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

analysis requirement on most Government agencies as a matter of Executive order. The problem is it is enforced more in the breach than in the compliance. And so many agencies do not follow that cost-benefit analysis in the establishment of regulations. And that, I will get back to, is basically what we are asking these Government agencies to do. When we give to them the obligation of protecting us in some way, we want them to do it in a way that represents common sense and at the least cost consistent with the protection which we want.

Now, there is an argument that has been made that the regulatory agencies ought to be expected to exercise the same sort of common sense that individuals do. I want to make a couple points about that.

First of all, Mr. President, whenever we hand power to the Government, it should be viewed with a special or through a special lens because the Government exercises power far beyond that which can be exercised by any of us as individuals or even as a business organization. Some call it the heavy hand of Government. But we all appreciate the fact that when we pass a law in the Congress, and when the executive branch agencies of Government administer that law pursuant to our direction, they are doing so under the color of, under the authority of, under the color of law—the power of the Government to enforce that law. And we as citizens are supposed to know what that law is.

We all learned in school that ignorance of the law is no excuse. And yet there are over 20 million words of regulation today, about 36,000 pages of regulations in the Federal Register. We cannot all be expected to know what those are. We do not need to know what they all are. But I daresay that there are a lot of regulations that could end up suggesting that we are in violation of some law that, in fact, we do not even know about. That is certainly the case with a lot of businesses.

The fact is there are a lot of regulations. They have behind them the power of the law to enforce them. So when we ask the Government to do something for us, we should be very careful about ceding too much authority, because the Government can, in the enforcement of those regulations, impose fines and impose other kinds of penalties upon us. And, of course, the stories in the newspapers and so on are full of stories about examples of situations in which an innocent citizen has gotten himself or herself into hot water because he has run afoul of some Federal regulation, frequently of which he was not even aware.

So, when we say, well, a Federal bureaucrat can certainly be trusted to exercise the same degree of common sense that an ordinary citizen would, we appreciate the hard work that our so-called bureaucrats do for us, but we also have to appreciate the power that stands behind that bureaucrat in terms of being able to enforce those regulations.

That is why we need to be very, very careful about the kind of regulations that have been imposed; and, second, because we have certainly seen instances in which there has been an overregulation; and, third, because the cost of those regulations on our society cannot necessarily be fully appreciated by the individual who is promulgating the regulation.

That is why we want to make it very clear to the people to whom we entrust with that authority that we, the Congress, want them to examine both the risks and the costs against the benefits to be achieved by the regulations that they would impose.

Let me give you an example, Mr. President, that occurred in my home State not too long ago. It is an example I cite because it really had a happy ending, but no thanks to the law that we wrote and the regulations that were promulgated pursuant to that law.

In Graham County, AZ, a rural area primarily of cotton farming and other agriculture, there is a river called the Gila River, which does not overflow very often but when it does, unfortunately, it is a wild river. It flooded in 1993 in January. The flood was significant enough to wipe out a bridge about 5 miles east of Safford, the county seat of Graham County. Unfortunately, when that happened, the river changed its course and went several hundred yards to the south wiping out a lot of farmland and causing a great deal of havoc. The primary thing that happened was that there was no more opportunity to cross the river there for the people who lived on the other side without a 28-mile detour across a bridge that was very narrow, 20 feet wide, a bridge one could not build today under Federal regulations, and probably a good thing because it is not a very safe bridge. School kids got up an hour earlier in the morning and stayed an hour later in order to ride that extra distance to and from home. And the traffic was all routed on a small State road. Since it is a farming community, the farm implements were obviously traveling on the same road as the highway traffic. Of course, these can be very wide. They are 20 feet wide sometimes and travel at maybe 10 or 15 miles an hour. I saw many instances in which, because motorists were frustrated, they passed the double line. They should not do it. It is against the law. But clearly, health and safety were implicated in the fact that people could not cross the bridge that existed before.

The Federal Highway Program had funds available through disaster assistance to reconstruct the bridge, and the Army Corps of Engineers was willing to reconstruct the bridge. The problem was that it had to consult with the Fish and Wildlife Service because it is believed that there is an endangered species in the Gila River called the razorback sucker. Now, nobody can find that little sucker, but supposedly it is there. Let us assume that it exists. And if it does, we certainly want to preserve it and save it.

But what the local officials were asking the Army Corps of Engineers to do was to build up a little dirt berm, now that the river has gone back down again and does not flow very heavily, to redirect the river back to its original channel. Now, if the sucker exists, and if it lived all of these years in its original channel in the Gila River, then presumably it can do just fine living where it always lived, and it is no danger to that species that the river is being redirected back where it always was. And by doing that, the bridge can be constructed, the people can travel safely, and life returns normally to the people in Graham County. But, alas, the Army Corps of Engineers could not get the approval from the Department of the Interior to go forward with these plans.

Finally, the situation was dangerous enough, the people were fed up enough, the situation was frustrating enough, costing enough, that the people of Graham County said, ''We've got to do something about this ourselves. We have to take matters into our own hands, apply a little common sense.''

They notified the Army Corps of Engineers of their plans to build a little dirt berm, to redirect the channel back where it had been and build a little low-river crossing there. And, fortunately, the Army Corps of Engineers exercised what they call ''enforcement discretion'' and did not cite the county officials when that is precisely what occurred.

Now the river has been channeled back in its original place. A low-river crossing has been built. And plans are going forward to reconstruct the bridge. An application of common sense by common people, having their lives to live, who just could not afford to wait any longer to live in this bureaucratic morass that we have created.

Well, who is really at fault? It is probably ultimately the Congress' fault for writing a statute that permits this kind of regulatory authority. But it is also the fault of the agency in not exercising the common sense to authorize the project to go forward.

When one considers the quality between protecting this species, which is somewhat questionable, as I said—and I think the folks would agree with that—in any event, protecting it by letting it go back into the same channel it had always been in, when you weigh that against the risk of lives to people for having to cross this very narrow bridge 5 miles downstream and traveling behind slow-moving farm implements and all the rest of it, it seems to me that it is a good example of how sometimes we do not apply common sense in these regulations, and it was necessary for people to take matters into their own hands.

When it has gotten to this point, we have a problem, and that is the problem we are trying to correct here with the process changes that are embodied in the Dole-Johnston substitute. We are not changing the underlying substantive law. Endangered species, clean air, clean water, all of those laws that we have created for the protection and safety of our environment and our people still exist. They still will prevail. But in the establishment of regulations now, we are asking the people who implement those laws to take certain things into consideration, such as an assessment of risks and a cost-benefit analysis, when that is appropriate, and, in the case of certain regulations where it is appropriate, to do peer review. Those are all very reasonable concepts.

I am certain in a bipartisan way we can work out any differences that exist relative to the application of those principles to the administering of the laws that we write.

Let me just conclude with a couple of other thoughts, Mr. President.

John Graham, professor and founding director of the Center for Risk Analysis at the Harvard School of Public Health, wrote in the Wall Street Journal recently:

> Since zero risk is not a feasible goal, we need to rank risks in order of priority.

For example, he agrees that childhood lead poisoning is a serious public health problem and asserts, nevertheless, that fewer resources should be used to excavate soil at Superfund sites where the probability of childhood exposure to lead is low, whereas more resources should be directed toward cleaning up older homes in poor communities, where each day kids are ingesting house dust contaminated with deteriorating lead paint. In other words, an example of where we probably have our priorities wrong because of the rigidity with which we developed these laws, and they are being administered pursuant to that rigidity. We are trying to loosen that process up in the Congress by giving discretion to our agencies to apply more common sense in the development of a regulation.

The Hillary Clinton task force, as a matter of fact, used the same type of prioritization and analysis. Her task force included a proposal for mammograms for 50 year olds at $100 million per life saved, while mammograms for 40 year olds at $158 million per life saved were rejected as too costly.

The conclusion is, in both cases, obviously there are lives at stake, but in one case it was simply deemed too costly for the Government to provide the source of revenue for the mammograms, considering the risks involved. One can argue with that particular analysis. One can say, ''No, that's still too great a risk.''

My point in citing the example is simply to note the fact that the President's wife in her task force and all of the work that she did on this, a professor from Harvard, Government agencies today, all of us in our individual lives all use common sense and prioritize the risks against the costs. So that is not a concept that we should be arguing against. We should be implementing it in the law.

I cited the Harvard School of Public Health study. It indicated:

> . . . reallocating resources to more cost-effective programs could save an additional 60,000 lives per year without increasing costs to the public or to the private sector.

In other words, Mr. President, cost-benefit analyses would not only prevent the squandering of our scarce resources, it would actually enable us to maximize their impact and end up saving more lives and preventing more harm to our citizenry than is the case today.

Mr. President, there are many, many examples. I will conclude by saying that it is my view that the substitute represents a good-faith effort to meet the concerns of those who thought that this legislation might either intentionally or accidentally go too far in undermining existing substantive law by assuring that it is strictly a process change which supplements the authority of the people we ask to administer these laws today to engage in the kind of risk assessment and cost benefit which all of us do every day of our lives; that that makes common sense; that it will end up saving more lives; that it will end up saving a lot of money and, in the end, will provide a safer climate for the people of our country than exists today.

So I certainly urge all of my colleagues at the appropriate time to support the Dole-Johnston substitute.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I say to my friend from Idaho, I will be brief.

I think the Senator from Arizona is correct. We should not be arguing about whether we should have cost-benefit analyses. The Glenn bill does not argue about that. The argument is about whether or not the Dole bill takes too much of a risk with the public safety or not a sufficient risk.

My friend from Arizona cited some things that I think could confuse folks. He indicated that the cost of regulation—and cited a study—was *X* billions of dollars per year, that that cost jobs, it cost every household $6,000 or $16,000, I do not know what his number was, per year; the implication being, if you vote for the Dole bill, those costs will evaporate, those costs will go away.

The truth is, the Dole bill could be implemented tomorrow and the cost to households will actually go up, not go down. But let me just make a point. We all hear, and I can cite and will cite as this debate goes on, horror stories of regulations that have occurred in my State of Delaware, absolutely foolish, stupid things that bureaucrats do. We are all about here trying to rationalize this and have an element of common sense.

Let us talk about common sense. What is common sense for a corporate executive is not necessarily common sense for the average citizen.

If you are a corporate executive and you are running a steel plant in the Midwest, common sense dictates that you build a great big, high smokestack, like we used to see in the forties and fifties and sixties, 350 feet high. Common sense dictates that because it is the cheapest thing for you to do. And then you emit out of that gigantic smokestack into the upper airstream damaging particles to people's health, and you blow them across the country into Delaware, and you blow them into the State of New York and you have acid rain and you kill our fish and you kill our wildlife and you kill some of us. Now, that is common sense.

You are the chief executive officer. Someone comes along and says, ''Now, I'll tell you what I can do for you here. We can, by you having to spend an additional half a billion dollars, clean your plant up. We can see to it that with the Clean Air Act, we are going—it is going to cost you now, it is going to cost your stockholders, it may even cost jobs, what it is going to do is cost you $400, $500 million to clean the plant up.''

If you are the corporate executive sitting at your desk, that is not common sense to you to go and spend all that money. So what do we have to do to make sure that the streams in Delaware are not polluted, that the Adirondacks do not have dead lakes where nothing lives because of acid rain? We have the Government come along and say, ''We're going to make you do that, we're going to make you do it.''

It is common sense to the person living in Delaware that it is not a good idea to have all those particles coming from the industrial Midwest into my State and choking us. That is common sense. It is a good idea to clean the air. But that is not common sense for the corporate executive. I am not suggesting they are bad or good guys, but listening to my friend from Arizona, it is like if we all just sat down and talked about this, common sense would prevail.

Why did the Federal Government get in the business of air pollution and water pollution? Because the State of Arizona did not do it, the State of Delaware did not do it, the State of Kansas did not do it.

I was raised in a place called Claymont, DE. It sits on the border of Pennsylvania and Delaware.

There are more oil refineries per square mile along the Delaware River in Marcus Hook and Chester, PA—which is less than a half mile from where I was raised—than any place in America. When I was a kid, I would come out of where we lived, Brookview Apartments, my uncle would drive me to school. If it was a misty fall morning, you would put on the windshield wipers and literally there would be an

oil slick on your windshield—not figuratively, literally.

The State of Pennsylvania understood the prevailing wind went into Delaware. This was the southeast corner of Delaware, and it was a multibillion-dollar industry for the State of Pennsylvania. The idea that the folks in Pennsylvania were going to pass a law saying that all those oil refineries in southeast Pennsylvania, which blew into New Jersey and Delaware, had to clean up their refineries was nonexistent—zero. There would be a lot of political pain for those legislators in voting against those captains of industry in their States, maybe costing jobs at that refinery, maybe costing income to that county.

So the reason we got in the business in the first place is because industry did not do it. They did not do it. The States did not do it. How about clean water? I wonder how many people in this Chamber visiting Washington would like us to get out of the business of assuring that their water is clean. I do not know where they live, but I now live along a place called the Brandywine River. A factory was there, and when I was a kid, there used to be a pipe that came right out of the factory, a pipe that went right into the Brandywine, because common sense dictated that if you owned that factory, it made sense to spill that effluent into the river and wash it out into the Delaware River and into the Atlantic Ocean because it costs millions of dollars to put on devices to catch that dirty water.

Well, today, I literally—not figuratively—can raft down the Brandywine River, which is a tradition in our State, on inner tubes on a Sunday with my kids. It is clean. Does anyone in this Chamber believe that had we not imposed costs on industry that that river would be clean today? Name me a place in America where that happened without regulation, because common sense dictated that it is better to give the stockholders more money in their dividends than less.

I am not making a moral judgment. I am not making a statement about greed or anything. It is just common sense. It made sense. It was all right if the Government let you put it in the river and that took it away. Instead of spending $12 million to treat it on-site, put it in the river.

My friend said we all take risks, that we get in our automobiles and we walk across streets. Guess why people get in their automobiles? They get in automobiles today because they know that the tires they buy meet certain standards that the Government imposes on manufacturers. So you do not have what you had in the 1940's and 1950's, tires shredding and people getting killed. We now have things called inspections. In every one of our States, in the beginning, you could drive a car when the motor car came along and you did not have to go to an inspection station, you did not have to show up there. You just took your risks. As more cars got on the road, even States figured, hey, wait a minute, a lot of folks are getting killed because they are putting in brakes that do not work, steering mechanisms that do not function. So we have all these regulations. Now, they are costly. They are costly.

The only broad point that I wish to make now is that I hope no one here—I do not think my friend from Arizona is doing so—is arguing that we should not have those kinds of regulations. We are talking about the margins here. What we are debating here on this floor is what kind of oversight, if you will, by the judiciary, and what kind of oversight by industry, if you will, should there be to prevent the aberrations that occur—and they do occur—and the unnecessary costs that occur—and they do occur—from occurring? But if the good Lord could come down and divine for us every bureaucratic glitch that occurs in implementing regulations —I will give you one by the way. Unintended consequences.

In my own State a friend of mine, a kid I grew up with, a very successful highway contractor in Delaware, shows up at a function with me. He walks up and says, ''JOE, I am helping you again this year, but I could kill you.''

I said, ''Why?''

He said, ''You voted for that Americans With Disabilities Act.''

I said, ''Yes, but you were for that.''

He said, ''Yes, but I did not know you were going to do what you did.''

I said, ''What did I do?''

He said, ''I will tell you what that act did.'' He owns a highway contracting company, and he hires flag persons. You know, we have them in all our States while they are repairing the roads. One guy with a flag puts up a stop sign, and with a walkie-talkie he calls the person at the other end and says, ''You let your folks go, I will put the stop sign up on this end.''

He said, ''I hired a guy that turned out to be hard of hearing, and so when he was given the walkie-talkie, he picked up the walkie-talkie and the guy down there would say, 'OK, stop them.' But he did not hear them. So what would happen is cars would be coming through and they banged into one another.''

He said, ''I moved him to another job. I put him behind a grader, and he sued me under the Americans With Disabilities Act.''

He called over one of the most prominent lawyers in Delaware and said, ''Francis, tell him what you told me I have to do.''

Francis Biondi walks over and says, ''JOE, I told him he had to settle this for''—I will not mention the amount—''a sizable amount of money.'' It was several times what the average American makes in a whole year.

I said, ''How could that be?''

He said, ''Well, they ruled that I had to take every possible action to accommodate this person's disability. So do you know what they told me I should do? I should have had an extension that ran up 30, 40 feet that had a red light and a green light on it at either end, and that guy would be able to look down, since his eyes were good, and he could see green so that he knows to press red, and he can see red and he will know to press green. His hearing would be taken out of it.''

I will quote my friend—I guess I will not because there was profanity in it. But he basically said, ''Why in the heck do I need him then, if I am going to do that?'' That is a bizarre outcome, in my view, for a well-intended piece of legislation.

But assume we took out all of those nonsensical aberrations of regulations that we pass. I doubt whether anybody on this floor—and again, I beg the indulgence of my friend from Arizona. He gave a figure of several billion dollars and about $6,000 per household, I think. If we got rid of every one of those stupid things, we are still at about $5,000 a household. So I do not want anybody on the floor—we kind of mix things up on the floor here. Listening to my friend from Arizona, I think the average person would think that, well, if the Dole bill passes, a lot more people are going to be employed, and instead of my paying $5,000, $6,000 a year, I am not going to have to pay that anymore—not unless he is talking about doing away with the Clean Water Act and the Clean Air Act and all of these major environmental pieces of legislation.

The third point I want to make—and then I will yield the floor—is that he mentioned lead paint. When I first got here in 1973, I was on the Environment and Public Works Committee, which then was called the Public Works Committee. I was given by the then chairman, Senator Randolph of West Virginia, a subcommittee assignment that had no legislative authority. I had authority to hold hearings. It is called the Subcommittee on Technology. And I could not understand why he was being so gracious to me until I found out the first assignment I was given. I was given the assignment—being one of the Senators from Delaware, a State with a lot of small companies like DuPont and others residing in that State—I was given the assignment of writing a report, after holding hearings, on whether or not we should phase out lead in gasoline or have lead traps in gasoline.

The DuPont Co. had a patent for a lead trap. If I had written a report saying, ''Do not phase out lead in gasoline, do not eliminate lead in gasoline, just have lead traps like we had for pollution control devices,'' I was under the impression that would be a multimillion dollar, probably billion dollar, decision for the company. I do not recall any corporation during those hearings coming and saying we should take lead out of gasoline. There was overwhelming scientific evidence along the lines of those my friend from Arizona cited. He stated that it makes more sense to clean up the lead paint, dust,

and particles in existing older housing than it does to take the last traces of lead out of contaminated sites in the ground where folks do not live, that are now Superfund sites. I happen to agree with him.

But the broader point I wish to make is, were it not for a regulation by the Government in the first instance, there was no commonsense reason why corporate America thought it made sense to take lead out of gasoline. They all repeatedly made what we would call commonsense arguments. First, the reason lead is put in gasoline is that you can go further on a gallon of gasoline with lead in it than without lead in it. Second, it is not as costly to make the gasoline. Third, you will employ more people. Fourth, we have an oil embargo. It went on and on. There were commonsense, legitimate reasons—but against the public interest overall. Because, from the public's standpoint, common sense said, if you lived in a metropolitan area and you had a child, you would have to live with lead in gasoline coming out of tailpipes of automobiles or defective lead traps—which would be the case. And there would have been an incredible, enormous cost of maintaining those lead traps, additional costs. States would have to inspect the lead traps when you got your car inspected, and so forth. Common sense for the citizen said: My kid ingests that air just like the dust particles the Senator from Arizona referred to.

So the common sense for the public—for us, as representatives of the public—was to say, ''No lead in gasoline.'' The commonsense position for those who made gasoline, and lead, was, ''Lead in gasoline.''

Again, I am not making a moral judgment. What I am saying is that, ''What is good for the goose ain't necessarily good for the gander.'' What seems to be common sense—there is an old expression. I believe it is an English expression. ''What is one man's meat is another man's poison.'' And that is literally true, literally true in environmental law.

So, I hope, as we get into the detailed meat—no pun intended—of this debate, we do not confuse three things. One, regardless of which bill prevails, the total cost—I will argue later and hopefully will be able to prove to my colleagues—the total cost to the American public in terms of dollars, the difference will be de minimis.

No. 2, there will be, still, a significant cost to the American public for these regulations because the American public decided that their ultimate priority is the air they breathe, the water they drink, the food they ingest. And the American public has had over 200 years of experience, culminating at the turn of the century with Lincoln Steffens and others, about what happens when you do not regulate people who deal with our air, affect our water, and produce our food.

The third and final point I will make is that when we look at the cost, I ask my friends to count the increased cost in the number of bureaucrats that would have to be hired to meet the timetables imposed by the Dole legislation, and the cost in additional number of judges we would have to hire and the additional number of lawyers that will be paid, litigating every jot and tittle of the change in the Dole legislation. We should count those costs, compared them to the costs that come from the overstepping bureaucrat and the unreasonable regulation.

Senator GLENN and Senator CHAFEE have a bill that at one time was a totally bipartisan bill. It passed out of the Committee on Governmental Affairs unanimously—without a dissenting vote; every Democrat and every Republican. Then, Senator HATCH, my esteemed chairman at the Judiciary Committee, presented the Hatch-Dole bill. I do not know what was so wrong with the bill that passed out unanimously from the Government Affairs Committee, a major piece of legislation, significantly rewriting regulatory law, significantly lifting the burden on American business without, in my view, doing unjust harm to American consumers. But something happened on the way to the floor.

Now we have the Dole bill. Senator DOLE came here today and proposed an E. coli amendment. Now, we argued in committee that the Dole bill, unless it was changed, would increase the prospect that people would die from E. coli in meat in their hamburgers—feces in their food. We were assured that cannot possibly happen under this law. If it was not going to be able to happen, why did Senator DOLE have to come to the floor and propose an amendment on that?

Mr. KYL. Will my friend yield on that?

Mr. BIDEN. I will be delighted to yield.

Mr. KYL. Senator DOLE came to the floor to offer the amendment to take away the political argument, because a red herring, as it were, was being raised, an argument that somehow his bill was going to permit people to get sick when, in fact, the bill would not do that at all. But to get the issue off the table so people would not continue to talk about it, he said, ''Fine, we will create a belt and suspenders. The bill already prohibits it, but we will make it crystal clear so that argument cannot be made anymore, so people cannot scare people.''

May I make one other point?

Mr. BIDEN. Let me respond. I will yield in a moment. Let me respond to that. I am glad to hear that, and that is useful. Maybe the Senator from Arizona and Senator DOLE would consider, then, taking away a couple of more of what they think are red herrings.

For example, why are we trying to undo all the Superfund site plans that are soon to go into effect? Why do we not take Superfund out of this legislation? It has no part in this legislation. We are told, when we raise that, it is a red herring. I would like him to supply suspenders on that one, too, for me. We have a belt; let us have suspenders.

The next one I would like to consider, and then I will yield the floor completely, a second one is we are told the Dole-Johnston legislation does not in any way overrule existing environmental law. Why do we not just say that? Why not use that exact language, just say it, give us the suspenders along with the belt, because some of us, although maybe we ''doth protest too loudly'' maybe we are a little too cynical, maybe we read things in this legislation that are truly not intended to be there.

Mr. KYL. Will the Senator yield?

Mr. LEVIN. Will the Senator yield?

Mr. BIDEN. I yield to the Senator from Michigan.

Mr. LEVIN. There will be an amendment which will do precisely that, because of the concerns the Senator from Delaware and others raised. These are legitimate concerns which a whole host of people who are deeply involved in this issue have raised as to whether or not there is any—where there is a conflict, if there is one, between the provisions of this bill and an underlying law, what governs. We have been assured over and over again there is no supermandate, there is no intent to have any superimposition or any undoing of existing law.

But the language is not clear enough. So there will be an amendment to add the suspenders to the belt in that area, or the belt to the suspenders in that area, just as the Senator from Delaware has suggested. And I hope—I do not predict—but I hope there will be unanimous support for that amendment when it reaches the floor.

Mr. BIDEN. I thank my friend. Again, I hope that occurs because, look, most of us on this floor want serious regulatory reform. This is not a debate about whether or not we want regulatory reform. No one can argue, that the original bill out of the Governmental Affairs Committee was not significant regulatory reform. I am for it. I was for it then. I am for it now.

So this is not a debate about whether or not we have significant regulatory reform, whether or not we are going to satisfy purists, whether or not we want to be bird lovers of America, to be happy with what we do. That is not my objective. My objective is to make sure that we do not unintentionally or intentionally undo the one success story of America, the one thing I can turn to and tell my kids beyond the fact that black children can now go to school with white children in my State which was segregated by law. I can literally take them through the county where I live and say, ''I could not swim there when I was your age. You can now.'' I can tell them and take them in the neighborhood I was raised in and say, ''I can walk out in the morning anywhere in this development where you

live and work and breathe the air.'' They do not now have to breathe in oil. They can turn on their windshield wipers and the windshield is clear.

I can point out to them that the Brandywine River, Christiana River, the Delaware River, and people sail on it now. When we were kids, there were big signs saying we could not do it. I can take them to the beaches, the pristine beaches of my State and say, ''You can swim anywhere any time and you don't have to worry about medical waste rolling up here.'' I can point to them and tell them that you no longer take what they took up until 12 years ago—garbage less than 1 mile out from the shores of my area—and dump it so it washes in.

The environmental story in America has been a success story even with this aberration. I want to tell you, if my friends are as concerned, as I hope they are, about the environment as well as the aberration, I hope they will make clear these ambiguities. Maybe the Senator from Michigan and I are wrong about what the legislation says. But they can clear it up. They can clear it up very quickly for us and put to rest any of those steps.

I yield the floor.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, just very briefly, one of the biggest fights we have had about this bill—and make no mistake, it has been a fight—is about the question of supermandates; that is, whether this bill supersedes the underlying bill such as the Clean Air Act.

Mr. President, I laid down a marker in negotiation with Senator DOLE and his staff, and Senator HATCH and others, that we would simply not accept a supermandate. The way the bill was drawn as it came from the House was that it said this section shall supersede existing law—supersede. As it was reported out of the Senate Judiciary Committee, it said this bill shall supplement existing law. As we finally agreed, we came up with language that says this bill shall supplement and not supersede existing law.

Mr. BIDEN. If the Senator will yield just one second on that point, the point the Senator just made I hope illustrates why the Senator from Michigan and I are not suspect of the Senator from Louisiana but why we are cynical about this because we know that the Senator from Utah and the Senator from Kansas wanted to supersede it. They kept telling us they did not. But we know they wanted to supersede. That is the problem.

I think Senator JOHNSTON has gone a long way to correcting that. But I just want the record to reflect, do not let anybody kid anybody. These folks, my colleagues, wanted, intended, to supersede. That is the point. That is why folks like me said ''bad idea.''

Mr. LEVIN. Mr. President, will the Senator from Louisiana yield?

Mr. JOHNSTON. Mr. President, if I may reclaim the time for just a minute, it is irrelevant what the House wanted or what they wanted on the initial bill. I wanted no supermandate. The point is, what does the language say?

Mr. President, I have been telling my colleagues, including my dear friend from Delaware, that we ought sometime to take yes for an answer. When language is clear, unambiguous, we need not put forth ambiguity into it.

The Senator came to one of our negotiating sessions. We talked about judicial review. I believe I am correctly judging the Senator's reaction that when he read what we had about judicial review, there was a light bulb. I think I see what he is doing now. I think you will see here that not only do we have that language which says it supplements and does not supersede, but we also have language that explicitly recognizes that there will be times when you cannot meet the test; that is, that the benefits justify the cost. There will be times when you cannot do that because the statute requires otherwise.

If you look on page 36, we say if applying the statutory requirements—this is line 22—if, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection B, it goes on to tell you what to do. But the point is that explicitly recognizes that there are circumstances in which because of the underlying statute, you cannot satisfy the fact that the benefits justify the costs because they told you in the Clean Air Act to use the maximum achievable control technology, for example. That is an explicit test in the Clean Air Act which may make meeting the test of subsection B here impossible.

Mr. BIDEN. Will the Senator yield for a question on that?

Mr. JOHNSTON. Yes.

Mr. BIDEN. The Senator from Arizona cited—I apologize. I do not have a copy of the statement. But I hope I state it correctly. He cited a section. He referred to it as the Hillary Clinton report on mammography, or something to that effect, where he said that report included that women under the age of 40 for mammographies—the average cost was, and I forget the number—it was $150,000, or $15 million, whatever it was. For women over the age of 50, it would cost less. And it was suggested that we should follow a cost-benefit analysis, and decide that mammographies maybe should be only for women over 50 years of age because of the cost.

The way this legislation is written, if in the wisdom or the lack of wisdom of the U.S. Congress and with the President signing the legislation, if we were to pass a piece of legislation which on its face made absolutely no economic sense, and we decided that even if it cost $10 million per life in order not to even have one life lost, you had to get to zero tolerance on some chemical, clearly it would not pass a cost-benefit analysis.

Let us assume the cost-benefit analysis was done and it is clear that they come back and say, ''Look, this is going to cost $10 billion or $1 million or $500 million for every life you save.'' If the legislative bodies and the President wanted to do that, would they still be able to do that?

Mr. JOHNSTON. I thank the Senator for his question because it is a critical question. The answer is yes. It is explicit. It says we shall supplement and not supersede.

Mr. BIDEN. May I add a followup question? This is sort of a parlance that I can understand and everybody I think can understand.

Let us assume we pass such a bizarre law to protect the welfare of individuals and it only gathered up 10, 12 people in all America who are affected by it. If a company, if an individual, affected by that cost and the onerous burden they would have to go through to meet the law, if they thought it was a bad idea, tell the Senator from Delaware what they would be able to do under this law to get to the point where the section the Senator referred to takes control. What I mean by that is, could an individual or a company come along and say, ''OK, I demand that the EPA do a cost-benefit analysis anywhere.''

Mr. JOHNSTON. I will tell the Senator exactly what is required. He is talking about a rule already in operation.

Mr. BIDEN. Yes. We, the Congress, pass a law explicitly stating that this end must be met and we assign it to an agency in effect, and an agency writes a rule.

Mr. JOHNSTON. And DuPont wants to contest the rule, say.

Mr. BIDEN. All right.

Mr. JOHNSTON. Here is what would happen. Within 1 year after the passage of this act, the head of each of the agencies shall look at all the rules under their supervision, determine which ones need to be looked at, and therefore come up with a preliminary schedule. That schedule will be published a year afterward. If this rule is on that schedule, then DuPont, since they are from Delaware—that is the only reason I use them—would not have to take further action because it is going to be reexamined. If it is not on the schedule and they want it reexamined, then they would petition. Their burden is to show that there is a substantial likelihood that the rule would not be able to reach, to satisfy the requirements of section 624.

Mr. BIDEN. That is the key. Let me stop the Senator there, if I may, Mr. President. Section 624 is a different section than the section cited, making it clear that you do not—that cost-benefit analysis need not prevail if there are other factors. You cannot supersede the underlying law. The underlying law says on its face this is going to cost, say, an exorbitant amount.

Mr. JOHNSTON. If the underlying law says that, if applying the statutory requirements upon which the rule is based, the underlying law that requires the mammography, let us say, a rule cannot satisfy that criteria of subsection (b)—subsection (b) criteria are that the rule justify the cost, that you have the least-cost alternative unless there are scientific or data uncertainties or nonquantifiable benefits——

Mr. BIDEN. Let me make it easy for the Senator because I think it is important the public understand this arcane notion.

Let us say the Congress passes a law, and the President signs it, that says no matter what it costs—in the legislation——

Mr. JOHNSTON. I am giving the Senator an answer to that.

Mr. BIDEN. No matter what it costs.

Mr. JOHNSTON. Then it satisfies the requirements of section 624.

Mr. BIDEN. And it is ended right there?

Mr. JOHNSTON. And your petition would be rejected.

Mr. LEVIN. Will the Senator yield on that point? We have offered language to say it that clearly in this bill, and it has been rejected. And let me just get right to the heart of the matter. We have about 10 Cabinet officers that have issued a statement of administration policy.

Mr. JOHNSTON. Mr. President, I have the floor, and I would be glad to entertain the question.

Mr. LEVIN. The question is this. Let me just read who it is that signed this before I ask the question. Secretaries of Labor, Agriculture, Health and Human Services, Housing and Urban Development, Transportation, Treasury, Interior, EPA, OMB have said that this bill ''could be construed to constitute a supermandate that would override existing statutory requirements.''

Now, when you have that many folks, I would think, of average or better intelligence——

Mr. BIDEN. I hope so.

Mr. LEVIN. Who say it can be interpreted that way, and when you have a whole bunch of Senators here who say it can be interpreted that way, and when it is the intent now of the Senator from Louisiana and the Senator from Kansas and the Senator from Utah not to have it interpreted that way, because that is what you have said over and over again, why then not accept the language which we have offered during our discussion which says that in case of a conflict, in case of a conflict between the underlying law and this bill, the underlying law governs?

That is a very simple question. Why not just simply make it explicit that in the event that there is a conflict between the requirements of this bill and underlying law, the requirements of underlying law govern? That will just eliminate all of these doubts. That is the suspenders and the belt.

Mr. JOHNSTON. Mr. President, I will answer the question like this. I do not care how many Cabinet people say this thing is ambiguous. It is not. It is as clear as the English language can be. Now, whether they are ingenuous or disingenuous in their criticism, I do not know. I know that this letter of administrative policy, much of it is, to be charitable, disingenuous, because I sat in the room and negotiated part of it and accepted some of the things that came from the administration and then was met with the argument coming back out that that which we accepted was a fault in the bill.

Mr. LEVIN. But on this particular issue, on this particular issue——

Mr. JOHNSTON. On this particular issue, let me—the point is the fact that they have said it does not make it so. I believe it is clear.

Now, what I believe also is that this language would really put an ambiguity into it because in the event of a conflict the statute under which the rule is promulgated shall govern. Now, the statute under which the rule is promulgated did not require risk assessment, did not require cost-benefit analysis, did not require that you go through any of those procedural hoops. I could make the strong argument that this would say that that rule under which it was promulgated, if at the time it was promulgated satisfied those rules, then that governs and that this statute, the petition process, the look-back process, is taken out of the picture; it is no longer valid.

Does the Senator see what I am talking about?

Mr. LEVIN. No. I think the question I asked though is a simple one. Where there is a conflict, where there is a conflict between the underlying statute's criteria and the criteria in this statute, the question is what governs?

Now, we have been assured—I mean, we have heard many speeches on this floor that there is no intent to have a supermandate, that the underlying statute is going to govern. And yet when it comes right down to the very specific question, if there is a conflict between the criteria in this statute——

Mr. JOHNSTON. If the Senator will let me answer, the question is, what is a conflict? If one statute requires something, a cost-benefit analysis, which this does, or a risk assessment and the other statute does not, is that a conflict or is that supplementing?

Mr. LEVIN. The other question is, what does the word ''supplement'' mean? It has to have some meaning. For instance, if you could not issue a regulation to enforce the double hulled tanker law—for instance, we passed a double hulled tanker law. A lot of people thought it was actually a bad mistake in terms of cost-benefit, but we passed it.

Now, the agency comes along and the agency is supposed to implement that in terms of the time of implementation, and so forth. It goes through this bill. It cannot implement it. It cannot because it does not pass the cost-benefit test.

Now, there is an argument—there is an argument which has been raised that the Senator from Louisiana, I would hope, would want to address.

He recognized very forthrightly to the Senator from Delaware what happens when you go through all the cost-benefit analysis, the risk assessment. It does not make any sense to have a double hulled tanker rule, but that is the law. The Senator from Louisiana says the law governs. The double hulled tanker law governs, period. Then it seems to me that the concerns which have been raised by so many Members here and so many of the administration that we ought to say it clearly should be addressed. We ought to say it clearly.

Mr. JOHNSTON. If the Senator will yield, the problem is your suggested language does not say it clearly. I believe it says it clearly when you say it shall supplement and not overrule. And then, when you have this alternative requirements language which explicitly recognizes that there will be times when you cannot meet the criteria of the benefits justifying the cost because the statute requires it, if in applying the statutory requirement, you cannot meet the criteria, then it tells you what to do. You can go ahead and promulgate the rule. That is precisely what it means.

Now, if you come up with some other language that does not itself make an ambiguity where there is not now, I mean, I would be glad to clarify. If you supplement and not override—I believe when you say ''supplement,'' that means you are supposed to read the two in harmony, but you are not overriding the substantive requirements of the underlying law. It is very tricky to start talking about what is the underlying law and what is procedure, what is substance; what is supplement, what is override. I believe we have hit the appropriate balance, particularly in light of the alternative requirements language of page 36.

Mr. LEVIN. If the Senator from Louisiana again would yield, the language which the Senator points to as being the clarifying language for the issue that we are discussing does not address a critical issue. In fact, I think it makes it more ambiguous. We have talked about this at some length off the floor, and perhaps to some extent we covered it this morning. But what the Senator says is, if, applying statutory requirements upon which the rule is based, a rule cannot satisfy criterion in subsection (b), then you go to (c).

Mr. JOHNSTON. Yes.

Mr. LEVIN. When you go to (c), which is what the Senator says we should do, what (c) says is that in certain circumstances underlying laws are going to govern. And here is what he says. Here is what the bill says. ''If scientific, technical or economic uncertainties are nonquantifiable benefits to health, safety and the environment,''

then certain things follow from that. And so the question which many of us have asked is, what happens if the benefits are quantifiable?

Mr. JOHNSTON. First of all——

Mr. LEVIN. I am not talking about lives. I understand that the Senator from Louisiana believes that the value of a life is not quantifiable. That perhaps is common parlance here. I know it is used differently from the agencies. That is not the question I asked.

What happens, for instance, if a law says that you have to reduce the parts per trillion of a certain toxic substance to at least 10? That is what the law says. Beyond that, an agency will do a cost-benefit analysis. If the agency, after doing that cost-benefit analysis, reaches the conclusion that it makes good sense to go to, let us say, 6 parts per trillion, now, that is quantifiable. That is very quantifiable. They have gone from cost per parts per trillion in dollars. We are not now talking about lives or asthma or other kinds of problems. We are talking about parts per trillion. Under this language, since it is quantifiable, there is no escape from (b).

Mr. JOHNSTON. There is, if the Senator will follow this through with me. See, the agency has a lot of discretion. Now, the agency discretion in the first instance is to interpret the statute. What does the statute mean? There will be a level of discretion between a minimal list interpretation and a maximum interpretation where the agency can pick that interpretation and is not overruled unless their judgment is arbitrary and capricious or an abuse of discretion. So, in the first instance, they can pick that interpretation; that is to say, they can pick that level of cost. Now they must meet the test of the benefits justifying the cost. But when you meet the test of the benefits justifying the cost, you use the definition of benefits as found on page—I think it is 621, subsection (5)—which says that benefits include both quantifiable and nonquantifiable benefits to health, safety and the environment. So that, if it is quantifiable, then you pick it up in the first instance of benefits justifying the cost. But we wanted to be sure that sometimes there will be some lagniappe, some nonquantifiable benefits to health, safety and the environment. I believe that clean air is not quantifiable as a benefit. I believe that the benefits of health are nonquantifiable. Notwithstanding, my friend from Michigan thinks a life, you can put a dollar value on it.

Mr. LEVIN. No. I am saying that the agencies do—because a risk assessment—you have to make those kinds of assessments.

Mr. JOHNSTON. If they can pick it up as a quantifiable matter under the definition on 621(5)—no—621(2) and (3).

Mr. LEVIN. If the Senator from Louisiana will yield for 1 more minute. The question is, if you cannot meet the requirements of (b), if you cannot meet them, then you go to (c). Under (c) the Senator does not provide for quantifiable and nonquantifiable benefits, but only for nonquantifiable. You have not done in (c) what you did in your definition of benefits. And there is no reason not to do it, by the way. There is no reason.

Mr. JOHNSTON. Let me tell you why. When you go to (c), then you cannot satisfy your benefits justifying the cost. But the statute required you to do something. And so you are required to go ahead and do what the statute says, notwithstanding that the benefits did not justify the cost. Keep in mind that those benefits included all of your quantifiable as well as nonquantifiable benefits.

Mr. KERRY. Would my colleague yield for a question?

Mr. JOHNSTON. Not yet.

And you can go ahead and do what the statute tells you. Moreover, you can do more than the least cost of what the statute tells you. You can go beyond that if there are uncertainties of science, uncertainties of data or nonquantifiable benefits to health, safety or the environment. So this is over and above to that which the statute required. And the statute required you to do something that was not cost-benefit justified.

Mr. LEVIN. On that issue, to pursue it, can you move to a more costly program if the benefits are quantifiable?

Mr. JOHNSTON. Is it beyond what the statute required?

Mr. LEVIN. No. Using my example, the statute says you have got to get to at least 10 parts per trillion reduction. That is the toxic substance. We want as a minimum to get to 10 parts per trillion.

Mr. JOHNSTON. Yes.

Mr. LEVIN. Now, the agency does a cost-benefit analysis and it finds that for a few dollars extra it can get to 6. After 6 parts per trillion, it becomes so costly it probably is not worth it.

My question is, this is highly quantifiable. We know exactly how many dollars for each part per trillion. But under the language of this bill, you could not get to 6 parts per trillion because 10 parts is slightly cheaper than 6 and it meets the test of the statute that the agency get at least to 10.

Mr. JOHNSTON. Let me answer the Senator's question. I think the simple answer is, yes, you can, but there is a caveat. If it is within the discretion of the agency head and the interpretation of the statute to have some leeway as to the interpretation, then yes, you can.

Mr. LEVIN. How would that be least costly?

Mr. JOHNSTON. Wait a minute. The statute is clear under the Chevron case, the Supreme Court case. What it said is that if the Congress has spoken on an issue and congressional intent is clear, then that congressional intent must be enforced. So that if, for example, you required that you meet 40 miles per gallon as a cafe standard, then I do not believe that the administrator could come in and say, well, look, it would be nice to go to 50 or 55 because we like that more. If Congress has spoken and the intent is clear, then you must follow congressional intent. If——

Mr. LEVIN. If the Senator would use my hypothetical where you must get to at least 10 parts per trillion reduction.

Mr. JOHNSTON. If the phraseology of the statute is ''at least,'' then that in turn would give discretion to the agency head.

Mr. LEVIN. Under the provision of this bill, you must use the least costly alternative to get to the goals set by Congress. The least costly alternative is to get to 10. Under my hypothetical, for a very slight additional cost, you can get to 6. After 6 the cost goes off the chart.

Mr. JOHNSTON. As I say, the simple answer is yes, unless congressional intent prohibits that by having spoken on it, and the Senator's hypothetical example would indicate by the use of the words ''at least'' that it is within a permissible interpretation.

Mr. LEVIN. Under this bill, it is not the least cost.

Mr. JOHNSTON. The answer is that they could, because those parts per million would relate to a benefit to health or the environment and, therefore, would be a nonquantifiable benefit to health or the environment.

Mr. LEVIN. If I could, again, ask the Senator to yield for a question. It is very quantifiable. There is no way under which my hypothetical can reasonably be described as setting forth a nonquantifiable.

Mr. JOHNSTON. What is quantifiable with the Senator is parts per million.

Mr. LEVIN. That is exactly what is in the statute. It does not talk about lives and it does not talk about breathing. What the statute says in my hypothetical is you must get to at least 10 parts per trillion of a toxic substance. Beyond that, the agency is allowed to use some discretion using cost-benefit analysis and risk analysis.

Under my hypothetical, you get to six in a very cost-effective way, but under the Senator's bill, because it says you must use the least-cost method to get to an alternative, which is in the statute, since 10 is an alternative permitted by statute, your least cost drives you to 10, whereas cost-benefit drives you to six.

There is a conflict between the cost-benefit and the least cost and I think—by the way, Senator ROTH is someone who is on the floor who knows a great deal about this subject and I think has some similar concerns with this.

Mr. JOHNSTON. The Senator has asked a question, and the answer to his question is, if it is parts per million of a toxic substance, therefore it relates to benefits to health or to the environment and, therefore, is specifically covered under the phrase that says where nonquantifiable benefits to health, safety or the environment makes a more expensive alternative appropriate

or in the public interest, then you may pick the more costly alternative.

Mr. LEVIN. Since there is an ambiguity here at a minimum, I think a fair reading would be since the word is ''nonquantifiable'' and my hypothetical is very quantifiable, at least reasonably interpreted, although the Senator from Louisiana does not agree with the interpretation, surely I gave a very quantifiable hypothetical.

My question is, why not eliminate that ambiguity by stating that if there is either a quantifiable or a nonquantifiable benefit which is cost-effective and permitted by statute that the administrator will be allowed to go to the most cost-effective rather than the least-cost conclusion? That is the question. Why not eliminate the ambiguity?

Mr. JOHNSTON. The answer is we took care of whatever ambiguity there was at the behest of the Senator from Michigan. You will recall our negotiation on this, and we added quantifiable and nonquantifiable to the definition of benefit in section 621.

Mr. LEVIN. That was not at my behest. That was before I raised this issue which I raised with you.

Mr. JOHNSTON. No, this was done between the time we filed the first Dole-Johnston amendment——

Mr. LEVIN. Not at the behest of the Senator from Michigan.

Mr. JOHNSTON. Well, the issue was at least talked about by the Senator from Michigan. I do not know that the Senator from Michigan suggested this exact fix. He was at least in the room. I thought it was he who raised this question of quantifiable and nonquantifiable.

Whoever raised it, we changed that definition so that benefit means identifiable significant favorable effects, quantifiable and nonquantifiable, so that you are able to use it, whether it is quantifiable or nonquantifiable, in meeting that test of cost-benefit. This is when you go beyond the quantifiable. You already quantified your benefits, but there will be other benefits nonquantifiable—the value of a life, the value of clean air, the smell of flowers in the springtime—all unquantifiable. That is what you can take into consideration, and we explicitly recognize that. You have already taken into consideration quantifiable, as well as nonquantifiable wants, but we are going beyond the statute at this point.

Does the Senator have a question?

Mr. KERRY. I appreciate the Senator being willing to take some time. I would like to follow up on the questioning of the Senator from Michigan, because I believe that he has targeted one of the most serious conflicts, ambiguities—whatever you want to label it at this point in time—and clearly in the legislative process, we ought to strive, where we identify that kind of ambiguity, to avoid it. I am sure the Senator would agree.

As I read the relevant sections, I confront the same quandary the Senator from Michigan does, and I find that in the answers of the Senator from Louisiana there is, in effect—not consciously necessarily, but because of the difference of interpretation or definition, there is an unavoidable sliding away from the meat or the center of the hypothetical posed.

The hypothetical that was posed by the Senator from Michigan is really more than a hypothetical. It is an everyday occurrence in the reality of agency rulemaking. I think the Senator from Louisiana knows that almost all the agencies quantify almost every benefit.

So let me ask a first threshold question. Does the Senator from Louisiana accept that some benefits are quantifiable?

Mr. JOHNSTON. Of course.

Mr. KERRY. If some benefits are quantifiable, does the Senator accept that a certain health benefit could be quantifiable?

Mr. JOHNSTON. It depends on what kind of health and certain aspects——

Mr. KERRY. Let me ask the Senator this. Does the Senator believe that it is possible to quantify the number of hospitalization cases for emphysema or lung complications that might follow from reducing air quality to a certain level of parts per million?

Mr. JOHNSTON. You can certainly quantify statistically those things. You cannot quantify the value and the value of the benefit.

Mr. KERRY. Well, I question that. That is an interesting distinction because——

Mr. JOHNSTON. If so, you can take into consideration for the purpose of your benefits justifying your costs.

Mr. KERRY. As the Senator knows, in the newspapers in the last months, we have seen repeated stories of the rise of asthma and allergy reactions in children in the United States. We have a quantifiable number of asthma prescriptions that are issued as a consequence of this rise of asthmatic condition. That is quantifiable in cost. We have a rising number of visits to doctors for diagnosis, and that is quantifiable in cost by the reporting levels that have allowed the newspapers to report a percentage of increase in America.

To follow up on the so-called hypothetical of the Senator from Michigan, those costs are quantifiable. We know, in many cases, how much it costs America in money spent on health care, in money spent on hospitalization, in lost time at work in a series of quantifiable effects. We know that, and that can be measured against the cost of reducing whatever is the instigator of those particular effects.

Mr. JOHNSTON. Right.

Mr. KERRY. The Senator agrees.

Mr. JOHNSTON. Yes, but you see, all of those costs, whether quantifiable or nonquantifiable in the first instance, to determine whether the benefits justify the cost, were taken into consideration. So I ask under your hypothetical, are you telling me that the quantifiable and nonquantifiable benefits would not justify the cost, whatever the statute said?

Mr. KERRY. I think to answer your question and to sort of continue the colloquy, if we can, the answer is that there is an uncertainty as to that, because what is contained in the definitional portion of the statute is never a sufficient clarification for what is contained in a particular section where the substance is interpreted by the court. The court may find that the definition intended one thing, but in the substance of the section, the court will find there is a conflict with the definition, and they are going to go with the substance.

So what the Senator from Michigan is saying and what I think a number of us are saying is, let us not allow for that ambiguity. In our legislative role, we have identified this ambiguity, we are troubled by the potential impact of this ambiguity, and we are suggesting a remedy that is precisely in keeping with the stated intent of the Senator from Louisiana.

So the question comes back that I know the Senator from Michigan has asked previously: Why would we not therefore legislate to a greater capacity of perfection the intent that the Senator says is contained in the language? It does no other change to the bill.

Mr. JOHNSTON. I do not know whether the Senator understands what I am saying. Did the benefits justify the cost of your—what was it—did they or did they not?

Mr. KERRY. No.

Mr. JOHNSTON. You see, his hypothetical was that if you add a little bit of extra cost, you get a big benefit.

Mr. KERRY. It is not a hypothetical.

Mr. JOHNSTON. If that is so, the benefit justified the cost.

Mr. KERRY. If we have a statute—the underlying statute suggests that, for reasons of the health of our citizens, we want to achieve a minimum reduction in emission standards to 10 parts per million—a minimum standard. But the legislation empowers the agency to go further. It is a minimum standard.

Now, under your language, a measurement would be made as to the benefit of the minimum standard, but it would also——

Mr. JOHNSTON. A measure would be made as to the rule, the rule as interpreted by the agency. That is what is subjected to the benefit-cost ratio.

Mr. KERRY. I agree. And the judgment made by the agency would be, does this rule or some—at the moment, we make the standard according to health-based and technology-based criteria. And we make an evaluation as to what are the benefits of reducing the air quality. We make an analysis of what is the benefit of breaking it down to the 10 parts per million. Let us say that for 10 parts per million reduction, the cost-benefit analysis shows an expenditure of $100 and it saves 100 lives.

But the same analysis has shown that for an expenditure of $105, you could save 150 lives.

Mr. JOHNSTON. Yes, well, did——

Mr. KERRY. Let me just finish. Under your language of least-cost alternative, and the distinction between quantifiable and nonquantifiable, the agency would be restricted to the $100 expenditure and 100 lives, even though $105 could save you 150 lives.

Mr. JOHNSTON. Not true, Mr. President, I tell my colleague, because there is nothing here—first of all, I do not know of any statute that says a minimum of so many parts per million with discretion to go higher.

Mr. KERRY. There is a statute. The Clean Air Act has minimal standards.

Mr. JOHNSTON. It is maximum achievable controlled technology, which is not stated in parts per million. There are other standards. For example, there are radiation standards that do specify so many rems or millirems per year, et cetera. The Clean Air Act is maximum achievable controlled technology. That gives to the administrator a broad discretion as to what is maximum and what is achievable; that is to say, what is on the shelf.

Mr. KERRY. But the underlying statute—if I can say to the Senator, I have the examples. I did not come to the floor with them at this moment because I came from another meeting. But this particular colloquy was taking place. I can assure the Senator that I will provide him with specific statutory examples where this so-called hypothetical clash exists. All I am suggesting——

Mr. JOHNSTON. I would like to see that because we have talked about these hypothetical clashes. You see, in your hypothetical, the benefits justified the cost, because in the first instance you saved lives——

Mr. KERRY. I agree that the benefits do, but——

Mr. JOHNSTON. And if it is within the realm of discretion of the administrator——

Mr. KERRY. But there is no discretion.

Mr. JOHNSTON. Under the law of the Supreme Court, in the Chevron case, the last and most definitive case I know of on the issue, they say specifically if the Congress has specifically spoken to an issue and the intent is clear, then the agency must follow the intent of Congress—''Must'' follow.

Mr. KERRY. But the——

Mr. JOHNSTON. I do not think you disagree with that.

Mr. KERRY. The problem I think we are underscoring here—and I cannot for the life of me understand the restraint on a simple clarification which actually codifies the stated intent of the Senator in this colloquy. I mean, this is very simple language. It seeks to say if there is a conflict between the cost-benefit analysis in the underlying statute and the least-cost standards, the underlying statute prevails. That is supposedly the stated intent of the Senator.

Mr. JOHNSTON. That is absolutely the intent.

Mr. KERRY. Why can the simple language not say, in the event of a conflict, the underlying statute prevails?

Mr. JOHNSTON. I would have no problem with proper language to do that. The problem is that, first of all, I think we have very clear language right now. I think it is very clear. The offered language creates its own ambiguity.

Mr. KERRY. I agree. I think the offered language—I do not disagree, if he is referring to the language proffered earlier by the Senator from Ohio.

Mr. JOHNSTON. It says, ''In the event of a conflict, the statute under which the rule is promulgated shall govern.''

Mr. KERRY. I could walk the Senator through now literally section by section, and I think that when you do that, the ambiguity sort of leaps out at you. And when you have to go from one section to the other and then ultimately find in the remote definition section one word—''social''—that somehow embraces this concept that you will have this relevant benefit analysis, I think we are asking lawyers to start to tie up the regulatory process. The whole purpose of a lot of our efforts here in the Congress now is to reduce the need for anyone to have to litigate what we are trying to legislate.

Mr. JOHNSTON. I tell my friend that it is indeed a complicated statute. But I think it is clear, and the problem is that—you talk about will ''social'' embrace all these things. We say ''benefit'' means the reasonably identifiable—this is page 13, section 621(2), line 8: The term benefit means ''reasonably identifiable, significant favorable effects.''

Mr. KERRY. Are we reading from the——

Mr. JOHNSTON. We are reading actually from the substitute. In any event, it says, ''reasonably identifiable, significant favorable effects, quantifiable and nonquantifiable, including social and environmental health and economic effects.''

We did not want to go into a laundry list because my friend knows the old rule about specifying one thing excludes those matters not specified. You will remember the old rule from law school. That is the problem here. But it is, I think, really clear.

To get back to your question of the underlying statute governing, I insist that it is absolutely clear. Nevertheless, I would recommend to my colleagues a clarification, if the clarification does not inject its own ambiguity.

Mr. LEVIN. If the Senator will yield, I am delighted to hear that because in the eyes of many, and I think many who work with the Senator, who the Senator knows and are reasonable in their reading of laws, there is ambiguity in this language. There has been an important and intensive effort to remove the ambiguity to make it clear that there is no supermandate that underlying law governs. That is the issue here. That is stated to be the intent of the Senator from Louisiana, and the language which can make sure that intent is carried forward in this statute is, I believe, quite easily drawn. We will be offering that language later on this afternoon, and I hope the Senator from Louisiana can join in that clarification.

Mr. JOHNSTON. I certainly will. Does the Senator understand my problem with the phrase, ''in the event of conflict, the statute under which the rule is promulgated shall govern''?

Mr. KERRY. The Senator is saying that he believes that it is opening up a whole rule interpretation, is that correct?

Mr. JOHNSTON. What I am saying is we do not define what—conflict. What we really mean is the substantive requirements of a health-based standard or a technology-based standard; that those health-based or technology-based standards shall govern. And we do not mean that the procedures under which the rule was adopted shall govern.

If you can get an appropriate way to phrase that concept, I certainly would recommend it. Even though I think it is clear, we want to reassure where we can.

Mr. KERRY. In furtherance of that reassurance, could I just ask the Senator, is it the clear intent of the Senator to invoke into the rulemaking process a practicable, efficient, cost analysis?

Mr. JOHNSTON. Of course. Of course.

Mr. KERRY. I would say to the Senator that I accept that. The Senator from Michigan accepts that. And that is what we want to achieve.

In the doing of that, I assume the Senator would want to also guarantee that cost analysis does not become a supermandate?

Mr. JOHNSTON. Oh, of course.

Mr. KERRY. Therefore we should, I think, be able to arrive at language—driven at by the Senator from Michigan—that achieves an avoidance of the ambiguity, but without creating a new potential for disruption of that cost analysis.

Mr. JOHNSTON. May I suggest here a way, perhaps, to get at this question of conflict? Part of my problem is to say that ''in the event of conflict''—in my judgment there is no possibility of conflict. We have written conflict out. So, therefore, you do not want to admit the possibility of that which you have written out, which injects its own ambiguity. So you ought to take that phrase out and simply say that nothing herein shall derogate or diminish or repeal or modify the health-based standards or the technology-based standards of environmental statutes—or words to that effect.

Mr. LEVIN. We are drafting language to address an ambiguity that we perceive to be in the bill. And we will try to write it in such a way—we will write

it in such a way that it does not create any other ambiguity.

Mr. JOHNSTON. If you would just leave out that ''in the event of conflict,'' because there is no conflict. That is why we say it shall supplement and not supersede, because we have written it in such a way that it does not conflict and we do not want courts to find conflict where none is there.

Mr. KERRY. Suppose we say in the event of unforeseen consequences, incapable of being described by the sagacity of the drafter of the bill, we nevertheless——

Mr. LEVIN. In the event somebody finds it.

Mr. JOHNSTON. We do not admit of that possibility.

Mr. President, I think this has been a very useful exchange. And I hope, maybe following up on this, we can make clear that those health-based standards and technology-based standards of the environmental statutes are not affected, repealed, or modified in other ways.

Mr. LEVIN. And other statutes also, which are important to health and safety; the underlying statutes.

Mr. JOHNSTON. What we are talking about is health-based or technology-based standards. Is there any other standard we are talking about?

Mr. LEVIN. Could be just a standard that the Congress sets.

Mr. JOHNSTON. Yes, I——

Mr. LEVIN. Could be the double-hulled tanker. I am not sure what that is based on. We made a decision on that and you do not intend that anything in this bill is intended to supersede it. The problem is, because of the ambiguity we pointed out, it could be interpreted that there is an ambiguity in that kind of situation.

Mr. JOHNSTON. The point is let us make it relate to standards and not to procedures.

Mr. LEVIN. Right.

Mr. JOHNSTON. Because the procedures surely do supplement and they do not conflict.

Mr. LEVIN. It is our intent that our language address the ambiguity that we and many others perceive in the bill without creating any other ambiguity. We will show it to the Senator before we offer it.

Mr. JOHNSTON. I thank the Senator. I think we made progress.

Mr. KERRY. I think the Senator is correct.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I wonder if those Senators have completed their discussion? I would like to proceed for a few minutes.

Mr. JOHNSTON. Did the Senator wish to ask a question?

Mr. CHAFEE. No. I wanted to proceed. I did not want to intervene with something if they were just about concluding.

Mr. JOHNSTON. No, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, the regulatory reform bill now pending before the Senate would, if enacted, bring sweeping changes to the regulations that protect the health and safety of the American people and of our natural environment.

What am I talking about? Let us take a look at this cost-benefit analysis business. Perhaps the most important feature of this bill is the new role for cost-benefit analysis in evaluating health, safety and environmental rules. Under S. 343, which is the bill before us, the Dole-Johnston bill, every major rule issued by a Federal agency must be accompanied by a study setting forth the costs that will be imposed by the rule and the benefits that will be experienced when the rule is fully implemented.

In other words, you figure the costs on one side and figure the benefits on the other.

This is not exactly a new development. That has been required by Executive order since the beginning of President Reagan's administration.

There are, however, two new twists to this, in this legislation. First, there is a prohibition on the issuance of any rule, unless the Federal agency can certify that the benefits of the rule justify the costs. And, second, the opportunity exists for extensive court review of the scientific and economic studies that form the basis for the agency's certification.

In other words, there are two new features in this bill. We have had cost-benefit analysis in the past. But this requires it. In other words, there can be no issuance of any rule unless the agency, the Federal agency, can certify that the benefits justify the costs. Second, we have in this legislation this extensive judicial review.

The cost-benefit analysis becomes a gate through which all of our health and environmental policies must pass. And the gate will be guarded by a host of litigants in Federal courts all across our land. They will spend millions of dollars on legal challenges to prevent new rules from becoming effective.

This is a big departure from the existing situation that we now have in our country. Although cost-benefit analysis is now a useful tool in writing regulations, it is important to remember that most health and environmental policies are not based on a strict cost-benefit calculus. Other values are also important in setting national goals. In some laws, the instruction to the agency is to protect public health and to set a standard that ensures that no adverse health effect will result from pollution. Some of our laws are based on the principle of conservation. Agencies are directed to take whatever action is necessary to save a species, an endangered species, for example, or to save a wild area from development or exploitation.

In many cases our laws require the use of best available pollution control technology. This is sometimes referred to as BAT, best available technology. Our science and engineering is too limited to know how to achieve an absolutely safe level, so we say to those engaged in activities that may cause pollution, ''Do the best you can to limit the impact on others, or on nature.''

But that is not the theory of this bill. The purpose of this bill brings an end to that philosophy of ''do the best you can.'' The report of the Judiciary Committee says it very well. The Judiciary Committee says, ''The proper philosophy for environmental law is summed up in this question: Is it worth it in dollars and cents?'' That is on page 71 of the Judiciary Committee report. ''Is this action worth it in dollars and cents.''

That is a new philosophy. No longer is the question asked, ''What is safe? What is the best we can do to preserve our natural heritage?'' Those may have been the principles that formed our environmental policies over the last quarter of a century, ever since 1972, but now we are being told that policy is too expensive. We should pay only as much as we are going to get back. Is it worth it in dollars and cents?

That is the new philosophy that is in this bill. This, it seems to me, this cost-benefit approach—everything in dollars and cents—ought to appeal to the man described by Oscar Wilde in the last century. Oscar Wilde described somebody as being the following: He knows the price of everything and the value of nothing.

Is it worth it? It may seem like a commonsense test that should apply to all regulations. But it falls well short of the envision that has been the foundation of our environmental laws for the past quarter of a century. Much of our current environmental law is based on the common law concept of nuisance. Simply stated it is this: People have a right to be free from injury caused by the activities of another. Under common law, going back to the 16th century, each property owner has the private right of action to abate or to receive compensation for a nuisance imposed by a neighbor. This is a property right. One type of nuisance frequently addressed in common law courts was the matter of foul odors created by some activity such as keeping livestock or operating a slaughterhouse. In fact, the first nuisance case involved odors caused by pigs kept in the alleys of London. The common law courts took action to prevent these nuisances such as noxious odors because one person has no right to act in ways that infringe on the property rights of another. Under the common law, public officials could also bring action to prevent a nuisance that affected the whole community.

As our society became more industrialized, more complex, the potential injuries caused by pollution became more far reaching and subtle. The ability of common law to abate and redress injuries effectively was undermined.

So it was not the old question of your neighbor suddenly bringing a whole lot of pigs on his property, and you are downwind causing your property to become of less value because of the noxious odors. That is the simple case. But it became much more complex as society became more complex.

General pollution control regulations, imposed first by the States and then by the Federal Government, have been established as the more efficient alternative, and have largely superseded the role of common law remedies in protecting our rights to be free from pollution. For example, the concern for air pollution that started under common law as a complaint against these noxious odors I just described have been transformed into a concern for the serious health affects that may be caused by air pollution. Today, we have the Clean Air Act that sets Federal standards for smog and carbon monoxide and lead. The foundation of these laws is, in part, the belief that we have a right to live free from threats to human health caused by the actions of others. The underlying principle has been retained. One person engaging in private activities does not have the right to impose injuries on another or the community at large. That principle is the source of many standards that instruct agencies to reduce pollution to levels that are safe or at which no adverse public health effects will occur.

The right to be free from pollution is compromised by this bill, S. 343. This bill imposes a cost-benefit test on regulations to control pollution. The theory behind the cost-benefit analysis is your neighbor has a right to pollute as long as the damage to you is less costly than the cost of pollution control devices are to the neighbor. In other words, if you are damaged less than the cost you can impose on him to stop this pollution, he does not have to install the pollution control. Yes. You suffer. But that is tough luck.

Let us suppose a large manufacturing firm locates a new plant in the community. The company's owner admits that the plant will release pollution into the air and water of the community. They also admit that, depending on the level of pollution control required, the pollution may cause illness or even death among the neighboring residents. How much pollution control should the plant be required to install? One way to answer that question is to set limits on the pollution so that there will be no adverse effects on the health or on the community as a whole. Another answer is that the plant should be required to use the best available technology to control the pollution. We may not know precisely what is safe or at what levels or by what routes people will be exposed to the solution. So we ask the owners of the plant. We do not ask them. We tell them. That is the way it works now—to make the investment in the best pollution control equipment they can afford, to do the best we can. That is how the law works now. But that is not how this new law works as proposed.

Under the cost-benefit approach there would be a limit on how much we could ask that plant to do to clean up its pollution. The limit would be determined by putting a price tag on the adverse effects of the pollution. How many people get sick? What is the cost for their medical care? How many days are they off from work or home from school because of illness? What is it worth to be able to fish in a stream that flows near the plant and to enjoy outdoor exercise in that town on a clear summer day free from smog and pollution? Under the cost-benefit approach, pollution control is only required if it costs less than the medical care for those stricken.

If the medical care is higher and you are doing more damage and causing more sickness than the cost of the equipment, then you have to put the equipment on. But if the equipment cost is higher than the cost of the sickness, you do not have to put it on.

A stream is not cleaned up unless the recreational business or commercial fisheries that use the stream are worth more than the investment in the pollution control equipment. Some people may get sick. Some people miss work or school. A fisherman may lose his job. A boat house may close down. But that is all OK under this bill because the alternative—asking the factory to do its best to reduce the pollution—would cost too much, would cost more than the losses suffered by the neighbors.

To me this is an outrage. I mean have you ever heard anything like this? It is all right to cause pollution. You do not have to stop it as long as the cost of the equipment to stop it would be greater than the cost of the sickness you are causing to your neighbors and those downwind and the others in the area. This is a very different ethic than that which guides our current policies. It abandons the principles of safety and conservation and doing the best we can. It abandons the notion of the right to be free from pollution that is the basis of our current laws.

All of this is coming from a Senate that is saying we protect private property. We want people to be paid when there are takings. Indeed, this is a bill that comes over from the House that says if the cost of endangered species and having that and protecting the endangered species is more than 30 percent of your land, you have to be compensated because that is a taking. But it is all right to take somebody's health. You do not bother with that. Somehow everything has gone crazy around this place.

This bill would allow your neighbor to take your property rights unless the Government can prove that the adverse effects you suffer are worth more than the cost that would be imposed for the pollution equipment.

I want to make it clear that it is not the information provided by the cost-benefit analysis that concerns me. I think that all regulatory options should be rigorously analyzed and the options selected should put a premium on efficiency and flexibility and good science. We want all of these things.

The cost benefit studies that have been done under the Executive orders as exist now under President Reagan and others have provided a useful tool, a tool to improve the quality of the regulations. I have sponsored, along with Senator GLENN, a bill that would require cost-benefit analyses and risk assessment for all major rules. The information generated by these studies is quite helpful to the agencies.

It is quite another matter to say that any polluter can go to court and challenge a rule because it imposes more costs on his activities than the benefits that are realized by the neighbors. Under this bill, S. 343, you say you cannot make me put that pollution control equipment on because, yes, I am causing bad health downstream to my neighbors, but that is all right because the cost of their missing school or missing work or the old people suffering from asthma, we put a price on that, and the price of that is less than the cost of my equipment that I have to put on so I do not have to put it on.

That is the new philosophy that is in this legislation.

Mr. President, here is the second general point. I am concerned about the explosion in litigation that will result if this bill is enacted. All of us are saying we do not like the proliferation of legal challenges that are coming up in different legislation. We want to stop that. This bill is a lawyer's employment act. This bill ought to be applauded by every member of the bar association, every student in law school because this represents potential work.

There is a case to be made for regulatory reform. I am for that. Senator GLENN is for that. All of us in this Chamber are for that. We have limited resources to spend on environmental protection. It is essential that we spend those resources wisely. More science, better risk assessment, peer review, all of these, if done right, will do a better job protecting health and natural resources. The regulatory reform bill now pending will not result in smarter or more cost-effective environmental laws and regulations. Rather, it will cause regulatory gridlock. It will entangle agencies in a web of procedures and paperwork and endless rounds of review and make the implementation of our environmental laws nearly impossible.

This bill would substantially increase the number and complexity of court challenges to environmental regulations. There are nearly a dozen new ways to get a regulation before court under this bill even before the final action has been taken. This bill would result in lawsuits. Is there a Senator who believes that more lawsuits will lead to

better regulation? The Federal courts are not the place to decide questions of science and economics that will be assigned under this bill.

Congress, because we are upset about the cost of health and environmental regulations, is impatient, is too impatient to wait for a statute-by-statute review of its own enactments. It is us and the laws that we have passed which have resulted in all these rules. What we ought to do is look at these laws and examine the rules under them. But we should not turn everything into a judicial review that goes up to our courts.

Mr. President, no doubt we will hear many horror stories about environmental regulations while this bill is being debated. And many have been paraded already. But we ought not to lose sight of the big picture. These laws have worked. They have improved the quality of life for all Americans. Let me give you some examples.

In a period that has seen significant growth in population, significant growth in industrial activity and in automobile travel, we have more than held our own against the most difficult air pollution problems. Between 1975 and 1990—that is a 15-year period—the total vehicle miles traveled in the United States increased by 70 percent. It went from 1.3 trillion miles to 2.2 trillion miles driven in a year—a 70-percent increase in mileage driven in the United States in 15 years. In that same period, the vehicle emissions of hydrocarbons, which is one of the pollutants that cause smog, were cut nearly in half. Up went mileage by 70 percent, pollutants, emissions of hydrocarbons dropped by nearly 50 percent, from 10 million tons to 5.5 million tons a year.

Now, that just did not happen. That did not come about because industry wanted to do it. It came about because of Government regulation. We required the automobile industry to produce a car that would reduce emissions by 90 percent, and they did it. Just since 1990, in only 5 years, between now and 1990, the number of areas in violation of the carbon monoxide standard in this country have dropped from 40 areas to less than 10. Since the mid-1970's, lead in the air is down by 98 percent. The amount of lead in the air has decreased by 98 percent—98 percent. Why do we care about this? Because lead in the air affects the developmental capacity of children growing up in congested urban areas. These are the most vulnerable Americans. And who are they? They are low-income areas, they are poor children who live there, and we have cut the lead in those areas by 98 percent. If this bill had been in place during that time, EPA Administrator Carol Browner has said that we could not have achieved those reductions in lead in gasoline. That marvelous accomplishment that we are so proud of could not have been achieved with a strict cost-benefit analysis.

The Clean Water Act is probably our most successful environmental law. In the late 1960's, the Nation was stunned when the Cuyahoga River in Cleveland caught fire. A river caught fire. That shows you the condition of our rivers and lakes and streams in the latter part of the 1960's. Our waters were being used as open sewers—the Potomac, absolutely foul.

In responding to this problem, Congress passed the Clean Water Act in 1972 and set some very ambitious goals including the elimination of all discharges to surface waters by 1985.

Well, we did not meet that goal of 1985, but we have made a lot of progress since the Cuyahoga River caught fire in the 1960's. When we began this effort under the Clean Water Act, more than two-thirds of our lakes, rivers and streams in the United States of America failed to meet the clean water standards.

With these 20 years of effort behind us, some of our most polluted waters—Lake Erie, the Potomac River, Narragansett Bay in my own State—have made remarkable recoveries. Today, those streams and lakes and bays are fishable and swimmable.

On the international scene, the United States has led the way as the world has faced up to the threat of ozone depletion. Each new development in our scientific understanding of chlorofluorocarbons and their impact on the ozone layer has confirmed the wisdom of the Montreal Protocol, the global agreement to ban production of CFC's that was signed by a Republican President in 1987, President Reagan.

Since the Endangered Species Act was passed in 1973, populations of whooping cranes, brown pelicans, and peregrine falcons have come back from near extinction. The bald eagle is ready to be moved from the endangered to the threatened list. Both the California gray whale and the American alligator have recovered to the point they have been removed from the endangered list altogether.

Now, what does all this mean to us? The American people can be proud of the accomplishments that have been made under the Clean Air Act, the Clean Water Act, the Endangered Species Act, and our other environmental laws over the past quarter of a century, and the American people are proud of this. And when asked, most often they say that we have not been tough enough on water pollution and air pollution. They want us to do more. They want Government to work better. But they want it to continue working for the health and environmental goals that have been achieved and are being achieved in our country today. The American people cherish their right to their property and the right to pass it on to their children free from pollution.

So I think, Mr. President, we have a lot to be proud of that we have achieved under the existing laws. I certainly hope we do not get involved with this cost-benefit business and this plethora of lawsuits that would result from this legislation.

I wish to thank the Chair.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER (Ms. SNOWE). The Senator from Iowa.

Mr. GRASSLEY. The legislation that is before us is not about whether or not the Government should write regulations or whether or not we should have regulators. That is an accepted fact. It has been a part of the process of Government a long time before we had the Administrative Procedure Act in 1946. All that did was basically conform all regulation writing to the same process.

This legislation is about bringing common sense to the whole process of writing regulations. And all of the horror stories that can be told about bad regulations and the bad enforcement of maybe even good regulations is related to the fact that people affected feel that there is not a commonsense approach to the regulation writing. The bottom line is, that we need legislation to bring common sense to regulation and the enforcement of regulation.

This legislation before us does that. And yet there are people that are coming to present possible horrors that will result if this legislation is passed. This is just not so as far as I am concerned. This legislation is not going to change any existing laws on the books that deal with public health, and safety, environmental laws. Not one.

There are many false accusations about this legislation that it would override existing law. There are a half-dozen places in the legislation that makes it clear that this legislation is not a supermandate imposing the language of this legislation in place of any specific public health and safety laws on the books. But this legislation is about process to make sure that regulation writers cannot go hog wild in trying to accomplish their goals.

This legislation has in it judicial review of regulation writing, and judicial review of regulatory activity, and judicial review of the actions of regulators. We ought to have judicial review to make sure that the process conforms to the statute and to the intent of Congress. Regulation writing and the process of analyzing information that goes into regulation writing and particularly scientific analysis should not be above the law. And the only way I know to assure that regulators do not go beyond congressional intent is to make sure that there is judicial review. Well, there are an awful lot of accusations from opponents of this bill that somehow if this bill becomes law it is going to compromise public health and safety. On the other hand, those of us who are proponents of this legislation can give example after example of where the existing process, without the proper safeguards in the existing legislation, have become a real horror for certain individuals who are affected.

Yesterday I had the opportunity to present an instance in which an informant who was a former disgruntled

employee, brought to the attention of EPA the possibility of the burying of some toxic waste on the business of the Higman Gravel Co. of Akron, IA. And, of course, there was not any such toxic waste buried there. But they acted on information of an informant and one morning at 9 o'clock came to the place of business. It was a usual morning at the business. Mr. Higman was gassing up his truck to start the process of work for that day. His accountant was behind the desk in the office doing what you would expect accountants to do. And all of a sudden that quiet morning, 40 local and Federal law enforcement agents come with cocked guns to this place of business telling Mr. Higman to shut up while the gun was pointed at him. They had, by the way, bulletproof vests on. They went into the office and stuck the gun in the face of the accountant. All of that in a little place of business, acting because a disgruntled employee had given some misinformation.

It cost Mr. Higman $200,000 in legal fees and lost business and probably still injured his reputation to some extent. But he had to fight it in the courts to get out of criminal charges that were unjustified. Now, just a little bit of common sense in the process of regulation writing in the process of enforcement could have saved a lot of trouble, damaged reputation for a good businessperson, damaged reputation for the legitimate work of the EPA.

I have another example that I would like to refer to because some people are making the argument that environmental legislation should not be subject to cost-benefit analysis or to risk assessment because a price tag cannot be placed on an individual's health.

There is not a price tag placed upon individual health. But when it comes to cost-benefit analysis, if there is a $5 cost to saving a life, or a $50 cost to saving a life, what is wrong with taking the $5 cost to saving a life as opposed to the $50 cost of saving a life? Common sense would dictate that you ought to use the less costly approach. But people are arguing that requiring the EPA to assess and scrutinize the cost of regulations will somehow lead to a rollback of environmental protection.

Now, I agree that a price tag cannot be placed on the health of citizens. And we do not intend to roll back the gains made in environmental protection in this country over the last 25 years. Senator CHAFEE, who we have just heard, the distinguished chairman of our Environment Committee, is correct. Many gains have been made in environment in the last 25 years. And we should not turn our backs on these significant achievements.

But once again, if the question is a $50 cost to saving a life versus a $5 cost to saving a life, we would chose the $5 approach. The life is going to be saved either way. And we want that life saved.

So I want to take the opportunity to discuss at least one example where conducting a cost-benefit analysis would have avoided the enactment of an absurd regulation that has cost small businesses in my State and many other States hundreds of thousands of dollars and has resulted in absolutely no benefit to the environment, absolutely no benefit to the environment. The 1990 Clean Air Act amendments regulate what are called major sources of emissions and it defines ''major sources'' as those that have the potential to admit 100 tons per year of a criteria pollutant, such as dust. The EPA in further defining ''potential'' to emit assumes that facilities operate 24 hours a day, 365 days a year.

Now that is quite an assumption—sitting in a marble palace someplace in Washington, DC, to assume when you are writing a regulation that every business is going to operate 365 days a year, 24 hours a day.

When you apply that faulty logic to a seasonal business, such as grain elevators in my State—and if some of you are confused about the term ''grain elevator,'' just let me simply say, that is a big cement silo where you store grain, where the farmers deliver grain, where grain can be processed from or grain can, in turn, be loaded onto hopper cars to be shipped to another location, even overseas when it gets to the terminal. But when you apply this faulty logic, assuming that a business is going to operate 365 days a year, 24 hours a day, for grain elevators, it becomes evident how absurd this regulation is in practice and how a simple cost-benefit analysis would have illustrated this fact.

In my State of Iowa, we have approximately 700 grain elevators. I think I know what I am talking about when I talk about a grain elevator. My son and I have a family farming operation. My son operates it almost totally by himself. I try to help when I am home and we are not in session.

In the fall of the year, my son runs what we call a combine, a grain-harvesting machine. This combine harvests our corn and our soybeans. One of the things I can do to help my son in the fall is to haul the grain, the corn, or the soybeans from the combine from the field 3 or 4 miles into town to weigh and to unload at our local New Hartford Cooperative elevator close to our farm.

We deliver grain to these local country elevators. We have 700 of these in the State of Iowa, and there are about 96,000 farming units in my State that use these 700 elevators to sell their corn to and to process their grains.

Although less than 1 percent of these elevators actually emit more than 100 tons, which is what EPA has defined as the level to be classified as a ''major source,'' if you use EPA calculations, all 700 grain elevators in Iowa are considered major sources of emission. Only 1 percent actually emit more than 100 tons, but all 700 grain elevators are affected by this regulation.

How this could be the case ought to defy all logic and does. During a subcommittee hearing that I conducted on the bill before us, we heard testimony from an operator of a grain elevator in Mallard, IA, in northwest Iowa. This particular elevator takes in grain for only 30 to 40 days per year and has a capacity of 3 million bushels. But according to the EPA, this little country elevator in Mallard, IA, has the capacity to process over 11 billion bushels of grain per year. Let us put this 11 billion bushels of grain per year EPA figures this grain elevator can handle in the context of our crop for 1 year in the entire United States.

Last year, the U.S. corn harvest set a record at 10.3 billion bushels. This year, because of the early rain in some parts of the Midwest, the USDA is projecting a 7 to 8 billion bushel harvest. Yet, the Environmental Protection Agency assumes that 11 billion bushels of corn, more corn than has ever been produced in this country in a year, will go through that one country elevator in Mallard, IA.

This calculation, of course, would be laughable but for the fact this elevator will expend a lot of money and a lot of time as a result of this EPA regulation. Last fall, at the height of harvest, the Mallard elevator received a 280-page permit application based upon the regulation I am talking about. The application is so complex that the elevator's managers were required to obtain an outside consultant to help complete the application. The cost of this assistance is estimated to be in the neighborhood of $25,000 to $40,000. Remember that my State has about 700 of these elevators, all required to pay up to $40,000 to comply with an absurd regulation.

So there is a very identifiable cost associated with this regulation from EPA in terms of money, in terms of time and in terms of jobs. The benefit to the environment and to the public health is less clear, however. In other words, I am about to say that there is no need for this regulation because there is not any impact on the public health, what the EPA assumes is a health problem.

First of all, all emissions from grain elevators are in the form of dust, and that is not considered toxic. Second, these dust particles—if you want to know where the dust comes from, I told you how you take the grain from the field off the combine, on the wagon behind the tractor or in your truck to the local grain elevator. You weigh it before you unload it. Then you pull into a pit with a grate over it. You drive your tractor over the grate, you open up the door and the grain unloads. While this grain is falling about 2 or 3 feet into the pit, there is some dust associated with that grain. Farmers live with that every day on the farm. EPA does not try to interfere on the farm,

but they do try to interfere when you haul your grain to town and unload it.

Those dust particles are fairly large in size. They are just specks, in a sense, but fairly larger in size than most of the types EPA is trying to regulate. They fall to the ground, after the winds have caught them, and they may blow away from where you are unloading. They fall to the ground. They never enter the atmosphere.

Thus, if there is even a remote chance the particles can be harmful, the group most at risk are the employees of the facility. Are we concerned about the employees of the facility? Yes, we are concerned about the employees' health. But this concern has already been addressed by OSHA regulations; not EPA regulations, but OSHA regulations. In fact, the elevator that I talked about, the Mallard elevator, spent $12,000 in 1994 for training and equipment to ensure the safety of its employees who work around grain dust.

The primary reason that the regulation results in little public health benefit, however, is that these elevators have actual emissions of well under 100 tons, and, in most cases, well under 20 tons.

Under the Clean Air Act, they are not required to reduce emissions, but they are still covered by the regulations. So after spending hours completing a 280-page application and paying maybe up to $40,000 to a consultant to help fill out this 280-page application, the result is that emissions are not reduced at all. They are not reduced at all.

This type of regulation—one that seems to impose large costs on small businesses and individuals without any public benefit—is exactly the reason we need a cost-benefit analysis, and exactly the type of regulation that is now saddling the public, and we will avoid saddling businesses in the future if we pass S. 343. But, you see, we have regulators that do not know when to quit regulating. They do not stop to think, Well, should we really be regulating this or that? They get some sort of a pseudo-science to justify some regulation, and some of these agencies even ask scientists from academia to come in and review their scientific analysis which is the basis for their regulation writing. We can show you examples of when those scientific panels have come in and said, ''You have to go back and start over again. There is no scientific basis for the regulation you are writing.''

But they are not looking for a scientific basis for regulation. They are only looking for a small part of a scientific justification for what they want to do anyway. They want to do what they want to do, regardless of the cost. And this legislation will impose some common sense on the regulation writers, which common sense, if it were used, would not have resulted in a regulation that affects 700 grain elevators in my State when, in fact, only 1 percent are over the EPA limit. And if the rule were only applicable to the time that the business was creating dust in the first place—how stupid to assume that a business is going to be emitting dust into the air 365 days out of the year, 24 hours a day, when it only probably operates about 10 hours a day, and the activity they want to control only takes place maybe 30 to 40 days out of a year.

We are entitled to some commonsense regulation, and we are never going to get it until we have legislation that dictates that we use a commonsense approach. This legislation does it.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

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

Mr. DOLE. I will be happy to yield.

Mr. JOHNSTON. Madam President, we have been debating the Dole amendment here all today. I have heard really no criticism at all on the Dole amendments. If our side is willing to accept those on a voice vote, and I do not know that they are, is the majority leader willing to let those go on a voice vote? Or does he want——

Mr. DOLE. I think we want a rollcall. I read so much about this from Joan Claybrook and Ralph Nader, I want them to be assured by a unanimous vote that we heeded the great contribution, not only that they made, but the New York Times and other extremely——

Mr. JOHNSTON. Does the Senator wish a rollcall on all the amendments or just the first one?

Mr. DOLE. I think if we had a rollcall on the first one, then I assume the others could be disposed of by voice vote. We would be glad to ask consent that vote occur at 5:30.

Mr. JOHNSTON. At 5:30.

Mr. DOLE. Could I get consent? I make the request there occur a vote at 5:30 on amendment No. 1493 and, if the amendment is agreed to, amendment No. 1942, as amended, be agreed to, and amendments numbered 1494 and 1495 be automatically withdrawn, and that the time between now and 5:30 be equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. GLENN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. I do not object.

The PRESIDING OFFICER. The Senator withdraws his objection.

Hearing no objection, it is so ordered.

ONE LAST POINT ON E. COLI AMENDMENT

Mr. HATCH. Madam President, this morning, my friend Senator GLENN, criticized S. 343 for not containing an explicit and separate provision exempting regulations dealing with food safety and E. coli bacteria.

To be fair, Senator GLENN recognized that S. 343 contains emergency provisions that would allow agencies to quickly deal with bad meat and E. coli emergencies.

He recognized that this was a good thing, but he also stated that this may not be enough because such emergency provisions leave too much to agency discretion. Perhaps a separate provision just dealing with E. coli bacteria is needed, he concluded.

Now I want to point out that Senator GLENN'S own substitute does not contain a separate provision dealing with E. coli bacteria and bad meat.

Instead, the Glenn bill also contains an emergency provision that exempts rules from risk assessment requirements when there exists a threat to public safety.

This is exactly the approach the Dole bill takes. You simply cannot specifically exempt all emergencies that may arise that requires a speedy promulgation of a rule.

If you did that you would have to enumerate every disease and natural catastrophe that ever existed. The bill would become too long and would wind up looking like one of those 100 page insurance policies.

I support the Dole amendment not because it is necessary—rules that need be quickly promulgated because of an emergency and agency safety inspection and enforcement actions are already exempt from S. 343's requirements—but because adding the words ''food safety'' in the emergency provision may somehow quell the unnecessary hype over food safety and the myth that S. 343 does not protect the public.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I yield 10 minutes to the distinguished Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, it appears we are about to vote on the Dole amendment to S. 343. I must say, I am extremely pleased the Republican leader came to the floor this morning and propounded this amendment to stop what I have watched over the last week—at best, journalistic silliness and a tremendous effort to distort what are, in fact, facts and realities as it relates to certain processes that have gone on and are still going on at the Department of Agriculture.

When I read headlines in the New York Times that suggest—and they did—''Let Them Eat Poison, Republicans Block a Plan That Would Save Lives,'' I say that is in fact a knowledgeable and outright distortion of the facts as we know them and certainly as this Senator knows them.

So, for the next few moments I would like to relate to you some unique experiences I have had serving on the Senate Agriculture Committee that have dealt directly with the issue of the E. coli bacteria and what this Congress and this administration has attempted to do and, in some instances, has failed to do.

First, I want to talk about how they are playing fast and loose with the

facts with, in my opinion, a direct effort to generate public attitude, and, in this instance, the attitude would be one of fear. Second, I want to talk about this administration, what it can do, if it is sincere in helping improve food safety, with or without S. 343. And I want to show it is flatout wrong to claim that this bill, S. 343, and all of the proceedings to it, along with this amendment, are going to do one single thing to damage food safety in this country.

Madam President, we take for granted, in the United States, that we have the safest food supply in the world—and we should take it for granted because we do. We are indisputably a nation that places before its consuming public the safest of all food supplies.

Let me suggest that, when I make that statement, I do not suggest that all food is, on all occasions, absolutely, every day, totally safe. New regulations do not save lives; safe food processes save lives. And it is phenomenally important for us to remember that the responsibility of safe food lies with everyone involved, in production—that is the one side we are talking about, because that is where the rules and regulations are—and on the consumption side, and that is where you and I and all other consumers, Madam President, have a responsibility.

Here is an interesting statistic that has been ignored by the press even though they know it. From 1973 to 1987 the Centers for Disease Control, which I think has credibility, reported that 97 percent of foodborne illnesses were attributable to errors that occurred after meat and poultry leave the plant; in other words, leave the processing plant, the slaughterhouse, the preparation plant, the packing area, if you will, however you wish to describe it; 97 percent of all foodborne illnesses are attributed after that. Yet, the debate today, and the foolish rhetoric in the press, has been on the other side of that issue.

Why have they missed the point? How could they come to be or appear to be so ignorant to the fact? Is it because they want it to be? Is it possibly because they want to distort the basis of the debate and the arguments behind why this Congress is moving S. 343?

Most foodborne illnesses can be prevented with proper food handling or preparation practices in restaurants and in home kitchens. Observers this afternoon might say this Senator has a bias. He comes from a life in the cattle industry. Madam President, my bias does not exist there because when the debate on E. coli began 2½ years ago—I come from a beef-producing State. But we had young people in our State growing ill, and in one instance a near death, because of a contaminated hamburger eaten at a fast food restaurant in my home State of Idaho. So I was clearly caught in the middle of this debate.

I, working along with the then Secretary Espy, began to move rapidly to try to solve this problem because it was an issue whose time had come and it was important that the Congress of the United States face and deal with food inspection in this country when they had in fact failed for years and years to do so.

So let me suggest to you that one of the arguments that has to be placed before the American consumer is simply this: True methods that transcend generations of Americans, whether we inspect the way we inspect or whether we regulate the way we regulate, or whether we change the rules of the cause and effect, the bottom line is you cook your meat and your poultry thoroughly. And if there is an example—and there is argumentatively statistics today—that suggest there is an increase in E. coli poisoning and bacterial poisoning, I believe it is because the consuming public no longer has the knowledge or has not gained the knowledge that you have to prepare your food properly. They just expect the Government to put on the plate every day and at all times safe food.

Let me suggest to the person who is the preparer of food—and that is all of us—that you just do not pop it in the microwave. You had better learn that food that is improperly prepared can in fact be life-threatening on occasion, if you mishandle it. And in 97 percent of the cases between 1973 and 1989 that was in fact the fact. I do not think that any of us today should be confused by the playing or the gamesmanship that has gone on with this issue.

To the critics that claim that Government should bear all the responsibility of food safety, I think you can tell by my expression this afternoon that I just flatly disagree. However, I do want to make one point. The administration has had the authority to address any food safety issues and in my opinion has not delivered. They have worked at it for 2½ years. What happened? When an industry pleads with them to bring on new regulation because the appearance of food that is not safe damages the reputation of the industry, it obviously causes great concern to the consumer. Yet, this administration has stumbled repeatedly inside USDA to bring about a new set of standards and regulations that the industry placed before them and said, Please do it. Please bring about processing that results in a regulatory effort that will cause in all appearances and hopefully in reality safe food.

Why has it not happened? Why are we still generally operating under a standard that was put in place in 1906? Is it because of the political interests? Is it because of the tug and pull of a labor interest that simply said, ''We will not give up our featherbedding and our employees for a safer, more scientific process?'' Oh, yes. Madam President, that is part of the debate that somehow we wanted to quietly skirt around when in fact it is fact, and that is why the food safety and inspection service in our country has been locked in a static environment since 1906, unwilling to move with the times and unwilling to move with the science of today.

But today's challenges are microbiological in nature. It is not a matter of sight. It is not a matter of inspecting because of an animal disease whether meat appears to be safe or it is not safe. It is really now a question of science. It is a question of bringing on line a technique that we all know exists out there. It is called HACCP. It is called hazardous analysis and critical control point.

These are the issues at hand, Madam President. That is why we are here debating today. Is there blame to cast around? Oh, yes, there is. But blame should not rest with this legislation. Blame should rest with past Congresses and past administrations that were unwilling to bring on line the kind of scientific food inspections that our country and our consumers deserve today.

I hope the Dole amendment will take away from this debate the kind of gamesmanship that was clearly going on in the press of this country because I think it ought to be stopped. My guess is the vote today will do so.

Opponents of regulatory reform claim it endangers health and safety—especially in the area of food safety. I am here to set the record straight.

First, I want to talk about how they are playing fast and loose with the facts, to generate public fear.

Second, I want to talk about what the Clinton administration can do if it is sincere about helping to improve food safety.

Third, I will show that it is flatout wrong to claim this bill will do anything to endanger food safety.

SAFE FOOD SUPPLY

We take for granted that in the United States of America we have the safest food supply in the world.

New regulations do not save lives. Safe food processes save lives. The responsibility for safe food lies on everyone involved in the production and consumption.

For the time period from 1973–87, the Centers for Disease Control reported that 97 percent of foodborne illnesses were attributable to errors that occur after meat and poultry leaves the plant. Most foodborne illness can be prevented with proper practices in restaurants and home kitchens.

The best way to ensure that food is safe is a tried and true method that transcends the generations: Cook your meat and poultry thoroughly. The basic rule of thumb is that meats should be cooked until the fluids run clear and the internal temperature has reached 160 degrees Fahrenheit.

Unfortunately, that lesson has not always been heeded. In my grandmother's scrapbook there is an article detailing the death of a family of six near Cambridge, ID, due to improper food preparation. This unfortunate occurrence took place in 1929. As you can

see, the issue of food safety is not a new one.

The food preparer and consumer always have and still must accept ultimate responsibility for food safety. Unfortunately, that responsibility, along with all others in this life, occasionally bears a consequence.

To the critics that claim the Government should bear all responsibility for food safety—I must disagree. However, I want to point out that this administration has had the authority to address any food safety issue and has not delivered.

A number of petitions from industry to utilize existing technology and improve food safety have been stalled at the U.S. Department of Agriculture. One example is a steam vacuum that can be used to remove contamination from carcasses. Only after multiple requests did the Food Safety and Inspection Service even allow a testing period to begin. It is not right for fingers to recently be pointed at the Republican Party, when this administration has consistently delayed food safety improvement and reform.

The administration's response to this issue and others in meat inspection was released in February 1995, and has since been nicknamed the ''mega reg.''

Mega reg, as introduced by the Food Safety and Inspection Service [FSIS]: The current meat inspection system is outdated and outmoded. Established in 1906, the system has remained largely unchanged and relies on visual inspections of every carcass to ensure safety. That made sense at the turn of the century when animal diseases were a major concern.

But today's challenges are microbiological in nature. Because it is so difficult to detect microbiological problems, and because it is impossible to see bacteria, the best approach is one of prevention. Such an approach is called hazard analysis and critical control points or HACCP.

Unfortunately, the administration chose to combine both of these choices rather than make clear and sweeping reform.

Most troubling is the fact that the administration's proposal would not replace the old outdated system, as has been recommended by scientific groups including the National Academy of Sciences and the General Accounting Office. Instead, mega reg would layer a host of new, costly requirements on top of the weak foundation that is the current inspection system.

Almost everyone involved, including consumers and the meat and poultry industry, agrees that change is imperative. But the current proposal does not embody these critical improvements. In fact, the current proposal cannot deliver on its promises and will largely be a hollow promise to consumers who are seeking safer meat and poultry.

When, not if, but when the system is overhauled, change must be envisioned and implemented correctly. Not on the second or third try, but the first time. Neither consumers, nor industry, can afford to pay for the undue burden of unnecessary regulations.

THE MEGA REG BUILDS ON A WEAK FOUNDATION—THE CURRENT INSPECTION SYSTEM

Unfortunately, the HACCP provisions in the mega reg would be layered on top of the old system. These two systems do not blend. In fact, they actually work against one another. The current system tries to detect problems, not prevent them. The HACCP portions of the mega reg try to prevent problems. This contradiction is not in the best interests of food safety and the American consumer.

Additionally, the regulatory requirements of the two systems, when taken together, are literally overwhelming to companies, especially small businesses, who fear that the new requirements would force them to close their doors. To make real progress, the current system must be discontinued so that a newer and stronger foundation can be laid.

FINISHED PRODUCT MICROBIOLOGICAL TESTING SOUNDS GOOD, COSTS A LOT AND ACHIEVES LITTLE

The mega reg contains requirements for finished product microbiological testing, meaning that products would be tested at the end of the production process. To the lay person, this sounds like a good idea. But in practical terms it doesn't work and it has been rejected by groups like the National Academy of Sciences and the General Accounting Office.

Take the example of a test on a hamburger patty. Conceivably, one side might be negative for a particular bacteria while the other side potentially could be positive. So how does a plant know where it should test? And how can it feel confident that test results ensure safety? The best assurance is a process control system like HACCP. The only way to guarantee that a product is bacteria-free is to cook it properly.

So where does microbiological testing fit into meat processing? The best approach is to use microbiological testing during the production process to ensure that processes are working as they should be, not at the end of the process to try and find a needle in a haystack.

THE MEGA REG WOULD INCREASE REGULATORY REQUIREMENTS, BUT DOES NOT PROVIDE THE NECESSARY EMPLOYEE TRAINING

The meat and poultry industry is the second most regulated industry in the country, just behind the nuclear industry. On-site inspectors keep track of reams of detailed requirements. The mega reg would add to those requirements dramatically, but the nature of the new requirements would be entirely different than earlier regulations.

If implemented, such a change calls for comprehensive training of those who would enforce the regulations. But the proposal does not address this issue. This omission has the potential to create chaos in practice.

MEGA REG INCREASES RISK

For example, the FSIS proposal would require that plants be kept far colder than they ever had before. These cold temperatures can help keep bacteria from developing, but can be harmful to workers. Cold temperatures increase the risk of repetitive motion disorders.

MEGA REG MOTIVES

The nature of change and seriousness of food safety underscores the need to involve all parties equally. Although, the current administration has spent over 2 years discussing meat inspection reform, their proposal does not satisfy anyone involved. For instance, the industry is concerned that USDA has paid more attention to the concerns of labor than it has to other groups, including packers and processors.

The union that represents meat and poultry inspectors is concerned about new approaches to meat and poultry inspection because they fear their jobs may be at stake.

USDA's Acting Under Secretary for Food Safety Michael Taylor is an April 7 memo told all FSIS employees that ''as we implement HACCP, we will be expanding, not shrinking the range of regulatory roles and inspectional tasks required of our employees''.

But changes to the inspection system must be made based on what is scientifically sound, not based on the needs of any one special interest group.

If food safety was really a priority to this administration they would balance the needs of all affected interests. The administration would enter into a process that could expedite meat inspection reform. The administration has the authority, although it has not been used, to enter into negotiated rulemaking and devise an acceptable and effective solution.

As written, the mega reg is not a solution to the needs of meat inspection and food safety. Utilizing the advances of modern science and technology would be a solution.

MEGA REG IS UNRELATED TO THE DOLE-JOHNSTON SUBSTITUTE

Regardless of your position relating to the mega reg, it cannot be cited as a reason to oppose regulatory reform. The language in section 622 of the substitute provides a ''health, safety or emergency'' exemption from the cost-benefit analysis and risk assessment requirements if they are not practical due to an emergency or health or safety threat.

In addition, section 624 of the substitute allows for an agency to select a higher cost regulation when ''nonquantifiable benefits to health, safety or the environment'' make that choice ''appropriate and in the public interest''.

This regulatory reform bill focuses on the process of rulemaking and results of regulation. It no way hinders the legislative process. Congress will still have full and complete authority to pass laws addressing health safety situations. Past laws that are already

on the books will not be superseded by bill.

Critics have targeted food safety. If the critics want food safety change, they should address those in the administration with the power and authority to make meaningful and immediate change.

Whether it is food safety or any other area of our lives as U.S. citizens, we must answer a fundamental question: What level of risk are we willing to accept in our daily lives?

For example, one mode of transportation may be safer than another, we oftentimes accept a small level of risk and choose the mode that takes us from point A to point B in the least amount of time.

Even though technology is constantly improving, it is unrealistic to think we will ever live in a risk-free world. Instead of setting policy based on a minuscule chance, we must set policy that is fair and responsible.

The American public wants change in our process of setting public policy. Supporting the Dole-Johnston substitute will reduce the overall regulatory burden, without harming public health or food safety.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). Who yields time?

Mr. HATCH. How much time do we have on this side?

The PRESIDING OFFICER. Six minutes.

Mr. HATCH. I yield 5 of those 6 minutes to the distinguished Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Mr. President, I thank the manager of the bill. We are getting short on time.

Mr. President, I rise today in support of the Comprehensive Regulatory Reform Act. It has been a long time coming.

I am very impressed with the compromise that has been worked out and I think Senator DOLE and Senator JOHNSTON need to be congratulated.

To begin with, this bill brings some common sense back to Government and starts to give some much-needed relief to businesses all across our Nation. But in Montana, where 98 percent of our businesses are small businesses, the onslaught of regulations in the past years have been a stranglehold. Regulations have a number of effects, two of which are to inhibit growth of a business and to discourage folks from even opening a new business.

There is no doubt that some regulations are necessary. This bill will not do away with all rules and regulations. What it will do is require the regulating authority to justify the regulation. By requiring the agencies to do certain things, such as a cost-benefit analysis, we will eliminate those ridiculous rules that seem to only add to the paperwork or cost of doing business.

Let me give you some examples. Earlier this year I held a field hearing in Kalispell, MT, to look at new regulations for logging operations. They range from silly to impractical to downright dangerous.

SAFE WORKPLACE

One of the regulations requires a health care provider to inspect and approve first aid kits on logging sites once a year. It makes me wonder just how that health care provider would be reimbursed for that visit—is it a house call? Making certain that first aid kits contain the needed supplies is certainly something the employer can do on his or her own. Requiring a health care provider to inspect each kit is ludicrous.

Another regulation required loggers to wear foot protection that is not even available. Specifically, they must have on waterproof, chain-saw resistant, sturdy, ankle-supporting boots. If Kevlar boots were available and affordable, they would not be flexible enough to wear in the logging field. On top of this, the regulations charge the employer with the responsibility of assuring that every employee has the proper boots, wears them and the employer must inspect them at the beginning of each shift to make sure they are in good condition.

Add to this the new requirement that the employer is now responsible for inspecting any vehicle used off public roads at logging work sites to guarantee that the vehicle is in serviceable condition—and the employer may as well spend all his time as a watch dog. Since when is an employer held responsible for the employee's property? Why should they limit this to just loggers? Perhaps OSHA would like to require the U.S. Senate to ensure all our employees are commuting to and from the Hill in cars that are serviceable.

But the regulations are not just burdensome, one regulation may even prove hazardous to the logger. They require the lower portion of the operator's cab to be enclosed with solid material to prevent objects from entering the cab. Unfortunately, when logging, you need to see below your cab. One gentleman who testified at my hearing said, ''Any rule that would require loggers to enclose areas of machines that operators need to see out of, in order to safely operate the machine, is poor logging practice.''

It became very clear during our proceedings that the OSHA paper pushers who wrote these regulations had never felled a tree. They probably had never even been at a logging site. And yet, the regulations written were to be enforced last February. It is only because of an outcry by the industry that these are now being reviewed.

But, Mr. President, this is just one example in just one industry. Regulations have been published that deal with fall protection on construction sites. They almost make me laugh. Requiring employers to have their employees harnessed if they are higher than six feet, would cover anyone on top of a standard ladder. But they do give the employer options. In the case of roofers, the employer can hire a roof monitor who tells roofers when they get too close to the edge. Now that is ridiculous.

By now, we have probably all heard the statistics before—the cost of regulations to our economy is staggering. Federal regulation costs have been estimated between $450 billion and $850 billion every year. That works out to about $6,000 per household every year. That might be acceptable if we knew we were getting our money's worth. And that is what this is all about.

S. 343 will allow us to decide whether the benefits of the regulation justify the costs. That may not always be easy, but it's necessary. It is responsible. It will give us a tool to decide whether the regulation is truly needed and whether it is practical.

But one of the sections of this bill that I am most pleased with is the congressional review. I have been calling for this since I arrived in the Senate. We pass laws here—that is our job. And then we leave it up to the agencies to write the rules and regulations. But we never get to review the final product. So, the law we pass and the rules enforced may be completely different. They may not be what we intended at all.

S. 343 requires the regulating authority to submit a report to the Congress, spelling out the rule, making available the cost—benefit analysis, and allowing the committees with jurisdiction to review the new rules. And we have 60 days to decide whether the rule follows the intent of the law.

Now I know some folks are worried that we will be stifling rules that are meant to protect the safety and health of children. That will not happen. Show me one person who would willingly put his family's or his constituent's health at risk. Rules will still be promulgated, regulations will still go into effect, to protect the safety and health of all of us. What we will cut down on is the unnecessary red tape.

In 1991, the Federal Government issued 70,000 pages worth of regulations and in 1992 the Federal Government employed over 122,000 regulators. These are the people responsible for such regulations as the prohibition of making obscene gestures in a National Forest. These people are responsible for the regulation requiring outdoorsmen to carry with them a bear box, to store perishables in while camping—a box the size of which would require a horse to carry. And these regulations are responsible for the destruction of private property when land owners are prohibited from preventing erosion on their land in order to not disturb local beetles.

We need to restore common sense to Government. That may be a foreign notion, but its time we try. This bill does that.

We passed unfunded mandates. We passed paperwork reduction. Now let us pass the Comprehensive Regulatory

Reform Act and give our businesses the relief they so desperately need.

Mr. President, let me reiterate that I rise today in support of the Dole-Johnston substitute. I will tell you why, because I think for the first time maybe we bring back some common sense in this business of rulemaking.

I am very supportive of that part of this legislation that requires Congress to look at the final rule before it is published in the Register and goes into effect. I have said ever since I came to this body that this is what we have to do. For so many times after legislation is passed by this Congress, and it is signed into law by the President, it is turned over to some faceless people to write the administrative rules. Sometimes those rules look nothing like the intent of the legislation.

But I want to talk about something today that probably in the rulemaking I think becomes very important.

Let me repeat that 98 percent of the businesses in my State of Montana are classified as small business. So we have a small business part in this piece of legislation to look into those things. There is no doubt in my mind that some regulations are necessary. Nobody in business today, and especially those who have a very close relationship with working men and women and their families, wants to have an unsafe workplace. It just does not make good sense. For sure it is not good business to have an unsafe workplace.

This bill will not do away with all of those rules and regulations. But the regulating authorities have to justify the regulation by requiring the agencies to do certain things, such as cost-benefit analysis. It will eliminate some of those ridiculous rules that seem to only add to paperwork and the cost of doing business. And they do very little to improve a safe workplace.

Earlier this year, I held a field hearing in Kalispell, MT, with regard to new regulations written for logging operations in our part of the country. They range from the silly to the impractical and sometimes downright outrageous.

Let me give you an example. One of the regulations required a health care provider to inspect and approve first aid kits on logging sites once a year. That is a health care provider. That is not somebody within the company going by every now and again and looking at the first aid kit to make sure all of the items are in there. That is just common sense. We do not need rules for that. I tell you what the rule was created for. If your health care provider did not go and look at it, then that is the place for a fine. Back in 1990, I think we set up the reauthorization of OSHA a little bit differently; in the tax bill we handled it a little differently. That is probably not meeting with great open arms in the public now.

Another regulation required loggers to wear a certain footwear protection that was not even available and is not available today. They are Kevlar boots. Now, if they were here, the majority of the people could not afford to wear them. On top of this, the regulations charge the employer with the responsibility in assuring that all of the employees have proper boots, primarily these boots, and inspect them every day at the beginning of the shift to make sure they are in good condition.

Now, add this to the new requirement that the employer is now responsible for inspecting any privately owned vehicle that you and I drive back and forth to work for safe condition and serviceable condition. So what it meant was that the employer was the watchdog. He had to even look at all the pickups and cars that you drove to work every day. Of course, being in a mountain area, that is probably not a bad idea, but, my goodness, can you imagine the cost for the employer just to comply?

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

Mr. BURNS. I rise in support of this amendment. And I appreciate what is trying to be done here. We realize that some rules and regulations are necessary.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Chair advises the Senator from Utah he has 37 seconds remaining.

Mr. HATCH. Could I ask my colleague for a few more minutes?

Mr. GLENN. I yield 5 minutes.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate my colleague doing that because I strongly support, as I think most every Senator will, the Dole amendment. I agree with Senator DOLE; it is time to put these myths to bed and these conjured-up illustrations that some of the far left have been trying to pass on to the media and to an unsuspecting media, I have to say, because I personally do not believe these media writers are literally going to just distort this the way they have without being fed the wrong material. So hopefully this will end some of these outrageous articles that literally are not based on fact and in fact are downright untruthful.

I cannot wait until tomorrow to bring up my next top 10 silly regulations. Let me start with 10.

No. 10. Trespassing on private land and seizing a man's truck on the claim that he poisoned eagles even though the Federal Government had no evidence that he did so.

I just love these illustrations. We go to No. 9 in our list of top 10 right now.

No. 9. Fining a person $5,000 for filling an acre-large glacial pothole and expanding another acre-large glacial pothole to 2 acres. In addition to fining him, they made him dig out the original pothole.

No. 8. Prohibiting a couple from preventing erosion on their property, which, of course, threatened their house, because the Government told them that it might destroy tiger beetles. So the tiger beetles were more important than the individual property owners' house.

No. 7. Requiring elderly residents of a neighborhood to have to walk to a cluster mailbox to save time for the letter carrier while admitting in a Postal Service self-audit that the average letter carrier wastes 1.5 hours per day.

No. 6. Here is one example which I know my friend, Senator MURKOWSKI, is familiar with. The use of a bear repellent was prohibited because it had not been proven effective in spite of the fact that Alaskan residents have successfully fended off bear attacks with it many times.

No. 5. Admonishing the Turner Broadcasting System for showing 15 seconds too many commercials during a January 14, 1992 broadcast of Tom and Jerry's Funhouse. I will hurry since I see that the minority leader is here.

No. 4. Prohibiting the construction of levees for rice production in spite of the fact that it would have increased the amount of wetlands.

No. 3. Prosecuting a company for ''conspiring to knowingly transport hazardous waste'' because the waste water the company discharged contained .0003 percent of methylene chloride. I might add that decaffeinated coffee has a higher percentage.

No. 2. Attempting to fine a company over $46,000 because they underpaid their multimillion dollars tax bill by 10 cents.

Let us just take a second and think about this No. 1, the silliest of all.

No. 1. Fining a poor electrician $600 because someone else left an extension cord on the job.

Well, this is my third list of top 10 silly regulations. I suspect it is a never-ending list, but I will endeavor to try to bring a few to our attention every day just to show why this bill is so important in what we are fighting for.

I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, the debate that has been taking place all day today on the impact of this bill on food safety and specifically its impact on the Department of Agriculture's proposed rule to require science-based hazard analysis and critical control point or HACCP systems in meat and poultry plants is really very important.

Secretary Glickman sent a letter this morning to the majority leader and to

me expressing his strong opposition to S. 343 because it would unnecessarily delay USDA's food safety reform, among other things. I believe Senator GLENN has submitted the letter for the record.

The letter explains that the peer review requirement in S. 343 will delay USDA's food safety reform by at least 6 months. As I read this bill and Secretary Glickman's letter, the bill requires that risk assessments underlying both proposed and final regulations be peer reviewed prior to becoming final. And there has been a good discussion about the applications of peer review this afternoon. In other words, before USDA can issue a final regulation reforming our meat and poultry inspection systems—a regulation that has been in the works for more than 2 years and is based on more than 10 years' of reform efforts—S. 343 would require that the final rule be peer reviewed. According to Secretary Glickman, this peer review requirement would result in a 6-month delay in this essential food safety reform. The Dole amendment does not address this unnecessary delay. As an initial matter, the amendment applies only to the cost-benefit subchapter of S. 343. As I explained earlier, the delay that S. 343 would impose is the result of the peer review requirements. So the amendment really does nothing in this regard.

Even if the amendment were changed to apply to the risk assessment and peer review requirements, the amendment still would not address the unnecessary delay that S. 343 would impose. Consumers and agricultural producers should not be asked to delay these essential reforms—reforms the entire agriculture and consumer communities have been calling for now for several years.

First, the Dole amendment simply adds food safety to the list of reasons an agency could declare an emergency and bypass the cost-benefit requirements of the bill. But the bill already contains an emergency exemption to protect health. I believe a food safety emergency is by definition a health emergency. People get sick from unsafe food. So an agency acting to prevent or address a food safety threat would be acting to protect health.

Even if the amendment does expand the scope of emergency by including food safety, I do not believe that it will alleviate the unnecessary delay that the bill would impose on USDA food safety reform.

USDA published the proposed rule in February of this year with a 120-day comment period. The USDA also extended the comment period at the request of a large number of commenters. Given this excessive comment period, if the USDA suddenly declared an exemption to avoid the peer review delay, it would be opening itself to litigation and, unfortunately, greater delay.

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

In addition to the opportunities that this bill would create for litigation—and which are not addressed by the Dole amendment—the bill also affords opportunities for those opposed to these rules to challenge them through the petition process. So even if we managed to get the rule released from USDA without delay—something that again would not be guaranteed by the Dole amendment—the rule could be challenged on the basis that it does not meet the decisional criteria in the bill and should therefore be weakened or could be subject to petitions calling for a repeal of the rule under the so-called lookback authority.

In short, there are numerous hurdles that are created by this bill which effectively can be used to delay or prevent the issuance of these important rules or lead to their repeal. That is unacceptable.

Food safety reform is essential not only to provide American consumers with safer food, but also to ensure that American agricultural producers have a strong market for their products. I understand the concerns that many in the agriculture community have with USDA's proposed reform.

However, I was the chairman of the subcommittee that first conducted the hearings on the tragic outbreak in 1993 and have held numerous followup hearings in which the industry, producers, and consumers have all repeatedly called for reforming and modernizing the meat and poultry inspection system. We can ill afford to delay these long-needed reforms. Yet that is precisely the outcome that will result under this bill even if this body adopts the current language in the Dole amendment.

So, as my colleagues consider this amendment, I want there to be no mistake about its effect. It is a harmless provision, one I support, but it will not fix the problem. It will do nothing to avoid the delay that the bill will require in the USDA's food safety proposal.

Later in this debate, I will offer an amendment to fix the problem. My amendment—in no uncertain terms—will ensure that this bill cannot be used by those who would oppose efforts to improve food safety to prevent, delay the issuance of, or repeal the Department of Agriculture meat inspection regulations regarding the E. coli. That seems to me to be the right objective and one which I hope every Member of this body will support.

Mr. JOHNSTON. Will the Senator yield?

Mr. DASCHLE. Yes.

Mr. JOHNSTON. I had three comments with respect to the Secretary's letter. First of all, his comments about peer review.

Mr. DASCHLE: I would be happy the yield for a question.

Mr. JOHNSTON. Yes. First of all, are you aware that the Glenn substitute has peer review in it of an even stronger variety than is contained in S. 343?

Mr. DASCHLE. Well, I think that is subject to some dispute. I understand that we have attempted to clarify the language and have found a way to address the concerns raised by the Secretary.

Mr. JOHNSTON. I would submit to my dear friend——

Mr. DASCHLE. I think the Secretary would find the language in the Glenn substitute much more to his liking than the Dole amendment.

Mr. JOHNSTON. With all due respect, I would ask my friend to look at the provisions. The only difference in the peer review in the Glenn substitute and in our peer review is that we do permit informal peer review panels whereas the Glenn substitute does not. In other words, it is more stringent.

Mr. DASCHLE. If I could just respond to the Senator. If the Secretary would find that the Glenn amendment is not as acceptable as he would like it to be, I am sure we could accommodate the Secretary's concerns here, just as we are doing with the pending bill.

Mr. JOHNSTON. All right.

Mr. DASCHLE. The pending bill obviously is the bill before us. We have to clarify that prior to the time we even have an opportunity to get to other amendments and the substitute. So, clearly that is what I think most of us would like to do. And to address the Secretary's concerns, let us address them. We may not have to address the language in the Glenn amendment or anything else. I think that is the issue. Can we clarify the Dole amendment adequately enough to ensure that his concerns are addressed and that we do not further encumber those efforts by the Department of Agriculture to promulgate these regulations in a timely manner?

Mr. JOHNSTON. Is my friend aware of, on page 49 of the Dole-Johnston amendment, where it explicitly says, ''This subchapter shall not apply to risk assessment performed with respect to—'' you go down to ''(C), a human health, safety or environmental inspection, an action enforcing a statutory provision, rule, or permit or an individual facility or site permitting action, except to the extent provided''?

In other words, it exempts the human health, safety or environment inspection from the risk assessment.

Moreover, was my friend aware that under subsection (f) on page 25:

> A major rule may be adopted and may become effective without prior compliance with the subchapter if—(A) the agency for

good cause finds that conducting cost-benefit analysis is impractical due to an emergency or health safety threat that is likely to result in significant harm to the public or natural resources . . .?

So, in other words, my question is, is my friend—indeed, is the Secretary—aware that, first of all, inspections are exempt and, second, that you can go ahead and do a rule without either cost-benefit analysis or a risk assessment if there is a threat to health or safety?

Mr. DASCHLE. Let me respond to the distinguished Senator, my friend from Louisiana, in this manner. The Secretary has examined the language to which you refer. And it is the Secretary's view that it falls far short of his standards and the expectations that he would apply to his own ability to address food safety. It is his view that this provision and many of the other provisions that the Senator has addressed in the language of the legislation is deficient. What the Secretary is simply saying is that unless we correct these deficiencies, his efforts to assure adequate standards and adequate confidence in our food safety system will be severely undermined. They are not my words. Those are the words of the Secretary himself. But the Secretary is saying that if we——

Mr. JOHNSTON. They are the Secretary's words.

Mr. DASCHLE. If I could again reconfirm that unless we address a number of these issues, the Secretary himself has indicated that it presents some serious problems for him, and he would advise we either amend the legislation or support an alternative.

So I am hopeful that whether it is through an amendment, as I will be proposing later on, or through an alternative draft, as the Senator from Ohio is proposing, we will be able to address it in a meaningful way.

Again, I would like to address it through amendments that we will be offering, but whether it is through amendments or in some manner, I think the deficiencies outlined by the Secretary ought to be of concern to everybody. It is in our interest and I think in the country's interest to try to do a better job of addressing the concerns than we have right now.

Mr. JOHNSTON. One final short question. I ask my friend to read the Secretary's letter. It pertains only to risk assessment, which, as I say, is contained in the Glenn-Daschle bill. That is all he talks about. He does not talk about the exception. I invite you and the principal author of the alternative to read your own bill, and I invite the Secretary to read the exceptions, because they except from the operation of risk assessment these inspections.

At an appropriate time, I will be offering an amendment to exempt all regulations where notice of proposed regulation was commenced prior to July 1, 1995, because I think there is a problem going back and looking at that, and maybe that will give us a basis on which to satisfy the Secretary and everybody else.

Mr. DASCHLE. I think the Senator would be wise to do so. I think, again, it confirms that there is a lack of clarification, there is uncertainty, enough so that the Secretary has seen fit to send a letter to express his concerns. I hope that we can clarify this issue and alter the provisions of the bill in whatever ways may be necessary. I do not think we ought to minimize those concerns or the problems of the Secretary with regard to the issue before us right now. Food safety is one of our greatest concerns, and we have to ensure that we do not undermine the confidence of the American people in our food supply as we address the need for regulatory reform. That is all we are trying to do—ensure that we accomplish regulatory reform in a meaningful way, a comprehensive way, but do it in a way that does not encumber the Secretary's efforts to provide a better system of ensuring food safety than we have right now.

I yield the floor.

Mr. HATCH. Mr. President, I think the Secretary should read the bill and the comments of Senator JOHNSTON, because they are completely different from what he said in his letter.

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.

VOTE ON AMENDMENT NO. 1493

The PRESIDING OFFICER. All time for debate has expired, and the Senate will proceed to vote on agreeing to amendment No. 1493 offered by the majority leader. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Missouri [Mr. BOND] is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 299 Leg.]

YEAS—99

Abraham	Craig	Hatch
Akaka	D'Amato	Hatfield
Ashcroft	Daschle	Heflin
Baucus	DeWine	Helms
Bennett	Dodd	Hollings
Biden	Dole	Hutchison
Bingaman	Domenici	Inhofe
Boxer	Dorgan	Inouye
Bradley	Exon	Jeffords
Breaux	Faircloth	Johnston
Brown	Feingold	Kassebaum
Bryan	Feinstein	Kempthorne
Bumpers	Ford	Kennedy
Burns	Frist	Kerrey
Byrd	Glenn	Kerry
Campbell	Gorton	Kohl
Chafee	Graham	Kyl
Coats	Gramm	Lautenberg
Cochran	Grams	Leahy
Cohen	Grassley	Levin
Conrad	Gregg	Lieberman
Coverdell	Harkin	Lott
Lugar	Packwood	Simon
Mack	Pell	Simpson
McCain	Pressler	Smith
McConnell	Pryor	Snowe
Mikulski	Reid	Specter
Moseley-Braun	Robb	Stevens
Moynihan	Rockefeller	Thomas
Murkowski	Roth	Thompson
Murray	Santorum	Thurmond
Nickles	Sarbanes	Warner
Nunn	Shelby	Wellstone

NOT VOTING—1

Bond

So the amendment (No. 1493) was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Is leader time reserved?

The PRESIDING OFFICER. The leader time was reserved.

Mr. DOLE. I ask that I might use my leader time.

The PRESIDING OFFICER. The majority leader is recognized.

THOUSANDS OF BOSNIANS FLEE

Mr. DOLE. Mr. President, just a short while ago, CNN reported that the so-called U.N. safe area of Srebrenica had fallen—Bosnian Serb tanks have reached the town center and thousands of the 40,000 Bosnians in the enclave have begun to flee.

The main argument made by the administration in opposition to withdrawing the U.N. forces and lifting the arms embargo on Bosnia was that such action would result in the enclaves falling and would lead to a humanitarian disaster. Well, that disaster has occurred today—on the U.N.'s watch, with NATO planes overhead.

If it was not before, it should now be perfectly clear that the U.N. operation in Bosnia is a failure. Once again, because of U.N. hesitation and weakness we see too little NATO action, too late. Two Serb tanks were hit by NATO planes today—hardly enough to stop an all-out assault that began days ago. As a result, in addition to thousands of refugees, the lives of brave Dutch peacekeepers are in serious danger.

Mr. President, there can be no doubt, the U.N.-designated safe areas are safe only for Serb aggression. What will it take for the administration and others to declare this U.N. mission a failure? Will all six safe areas have to be overrun first?

It is time to end this farce. It is time to let the Bosnians do what the United Nations is unwilling to do for them. The Bosnians are willing to defend themselves—it is up to us to make them able by lifting the arms embargo.

Mr. President, I have just been on the telephone with the Prime Minister of Bosnia, along with Senator LIEBERMAN, Prime Minister Silajdzic in Sarajevo. He was giving us the latest conditions in Srebrenica, one of the safe havens, where 40,000 men, women, and children are now fleeing Serb aggression. He also indicates that other safe havens are under attack, or threatened attack.

It seems to me that if there was ever a moment when we ought to have a