also serves as a valuable resource to the domestic and international copyright communities. The Office registers almost 600,000 works a year.

Copyright has been a critical element of American creative and economic life since the beginning of our Nation. Today, our core copyright industries have become an increasingly important part of our national economy and a major area of our international trade relationships. We in the Congress must continually ensure that the basic principles of copyright remain applicable to a scientific and creative world in which technology changes very rapidly.

I would like to join the Librarian and the Register in saluting the work of the Copyright Office and its staff on this day and in paying tribute to the important services they provide in keeping our copyright system strong and adaptive to change.

REGULATORY REFORM

Mr. PRESSLER. Mr. President, during consideration of S. 343, the Regulatory Reform Act, I intend to offer an amendment to waive administrative and civil penalties for local governments when Federal water pollution control compliance plans are in effect.

I believe this amendment is a simple issue of fairness to local governments and I urge my colleagues to join me in supporting this amendment. I ask unanimous consent that my amendment be printed in the RECORD, along with my ''Dear Colleague'' letter.

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

AMENDMENT NO. —

At the appropriate place, insert the following:

SEC. . WAIVER OF PENALTIES WHEN FEDERAL WATER POLLUTION CONTROL ACT COMPLIANCE PLANS ARE IN EFFECT.

Section 309 of the Federal Water Pollution Control Act (33 U.S.C. 1319) is amended by adding at the end the following:

''(h) WAIVER OF PENALTIES WHEN COMPLIANCE PLANS ARE IN EFFECT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of this Act, no civil or administrative penalty may be imposed under this Act against a unit of local government for a violation of a provision of this Act (including a violation of a condition of a permit issued under this Act)—

''(A) if the unit of local government has entered into an agreement with the Administrator, the Secretary of the Army (in the case of a violation of section 404), or the State to carry out a compliance plan with respect to a prior violation of the provision by the unit of local government; and

''(B) during the period—

''(i) beginning on the date on which the unit of local government and the Administrator, the Secretary of the Army (in the case of a violation of section 404), or the State enter into the agreement; and

''(ii) ending on the date on which the unit of local government is required to be in compliance with the provision under the plan.

''(2) REQUIREMENT OF GOOD FAITH.—Paragraph (1) shall not apply during any period in which the Administrator, the Secretary of the Army (in the case of a violation of section 404), or the State determines that the unit of local government is not carrying out the compliance plan in good faith.

''(3) OTHER ENFORCEMENT.—A waiver of penalties provided under paragraph (1) shall not apply with respect to a violation of any provision of this Act other than the provision that is the subject of the agreement described in paragraph (1)(A).''.

WASHINGTON, DC,
June 27, 1995.

DEAR COLLEAGUE: When the Senate begins consideration of S. 343, the Regulatory Reform Bill, I intend to offer an amendment to lift the unfair burden of excessive civil penalties from the backs of local governments that are working in good faith with the Clean Water Act.

Under current law, civil penalties begin to accumulate the moment a local government violates the Clean Water Act. Once this happens, the law requires that the local government present a Municipal Compliance Plan for approval by the Administrator of the Environmental Protection Agency (EPA), or the Secretary of the Army in cases of Section 404 violations. However, even after a compliance plan has been approved, penalties continue to accumulate. In effect, existing law actually punishes local governments while they are trying to comply with the law.

Under my amendment, local governments would stop accumulating civil and administrative penalties once a Municipal Compliance Plan has been negotiated and the locality is acting in good faith to carry out the plan. Further, my amendment would act as an incentive to encourage governments to move quickly to achieve compliance with the Clean Water Act.

This amendment is a simple issue of fairness. Local governments must operate with a limited pool of resources. Localities should not have to devote their tax revenue to penalties, while having to comply with the law. Rather, by discontinuing burdensome penalties, local governments can better concentrate their resources to meet the intent of the law in protecting our water resources from pollution.

I hope you will join me in supporting this commonsense amendment for our towns and cities. If you have any questions or wish to cosponsor this amendment, please feel free to have a member of your staff contact Quinn Mast of my staff at 4–5842.

Sincerely,

LARRY PRESSLER,
United States Senator.

WAS CONGRESS IRRESPONSIBLE? LOOK AT THE ARITHMETIC

Mr. HELMS. Mr. President, before contemplating today's bad news about the Federal debt, let us have ''another go,'' as the British put it, with our little pop quiz. Remember—one question, one answer.

The question: How many million dollars in a trillion dollars? (While you are arriving at an answer, bear in mind that it was the U.S. Congress that ran up the Federal debt that now exceeds $4.9 trillion.)

To be exact, as of the close of business yesterday, Monday, July 10, the exact Federal debt—down to the penny—stood at $4,924,014,991,181.29. This means that, on a per capita basis, every man, woman, and child in America now owes $18,691.65.

Mr. President, back to the pop quiz: How many million in a trillion? There are a million million in a trillion.

THE 50TH SITTING BULL STAMPEDE

Mr. PRESSLER. Mr. President, last week marked the 50th Annual Sitting Bull Stampede in Mobridge, SD. People from across the State and Nation joined together in celebrating a long-standing tradition which first began in 1946. The stampede has a long and colorful history, and it serves to remind people of South Dakota's proud heritage.

It is appropriate that the Sitting Bull Stampede is named after the famed Sioux leader. The multicultural diversity of the event recognizes the contributions of both native Americans and non-native Americans to South Dakota in the last century. As my colleagues know, Sitting Bull was a famous leader and medicine man of the Lakota people. This native American hero was born in the Mobridge area and lived there for much of his life. His remains are buried on a nearby bluff overlooking the Missouri River.

The Sitting Bull Stampede began as a small rodeo organized by a group of cowboys. As the rodeo became more successful, the stampede began to take on a cultural focus. Last week's celebration was one of the biggest thus far, complete with parades, rodeos, a carnival, and many other festivities. More than 400 contestants competed in this year's rodeo. Miss Rodeo America, Jennifer Douglas, was on hand to assist in the crowning of this year's stampede queen, Anne Lopez of Keldron.

Mr. President, I am very proud of the accomplishments of the people of the Mobridge area in planning such a tremendous event. The Sitting Bull Stampede brings two cultures of our State together. It reminds us not to forget our past as we progress into the future. I extend my best wishes to the citizens of Mobridge and all who participated in this year's events.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

COMPREHENSIVE REGULATORY REFORM ACT

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

The assistant legislative clerk read as follows:

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

The Senate resumed consideration of the bill.

Pending:

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

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEFLIN. 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, will the Senator yield?

Mr. HEFLIN. Yes.

Mr. HATCH. I ask unanimous consent that no amendment be filed until Senator DOLE has an opportunity to get here from the wings.

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

Mr. HEFLIN. Mr. President, I am pleased to support and cosponsor S. 343, the Comprehensive Regulatory Reform Act of 1995. The time has come for meaningful regulatory reform and for the Congress to exercise its legitimate legislative function to set statutory standards to guide Federal agencies with regard to their rulemaking authority.

Since my term as chief justice of the Alabama Supreme Court when I and others set out to reform Alabama's antiquated judicial system, I learned that true reform never comes easy. Entrenched bureaucracy and vested interest groups will fight you every inch of the way, as I know they are now doing.

President Clinton acknowledged the need for regulatory reform in a speech on March 16 of this year when he called for common sense in approaching regulatory reform. He said, and I agree, that ''government can be as innovative as the best of our private sector businesses. It can discard volume after volume of rules and, instead, set clear goals and challenge people to come up wit their own ways to meet them.''

The substitute bill that has emerged is the product of several hearings before the Judiciary Committee, the Energy Committee, and the Governmental Affairs Committee. Extensive discussions have occurred over the last several weeks in an attempt to fashion a consensus bill which can pass the Senate and will be signed by the President. I believe our efforts will prove successful because the bill under consideration is not extreme reform.

It does not contain a supermandate, as the House bill does, which would overturn Federal laws to protect our environment, protect worker safety, or guarantee product safety.

The last time the Senate attempted to legislate in this area was 15 years ago when working in a bipartisan manner we passed 94–0 a bill known as S. 1080. Regretfully, certain interest groups prevailed upon the House of Representatives to kill our reform efforts.

I was a cosponsor of S. 1080 which was drafted to address deficiencies in the Federal regulatory system and to improve the rulemaking process of public notice and comment. The Judiciary Committee report at that time found that the ''dramatic costs of regulation suggest that we may be expending our limited resources on uncertain regulatory remedies for various costs at a significant human cost by depriving other vital interests of these resources.''

The 1982 report found that annual compliance costs of Federal regulation, that is, costs which are borne by those who must comply with regulations, were running ''at more than $100 billion a year.'' The 1995 report from the Judiciary Committee concludes that these costs are now approximately $542 billion. Congress must act to address this problem.

RULEMAKING

I note that the first part of the substitute incorporates many procedural improvements to section 553 of the Administrative Procedure Act which defines the rulemaking process. This section substantially incorporates and updates the provisions of S. 1080.

This section requires public notice of proposed rulemaking in the Federal Register and expands the amount of information which must be given by an agency to the public so that it can adequately comment on the proposal. An exemption is established from this requirement where such a proposed rule would be ''contrary to an important public interest or has an insignificant impact.''

There are other provisions which are too numerous to mention, but this section is strongly supported by many legal scholars and the American Bar Association.

ANALYSIS OF AGENCY RULES

The second section of the substitute deals with the analysis of agency rules defining expansively the terms ''costs'' and ''benefits'' to include, not just quantitative considerations, but also qualitative considerations of what a cost-benefit analysis should contain. This section also contains a definition of a ''major rule'' which is set at $50 million, a figure that is arguably too low especially since every President since Gerald Ford has defined, by Executive order, a major rule to be $100 million, as does S. 291, the regulatory bill that reported out of the Governmental Affairs Committee.

An earlier draft of this legislation provided that a major rule could also be less that $50 million if it were likely to result in disproportionate costs to a class of persons or businesses within the regulated sector. This provision would have given relief to many small businesses who are all too often threatened with being put out of business due to the costs of implementing a rule. I support an amendment offered by Senator NUNN which will assure that our Nation's small businesses will derive the benefits intended by our reform efforts in this bill. The Nunn amendment would require that a proposed rule which has been determined to be subject to the Regulatory Flexibility Act be considered a major rule for the purposes of cost benefit analysis and periodic review. Agencies frequently propose rules whose annual economic impact would not rise to the $50 million threshold set by this bill, but those rules can and do place significant burdens on small businesses. The Nunn amendment will assure that cost benefit analysis benefit small businesses.

I might add that the substitute exempts from the definition of ''rule'' those rules which related to future rates, wages, prices, monetary policy, protection of deposit insurance funds, farm credit insurance funds, or rate proceedings of the Federal Energy Regulatory Commission.

Once an agency has determined that a rule is a major rule, the agency must conduct a cost-benefit analysis to demonstrate that, based on the rulemaking record as a whole, the benefits justify the costs and that the rule imposes the least cost of any of the reasonable alternatives that the agency has the discretion to adopt. Quite simply put, this means that if a Chevrolet will get you to your goal, pick it and not the Cadillac model.

AGENCY REVIEW AND PETITION

The next section of this substitute requires each agency to publish a list of existing rules, general statements of policy, or guidances that have the force and effect of rules, that the agency deems to be appropriate for review, and each agency must publish a schedule for systematic agency review of those rules. The agency schedule shall propose deadlines for review of each rule and the deadlines will occur not later than 11 years from the initial schedule established by the agency. This timeframe, to me, is a reasonable one and should allay concerns that agencies will be swamped with too much work as a result of this legislation.

This bill also provides a petition process to allow any interested person subject to a major rule to petition an agency to conduct a cost-benefit analysis on an existing rule if it is a major rule and that its benefits do not justify its costs, nor does the rule impose the least costs of the reasonable alternatives. A petitioner has a high standard to meet and will have to spend a great deal of money to conduct its own cost-benefit analysis to show there is a likelihood that the rule's benefits do not justify its costs.

I also supported an amendment offered by Senator ABRAHAM which will be included in this section to ensure that agencies periodically review the need for rules which have a substantial impact on small businesses. As section 623 is now written rules will not be subject to review unless an agency chooses to place them on the review schedule or unless an interested party successfully petitions to have the rule placed on the schedule. Thus rules which have a substantial impact on small businesses might be left off of the review

schedule. The Abraham amendment would require agencies to include on their review schedules any rule designated for review by the Chief Counsel for Advocacy of the Small Business Administration. This amendment creates, in effect, a small business counterpart to the petition process available to larger industries and makes section 623 stronger and fairer for all the regulated community.

I, therefore, support the provisions of section 623 relating to agency review and the petitioning process. I believe that a reasonable effort and compromise has been achieved which will not overly burden our regulatory agencies and at the same time will ensure that current rules are revised, if necessary, and terminated if they become outdated or useless.

DECISIONAL CRITERIA

Let me turn briefly to the decisional criteria section of this legislation. In my judgment, it does not go as far as the House bill on the issue of supermandate. The House bill's provisions require that a rule's benefits must justify costs and that the rule achieves greater net benefits or the rule must be rescinded outright. The House bill thus supersedes, supermandates, and trumps all other previous statutory criteria. The provisions of this substitute ''supplement any other decisional criteria otherwise provided by law.'' Despite what the critics may say, the Senate bill is not a supermandate, nor is it a wholesale massacre of our Nation's environmental, health, or safety laws and regulations.

Under this legislation, Federal agencies are directed to conduct cost-benefit analyses on all major rules they propose to issue. As a general rule, no final major rule shall be promulgated unless the agency head finds: First, that the benefits justify the costs; second, that the rule employs flexible alternatives, and third, that the rule adopts the ''least cost alternative of the reasonable alternatives that achieve the objectives of the statute.''

If the underlying statute does not allow the agency to consider whether a rule's benefits justify its cost, the agency can still issue the rule—unlike the House bill where the rule is precluded from going forward—as long as the rule employs flexible alternatives, and adopts the ''least cost alternative that achieves the objectives of the statute.''

What is unreasonable about Congress requiring agencies to follow these standards when a rule's benefits do not justify its costs? This is what regulatory reform is all about—trying to give the unelected Federal bureaucrats some guidance in their rulemaking authority.

JUDICIAL REVIEW

Next, the judicial review provisions of the substitute adequately address concerns that I have raised, and judicial review is granted to review final agency actions. Any cost-benefit analysis or risk assessment shall constitute part of the whole rulemaking record and not be subject to separate, independent consideration. The provisions in the substitute provide for effective judicial review of cost-benefit analyses and risk assessments ''to determine whether the analysis or assessment conformed to the requirements'' of the bill.

The judicial review provision does not allow judicial nitpicking to overturn a final rule if an agency fails to follow a procedure required by this law. However, if the substance of a cost-benefit analysis or risk assessment is flawed, a court can and should review such a flawed conclusion as a part of the final agency rulemaking.

MISCELLANEOUS

There are other provisions which I will not attempt to address at length at this time. There is an extensive provision relating to risk assessment, a section known as regulatory flexibility analysis which passed the Senate last year, which I supported, to give relief to small businesses and a provision supported by Senator GRASSLEY known as congressional review which will give Congress the right to veto agency rules before they take effect. Perhaps this should be limited to veto major rules or we may risk being inundated with paperwork. With congressional staffs shrinking, it may be wise to limit this provision, or this provision may prove meaningless.

The substitute bill before the Senate is a major step in the right direction toward meaningful regulatory reform. Congressional action to give agencies some greater guidance is warranted and long overdue. I applaud the administration for its recent actions to improve the situation, but it is not enough for my constituents who must live with the reality of regulatory overkill on some occasions. I am quite certain that the entrenched Federal bureaucracy will never approve of true reform. They want unlimited authority to make rules as they see fit.

However, I believe the Congress has a responsibility to set some reasonable standards for the bureaucrats to follow. This historic regulatory reform bill is the most comprehensive effort since the Administrative Procedure Act was adopted in 1946.

I began my public career reforming one system, and as I approach the end of my career, I am pleased to join the reform that is now needed for the Federal executive branch of the Government.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The Chair advises the pending business is S. 343.

AMENDMENT NO. 1492 TO AMENDMENT NO. 1487

(Purpose: To address food safety concerns)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 1492 to amendment No. 1487.

On page 25, delete lines 7–15, and insert the following in lieu thereof:

''(f) HEALTH, SAFETY, OR FOOD SAFETY OR EMERGENCY EXEMPTION FROM COST-BENEFIT ANALYSIS.—(1) A major rule may be adopted and may become effective without prior compliance with this subchapter if—

''(A) the agency for good cause finds that conducting cost-benefit analysis is impracticable due to an emergency, or health or safety threat or a food safety threat (including an imminent threat from E. coli bacteria) that is likely to result in significant harm to the public or natural resources; and''.

Mr. DOLE. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1493 TO AMENDMENT NO. 1492

(Purpose: To address food safety concerns)

Mr. DOLE. Mr. President, I send a second-degree amendment to the pending amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 1493 to amendment No. 1492.

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

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

The amendment is as follows:

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

''(f) HEALTH, SAFETY, OR FOOD SAFETY OR EMERGENCY EXEMPTION FROM COST-BENEFIT ANALYSIS.—(1) Effective on the day after the date of enactment, a major rule may be adopted and may become effective without prior compliance with this subchapter if—

''(A) the agency for good cause finds that conducting cost-benefit analysis is impracticable due to an emergency, or health or safety threat, or a food safety threat (including an imminent threat from E. coli bacteria) that is likely to result in significant harm to the public or natural resources; and''.

Mr. DOLE. Mr. President, the only change is that it becomes effective 1 day after the date of enactment in the second-degree amendment.

As I stated yesterday, opponents of regulatory reform have avoided the merits and, instead, have engaged in scare tactics.

One of the most recent, perhaps most offensive, of the scare tactics has been the suggestion that regulatory reform means tainted meat, specifically, further outbreaks of E. coli food poisoning. This is an insult to the American people.

It is also false. Opponents know that this claim is false, and the media knows it. Yesterday, I included in my statement and accompanying fact sheet in the RECORD two specific provisions already in the bill to make it obvious that this bill would not hold up meat inspection rules.

One provision allows the implementation of a regulation without first complying with other requirements of the bill where there is ''an emergency or health or safety threat.''

That seems pretty clear to me. That is in the bill. It does not get any clearer than that. It is a sign of either sloppy journalism or extreme cynicism, and this amendment ought to be named the Ralph Nader-Margaret Carlson-Bob Herbert amendment. I have listened to these commentators—who probably never read the bill—and they talk about the terrible things that can happen and that we are all going to eat tainted meat. Margaret Carlson said 5,000 people are going to die, and then she corrected it to 500 before the program ended. It seems that the media do not worry about the facts if they have a good story. I hope to send a message to the media—at least those three—and those on the left who need to read the bill, to read what really happens. The media have chosen to buy into these distortions in the face of language that makes clear that we have responsibly taken health and safety concerns into account.

I do not believe for a moment that opponents are unaware of this health and safety exemption. But in an effort to ensure that we begin focusing on issues legitimately in this debate, I am offering an amendment to make crystal clear that S. 343, the regulatory reform bill before us, has no effect on efforts to address food safety. Period. End. That is it.

No one here, Democrat or Republican, wants to interfere with food safety. I hope we can lay that to rest by having a big vote on this amendment. The words ''health and safety,'' already part of the bill, obviously include concerns about food safety. But this amendment adds the words ''food safety, included an imminent threat from E. coli bacteria.''

Mr. President, it concerns me that such distortions are being made. E. coli bacteria and the illnesses that occur as a result of that bacteria are serious problems for the people of this country. Every Member of Congress, regardless of party, is concerned. It is not a partisan issue and should not be a partisan issue. But opponents—I do not mean the opponents in the legislative body. I think the opponents have come from outside the bureaucracy and in the media. All these people who want to protect their little preserves are the ones who are peddling the false information and trying to scare people. Obviously, you can scare people if you distort the facts.

Now that I have offered the amendment, opponents will no doubt come up with more imaginary scenarios. But I am putting them on notice that we chose the broadest possible phrase. In the event that somebody missed it, it is, ''emergency and health safety threats.'' We chose it in the first place for a very good reason. We want to make certain that every possible response to health and safety threats is exempted from delay where that is appropriate. Adding a laundry list, as opponents would have us do, undermines the very public policy goal opponents pretend they seek. This is so because it raises the possibility that someone could read this provision to exclude anything not specifically included. I do not think that is what ought to happen.

That is not our intent. We want the broadest possible language so that we can take care of all of the situations where health or safety threats exist.

Mr. President, I certainly urge the adoption of this amendment. It seems to me, as I have said earlier, based on the misinformation, flatout distortions, and flatout false statements that I have read in the media, heard in commentary, heard on television, I offer this amendment. It should not be necessary to offer this amendment, but, as I have suggested, it is being offered to make certain that nobody misunderstands—nobody on this floor, on either side of the aisle. There is nobody that I know of who does not support food safety.

Mr. President, I want to make an inquiry of the managers momentarily. In an effort to get a vote on this amendment and make certain this is the first amendment we will have a vote on, procedurally, I also would need to amend the bill itself. I am amending the substitute. But if I can have some assurance that we can have a vote without any further amendments to the bill on this issue, then I will not proceed to sort of fill up the tree. I make that inquiry of the Senator from Ohio.

Mr. GLENN. Mr. President, I am glad the majority leader has addressed the E. coli situation. I would like to check with some of the people who were interested in this on our side before we proceed with this. It might even be possible to accept it, I do not know. I would like to check on it further before I agree to anything at this point.

Mr. DOLE. It may be just a matter of—well, I will go ahead and fill up the tree and amend the bill in two degrees.

AMENDMENT NO. 1494

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 1494.

Mr. DOLE. 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:

Strike the word ''analysis'' in the bill and insert the following:

''analysis.

''( ) HEALTH, SAFETY, OR FOOD SAFETY OR EMERGENCY EXEMPTION FROM COST-BENEFIT ANALYSIS.—(1) A major rule may be adopted and may become effective without prior compliance with this subchapter if—

''(A) the agency for good cause finds that conducting cost-benefit analysis is impracticable due to an emergency, or health or safety threat, or a food safety threat (including an imminent threat from E. coli bacteria) that is likely to result in significant harm to the public or natural resources.''

Mr. DOLE. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1495 TO AMENDMENT NO. 1494

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 1495 to amendment No. 1494.

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

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

The amendment is as follows:

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

''analysis.

''( ) HEALTH, SAFETY, OR FOOD SAFETY OR EMERGENCY EXEMPTION FROM COST-BENEFIT ANALYSIS.—(1) Effective on the day after the date of enactment, a major rule may be adopted and may become effective without prior compliance with this subchapter if—

''(A) the agency for good cause finds that conducting cost-benefit analysis is impracticable due to an emergency, or health or safety threat, or a food safety threat (including an imminent threat from E. coli bacteria) that is likely to result in significant harm to the public or natural resources.''

Mr. DOLE. Mr. President, I think this is a clear-cut issue. My view is that the amendment is not necessary. But this is an effort to have the opponents who are really concerned about this bill focus on the issues rather than trying to frighten the American people, saying that somehow anybody who is for this bill is out here trying to peddle dirty meat. That was a charge made over the weekend and in the past few days.

I think probably it is in the interest of everybody who supports regulatory reform that the amendments be offered. I am the one being criticized by the media. ''Senator DOLE's bill is promoting dirty meat.'' And some say maybe I am doing it for the

meatpackers. Well, I do not know any meatpackers. I do not have any connection there. In any event, this is just to calm down the hysteria of some in the media. But they will get hysterical about something else. They are good on their feet. As soon as this matter is resolved, they will have some other hysterical notion or a figment of somebody's imagination, and some statement will be made, or there will be a ludicrous charge that they will pick up on. There are, unfortunately, some people in the bureaucracy who believe that the Government should do everything in America. They do not want any regulatory reform.

They are not one of the American families who are paying an average of $6,000 a year for regulatory reform. They are not a farmer or rancher or small businessman or small businesswoman who is trying to make a living for their family and all they get are more and more and more regulations from the Federal Government.

I happen to believe that regardless of anybody's party affiliation, if you are a businessman, a businesswoman, a farmer, rancher, whatever, you have to believe there are too many regulations and you have to believe there is some way to protect health and safety as we should, also, to make certain that there is some way we can review and make certain that some of these regulations never are implemented, because they have no benefit, a great deal of cost, and all they do is put a burden on somebody in America.

Democrat, Republican, somebody out there will pay. That is why we find this coalition of the left and the media and those in the bureaucracy and others who are fearful they might lose a job, I guess, or they might make life easier for the average Americans, who are vitally opposed to any regulatory reform.

I mentioned to the President this morning, we had a meeting at the White House, and I apologize to the managers for being late, this was a bill that I thought had potential to have broad bipartisan support. I met privately with the President after a regular meeting. I told him the number of changes we have already made, and we are prepared to look at other changes that are legitimate, and we are still having ongoing—as I understand—the Senator from Utah has an ongoing discussion with Members on the other side.

I will not repeat what the President said. I do not want to repeat discussions of the President, but I want him to understand, talking about bipartisanship, and lowering the rhetoric, this is an opportunity, right here, this bill.

There is no reason this bill does not pass this body by a vote of 75 to 20 or 80 to 20—good, strong, regulatory reform bill. I would hope that we can continue in the spirit we have started.

I want to commend the Senator from Louisiana, the Senator from Utah, Senator HATCH, and the Senator from Delaware, Senator ROTH, and others, including the Presiding Officer, who have been working on this on a daily basis.

My view is if we were to work in a bipartisan way we can complete action on the bill this week. I am happy to yield the floor to the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I want to thank the majority leader for his comments.

Mr. President, this amendment, in my view, is totally unnecessary, but if it helps to clarify and reassure, then I will support it. The provision that it amends was one of those provisions put in at our behest, and agreed to by the majority leader, in order to take care of this very situation.

Whether it is cryptosporidium, E. coli bacteria, or Ebola virus—whatever—the bill already covers that kind of health emergency. The bill says that you do not have to comply with either cost benefit or with risk assessment if they find that there is an emergency or health or safety threat that is likely to result in significant harm to the public or to natural resources.

Mr. President, it is clear the bill already covers that, and this was one of those 100-odd amendments that were accepted by the majority leader at our behest.

I believe it has been a very good bipartisan effort. It is not a complete and perfect bill yet. We still have some amendments which we hope will be accepted. There is an ongoing dialog about that.

Mr. President, I am still very hopeful this bill can be passed overwhelmingly on both sides of the aisle. I hope we can proceed not with drawing lines in the dirt and lines in the sand and tossing bombs at one another, but, rather, try to make this bill a more perfect bill, a better bill.

Believe me, Mr. President, risk assessment and cost-benefit analysis is needed by the taxpayers who are overburdened in this country today, and just to try to defeat this bill by phony issues is not the way to go. We should try to improve it with real amendments.

I believe that the distinguished Senator from Utah, the floor manager of this bill, and I believe the majority leader, will show cooperation, because they have so far.

I will vote for this amendment. It is totally unnecessary. The bill already covers this kind of emergency.

Mr. HATCH. Mr. President, I know the distinguished Senator from Ohio wants to comment. I will just take a few minutes.

I want to thank the distinguished Senator from Louisiana for his cogent remarks. He is right. This matter was taken care of in our negotiations. We have language in this bill that completely resolves this problem without this amendment.

In the interest of trying to pacify and resolve some of the hysteria and fear that seems to pervade this body from time to time, and certainly the outside groups—I have to say, evidently, the media, or some aspects of the media. I actually have watched the media over the last number of years, and I think they have been for the most part responsible, but on this issue they have not been responsible since this bill has been laid down, or at least those who have been primary purveyors of what they think this bill stands for.

We have over 100 amendments we have agreed to with the White House and others on this bill, trying to accommodate and resolve these problems.

I might add, we have worked very closely with the distinguished Senator from Louisiana and others in doing so. I want to compliment the majority leader for his willingness to try and make this bill as perfect as we possibly can.

One of the amendments we agreed to was described by our distinguished Senator from Louisiana, that he fought for in our negotiations, that really solved this problem. I think it is unfortunate we have to resolve it again and again and again because of hysteria and the use of fear tactics on the part of the left, really, in this country.

I have to say, certain Members of the media, in my opinion, have acted irresponsibly. I hope that the media will read this bill, those who are responsible will read it, and start talking about this bill in the manner that it deserves.

It is amazing to me the lengths supporters of big government status quo will go to in opposing the Dole-Johnston regulatory reform bill. The newest media myth spread at the end of last week is that the bill's cost-benefits requirement will somehow block the U.S. Department of Agriculture's meat safety rules for 2 or 3 years. That is pure bunk. It is apparent opponents of the bill are preying on the fear of the public and on individuals who have suffered from E. coli bacteria.

What these advocates of fear do not reveal, enforcement of food safety rules is predominantly done not through rules but through adjudicatory enforcement and inspection orders against meat processors and handlers, which are explicitly exempt from S. 343's requirements.

What they did not reveal is that S. 343, in any event, contains a provision that exempts health, safety, or emergency rules from cost-benefit analysis when there is a threat to the public.

They also do not reveal S. 343 mandates the promulgation of rules that are both cost efficient and that are likely to significantly reduce health, safety, and environmental risks.

They did not reveal that the USDA had already conducted a cost-benefit analysis and concluded that the benefits of the rule far outweighed its cost.

Finally, I want to mention the most outrageous statement attacking the bill in this media campaign of fear was made last Thursday on C-SPAN. To

generate fear of S. 343's cost-benefit requirement, a spokesperson for the lobbying group Public Citizen, contended that cost-benefit analysis was something the Nazis conducted to compute the worth of prisoners in concentration camps.

That is highly offensive. Such claims are pure bunk. They are nonsense. It demonstrates how really desperate the desperate can be.

These people want overregulatory activity because that is where the power has been. They control the whole U.S. population from this little beltway called Washington, DC. When we come to this floor and bring reasonable rules that will change the status quo and cause people to be able to live within certain norms and restraints and save the taxpayers' moneys and cause our society to work better, then these defenders of the status quo, these leftists, start making these outrageous comments.

The Dole amendment makes crystal clear that S. 343 does not impede the all-important protection of public health and food safety.

In that regard, let me just take a couple more minutes, because I think this is a perfectly appropriate place for me to give my daily Top 10 List of Silly Regulations. Let me start with No. 10, a regulation holding up the residential building project for a wetland, .0006 acres in size—about the size of a Ping Pong table.

No. 9. Creating an Endangered Species Act recovery plan for a breed of snail that will only flourish in an ice age or during the ice ages.

No. 8. A regulation making the playing of a musical instrument near a campfire in a national forest a Federal class B misdemeanor. I mean, my goodness.

No. 7. Fining a company for not having a comprehensive hazardous communications program for its employees. Its employees were two part-time workers. That is our Federal Government in action.

No. 6. Requiring $6 hospital masks instead of $1.50 masks, without any evidence that the more expensive mask is needed.

No. 5. Requiring such stringent water testing, that local governments actually had to consider handing out bottled water in order to save money.

That is our Federal Government in action, at work.

No. 4. Denying a permit to build a pond to raise crawfish because the habitat provides food and shelter to ''a wide variety of * * * fish * * * including the red swamp crawfish.''

No. 3. Barring a couple from building their dream house because the goldencheeked warbler had been found in the canyons adjacent to their land. Just think about that. This is happening in America.

No. 2. Requiring so much paperwork for a company over 50 employees—8 pounds, by the way, 8 pounds of paperwork—that they purposely do not hire any more people.

The silliest of all as far as I am concerned, for today's list:

No. 1. A company was fined $34,000 by the EPA for failing to fill out form ''R'' in spite of the fact that they do not release any toxic material.

These are the type of things we are trying to correct. These are the type of things this bill will correct. These are the type of things that have Americans all over this country upset, and rightly so.

This is why we have worked so hard, the distinguished Senator from Louisiana and our majority leader and others, to come up with a bill that really makes sense, that will make a difference, that will help us all to get rid of some of these silly, ridiculous, costly and really harmful regulations and interpretations of regulations as well, and to give the people some power to make the bureaucrats have to think before they issue regulations and interpretations of those regulations as well.

At that point, I yield the floor.

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

Mr. GLENN. Mr. President, I am sorry the majority leader, who proposed the amendment, has left the floor. I hope he may be listening, because there is more reason to be concerned about this than he indicates.

We hear repeatedly, ''This is not needed, it is not needed, it is not needed.'' Everybody says that. Yet we are still leaving it up to the agencies to make the decisions. Maybe that is OK. But let me tell you why we were planning to address E. coli this morning anyway before the majority leader came back and put in the amendment. There is a track record here, going back into committee, of Republicans not voting to take E. coli out of consideration here. We had a regulatory moratorium bill proposed a few months back that came before the Governmental Affairs Committee. It would have stopped everything in its tracks. It was a regulatory moratorium for everything from the last election on—any rule, any regulation that was in consideration. Even some of those that had been finalized already and were in effect were cut off.

We had a list of rules in committee that we thought should be exempted, that should not be subject to that regulatory moratorium. There was no exemption for health and safety in committee on that. And what happened? I put in an amendment in committee that would exempt rules to protect against E. coli. We had parents who lost children come before the committee and testify as to the horrible death that their children suffered with E. coli. Their children died. And I put in an amendment in committee to exempt E. coli from that moratorium. We had a record rollcall vote and I lost, because the Republicans opposed it. I lost on that, 7 to 7, one Republican being absent. I lost that vote to exempt E. coli, with seven Republicans on the other side of the aisle voting to keep E. coli in, in that regulatory moratorium.

Mr. JOHNSTON. Will the Senator yield?

Mr. GLENN. No, I will not yield at this point.

The PRESIDING OFFICER. The Senator has not yielded.

Mr. GLENN. I will not yield.

We hear it is not needed. We hear that such rules are exempted in this bill—but it still leaves it up to the agency. What if we have somebody in the agency who does not want to do this? I am not going to make too much out of that because, we have to trust the people in the agencies. But to say that we should have no concern, that nobody on this floor, nobody in the whole U.S. Senate is against health and safety rules when we had a vote in committee that prevented rules addressing E. coli and cryptosporidium, which was another vote, from being exempted from that moratorium is just not right. There is very, very good reason why we are concerned about this.

We did not have a single Democratic vote that was against exempting these important rules, but we did have votes on the Republican side that prevented that exemption being made in committee. That is the reason we are concerned about this. This is not something we are making up. It is not something fictitious. It showed the intent on the other side, at least in that case, under the regulatory moratorium, of not being willing to give one inch on this issue. Not even when we have about 250 deaths a year, and over 20,000 people made ill by E. coli bacteria every year.

Further, under this bill, there are still problems even if the agency declares an emergency. An emergency exemption is provided, and I agree and I know the Senator from Louisiana is going to say that the agency has the discretion to exempt these rules, and they can. But the bill now says that within 180 days of putting the rule out, the agency has to go back and do the cost-benefit analysis and risk assessment. Even with that kind of an exemption by the agency, I do not know whether they can do a cost-benefit analysis or whole risk assessment in 180 days. That is very difficult. Sometimes these things take years—2, 3, or 4 years or more. If they cannot complete the work required what happens then? And even then, these rules would still be subject to the petition process. The agencies might have to review the rule again, which is subject in turn to judicial review, or judicial challenge, anywhere along the line. So there are still weaknesses and there are areas where we are still concerned about this.

But I come back to why we are concerned about this. We are not digging up things. We are not desperate. We are not wild-eyed leftists over here. We are trying to protect the people of this country from E. coli in this particular case. I think the majority leader has

addressed some of the problem with this. Maybe it is sufficient. I do not know. We will have to talk it over a little bit to see what we want to do on this.

But there is very, very good reason why I personally had concern about this. It is heartwrenching to sit in the committee and hear mothers and fathers come before the committee talking about how they lost their children to E. coli.

We see statistics. We know that there are estimates that about 4 percent of the meat is tainted. So you had better cook it well. I will tell you that. Four percent—that means that 1 out of every 25 times you buy a hamburger, it could be tainted. We want to protect the people of this country against that kind of meat contamination, if we can. Of course, we do. We brought this up in committee. We could not get that exemption through in the committee. It was not exempted from the moratorium. That is the reason we are concerned about this.

So this is not something fictitious. This is something that we have already voted on in committee. The Republicans voted solidly on the other side to not exempt E. coli from that regulatory moratorium that was proposed at that time. The regulatory moratorium still has not been completed, because we have not gone to conference with the House yet.

I still have some concern about the processes under this bill, S. 343, that would require that within 180 days a cost-benefit and risk assessment would have to be done for rules that have been issued under this exemption. I do not know whether that can be done. But if it is not done, what would happen then? It would still be subject to petitions to review the rule all over again, even though everybody can say E. coli is a danger to the health and safety of the people of this country. Yet, in committee Republicans voted against exempting that; voted to not give the protection that the people of this country deserve.

So I am glad that the majority leader has done what he has done this morning. We will have to discuss whether we think this goes far enough. But there is very good reason why we are concerned about this. Our concerns are not fictitious, not something we are making up, and it is not something where politics is involved. It is the health and safety of the people of this country. It is not because of politics, as the majority leader indicated a little while ago, that we are talking about E. coli. And an exemption is needed. The vote in committee showed that we needed legislation in this regard. So we will see whether we think it is adequate or not.

I yield the floor.

Mr. JOHNSTON addressed the Chair.

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

Mr. JOHNSTON. Mr. President, the problem with this bill is that the opponents are not willing to take yes for an answer. I do not know what happened in committee. I do not know whether the Republicans were opposed or were not opposed to some particular provision on E. coli bacteria. But I am telling you.

Mr. ROTH. Will the distinguished Senator yield a moment on that point?

Mr. JOHNSTON. Yes, for a question.

Mr. ROTH. I wanted to make a statement on what happened in the committee.

Mr. JOHNSTON. If the Senator will let me make a few comments, I will yield the floor.

Mr. ROTH. All right.

Mr. JOHNSTON. The point is not what has happened in past history. We are dealing with what this bill says now here. I and my staff worked with the majority leader on this very provision to take care of not only E. coli, not only cryptosporidium, not only Ebola virus, but all public safety threats so that we exempted from any cost-benefit analysis or any risk assessment if it is impractical due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources.

Mr. President, what could be more clear than that? If it is a threat to public health or safety or likely to result in any significant harm to the public or natural resources, you do not have to do a cost-benefit analysis. You do not have to do a risk assessment. That was not in the original Dole bill. They accepted this amendment. Now they do not want to take yes for an answer.

Mr. President, we need to get this bill to be really considered for what it says. I just received a statement of administration policy on this Comprehensive Regulatory Reform Act which I must tell you, Mr. President, I find offensive. I think it is disingenuous. I sat in the room with Sally Katzen who is head of the OIRA. She came up with some very good suggestions among which was a method—I call it the Katzen fix—whereby we could combine all of the scheduling of rules to be considered, of look backs of the petition process to have it all considered at the same time with that schedule controlled by the Administrator. We accepted this suggestion completely—Senator DOLE and his staff, and Senator HATCH and others. And now I find that this is unacceptable and agencies are overwhelmed with petitions and the lapsing of effective regulations. It is just disingenuous because they accepted the very proposals which were made.

Let us get serious about this bill, Mr. President. Look. This bill is not about E. coli bacteria or about cryptosporidium. Those are scare tactics. That has been taken care of in this bill. There may be a lot of things to oppose on real grounds. But I think we ought to get real about it. We ought to be ingenuous about our opposition, those who propose various provisions. And if there is a real problem with cryptosporidium or E. coli, why do not you offer the amendment? Let us see if we can work it out rather than come in on the floor with white-hot debate and mothers with children who die from various things. We are just as concerned about that, those of us who want regulatory reform, as anybody in this Chamber. And we have taken care of it. To suggest that it is not taken care of is just not ingenuous, Mr. President.

We need regulatory reform. We need bipartisan regulatory reform. If there are serious amendments, let us consider them on their merits and not on the basis of something that is not in this bill.

Several Senators addressed the Chair.

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

Mr. ROTH. Mr. President, what the distinguished Senator from Louisiana has just said is exactly on point. What we are seeking to do is to make this a cleaner environment for all people. What has happened too often by scare tactics is that we find actions being taken that are unnecessary and unwarranted. The Senator is absolutely right. There is language already in the proposed legislation that will take care of these emergencies where there is a threat to health and safety. And there is no way. It is totally impossible to eliminate where all of those threats are going to arise in the future. That is the reason for the general language that, where there is an emergency or a problem of health and safety, an exemption, an exception, is made to the requirements of the legislation. But the basic purpose of the legislation is to ensure that we do a better job of regulating, of eliminating the risks and problems faced by this Nation. It is already costing every American family something like $6,000 a year. We need to ensure that those dollars are well spent, that we get the biggest bang for the buck.

Just let me point out that what exists in this legislation also existed in the moratorium. The moratorium provided that the President had the right to exempt health and safety regulations from the moratorium. That would include various diseases, E. coli or whatever else might be of emergency nature. The important point was that when the Republicans voted the way they did they were relying on the general language. I do not care how many amendments we add. I support the amendment of the distinguished majority leader. But legally, it is not necessary.

Would not the Senator from Louisiana agree with that?

Mr. JOHNSTON. Mr. President, I will say in response that really the majority leader's amendment adds nothing to what is already in the bill except it says including E. coli. Health including E. coli. A health threat already included E. coli. It already includes

cryptosporidium. It also includes the Ebola virus. It already includes everything that is encompassed in the world health.

So it is totally unnecessary. But if it reassures somebody that now we are taking care of E. coli, so much the better.

Mr. ROTH. I could not agree more. I personally intend to support the amendment of the distinguished majority leader. But the important point is that in this legislation we want to deal with not only the threats we face today but we face in the future. That is the reason for the general legislation. Who knows what horrible disease may develop sometime in the future. That is the purpose of the language in this legislation.

So I just want to say I agree with what the distinguished Senator from Louisiana said. It was exactly the same situation when we were dealing with regarding the moratorium. We had general language to cover health and safety. We gave the President the authority to exempt it. There was no need for it. That is the reason many of the Senators voted as they did.

Several Senators addressed the Chair.

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

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I appreciate the fact that the majority leader has offered this amendment this morning, not just because it clarifies that the language of the bill was not intended to hold up this rule on bacteria in meat, which the Centers for Disease Control tells us is a serious health problem, but because the amendment reminds us why we have regulation. The amendment reminds us that regulation does not simply emanate out of a vacuum in which some bureaucrat falls to impose irrational rules. Regulation comes from laws that we adopt in Congress, that are signed by the President, that recognize some public problem that we as the elected representatives of the people have concluded the people themselves cannot protect themselves from; they cannot handle that problem on their own.

There are a lot of problems like that in our increasingly complicated, sophisticated, globalized world. It is not like the old days where you basically grew what you ate. We are eating a lot of stuff that comes from halfway around the world. We are breathing air that contains pollutants that come from thousands of miles away. We are affected, when we go out on a sunny day in the summer, by rays that are coming through the hole in the ozone layer that has been created by chemicals that are being sent up there from all around the globe, and so on and so forth.

So we have created a series of protections as part of what I would consider the police power of the State, which is why people form governments in the first place, which is to protect them, to create security for them from harms from which they cannot protect themselves. The inspection of meat, to protect people—and people have died from bacteria in meat—is part of that apparatus.

So it is after Congress recognizes a problem, creates a law, and the President signs it, that then, because the law cannot cover every contingency, the administrators come along and they adopt regulations to carry out the rule, to apply it to specific cases. And this, frankly, is where we have gotten into some of the problems that have generated the bill before us and the substitute that many of us on the Governmental Affairs Committee supported, S. 291, now adopted almost completely in the Glenn-Chafee bill.

You would have a hard time, Mr. President—at least I have not found in this Chamber of 100 Senators representing every State in this Union—one Member who will say that he or she is not for regulatory reform. We all have been home and talked to our constituents, small business people, large business people, individuals who can cite for us an example where there is just too much regulation, but even more regulation without common sense.

My friend and colleague from Utah, Senator HATCH, has been providing what I might call the daytime version of David Letterman's nighttime list of the 10 best. We have Senator HATCH in the morning, and we have heard these stories and they are real, and it is why we are all for regulatory reform. But the reason why some of us are concerned about the content of the bill before us and why we seriously want to go through this process and see hopefully if we cannot work together in the end to get to a position where all of us, or at least most of us, can support the bill is our fear that inadvertently in responding to some of the excesses and foolishness of regulation and bureaucracy, we may impede the accomplishment, the purpose of the underlying public health and safety laws that I believe the public wants.

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

Mr. LIEBERMAN. I would be happy to yield to my friend from Louisiana.

Mr. JOHNSTON. The Senator, my friend from Connecticut, is one of the best lawyers in this body, and I consider him to be one of the best lawyers in the country. It is for that reason that I ask him, on page 25 of the bill, it contains language that says:

> A major rule may be adopted and may become effective without prior compliance with this subchapter if the agency, for good cause, finds that conducting a cost-benefit analysis is impractical due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources.

We have the same language over on page 49 that has to do with the risk assessment. So it covers both cost-benefit analysis and risk assessment, and the operative language is you do not have to comply with the chapter if there is a health or safety threat.

Now, would the Senator not agree with me that the phrase ''health or safety threat'' would encompass any of these problems such as E. coli, cryptosporidium, Ebola, flu, the common cold? It covers everything relating to a health or safety threat. Would not the Senator, my friend, agree with that?

Mr. LIEBERMAN. Mr. President, to respond through the Chair to the Senator from Louisiana, first, I thank him for his kind words and, second, it seems to me on the face of it the intention is certainly to cover those health and safety threats. The question is whether it is effectively done or comprehensively done, and I would like to work with the Senator.

Let me just say that the other day we received the paper flying all over about the Food and Drug Administration comments of the overall bill, and they say as part of their comments:

> The exemption for likely health or safety threats will not permit the agency to take expeditious action to avert harm. First, the finding of good cause would be imposed in addition to the statutory violation finding that the agency currently is required to make before taking any action, unless the intent is to override the statutory finding. This requirement is burdensome and inappropriate. Second—

And this is something that I have been concerned about—

> neither ''significant harm'' nor ''likely'' is defined. As a result, it is unclear how many situations would fall under this standard. Is the threat of one spontaneous abortion—

The example they use—

> or one death a significant harm? Under what circumstances would the threat be deemed likely? Would the adulterated product need to be in domestic commerce before the threat was likely?
>
> The requirement that the harm render the completion of a detailed risk-benefit analysis impractical adds a further level of complexity to what should be a straightforward, expedited determination.

I am not embracing all of these questions as my own, but I think they are reasonable, and I would like to work with the Senator to make sure that we do put to rest any of the concerns that are raised in here about public health and safety, although I must say that I have an underlying concern about some of the other sections as they affect the regulatory process even in cases where they are not health and safety.

But let me finally, bottom line, respond. I understand that the intention here is to cover all of the concerns, the specific cases, of the bacteria and the rest, and I would like to review the language in the majority leader's amendment and work with the Senator from Louisiana to make sure that we do just that.

It seems to me, as I said a few moments ago, I think we all share two common goals. The Senator from Ohio has outlined these as his test for whether he will support a regulatory

reform bill. And to paraphrase and state them simply, we are all for regulatory reform. We agree there are excesses. There is foolishness. But in achieving regulatory reform let us make sure that inadvertently we do not block the accomplishment of the purpose of the legislation that is underneath the regulations.

Mr. JOHNSTON. Mr. President, if the Senator will further yield, I appreciate his candor. Let me say that this amendment was put in at my behest to deal with the problem. It was our best judgment as to how to deal with what really was, we thought, a problem with the original language. This was printed up, as you know, and then we went into negotiations on our side of the aisle. I personally spent something like 24 hours in direct face-to-face negotiations with our caucus and our Members and our staff. I did not, up until today, hear any criticism of this language.

If there is a way better to make it absolutely clear that you can deal with these imminent threats without any delay, without having to do anything like cost-benefit or risk assessment, if that is not absolutely clear—and I believe it is as clear as the noonday Sun on a cloudless day, I think it just shines through—but if it is not, then I, for one, will certainly help clear it up. I will solicit the help of my good friend and good legal advisor from Connecticut in helping to sharpen that language.

Mr. LIEBERMAN. I thank my colleague from Louisiana. Obviously, I have respect for him, his judgment, his word, and his good faith. I accept the challenge to work with him to clarify the intention of the bill overall with regard to emergency health and safety problems.

I know that the Senator from Ohio has a statement he wishes to make. I am going to spend a few minutes more and then I will yield the floor.

I do want to say in overall terms, to put in a different context these two goals that we have, that there is no question that part of what motivates the bill before us is the broadly held feeling in America that Government has become too big and too intrusive. But reflecting only what I hear from my constituents in Connecticut, which is that, I also hear from them that there are certain things that they very much want Government to continue to do for them because they know they cannot do it alone and it cannot be privatized.

I remember somebody once said—it is not my thought—the law exists in society in relationship to the natural goodness and perfection of the species; in other words, in Heaven, if you will, there is no law because everyone does the right thing; in Hell, it is all law because no one does the right thing; and we on Earth are somewhere in between. The law expresses our aspirations, our values, our desire for a just society.

Do we overdo it sometimes? Sure, we do. I have to tell you, when I am home in Connecticut, I do not find anybody saying to me there is too much environmental protection. I do not find anybody saying to me there is too much consumer protection, there is too much food safety protection, too much protection of toys. Yes, I find some business people saying to me that some of the ways in which these goals you put into legislation are being enforced by some of the inspectors, the bureaucrats are ridiculous. The average business person I talk to says, ''Look, I'm not just a business person, I'm a citizen, I'm a father, I'm a husband, I'm a grandfather. I have as much interest in clean air and clean water and safe drinking water and safe food and safe toys as anybody else.''

I am saying as we go forward, let us remember both sides.

I have two more general points. No. 1 is, I am a member of the Environment and Public Works Committee. I have spent a lot of time on that committee. Let me say briefly that I find there is an extraordinary broad base of support in my State, and I believe throughout this country, for environmental protection. In fact, environmental protection is, as the writer Gregg Easterbrook pointed out in articles and a book recently, probably the single greatest success story of American Government in the postwar period. It is an interesting thing to talk about. Again, it is not to say everything has been done to protect the environment rationally and sensibly. Twenty-five years ago, the Connecticut River was described by somebody as the prettiest sewer in America. Today, the river is fishable and swimmable. That has happened all around America with rivers, lakes, and streams.

The same is true of the air, that was heading rapidly in the direction of not just smog that is hard to see through, but really affecting people's health. I am hesitant, after the discussion we had today about numbers here, but there are fairly credible scientists and doctors who say still in our country tens of thousands of people die prematurely—which is to say what it says, they would have lived somewhat longer were it not for forms of air pollution. This is particularly true of vulnerable populations.

There is an epidemic of asthma in our country. It has gone up 40 percent in the last 10 years, particularly among children. I have a child who has asthma. More and more of these kids are vulnerable to pollutants in the air. We have done a pretty good job of cutting the number of those pollutants, but still we have a greater amount of work to be done. I am saying, as we try to make the regulatory process more rational, more reasonable, let us not pull away from the underlying goals.

Finally, one of the things that has happened in the environmental area is a general acceptance of the environmental ethic, as I said a moment ago, and, I think, a growing partnership between the business community and individuals and the environmental community. I am fearful that if cooler heads do not prevail in this particular debate, and debates are going on about other laws, that that partnership is going to be broken. It will have a bad effect overall. It is going to lead, first, to the kind of conflict that does not produce results, does not clean up the environment, but, second, I am afraid from the point of view of business, one of whose understandable goals is to seek consistency of regulation, of law, there is going to be inconsistency, we are going to swing from extreme to extreme, and that is not good.

Finally, if we do not get together and be reasonable with one another and adopt a good regulatory reform bill, it is going to face a Presidential veto. Then nothing is going to be accomplished. We would have spent a lot of time, filled the air with a lot of rhetoric, but ultimately, we are going to be left with a regulatory system that all of us find inadequate.

So I hope as we go forward that we will keep those thoughts in mind. I believe that the bill before us still, because of the petition process in it, which is an invitation to delay, because of some of the standards that are set, inadvertently puts at risk some of the accomplishments of the last two or three decades.

I personally prefer S. 291. I prefer it in part because I worked on it in the Governmental Affairs Committee under the leadership of the Senator from Delaware and the Senator from Ohio. It came out of our committee 15 to 0, a bipartisan vote. It is tough regulatory reform. It requires a determination of whether the benefits justify the costs. It requires regular review by the agencies of the regulations. It goes on to create sunshine in the process and to put some common sense into the regulatory process without jeopardizing the underlying laws.

So I prefer it to the alternative we have before us, but I hope we can bridge the ground and, most of all, get something done to change the status quo without jeopardizing the purposes that have engendered the status quo.

I thank the Chair. I thank my colleagues for their patience, and I yield the floor.

Several Senators addressed the Chair.

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

PRIVILEGE OF THE FLOOR

Mr. GLENN. Mr. President, I ask unanimous consent that Jeneva Craig, of my staff, be granted the privilege of the floor during consideration of this legislation.

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

Mr. GLENN. Mr. President, we got off to a rather fast start yesterday and we did not get to give our opening statements on the general view of the legislation before us. I would like to do that at this time.

This is a most important matter that comes before us with this legislation.

It may well prove to be, as far as impact on the American public, the most important legislation we pass this year. I am under no illusions it will get the most attention, but it may be the most important.

Before I launch into my statement, I ask unanimous consent to have three editorials from the Washington Post, the New York Times, and the Cleveland Plain Dealer, which discuss the issue of regulatory reform, printed in the RECORD following my statement.

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

(See exhibit 1.)

Mr. GLENN. Mr. President, regulatory reform is one of the most important issues before us. Make no mistake, I want regulatory reform. I think we need regulatory reform. Large businesses want regulatory relief, so do small businesses, so do individuals. And their general discontent with regulatory burdens is, in many ways, justified. I believe that. That is why I want regulatory reform to be the right balance.

Why do we have to have a lot of regulations? Are bureaucrats just deciding to write as many regulations as they can think of over in the agencies? No, that is not the answer. The process is that Congress passes laws and agencies carry out the intent of these laws through regulations, through the details that are necessary to make the laws applicable.

Unfortunately, Congress passes a lot of ill-thought-out laws in insufficient detail in the first instance, and then we complain bitterly when the regulation writers in the agencies overstep into unintended areas. In other words, if we want to look at some of the culprits in overregulation, let us look at ourselves, let us look in the mirror.

I repeat that sentence. Congress passes a lot of ill-thought-out laws in insufficient detail in the first instance, and then we complain bitterly when the regulation writers in the agencies overstep into unintended areas.

I believe Congress needs to write laws more clearly and give agencies more guidance. That way, agencies will not have to guess what our intent was when they write the regulations that implement the laws.

In other words, Congress should do the work and weigh our actions more carefully, including the costs and benefits of a law. We should be doing all of that right here before passing legislation that will be implemented through regulation.

As we debate how to reform the regulatory process, we need to ask ourselves two essential questions. First, does the bill before us provide for reasonable, logical, and appropriate changes to regulatory procedures that eliminate unnecessary burdens on businesses and on individuals?

Second, at the same time, does the bill maintain our ability to protect the environment, health, and safety of all of our people? In other words, does the legislation strike an appropriate balance? That is the question.

Those are the two tests this legislation must meet. I believe that if it can meet those two tests, there will be broad support for this effort. Any bill that relieves regulatory burdens but threatens the protections for the American people in health, safety and the environment should be opposed.

Regulatory reform is very complicated. The idea sounds great, but the devil is in the details. Cost-benefit analysis, risk assessment, judicial review, the specific elements of regulatory reform, are complex—very complex. The parts do not make easy sound bites. But without making sense of the words, there can be no real reform, let alone a workable Government.

I am very concerned that in order to keep up with the schedule established by the other body, the Senate is being rushed to consider a complex and lengthy proposal whose consequences are not yet fully understood. Regulatory reform should be arrived at through a process of deliberation and bipartisan consultation. That is the process we used in the Governmental Affairs Committee. From our landmark regulatory reform study clear back in 1977, through legislation and more than a decade of oversight of OMB and OIRA paperwork and regulatory review, and now to the consideration of legislative proposals in this Congress, the Governmental Affairs Committee has approached this issue in an open and bipartisan manner. That was our mode of operation during my years as chairman. And this year, under the leadership of the new chairman, Senator ROTH, our committee held four hearings and developed a unanimous bipartisan regulatory reform bill, and S. 291 was the number as it came out of committee. Our committee report also reflects this bipartisan spirit and deliberative process.

Now, I make these points because the proposal, S. 343, that has been brought to the floor has been developed in a similar open and deliberative manner. The bill is based on the Judiciary Committee's reported bill that reflected a divisive committee, a proceeding that was cut short.

Until recently, negotiations on this bill went on behind closed doors. During the past several weeks, there have been many attempts to work together to improve this bill. A number of Members have worked diligently to explain our differences and what we think needs to be changed. Before these discussions were completed, S. 343—this bill—was brought to the floor. It is a bill that we believe continues to have a great number of problems. The result, from what I can see, is a bill tailored to special interests. It is a lawyer's dream. It does not meet the dual goals of protecting health and safety and, at the same time, having a more effective and more efficient Government.

Yes, we want agencies to have more thoughtful and less burdensome rules. But we also want agencies to be effective. The American public does not want the Federal Government to be more inefficient or to have more public protections delayed or bogged down in redtape and delay and courtroom argument. That is why Senator CHAFEE, myself, and several others offered an alternative bill just before the recess. It is S. 1001, and it is based on that same Governmental Affairs Committee bill, S. 291, that was reported out with full bipartisan support. The vote was 15 to 0. There were eight Republicans and seven Democratic votes out of committee.

S. 1001 provides for tough, but fair, reform. It will require agencies to do cost-benefit analysis and risk assessments, but it will not tie up all their resources unnecessarily. It does not provide for special interest fixes. It does not create a lawyer's dream. It provides for reasonable, fair, and tough reform. It reflects the work of the Governmental Affairs Committee on S. 291 and only changes this bill in three ways.

First, the definition of a major rule is one that has an economic impact of $100 million. There are no narrative definitions, such as ''significant impact on wages.''

Second, the automatic sunset of rules that are not reviewed has been changed. If agencies do not review rules within the allotted timeframe, they must commence a notice of proposed rulemaking to repeal the rule. In other words, the rule could not just sit there and automatically become unenforceable. With this approach, there is opportunity for public comment, and rules will not sunset without adequate opportunity for review.

Third, we limited the risk assessment requirements to particular programs and agencies. We also made some technical changes in line with the National Academy of Sciences' approach to risk assessment. Those are the three changes to S. 291 that we incorporated when it became S. 1001.

Let us remember what is at stake here. Regulation is important because rules are needed to implement most laws. There is no way around it. Public health and safety, environmental protection, equal opportunity in education and in employment, stability in agriculture and other sectors of our economy, each area has shown that it needs the help of legislation and regulation that follows to make it workable.

I would like to talk for a few minutes about a different, but related, regulatory matter. I mentioned it earlier this morning. That was regulatory moratorium. We debated that at the end of March. I want to talk about here, because I believed many of the provisions of S. 343 could have a similar effect in undermining health and safety protections for the American people, their families and their children.

If there was ever a proposal to make one stop and think about what is at

stake, the moratorium would do it. It would have stopped all regulations dead in their tracks, starting back at last year's election through the end of this year, no matter what State the regulations were in, no matter whether they were good or bad regulations. Now, proponents of the moratorium, like proponents of S. 343, are ready to subject the people of this country to the slashing of regulations without due examination of what could happen, without considering what health and safety protections may be at stake.

We had hearings in committee, and I met with Nancy Donley of Illinois and Rainer Meuller of California, who both lost children to E. coli-tainted hamburgers. Both came to Washington intent on looking in the eyes of politicians who were more willing to tolerate endangering children than facing up to a responsibility and making a regulatory process that works. According to USDA's Food Safety and Inspection Service, 3,000 to 7,000 Americans die of tainted food each year, and 3 to 7 million Americans are sickened by food-borne illness. This is costing lives and health and millions of dollars.

Can anyone honestly say that we do not need protections and an effective regulatory process? Further, I heard from airline pilots who were angry that Congress might sacrifice air safety standards in order to appear strong not by being proponents of enhancing safety regulations, but by going too far the other way and delaying and even slashing safety rules, all in the name of regulatory reform. In other words, we would reform ourselves into greater danger for every airline passenger.

I heard from public health experts who are alarmed at the threats to the safety of drinking water from dangers like cryptosporidium, which killed 100 people in Milwaukee in 1993, and made 400,000 sick. So the moratorium would have halted drinking water safety rules until the end of the year.

But the point of bringing up the moratorium here is not to confuse the issue, it is to point out that the bill we take up today could well delay some of these items well beyond the end of the year. It could delay them significantly beyond that.

Of course, rules, regulations, and regulators are not always right. There can be different approaches to protecting the public from disease or injury. That is why reform is important. Regulations do not come free. Their costs are weighing down the American people. Businesses, private citizens, universities, and State and local governments all complain that too many regulations go too far, that they just are not worth it.

So our job is to find a balance that recognizes both the essential role of regulations in our society and the social and economic price paid by an overreliance on regulation. Finding this balance means evaluating the benefits as well as the burdens of rules and using the best scientific and economic analyses to do so.

What is the economic impact of regulation? How do we measure that impact? How do we weigh economic costs and benefits? What are the societal costs and benefits? Agencies need to do better in each of these areas, and I believe true regulatory reform can improve agency analysis and make the Federal rulemaking process work better. But accomplishing these reforms is easier said than done.

There is wide disagreement in both the economic and scientific communities about the methodologies and underlying assumptions used in performing these analyses. In our committee, we heard from witnesses on every side of these issues. In developing S. 1001, we tried to craft a workable framework for regulatory decisionmaking. The product of our committee work was a unanimously supported, tough regulatory reform bill. With only a few changes—the ones mentioned—Senator CHAFEE, myself, and others have proposed this bill, S. 1001, as an alternative approach to regulatory reform. It would improve agency decisions, lessen burdens on the American public, improve the implementation of our laws, and make Government more efficient and more effective. I intend to offer S. 1001 as a substitute to S. 343 at the appropriate time. The debate on the regulatory reform before us will, I believe, reveal many of the failings of S. 343, and the more practical advantages of the Glenn-Chafee bill.

Regulatory reform should focus on the following central issues, which are reflected in S. 1001. I will expand on these principles in more detail later in my statement:

First, agencies should be required to perform risk assessments and cost-benefit analysis for all major rules.

Second, cost-benefit analysis should inform agency decision making, but it should not override other statutory rulemaking criteria.

Third, risk assessment requirements should apply only to major risks assessments, and these requirements must not be overly prescriptive.

Fourth, agencies should review existing rules, but their review should not be dictated by special interests.

Fifth, Government accountability requires sunshine in the regulatory review process.

Sixth, judicial review should be available to ensure that final agency rules are based on adequate analysis. It should not be a lawyer's dream, with unending ways for special interests to bog down agencies in litigation.

Seventh, regulatory reform should not be the fix for every special interest.

These principles would establish for the first time a Government-wide comprehensive regulatory reform process. This process will produce better, less burdensome, and probably fewer regulations. It will also provide the protections for the public interest that the American people demand of their Government.

I do not believe S. 343 follows these principles; instead it does special favors for a special few—and in so doing creates a process that will delay important decisions, waste taxpayer dollars, enrich lawyers and lobbyists, undermine protections for health, safety, and the environment, and further erode public confidence in Government.

I mentioned the seven principles. Let me talk about each of the seven principles I raised in a little more detail.

Principle 1. Agencies should perform risk assessments and cost-benefit analysis for all major rules. Most of us would agree that before an agency puts out a major rule, it should do a cost-benefit analysis, and if it makes sense, a risk assessment.

Let us start with one of the most fundamental questions in this debate: What should be considered a major rule? In the Glenn-Chafee bill and the bill we reported out of the Governmental Affairs Committee on a bi-partisan, 15-to-0 vote, we decided that a major rule should be one that has an impact of $100 million. A $100 million threshold has been the standard under Presidential Executive orders for regulatory review since President Reagan in the early 1980's. If anything, given inflation, that threshold should go up, not down, if you think about it.

S. 343 has a threshold of $50 million; the House bill casts an even wider net of $25 million. These are just simply too low. Remember—this bill will cover all Federal agencies—not just the Environmental Protection Agency or the Food and Drug Administration. All Federal agencies—Treasury, Commerce, Agriculture, and so on—would have to do extensive analysis for every single rule that had a $50 million impact. Or, if the House wins on this, a $25 million impact.

What are we trying to accomplish here? If it is to make the agencies use these important tools for important, economically significant rules, I believe we should keep the threshold high. If we demand that rigorous cost-benefit analysis and risk assessment be required for just about every rule, we will guarantee that we will use up valuable agency resources with very little to gain.

One group that testified before the Governmental Affairs Committee estimated that the House bill would add 2 years to the rulemaking process and cost agencies a minimum of $700,000 per rule. I had some figures yesterday that computed how expensive that could be and it gets up into the hundreds of millions of dollars. Let us remember that we are cutting the Federal work force and consolidating agency functions. This bill should not create needless work that has little benefit. What is the cost-benefit analysis for using $50 million or $25 million? I believe it is going to cost the agencies a bundle of money and resources and the benefits are few. Talk about poor cost-benefit ratios. Let us stick to truly major

rules and set that threshold at $100 million.

I say let us first see how this works at the $100 million level. If we see that it works well, I would be in favor of reducing the threshold at a later date to capture more rules, whether down to $50 million or $25 million. But I want to make sure that what we pass now works, is fair, and brings relief for the biggest problems. I do not want to flood the system with so many rules that nothing works, and we find ourselves back here in 3 or 4 years reforming the regulatory process once again.

I feel this even more strongly after yesterday's acceptance of an amendment to include significant rules under the Regulatory Flexibility Act in the definition of major rule. This will add well over 500 rules to those having to go through cost-benefit analysis under S. 343. This is just too much.

Principle 2. Cost-benefit analysis should not override existing statutes. Another question that we must decide is how cost-benefit analysis should be used. I believe, and many of my colleagues believe, that in no way should cost-benefit analysis override existing statutes. This is the so-called supermandate issue. We all agree that it is a good idea to make agencies figure out what the costs and benefits of a rule are before issuing it, and to see whether the benefits justify the costs.

But let us keep in mind that this tool is far from a hard and fast analytical science. There are lots of assumptions that go into figuring out the costs of a rule and the benefits of a rule, and many benefits and costs are unquantifiable. That is certainly no argument for not doing it. I believe it can be a very useful tool in the decisionmaking process, but it does show that caution is in order.

Agencies often have to get cost data from the industry it is intending to regulate. And some industries have been known to overstate how much it will cost to comply with a regulation. The benefit side also has lots of difficulties. How much value do we place on a human life? Does it matter if that human is an old man or a young girl? What is the value of preserving a plant species? What is the value of avoiding an injury to a worker? Clearly, agencies should not be forced to quantify everything. On this point, Senator DOLE, Senator JOHNSTON, Senator CHAFEE, and I—and in fact, probably all of us—agree. We should encourage agencies to estimate costs and benefits—both quantifiable and nonquantifiable—and make totally clear what assumptions they use to do the analysis. This can help inform their decisionmaking.

But this is where we differ: Should the result of a cost-benefit analysis trump all other criteria for deciding whether or not an agency should go forward with a rule? The way S. 343 is written right now, that is what would happen, and I do not think that makes sense.

First, in passing legislation, we, in Congress, have said to agencies, ''Go issue a regulation, based on what we've said in the statute''—whether it be ''an adequate margin of safety'' or whatever. The agency should not have the power to say, ''Well, we can't justify the costs given the benefits of this rule, and therefore, we are not going to issue this rule.'' This would basically be handing our congressional responsibility over to the agencies, based on a less-than-perfect tool of cost-benefit analysis.

I heartily believe that agencies should tell us if they really do not think a rule's benefits justify its costs. But then the rule should come back to us in Congress to figure out what to do. This will also help to inform us in Congress about a law that should be changed. For these reasons, I strongly support—and my colleague Senator LEVIN has been a strong leader on this issue—a congressional review or the right to veto rules through an expedited review process. This makes a lot more sense than having a supermandate,'' which would make cost-benefit analysis override an existing statute. Remember that the congressional review of rules passed the Senate 100 to 0. It makes sense to do business this way.

Let me give an example of how hard it is to figure out costs. Everyone acknowledges that it can be very difficult to quantify benefits, but most assume that cost numbers are easier to estimate accurately. But let us consider the example from the Occupational Safety and Health Administration [OSHA] of the cotton dust standard. Several hundred thousand textile industry workers developed brown lung—a crippling and sometimes deadly respiratory disease—from exposure to cotton dust before OSHA issued protective regulations in 1978. That year, there were an estimated 40,000 cases, amounting to 20 percent of the industry work force. By 1985, the rate had dropped to 1 percent.

The initial estimates in 1974 for industry to comply with a stricter standard was nearly $2 billion. By 1978, OSHA estimated the same costs to industry to be just under $1 billion. So the estimate fell by 50 percent by the time the standard was issued. When the actual costs of compliance were reported in 1982, they were four times lower than the $1 billion estimate. It is likely that if OSHA had to use a cost-benefit analysis to figure out whether to put out this standard in 1978, not having the knowledge that they did in 1982, they would not have done it, even though it is clear to me that the great success of this rule certainly justifies its costs.

Let us be clear on this point: Cost-benefit analysis should not override existing statutory rulemaking criteria. Proponents of S. 343 say that this bill does not have a supermandate. It has been repeated over and over that this bill does not have the supermandate. Many of us disagree. Language to clarify this was offered during negotiations on this bill, but it was rejected. We still do not have clarifying language on this point. If there was no supermandate lurking here, why was the clarifying language rejected? So the more I hear that this is not a problem, but that the language cannot be clarified, the more I have to wonder.

Another problem that many of my colleagues have discussed at length with the supporters of this bill is the issue of least cost. Right now, this bill requires two major determinations before a rule can be issued: One, that the benefits justify the costs; and, two, that the rule adopts the least-cost alternative. Let us think hard about these words ''least cost.'' Do we always want the agencies to do the cheapest alternative? What if an alternative that costs just $2 extra saves 200 more lives? Do we say pick the cheapest, and do not look at benefits of the alternatives before you?

That is what this bill does. We should give the agencies some leeway to use common sense. They should be able to choose the most cost-effective approach, looking not just at costs but also at the benefits. Here, we would be requiring them to pick the cheapest alternative, which may not always be the most cost effective.

In talking about this economic analysis, let me say a quick word about trying to reduce the costs of regulation on industry. In our efforts to reform the regulatory process, we should encourage agencies to take a hard look at market-based incentives to achieve regulatory goals. Many have shown that we can achieve our environmental goals, for example, at a lower cost than we do now by using market-based mechanisms. These alternatives allow industries more flexibility in how they meet a standard. For example, rather than telling every factory, new or old, that they must purchase the same equipment to fix a problem, we would give them flexibility, reducing their compliance costs while reducing the same amount of pollution overall.

I agree with the part of S. 343, Senator DOLE's bill, in which we are requiring agencies to consider market-based mechanisms. We have a similar provision in the Glenn-Chafee bill, S. 1001.

Principle 3. Risk assessment requirements must not be overly proscriptive and should apply only to major risk assessments. Risk assessment requirements are an important part of regulatory reform because many of the rules we want to address in this legislation relate to health, safety, or the environment.

Risk assessment can help us better understand what the risks are to the public or the environment, which in turn lets us figure out how best to lower those risks.

Scientists, agencies, and others have testified that it is essential that we do

not make these requirements too prescriptive. Risk assessment is an evolving science. The last thing Congress should be doing under regulatory reform is freezing this science by laying out in excruciating detail how an agency must do a risk assessment.

I believe that both S. 1001, as well as this bill, do try to strike a good balance. I must commend Senator JOHNSTON for his leadership in the area of risk assessment. He has done a lot of work on that. S. 1001 outlines smart risk assessment principles that are in line with recommendations of the National Academy of Sciences.

There are still a few problems in S. 343, however, when it comes to the specific risk assessment requirements. For example, what is exempted from these requirements and what is not? This bill states that an agency does not have to do a risk assessment for a rule ''that authorizes the introduction into commerce * * * of a product.''

I ask my colleagues, what if an agency determines that a product is unsafe and should be removed from commerce? Under this bill, the agency would have to do a full-blown risk assessment, complete with extensive peer review, before it could take a product off the market. If you want to put something on the market, no sweat. If you want to take something off the market, it is not so easy. And it will take time, a lot of time.

I do not think this makes sense. Public health and safety can be harmed by dangerous products on the market. All we have to do is remember back to the thalidomide situation, for example, of a few years ago, when talking about taking products off the market. We do not want to make it more difficult.

Another problem is that the peer review requirements are exempted from the Federal Advisory Committee Act. Let me state first that peer review of major risk assessments I think is absolutely essential. Scientific experts should evaluate the information put together by the agencies, and a good peer review process will ensure high-quality assessments. But how is the peer review going to be run? The way S. 343 is written now, no peer review would have to comply with FACA. FACA was set up to ensure sunshine, accountability, public input, public access—in fact, fairness to all parties involved in such Advisory Committee processes.

FACA was put in to guarantee a balance of views on peer reviews, and yet FACA would not apply to the requirements for peer review under this act.

The Federal Government currently uses many peer review groups, most in the fields of health, science, and technology. These are all subject to FACA.

The proponents of S. 343, who now want to exempt these panels from FACA, were strong advocates of having FACA apply to the health care review panels just last August, less than a year ago. For example, the majority leader stated, quite properly in my view, that ''There is no reason why these boards should be granted the power to meet in secrecy. Indeed, there is every reason why they must meet in public.''

Senator GRASSLEY, on the same subject, stated, ''I ask my colleagues to adopt the amendment to make FACA apply, because we ought to be doing everything in the sunshine. If we do, the mold will not grow there.''

I agree completely with both of those statements. I do not see why the peer review panels under S. 343 should be any different.

Another issue about peer reviews: Do we really need to require peer review panels for every risk assessment for every environmental cleanup project? S. 343 applies risk assessment and cost-benefit requirements to all Superfund and Department of Energy cleanups that cost more than $10 million.

Aside from the fact that I do not believe we should deal with Superfund in a regulatory reform bill, I am very concerned about the resources that agencies would have to use to comply with this bill. There are hundreds of DOE sites and close to 1,000 Superfund sites that would be affected by these requirements. I do not think it makes sense to require such extensive peer review requirements for each one of these risk assessments. How will the agencies ever be able to find so many panels, for instance, that are truly balanced? How much will this cost the Government? What would we gain from it? Where is the cost-benefit analysis of this approach? I think we should delete the peer review requirement for environmental cleanups.

Finally, the position of those supporting the Glenn-Chafee bill is that the procedural requirements of these assessments should be, of course, open to peer review, but they should not be reviewed by the court. The courts are not the appropriate place to determine whether particular assumptions or toxicological data in a risk assessment are appropriate. The way the judicial review section is written, this is indeed a major concern. I will address that issue just a bit later.

Principle 4. Agencies should review existing rules, but that review should not be dictated by special interests. Regulatory reform is not just about improving new rules and developing new techniques for addressing new problems. Regulatory reform must also address the great body of existing rules that currently govern so many activities in business, in State and local governments, and which affect so many of us as individuals.

For regulatory reform to be effective, it must look back and review existing regulations to eliminate outdated, duplicative, or unnecessary rules, and to reform and streamline others. This review is required most simply because over time, many decisions become outdated. Review is also needed because of the rising cumulative burden of existing rules on businesses and individuals. For this reason, agencies should take a hard look at major rules that they believe deserve review. Of course, this process should be open for public comment so that those who are interested in particular rules can make their concerns known to the agencies. But this review should not be dictated by special interests.

While I think a retrospective look at rules is essential, I do not believe in a process that would allow anyone subject to a rule to petition an agency to review a rule, which then requires stringent action by the agency to respond to that petition. That could just gridlock agencies and put special interests and the courts, not the agencies, the executive branch, or the Congress, in charge of the review.

The latest draft of S. 343 uses a petition process to put rules on a schedule for review. If the agency grants the petition, it has to review the rule in 3 years. That is a very short timeframe for such matters. If it fails to review the rule in that time, the rule automatically sunsets, it becomes unenforceable. This process, it seems to me, puts the petitioner in the driver's seat, not the agencies or the Congress who passed the law in the first place.

Mr. JOHNSTON. Mr. President, will the Senator yield on that point?

Mr. GLENN. No, I want to complete my statement. Then I will yield the floor at that point.

It also creates a process that is more prone to killing regulations than creating a thoughtful review of regulations. In addition to the peer review petitions, S. 343 has many other petitions for any interested party to challenge an agency on any rule, not just the major rule. These are yet more examples of the lawyer's-dream approach taken under this bill. Under S. 343, someone could petition for issuance, amendment, or repeal of any rule; or, amendment or repeal of an interpretive rule or general statement of policy or guidance; and, interpretation of the meaning of a rule, interpretative rule, general statement of policy, or guidance.

And just to add to the confusion, S. 343 also has a separate section, section 629, for a petition for alternative compliance. Any person subject to a major rule could petition an agency to modify or waive the specific requirements of a major rule and to allow the person to demonstrate compliance through alternative means not permitted by the rule.

In addition, S. 343 adds another petition process in section 634 so that interested persons may petition an agency to conduct a scientific review of a risk assessment.

Each agency decision on every one of these petitions, except the petition for alternative compliance, is judicially reviewable. It could be challenged in the courts. What a dream for the lawyers. All of these petitions and reviews add up to one of the worst parts of this bill. I think it is a formula for true

gridlock. Agencies will have to spend enormous resources responding to each and every petition, and then they can be dragged to court if they turn down a petition. This does not come close to being real regulatory reform. This is regulatory and judicial gridlock. This is a way to keep the agencies from doing their jobs and to keep lawyers happy and extremely prosperous. This bill would make all the rhetoric about tort reform a big joke except that in this case judicial gridlock means that the health and safety of the American people could be jeopardized.

Principle 5. Government accountability requires sunshine in the regulatory review process. Agencies must work to involve all interested parties in the regulatory process, from soliciting comments to disseminating drafts to ensuring broad participation in peer review. Accountability also requires public disclosure of regulatory review documents, including related communications from persons outside the Government. There can be no public confidence in Government when some can use back doors to decisionmakers. S. 1001 requires reasonable disclosure consistent with recommendations of the Administrative Conference of the United States.

Over the past 25 years, the most notable regulatory reform accomplishment has been development of centralized Executive oversight of agency rulemaking. This effort, while not truly reforming the regulatory process, has had a substantial impact on the Federal regulatory process. It led to the development of agency regulatory analysis capabilities and better coordination among agencies, though the record is quite uneven across agencies.

The development of centralized regulatory review has also led to more consistent policy direction and priority setting from the Office of the President, though the record here is uneven as well, due largely to partisan controversy about Presidential use of that power to affect agency decisions. Many times over the past 15 years many of us have been in the Chamber debating the use of OMB regulatory review.

Much of the controversy that has dogged centralized regulatory review since it was formalized in 1981 by President Reagan in Executive Order No. 12291 revolves around public confidence in the integrity of the regulatory process. The issue has come to be known as the regulatory sunshine issue. And while the Governmental Affairs Committee has in the past been divided about how much sunshine is needed and at what stages in the process, the committee has always agreed on the need for sunshine and public confidence in the regulatory process.

S. 343 has no sunshine provisions. It is not like the Glenn-Chafee bill, S. 1001. S. 343 has no sunshine provisions for regulatory review, and I believe that is a fundamental flaw that needs to be addressed.

Principle 6. Judicial review should be allowed for the final rulemaking, not for each step along the way. Regulatory reform should not become a lawyer's dream, with unending ways for special interests to bog down agencies in litigation. We firmly believe in a court's role in determining whether a rule is arbitrary and capricious. S. 1001 authorizes judicial review of the determinations of whether a rule is major and therefore subject to the requirements of the legislation. Also, it allows judicial review of the whole rulemaking record, which would include any cost-benefit and any risk assessment documents. We should not, however, provide unnecessary new avenues for technical or procedural challenges that can be used solely as impediments by affected parties to stop a rule. Courts should not, for example, be asked to review the sufficiency of an agency's preliminary cost-benefit analysis or the use of particular units of measurement for costs and benefits. While courts have a vital role, they should not become the arbiters of the adequacy of highly technical cost-benefit analyses or risk assessments independent of the rule itself.

I believe, the way the bill is currently drafted, that lawyers and the courts will get into the details of a risk assessment or cost-benefit analysis. I think that is a mistake. From what I understand, there has been a great deal of discussion about this issue, and I believe many of us want the same result. The question is how to get there from here. Leaving the language as ambiguous as it is now is not acceptable.

Principle 7. Regulatory reform should not be the fix for special interests in every program. Many parts of S. 343 are very different from the bill we reported out from the Governmental Affairs Committee on a bipartisan basis and the alternative bill we introduced before the recess. In the bill before us, S. 343, several provisions are aimed at benefiting special interests or stalling particular programs. Frankly, they have no place in a regulatory reform bill that should attempt to set a fair process, fair and equal to all.

First, let me say that I sympathize with those who would like to fix particular problems. I know of examples where regulations go too far and where agencies go too far. As testimony before our committee showed, 80 percent of the rules are required by Congress. It is not just the regulatory process that needs fixing. We in Congress are also responsible for a lot of these problems. Let us focus on making the regulatory process better as a whole and not a fix for special interests.

Let me give some examples.

This bill tries to delay Superfund cleanups. It rewrites the Delaney clause, shuts down the EPA toxic release inventory, provides enforcement relief for companies, and so on.

Now, I agree that some of these are legitimate problems that deserve our attention, but this is not the place. The regulatory reform bill should address regulatory issues, not be a Christmas tree for lobbyists to hang solutions to whatever problems they may have. Let us look at some of these provisions a little more carefully.

First, delays and higher costs for environmental cleanups. Every Superfund and Department of Energy cleanup that costs more than $10 million would have to go through a risk assessment and cost-benefit analysis. This is not just for activities that will be starting up, not just for new projects. It covers cleanups that are already under way. EPA and DOE will have to stop any progress they are making to go back and do additional costly analyses. This is guaranteed to slow the pace of cleanup even further, something we have all been concerned about for a long time. EPA estimates that 600 to 1,000 Superfund cleanups spread across every State in the Union would be caught in this requirement. The Department of Energy estimates that about 300 cleanups would be affected. Does this make any sense? I would prefer to spend the taxpayers' money on cleanup rather than repetitious, redundant studies and more lawsuits.

To make matters even worse, these cleanups have to go through the hoops of the decisional criteria, yet another supermandate in this bill. For each $10 million cleanup, agencies would have to prove that the benefits of the activity justify the costs, the activity employs flexible alternatives, and the activity adopts the least cost alternative.

Now, I and many others here recognize the need for Superfund reform, and we worked hard on that last Congress. That is where this provision belongs, under Superfund reform, not regulatory reform. If we are going to fix the problem, let us fix it right. Adding new burdens and hurdles is certainly not the right approach.

Second, gutting of the toxics release inventory, the TRI. The TRI is intended to provide the public with information about chemicals being released into their local environment. This bill would fundamentally change the way the TRI works and would swamp the agency. In reforming the regulatory process, we are trying to encourage agencies to use flexible approaches to regulation and make the agencies more efficient. The TRI currently provides information to the public and encourages the voluntary reduction of toxic emissions through whatever means a company chooses to use. This program has not only provided maximum flexibility to companies, but it has also resulted in significant reductions in emissions. Since 1988, companies have reported a decrease in emissions of listed chemicals of more than 2 billion pounds a year. In this bill, we would change the standard for removing chemicals from the list. We would force EPA to perform thousands of site-specific risk assessments in a very short time. This sounds less like regulatory reform and more like make-work for

the agency. If Congress wants to change the standard in TRI, we should do it in the context of Emergency Planning and Community Right-to-Know Act legislation. This provision has no place being in this bill.

Third, repeal of the Delaney clause. You will get no argument from me that it is time to change the Delaney clause. It should have been done a long time ago. But this regulatory reform bill does not fix it. I believe this is just one more case of a very important and substantive area that should be dealt with outside the context of regulatory reform.

In conclusion, I want regulatory reform, but S. 343 does not provide balanced regulatory reform. Its overall impact will be to swamp the agencies to the point of ineffectiveness, provide lots of jobs for lots of lawyers, and to make some companies very happy.

I would like to work hard with everyone here, all my colleagues, to make a good, fair and truly balanced regulatory reform bill.

So I hope we can address many of the issues I have raised today. I urge everyone to take a hard look at the regulatory reform approaches in the Dole-Johnston and the Glenn-Chafee bills and then ask yourselves: Are we relieving regulatory burden on industries and individuals? Are we protecting the environment and health and safety of the American people?

We must work together in a true bipartisan spirit to meet these two essential goals of regulatory reform. Together we can truly improve how our Government works.

Mr. President, I asked consent earlier for insertions into the RECORD. I will ask for one more. We have a letter that was addressed to both leaders, the majority and minority side, from the Department of Agriculture. I think it is worth including in the RECORD also. I ask unanimous consent that that letter be printed in the RECORD.

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

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, July 11, 1995.

Hon. ROBERT DOLE,
Majority Leader, U.S. Senate, Washington, DC.

DEAR BOB: I am writing in regard to the effect that S. 343 would have on the efforts of the Department of Agriculture (USDA) to improve the meat and poultry inspection system and the safety of the nation's supply of food. The Food Safety and Inspection Service (FSIS) published a proposed rule to significantly reform the federal inspection system by requiring the adoption of science-based Hazard Analysis and Critical Control Point (HACCP) procedures. S. 343 would needlessly delay USDA's efforts to reform the meat and poultry inspection system.

Foodborne pathogens in meat and poultry products, such as E. coli, Salmonella and Listeria are believed to cost the nation billions of dollars from lost productivity, medical costs, and death. The virulent E. coli bacteria alone is estimated to cause 20,000 illnesses and 500 deaths annually. Young children and the elderly are particularly vulnerable to foodborne pathogens and therefore at greatest risk.

On February 3, 1995, USDA proposed reform of the federal meat and poultry inspection system to incorporate science into its inspection system. USDA's proposal would require the use of scientific testing and systematic measures to directly target and reduce harmful bacteria. The goal is simple: to improve food safety and to reduce the risk of foodborne illness from consumption of meat and poultry products.

Under the proposal, the Nation's 9,000 federally inspected slaughter and processing plants would be required to adopt science-based HACCP procedures. Targets would be set for reducing the incidence of contamination of raw meat and poultry with harmful bacteria. Meat and poultry plants would be required to test raw products for pathogens, and to take corrective action, if necessary, to meet food safety targets.

S. 343 would significantly delay this essential reform by requiring USDA to establish a peer review panel which satisfies the criteria in S. 343, submit a cost-benefit analysis and risk assessment (analyses) to the panel, and convene the panel to review the analyses. The panel would then be required to prepare and submit a report to FSIS detailing the scientific and technical merit of data and methods used for the risk assessment, including any minority views. FSIS would have to respond in writing to all significant comments made in the report. The report and the FSIS response would become part of the rulemaking record and would be subject to judicial review provisions of S. 343. These procedures would significantly delay the essential reform effort by a minimum of six months.

While peer review can be a useful tool to improve the rulemaking analyses, the potential benefits from a peer review of the HACCP reform proposal does not justify delaying reform of this system—a reform that is supported by all interests. Similar review has been already been occurring. The scientific foundation of the HACCP proposal, in short, will have been the subject of extensive review and comment as part of the rulemaking process.

First, FSIS published the preliminary regulatory impact analysis (PRIA) in the Federal Register for comment with the proposed HACCP rule. The PRIA contained a preliminary cost-benefit analysis and risk assessment which explained the assumptions regarding the risks and costs of foodborne illness to the public, the costs of the proposed rule to the regulated community, and the range of benefits in terms of reduced foodborne illness that the proposed HACCP rule would achieve. Before publishing any final regulation, FSIS will revise and finalize this cost-benefit analysis based on the comments received. Second, peer review of the HACCP proposal is unnecessary since FSIS has held at least 11 public meetings to discuss and obtain comments on all aspects of the reform proposal. Three of those meetings were two-day conferences which addressed various scientific and technical issues raised by the rulemaking. Third, the National Advisory Committee for Microbiological Criteria in Foods, which provides impartial, scientific review of agency actions relative to food safety, also reviewed the HACCP proposal and submitted comments. All comments received in connection with these public meetings have been placed in the rulemaking record.

S. 343 simply adds another level of review which in this case would result in an unnecessary delay of essential food safety reform. For this and other reasons, I would recommend that the President veto S. 343 if enacted in its present form.

The Office of Management and Budget advises that there is no objection to the presentation of this report to the Congress.

Sincerely,

DAN GLICKMAN,
Secretary.

Mr. GLENN. Mr. President, I quote some from that RECORD, in closing, to show how some of these things can work. They address E. coli, salmonella, and some other things we addressed earlier on the floor today.

In this letter from the Secretary of Agriculture, he points out some of the difficulties. He says:

I am writing in regard to the effect that S. 343 would have on the efforts of the Department of Agriculture to improve the meat and poultry inspection system and the safety of the Nation's supply of food. The Food Safety and Inspection Service published a proposed rule to significantly reform the Federal inspection system by requiring the adoption of science-based Hazard Analysis and Critical Control Point procedures. S. 343 would needlessly delay USDA's efforts to reform the meat and poultry inspection system.

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Under the proposal, the Nation's 9,000 federally inspected slaughter and processing plants would be required to adopt science-based HACCP procedures. Targets would be set for reducing the incidence of contamination of raw meat and poultry with harmful bacteria. Meat and poultry plants would be required to test raw products for pathogens, and to take corrective action, if necessary, to meet food safety targets.

S. 343 would significantly delay this essential reform by requiring USDA to establish a peer review panel which satisfies the criteria in S. 343, submit a cost-benefit analysis and risk assessment analyses to the panel, and convene the panel to review the analyses. The panel would then be required to prepare and submit a report to FSIS detailing the scientific and technical merit of data and methods used for the risk assessment, including any minority views. FSIS would have to respond in writing to all significant comments made in this report. The report and the FSIS response would become part of the rulemaking record and would be subject to judicial review provisions of S. 343. These procedures would significantly delay the essential reform effort by a minimum of 6 months.

While peer review can be a useful tool to improve the rulemaking analyses, the potential benefits from a peer review of the HACCP reform proposal does not justify delaying reform of this system—a reform that is supported by all interests. Similar review has already been occurring. The scientific foundation of the HACCP proposal, in short, would have been the subject of extensive review and comment as part of the rulemaking process.

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S. 343 simply adds another level of review which in this case would result in an unnecessary delay of essential food safety reform. For this and other reasons, I would recommend that the President veto S. 343 if enacted in its present form.

The Office of Management and Budget advises that there is no objection to the presentation of this report to the Congress.

Mr. President, I know that is a lengthy statement this morning. But I wanted to get my views in. We did not have opening statements yesterday. I think I have laid out today the major differences between S. 343, the bill before us now, and S. 1001. S. 1001 is based on the bill that came out of the Governmental Affairs Committee on a 15–0 unanimous vote, except for the three changes I mentioned, which are improvements to the bill.

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

Mr. GLENN. I hope people will look very carefully at these differences and, at the appropriate time, we may want to recommend or may submit as a substitute S. 1001. I yield the floor.

EXHIBIT 1

[From the Washington Post, July 6, 1995]

REGULATING REGULATION

The Senate is about to embark on a major debate over regulatory reform. The fundamental issue is how much weight to give to costs in measuring the costs and benefits of regulation. The principal bill is sponsored by Majority Leader Bob Dole. Its backers say, we think with cause, that in the last 25 to 30 years particularly, too many federal regulations of too many kinds have been issued without sufficient regard to cost. That's partly because these costs don't show up in any budget. The politicians can impose them, and for all practical political purposes, they disappear.

The legislation seeks to impose greater discipline by requiring more use of both risk assessment and cost-benefit analysis, the first to lay out more clearly the risks that each rule is meant to abate, the second to compare the expected benefits and costs of compliance. It would then require a finding that the benefits are somehow commensurate with the costs.

All that's to the good; the only problem is that regulatory matters are rarely that tidy. Among much else, they often involve a great deal of scientific guesswork, and the benefits—of a cleaner lake, for example—often can't be quantified. The questions are further complicated when the winners and losers aren't the same people. Whether or not to issue a particular rule will always be in part a value judgment. The cost of compliance should be a larger factor in reaching such judgments than it has often been in the past; it should not be the only factor. That's the policy zone that this bill seeks to define.

It isn't easy. The bill now forbids an agency to issue a major rule without a finding that the benefits ''justify'' the costs. Some deregulatory advocates think that's too weak a word and want the bill to read ''outweigh'' instead. The bill says that, in requiring the weighing of benefits against costs, the intent is not to ''supersede'' but to ''supplement'' the ''decisional critera'' in other statutes. Environmentalists and the administration say that's a word game and that the bill would still override the other statutes—clean air, clean water and all the rest—because the supplementary standard would still have to be met. The bill suggests in one place that courts could toss out agency actions only if arbitrary or capricous—the current standard—but elsewhere says the agency actions would also have to be supported by ''substantial evidence,'' a higher standard.

Our own sense is that regulating regulation may turn out to be as hard as regulating anything else, which suggests that there's a limit to what can likely be constructively accomplished by this bill. To require as clear a statement as possible of the risks to which a rule is addressed (how serious are they? how sure can we be?) as well as the likely costs and benefits of compliance (and of rival approaches) is absolutely the right thing to do. To insist that an agency demonstrate that a rule is sensible policy—plainly, that's right as well.

The question is, demonstrate where and to whom? The bill is set up to be enforced through litigation. The courts would become the arbiters of whether benefits had been shown to ''justify'' costs—but the courts are the wrong place to make such judgments. There's a better idea in a rival bill; when a major rule is issued, sent it first to Congress, which would have, say, 45 days in which to veto it or let it take effect. It's Congress, after all, that passed the laws that gave rise to the regulations. Since these are essentially political judgments anyway, let Congress also be the one, on the strength of all the studies this bill would require, to bless or block the results. That's the right way to do it.

[From the New York Times, July 7, 1995]

OVERKILL IN REVISING REGULATION

Senator Bob Dole's bill to reform regulatory procedures would erect needless obstacles to adopting Federal health, safety and environmental rules. Its excessive provisions invite filibuster by angry Democrats and a Presidential veto. The majority leader could exercise better leadership by joining forces with John Glenn, Democrat of Ohio, whose alternative bill would bring common sense to Federal rules, not extinguish them.

Both Mr. Dole and Mr. Glenn start off right by requiring Federal agencies to weigh benefits against costs to weed out regulations that do more harm than good. The calculations are necessarily inexact, especially where non-quantifiable benefits, like the value of clean air over the Grand Canyon, are involved. But forcing agencies to explain the pros and cons of rules and justify their wisdom gives the public vital information.

The problem with the Dole bill, co-sponsored by Senator J. Bennett Johnston, Democrat of Louisiana, is that its complex language would not fulfill promises made by the sponsors. Mr. Dole says his bill would not override existing health and safety laws that explicitly forbid balancing benefits against costs nor invite judicial challenge of the minute procedures by which agencies conduct their analyses. But the actual words and likely impact of the bill provide no decisive protections.

The bill builds in elaborate petition rights by which regulated industries can force review of existing regulations. That will allow the affected industries to tie up regulations in court and bury agencies in costly administrative reviews. The bill also establishes seemingly contradictory standards. In some sections it tells agencies to pick rules that generate large benefits relative to their costs, but in other places it favors rules that simply minimize cost.

Mr. Glenn's bill fixes many of these missteps. It would allow industry to challenge only arbitrary or capricious rules, and not procedural miscues. It would cut administrative burdens by limiting cost-benefit analysis to major rules. Mr. Glenn would protect against overzealous rule-making by subjecting new rules to review by outside experts and giving Congress 45 days to review major rules before they go into effect. That puts Congress, rather than the courts, in charge.

There is no problem with the existing regulatory system that warrants Mr. Dole's radical approach. Why not start with the Glenn bill, and do more later if necessary?

[From the Plain Dealer, July 9, 1995]

REASON AND REGULATION

Sen. John Glenn, a longtime aficionado of dry but important issues, is not about to change his image with his latest mission; a bid to temper legislation that would weaken the federal government's power to impose regulations.

But however unglamorous his latest crusade may be, there is no question that Glenn is making a critical contribution on an issue that is far more consequential than it sounds. At stake is the federal government's ability to protect Americans from all sorts of health, safety and environmental dangers.

Glenn, the ranking Democrat on the Governmental Affairs Committee, is leading the challenge to a sweeping regulatory-reform bill pending on the Senate floor.

The bill, offered by Majority Leader Bob Dole, would slow down the regulatory process by subjecting a broad range of regulations to cumbersome risk-assessment and cost-benefit studies. It also would make it easier for industries to fight regulations with lawsuits and petitions. The Dole bill, which already has been moderated a bit to draw some Democratic support, is generally similar to legislation already passed by the House.

Glenn, however, hopes to moderate the Senate bill further. Though he embraces Dole's overarching goal of reducing unnecessary government regulation, as well as some of Dole's prescriptions, he is wisely warning that the Dole bill poses a new bureaucratic risk: that the government will become entangled in even more paperwork from a flurry of new litigation, cost-benefit analyses, and risk-assessment studies.

Glenn is proposing a more reasonable alternative—a bipartisan regulatory-reform bill almost identical to one approved earlier this year by the Government Affairs Committee. Glenn's bill contains numerous provisions designed to streamline the federal regulatory process, but it takes a less drastic

approach than Dole's. Glenn's bill, for example, would require risk-assessment and cost-benefit studies of regulations expected to have an economic impact exceeding $100 million; Dole's bill would apply to rules with an impact of $50 million.

When the Senate returns this week from its holiday recess, negotiations are likely to resume over a possible compromise between the Glenn and Dole versions. Glenn should hang tough as long as possible, knowing that any compromise he endorses is likely to win Senate approval and then be watered down further in negotiations with the House.

The rules of regulating may not be most politicians' idea of an exciting cause. But it is well worth Glenn's time and effort.

Mr. GRASSLEY addressed the Chair.

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

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

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

Mr. GLENN. I yield the floor.

Mr. JOHNSTON. He will not yield for a question?

Mr. GLENN. I yield the floor.

Mr. JOHNSTON. He yields the floor or yields for a question?

Mr. GLENN. Yield for a question.

Mr. JOHNSTON. I thank the Senator from Ohio. Mr. President, the Senator from Ohio just read a copy of a letter from Secretary of Agriculture Dan Glickman to Democratic leader TOM DASCHLE dated July 11 which he read in full which recommended veto because the Dole-Johnston bill added another level of procedure, which would be the peer review of these matters in food safety.

I am looking at the Glenn substitute, particularly pages 27, 35, 36, and 37, and I see a peer review situation of exactly the sort that Secretary Glickman describes. I ask the Senator from Ohio, am I not correct, does he not include the same kind of peer review and, indeed, that includes on page 27 review of the Food Safety and Inspection Service for peer review?

Mr. GLENN. I think what the Secretary is complaining about is the effective date on this. Ours would not have the same time of effectiveness as S. 343.

In addition, as the Senator from Louisiana will note, one of the major differences he had with S. 343 is making the record subject to judicial review provisions which could delay things in a major way, as he says at the top of the second page of his letter. I might add, the letter was not just to the minority leader, it was to both the majority and minority leaders.

Mr. JOHNSTON. Do I misread this when he says in the last paragraph on the first page that ''S. 343 would significantly delay this essential reform by requiring USDA to establish a peer review panel which satisfies the criteria in S. 343, submit a cost-benefit analysis and risk assessment [analyses] to the panel, and convene the panel to review the analyses''? He is not talking about appeal or effective date, he is talking about peer review, is he not?

Mr. GLENN. He is talking about peer review and subjecting it to judicial review.

Mr. JOHNSTON. I invite my friend from Ohio to go back and read the letter. He may be also complaining about judicial review provisions. Did the Senator have any judicial review in his proposal?

Mr. GLENN. Of the final rule. Of the final rule only. In S. 1001, we do not permit judicial review at each step along the way, as is provided in S. 343. That is what I mentioned several times this morning. That is just a lawyer's dream, as I see it, because they can challenge at any point along the way virtually where we provide for a final rule. You can take the whole rulemaking process, and once it is ready to become finalized, to become a rule, then it can be challenged in court. Then you can have judicial review.

Mr. JOHNSTON. Is the Senator aware that S. 343 does not allow judicial review at every step along the way? It simply allows an interlocutory review for three limited questions. First, whether it is a major rule; that is, whether its impact will be $50 million—and I hope we can change that to $100 million—but the size of the rule. Second, whether it is a matter affecting health, safety or the environment, which would require a risk assessment. Third, whether it would require the reg-flex for small business. And that limited appeal would have to be made in 60 days. That is not to give a lawyer's dream; that is to give certainty, so that you do not, at the end of the process, have to go back and do the peer review and the risk assessment if you were incorrect about the size of the impact of the rule. Now, that is not what he is complaining about here, that interlocutory appeal. That is a separate thing. Would the Senator not agree with me that I have correctly stated what S. 343 states, and if I have not stated it correctly, would he correct me on how I have misstated it?

Mr. GLENN. Well——

Mr. SIMON. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Iowa has the floor.

Mr. SIMON. That was my question: Who has the floor?

The PRESIDING OFFICER. The Senator from Ohio yielded the floor. The chair recognized the Senator from Iowa, who yielded for this colloquy.

Mr. GLENN. Repeat your question.

Mr. JOHNSTON. The Senator says that the Secretary of Agriculture objects because there is an interlocutory appeal provided in S. 343. Having recognized that both bills, the Glenn substitute and S. 343, provide for an appeal from the final agency action. So what the Senator from Ohio says is that the Secretary of Agriculture is objecting because of an interlocutory appeal. My question to him is, would he not agree with me that that interlocutory appeal—that is, an appeal taken within the first 60 days after the publication in the Federal Register of the question of whether or not it is a major rule, whether or not it pertains to health, safety, or the environment, or whether or not it affects small business requiring the reg-flex—that must be published in the Federal Register and appeal taken on that limited question within the first 60 days. Does the Senator agree with me that that is not what——

Mr. GLENN. Well, what I will have to do, I answer my colleague, I would have to get a clarification from the Secretary as to exactly what he meant in some of this. There can be two interpretations of it, as there can be different interpretations as to whether judicial review is required each step along the way. That is not certain at this point. I think there are different interpretations of that. I believe that is one of the areas in which we had trouble getting language clarified, was it not?

Mr. JOHNSTON. I think the Glenn bill is ambiguous on that question. I do not believe S. 343 is in its present form. We will debate that at a separate time. I am simply saying that the Glenn bill is subject to the same thing on peer review that he says the Secretary of Agriculture says S. 343 has. Only ours is more flexible with respect to peer review than his because we allow for informal peer review, and the Glenn bill does not.

Mr. GLENN. S. 343 would take effect sooner and would affect these rules more, where our effective date is later.

Mr. JOHNSTON. Now, if I may ask the Senator this. The Senator said that under S. 343 rules automatically sunset. Now, two questions:

First, is he not aware that in S. 343 we now provide—this has been added since it originally started—that any interested party may petition the court of appeals for D.C. to get an extension of up to 2 years upon a showing that the rule is likely to terminate, that the agency needs additional time, that terminating the rule would be in the public interest, and that the agency has not expeditiously completed its review. You cannot only get an extension of 2 years, but you can get such court orders as are appropriate, such as to complete the rulemaking, or commence the rulemaking, or advance the schedule, whatever court orders are necessary; and is he aware of that, and in light of that, would he not say that a sunset is not automatic under S. 343 but is subject to that extension?

Mr. GLENN. What happens at the end of 2 years? Two years is not much in this rulemaking thing, as he is aware. Sometimes it takes 3 or 4 years to get a rule put into effect. Two years is not a long period of time.

Mr. JOHNSTON. After the 3 years, 5 years.

Mr. GLENN. At the end of that time it would sunset, is that correct?

Mr. JOHNSTON. At the end of the 5-year period, it would sunset. Keep in mind that it did not get on the schedule and that the person at the agency

was in charge of the schedule, and so he or she could advance the rule as quickly as he could. Would the Senator say that 5 years is not a sufficient time?

Mr. GLENN. It took 5 years to get put into place.

Mr. SIMON. Point of order, Mr. President.

The PRESIDING OFFICER. The Senator from Iowa has the floor. Does he yield for an inquiry?

Mr. JOHNSTON. Will the Senator from Iowa yield for another question?

Mr. GRASSLEY. I will yield. But is it going to come to a close soon?

Mr. JOHNSTON. Yes.

Mr. GRASSLEY. I ask unanimous consent to extend the time to recess until 12:45.

Mr. GLENN. Reserving the right to object.

Mr. GRASSLEY. Why do I not take the floor then. I thought this was a good exchange.

Mr. JOHNSTON. If I could ask one more question.

Mr. GLENN. I could not agree to doing that. That is done by the leadership.

Mr. JOHNSTON. One more question. Did the bill which the Senator has touted that came out of committee by, I think, a unanimous vote, not provide for a sunset of all bills with no extension at the end of 10 years on the sunset provisions. Did that bill not so provide?

Mr. GLENN. We have changed that in the Glenn-Chafee bill.

Mr. JOHNSTON. With a 5-year extension.

Mr. GLENN. We changed the sunset and review provision.

Mr. JOHNSTON. The bill you voted for in committee.

Mr. GLENN. We no longer have a sunset in this. The bill came out in committee and we changed that later on.

Mr. JOHNSTON. The bill out of committee did have the sunset and did not have any ability to get court orders to order the agency to take action.

Mr. GLENN. No, it came out with a 10-year limit, with a Presidential right to extension. If the agency did not review it, it would sunset. We now realize that was wrong because somebody could delay it over in an agency and sunset a bill by not doing anything. So we took that out. S. 1001 does not have that in there.

Mr. JOHNSTON. I thank the Senator from Iowa for yielding.

Mr. GRASSLEY. The Senator from Louisiana has been so involved in this legislation, so I thought it was very important that I give him time to have that communication with the Senator from Ohio, because I think there is a lot of misperception about this legislation. I think what the Senator from Louisiana just had to say in the way of asking questions helped clear up some of the misperceptions about this legislation.

Also, the Dole amendment is before us. I want to speak on the Dole amendment, because there are a lot of misperceptions about the legislation.

I support the Dole amendment on E. coli and other food borne pathogens. I would like to be able to argue that the amendment is necessary to protect the public health from threats to food safety.

But I think we have to be honest with each other. The regulatory reform act of 1995—that is the title of the bill before us—will not in any way jeopardize the safety of this country's food supply. So then why the Dole amendment?

The Dole amendment is necessary due to fear mongering and scare tactics used by opponents of regulatory reform in this town. They are doing this in an attempt to kill this legislation, S. 343, which has been caught up in the politics and misinformation over the proposed meat inspection regulations.

We have all seen television commercials, and we have seen the political cartoons characterizing Republicans, in particular, as supporting ''dirty meat.'' It makes it sound like we are rolling back meat inspection requirements. This is demagoguery, Mr. President, at its worst. There is not a Member of this Chamber that would put the health of this Nation's children at risk, or anybody of any age at risk.

Yet, the administration and the opponents of this bill would have you believe that the proposed meat inspection regulation would somehow be delayed or even eliminated altogether by this bill. That is simply not the case.

This bill already allows agencies to avoid conducting cost-benefit analyses and risk assessment when a regulation is necessary to avoid an ''emergency or health safety threat.'' And the words ''emergency or health safety threat'' are from the legislation. Furthermore, even if this exemption were not in the bill, the proposed regulation on meat inspection has already passed cost-benefit scrutiny by both USDA and OMB.

So a regulation that they fear is in jeopardy has already gone through this process to satisfy this legislation. The administration and opponents of regulatory reform somehow seem to want it both ways. On the one hand, they argue that if this bill is passed, there will be a serious and imminent threat to the Nation's food supply.

If this argument is correct, the exemption in this bill allows for the implementation of the meat inspection regulation without conducting cost-benefit analysis and risk assessment. But, on the other hand, they argue that if the exemption does not apply, the meat inspection regulation will be held up because it would not pass muster under this bill.

That is not true. Because, apparently, the regulation has already passed the cost-benefit analysis that is required. So even though I do not believe this amendment is necessary, I think it does help clarify the meaning of the bill. Most important, it is going to stop opponents from demagoging on this issue and for this reason I fully support it.

But I think what is at issue here is this. The regulators and organizations in this town who support massive big Government regulation—and of course Members of this body who are supportive of that concept as well—see their power to stretch the meaning of legislation to an extreme, to do what is in their mind everything the law will allow, just stretch the intent of Congress as much as you can—they see this legislation as impeding their power. They do not like that. It is this power in this town versus, then, the power of the people at the grassroots who want to make sure that public health and safety is protected. We all want that to happen. But we want to make sure that it is done in a reasonable way—not from emotion but from reason.

The regulators' mindset is to look at scientific data differently than the way scientists look at scientific data. This legislation is going to make sure that risk assessment and regulation generally has a scientific basis. It is a way of taking emotion out of so much of the debate that comes with regulation.

There have been many instances in which regulatory agencies have issued regulations and then they would put together panels of scientists, most from academia, to come in and look at the science behind the regulations that are issued. There are instances in which the scientific panels would say that the science is not good; where the panels would not back the science of the regulatory agency that was behind the regulation writing. Panels of scientists would say to the agency, ''Go back to the drawing board. Start over again.'' The politics of the agency or the politics of this town gets in the way of good regulation writing because of the regulators' mindset to not view scientific data the same way that scientists would.

The attitude in this town is to have just enough science as a rationale for your regulation. The attitude in this town is that we do not want science to disprove anything. Regulatory agencies do not want science to disprove anything. What they basically want is just enough data to support a regulatory decision already made, a political decision already made.

So what this legislation does is put in process a procedure by which scientific evidence is going to carry a greater weight. Most important, though, there is going to be judicial review and congressional review of the decisionmaking process so regulators, who are told to use sound science, will have to use sound science. Or, if they do not, there are going to be other people looking over their shoulders.

This legislation is going to make the regulatory process more intellectually honest. It is going to eliminate those instances in which the politics of this town or the politics of a regulatory agency say which regulations they are going to write, and then scientists

come in and say sound science does not back up the regulation, so go back to the drawing board. There should not be any more need to go back to the drawing board unless a court would say that they should, or the Congress would say that they should, through the process of review.

It is very important that we have a sound scientific basis for regulation. But it is more important that the regulation writers are held accountable, by having somebody look over their shoulder. This legislation is very rational, a very rational approach to regulation writing. This legislation is badly needed to make sure that regulation is within the least costly approach to give us the most benefit.

This legislation is simply common sense, and that is what we do not have enough of in this town—maybe even in the laws we write, but most important in the regulations. That is why Senator DOLE's amendment is very important, to take some of the emotion out of this debate. It is very important that we get some of this legislation passed, this regulatory reform bill passed, so we take some of the emotion out of the whole process of regulation writing in this town.

Mr. President, I have a request from the leader to read a unanimous-consent request.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the recess at 12:30 be delayed for up to 15 minutes in order to allow for a statement by Senator SIMON.

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

Mr. GLENN. Reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Illinois is recognized.

Mr. SIMON. Mr. President, I thank my colleague from Iowa for making the unanimous-consent request.

What we need in this field is some balance. There is no question we have overregulation. Anyone, in any field—I do not care whether it is education, medicine, what the field is—recognizes we have overregulation. But the bill that came out of the committee headed by Senator ROTH and Senator GLENN, being the ranking member, that came out 15 to nothing—that strikes me as having that balance. Let us just take a look at a few examples.

Iron poison—between 1990 and 1993, 28 children under the age of 6 died from iron poisoning after taking adult iron-containing products. Overdoses of iron tablets by children can result in intestinal bleeding, shock, coma, seizures, or possibly death. Iron is now a leading cause of poisoning deaths for children under the age of 6.

The FDA has proposed warning labels. This bill might well delay what could come, and would permit judicial review that clearly could cause delay.

Let me give another example.

When it was proposed that we have safety belts in our cars, the automobile industry was not enthusiastic about that, as many of us here will recall. Here is Henry Ford II, in response to this proposal, in 1966.

> Many of the temporary standards are unreasonable, arbitrary and technically unreasonable. If we cannot meet them when they are published, we'll have to close down.

This was seatbelts. They were going to have to close down American automobile manufacturing because of seatbelts.

We voted for seatbelts and, lo and behold, it has not hurt American manufacturing. As a matter of fact, the Japanese were there ahead of us and we are saving thousands of lives every year.

Here is Lee Iacocca, and I am ordinarily a Lee Iacocca fan. He was then vice president of Ford Motor Co., in a meeting with President Richard Nixon, April 27, 1971:

> . . . the shoulder harness, the head rests are complete wastes of money. You can see that safety has really killed all of our business. We're not only frustrated, but we've reached the despair point.

Now, all of a sudden it sells cars. Now they are bragging about the very things that they opposed: Airbags. I can remember, in 1990, the fall of 1990, right after the election I wanted to buy an American car. The only American car that had airbags on the passenger side was a Lincoln—meaning no disrespect, I am not the Lincoln type. I am a Ford, Chevrolet, or Plymouth. I could not buy an American car that had airbags on the passenger side. I finally bought a Chevrolet that had them on the driver's side, not on the passenger side. Now they are bragging about the very things they opposed.

If this law were not in effect, would we have moved ahead on seatbelts and airbags? I think the answer is clearly we would not have.

Let us take a look at a few other things. Lead solder out of food cans. These are examples from the FDA. Final rules published June 27, 1995; effective date to stop manufacturing cans with lead solder is December 27, 1995. What is going to happen if this law comes into effect? I do not know. Requiring quality standards for mammography tests, publication of proposed regulations are planned for October 1995. You have people who are not providing quality tests for women.

What happens if this goes into effect? Cables and lead wires in hospitals have caused the deaths of a number of people. FDA has proposed a regulation to require that cables which connect patients to a variety of monitoring and diagnostic devices be designed so that the cables could not be plugged directly into a power source or electric outlet. Proposed rules were published June 12, 1995. What happens?

Take another example, Mr. President. I had a press conference with two little boys with asthma. Asthma is the leading illness of all U.S. children. A young boy named Kyle Damitz spoke at this press conference. He and his brother both spoke. Here is what Kyle Damitz had to say.

> Hi, my name is Kyle Damitz.
> I am 6 years old.
> I go to Farnsworth school.
> I have asthma.
> I love to play sports.
> In the summer when the air is dirty, I can't go outside. I can't breathe in the dirty air.
> And my mom makes me come inside.
> This is not fair to me and my brothers and everyone with asthma.
> We need to tell the president, to make new laws. So that all the kids with asthma can play outside all the time.

How do you do a cost-benefit analysis on kids playing outside who have asthma? I think you have to recognize the cost-benefit test simply is not a workable test.

Mr. JOHNSTON. Mr. President, will the Senator yield on that point?

Mr. SIMON. Let me finish, and then I will be happy to yield to my colleague from Louisiana.

The State of Illinois tried a cost-benefit criteria in terms of its water and air pollution and found it just was not workable.

Jacob Dumelle, the chairman of the Pollution Control Board from 1973 to 1988 commented about why the Illinois Pollution Control Board had banned the mandatory economic impact analysis. This is a quote from him:

> Cost-benefit analyses are expensive, hard to do. In the end, you try to put a dollar value on human lives.

You just cannot do that effectively. The cost-benefit test just does not make sense.

Let me quote, and I ask unanimous consent, Mr. President, that an article of July 17 from Business Week be printed in the RECORD.

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

[From Business Week, July 17, 1995]

ARE REGS BLEEDING THE ECONOMY?

MAYBE NOT—IN FACT, THEY SOMETIMES BOOST COMPETITIVENESS

(By John Carey, with Mary Beth Regan)

To the Republican Congress, regulations are like a red cape waved in front of a raging bull. ''Our regulatory process is out of control,'' says House Science Committee Chairman Robert S. Walker (R–Pa.). He and other GOP leaders charge that nonsensical federal rules cripple the economy, kill jobs, and sap innovation. That's often true: Companies must spend enormous sums making toxic-waste sites' soil clean enough to eat or extracting tiny pockets of asbestos from behind thick walls.

That's why GOP lawmakers on Capitol Hill want to impose a seemingly simple test. In a House bill passed earlier this year and a Senate measure scheduled for a floor vote in July, legislators demand that no major regulation be issued unless bureaucrats can show that the benefits justify the costs. ''The regulatory state imposes $500 billion of burdensome costs on the economy each year, and it is simply common sense to call for some consideration of costs when regulations are issued,'' says Senate Majority Leader Bob Dole (R–Kan.).

That sounds eminently reasonable. But there's a serious flaw, according to most experts in cost-benefit calculations. ''The lesson from doing this kind of analysis is that it's hard to get it right,'' explains economist Dale Hattis of Clark University. It's so hard, in fact, that estimates of costs and benefits may vary by factors of a hundred or even a thousand. That's enough to make the same regulation appear to be a tremendous bargain in one study and a grievous burden in the next. ''If lawmakers think cost-benefit analysis will give the right answers, they are deluding themselves,'' says Dr. Philip J. Landrigan, chairman of the community medicine department at Mount Sinai Medical Center in New York.

There's a greater problem: The results from these analyses typically make regulations look far more menacing than they are in practice. Costs figured when a regulation is issued ''almost without exception are a profound overestimate of the final costs,'' says Nicholas A. Ashford, a technology policy expert at Massachusetts Institute of Technology. For one thing, there's a tendency by the affected industry to exaggerate the regulatory hardship, thereby overstating the costs.

More important, Ashford and others say, flexibly written regulations can stimulate companies to find efficient solutions. Even critics of federal regulation, such as Murray L. Weidenbaum of Washington University, point to this effect. ''If it really comes out of your profits, you will rack your brains to reduce the cost,'' he explains. That's why many experts say the $500 billion cost of regulation, bandied about by Dole and others, is way too high.

Take foundries that use resins as binders in mold-making. When the Occupational Safety & Health Administration issued a new standard for worker exposure to the toxic chemical formaldehyde in 1987, costs to the industry were pegged at $10 million per year. The assumption was that factories would have to install ventilation systems to waft away the offending fumes, says MIT economist Robert Stone, who studied the regulation's impact for a forthcoming report of the congressional Office of Technology Assessment (OTA).

BOTTOM LINES

Instead, foundry suppliers modified the resins, slashing the amount of formaldehyde. In the end, ''the costs were negligible for most firms,'' says Stone. What's more, the changes boosted the global competitiveness boosted the global competitiveness of the U.S. foundry supply and equipment industry, making the regulations a large net plus, he argues.

While federal rules that improve bottom lines are rare, regulatory costs turn out to be far lower than estimated in case after case (table). In 1990, the price tag for reducing emissions of sulfur dioxide—the cause of acid rain—was pegged at $1,000 per ton by utilities, the Environmental Protection Agency, and Congress. Yet today the cost is $140 per ton, judging from the open-market price for the alternative, the right to emit a ton of the gas. Robert J. McWhorter, senior vice-president for generation and transmission at Ohio Edison Co., says the expense could rise to $250 when the next round of controls kicks in, ''but no one expects to get to $1,000.'' The reason: Low-sulfur coal got cheaper, enabling utilities to avoid costly scrubbers for dirty coal.

Likewise, meeting 1975 worker-exposure standards for vinyl chloride, a major ingredient of plastics, ''was nothing like the catastrophe the industry predicted,'' says Clark University's Hattis. He found in a study he did while at MIT that companies developed technology that boosted productivity while lowering worker exposure.

Of course, it's possible to find examples of underestimated regulatory costs. And even critics of the GOP regulatory reform bills aren't suggesting that cost-benefit analysis is worthless. ''We should use it as a tool'' to get a general sense of a rule's range of possible effects, says Joan Claybrook, president of the Ralph Nader-founded group Public Citizen. But she and other critics strongly oppose the Republican scheme to kill all regs that can't be justified by a cost-benefit exercise. As a litmus test for regulation, ''the uncertainties are too broad to make it terribly useful,'' says Harvard University environmental-health professor Joel Schwartz.

What is useful is moving away from a command-and-control approach to regulation. There's widespread agreement among companies and academic experts that bureaucrats should not specify what technology companies must install. It's far better simply to set a goal, then give industry enough time to come up with clever solutions. ''We need the freedom to choose the most economic way to meet the standard,'' explains Alex Krauer, chairman of Ciba-Geigy Ltd. Krauer, for example, points to new, cleaner, processes for producing chemicals that end up being far cheaper than installing expensive control technology at the end of the effluent pipe.

DUMB THINGS

But when goals are being set for industry, the proposed cost-benefit analysis approach could have a perverse effect. That's because agencies are rarely able to foresee the low-pollution processes industries may concoct. Smokestack scrubbers are a good example. The bean-counters will use the known price of expensive scrubbers in their analyses. Their cost-benefit calculations will then argue for less stringent standards. And those won't help spark cheaper technology. The result can be the worst of both worlds: costlier regulation without significant pollution reductions. ''It's a vicious circle,'' explains Stone. ''If you predict that the costs are high, then you stimulate less of the innovation that can bring costs down.''

There's no doubt reform is needed. ''Frankly, we have a lot of dumb environmental regulations,'' says Harvard's Schwartz. But he puts much of the blame on Congress for ordering agencies to do dumb things. Now, Congress is tackling an enormously complex issue without fully understanding the ramifications. Schwartz and other critics worry. Overreliance on cost-benefit analysis could make things worse for business, workers, and the environment.

REGULATION ISN'T ALWAYS A COSTLY BURDEN

Many regulations cost much less than expected because industry finds cheap ways to comply with them.

COTTON DUST

1978 regulations aimed at reducing brown lung disease helped speed up modernization and automation and boost productivity in the textile industry, making the cost of meeting the standard far less than predicted.

VINYL CHLORIDE

Reducing worker exposure to this carcinogen was predicted to put a big chunk of the U.S. plastics industry out of business. But automated technology cut exposures and boosted productivity at a much lower cost.

ACID RAIN

Efficiencies in coal mining and shipping cut prices of low-sulfur coal, reducing the need to clean up dirty coal with costly scrubbers. So utilities spend just $140 per ton to remove sulfur dioxide, vs. the predicted $1,000.

Mr. SIMON. Mr. President, that article is about this legislation. Listen to the last sentence of this article. This is not from some wild-eyed radical liberal publication. This is from Business Week.

Overreliance on cost-benefit analysis could make things worse for business, workers, and the environment.

I think we ought to be going back to the bill by our colleague from Delaware, Senator ROTH. I think that has balance. I think this bill does not have balance. This bill is going to end up in endless litigation. I know my colleague from Louisiana is sincere, as is the majority leader. But I think it is moving in the wrong direction.

I am pleased to yield to my colleague from Louisiana for a question.

Mr. JOHNSTON. I ask my friend, would he not agree that benefits to health, safety, or the environment are by their nature nonquantifiable; human life, health, clean air?

Mr. SIMON. They are not. That is why I think we have to be very, very careful in this area.

If I may regain my time just for a minute, when you talk, for example, in an area that the Senator from Louisiana knows much about, and the Presiding Officer does, and I do, and that is flood control, then when you talk about cost-benefit, it is very easy. When you talk about something like asthma, then you are talking about something where it becomes very, very difficult.

Mr. JOHNSTON. Is the Senator aware that at my behest, we put in language in the bill contained on page 36 that 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, appropriately and in the public interest, that that more costly alternative may be accepted because of the nonquantifiable benefits to health, safety, and the environment, or because of the uncertainty of science and data?

Is the Senator aware that that amendment was added to this bill since that Business Week article was written?

Mr. SIMON. Let me just add, there is no question that the Senator from Louisiana has improved the bill before us.

Mr. JOHNSTON. Does that not cover the exact things the Senator from Illinois was talking about, the boy with the asthma, the kid with the lead?

Mr. SIMON. I think the answer is what is quantifiable and what is nonquantifiable is going to become a matter of jurisdiction of the courts under this legislation. I think we are going to have endless litigation.

Mr. JOHNSTON. Under the definition of benefits, we have already included the quantifiable benefits. That is put into your cost-benefit ratio. This says that this is a little extra that you are able to add. If you are not able to quantify the value of life, which by its nature is nonquantifiable, or the value of

clean air, then you can add that on and have a more costly alternative.

That is exactly and precisely to deal with the problem that my friend from Illinois so eloquently described, which is the kid with asthma, the people with safety belts, and all that. It is nonquantifiable. It is human life. You do not put a dollar value on human life or on the value of clean air.

I urge my colleagues to go back and read on page 36 those words. I think it covers this like a hand in a glove.

Mr. LEVIN. Will the Senator from Illinois yield on that exact same point?

Mr. SIMON. I am pleased to yield to my colleague from Michigan.

Mr. LEVIN. I hope also all of us will read that language which was referred to by the Senator from Louisiana. But what it does not cover are areas where we cannot quantify the benefits, such as how many fewer asthma attacks will result? That is quantifiable, let us assume for a moment. The value of avoiding it may not be quantifiable. But the fact that we could avoid a certain number of asthma attacks, or deaths in many cases, is very quantifiable.

We sought from the Senator from Louisiana and others language which would say that where you can quantify a reduction in deaths or asthma attacks, we should then not be forced to use the least costly approach. We may want to reduce more asthma attacks and save more lives with a slightly more expensive approach. We were unable to get that language.

So, yes. It is very important that all of us understand the point that is made by the Senator from Louisiana. But it does not solve the problem which has been raised by the Senator from Illinois.

Mr. SIMON. Mr. President, I think the dialog we have just had suggests that my point is valid, that we are going to end up with the courts deciding what is quantifiable and what is not quantifiable. I think we should move slowly in this area. I have been in Government a few years now, Mr. President. I was first elected to the State legislature when I was 25. I am now 66. I have found generally that when we take solid, careful steps, we are much better off than when we do these sweeping things.

I think what we have before us now is well intentioned, but too sweeping, in answer. The pendulum will go from one cycle to the other.

Mr. President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:55 having arrived, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:46 p.m., recessed until the hour of 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. GRAMS).

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I would like to speak for a moment in support of the Dole amendment, and therefore in support of this legislation as we will amend it.

The question before us is whether or not benefits justify costs. That is really all we want to know. Given that the Judiciary Committee's report places the regulatory burden on our economy at over $881 billion, I think that is a reasonable question to ask. That averages just under $6,000 for every household in this country—$6,000 that families in this country cannot spend on other things because the money has to be given to the Government or has to be used in other ways to comply with the costs of regulation.

That is why these costs are cloaked in what amounts to a hidden tax. They are passed on through lower wages, through higher State and local taxes, through higher prices, through slower growth and fewer jobs. I said fewer jobs. According to William Laffer in a 1993 Heritage Foundation report, and I am quoting:

> There are at least three million fewer jobs in the American economy today than would have existed if the growth of regulation over the last 20 years had been slower and regulations more efficiently managed.

To put it in perspective further, the Americans for Tax Reform Foundation found that each year Americans work until May 5 to pay for all Government spending. If you add the cost of regulations, each American has to work until July 10—I believe that was yesterday—in order to pay for all of the taxes and regulations imposed upon us. That is over a half year of work to pay the total cost of Government, and 2 months of that hard work must pay for the costs of regulation. As I said, that is money families could spend making their own decisions on how to spend for their own health care, safety, and education.

According to a 1993 IPI policy report, regulations add as much as 95 percent to the price of a new vaccine. And Justice Breyer, who has recently been elevated to the Supreme Court, wrote a book called ''Breaking the Vicious Circle,'' in which he poses the following question: ''Does it matter if we spend too much overinsuring our safety?'' And he answers his own question. ''The money is not, nor will it be, there to spend, at least not if we want to address more serious environmental or social problems—the need for better prenatal care, vaccinations and cancer diagnosis, let alone daycare, housing, and education.''

In other words, Mr. President, it is foregone opportunity in the sense that by spending this money on something where its benefits are marginal, we are precluded from spending it on things that could really be more important and helpful to us.

Cost-benefit analysis, some people say, is a new and a foreign concept. Well, businesses fail if they do not utilize cost-benefit analysis. At every turn, individuals are confronted with decisions that require weighing the pluses and minuses and the benefits and costs. These are decisions that we make every day. We call it common sense. When we decide to get in our automobile and drive somewhere, we know that the national highway fatality and accidents statistics weigh fairly heavily toward the possibility that sometime in our life we are going to be involved in an accident in which we are going to be harmed and yet we consciously make the decision that because the benefits to us of arriving at our destination using our automobile are worth more than the risks, we decide to take those risks.

In another more simple example, we cross the street every day, and most of us understand that there is some degree of risk in crossing the street; people are harmed every day by doing that, but the benefits of us getting to our destination exceed the costs, or the potential risk to us in making that particular trip.

So as human beings, as families, as individuals, we make decisions, many decisions every day that involve some theoretical and sometimes not so theoretical risks to ourselves. Yet we do that knowingly, and we do that understanding that sometimes benefits can outweigh those risks. It is the application of common sense. And what we are asking for with respect to the regulations that are imposed upon us, is that there be a little bit more common sense, a little bit more care to go into the development of these regulations.

Now, one of my colleagues this morning spoke, and I thought made an excellent point, that Government generally is supposed to do for us what we cannot do for ourselves. Most of us believe that. We appreciate the fact that in many cases we cannot as individuals understand the risks involved and we cannot police everything that could pose a particular risk to us. And so we ask the Government to do that for us. We empower Government agencies to do tests, to do analysis, and to actually establish standards. Then they frequently report those standards to us on a product or on a label or by some regulation precluding the manufacture or use of something that would be dangerous to us.

We do that certainly in our food industry in a way that is understood by all, in the approval of drugs and in many, many other ways. We ask the Government to do for us what we cannot do for ourselves, to understand the risks. That is called a risk assessment, to do a cost-benefit analysis. Indeed, most Presidents since President Ford have, in fact all Presidents I think have, in effect, imposed a cost-benefit