possible input into the peer review process.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, this is a terrible amendment. You can consider it a good amendment only if you want to keep the thinking we have kept for the last 40 years. That is precisely the cycle that we want to break.

No, God forbid that we have somebody on the review boards that knows what they are doing. Our good friend from Massachusetts mentioned the power plants. Well, who do we want sitting on the review board? Do we want somebody sitting on the review board that knows nothing about the power plants, or do we want somebody there that knows what they are doing and what they are talking about? Certainly the people in Congress do not know enough or they would not have been passing these laws for the last 40 years.

I just walked over to the dictionary and what is a peer? It is a person who is equal to another in ability, qualifications, age, background and social status. That is what Webster's has to say about it. And that is what this language is saying.

But the reason I want to take this time, and I am delighted you yield me this time, is because I am really concerned about what these regulations are doing to the people you and I are representing. OSHA has come out with a rule, I could not believe this at our last town hall meeting on Saturday, has come out now with a rule, if you are building a little three bedroom ranch, like you have in your place in Ohio, or Wisconsin or Massachusetts, in order to put on shingles or put on roof boards, you have to encase this house now with a net. That costs thousands of dollars and additional time.

When you put on shingles, you have to have mountain climbing equipment. I mean, you talk about common sense? And who has to pay for it? The poor guy that is working in the mills that has to pay the mortgage, he has to pay additional thousands of dollars so the regulators in Washington can live high off the hog. No. The time for this legislation is long past.

Listen to in this. In the last 2 years, the current administration has put out 125,000 pages of additional regulation. That is staggering. Who is paying for that? The people you are representing.

Now, the prestigious industrial counsel said more than 1,000 businesses and their tens of thousands of hard-working employees, have estimated that our Nation's regulations bill now amounts to $600 billion a year. Let me repeat that. The regulations that the people in this Congress, the majority, have put on the people of this country, is $600 billion each year. That comes out to $2,000 for every man, woman, and child in America.

If you want to give the people a tax break, or give the people a break, give them a break with these regulations. Take a look at what OSHA is doing to your people, the people that you are representing. Take a look at what these regulations are doing to our economy.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. OXLEY] has expired.

(By unanimous consent, Mr. OXLEY was allowed to proceed for 2 additional minutes.)

Mr. OXLEY. Mr. Chairman, let me simply point out there is no difference between serving on a peer review panel and having expert witnesses in court. We have expert witnesses in court day after day in this country. Many of them are paid for their services, but they provide expert testimony. They are not going to foul the process by the fact they become expert witnesses.

We have to understand in the peer review process, Mr. Chairman, that is what experts are for, to give their best information. Nothing is withheld from the public. They understand that they have to reveal their employment and whatever particular ax they may have to grind.

But that I think is a cynical attempt on the part of the sponsors of the amendment to basically say anybody who has any interest in the issue is somehow going to take advantage of that and take advantage of the system. That is just an entirely unrealistic viewpoint of what this peer review process is all about.

Mr. Chairman, I yield back the balance of my time.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, I cannot believe that my Republican colleagues do not understand the language of the bill, and I cannot believe that they do not understand the language of the amendment. The language of the amendment corrects an obvious error in the bill. The bill provides that peer reviewers may not be excluded simply because they represent entities that have a potential interest in the outcome. That is really what is at question here. Is peer review going to be

conducted by people who have an interest in the outcome?

Then it goes on to say, ''provided the interest is fully disclosed and, in the case of a regulatory decision affecting a single entity, no peer reviewer representing such entity may be included in the panel.''

What is the practical result of this language on the question of whether or not PCB's should be regulated in a special way, or whether clean air emissions, or water pollutants, or a particular kind of contaminant should be permitted in the food or drugs that are sold in this country, or whether a question involving safety in the workplace should be dealt with because of the presence of a particular pollutant or a particularly hazardous practice? In those instances, if it affected the entire industry, the entire panel, the entire panel of peer reviewers could be composed of people who had a financial interest, if only they had disclosed what that particular interest was.

Now, I ask my colleagues, do you want to have peer review conducted by people who have an interest in the outcome? I think not. The amendment offered by the gentleman from Massachusetts [Mr. MARKEY] says that peer reviewers shall be excluded if they are associated with entities that have a financial or other interest in the outcome, unless such interest is disclosed to the agency and the agency has made a determination that such interests will not reasonably be expected to create a bias in favor of obtaining an outcome that is consistent with the special interest that is held by that peer reviewer.

That is something which permits us to obtain the necessary expertise of people who know something on the subject, if they have an interest. But it also provides a very careful screen through which rascals may not proceed, and in which we can have a reasonable assurance that the protections which are here for the people in peer review of important scientific and technical questions will be done in such a way as to assure that the result will not be tainted with the determination or an inclination on the part of the reviewer to secure on behalf of himself and the special interests which he serves a result favorable to that particular interest.

Without this amendment, the entirety of the panel may be composed of people who have a financial interest in the matter. I will repeat that, because I saw somebody nodding a no. Without this amendment, the entire panel may be composed of people who have a particular interest in the result.

I think for this Congress to pass legislation which would sanctify such a consequence is a great shame. Shame on us, shame on the country. And the consequences of peer reviews which is tainted in this evil way will not only jeopardize the faith of the people in this body, but will justifiably jeopardize the faith of the American people in the peer review system we are authorizing under this legislation which we consider today.

I urge my colleagues to consider not only the consequences of this legislation as it is written here, but the consequences of a tainted peer review conducted under the provisions of the bill without the protection of the amendment offered by the gentleman from Massachusetts [Mr. MARKEY].

I would urge my colleagues to think about what can happen to the American people. And while they are thinking on that particular matter, I would urge them to reflect on what this means to them in the future when some opponent gets up at election time and says, ''Why was it that you supported a proposal in the Congress which permitted special interest peer reviews to override the Food and Drug Administration or the Environmental Protection Agency or OSHA or any other agency charged with protection of the public interest? And why was it, why was it, that you permitted a peer review panel to be set up which could be composed entirely of special interest representatives?'' Think on it, my colleagues, and vote wisely.

Mr. BARTON of Texas. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

(Mr. BARTON asked and was given permission to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Chairman, I am on the two committees that have reported this legislation to the floor, and I think we need to make a few basic points. No. 1, I do not even think the gentleman from Massachusetts [Mr. MARKEY], the author of this amendment, is opposing the peer review, because he lets the first two subparagraphs stand. He is substituting subparagraph (3), and I want to read the paragraph that he is substituting for. It says, in the bill, ''shall not exclude peer reviewers with substantial and relevant expertise merely because they represent entities that may have a potential interest in the outcome, provided that the 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.''

Well, we are trying to do, I think, in the bill what the gentleman from Massachusetts [Mr. MARKEY] is attempting to do, but we do say that they are not automatically excluded given, No. 1, that they fully disclose what their interest is, and, No. 2, if it is a decision that only affects their interest, affects their entity, then they are not going to be on the panel at all.

Now, the gentleman from Massachusetts says we shall exclude. We say shall not automatically. The gentleman from Massachusetts [Mr. MARKEY] says they shall be excluded unless they disclose their interest, and the agency reasonably determines they are not going to create a bias in favor of obtaining an outcome.

Well, we both want to disclose. We just change the burden of proof to say they are not automatically going to be excluded unless the decision directly affects the entity they represent, in which case they would be excluded.

Well, as I read the amendment of the gentleman from Massachusetts [Mr. MARKEY], that exclusion does not stand. If I read it correctly, they could actually even impact a decision that directly affects them if the agency says it is OK.

In some ways what we have in the bill is stronger, except for the fact that we say the burden of proof is not in the beginning automatically to exclude them. In your burden of proof, they are automatically excluded.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Chairman, is the gentleman referring to the language at the end of the subsection (3) that deals with single entities that are excluded from having peer reviewers represent them?

Mr. BARTON of Texas. Yes. No peer reviewer representing such entity may be included on the panel if the decision affects that single entity that they represent.

□ 1430

Mr. MARKEY. Do not forget, in that language itself, we do not exclude the competitors to the entity, which could have, which could have a financial interest in the outcome as well. So although we have excluded the company that might have the most direct financial interest, we have not excluded their competitors from stacking the panel with their own scientists. They should not be allowed to participate either, if there is bias.

The point of this provision is that there is an obvious bias if you are the only company affected. The truth is, it is additional bias amongst other companies if their competitor would not have this——

Mr. BARTON of Texas. Mr. Chairman, my comment was directly on the specific entity, the specific entity. And under the language in the bill, if that entity, if they represented a specific entity, they are automatically excluded. Under the gentleman's language, they are not.

Mr. MARKEY. Mr. Chairman, if the gentleman will continue to yield, I would be more than willing to accept the gentleman's language to exclude any single entity. I would be more than willing to accept that language.

Mr. BARTON of Texas. I am rising in opposition to the gentleman's amendment. I support the provision that is in the bill. I am just trying to point out that we have got, I believe, that the bill as stands has the protections that the gentleman is trying to attempt, because we require full disclosure.

Mr. MARKEY. Again, the point here is that there is a palpable conflict of interest when you are the only company that is going to be directly affected by the regulation. But the truth is, there is built-in bias for companies when there are three or four or five that are going to be affected by the regulation.

Here we basically say that they cannot, ''shall not'' be excluded.

Mr. BARTON of Texas. Automatically.

Mr. MARKEY. You are building in a mandate that they not be excluded merely because their lobbyist happens to be someone that has an interest in the outcome. We are saying that that is not a high enough standard that can be established in order to protect the public health and safety.

Mr. BARTON of Texas. Reclaiming my time, Mr. Chairman, I thank the gentleman for his comments. The point is, we do not feel they should automatically be excluded.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BARTON] has expired.

(By unanimous consent, Mr. BARTON of Texas was allowed to proceed for 1 additional minute.)

Mr. BARTON of Texas. Mr. Chairman, we do not automatically exclude people because they happen to represent an interest that has an interest in the pending rule or regulation and the peer review. We understand that there are many of these rules and regulations that are so technically complex that we have to have experts. As long as we fully disclose and guarantee that if the regulation specifically affects a single entity they are not going on the panel, for example, given the fact that in subparagraphs 1 and 2 we are providing for a broad range of peer review, that it is not just this one individual, that we think the bill as is should stand. We get the outcome the gentleman from Massachusetts is attempting to obtain, but we do not put the burden of proof on the peer reviewer.

Mr. DOGGETT. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Markey amendment.

This reduces the danger of conflict of interest that is inherent in this bill. The concept of peer review, of having a jury of one's peers, in this case scientific peers, to review the work and ensure we have good science is a very good concept. But what we have here is not true peer review but, as the gentleman from Massachusetts has pointed out, phony peer review. Because we are going to ensure that lobbyists, when they finish their work in this great Capital, can go out and sign up for the peer review committee.

I know the gentleman from Massachusetts had some further words on that subject.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Chairman, for those who are listening right now, think about it in these terms: for every regulation that is placed upon the books or has been placed upon the books by any of these agencies, there are 25 experts in America on the subject who could potentially qualify for the peer review group. Twenty of them have no conflict of interest; five of them have a conflict of interest.

The history of this country has been that the agency selects amongst the 20 that have no conflict of interest so that the public can be sure that the health and safety regulation has in fact been analyzed by people who are not going to financially benefit.

Under the amendment which I have proffered, if in fact the company that has a conflict of interest has a Nobel laureate with a de minimis stake in the company, then they could make an exception saying there is no bias for that Nobel laureate. But throughout the history of our country, every time there is a regulation put on the books, they always select from the 20 with no conflict of interest. We have a lot of experts in America on a lot of subjects.

The misimpression being left by the authors of the legislation is that in fact there will be no experts that will be allowed to participate. Just the opposite is the case. We will have just as many experts as we have ever had, but we will ensure that, as we have in the past, they will not have a financial conflict of interest. In that way the public can be sure of the outcome.

I think that the misrepresentation that goes on with regard to the amendment and these horrific examples of regulations that have been placed upon the books, assume that they would not be placed upon the books if, in fact, the lobbyist for the company that was going to be affected by the regulation could serve on the peer review group. In fact, as we know, if that had been the case throughout the history of our country, we would have had no regulations to protect the health and safety of this country because the drug companies and the chemical companies and the nuclear industry and every other industry would have packed every one of these peer review groups.

Let us not, for God's sake, leave any misimpression for anyone who is listening that there are not plenty of independent experts available to serve on every single panel that would ever be constructed by every single agency. Let us not for a second again think that if in fact the Markey amendment is accepted that the first thing that they would decide is that a single company would, and the only company that could be affected by a particular regulation, of course, would be in a clear conflict of interest and bias, if their scientists and their lobbyists sat on the panel. So to a certain extent the gentleman's amendment, while clarifying, is redundant in terms of what is already offered as a real protection inside of the Markey amendment.

This is a conflict of interest, clear and simple, loaded with potential for lawsuits from here to eternity, if, in fact, the Markey amendment is not adopted.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, I thank the gentleman for yielding. Here is the question.

This conflict of interest, when the regulator is paid for partially by fines that he levies, is that not a conflict of interest?

Mr. DOGGETT. I thought the best example on conflict of interest was the last one the gentleman had with the silly regulation about covering the net over the house, because there are a lot of Members here on both sides of aisles that are concerned about eliminating silly regulations.

But under the bill as you propose it, OSHA has to have somebody from the net manufacturer on the peer review committee to decide whether it is reasonable to put a net over the house. That is what the gentleman from Massachusetts [Mr. MARKEY] is trying to prevent.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Massachusetts.

Mr. MARKEY. The example which the gentleman uses is absolutely ridiculous. When a regulator fines a company for polluting, the money does not go back to the regulator. The money goes back to the Federal Treasury. When a lobbyist is on a peer review panel, proposing that a regulation pass, he gets rich if that regulation is blocked.

The CHAIRMAN. The time of the gentleman from Texas [Mr. DOGGETT] has again expired.

(At the request of Mr. BARTON of Texas and by unanimous consent, Mr. DOGGETT was allowed to proceed for 2 additional minutes.)

Mr. BARTON of Texas. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Texas.

Mr. BARTON of Texas. In the gentleman's earlier comment, he said that the bill is going to create phony review panels or at least has the potential to create phony review panels. I would ask if the gentleman has read subparagraph 1 where it says, panels consisting of experts shall be broadly representative and balanced, and then it goes on to say, represent State, local, tribal governments, small business, other representatives of industry.

Do you not believe that that paragraph which remains intact under the Markey amendment is going to ensure that there is a true review panel?

Mr. DOGGETT. Certainly that paragraph, which was read by the distinguished chair of the committee last night in suggesting that I had misrepresented what this legislation does,

which I certainly had not, is the kind of general claim for a lack of bias in these panels. But we cannot just read that one section. We have to move down to the next section, and that is where we tell each one of these agencies that they cannot keep a lobbyist off of these peer review committees. They have to put them on. It is not a may or a maybe. It is a shall not. It is a commandment to every one of these regulatory agencies that they cannot keep off these panels lobbyists.

As the distinguished former chair of the Committee on Commerce indicated, while there may have to be balance, there is nothing in this legislation that prevents an agency from having every single member on the panel being someone who has a financial interest. They may have somebody who is a consumer, but they may still have a financial interest in this.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Massachusetts.

Mr. MARKEY. They do have a balance requirement in the law. It has to be a balanced panel. But the balance, for example, for a nuclear regulation could be they have a nuclear manufacturer. They have a nuclear chemist. They have a nuclear waste disposal company. They have a nuclear, nuclear, nuclear. They all have conflicts of interest, but it is balanced in its conflicts although they all are against the public health and safety.

Mr. BARTON of Texas. Mr. Chairman, if the gentleman will continue to yield, they also have State government, local government, small business.

The CHAIRMAN. The time of the gentleman from Texas [Mr. DOGGETT] has again expired.

(By unanimous consent, Mr. DOGGETT was allowed to proceed for 1 additional minute.)

Mr. DOGGETT. Mr. Chairman, this is like saying we are going to have a jury of our peers for the O.J. trial, and we will have a fair cross section of peers for that, but we are also going to let the lawyers for one side or the other serve on the jury panel. What we want is good science, not good advocacy.

I could not disagree more with the gentleman earlier who said, well, we have got all these paid experts in court going back and forth. It will not be any different than that.

That is the problem. In too many of these cases, you get whatever degree of expertise you pay for. We are not interested in paid science. We are not interested in advocacy. We are interested in balance and in keeping those who have an axe to grind off of these peer review committees. That is what the amendment of the gentleman from Massachusetts is designed to accomplish and why I rise in support of his amendment.

Mr. WALKER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think we ought to be clear about what we are doing here. Some Members just have not bothered to read the language in the bill. It requires an independent and external peer review. ''Independent'' means that there does have to be some degree of work to make certain that the people are independent. Then it also says that they shall provide, it does not make it voluntary, ''they shall provide for the creation of peer review panels consisting of experts,'' not Gucci shoe lobbyists, but experts and shall be broadly representative and balanced. So much of what we have heard here today just does not bear to the language that we begin with when we set forth the section.

Why did we go down and put a section in that says we shall not exclude peer reviewers with substantial and relevant expertise? In large part because the testimony before our committee anyhow was somewhat different from the way the gentleman from Massachusetts portrays it.

The fact is we are creating a system now where we are likely to be looking at things that involve a good deal of technical expertise, that involve a good deal of technical knowledge. We may, in fact, be writing regulation that at some point, for instance, affects an ecosystem such as the Chesapeake Bay. We might want to have the premier experts on the Chesapeake Bay as part of a peer review panel. That premier expert might be someone who works for the University of Maryland that might have a direct interest in the outcome of something with regard to the Chesapeake Bay but under the gentleman's amendment would be excluded from the panel.

And so the fact is that what we are doing is assuring, under the gentleman's amendment, that the dumber you are about the issue, the more likely you are to be able to participate in the peer review.

I am not certain that that is what we want to set up. I think what we want to set up is exactly what we do in the bill to assure that those people who have some knowledge about the issue are, in fact, involved in the peer review.

The gentleman from Texas suggests that this is somewhat analogous to a jury. It is not a jury. These are people who are reviewing technical data. They do not determine the outcome. They simply review the technical data to find out whether or not it was honestly arrived at.

It seems to me that that is where we want to have some people who are very knowledgeable about the subjects. And yet what there is an attempt to do here is to take knowledgeable people out of the process.

I understand why the gentleman from Michigan [Mr. DINGELL] and the gentleman from Massachusetts [Mr. MARKEY] and the gentleman from Texas [Mr. DOGGETT] and so on come up with this kinds of language. They are opposed to this bill. They do not like it. They do not want this bill. They are going to vote against it. They will do everything possible to destroy it.

☐ 1445

One of the things they are attempting to do here is destroy it by assuring that it becomes unworkable, and it becomes unworkable when in fact what you have is the dumbness test for peer review, rather than the smartness test.

Mr. DOGGETT. Will the gentleman yield, Mr. Chairman?

Mr. WALKER. The gentleman interrupts me in the middle of my speech, but I am happy to yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, will the gentleman do us the courtesy by just taking away that argument completely by excluding lobbyists from these peer review panels?

Mr. WALKER. I would say to the gentleman that I am perfectly willing to exclude lobbyists, but we did exclude them when we said we had to have experts as a part of it.

This idea of lobbyists is in fact a term being thrown around by gentlemen who want to play to public sentiments, and so on.

Mr. DOGGETT. Mr. Chairman, I agree, we have a little expertise among the lobbyists, but some of them are scientists, and some do come here on bills like this and offer their testimony.

Mr. WALKER. Some of the ones who are true scientific experts might actually be someone we would want to have review.

Mr. DOGGETT. So the gentleman wants them on these peer review panels?

Mr. WALKER. As far as I am concerned, we can exclude lobbyists. I want to have experts.

Neither the amendment of the gentleman from Massachusetts [Mr. MARKEY] nor what is in the bill is anything but permissive. Both permit people to participate.

It is just that with the gentleman from Massachusetts, what they want is an insider game to be played where only the agency gets to choose, the agency gets the choice here, and what they are going to do is pick the people who like the agency bias.

The gentleman from Massachusetts [Mr. MARKEY] wants to make certain if this law goes into effect what we get is exactly the same kind of regulations we have always gotten, those kinds of regulations that the agency wanted in the first place, where they set out to do something good and end up doing something harmful because they did not get broadly relevant expertise in the review.

We want to change that. We want to go to a new order solution that changes things in a way that makes some degree of sense. Most of all in this, Mr.

Chairman, what we are trying to do is to make certain that where we get down to those narrow activities that involve some real technical expertise, that we can in fact bring people onto panels who are truly knowledgeable about those subjects.

I would be happy to narrow the focus of the language in the bill in a way that gets to that subject matter.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has expired.

(By unanimous consent, Mr. WALKER was allowed to proceed for 1 additional minute.)

Mr. WALKER. Mr. Chairman, If in fact what we need to do is just make certain that there is language to assure that the only time this applies is if there are no other experts available, I am perfectly willing to modify the language in the bill to do that.

However, with the gentleman's amendment, what we do is we exclude people who might have relevant expertise to bring to a highly technical subject, and do it in a way that I do not think makes any sense.

Mr. Chairman, I would hope this amendment would be rejected. Dumbness should not be the standard for peer review, it ought to be a smartness test.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. MARKEY. Mr. Chairman, I do not want to prolong the debate, except to, here at its conclusion, make a simple point, once again. We do not want any of these agencies to exclude experts. We do not want anyone who can contribute to an evaluation of any of these scientific questions to not be able to serve on any of these peer review panels.

The issue is bias. If in fact the scientist, the lawyer, the lobbyist who is being offered as an expert has a bias on that issue, we are arguing that they should not serve on that peer review panel unless the agency determines that there is a significant contribution that can be made, and the bias is incidental.

Mr. BLILEY. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I am glad to yield to the gentleman from Virginia.

Mr. BLILEY. Mr. Chairman, I am glad to hear the gentleman make the statement. I wish we could have had his support in the last Congress, when EPA was doing its risk assessment on secondary smoke and there was a gentleman on our risk review panel that I pointed out from California who was a leading antismoking crusader, but I did not hear anything from the gentleman.

I thank him for yielding to me.

Mr. MARKEY. Mr. Chairman, if I may reclaim my time, I think it is noteworthy that in our language we make it clear that it is not just financial, but other interests in the outcome, which would qualify as bias. We would want the agencies to look at other interests as well that may not be financial.

That is why I deliberately included those words after the full committee markup when that subject was raised, because I agree with the gentleman, where there is bias, regardless of whether there is a financial interest, there should be an ability to remove those people from the panel.

However, that is the whole point. It does not really make any difference whether you are going to get rich because the regulation is coming out your way, or your whole career is obviously so tainted by a pattern of behavior that that person should be excluded as well.

Mr. Chairman, I understand that there are some people who want industry lobbyists to serve on the panel, who want a biased position to be represented as part of these hearings. That is what the bill allows.

The amendment bans that. It puts up a wall, and if Members want, I will add in the extra language which I have which keeps out bias other than financial, so that the gentleman can legitimately object when in fact there are those who have other interests.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, before we talked about OSHA, and this is important because it is something relevant that is happening in our society today. When OSHA pays its staff, when OSHA pays its bills, does that not come out of the fines they impose? The answer is yes. OSHA is hiring new people. OSHA is out there levying fines.

Mr. MARKEY. Mr. Chairman, if I may reclaim my time, let us not confuse whether or not other people are hired at agencies with the issue of whether or not the person gets personally enriched by a decision which is made. No Federal employee can profit, by law, from any decision which they make. There is absolutely a total prohibition against that.

I do not think it is proper to equate that situation with a Federal regulator with the lobbyists' interests which a chemical, a tobacco, a drug, or a toy manufacturing concern would have with the promulgation of a regulation and personal enrichment of the individual.

Mr. ROTH. If the gentleman will continue to yield, Mr. Chairman, I think the gentleman is being a little too disingenuous. I think it is relevant. If OSHA hires additional people, they have to levy additional fines.

Just the last couple of weeks ago when OSHA put out their latest regulation, they promulgated the rule on day 1 at 7 o'clock in the morning, and at 8 o'clock they were imposing fines. There was no publication that this is a new rule.

I say that there is a conflict of interest in these industries, in these agencies.

Mr. MARKEY. Mr. Chairman, if I may reclaim my time one final moment, the point is if there is a lobbyist, if there is a scientist, we will not even call them lobbyists, we will just say employees of the company, if they have stock options in the company that personally enrich them if a regulation does not go on the books, let us not kid ourselves, there is a tremendous bias with regard to how the individual will view that regulation going forward.

If a Federal regulator passes a regulation, he does not personally or she does not personally find any monetary remuneration because of the passage of that regulation or defeat of that regulation. One might say they have a professional stake, no question about it, but they do not have a financial concern, and that is really the whole heart of this debate.

I urge anyone listening, if they do not believe people should have a financial stake, please vote for the Markey amendment. It still allows for every other expert in every field to serve on the peer review panels.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I am glad to yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, I think I heard the gentleman say a little while ago that he is sensitive about the concern.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(At the request of Mr. WALKER and by unanimous consent, Mr. MARKEY was allowed to proceed for 2 additional minutes.)

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, the gentleman has indicated that he is sensitive to the concern that there might be areas where you have a particular expert that serves and there could be some modest conflict of interest or something, and that is what he tried to correct in his amendment.

I think maybe he is even, from what he said, sensitive to the fact of what we heard in the committee, that there are in fact people who might have expertise in very, very narrow technical areas that would have to be included in these peer reviews if the peer review is going to be done in a good sense.

Mr. Chairman, let me ask the gentleman, as I said, I am willing to narrow the scope of the amendment. What if we put language up front in the amendment that said ''Unless there are available peer reviewers with the equivalent or superior expertise and experience and no potential interest in the outcome, they shall not exclude peer reviewers.''

In other words, the only way that the provisions in the bill would apply is if there were absolutely no other kinds of peer reviewers with the kind of expertise that is needed in order to make these judgments; then we would have language that would say where there would be no potential interest in the outcome.

Let me ask the gentleman, is that something that the gentleman would be willing to accept to solve the committee's problem, as well as his?

Mr. MARKEY. Mr. Chairman, if I may reclaim my time, the amendment which I have offered already provides that flexibility to the Federal agency. It allows for the agency to make a determination that the interest would not be reasonably expected to create a bias, and therefore, to allow that expert to testify.

Mr. WALKER. The problem with the gentleman's amendment, Mr. Chairman, if he will continue to yield, is that it presupposes that these people are bad people and should not be brought in.

What we are suggesting is that maybe there is a need for some language that would suggest that if there are other kinds of peer reviewers available that have no interest, the agency ought to look to those people, but if there was nobody else, the agency should have the discretion.

I wonder if the gentleman would go along with that.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(At the request of Mr. WALKER and by unanimous consent, Mr. MARKEY was allowed to proceed for 1 additional minute.)

Mr. MARKEY. Mr. Chairman, again, I think the gentleman is heading in the right direction, but it is not enough, and it is already covered by the language which I have in my amendment. We make it a ban, but a ban which can be waived by the agency if they need the experts.

By the way, that is how every Federal agency today now operates. We are not changing anything, we are not adding anything new here. There are peer review groups today, there have been for 50 years, and they have always used experts. They will continue to use experts.

The only change we are debating here today is whether or not people with financial conflicts of interest should be able to serve on the panel. That is the only thing in the debate.

Historically, they have always had the latitude of waiving, if they want to, under the U.S.C. 208 that allows for the Federal agency to let those people in if they needed them, so the law is already there to do it. I do not know why we are changing it at all.

Again, to avoid the conflict of interest, and again, if I may in conclusion just say to the gentleman from Pennsylvania [Mr. WALKER], it is not with the intention of killing this legislation that we are offering the amendments. It is just the opposite, it is to improve it before it does become the law of the land.

Mr. BILBRAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. I understand the concern of my friend, the gentleman from Massachusetts [Mr. MARKEY], that there may be a major problem here.

However, let me just sort of quote a representative of the Environmental Defense Fund, who stated at testimony before the Committee on Commerce, ''I think in principle there are probably very few exclusions that I would make, as long as members of peer review panels are experts in their area and there is an appropriate balance.''

I wish to say to my friend, the gentleman from Massachusetts, that I have seen different peer review processes work. It is essential to get everybody who has expertise to be included in the process, and not to exclude them.

I think what the gentleman fears with regard to conflicts, the conflicts come from many directions. I would not feel it would be appropriate that just because somebody happens to be employed by the Lung Association and actively involved in that process, that they should somehow be treated as if they are tainted and unacceptable to the review process.

In fact, Mr. Chairman, as long as we understand that there is an agenda, and where they come from, it is a major contribution, because in reality we want those who may come from different spectrums to be at the table to build the consensus.

There may be those that are scared of what may be termed the extremes finding consensus. I think we should not only not fear it, we should embrace the fact that consensus is what we want to find on these issues, and that is where we can.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. BILBRAY. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Chairman, again, we are not excluding the companies that are affected. They can still participate legally by commenting upon the regulation, by meeting with the regulators, by participating in any number of ways.

What we are talking about here is, as the gentleman from Texas calls it, the jury over here on the peer review panel. Except for that one part of the process, they are allowed to fully participate in making their case and in ensuring that all the evidence and information is before the agency.

Mr. BILBRAY. Mr. Chairman, reclaiming my time, the fact is, as the gentleman said, except for participating in that process, they can participate in the rest of the process. The gentleman and I know this is the core of being able to be proactive rather than reactive.

I do not care if you are a representative of the industry or a representative of an environmental group, to be involved in the initial process is absolutely essential for not only your agenda, be it one way or the other, but for the process itself and the finished product.

□ 1500

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. MARKEY].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MARKEY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 177, noes 247, not voting 10, as follows:

[Roll No. 178]

AYES—177

Abercrombie	Furse	Nadler
Ackerman	Gejdenson	Neal
Andrews	Gephardt	Ney
Baesler	Gibbons	Oberstar
Baldacci	Gordon	Obey
Barcia	Green	Olver
Barrett (WI)	Hall (OH)	Owens
Becerra	Hall (TX)	Pallone
Beilenson	Hamilton	Pastor
Bentsen	Hastings (FL)	Payne (NJ)
Berman	Hefner	Pelosi
Bevill	Hilliard	Pomeroy
Bishop	Hinchey	Poshard
Boehlert	Holden	Rahall
Bonior	Hoyer	Rangel
Borski	Jackson-Lee	Reed
Boucher	Jacobs	Reynolds
Brown (CA)	Jefferson	Richardson
Brown (FL)	Johnson (SD)	Rivers
Brown (OH)	Johnson, E. B.	Roemer
Bryant (TX)	Johnston	Rose
Cardin	Kanjorski	Roybal-Allard
Chapman	Kaptur	Sabo
Clay	Kennedy (MA)	Sanders
Clayton	Kennedy (RI)	Sawyer
Clyburn	Kennelly	Schroeder
Coleman	Kildee	Schumer
Collins (IL)	Kleczka	Scott
Collins (MI)	Klink	Serrano
Conyers	LaFalce	Shays
Costello	LaTourette	Skaggs
Coyne	Levin	Slaughter
Danner	Lewis (GA)	Stark
de la Garza	Lincoln	Stokes
DeFazio	Lofgren	Studds
DeLauro	Lowey	Stupak
Dellums	Luther	Tanner
Deutsch	Maloney	Taylor (MS)
Dicks	Manton	Tejeda
Dingell	Markey	Thompson
Dixon	Martinez	Thornton
Doggett	Mascara	Torres
Doyle	Matsui	Torricelli
Durbin	McCarthy	Towns
Edwards	McDermott	Traficant
Engel	McHale	Tucker
Eshoo	McKinney	Velazquez
Evans	McNulty	Vento
Farr	Meehan	Visclosky
Fattah	Menendez	Volkmer
Fazio	Mfume	Waters
Fields (LA)	Mineta	Watt (NC)
Filner	Minge	Waxman
Flake	Mink	Williams
Foglietta	Moakley	Wise
Ford	Mollohan	Woolsey
Frank (MA)	Montgomery	Wyden
Franks (NJ)	Morella	Wynn
Frost	Murtha	Yates

NOES—247

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Upton
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—10

Gonzalez
Gutierrez
Hunter
Lantos
Lipinski
Meek
Miller (CA)
Rush
Vucanovich
Ward

☐ 1517

The Clerk announced the following pairs:

On this vote:

Mr. Rush for, with Mrs. Vucanovich against.

Mr. BAESLER changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. BARCIA. Mr. Chairman, on roll No. 178, the Markey amendment to H.R. 1022, I intended to vote ''no'', and inadvertently voted ''yes''. I would like the RECORD to reflect this, and as such I submit the following February 24 correspondence to my colleagues for the RECORD to illustrate my support.

SUPPORT PEER REVIEW IN RISK ASSESSMENT

We strongly support requiring Federal regulations to be based on sound scientific principles, and urge our colleagues to support the peer review provisions of title III in H.R. 1022. This provision would establish a systematic program for sound scientific review of risk assessments used by agencies when promulgating regulations addressing human health, safety, or the environment. We believe that peer review is a critical component of sound science, and is necessary for accurate risk assessment analyses involving complex issues.

We spend an exorbitant amount complying with regulations. These costs totaled a whopping $581 billion in 1993, and ultimately increased the price for every good and service purchased by the American people. These regulatory costs are nothing more than a hidden tax on American consumers and business.

Some critics of the risk assessment provisions in H.R. 1022 believe those organizations or sectors impacted by a regulations should not be allowed to serve on their review panels. This notion, however, subverts the very intention of sound science—to base decisions on all relevant and available information without color or prejudice.

Peer review panels should include scientists from affected sectors as well as consumer interests and any outside interest. Doing so will allow risk-based analyses to maintain balance and flexibility, thereby ensuring agencies use sound science in their decisionmaking.

Some critics have suggested that including interested parties in the peer review process compromises the integrity of human health, safety, or environment regulations. However, the precedent for peer review already exists. Congress has consistently supported legislation requiring the use of comprehensive peer review panels for environmental and safety issues.

For example, the Science Advisory Board [SAB], created under the 1969 National Environmental Policy Act, was established to conduct peer reviews for EPA regulations. To be a member of the SAB you must have the proper education, training, and experience; there are no restrictions on affiliation. Further, the National Advisory Committee on Occupational Safety and Health as mandated under the Occupational Safety and Health Act is to be composed of ''representatives of management, labor, occupational safety and occupational health professionals and the public.'' The Energy Policy Act, which Congress passed in 1992, requires a peer review panel on electrical and magnetic fields. This peer review panel must contain representatives from the electric utility industry, labor, government, and researchers.

Peer review is a commonsense approach that must include all interested parties, and as such we urge you to support the peer review provisions in title III of H.R. 1022.

AMENDMENT OFFERED BY MR. BARTON OF TEXAS

Mr. BARTON of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BARTON of Texas: Page 36, after line 2, insert the following new title, redesignate title VI as title VII, and redesignate section 601 on page 36, line 4, as section 701:

TITLE VI—PETITION PROCESS

SEC. 601. PETITION PROCESS.

(2) PURPOSE.—The purpose of this section is to provide an accelerated process for the review of Federal programs designated to protect human health, safety, or the environment and to revise rules and program elements where possible to achieve substantially equivalent protection of human health, safety or the environment at a substantially lower cost of compliance or in a more flexible manner.

(b) ACCELERATED PROCESS FOR CERTAIN PETITIONS.—Within 1 year after the date of enactment of this Act, the head of each Federal agency administering any program designed to protect human health, safety, or the environment shall establish accelerated procedures for accepting and considering petitions for the review of any rule or program element promulgated prior to the effective date of this Act which is part of such program, if the annual costs of compliance with such rule or program element are at least $25,000,000.

(c) WHO MAY SUBMIT PETITIONS.—Any person who demonstrates that he or she is affected by a rule or program element referred to in subsection (b) may submit a petition under this section.

(d) CONTENTS OF PETITIONS.—Each petition submitted under this section shall include adequate supporting documentation, including, where appropriate, the following:

(1) New studies or other relevant information that provide the basis for a proposed revision of a risk assessment or risk characterization used as a basis of a rule or program element.

(2) Information documenting the costs of compliance with any rule or program element which is the subject of the petition and information demonstrating that a revision could achieve protection of human health, safety or the environment substantially equivalent to that achieved by the rule or program element concerned but at a substantially lower cost of compliance or in a manner which provides more flexibility to States, local, or tribal governments, or regulated entities. Such documentation may include information concerning investments and other actions taken by persons subject to the rule or program element in good faith to comply.

(e) DEADLINES FOR AGENCY RESPONSE.—Each agency head receiving petitions under this section shall assemble and review all such petitions received during the 6-month period commencing upon the promulgation of procedures under subsection (b) and during 15 successive 6-month periods thereafter. Not later than 180 days after the expiration of each such review period, the agency head shall complete the review of such petitions, make a determination under subsection (f) to accept or to reject each such petition, and establish a schedule and priorities for taking final action under subsection (g) with respect to each accepted petition. For petitions accepted for consideration under this section, the schedule shall provide for final action under subsection (g) within 18 months after