

She is really unexcelled when it comes to an intuitive sense of this Senate and its machinations. Abby is the literal personification of the wonderful ability to maintain great grace under extraordinary pressure—the true mark of the professional.

Few individuals understand the great personal sacrifice routinely made by the legislative floor staff here in the Senate, on both sides of the aisle. Unpredictable schedules, long hours, intense pressures, time away from loved ones at important moments, broken engagements with friends and family—all are experienced to some degree by senior Senate staffers, but no one group experiences these demanding and trying disruptions with more frequency than the Senate floor staff.

These positions, in particular, demand extreme dedication, steady nerves, alert and facile minds, hearty constitutions, patience, and a deep and abiding love for, and dedication to, this institution and the important work it must perform. Never was there a better example of that dedication than C. Abbott Saffold. She is in every way a marvel, with the ability to perform difficult and demanding duties, always with a pleasant demeanor and unequaled coolness under fire.

I would be less than honest if I did not admit that Abby's decision to leave us causes me considerable sadness, because she is so much a part of the Senate family. In many ways, I cannot imagine the Senate without her. I know that for many months after her departure, I shall search in vain for her familiar cropped head and her friendly grin in the Chamber, only to have to remind myself once again that she has gone.

I offer her my heartfelt congratulations on an outstanding Senate career, and on her service to her country. Certainly I wish her blue skies and happy days as she begins her well-earned retirement time. But, I cannot deny that I regret her leaving. I shall miss her friendship and her always sage advice. As Paul said of two women Euodias and Syntyche—both eminent in the church at Philippi—"They labored with me in the gospel," so I say to Abby: "You labored with me in service to the Nation." For me, there will never be another Abby.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### COMPREHENSIVE REGULATORY REFORM ACT

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

The bill clerk read as follows:

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

The Senate resumed consideration of the bill.

Pending:

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

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan is recognized to offer an amendment relative to small business.

Mr. ABRAHAM. Mr. President, I will shortly offer the Abraham amendment.

In essence, our amendment would ensure that Federal agencies periodically assess the utility of regulations that disproportionately impact small business.

I think it is critically important any regulatory reform bill take into account concerns of America's small businessmen and women.

At this time, I yield to the distinguished chairman of the Judiciary Committee as much time as he desires for comment.

Mr. HATCH. Mr. President, I thank my colleague, and would like to thank the distinguished ranking member of the Appropriations Committee, Senator BYRD, for his excellent remarks covering the women of the Bible as well as I have heard him cover on the Senate floor, and his tribute to Abby Saffold, who, of course, all Members have a great deal of respect for.

Mr. President, I intend to start each day in this debate—I may not fully comply—with the top 10 list of silly regulatory requirements.

I would pick a few at random today. Let me start with No. 10: Delaying a Head Start facility by 4 years because of the dimensions of the rooms; No. 9, forcing a man to choose between his religion and his job because rules do not allow workers to wear a mask over a beard—stupid rules, I might add, silly regulatory requirements; No. 8, throwing a family out of their own home because of painted over lead paint, even though the family is healthy; No. 7, fining a gas station owner \$10,000 for not displaying a sign stating that he accepts motor oil for recycling; No. 6, reprimanding a Government employee who bought a new lawn mower with his own money but failed to go through the proper procedures; No. 5, citing a farmer for converting a wetland when he fills his own manmade earthen stock tank and made a new one, elsewhere on his property—on his own property, I might add. No. 4, failing to approve a potentially lifesaving drug, thus forcing a terminal cancer patient to go across the border to Mexico to have it administered; No. 3, prohibiting an elderly woman from planting a bed of roses on her own land; No. 2, fining a man \$4,000 for not letting a grizzly bear kill him.

These are my top 10 list of silly regulatory requirements. No. 1: Requiring Braille instructions on drive-through ATM machines. We can see a lot of reason for that in our society today.

These are just a few of the reasons why we are here today. I intend to bring some more to the attention of Members as we continue to go on here. We all know the regulatory process is

out of control. Regulators have an incentive to regulate.

Some regulations are not only counterproductive, they are just plain stupid, as some I have just mentioned. The status quo is not acceptable to the American people, especially if they get to know what is really going on in our society. And they all suspect the costs of regulation are mounting. Paperwork costs the private sector and State and local governments a small fortune. Compliance costs cost even a bigger fortune.

Regulation restricts freedom. What you can use your own land for, what medical treatment you can have or provide for your family, what your company is required to do, et cetera, et cetera.

It is especially onerous on small businesses. Regulatory reform is absolutely necessary to get the Federal Government off our backs. For economic flexibility and growth as well as to reform personal freedoms, we need to change the way in which the Federal Government regulates.

Regulatory reform is an essential part of making Government smaller. Regulatory reform will mean less Federal spending, lower Federal taxes, fewer Federal regulations, smarter regulations, and accountability on the part of those in the bureaucracy.

This bill is about common sense. I think most Americans would agree that our Federal Government is out of control and that the overregulatory system is eating us alive, especially in terms of the burdens it places on all Americans.

This bill simply requires that Government agencies issue rules and regulations that help, rather than hurt, people. It will require that the Federal bureaucracy live by the same rules that Americans have to live by in their own lives—you and I and everybody else. These rules are that the benefits of what you are telling people to do have to justify the cost.

The notion of common sense and accountability and rulemaking may be a radical idea inside the Washington beltway, but I believe that our fellow Americans are smothered in bureaucratic red tape in all aspects of their lives and they are pretty darned tired of the status quo.

This bill will not mean an end to safety and health regulations, as some of its critics would have you believe. All it will mean is that the people in Washington who devise such rules will have to ensure that the interpretations of those rules, or the rules themselves make sense. They will have to quit being the protectors of the status quo.

MYTHS AND FEARS: UNFOUNDED ATTACKS ON  
S. 343

In his first inaugural address, Franklin Delano Roosevelt inspired a nation beleaguered by the Great Depression with these calming words: "We have nothing to fear but fear itself." Now

certain Democrats, representing the left of that great party and claiming to be the political heirs of Roosevelt, have turned 180 degrees. Instead of pacifying hysteria they are engaging in the worst form of fear mongering.

They content that regulatory reform will either overturn 25 years of environmental law or roll-back environmental, health, or safety protection. They also claim that passage of this bill will clog the courts, allow judges to second-guess scientific findings, delay needed rulemaking, and require the creation of a new bureaucracy of thousands.

Nothing could be further from the truth. Indeed, the root of the hysteria of the left is not a concern over the protection of health, safety, or the environment, but a concern over the loss of power. The liberal agenda has usurped power to the Federal agencies, which have become the left's biggest constituency. Real regulatory reform, such as S. 343, you see, will whittle away at the excesses of the modern centralized administrative state. It will force the bureaucracy to rationalize and make more cost-effective its rules and regulations. It will shift power back from Washington to the grass roots of the people. It will transform bureaucracy into democracy.

This bill is a commonsense measure. It simply requires Federal bureaucrats to ask how much a rule will cost and what the American people will get in return. Passage of this bill, in fact, will foster the protection of health, safety, and the environment by assuring that the American taxpayer will get more bang for the buck. It does so by mandating that the costs of regulation must justify the benefits obtained and that the rule must adopt the least costly alternative available to the agency. This will assure more efficient regulations, ultimately saving taxpayers hundreds of millions of dollars. Actually, billions of dollars.

Let me address certain myths arising from the fear campaign of the opponents of S. 343:

Myth No. 1: The bill will overturn or rollback environmental protection or health and safety laws. That is pure poppycock. Section 625 of the bill, the decisional criteria section, makes clear that the cost-benefit and risk assessment requirements supplement existing statutory standards. Thus, there is no supermandate that overturns statutory standards, such as the recently passed House regulatory reform bill. Instead, S. 343 works much the way the National Environmental Policy Act does. Where NEPA requires agencies to consider environmental impacts, S. 343 requires agencies to consider cost of the regulation. Neither statutory scheme overturns existing health, safety, or environmental standards.

So, forget about myth No. 1. It is phony. It is a lie.

Myth No. 2. They say cost-benefit analysis is unworkable because we cannot quantify benefits. In fact, one of

these far-left liberal outrageous groups compared a cost-benefit analysis with what happened under Hitler's regime.

It is hard to believe that we would have that in this day and age, from groups that claim to be representing the public.

Let us just forget that myth, because opponents of S. 343, although they claim that the cost-benefit analysis requirement in the bill requires that costs and benefits be quantified, their argument is that benefits, such as clean air or good health, are too subjective to be quantified. As a result, benefits will be understated and rules consequently will not adequately protect health, safety, or the environment. That is their argument.

There is only one problem with this argument: S. 343 explicitly states that agencies must consider qualitative—as well as quantitative—factors in weighing costs and benefits, Section 624 even goes so far as to allow agencies to select a rulemaking option that is not the least costly if a nonqualitative consideration is important enough to justify the agency option.

Myth No. 3: The requirements for cost-benefit analysis and risk assessments will harm health, safety, and the environment by delaying implementation of needed regulations. This is simply not true. S. 343 contains emergency exemptions from cost-benefit analysis and risk assessments in situations where regulations need to be enacted to prevent immediate harm to health, safety, and the environment. Furthermore, agency actions that enforce health, safety, and environmental standards, such as those concerning drinking water and sewerage plants, simply are not covered by the Act.

In any event, the cost-benefit analysis and risk assessment requirements are hardly novel. Under orders on regulations that go back to the administration of President Ford, most agencies must already perform cost-benefit analyses for numerous rulemakings and many agencies, such as EPA, already conduct risk assessments as a routine matter. What this bill will do is to assure that cost-benefit analyses are done for all rulemakings and that risk assessments are based on good science.

Myth No. 4: The agency review and petition process will open up all existing rules for review and this will grind all agency activities to a halt. The agency review and petition process will have no effect on reasonable regulations. Only those regulations imposing unreasonable costs without significant benefits and rules based on bad science are likely to be modified or repealed. I might ask what is wrong with that?

Moreover, not all rules must be reviewed. Only major rules, which have an expected effect of \$50 million on the economy need be reviewed. And the agencies have 11 years to review these rules. This is more than ample time to review rulemakings. As to the petition process, to be successful in having a pe-

tion to review a rule not on a review schedule granted, the petitioner must demonstrate a reasonable likelihood that the existing rule does not meet the decisional criteria section. In other words, that the rule would not be cost-effective if the rule was promulgated under the standards set forth in the bill. This is an expensive proposition, for the petitioner must do a cost-benefit analysis to demonstrate this point.

Ultimately, with regard to the petition process, it simply boils down to whether one thinks that the status quo is acceptable or not. Understandably, defenders of the status quo are horrified at the prospect that perhaps something ought to be done about rules already in existence whose costs to the American people are greater than the benefits that result. I disagree, of course, with that attitude.

Myth No. 5: The judicial review provision will create scores of new cause of actions clogging the courts and would allow judges to second guess agency scientific conclusions. Section 625 of the bill makes clear that judicial review of a rule is to be based on the rulemaking file as a whole. Noncompliance with any single procedures is not grounds to overturn the rule unless the failure to follow a procedure amounts to prejudicial error—which means the failure would effect the outcomes of the rule. Thus, section 625 would not allow for courts to nit-pick rules. Moreover, section 625 requires courts to employ the traditional arbitrary and capricious standard, a standard which requires courts to show deference to agency factual and technical determinations. This prevents courts from second, guessing agency scientific findings and conclusions.

I would also note that it is ironic that those who oppose the judicial review provision of S. 343 on the grounds that it will clog the courts are the same people who oppose meaningful legal reform.

Why? Because they want these lawsuits to continue everywhere else. They just do not want the American people and individual citizens and small businesses to be able to sue to protect their rights against an all-intrusive Federal Government which is over-regulating them to death.

Myth No. 6: Implementation of the bill would require a new bureaucracy of thousands. First of all, many agencies, such as EPA, already perform cost-benefit analyses and risk assessments. This is because of the existing executive order that requires such analyses for rules effecting the economy at \$100 million. According to an EPA source, "[o]ne big misconception about these bills is that risk assessments and cost-benefit analysis requires a lot more work than has routinely been done at EPA." Second, the requirement for peer review panels to assure good science and plausible estimates for risk assessments, will not significantly hinder the promulgation of rules. Peer review only applies to risk assessments

that form the basis for major rules—having the effect on the economy of \$50 million annually—or major environmental management activities—costing \$10 million.

I just wanted to get rid of some of these myths about this bill. I am sick and tired of articles written, like the one in the New York Times, that have no basis in fact. As a matter of fact, I think this is one of the most hysterical displays by the far left that I have seen. And it is even worse than the "People For The American Way" full-page ad against Judge Robert Bork that had some, as I recall, close to 100 absolute fallacious assertions in it that they never once answered after I pointed them out.

Mr. JOHNSTON. Will the Senator yield?

Mr. HATCH. I will be happy to yield. Mr. JOHNSTON. One of the myths put out about the so-called Dole-Johnston amendment is that it contains a supermandate. That is, that the present requirements of law—for example, on the Clean Air Act, when it sets standards, for example, of maximum achievable control technology or the other specific requirements of law—that somehow those are overruled by this bill.

Would the Senator agree with me that the language is very clear in saying that does not happen under this bill? To quote the language, it "supplements and does not supersede the requirements of the present law." And, in fact, other language in the bill specifically points out that there will be instances where, because of the requirements of present law, you cannot meet the tests of the risk justifying the cost? The benefits justifying the cost? And, in other words, the requirements of present law, under the instant Dole-Johnston amendment, would still be in effect and would not be overruled by this bill? Would the Senator agree with me?

Mr. HATCH. I agree 100 percent with the distinguished Senator from Louisiana, who has coauthored the bill along with Senator DOLE and others here. Section 625 of this bill, the decisional criteria section, makes clear that the cost-benefit assessment requirements supplement existing statutory standards.

Mr. GLENN. Will the Senator yield—

Mr. HATCH. Thus, there is absolutely no supermandate.

Mr. GLENN. For a parliamentary inquiry? I wanted to straighten out the time. It was my understanding the time, starting at 2 o'clock, was to be divided equally among proponents and opponents of the bill. The Senator from Michigan—it was my understanding the time so far, the time of the Senator from Utah, had come out of the time of the Senator from Michigan? Is that correct?

Mr. HATCH. That is correct. I have used too much of this time, so I yield back my time.

Mr. GLENN. I know they were preparing a unanimous-consent request to that effect. We do not have that yet. But it was my understanding that those were the rules we were operating under. I just wanted to make sure everyone agreed to that.

Mr. HATCH. Mr. President, I ask unanimous consent a factsheet I have with me be printed in the RECORD at this point, as well.

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

S. 343: RESPONSIBLE REGULATORY REFORM THAT PROTECTS HEALTH, SAFETY AND THE ENVIRONMENT

S. 343 DOES NOT OVERRIDE EXISTING HEALTH, SAFETY AND ENVIRONMENTAL LAWS

Sec. 624(a)—Cost-benefit requirements "supplement and [do] not supersede" health, safety and environmental requirements in existing laws.

Sec. 628(d)—Requirements regarding "environmental management activities" also "supplement and [do] not supersede" requirements of existing laws.

S. 343 PROTECTS HUMAN HEALTH, SAFETY AND THE ENVIRONMENT

Sec. 622(f) and Sec. 632(c)(1)(A)—Cost-benefit analyses and risk assessments are not required if "impracticable due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources."

Sec. 624(b)(3)(B)—An agency may select a higher cost regulation when "nonquantifiable benefits to health, safety or the environment" make that choice "appropriate and in the public interest."

Sec. 624(b)(4)—Where a risk assessment has been done, the agency must choose regulations that "significantly reduce the human health, safety and environmental risks."

Sec. 628(b)(2)—Requirements for environmental management activities do not apply where they would "result in an actual or immediate risk to human health or welfare."

Sec. 629(b)(1)—Where a petition for alternative compliance is sought, the petition may only be granted where an alternative achieves "at least an equivalent level of protection of health, safety, and the environment."

Sec. 632(c)—Risk assessment requirements do not apply to a "human health, safety, or environmental inspection."

S. 343 DOES NOT DELAY HEALTH, SAFETY AND ENVIRONMENTAL RULES

Sec. 622(f) and Sec. 632(c)—Cost-benefit and risk assessment requirements are not to delay implementation of a rule if "impracticable due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources."

Sec. 533(d)—Procedural requirements under the Administrative Procedures Act may be waived if "contrary to the public interest."

Sec. 628(b)(2)—Requirements for major environmental management activities are not to delay environmental cleanups where they "result in an actual and immediate risk to human health or welfare."

Sec. 801(c)—Congressional 60-day review period before rule becomes final may be waived where "necessary because of an imminent threat to health or safety or other emergency."

S. 343 DOES NOT PLACE A "PRICE TAG ON HUMAN LIFE"

Sec. 621(2)—"Costs" and "benefits" are defined explicitly to include "nonquantifiable," not just quantifiable, costs and benefits.

Sec. 622(e)(1)(E)—Cost-benefit analyses are not required to be performed "primarily on a mathematical or numerical basis."

Sec. 624(b)(3)(B)—An agency may choose a higher cost regulation when "nonquantifiable benefits to health, safety or the environment" dictate that result.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, it was my understanding that when the Senator from West Virginia concluded and we began discussion on the regulatory reform bill, that there would be 2 hours of time equally divided between myself and Senator GLENN; and that the time for Senator HATCH's statement—I did yield to him—was to come out of my time.

I agree with that. I would like to know how much of my hour remains at this point.

The PRESIDING OFFICER. The time is 30 minutes remaining.

Mr. ABRAHAM. Mr. President, I do not think that is correct. I believe Senator HATCH spoke for 30 minutes.

Mr. HATCH. Mr. President, I ask unanimous consent that the time yielded to both sides on this matter will have begun at 1:15.

Mr. GLENN. Mr. President, reserving the right to object, would this then mean that the time certain that was established for a vote later this afternoon at 5:15 would have to be set back in accordance with that?

The PRESIDING OFFICER. Not necessarily.

Mr. GLENN. Then, Mr. President, something has to give here because we were supposed to have a certain time set aside for Senator NUNN, which I believe was 2 hours—2 hours for Senator ABRAHAM and 2 hours for Senator NUNN; is that correct?

The PRESIDING OFFICER. Originally, that would have been 2 hours on the first amendment and 2 hours and 15 minutes on the second.

Mr. GLENN. What would be the timing on the vote this afternoon if we agreed to the proposal made by the Senator from Utah?

Mr. ABRAHAM. Mr. President, I object to the proposal of the Senator from Utah in that the Senator from West Virginia did not conclude his remarks until 1:25 p.m. We were to start at 1:25. I would have no objection in calculating based on that.

The PRESIDING OFFICER. The Chair will announce that the bill was laid down at 1:20 and that the next amendment would be laid down at 3 o'clock pursuant to the previous order.

Mr. HATCH. Parliamentary inquiry: As I understand, there was supposed to be 2 hours of debate. That should not begin until 1:20. That means that there should be 2 hours from 1:20.

The PRESIDING OFFICER. The previous agreement was that the amendment by the Senator from Michigan could be laid down at 1 o'clock with no other time agreement, and that the other aspect of the agreement was that the amendment could be laid down by

the Senator from Georgia at 3 o'clock with votes beginning at 5:15.

Mr. HATCH. Then I suggest, and I ask unanimous consent, that the 2-hour time limit on this first amendment begin at 1:20 and that the 2-hour-and-15-minute time limit begin on the second amendment at 3:20.

I withdraw my unanimous-consent request.

Mr. GLENN. Mr. President, I suggest we proceed. We are wasting a lot of time on this. Let us just proceed. If we need extra time at the end, which I doubt that we will, then we can take appropriate action at that time. Otherwise, let us proceed and hope we can hit the 3 o'clock deadline anyway, if that is all right with the Senator from Michigan.

Mr. ABRAHAM. Very well.

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan is recognized to offer an amendment.

AMENDMENT NO. 1490 TO AMENDMENT NO. 1487  
(Purpose: To ensure that rules impacting small businesses are periodically reviewed by the agencies that promulgated them)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. ABRAHAM], for himself, Mr. DOLE, Mr. KYL, and Mr. GRAMS, proposes an amendment numbered 1490.

Mr. ABRAHAM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(a) on page 27 line 13, strike "subsection" and insert "subsections"; and

(b) on page 27 line 13, after "(c)", insert "and (e)"; and

(c) on page 30, before line 10, insert the following:

"(e) REVIEW OF RULES AFFECTING SMALL BUSINESSES.—(1) Notwithstanding subsection (a)(1), any rule designated for review by the Chief Counsel for Advocacy of the Small Business Administration with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, or designated for review solely by the Administrator of the Office of Information and Regulatory Affairs, shall be included on the next published subsection (b)(1) schedule for the agency that promulgated it.

"(2) In selecting rules to designate for review, the Chief Counsel for Advocacy of the Small Business Administration and the Administrator of the Office of Information and Regulatory Affairs shall, in consultation with small businesses and representatives thereof, consider the extent to which a rule subject to sections 603 and 604 of the Regulatory Flexibility Act, or any other rule meets the criteria set forth in paragraph (a)(2).

"(3) If the Administrator of the Office of Information and Regulatory Affairs chooses not to concur with the decision of the Chief Counsel for Advocacy of the Small Business Administration to designate a rule for review, the Administrator shall publish in the Federal Register the reasons therefor."

Redesignate subsequent subsections accordingly.

Mr. ABRAHAM. Mr. President, the amendment I have proposed with the majority leader and other Senators would ensure that the concerns of America's small businesses are not overlooked or ignored during the regulatory review process that S. 343 would establish.

We need some type of meaningful regulatory review process because, quite simply, the utility of a regulation may change as circumstances change. The fact that a regulation withstood cost-benefit analysis at the time of its promulgation provides no assurance that it remains cost-effective 5 or 10 years later. A review process with teeth, however, would ensure that regulations remain on the books only so long as they remain cost-effective.

Section 623 of the regulatory reform bill appears at first glance to address the need to review periodically the cost-effectiveness of existing regulations. Agencies would be required to publish a schedule of regulations to be reviewed. Regulations on the schedule would be measured against the cost-benefit criteria in section 624 of the bill. And, although the agency might have more than 14 years to conduct its review of a regulation, the regulation would terminate if the agency failed to complete its review of it within the time allowed.

As currently drafted, however, section 623 contains a significant loophole. Whether a regulation is subject to review under section 623 depends, at least in the first instance, on whether the agency chooses to place the rule on its review schedule. This amounts to the fox guarding the henhouse.

Under the bill's current language, the only way to add a regulation to the list of rules chosen by the agency is to present the agency with a petition that meets the extremely demanding standard set forth in the bill. It likely would cost hundreds of thousands of dollars to hire the lawyers and technical experts needed to prepare such a petition. Small businesses by their very nature do not have such large resources at their disposal. Thus, under the current language of section 623, agencies potentially could overlook or even ignore the needs of small businesses.

Mr. President, small businesses are too important to our economy to let that happen. Small businesses are the engines of job creation in our Nation. From 1988 to 1990, small businesses with fewer than 20 employees created 4.1 million net new jobs, while large businesses with more than 500 employees lost over 500,000 net jobs during the same period. It comes as no surprise, then, that 57 percent of American workers are employed by a small business. Thus, when we overlook the needs of small businesses, we put American jobs in jeopardy.

And when it comes to reducing the burden of regulations, the needs of

small businesses are particularly acute. The hidden tax of regulatory burdens is highly regressive in nature: According to the U.S. Small Business Administration, small businesses' share of regulatory burdens is three times that of larger firms.

There are a number of commonsense reasons for this fact. First, unlike big businesses, small businesses cannot spread the costs of regulation over a large quantity of product sold to the public. Since the regulatory costs borne by small businesses are thus concentrated on a relatively small quantity of product, those costs have a disproportionate impact on the cost of goods and services sold by small businesses. Put simply, the advantages of economies of scale apply to regulatory costs just as they do to other costs of doing business.

A second reason why regulations hit small businesses especially hard is that small businesses simply cannot afford to hire the lawyers, consultants, and accountants needed to comply with the paperwork requirements that inevitably attend regulatory mandates.

When it comes to small businesses, the agencies' avalanche of paperwork falls not on an accounting or human resources department but, rather, on a hard-working entrepreneur who often lacks the time or expertise necessary to cross all the T's in the manner the agency has commanded.

The magnitude of this burden truly cannot be overstated. The Small Business Administration estimates that small business owners spend almost 1 billion hours per year filling out Government forms. An example illustrates the point. Recently, a small construction company inquired about bidding on a modest remodeling project at a post office in South Dakota. In response to that inquiry, the owner of the company received no less than 100 pages of bidding instructions. Needless to say, Mr. President, a 100-page book of bidding instructions might as well state on its cover that "small businesses need not apply."

In short, Mr. President, given the importance of small businesses to our economy and their disproportionate share of the cost of regulations, we need to ensure that S. 343 contains a regulatory review process that is responsive to the concerns of small businesses.

Our amendment would meet that need by empowering the chief counsel for advocacy of the Small Business Administration, also known as the "small business advocate," to protect the interests of small businesses during the regulatory process.

Under our amendment, the advocate would be permitted to add regulations that hurt small businesses to the list of regulations that the agencies themselves have chosen to review, in accordance with the office at the White House known as OIRA.

The advocate would do so pursuant to a simple process. First, the advocate would consult with small businesses concerning the burdens that regulations impose on them. Next, the advocate would consider criteria such as the extent to which a regulation imposes onerous burdens on small businesses or directly or indirectly causes them not to hire additional employees.

On the basis of such input and criteria, the advocate would designate regulations for review. If the administrator of OIRA then concurred in the advocate's designation of a rule for such inclusion, at that point the rule would be added to the list of regulations the agencies have chosen to review. Additionally, if OIRA itself chose to designate a rule for review, that rule could be added to the agency's list.

Our amendment thus would be a small business counterpart to the petition process available to larger firms. Just as through the petition process high-priced lawyers and consultants would ensure that regulations impacting big businesses are not overlooked as regulations are reviewed, so, too, would this process ensure that regulations, the heavy costs of which are borne by small businesses, are not ignored in the regulatory review process.

This task falls squarely within the advocate's mission. Created by a 1976 act of Congress, the advocate's mission is to "counsel, assist and protect small business," thereby "enhancing small business competitiveness in the American economy."

Pursuant to this mission, the advocate "measure[s] the direct costs and other effects of Government regulation on small businesses and make[s] legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations of small businesses." The advocate also administers the Regulatory Flexibility Act, which has afforded it additional experience in assessing the impact of regulations on small businesses.

In fact, by allowing the advocate to designate rules for review, our amendment merely builds on the foundation laid by the Regulatory Flexibility Act. Under that act, the advocate reviews agency analyses of the likely impact of proposed and final rules on small businesses. Thus, under our amendment, the advocate's role in reviewing regulations will be very similar to its role in promulgating regulations.

In summary, Mr. President, small businesses need an advocate in the regulatory review process. For too long, small businesses have been left at the mercy of Federal agencies. Our amendment will ensure that small businesses' concerns are considered in a manner that reflects their contribution to our economy.

That is why the National Federation of Independent Businesses has scored our amendment as a key vote in its rating system.

In the end, Mr. President, our amendment will lead to more efficient regula-

tions for small businesses and more jobs for American workers.

Mr. President, I reserve the remainder of my time.

Mr. DOMENICI. Mr. President, I wonder if the Senator from Michigan will yield a few minutes to me on his amendment.

Mr. ABRAHAM. Mr. President, I yield to the Senator from New Mexico such time as he shall need.

Mr. DOMENICI. Do we have enough time for me to ask him—

The PRESIDING OFFICER. The Chair should note that time is not controlled at this point.

Mr. GLENN. Mr. President, you say time is not controlled?

The PRESIDING OFFICER. Time is not controlled at this point.

Mr. DOMENICI. On this amendment.

Mr. GLENN. Mr. President, parliamentary inquiry. The discussion we had a little while ago resulted in no agreement. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, will you advise me when I have used 10 minutes, please.

Mr. President, the Federal regulatory process, from everything we can determine from our constituents and in various and sundry meetings across this land and in our States, is simply out of control. Federal regulations affect in a very real way every man, woman, and child in America.

The cost of Federal regulations, however, has been estimated to be as high as a half trillion dollars a year, \$500 billion. Even the most conservative estimates of the cost of Federal regulations show that the cost of regulations has a profound impact on American citizens.

A recent Washington Post article reported that regulations ultimately cost the average American household about \$2,000 a year. I believe one of the main reasons these regulations cost Americans so much is that often they are not generated in an efficient and commonsense manner. That does not mean we do not need regulations, but we need efficient and commonsense regulations.

The sheer volume of regulations proposed and finalized by Federal agencies every year is staggering. For example, the registry, that is, the Federal Register, in 1994 alone runs a total of 68,107 pages. They take up an entire store-room of space in my office as we attempt to follow them.

Mr. President, how can anyone, no matter how earnest or diligent, comply with all of these? In my State, small business makes up about 85 to 90 percent of the employers. From my standpoint, I have suspected that they felt unrepresented and put upon, and about 2 years ago I established a small business advocacy group. We held field hearings on an informal and voluntary basis, and almost all the small business

owners that I talked to and spoke with, the people who create almost all the jobs in our State, told me just how smothering this explosion has become.

I would like to read a letter from one of my constituents in this regard, a small businessman in northwestern New Mexico, Mr. Greg Anesi. He is the president of a small business in our State called Independent Mobility Systems which makes equipment for the handicapped. His business employs quite a few handicapped people. And Mr. Anesi wrote to me to tell me exactly how crushing simply preparing the paperwork required by regulations has become to his small business. The letter states:

When we consider hiring additional employees, we are limited by the fact that the more people we employ, the greater the regulatory costs and the burdens.

Further, this crushing regulatory inefficiency can and does have a very damaging impact on the environment and on human safety because it diverts limited financial resources from the most pressing of environmental problems. The book called "Mandate for Change" reports that in 1987, "a major EPA study found that Federal Government spending on environmental problems was almost inversely correlated to the ranking of the relative risks by scientists within the agency."

One way to solve the problem is to use best available science when making regulatory decisions about the environment and human safety. I have been a champion of that, and last year in fact I attached the amendment to the Safe Drinking Water Act. That amendment would ensure that the best available peer-review science was used when promulgating safe drinking water standards.

Nor is the use of good science in environmental decisionmaking a partisan issue. In this same book, which I hold up, "Mandate for Change", which President Clinton endorsed as a book which tries to move us toward a better future, on page 216 there is a specific call to "expand scientific research on, and use of, risk assessment as part of a national effort to set environmental priorities." I am happy to see that S. 343 has incorporated environmentally conscious, good science concepts in its assessment provisions.

Another way to solve problems of inefficient Federal regulations is to make sure that agencies consider the costs and the benefits of the regulations they promote. I understand that will be a matter of very significant debate on the floor, what standard with reference to costs and how will costs and benefits relate one to the other.

Again, I do not believe cost analysis is a partisan issue. Every President since Richard Nixon, including President Clinton, has required cost-benefit analyses before rules are promulgated. Unfortunately, Federal agencies are not performing these analyses as well as they should. The fact that both S.

343 and Senator GLENN's regulatory reform bill contain cost-benefit sections show that both Democrats and Republicans agree on this point. Perhaps there is some disagreement as to how one would apply the costs and the concept of benefits in determining whether or not the costs were justified is still in order, and we will debate that.

Mr. President, the Abraham amendment to S. 343 allows for agencies to put an existing regulation on a list of meaningful cost-benefit reviews. The problem with the bill's current language is that there are only two ways for a regulation to be put on this list. First, it is up to the agency to choose to put an existing regulation on the list for review, while allowing the agency to do this sort of thing rather than forcing them to do exactly the problem we are trying to address with these bills. Second, an interested party can petition to get an existing rule on the list but only if that party can show that the rule is a major rule.

Showing that a rule costs the national economy \$50 to \$100 million can cost the interested party thousands of dollars. That is one of the problems. Small business does not have thousands of dollars to prove that the national economy will be influenced \$50 to \$100 million. When the interested party is a small business, that cost is simply out of reach no matter how ridiculous the existing regulation might be.

Mr. President, that is why I support the Abraham amendment. This amendment will empower the chief counsel for advocacy at the U.S. Small Business Administration, in concurrence with the administrator of the Office of Information and Regulatory Affairs, to add regulations to the agency's list which have significant impact on small business. This amendment, therefore, would allow the small businessman, the little guy, the small business owner, a real opportunity to make sure that Federal agencies actually perform the cost-benefit analysis that everyone says should be done but that everyone agrees are too often ignored in practice.

So, Mr. President, I compliment the Senator who has had to modify his amendment, as I understand it, to include OIRA, the administrator of the Office of Information and Regulatory Affairs, and some might think under certain circumstances that might not be the best. But I think over time, when you combine the small business advocacy office and the administrator of the Office of Information and Regulatory Affairs in the executive branch, over a period of time I think this amendment has a chance for small business to get some of their concerns on the list—that is, on the list to be reviewed—rather than it being as difficult as the base bill, S. 343, would provide.

I hope the amendment is adopted, and I thank the Senator for offering the amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I want to make some remarks on the bill itself and then some remarks specifically on the amendment by the distinguished Senator from Michigan.

I firmly believe that this is one of the most important bills that we will take up this year. That probably comes as a surprise to a lot of people who think regulatory reform is pretty dry, arcane, and is about like watching mud dry, as far as interest goes. It is what we termed in the past a MEGO item, "my eyes glaze over" when you bring it up. That is about the interest that it will generate with a lot of people, because it is not debating B-2 bombers or the M1A2 tanks, or something like that. It deals with the nitty-gritty of rules and regulations, how they get published, why they are necessary, and so on.

Let anyone think we have a lot of bureaucrats just sitting over on the other side of town dreaming up rules and regulations to put out on their own volition, that is not the way these things happen.

We pass laws in the Senate and in the House of Representatives and we send them over to the President. The President signs them. Then they go to the agencies to have the rules and regulations written that implement them, that let them be put into effect, that make them practical so they can go out and affect everyone, literally, in this country—businesses, organizations, individuals, families, children, elderly. Everyone is affected by many of these rules and regulations.

If we did a better job in the Congress, I think perhaps we would find less necessity for rules and regulations over in the agencies and the Departments. If we want to see the major problem area, we ought to look in the mirror, because what we do is too often see how fast we can get legislation out of here. We do slapdash work on it here, send it over and then we are somehow surprised that the agencies and the people doing the regulation writing do not do a better job, and then we are all concerned about why they did not do a better job when we did not do a good enough job in directing them in what they are supposed to do.

Having said that, some 80 percent of the regulations written are required to be written by specifics of legislation passed in the Congress. So we bear heart and soul a lot of the blame on this thing. But the importance of rules and regulations cannot be denied. It is what makes them applicable across the country.

Let me say this. I do not think there is a single Senator that I know of who thinks we should just go along with the status quo. The administration started a review of this whole area 1½ years ago, and they already cut out a lot of rules and regulations. They are in the

process of doing more of that right now. So the Senate is interested, the House of Representatives is interested, the administration is interested, and it is that important. We are united on the need to make some changes. So this is not a partisan thing across the aisle on the need. The question is how we go about this.

Let me go back a few years to 1977. The Governmental Affairs Committee, of which I am a member—I was not chairman at that time. Later on I was chairman of the committee for 8 years. Senator ROTH chairs the committee now. But back in 1977, we had what was really a landmark study. It was a landmark study on regulatory reform. It resulted in OMB and OIRA changes, the establishment of processes there. It was an open process. So we had an interest through the years on these matters.

In this year, we had four hearings on the bill in committee. It was bipartisan in support in that committee. We deliberated, we considered everything everyone wanted to consider, and we had a 15-0 vote when that came out of committee. There was agreement on it, and it was a bill of balance.

I think we focused on many of the very central issues, and I will get to those in just a moment. But the bill that we have as S. 291 that has not been introduced here—of course, we are dealing with S. 343, the bill proposed by the majority leader—but that bill we passed out of committee, the Roth bill—and the bill which we would have as an alternative, S. 343, now is basically S. 291 that came out of committee, with just three changes. Those three changes are: A major rule would be defined as one having a \$100 million impact per year. No. 2, if an agency fails to review the rules within 10 years, there would be no sunset. In other words, an administrator in an agency could not deliberately let it run beyond the time period and automatically have laws and rules sunset without congressional action. And No. 3, the difference between this and S. 291, as originally voted out of committee, is there is a simplified risk assessment process to comport with the National Academy of Sciences guidelines on risk assessment.

Those are the only three differences. This is a bill that was voted out of committee 15-0. We find ourselves in a position where we have several differences between what was provided in the bill out of committee and what the majority leader has proposed with S. 343. No. 1, the decision criteria, the test whether an agency can promulgate a regulation.

S. 343 proposes a least-cost basis. The bill voted out of committee proposed a cost-effective basis. There is a big difference between least cost and cost effective.



Another area of difference is that of judicial review. Under judicial review there are some major differences as to what would be judicially reviewable; in other words, what you can file suit in court on.

Another difference is the \$100 million threshold. S. 343 has a \$50 million threshold, which drastically increases the number of bills that would have to be considered.

Another difference is the petition process.

Another is the sunset, as I mentioned a moment ago.

Another is how we do risk assessment.

The effectiveness of regulatory flexibility is another.

If the agencies have done their job or have not done their job.

The lack of sunshine, openness, a requirement for openness in our legislation.

Of course, there is the area of specific interest fixes, and whether we, as proposed in S. 343, knock out Delaney or toxic release emissions requirements, inventory requirements that every community should have knowledge of.

These are some of the differences in the legislation between what we voted out of committee and the legislation the majority leader brought to the floor.

Let me talk about the cost-benefit analysis as a tool and not a statutory override. Now, there is substantial difference of opinion on this. Regulatory reform, we feel, should build on our health and safety accomplishments, while applying better science and economic analysis. Regulatory reform on its own and without any other consideration should not override existing environmental safety and health laws.

There seems to be a difference here. But in discussions about S. 343, there has been a refusal to include language that in the event of a conflict between a law—the Clean Air Act, for example—and the new standards in this bill that the law would govern. That is a major difference. I know we say we are in agreement on that. But the language that would spell that out very specifically has been difficult to come by up to now.

There are other statutory overrides in this bill, like the sunset of current regulations if an agency did not act to rewrite or renew them. There would be 10 years to review a petition process, and if it was not reviewed, the bill, according to S. 343, would sunset, would go out of existence.

There is also what could be considered a rewrite of Superfund and the Reg Flex Act. What they have in S. 343 is if the cleanup is worth more than \$10 million, or will cost more than \$10 million, there needs to be a new analysis of even work in process. I know there is a lot of work going on. But it is my understanding that that is still the intent of the bill.

Under the cost-effective regulations, regulatory reform should result in reg-

ulations which are cost effective. S. 343 requires agencies to choose the cheapest alternative, not necessarily the one which provides the most bang for the buck. Here is an example: If a \$2 increase in the cost of a bill would result in the saving of 200 lives, to make a ridiculous example, the least cost would not permit that extra \$2 expenditure.

Another area of interest: No special interest fixes. Congress should enact reforms of the regulatory process, not fixes for special interest. S. 343, as brought to the floor, rewrites the toxic release inventory which gives people the right to know what toxic substances have been released in their communities. It repeals the Delaney clause against additives in cosmetics with a substitute. It delays and increases costs of ongoing Superfund cleanups and prohibits EPA from conducting risk assessments to issue permits to even such things as cement kilns and others allowing them to burn hazardous waste.

So those are some of the areas. We have others. Better decisionmaking, not a regulatory gridlock is what we are after also. Regulatory reform should streamline rulemaking. It should not just be a lawyer's dream opening up a multitude of new avenues for special interests to tie up the process.

The bill, as brought to the floor, allows courts to review risk-assessment and cost-benefit procedures and to reopen peer review conclusions. It creates numerous petition processes for interested parties. These petitions are judicially reviewable and must be granted or denied by an agency within a time certain and these petitions will eat up agency resources and allow the petitioners, not the agencies, to set agency priorities.

Now, a very major difference also is the reasonable threshold. The new requirements should be applied wisely where the cost of conducting the analysis are justified by the benefits. But S. 343 sweeps into the new process an unwarranted number of regulations because it would, I believe, flunk its own cost-benefit test, because it provides for a threshold of \$50 million, where the bill we brought out of the Governmental Affairs Committee, that Senator ROTH brought out, has a \$100 million threshold, which means even then somewhere 400 to 600 reviews are going to have to be conducted per year. And cutting that \$100 million standard in half, with no evidence that the extra taxpayer dollars needed to comply would be spent effectively.

In other words, how many can we really do effectively? That is the question. I think if we went to the \$50 million threshold, we would probably find the agencies being swamped. We are going to spend a lot of dollars making no progress, as far as the accomplishment of regulatory reform.

Last, but certainly not least, is sunshine. Regulatory reform should be open and understandable to the public

and regulated industries. It should be sunshine in the regulatory review process.

S. 343 as brought to the floor has no sunshine provisions to protect public participation and prevent secrecy in regulatory review. I can say this, going back a few years, when we had the Council on Competitiveness and a few things like that, we certainly need the sunshine provision. I think most people here would probably agree with that.

Mr. President, the rules and regulations that we are talking about involve every child in this country, every family, the milk you drink, the meat you eat, transportation, safety, water, air, all of these are things that will be affected by this legislation. That is the reason that I say it will be one of the most important bills that we bring up this year.

I do not want confrontation on these things. I think the press has continued to play it mainly as confrontation. I do not like that, particularly because we are talking about working out cooperative methods and working out compromise on this so we can get a good bill for the whole country. We all stand here united on the need for regulatory reform. So I think it is important that we try and work as many of these things out as possible.

Now, with specific regard to the proposal made by the Senator from Michigan, I know his original proposal was one that I was prepared to oppose. But he has modified that proposal. I think after we have checked with some of the people involved on our side or wanted to be involved on our side, we may be able to accept the amendment over here. The amendment, as originally proposed, while well-intentioned, I think, would have added to special interest lobbying, would have delayed Government decision and frustrated effective regulatory reform. The amendment would have allowed a single official, and not even the Administrator of SBA but the chief counsel for advocacy, to determine any rule, any regulation, to be put on the list for agencies. Agencies would have been forced to put these rules on just with one person's say-so. And that could have been any existing rule he or she might have chosen. I did not favor that approach to it because I think we had adequate protection in the bill in S. 343 and S. 291 both to cover that. We had adequate procedures that would have covered that without giving one person, in effect, what would be a czar's authority over all rules and regulations which already have to be reviewed for small business under the Regulatory Flexibility Act, which is required for agencies to evaluate the impact of proposed rules on small businesses and to consider less burdensome, more flexible alternatives for those businesses.

Both the Glenn-Chafee bill and S. 343, the one before the Senate, also strengthen the Regulatory Flexibility Act by providing judicial review of agency reflex decisions.

I think that is the right thing to do. I think both bills cover that. Trying to tighten up reflex is one thing, but creating a whole new set of powers for the Small Business Administration would be quite another thing.

I know the Senator has modified his proposal to say that now, instead of the chief counsel for advocacy at SBA being able to determine on his or her own that these things must be considered by the particular agency or department involved, he has said now that first they have to recommend these up to the Office of Information and Regulatory Affairs in the Office of Management and Budget, which is the office OIRA, that normally passes on these things.

It is our understanding that would be an adequate stopgap, an adequate monitor, a governor, if you will, or a sieve, to sort out what might be frivolous or might not be frivolous.

It is my understanding that the OMB, then, in the amendment as now proposed, would be able to stop that procedure if they wanted.

I ask my distinguished colleague from Michigan if that is his intent now, that once the SBA counsel has submitted this to OIRA, we could turn it down and that would be the end of it.

Mr. ABRAHAM. The Senator from Ohio is correct, I think. Our understanding is, with some changes which we made prior to introducing the amendment here today, it was to provide sort of a fail-safe to ensure that the concerns that the Senator from Ohio has expressed about the possibility of having the advocate of the Small Business Administration move into areas that were of negligible importance, that might be extraordinarily burdensome to the agencies, to provide a type of a fail-safe by requiring concurrence—in other words, approval—also, by the Administrator of OIRA.

Mr. GLENN. I was curious as to why the Administrator of the Small Business Administration was not the authority that would pass on these things to OIRA, or make the decision, rather than taking a subordinate officer and, in effect, elevating that officer for a greater authority than the Administrator has in being able to send things off for review at a different place.

Mr. ABRAHAM. I will say we felt, of the various responsibilities at the Small Business Administration, the advocate's office is, in effect, a somewhat independent figure whose principal responsibility under current law would seem to be very consistent with the responsibility of trying to protect small businesses with regard to promulgation of new regulations.

We thought that was the logical place to impose this responsibility. Also, the mechanism seemed to exist to do some of the study that is entailed in putting forth these recommendations.

We thought that this semi-independent status of the advocate, combined with the authorities already given it, were ones that justified and supported the notion of allowing that.

Mr. GLENN. I thank my colleague.

As I said earlier, at the appropriate time, after I have had a chance to check with a number of people on our side interested in the legislation, we may be able to accept. I, personally, think it is OK now as far as putting OIRA on as sort of a governor or place in which these can be judged before they would be sent to a department or agency. I would personally be prepared to accept it.

We would like to check with a few more people. I yield the floor.

Mr. JOHNSTON. Mr. President, I rise in support of the Abraham amendment. I congratulate the Senator for, first, his concern about small business, which is a concern of all Members on regulations; second, for having an appropriate screening mechanism to prevent the agency overload.

Agency overload, Mr. President, is one of the principal problems with this bill. We are all in favor, at least everyone that I have heard, says they are in favor of cost-benefit analysis, says they are in favor of risk assessment. The question is, do we give the agencies more work than they can do and overload their capacity to do it?

In its original form, the Abraham amendment might well have been subject to that criticism in that any rule on a look-back which the advocate designated would go into the workload of the agency.

However, in the form that the Senator from Michigan has proposed, there is an appropriate screen because the head of OIRA would have to concur with that judgment, which would ensure, I believe, that those rules which have a major effect on small business would be included in the workload, as they should be, but that we could prevent the agency overload.

Mr. President, I think this is an excellent amendment which will presently protect small business on the look-back.

If I may speak for a few moments on the pending bill and on the Glenn substitute, which the Senator has spoken about, there are a number of differences, Mr. President, and I believe that the pending bill, the so-called Dole-Johnston amendment, is a much better bill in terms of accomplishing the control over a runaway agency.

Mr. President, the Senator from Ohio [Mr. GLENN] states that under the Dole-Johnston bill, there would be a judicial review of the procedures in the risk assessment management; and under the Glenn substitute, there would not be that review of procedures.

Mr. President, exactly the opposite is true under the language proposed. Under the language of the Glenn substitute, it states specifically that any regulatory analysis for such actions shall constitute part of the record and shall, to the extent relevant, be considered by a court in determining the legality of the agency action.

The risk assessment protocol is included as part of the record and shall be considered by the court—shall be considered by the court—in determining the legality of the agency action.

Now, what does legality mean, Mr. President? Legality can only mean, in my judgment, the legality as measured by section 706 of the Administrative Procedure Act. If it does not refer to section 706, there is not, within the Glenn amendment, a separate rule for testing and determining legality.

Now, what does section 706 say? Section 706(D) refers to the procedures, and that any rule which the reviewing court shall hold unlawful and set-aside agency actions which are "without observance of procedure required by law." " \* \* \* without observance of procedure required by law."

There is nothing, Mr. President, in the Glenn substitute, to say that section 706(D) does not apply. That is the only thing that legality can mean.

Now, when we get into a further discussion of what the Dole substitute shows, we will have a blowup of the language and make this clear.

Mr. President, exactly the opposite is true. That is, Senator GLENN says that his amendment would prevent the review. We say it not only permits it, but requires it. And that, under the Dole-Johnston pending amendment, it prevents any such review by saying that, "failure to comply with the subchapter may be considered by the court solely for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion."

Mr. President, another serious deficiency of the substitute is that there is no enforceable petition process on the Glenn substitute, no enforceable petition process—no enforceable look-back process.

Oh, there are words in there about you can adopt it—you have the petition process as provided for under the present law. But what does that amount to? I mean, if all you get is the petition process under the present law, you get nothing. That is what this bill is all about. What happens when you have an oppressive regulation, of which there are many, which did not follow a risk assessment protocol, which did not involve scientists or ignored the scientists, which is exorbitantly expensive, and which you want to take a look at?

Effectively, there is almost nothing you can do about it, because there are no standards by which you can seek that petition and get it reviewed. And, under the Glenn substitute, they simply take the present law and say: Whatever you do under the present law, we are not going to disturb. There is no look-back process that is enforceable. None at all. What it says is that you shall look back at these, all these regulations, within 10 years, or you may request to extend that up to 15 years. But what happens if you do not do it? It says you shall institute a rule-making under section 553. What does that mean? It means you submit a notice of proposed rulemaking, which can



go on forever, and which in turn is not enforceable. That is the problem today. What happens when you can not get an agency to act? You have no recourse at all.

Some of these agency actions are absolutely ridiculous. Two years ago I first proposed a risk assessment. And the reason I did was we found in some of the rules which come before the Energy Committee, which I chaired at that time, that these costs were out of control. We could not figure out why it was, for example, that the cost of analyzing the Yucca Mountain waste site—the costs of characterizing that site—had gone up a hundredfold—a hundredfold—from \$60 million to \$6.3 billion. And we said, Why could this be? How can the cost of just determining, in this case a site for storage of nuclear waste, whether that site is suitable—not the building of the site, just determining whether that site is suitable—how could those costs have gone up from \$60 million to \$6.3 billion?

One of the things we found that they had done was adopted a rule where they had ignored their own scientists, absolutely ignored what the scientists had told them. They did not know what it was going to cost. The rule had no basis in health or safety. It was going to cost \$2.1 billion to comply with and there was nothing anyone could do about it.

The Glenn substitute takes that same attitude, which is to say: Do not worry about it. You are fully protected under the present rules. We are not going to give you a right to go to court. We are not going to give you a right to enforce a petition process. We are not going to give you a right to have an enforceable look-back process. We are going to leave it as under present law, and under present law all you have to do is file your notice of proposed rulemaking and that is all you have to do. You cannot enforce and require the agency to proceed with that rulemaking.

So we will have a lot to discuss about this question of the two bills. There are improvements which need to be made, to be sure, in the Dole-Johnston substitute. One of those, which I hope to propose and have agreed to, and I have some confidence that we will be able to do so, is to take the CERCLA provisions—that is the Superfund, or environmental management procedures—out of this bill. I think they ought to be considered separately. Almost everybody agrees that you need to use risk assessment principles in determining cleanup when you have Superfund sites, but that it would better be done in a separate bill, reported out of the Environment and Public Works Committee in the Senate. And I believe there is a desire on the part of that committee to proceed with that. I think we ought to take those provisions out.

I also hope at the appropriate time we can increase the threshold amount from \$50 to \$100 million. Again, that re-

lates to this question of overload. Because, just as Senator ABRAHAM has so wisely provided a screen to have a check on the amount of overload coming from consideration of small business matters, we need a screen to lift that bar a little higher, from \$50 to \$100 million. There is going to be a lot of work to be done under risk assessment and under cost-benefit analysis. There is a lot of work to be done. We do not want to overload the agencies.

So, Mr. President, I quite agree with Senator GLENN when he says that this is a very, very important bill. I am delighted there is, I believe on the part of all parties—myself and Senator DOLE, Senator GLENN, Senator HATCH, Senator ROTH, those who have been the leaders in this area—a desire to try to find a way to provide for an appropriate risk assessment and appropriate cost-benefit analysis.

I believe, with that desire of all parties, that we can work our will and get a good bill. But make no mistake about it, risk assessment, putting science as opposed to politics or emotion or prejudice or superstition—putting science back into the decision process and having a process that works, and that is required to be followed, a logical process—that tells the American taxpayer we are going to fully protect your health and safety but we are not going to foolishly spend money on things that do not relate to health and safety.

One final point about the Dole-Johnston amendment. My friend from Ohio, Senator GLENN, says that under our amendment you must take the least-cost alternative. Mr. President, that is simply not true. The bill very specifically states that where uncertainties of science or uncertainties in the data require a higher cost alternative, that you may do so. Or, where there are—actually, to give the language here, the language says, “if scientific, technical or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation”—that may be adopted.

So, Mr. President, what we say is you get the least cost alternative that achieves the objectives of the statute unless the science is uncertain, or the data are uncertain, in which event you can get a more costly alternative. Or you may make a more costly alternative if nonquantifiable benefits to health, safety, or the environment make that in the public interest. What does that mean? That means, if it would save more lives to do something else. How can you quantify the value of life? You cannot. But you can go to a higher cost alternative if those nonquantifiable benefits to health, safety, or the environment make another alternative more advisable.

But we say that, if you are going to go to this higher cost alternative be-

cause of these nonquantifiable benefits, or if there are uncertainties of science, then you must identify what those uncertainties are, or you must identify what those nonquantifiable benefits are, and then provide the least cost alternative that takes into consideration the nonquantifiable benefits.

So what we are saying is you may go higher, but you have to say why you went higher, and you cannot do it just because you want to or because it is politically attractive to do so or because some constituent group wants you to do it. You have to identify what it is that is uncertain or what it is that is nonquantifiable.

So, Mr. President, in closing, I will just say that the Abraham amendment, I think, is a good one now that both protects small business on the lookback procedures but provides the appropriate screen. Therefore, I support that amendment.

Mr. GLENN. Mr. President, will the Senator yield for a question?

Mr. JOHNSTON. Yes.

Mr. GLENN. I ask my friend from Louisiana. On this least cost versus cost effective, he talked about uncertainties. What if there are no uncertainties, if the science is good, everybody is agreed on that, and if all matters are quantifiable, lives may not be monetizable in dollar value but they are quantifiable on lives to be saved? I believe the way S. 343 is written now, even if only a \$2 or a \$20 expenditure would save 100 lives, you still have to go with the least cost unless there is some uncertainty about the scientific data.

Is that correct?

Mr. JOHNSTON. Mr. President, that is not correct. I think it is an excellent question. I think the problem with the interpretation of the Senator from Ohio is that he is putting a very tortured and incorrect definition of the term “nonquantifiable benefits to health, safety and the environment.” The value of the human life is by its nature nonquantifiable. I mean, you may say there are 10 lives. You can quantify it in that narrow sense. But that is not the sense in which this is meant. We are talking about values and benefits which are nonquantifiable. The value of breathing clean air is by its very nature nonquantifiable. How can you say when you go out on a beautiful, clear day where the temperature is just right, you feel good, how can you say that is worth \$764 a week? You cannot. It is by its nature nonquantifiable. The health, safety, or the environment are by their nature nonquantifiable and, therefore, we have provided that.

But all we are saying is, if you as administrator are saying that you can save 10 additional lives, that you have to identify that as your reason for going to the more costly alternative, and if that was the reason, then you must take the least cost alternative that takes care of your 10 lives, that saves your 10 lives.

I hope I have made that clear to my friend from Ohio because it is a very key point.

Mr. GLENN. It is a key point. I think it is indicative of the kind of debate we are going to get into here on some of these specifics, the meaning of words and so on. It has to be something that will hold up in court, that is understood by the courts. And that is a real major problem on this whole bill. We spent days and many hours going through some of these word differences. This is one example of it that is going to be debated further as we get into this bill. I know basically we are on the Abraham amendment now.

Parliamentary inquiry. Does that run out at 3 o'clock?

The PRESIDING OFFICER. At 3 o'clock the Senator from Georgia will offer an amendment.

Mr. NUNN. Mr. President, will the Senator from Louisiana yield for 10 seconds?

Mr. JOHNSTON. Yes.

PRIVILEGE OF THE FLOOR

Mr. NUNN. Mr. President, I ask unanimous consent that Bill Montalto, of the House Committee on Small Business, be permitted floor privileges for the purpose of working on my amendment when it comes up.

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

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. First, Mr. President, I want to say how strongly I agree with my distinguished colleague, the senior Senator from Ohio, when he speaks about the need for a bipartisan approach to obtain regulatory reform. I want to say that I hope we can continue to work together as we did in the Governmental Affairs Committee to move forward legislation that accomplishes the goals that I think we all seek on both sides of the political aisle.

Mr. President, I want to congratulate Senator ABRAHAM for his contribution in offering this amendment. I strongly agree with him that there is no area of activity more adversely affected by some of the regulatory reform actions of the past than small business. I think we all agree that small business in many ways is the most important part of our economy as it is the primary area that results in growth in our economy and, most importantly, is the area where the majority of jobs are being created.

So, again, I want to congratulate the junior Senator from Michigan for his contribution in proposing this most important amendment.

This amendment would strengthen the lookback provisions of section 623. It would provide a mechanism for adding rules adversely impacting small businesses to the agency schedules for reviewing rules.

As the amendment was originally drafted, it would have allowed the Chief Counsel for Advocacy at the Small Business Administration to have

sole discretion to add small business rules to the agency review schedules. To respond to concerns about political accountability and the need for standards in selecting rules for review, Senator ABRAHAM has revised his amendment. I believe this revision is a balanced solution to a very important problem.

One of my concerns was that, in providing this discretion solely to the Chief Counsel for Advocacy at the Small Business Administration, the original amendment was a delegation of an extraordinarily broad power. Since the Chief Counsel for Advocacy at the Small Business Administration is, as the Senator from Michigan pointed out, semi-independent in the same sense that inspectors general are independent, it gave tremendous authority for this individual to take whatever action he or she thought was appropriate in requiring rules to be reviewed.

As revised, the Abraham amendment would ensure more political accountability regarding which small business rules are added to agency review schedules. Small business rules could be selected jointly by the Chief Counsel for Advocacy for the Small Business Administration and the Administrator of the Office of Information and Regulatory Affairs. Alternatively, the Administrator of OIRA alone could choose small business rules for review. This would ensure that the Administrator of OIRA, a politically accountable official who also understands the burdens on the agencies, will be involved in the process.

In addition, the revised amendment makes clear that the standards applicable to other rules selected for review apply to the small business rules. For example, the Administrator of OIRA and the chief counsel must consider, in selecting a small business rule for review, whether review of the rule will substantially decrease costs, increase benefits, or provide flexibility.

Mr. President, I believe that Government must be more sensitive to the cumulative regulatory burden on small business. As I said earlier, small business is, indeed, the backbone of America, a crucial provider of jobs, a wellspring of entrepreneurial innovation and a central part of the American dream.

And again I congratulate Senator ABRAHAM for his hard work to help America's millions of small businessowners, their employees, and their families. I urge my colleagues to support this amendment.

Mr. President, I yield back the floor.

Mr. ABRAHAM. Mr. President, I will be very brief. I would like to first thank the Senator from Delaware for his help, and providing this amendment has made it, I think, a stronger amendment, and I appreciate his judgment and guidance on these matters.

Mr. President, I would also say that the Abraham-Dole amendment has been strongly supported by all the Nation's major small business organiza-

tions, including the NFIB, the National Association for the Self-Employed, the Small Business Legislative Exchange Council, and the chamber of commerce, among others. I ask unanimous consent that those letters of support be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SUPPORT THE ABRAHAM-DOLE SMALL BUSINESS PROTECTION AMENDMENT TO S. 343

Government regulations constitute an enormous burden for small businesses. Therefore, periodic review and sunseting of regulations which can become out-of-date, obsolete or excessively time-consuming and costly is a major priority for small business in the regulatory reform debate. Seventy-seven percent of NFIB members support reviewing and sunseting regulations.

The intent of Section 623 of the Regulatory Reform bill is to make certain that regulations are sunsetted as they become obsolete. Regulations listed on review schedules published by the agencies would be measured against the cost-benefit criteria in section 624 of the bill.

Unfortunately, regulations would not be subject to review and eventually sunsetted unless the agency responsible for the regulation chooses to place it on the review schedule? That's almost like putting the wolf in charge of guarding the sheep.

If an agency doesn't put a regulation, which is particularly burdensome to small business, on the list for review the only recourse is to petition to have the regulation added to the review schedule. Petitioning will cost small business owners money—lawyers, consultants, researchers and others will have to be hired to prepare the petition in order to meet the high demands set forth in section 623.

The solution is the Abraham-Dole amendment. This amendment would empower the Chief Counsel for Advocacy at the U.S. Small Business Administration to add regulations to the agencies' review schedules which have significant impact on small businesses. The Advocate would seek input from small business men and women on regulations that need to be reviewed, would evaluate the suggestions from entrepreneurs and direct agencies to take proper action for reviewing those regulations. This amendment gives the only person in the Administration who is exclusively responsible with representing the special needs of small business the ability to ensure that regulations affecting them are not overlooked or ignored by agencies during the regulatory review process.

A vote is expected on the Abraham-Dole amendment after 5 p.m., Monday, July 10. This amendment has the strongest possible support from the National Federation of Independent Business. For more information contact NFIB at (202) 484-6342.

NATIONAL ASSOCIATION FOR THE SELF-EMPLOYED,  
Washington, DC, July 7, 1995.

Hon. SPENCER ABRAHAM,  
U.S. Senate, Dirksen Senate Building, Washington, DC.

DEAR SENATOR ABRAHAM: On behalf of the 320,000 members of the National Association for the Self-Employed, I am writing to support your amendment to S. 343, the Comprehensive Regulatory Reform Act of 1995.

Currently, S. 343 calls for sunseting regulations as they become obsolete. The various regulatory agencies would judge the regulations against the cost-benefit criteria outlined in S. 343, section 624. The agencies would then place the outdated regulations on a review schedule.

The Abraham/Dole amendment would grant authority to the Chief Counsel for Advocacy of the Small Business Administration to add regulations to the review list, thus ensuring that all regulations affecting small business can be reviewed in a timely manner.

We commend your efforts to give the Chief Counsel for Advocacy this important authority. The Abraham/Dole amendment would greatly benefit the small-business community.

Sincerely,

BENNIE L. THAYER,  
*President.*

SMALL BUSINESS LEGISLATIVE COUNCIL,  
*Washington, DC, July 6, 1995.*

Hon. SPENCER ABRAHAM,  
*U.S. Senate,*  
*Washington, DC.*

DEAR SENATOR ABRAHAM: On behalf of the Small Business Legislative Council (SBLC), I would like to offer our support for your amendment to the pending regulatory reform bill to ensure regulations that have an impact on small business are given a thorough review for "cost-effectiveness" after they have been "on the books" for awhile. We commend you for the initiative as it addresses just the kind of disadvantage at which small business always finds itself in the regulatory process.

As we understand it, the pending bill requires agencies to review regulations for cost-effectiveness if the agency puts them on a review schedule, or a private party petitions to have them on the schedule. As you have correctly recognized, the odds are that small businesses will not have the wherewithal to either identify such regulations or petition for their reconsideration. Giving the Chief Counsel for Advocacy for Small Business the right to select the rules for review seems to us to be a sensible, cost-effective alternative to assure small business access to the process.

The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, and agriculture. Our policies are developed through a consensus among our membership. Individual associations may express their own views. For your information, a list of our members is enclosed.

Sincerely,

JOHN S. SATAGAJ,  
*President.*

MEMBERS OF THE SMALL BUSINESS  
LEGISLATIVE COUNCIL

Air Conditioning Contractors of America;  
Alliance for Affordable Health Care;  
Alliance of Independent Store Owners and Professionals;  
American Animal Hospital Association;  
American Association of Equine Practitioners;  
American Association of Nurserymen;  
American Bus Association;  
American Consulting Engineers Council;  
American Council of Independent Laboratories;  
American Gear Manufacturers Association;  
American Machine Tool Distributors Association;  
American Road & Transportation Builders Association;  
American Society of Interior Designers;  
American Society of Travel Agents, Inc.;  
American Subcontractors Association;  
American Textile Machinery Association;

American Trucking Associations, Inc.;  
American Warehouse Association;  
AMT—The Association for Manufacturing Technology;  
Architectural Precast Association;  
Associated Builders & Contractors;  
Associated Equipment Distributors;  
Associated Landscape Contractors of America;  
Association of Small Business Development Centers;  
Automotive Service Association;  
Automotive Recyclers Association;  
Automotive Warehouse Distributors Association;  
Bowling Proprietors Association of America;  
Building Service Contractors Association International;  
Christian Booksellers Association;  
Cincinnati Sign Supplies/Lamb and Co.;  
Council of Fleet Specialists;  
Council of Growing Companies;  
Direct Selling Association;  
Electronics Representatives Association;  
Florists' Transworld Delivery Association;  
Health Industry Representatives Association;  
Helicopter Association International;  
Independent Bankers Association of America;  
Independent Medical Distributors Association;  
International Association of Refrigerated Warehouses;  
International Communications Industries Association;  
International Formalwear Association;  
International Television Association;  
Machinery Dealers National Association;  
Manufacturers Agents National Association;  
Manufacturers Representatives of America, Inc.;  
Mechanical Contractors Association of America, Inc.;  
National Association for the Self-Employed;  
National Association of Catalog Showroom Merchandisers;  
National Association of Home Builders;  
National Association of Investment Companies;  
National Association of Plumbing-Heating-Cooling Contractors;  
National Association of Private Enterprise;  
National Association of Realtors;  
National Association Retail Druggists;  
National Association of RV Parks and Campgrounds;  
National Association of Small Business Investment Companies;  
National Association of the Remodeling Industry;  
National Chimney Sweep Guild;  
National Electrical Contractors Association;  
National Electrical Manufacturers Representatives Association;  
National Food Brokers Association;  
National Independent Flag Dealers Association;  
National Knitwear & Sportswear Association;  
National Lumber & Building Material Dealers Association;  
National Moving and Storage Association;  
National Ornamental & Miscellaneous Metals Association;  
National Paperbox Association;  
National Shoe Retailers Association;  
National Society of Public Accountants;  
National Tire Dealers & Retreaders Association;  
National Tooling and Machining Association;  
National Tour Association;

National Wood Flooring Association;  
NATSO, Inc.;  
Opticians Association of America;  
Organization for the Protection and Advancement of Small Telephone Companies;  
Petroleum Marketers Association of America;  
Power Transmission Representatives Association;  
Printing Industries of America, Inc.;  
Professional Lawn Care Association of America;  
Promotional Products Association International;  
Retail Bakers of America;  
Small Business Council of America, Inc.;  
Small Business Exporters Association;  
SMC/Pennsylvania Small business;  
Society of American Florists;  
Turfgrass Producers International.

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA,  
*Washington, DC, July 10, 1995.*

Hon. SPENCER ABRAHAM,  
*U.S. Senate,*  
*Washington, DC.*

DEAR SENATOR ABRAHAM: On behalf of the 215,000 business members of the U.S. Chamber of Commerce, 96 percent of whom have fewer than 100 employees, I urge your strong and active support for two amendments to be offered to S. 343, the "Comprehensive Regulatory Reform Act of 1995." The Nunn/Coverdell amendment ensures that small businesses benefit from the broader protections of S. 343, and the Abraham/Dole amendment guarantees a voice for small businesses in the regulatory look-back process. To achieve meaningful reform for that segment of our society hit hardest by regulatory burdens—small businesses—these amendments are critical.

The Nunn/Coverdell amendment recognizes that there may be many instances where a regulatory burden on small businesses could be severe even though the \$50 million threshold for a complete regulatory review has not been triggered. By deeming any rule that trips an analysis under the Regulatory Flexibility Act of 1980 a "major rule," small entities will receive the protection they need and deserve from the extreme rigors they often experience from even the best-intentioned regulations.

To address the problems associated with the mountain of existing regulations and their impact on small entities, the Abraham/Dole amendment will boost the power of small businesses to benefit more effectively from the sunset provisions of Section 623 of S. 343. Small companies often need all of their people-power and resources simply to keep afloat. They do not always have the ability to petition federal agencies for review of particularly onerous existing regulations. By vesting within the Small Business Administration responsibility for ensuring that regulations that are particularly problematic for small businesses are not excluded from the regulatory sunset review process, small businesses can be assured that their proportional needs are always considered.

The Chamber hears regularly from its small business members that federal regulations are doing them in. Support for these two amendments will validate that their cries have been heard and acted upon. I strongly urge your support for both the Nunn/Coverdell amendment and the Abraham/Dole amendment.

Sincerely,

R. BRUCE JOSTEN.

NATIONAL ROOFING  
CONTRACTORS ASSOCIATION,  
Washington, DC, July 7, 1995.

Hon. SPENCER ABRAHAM,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR ABRAHAM: The National Roofing Contractors Association (NRCA) strongly supports the "periodic review and sunset of regulations" amendment that you and Majority Leader Dole will offer to Section 623 of the Comprehensive Regulatory Reform Act of 1995, S. 343.

As we understand it, the intent of Section 623 is to ensure that regulations are sunsetted as they become obsolete. However, a regulation would not be subject to review and sunset unless the agency that administers the regulation schedules it for review. This would allow agencies a disproportionate amount of discretionary power to pick and choose regulations for sunset.

The Abraham-Dole amendment would curb the potential for agency bias by enabling the SBA's Chief Counsel for Advocacy to add regulations which have a significant impact on small business to an agency's review schedule. This would be done with input from the small business community.

Earlier this year, NRCA testified in support of the Regulatory Sunset and Review Act of 1995, H.R. 994. A copy of our written statement, which discusses specific regulations, is enclosed. Please note that attached to the statement is the Wall Street Journal article, "So You Want To Get Your Roof Fixed . . ."

NRCA is an association of roofing, roof deck and waterproofing contractors. Founded in 1886, it is one of the oldest associations in the construction industry and has over 3,500 members represented in all 50 states. NRCA contractors are small, privately held companies, and our average member employs 35 people with annual sales of \$3 million.

Sincerely,

CRAIG S. BRIGHTUP,  
Director of Government Relations.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. I rise in strong support of the Dole-Abraham amendment and compliment my colleague from Michigan for his work in preparing this amendment. Obviously, it is going to be very popular. It is going to make a necessary improvement in the bill, which in its current form is a very good bill. But because small business is such an important part of our Nation's economy and because regulations can have a particularly pernicious effect on small businesses, because small businesses are not as well equipped as large companies are to hire the lawyers and the consultants and the other people necessary to deal with the red tape of Federal regulations, I think it is especially important that small businesses not be unduly negatively impacted by regulation, and therefore this amendment will certainly assist in this regard.

Small businesses are really the engine that drives our economy. In fact, from 1988 to 1990, small businesses with fewer than 20 employees created over 4 million new jobs in this country, and that was at the same time, Mr. President, that companies with more than 500 employees lost over 500,000 net jobs during that same period.

As I said, small businesses bear a disproportionate share of the burden of regulation. According to the Small Business Administration, small businesses' share of the burden of regulations is three times that of larger businesses.

Under the current language of section 623, a regulation would not be subject to review unless the agency chooses to place it on the review schedule or an interested party successfully petitions to have it added to the review schedule.

Since small businesses, as I noted, frequently do not have the same kind of resources to hire the lawyers and the consultants necessary to prepare a petition that would meet the demanding standards set forth in section 623, the bill's current language would allow agencies to refuse to review regulations that have a significant impact on small business. And that is where this amendment comes in. It is very important that agencies include in their review schedules any regulation designated for review by the chief counsel for advocacy of the Small Business Administration and OIRA. And that is the important point of this amendment.

In selecting regulations to designate for review, the advocate could seek input from small businesses and would consider criteria such as the extent to which the regulation imposes onerous burdens on small businesses or directly or indirectly causes them not to hire additional employees.

The amendment thus would create a small business counterpart to the petition process which is available to larger firms, with the advocate representing the interests of small businesses, just as the high-priced lawyers and consultants will represent, presumably, the interests of those larger businesses in that petition process.

And, of course, it has been noted why the advocate of the Small Business Administration is ideally suited to this task, because, according to the statute, and I am quoting now, its mission is to "enhance small business competitiveness in the American economy." And the advocate "measure[s] the direct costs and other effects of Government regulation on small businesses and make[s] legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations of small business."

As a matter of fact, the advocate also administers the Regulatory Flexibility Act which has afforded it additional experience in assessing the impact of regulations on small business.

So this amendment, Mr. President, would actually merely build on a foundation laid by the Regulatory Flexibility Act. Under that act, the advocate reviews agency analyses of the likely impact of the proposed and final rules on small businesses. So under the Abraham-Dole amendment the advocate's role in reviewing regulations would be very similar to its role in promulgating regulations.

Let me conclude with a couple points about concerns with this general approach, although, as I said, I think particularly with the amendment to the amendment that Senator ROTH spoke about a moment ago this should be a very popular amendment.

There was some question that it might be appropriate for there to be a limit on the number of regulations that the advocate could designate for review, but we think that under this process clearly agencies that choose to review regulations that hurt small business likely will not have many regulations added to their review schedule by the advocate. Those, of course, that ignore the concerns of small business could expect to have their review schedule expanded by the advocate, but that is part of the incentive which we are building into this amendment.

And second, there was a concern that really we ought to only be considering major rules; otherwise, we could clog the courts and clog the agency with an unnecessary workload.

It is true, of course, that the cost-benefit and risk-assessment requirements generally apply only to the promulgation of major rules, but many of the rules that hurt small business the most would not meet the cost threshold for major rules, and this is particularly true if the major rule threshold were to be raised from its current \$50 million limit.

For example, the NFIB estimates that OSHA's widely criticized fall-safety rule would impose costs of \$40 million annually, \$10 million short of the \$50 million major rule threshold. This rule would require employees, by the way, to wear an expensive harness with a lifeline attached to the roof any time that a worker works 6 feet or higher above the ground.

The negative impact of this rule on small businesses was the subject of an op-ed in the June 13, 1995, issue of USA Today. It is a good illustration of how even with a rule like this, which achieved a great deal of attention and would impose a significant cost on small contractors, it nonetheless would fail to meet that threshold requirement, and that is one of reasons why the kind of review called for in the Abraham-Dole amendment is not only appropriate but is really quite necessary.

So, Mr. President, I am sure that most of our colleagues will be in strong support of the Abraham-Dole amendment, and I certainly urge its adoption and would also indicate my strong support for the underlying bill.

I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I also would like to rise today as a cosponsor of the small business protection amendment to the Regulatory Reform Act.

The PRESIDING OFFICER. The Senator should be advised that under a

previous order, we are to turn to the amendment of the Senator from Georgia at 3 o'clock.

Mr. GRAMS. I ask unanimous consent to address the Senate for about 7 minutes.

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

Mr. GRAMS. Mr. President, again, I want to say I rise as a strong cosponsor of the small business protection amendment to the Regulatory Reform Act, and as a strong proponent of holding Government accountable to the taxpayers, I believe this amendment would make a good bill even better.

I also compliment the Senator from Michigan for all the work he has done in this area.

The negotiations that many of us have undertaken on the Regulatory Reform Act have been long and often painful, especially as we witnessed the watering down of rational provisions. The sunset provision has been one of those casualties.

But the small business protection amendment would strengthen the provision in the bill which cancels or sunsets regulations as they become obsolete.

Excessive Federal regulations and redtape impose an enormous burden on this Nation. Regulations act as hidden taxes which push up prices on goods and services for American households, dampen business investment and, ultimately, kill jobs.

What concerns me most, however, is that a large portion of Federal regulations do not have strong scientific merit to back up their enforcement. I am also concerned that we are currently prohibited from even conducting cost-benefit analyses on some of the extensive regulatory measures in this country. How can this Congress make well-informed decisions if we cannot even consider these types of options?

More than 2 years ago, as a new Member of Congress, the first sunset amendment I offered was to H.R. 820, and that was the National Competitiveness Act. I mention this because my goal was not to hinder our ability to compete in the international marketplace. On the contrary, with overregulation strangling our competitiveness abroad, my goal was simply to provide a framework for ensuring oversight and accountability and to get agencies to start setting standards to justify the funding that they now receive.

After this first sunset amendment, I offered several more to various House appropriations bills, and almost a dozen were passed into law with wide bipartisan support.

Let me remind you, Mr. President, that the concept of sunset regulations is not new. In fact, President Clinton's Chief of Staff, Leon Panetta, offered sunset legislation when he served in the U.S. House of Representatives.

So now we have the opportunity with a single piece of legislation to sunset

regulations that have outlived their usefulness.

As the 1995 Regulatory Reform Act is currently written, regulations would be listed on review schedules published by the agencies. However, a regulation would not be subject to review unless the agency chooses to place it on the review schedule. If the agency does not place a particular regulation on the review schedule, an individual or a small business may petition that agency to do so. But this is not as easy as it sounds. The individual or small business must meet unreasonably high standards—standards so stringent that the average person would have to hire expensive lawyers and consultants just to figure out how to meet that criteria.

What the small business protection amendment would do is to require agencies to include on their review schedules any regulation designated for review by the chief counsel for advocacy of the Small Business Administration in concurrence with the OMB's Office of Information and Regulatory Affairs. This represents an important step toward alleviating the burden of outdated regulations and also ensuring the future health of our economy.

Big businesses already have a loud voice in the regulatory process because they have access to resources often out of the reach of small businesses. But small businesses create millions of new jobs every year, and this amendment would allow their voices to be heard as well.

Mr. President, I am sure that there is not a single Member of this body who has not been contacted by a constituent from their home State because of some absurd and outmoded regulation. And yet some of my colleagues will argue that strengthening the sunset measure in the Regulatory Reform Act would place an undue burden on the regulatory agencies, who would have to spend a lot more time reviewing and a lot less time regulating. I argue that is what regulators ought to do—that is, review and then retire regulations that are no longer needed and then to fix those that are not working.

The fact is that strengthening the sunset provision of the Regulatory Reform Act will have absolutely no impact on regulations which serve a useful and realistic purpose. It will not make our air dirty or our water unclean. It will not pollute our environment or jeopardize our health or our safety.

What this amendment will do is to enhance the accountability and oversight that regulators have to the taxpayers of this country—the people who must foot the bill for every rule and requirement imposed by the myriad of regulatory agencies.

Establishing a fair procedure by which regulations can be reviewed periodically to ensure and to maintain their effectiveness is just plain common sense. That is why I am proud to be a cosponsor of the Abraham-Dole small business protection amendment,

and that is also why I urge my colleagues to give it their support today as well.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I ask unanimous consent to speak briefly with respect to the Abraham-Dole amendment.

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

Mr. ABRAHAM. Mr. President, I would like to conclude my remarks. There does not appear to be anyone else at this point who wants to speak to the amendment.

I want to thank my colleague, the Senator from Minnesota, for his support on these matters pertaining to sunset regulations, as he already indicated, before this Congress took office, and I am sure he will continue his support in the process of putting together this amendment. His broad support for sunset regulations has been an important ingredient in our efforts to bring this particular amendment to the floor. I want to thank him for his remarks today.

As I said earlier, Mr. President, when I offered the amendment, I think that the bill we have before us has a system in place which will provide big businesses with a vehicle, a mechanism by which they can bring regulations up for review, because they will be in a position financially to afford the kind of technical cost-benefit studies and other types of inquiry necessary to present a petition that can be successful as it is considered.

Unfortunately, small businesses do not always enjoy that opportunity. It is also the case that regulations which cost \$30 or \$40 million that do not quite make it to the level which we consider major rules in this legislation, at the \$30 or \$40 million pricetag are very costly rules, very major rules from the standpoint of a small mom-and-pop business that is out there in America trying to survive.

So I think this amendment, as I said at the outset, strikes the proper balance between the need to place some constraints on how many regulations come up for review, on the one hand, and the legitimate needs of small businesses on the other to have their day in court.

My parents owned a small business for quite a long time. I know what they encountered as small business people, truly a mom-and-pop operation, in attempting to just sort out the demands that we in Washington placed on their business. Others come to my office all the time with similar expressions of concern. I believe this amendment gives the small business community a mechanism by which regulations that are costly to small businesses can be brought up for review, even if they are not initially placed on the list of rules to be reviewed by agencies, and be brought up for review without necessitating on the part of small businesses

who often will not be able to afford the expensive process that the petition system provides.

I think it will be an effective addition to this bill and I hope an effective way by which small businesses across this country continue to have their voice heard as they deal with Federal regulation in the future.

Mr. President, I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I know we have run over our time for this particular amendment, but I believe there is a small meeting still going on. I ask my distinguished colleague from Michigan if he had considered having the reporting authority for small business concerns be the Administrator of the Small Business Administration?

It is a little unusual to go down somewhere in the organizational chart of any agency or department and give a particular person the authority, no matter what their title or what their normal responsibilities are, to bypass all other rules, regulations, and administrative procedures for that particular department, to bypass the administrator of their department, even though the administrator might not agree with what he is going to propose, and bypass within the depths of an agency the administrator and go directly to OIRA.

Would it not make more sense if we really did this through the administrator as the first step on this process? Otherwise, you could come up with a situation where you have an administrator who really does not agree, and maybe for some very good reasons, as to the actions that will be taken by the counsel for advocacy. I ask, was that considered? If that was turned down, what were the reasons for not going that route of having the administrator represent his agency?

Mr. ABRAHAM. The concern the Senator from Ohio expressed was one that we took into account in the process of putting together the amendment originally. What we tried to balance was the responsibilities of the different officials in the Small Business Administration.

The reason that we felt this particular office was the appropriate place to vest this authority was because of two things. No. 1, the responsibilities of this office are expressly those of advocating the concerns of small businesses. With all due respect to the head of any agency, as far as their set of responsibilities goes, whether it is the head of the SBA or any of the other agencies of our Government, they have other considerations they must take into account, whether it is political considerations or considerations that have to do with budget needs or managerial duties. But this office was set up, as we interpreted it, in an exclusive sense to try to really be the advocate of the small business community of America. It is the one place in Govern-

ment where that power has been authorized by Congress.

We felt, as a consequence, that there would be fewer countervailing types of considerations brought before the advocate than at the other offices of SBA. We thought, as a consequence, the advocate could perform their jobs freed of, and somewhat liberated of, some of the other countervailing responsibilities that an administrator or other agents of the SBA might have. That is how we reached this judgment.

I think it certainly would be my expectation that the advocate would consult with and discuss with the agency and with the SBA Administrator decisions regarding regulations put on the rule. We thought this office was the place where the least argument could be made, where political pressures, special interest group pressures, and so on, were not justifying actions, and that in fact this had a certain amount of independence and a specific amount of authority, as well as what I said earlier, some of the tools it will take to make these decisions, because it is part of the current responsibility of the office to examine regulations for reasons of promulgation. So it makes sense that this might be the place.

Mr. GLENN. I say to my colleague that I would certainly hope that in every case—as he said, the normal procedure would be that there would be consultation with the administrator.

Would it be acceptable to the Senator from Michigan to make it consultation and approval of the administrator before this matter was brought to OIRA?

Mr. ABRAHAM. At this point, I would not be in a position to make that change, I say to the Senator from Ohio. Because my mind is not fully closed on this, there are a number of people who participated in putting together this amendment initially, and I need to consult as to their feelings on this departure. I know a number of them earlier expressed the view that once we added the OIRA Administrator to the process in determining which regulations would be placed on the various agencies' lists, that we had satisfied any residual concerns which might exist as to having a person with a direct appointment and responsibility in the loop. I would need to go back and determine, I think, from some of the other people who are part of this, their receptive feeling to any change of that type.

Mr. GLENN. I would think we would get much more broad support if it had that arrangement in it. If this is such an unusual procedure, to say we go down within an agency and say we give that person responsibility for taking the basic function of that agency and making a review necessary by OIRA, or whatever else it might be—in this case OIRA—without the approval of the agency head—now, there are only two other places in Government that I am aware of where we do that. One is with the inspectors general, and we provide them considerable leeway. In fact, we

require the inspectors general not only to report to their agency heads, we require them to give us those same individual reports because we feel if the IG's are so important in the work they do, that we give them specific authority to report outside the chain of command to the appropriate committees of Congress, in addition to reporting to their agency head—not to bypass completely, but in addition to reporting to the agency head.

The other place we do that is in the Chief Financial Officers Act, where the chief financial officers are required, by law, to report not only to their agency head but also to the appropriate committees of Congress.

Now, those are the only cases I know of where we authorize people, or require people, that if they want to take action, they are authorized to go outside the purview and outside the views of, and maybe the wishes of, their agency head, and do something that the agency head might not agree with.

So I think there is that problem. I would feel more comfortable, I guess, if we had the agency head required to be consulted. And if the report was still to go on to OIRA and the agency head objected, that reasons why the decision was made to go to OIRA over the objection of that report to OIRA, I do not know whether that was considered or not. But it seems that that would be a more normal procedure for what we want to do.

Mr. ABRAHAM. I do not want to express the suggestion that we have spent a huge amount of time considering the specific role of the head of SBA. But let me go back to the point as to why the chief counsel for advocacy was initially identified. That is, because in the reg flex language that is currently on the statutes, it states specifically in 602(b) that "each regulatory flexibility agenda shall be transmitted to the chief counsel for advocacy of the Small Business Administration for comment, if any."

In other words, because that was the way the statutes currently kind of vested authority for reg flex, we thought it was a sensible way to deal with it and was built more or less on that language. I think that was more the guiding notion that we used than any other particular consideration.

Mr. GLENN. Well, I say to my friend from Michigan that this is an enormously important position in that—I believe I state this correctly—all the rules and regulations being promulgated throughout Government are required to be submitted to SBA and be reviewed by SBA under reg flex, the Regulatory Flexibility Act. So everything that is going to occur in Government in the regulatory field is submitted to SBA specifically now, whether it is intended to cover big corporations, small or private businesses, individuals, or whatever. They, in effect, get a crack at them to make their comment.



This office of advocacy is the organization within SBA that looks at those. And so the recommendations that would be made to OIRA are potentially enormous in scope. All the rules and regulations promulgated by Government would have to go through that chain and could be kicked up to OIRA for whatever consideration they wanted to make. To take that out from under them—at least the oversight or the coordinated action of the administrator of SBA—is a mighty big step to make, and a mighty big important responsibility to give to that one person, whoever he or she might be in that office of advocacy.

So I think it would be better if it went in the other direction. We are still checking with some of the people interested in this on our side. We are way over on our time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. ABRAHAM. I ask unanimous consent that Senator NICKLES be added as an original cosponsor of the Abraham amendment No. 1490.

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

Mr. ABRAHAM. Mr. President, I ask unanimous consent that Senator HATCH, the Senator from Utah, be added as an original cosponsor.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I strongly support the Abraham-Dole amendment, which would require agencies to include in their schedule to review existing rules, pursuant to section 623 of S. 343, any existing regulation that substantially affects small business as selected by the chief counsel for advocacy of the Small Business Administration.

Under section 623 as currently drafted, a regulation would not be subject to review unless an agency chooses to place an existing rule on the review schedule or an interested party is successful in having a petition to place a rule on the schedule for review.

Unfortunately, the petition process is costly and thus particularly burdensome to small businesses. Most small businesses do not have the resources to hire the attorneys, consultants, econo-

mists, or environmental experts, that may be necessary to prepare a petition that meets the exacting standards in section 624 necessary for granting a petition to review rules that are burdensome to small business.

This amendment will allow the chief counsel for advocacy of the SBA with the concurrence of head of OIRA to select rules to be put on the agency review schedule as a substitute for the petition process available to larger businesses with greater capital assets. It assures that the one official in the Administration exclusively responsible with representing the needs of small business will have authority to ensure that regulations burdensome to small business will be reviewed. In essence, the advocate will act as an ombudsman for small business.

The advocate, however, does not have unrestrained discretion to place existing rules on section 623's mandated review schedule. The advocate must seek the input from small business as to what burdensome rules to review and the amendment establishes criteria, such as whether the existing rule causes small business not to hire additional employees, to guide the advocate in selecting rules for review. I do not believe that the review schedule system will be overwhelmed by the addition of rules that burden small business. Under the Abraham-Dole amendment the advocate will cooperate with the responsible agency and OMB to assure the efficacy of the agency review process.

I urge my colleagues to support this amendment.

I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1491 TO AMENDMENT NO. 1487  
(Purpose: To provide small businesses improved regulatory relief by requiring that a proposed regulation determined to be subject to chapter 6 of title 5, United States Code (commonly referred to as the Regulatory Flexibility Act) will be deemed to be a major rule for the purposes of being subject to agency cost-benefit analysis and periodic review; requiring factual support of an agency determination that a proposed regulation is not subject to such chapter; providing for prompt judicial review of an agency certification regarding the nonapplicability of such chapter; and clarifying other provisions of the bill relating to such chapter)

Mr. NUNN. Mr. President, I apologize to my colleagues for my voice. Obviously, I am losing it, but I will do the best I can this afternoon.

Mr. President, I send an amendment to the desk for immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN], for himself and Mr. COVERDELL, proposes an amendment numbered 1491 to amendment No. 1487.

Mr. NUNN. Mr. President, I ask unanimous consent further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 14, line 10, strike out "or".

On page 14, line 16, add "or" after the semicolon.

On page 14, insert between lines 16 and 17 the following new subparagraph:

"(C) any rule or set of closely related rules, not determined to be a major rule pursuant to subparagraph (A) or (B), that the agency proposing the rule determines will have a significant economic impact on a substantial number of small businesses, pursuant to subchapter I;

On page 39, line 22, strike out "and".

On page 39, line 24, strike out the period and insert in lieu thereof a semicolon and "and".

On page 39, add after line 24 the following new subparagraph:

"(C) an agency certification that a rule will not have a significant economic impact on a substantial number of small entities pursuant to section 605(b).

On page 40, line 5, insert "and section 611" after "subsection".

On page 68, strike out all beginning with line 9 through line 11 and insert in lieu thereof the following:

"(A) include in the final regulatory flexibility analysis a determination, with the accompanying factual findings supporting such determination, of why the criteria in paragraph (2) were not satisfied; and

On page 72, insert between lines 14 and 15 the following new subsection:

(e) AMENDMENTS TO THE REGULATORY FLEXIBILITY ACT.—

(1) IMPROVING AGENCY CERTIFICATIONS REGARDING NONAPPLICABILITY OF THE REGULATORY FLEXIBILITY ACT.—Section 605(b), of title 5, United States Code, is amended to read as follows:

"(b) Sections 603 and 604 of this title shall not apply to any rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification, along with a succinct statement providing the factual reasons for such certification, in the Federal Register along with the general notice of proposed rulemaking for the rule. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration."

(2) TECHNICAL AND CLARIFYING AMENDMENTS.—Section 612 of title 5, United States Code, is amended—

(A) in subsection (a) by striking "the Committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" and inserting "the Committees on the Judiciary and Small Business of the Senate and House of Representatives"; and

(B) in subsection (b) by striking "his views with respect to the effect of the rule on small entities" and inserting "views on the rule and its effects on small entities".

On page 72, line 15, strike out "(e)" and insert in lieu thereof "(f)".

Mr. NUNN. Mr. President, this amendment assures that the Nation's

small business community will derive full benefit from the fundamental changes to the regulatory process proposed in S. 343.

The amendment accomplishes this goal by establishing a direct statutory link between the existing requirement to the Regulatory Flexibility Act of 1980 [RFA] and the requirements of S. 343.

Under the Regulatory Flexibility Act, whenever a Federal agency proposes a rule that is expected to have a significant impact on a substantial number of small entities, the agency is required to conduct a regulatory flexibility analysis, with opportunities for public participation, to minimize the expected burden.

The Nunn-Coverdell amendment would, No. 1, require that a proposed rule, determined to be subject to the RFA, be considered to be a major rule for the purpose of cost-benefit analysis and periodic review. But we exclude the comprehensive risk assessment required under S. 343.

No. 2, the amendment would require agencies to provide factual support for any determination that a proposed regulation would not have a significant impact on a substantial number of small businesses and is exempt from the Regulatory Flexibility Act.

No. 3, the amendment provides for prompt judicial review of an agency certification that the Regulatory Flexibility Act does not apply to a proposed rule.

This is a bipartisan amendment.

This amendment enjoys strong support within the small business community.

I ask unanimous consent that copies of letters from some of those who are supporting this amendment in the small business community be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS,  
Washington, DC.

SUPPORT THE BIPARTISAN NUNN-COVERDELLE  
AMENDMENT TO S. 343

S. 343, the Dole/Johnston substitute, currently defines "major rules" as regulations that have more than a \$50 million dollar impact. Those major rules are then subject to cost benefit analysis, risk assessment and periodic review.

Unfortunately, some regulations that have a significant impact on small businesses and other small entities may not meet the \$50 million threshold. A regulatory cost that may be almost insignificant to a Fortune 500 company could have a devastating effect on a particular segment of the small business community. Or, the agency's estimate that the impact is less than \$50 million may be significantly undervalued.

A good example of an expensive regulation that falls under the threshold is OSHA's so-called "fall protection" rule requiring roofers to wear harnesses with lifelines that are tied to the roof any time they are at least six feet above the ground. Not only will the total cost to small roofing companies be much more than \$50 million, many believe the rule may create a greater danger for

workers who will have to worry about tripping over each other's safety riggings.

The Nunn-Coverdell amendment, which is scheduled to be voted on after 5 p.m. on Monday, July 10, solves this problem by requiring all regulations that are currently subject to the Regulatory Flexibility Act (Reg-Flex) of 1980 to be subject to cost-benefit analysis and periodic review—but not risk assessment.

Which regulations currently fall under Reg-Flex? Reg-Flex requires the regulatory burden be minimized on those regulations which have a "significant impact on a substantial number of small entities." Last year, 127 regulations contained a Reg-Flex analysis. Small entities, which often bear a disproportionate share of the regulatory burden, include small businesses, small local governments (like towns and townships) and small non-profit organizations.

The Nunn-Coverdell amendment also allows prompt judicial review of an agency's non-compliance with the Reg-Flex Act. If an agency incorrectly states that a regulation does not have a significant impact on small business—and it does—a judge will have the authority to put the regulation on hold until the Federal agency re-evaluates the regulation and reduces the burden on small business as much as possible.

Agencies would also be required to provide factual support to back up their decisions to ignore Reg-Flex.

The bipartisan Nunn-Coverdell amendment is a major priority for small business and has NFIB's strong support. Regulatory flexibility was recently voted the third most important issue at the White House Conference on Small Business. Please call NFIB at (202) 484-6342 for additional information.

UNITED STATES OF AMERICA  
CHAMBER OF COMMERCE,  
Washington, DC, July 10, 1995.

DEAR SENATOR: On behalf of the 215,000 business members of the U.S. Chamber of Commerce, 96 percent of whom have fewer than 100 employees, I urge your strong and active support for two amendments to be offered to S. 343, the "Comprehensive Regulatory Reform Act of 1995." The Nunn/Coverdell amendment ensures that small businesses benefit from the broader protections of S. 343, and the Abraham/Dole amendment guarantees a voice for small businesses in the regulatory look-back process. To achieve meaningful reform for that segment of our society hit hardest by regulatory burdens—small businesses—these amendments are critical.

The Nunn/Coverdell amendment recognizes that there may be many instances where a regulatory burden on small businesses could be severe even though the \$50 million threshold for a complete regulatory review has not been triggered. By deeming any rule that trips an analysis under the Regulatory Flexibility Act of 1980 a "major rule," small entities will receive the protection they need and deserve from the extreme rigors they often experience from even the best-intentioned regulations.

To address the problems associated with the mountain of existing regulations and their impact on small entities, the Abraham/Dole amendment will boost the power of small businesses to benefit more effectively from the sunset provisions of Section 623 of S. 343. Small companies often need all of their people-power and resources simply to keep afloat. They do not always have the ability to petition federal agencies for review of particularly onerous existing regulations. By vesting within the Small Business Administration responsibility for ensuring that regulations that are particularly problematic for small businesses are not excluded

from the regulatory sunset review process, small businesses can be assured that their proportional needs are always considered.

The Chamber hears regularly from its small business members that federal regulations are doing them in. Support for these two amendments will validate that their cries have been heard and acted upon. I strongly urge your support for both the Nunn/Coverdell amendment and the Abraham/Dole amendment.

Sincerely,

R. BRUCE JOSTEN.

SMALL BUSINESS LEGISLATIVE COUNCIL,  
Washington, DC, July 10, 1995.

Hon. SAM NUNN,  
Hon. PAUL COVERDELL,  
U.S. Senate,  
Washington, DC.

DEAR SENATORS: On behalf of the Small Business Legislative Council (SBLC), I wish to offer our support for your amendment to ensure that proposed regulations, with the potential to have a significant impact on small businesses, are subject to a comprehensive cost benefit analysis. It makes sense to us to have as much data available as possible to assess the full impact proposed regulations will have on small business.

As you know, the delegates to the recent White House Conference on Small Business included several references to the regulatory process among their top recommendations. Clearly, the cumulative burdens of the current regulatory regime weighed heavily on their minds. We need to make certain that we do not add to that regulatory burden unnecessarily.

Along with the language in the Dole/Johnston version of S. 343 which allows for judicial review of agencies' compliance with the Regulatory Flexibility Act, your amendment will ensure we have a meaningful way to truly assess the impact of regulations upon small business and to ensure we do something to mitigate the impact.

The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, and agriculture. Our policies are developed through a consensus among our membership. Individual associations may express their own views. For your information, a list of our members is enclosed.

Sincerely,

JOHN S. SATAGAJ.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE  
COUNCIL

Air Conditioning Contractors of America.  
Alliance for Affordable Health Care.  
Alliance of Independent Store Owners and Professionals.  
American Animal Hospital Association.  
American Association of Equine Practitioners.  
American Association of Nurserymen.  
American Bus Association.  
American Consulting Engineers Council.  
American Council of Independent Laboratories.  
American Gear Manufacturers Association.  
American Machine Tool Distributors Association.  
American Road & Transportation Builders Association.  
American Society of Interior Designers.  
American Society of Travel Agents, Inc.  
American Subcontractors Association.

American Textile Machinery Association.  
 American Trucking Associations, Inc.  
 American Warehouse Association.  
 AMT-The Association of Manufacturing Technology.  
 Architectural Precast Association.  
 Associated Builders & Contractors.  
 Associated Equipment Distributors.  
 Associated Landscape Contractors of America.  
 Association of Small Business Development Centers.  
 Automotive Service Association.  
 Automotive Recyclers Association.  
 Automotive Warehouse Distributors Association.  
 Bowling Proprietors Association of America.  
 Building Service Contractors Association International.  
 Christian Booksellers Association.  
 Cincinnati Sign Supplies/Lamb and Co.  
 Council of Fleet Specialists.  
 Council of Growing Companies.  
 Direct Selling Association.  
 Electronics Representatives Association.  
 Florists' Transworld Delivery Association.  
 Health Industry Representatives Association.  
 Helicopter Association International.  
 Independent Bankers Association of America.  
 Independent Medical Distributors Association.  
 International Association of Refrigerated Warehouses.  
 International Communications Industries Association.  
 International Formalwear Association.  
 International Television Association.  
 Machinery Dealers National Association.  
 Manufacturers Agents National Association.  
 Manufacturers Representatives of America, Inc.  
 Mechanical Contractors Association of America, Inc.  
 National Association for the Self-Employed.  
 National Association of Catalog Showroom Merchandisers.  
 National Association of Home Builders.  
 National Association of Investment Companies.  
 National Association of Plumbing-Heating-Cooling Contractors.  
 National Association of Private Enterprise.  
 National Association of Realtors.  
 National Association of Retail Druggists.  
 National Association of RV Parks and Campgrounds.  
 National Association of Small Business Investment Companies.  
 National Association of the Remodeling Industry.  
 National Chimney Sweep Guide.  
 National Electrical Contractors Association.  
 National Electrical Manufacturers Representatives Association.  
 National Food Brokers Association.  
 National Independent Flag Dealers Association.  
 National Knitwear & Sportswear Association.  
 National Lumber & Building Material Dealers Association.  
 National Moving and Storage Association.  
 National Ornamental & Miscellaneous Metals Association.  
 National Paperbox Association.  
 National Shoe Retailers Association.  
 National Society of Public Accountants.  
 National Tire Dealers & Retreaders Association.  
 National Tooling and Machining Association.

National Tour Association.  
 National Wood Flooring Association.  
 NATSO, Inc.  
 Opticians Association of America.  
 Organization for the Protection and Advancement of Small Telephone Companies.  
 Petroleum Marketers Association of America.  
 Power Transmission Representatives Association.  
 Printing Industries of America, Inc.  
 Professional Lawn Care Association of America.  
 Promotional Products Association International.  
 Retail Bakers of America.  
 Small Business Council of America, Inc.  
 Small Business Exporters Association.  
 SMC/Pennsylvania Small Business.  
 Society of American Florists.  
 Turfgrass Producers International.

NATIONAL ROOFING  
 CONTRACTORS ASSOCIATION,  
*Washington, DC, July 7, 1995.*

Hon. SAM NUNN,  
*U.S. Senate, Washington, DC.*

DEAR SENATOR NUNN: The National Roofing Contractors Association (NRCA) supports the amendment that you will offer with Senator Coverdell to remove the \$50 million "major rules" floor for small business in the Comprehensive Regulatory Reform Act of 1995 (S. 343), in order to apply cost-benefit and periodic review to all regulations impacting small business.

Federal agencies are poor at accurately estimating the cost of their regulations. OSHA estimated \$40 million annually for its new Fall Protection Standard (Subpart M) and said that it would not have a significant impact on small business. NRCA estimates its impact to be at least \$250 million annually, and it has already wreaked havoc on the industry.

Another example is OSHA's 1994 standard for asbestos containing roofing material (ACRM). OSHA estimated the annual costs to the roofing industry to be approximately \$1 million annually, while NRCA estimated approximately \$1.3 billion! OSHA's cost figures only took into consideration Built-up Roofing (BUR) removal, and it had failed to cover the vast majority of roof removal and repair jobs. NRCA estimated that removals of asbestos-containing BUR constituted less than 12 percent of all roof removal jobs.

Your amendment would end the tendency for agencies to underestimate costs by making all regulations now subject to the Regulatory Flexibility Act of 1980 (Reg Flex), subject to S. 343's cost-benefit analysis and periodic review requirements. And we appreciate your language giving judges the authority to immediately stay regulations if necessary.

NRCA is an association of roofing, roof deck, and waterproofing contractors. Founded in 1886, it is one of the oldest associations in the construction industry and has over 3,500 members represented in all 50 states. NRCA contractors are small, privately held companies, and our average member employs 35 people with annual sales of \$3 million.

Sincerely,

CRAIG S. BRIGHTUP,  
*Director of Government Relations.*

NATIONAL ASSOCIATION OF  
 TOWNS AND TOWNSHIPS,  
*Washington, DC, July 7, 1995.*

Hon. SAM NUNN,  
*U.S. Senate, Washington, DC.*

DEAR SENATOR NUNN: The National Association of Towns and Townships (NATA/T) strongly supports the Nunn-Coverdell amendment to S. 343 that would require all regulations currently subject to the Regulatory Flexibility Act of 1980 (RFA) to be

subject to cost-benefit analysis and periodic review.

NATA/T represents approximately 13,000 of the nation's 39,000 general purpose units of local governments. Most of our member local governments are small and rural and have fewer than 10,000 residents. Many of these small communities have very limited resources available to provide those services required of them such as fire and police protection, road maintenance, relief for the poor and economic development. Consequently, many regulations that have less than a \$50 million threshold have a very significant impact on small towns and townships.

A good example is the commercial drivers license (CDL) requirement for public sector employees required by the Motor Vehicle Safety Act of 1986. While that law may not have seemed to have a significant impact, it had a significant impact on small townships that had to pay for the training and testing of drivers to obtain a CDL, especially those townships which use part-time drivers for snow removal or for emergency response to floods or tornados. Recently, drug and alcohol testing requirements were mandated for those who hold CDL's, adding to the cumulative impact.

Your amendment will also allow prompt judicial review of an agency's non-compliance with the RFA if an agency states incorrectly that a regulation will not have a significant impact on small entities. This has been a continual problem. Agencies have often claimed no significant economic impact on small entities in their regulatory flexibility analysis while giving no justification for their reasoning, though we have believed quite the opposite.

Mr. NUNN, Mr. President, such a display of strong support for the Regulatory Flexibility Act has a very long history within the small business community, going back to the late 1970's. The Regulatory Flexibility Act of 1980 has been looked upon as the small business community's first line of defense with regard to the burdens of Federal regulations. Recognizing that the effective functioning of government certainly requires regulations, the Regulatory Flexibility Act was designed to compel agencies to analyze their proposed regulations, with opportunities for public participation, so that the final regulation imposes the least burden on small businesses.

Mr. President, given my focus today on the needs of the small business community, my remarks may suggest to my colleagues that the Regulatory Flexibility Act offers protections only to small business. In fact, the act's protections are available to a fairly broad range of small entities in addition to small businesses, including small units of local government, educational institutions, and other not-for-profit organizations. My friend from Ohio, Mr. GLENN, was especially vigilant regarding the application of the Regulatory Flexibility Act to small units of local government during his tenure as chairman of the Committee on Governmental Affairs.

Enactment of the legislation that became the Regulatory Flexibility Act was a key recommendation of the 1980

White House Conference on Small Business. Last month, small business persons from across the Nation came together for the 1995 White House Conference on Small Business.

It comes as no surprise that issues relating to regulatory relief were key topics of discussion among the delegates at the 1995 conference. They made clear their strong concerns regarding the current Federal regulatory process, from the way agencies design new regulations to how the agencies implement the regulations under their charge.

Many of the key features of S.343, and other legislative proposals to provide greater discipline to the regulatory process, were endorsed in the recommendations voted upon by the White House Conference delegates. In particular, the White House Conference's recommendations on regulatory reform called for assessing more proposed regulations against rigorous cost-benefit standards. Similarly, the broader use of risk assessment, based on sound scientific principles and compared to real world risks, were included within a number of recommendations voted the top 60 recommendations from the 1995 conference. Other conference recommendations called for the periodic review of existing regulations to establish their continuing need and to determine if they could be modified, based upon experience, to make them less burdensome.

Finally, Mr. President, the delegates to the 1995 White House Conference on Small Business adopted recommendations to strengthen the Regulatory Flexibility Act in many of the ways being done by the provisions of S. 343, and by the Nunn-Coverdell amendment. Action today to strengthen the Regulatory Flexibility Act may well be the most prompt congressional response to a recommendation from any White House Conference on Small Business.

Mr. President, in addition to establishing a statutory link between the Regulatory Flexibility Act and the requirements for cost-benefit analysis under S. 343, my amendment takes other steps to enhance the effectiveness of the regulatory flexibility process. First, an agency certification that a proposed regulation would not have a significant impact on a substantial number of small businesses would have to be backed up by facts. This is not the case today. Small business advocates complain about their being deprived of the act's protections by such unwarranted certifications of non-applicability.

Along the same lines, the Nunn-Coverdell amendment makes possible a judicial challenge of such unwarranted certifications early in the regulatory process. Abuse is prevented by requiring that the judicial challenge be brought within 60 days of the certification and in the Court of Appeals for the District of Columbia Circuit. Supporters of our amendment within the small business community believe that

this provision and the enhanced judicial enforcement of the act already contained in the bill will make the agencies take more seriously their responsibilities under the Regulatory Flexibility Act.

I know that during the debate on this provision concern will be expressed that the amendment will substantially overburden the regulatory staff within the various departments and agencies. They may cite figures drawn from the semiannual regulatory agenda which suggest that 500 or even 1,000 additional rules may be subject to cost-benefit analysis under the Nunn-Coverdell amendment. I believe these figures are inflated and inaccurate for the reasons that will, no doubt, be subsequently discussed.

In contrast, I am confident that the actual number is substantially smaller, certainly less than 200. By the time you count those proposed regulations within a \$50 million or \$100 million threshold, a number will be double counted: The number of proposed regulations covered is probably somewhere around 150. Even that number may be inflated by proposed rules that are exempt under S. 343's definition of rule.

My estimate, Mr. President—and I recognize that it is an estimate that is based upon 14 years of experience under the Regulatory Flexibility Act by the career staff of the Office of the Chief Counsel for Advocacy at the Small Business Administration, the office charged with monitoring agency compliance with the Regulatory Flexibility Act. It takes into consideration regulations for which regulatory flexibility analyses were done. It also takes into consideration those situations in which the Office of Advocacy believed the Act applied and the agency certified to the contrary.

While I agree that we cannot give the agencies an impossible set of tasks in reviewing proposed and existing regulations, we must not lose sight of the regulated public. I believe that they have a right to demand that proposed regulations be thoroughly analyzed, and that they meet rigorous standards of cost-benefit analysis, risk assessment when appropriate, and regulatory flexibility for small entities. Similarly, the regulated public has a right to expect that existing regulations be reviewed for their continuing utility, and when possible, modified to reduce their burden.

Mr. President, I urge my colleagues to support the amendment.

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

Mr. NUNN. Yes.

Mr. JOHNSTON. Mr. President, I will not subject the Senator to a long series of questions because I sympathize with the condition of his voice.

Mr. President, we have had conversations, both Senators from Georgia and myself and my staff, Senator ROTH, and others, concerning the problem of agency overload. It seems to me that all sides in this endeavor want to ar-

rive at the same place, and that is the maximum protection for small business but a workable system for the agencies so that the agencies will not be overloaded.

We had proposed to the Senator from Georgia an alternative, which is, in effect, to have the same kind of fix that Senator ABRAHAM had in his amendment, which is to give OIRA, in effect, a veto over these procedures.

Mr. President, I ask unanimous consent that the amendment that the Senators from Georgia and I have discussed be printed in the RECORD at this point.

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

On page 14, line 10, strike out "or".

On page 14, line 16, add "or" after the semicolon.

On page 14, insert between lines 16 and 17 the following new subparagraph:

"(C) any rule or set of closely related rules, not determined or designated to be a major rule pursuant to subparagraph (A) or (B), that is designated as a major rule pursuant to section 622(b)(2) (and a designation or failure to designate under this subparagraph shall not be subject to judicial review)."

On page 20, insert between lines 12 and 13 the following new paragraph:

"(2) If the agency has determined that the rule is not a major rule within the meaning of section 621(5)(A) and has not designated the rule as a major rule within the meaning of section 621(5)(B), the Chief Counsel for Advocacy at the Small Business Administration may publish in the Federal Register a determination, and accompanying factual findings supporting such determination, drawn from the initial regulatory flexibility analysis, that the proposed rule should be designated as a major rule because of its substantial economic impact on a significant number of small entities. Such determination shall be published not later than 15 days after the publication of the notice of proposed rulemaking. The Director or designee of the President shall designate such rule as a major rule under paragraph (1) unless the Director or designee of the President publishes in the Federal Register, prior to the deadline in paragraph (1), a finding regarding the recommendation of the Chief Counsel for Advocacy that contains a succinct statement of the basis for not making such a designation."

On page 20, line 13, strike out "(2)" and insert in lieu thereof "(3)".

On page 39, line 22, strike out "and".

On page 39, line 24, strike out the period and insert in lieu thereof a semicolon and "and".

On page 39, add after line 24 the following new subparagraph:

"(C) an agency certification that a rule will not have a significant economic impact on a substantial number of small entities pursuant to section 605(b)".

On page 69, line 5, insert after "entity", ", upon publication of the final rule."

On page 69, line 7, strike "A court" and insert in lieu thereof "Notwithstanding section 625(e)(3), a court".

Mr. JOHNSTON. Mr. President, I will not propose that amendment today, but I simply ask the Senator, in fact both Senators from Georgia, if they will continue to work with us with a view to dealing with this problem of agency overload, hoping to find some alternative—if not the one that I have sent to the desk for printing, then some other alternative, so that we may deal with that question of overload.

Mr. NUNN. Mr. President, I say to my friend from Louisiana that the answer is yes. I will certainly continue to discuss any modification of this amendment that makes sense from the small business perspective, and also from the point of view of regulatory overload. This is a difficult area. None of us knows precisely what the numbers of regulations that are going to be affected here. So we are dealing with an unknown. But I do think that when we are in doubt, we ought to tilt toward not having a regulatory burden overwhelming the small business community. That would be my perspective. But I will be glad to continue to try to work with him in this regard because I know he has the same goal. We will continue to discuss it even as we debate it here on the floor.

Mr. JOHNSTON. Mr. President, I thank the Senator from Georgia for his answer.

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

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I withhold.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, first I want to thank my colleague from Georgia, Senator NUNN, for his dedication to this effort on behalf of small business. And we are all particularly sympathetic to the malady with which he returned from the recess. We wish him well soon.

I also want to answer the question of the Senator from Louisiana. As we continue through the process with Senator DOLE and his bill, we would obviously keep on the table discussions to try to facilitate his concern. We did not have enough time to talk a little earlier. But while we remain concerned about agency overload, I think the Senator from Louisiana would join with myself and the Senator from Georgia and others in sympathy for the overload that small business America has been suffering for too long, way too long.

Just to cite some of the figures, sometimes I think we forget what we are talking about when we talk about small business. There are over 5 million employers in the United States. Sixty percent of them are small businesses that have four—four—employees or less.

If you run a family business, or any endeavor, you understand what a limited resource that is standing against the aura of the Federal Government. I remember years ago walking into our family business. My mother had come down to help us. We had four—myself, my father, my mother and one other at that time. I looked across the table. She was just staring across the room. This is many regulations ago. I asked her what the problem was. She had some government form in front of her,

and she was literally scared to death. She was afraid that she was going to make a mistake that would somehow do harm to our family and our company. Even at that time it was threatening. And since that time—probably some 15 years ago—it has been regulation after regulation after regulation by the hundreds, by the thousands. People that had four employees or less had an enormous problem trying to respond to what all these regulations ask of small business.

Here is an even more startling figure. Of the 5 million companies, 94 percent have 50 employees or less. That means only 6 percent of the companies in the United States fall into this category where they have the kinds of resources—even as expensive as they are—to defend themselves.

Half the small businesses are started with less than \$20,000. More than half the 800,000 to 900,000 businesses that are formed each year will go out of business within 5 years. One of the reasons is they cannot keep up with what their Federal Government is demanding of them.

From 1988 to 1990 small businesses with fewer than 20 employees accounted for 4.1 million net jobs. Large firms—that is the 6 percent—lost half a million jobs.

The point I am making here is that these small businesses need a lot of nurturing and help and assistance from a friendly partner and not a lot of burden and bludgeoning from a bully partner. As we have restructured corporate America, it is the small business that has given us the most to be optimistic about. They are creative, they take risk, and they are hiring people. They are virtually the only sector right now that is hiring people.

The point I am making is that we need to underscore how much attention we as a Congress need to give to facilitating small business. We have a lot of financial problems in our country that we have to resolve in the very near term. That is what all the balanced budget fights are about. But one of the four key components to fixing our financial discipline today is to expand the economy. We have such a large economy that a modest expansion gives us enormous relief, and the one place that we have the best chance of expanding our economy is small business. It literally makes no sense for us to not only be not attentive to relieving them from regulatory burden and threat and cost, but we should be very focused on the reverse; that is, creating every incentive that we can think possible to aid and abet small business.

Mr. President, the Congress has recognized this for a long time. And in 1980, as Senator NUNN has acknowledged, the Regulatory Flexibility Act was enacted. The idea was we were already worried about what was happening to small business. We were already treating small business like it was General Motors. So the Congress passed legislation that made the Gov-

ernment begin to become more flexible to analyze the proportionate impact of regulations on small business. The problem was that it did not require a cost analysis and there was no judicial review. So it had been ignored far too much.

So while the Congress came forward and said we are going to do this, we are going to really try to improve the situation for small business, it was a hollow promise. It has not achieved what it set out to do.

So the Nunn-Coverdell amendment takes the Regulatory Flexibility Act—which we have already passed; we have already acknowledged the purpose—and it said it will have to have meaning. It already requires extensive review and analysis. So we are simply saying that it will have to add a cost analysis and that there is a regulatory review so that it is enforceable, so that what the Congress meant to do in 1980 will in fact happen in 1995, 15 years later. That says something else about our Government.

The Senator from Louisiana has raised a legitimate problem. We are concerned about the administrative functions of Government. But if I have to choose between where the balance of the burden should rest, should it rest on the U.S. Government, the EPA, OSHA, the Labor Department, and their millions and their thousands of employees, or should it rest on the little company in Georgia that has three employees? And if I have to pick between those two, I am going with the little company in Georgia. Given the scope of the resources both have, the problem is a lot more fixable from a burden standpoint on the part of the Government than it is on that little firm and thousands of, millions of, others like it across the country.

This is a good amendment. This will help small business. If we help small business, Mr. President, they are going to help America because they are going to hire people looking for a job by the millions. And they are going to expand our economy.

Mr. President, I yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. I wonder if I might have a few minutes on another topic. Is the time divided?

The PRESIDING OFFICER. Time is not divided.

Mr. DOLE. If I may be permitted to speak out of order on two other matters.

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

#### FAILED APPROACH IN BOSNIA

Mr. DOLE. Mr. President, as the Serbian advance on Srebrenica continues, the administration, the U.N. bureaucracy, and some of our allies are busy defending their failed approach in Bosnia. They argue that the Bosnians are better off if the U.N. forces stay in