

the action that had not been timely published in the Federal Register or communicated to the defendant by the method described in paragraph (a)(2)(B) in a timely manner by the agency, or by a state official described in paragraph (a)(2)(B), prior to the commencement of the alleged violation.

"(c) Except as provided in subsection (d), no agency shall bring any judicial or administrative action to impose a civil or criminal penalty based upon—

"(1) an interpretation of a statute, rule, guidance, agency statement of policy, or license requirement or condition, or

"(2) a written determination of fact made by an appropriate agency official, or state official as described in paragraph (a)(2)(B), after disclosure of the material facts at the time and appropriate review,

if such interpretation or determination is materially different from a prior interpretation or determination made by the agency or the state official described in (a)(2)(B), and if such person, having taken into account all information that was reasonably available at the time of the original interpretation or determination, reasonably relied in good faith upon the prior interpretation or determination.

"(d) Nothing in this section shall be construed to preclude an agency:

"(1) from revising a rule or changing its interpretation of a rule in accordance with sections 552 and 553 of this title, and, subject to the provisions of this section, prospectively enforcing the requirements of such rule as revised or reinterpreted and imposing or seeking a civil or criminal penalty for any subsequent violation of such rule as revised or reinterpreted.

"(2) from making a new determination of fact, and based upon such determination, prospectively applying a particular legal requirement;

"(e) This section shall apply to any action for which a final unappealable judicial order has not been issued prior to the effective date.

GLENN (AND LEVIN) AMENDMENT NO. 1540

Mr. GLENN (for himself and Mr. LEVIN) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, *supra*; as follows:

On page 66, after line 15, insert:

"SEC. 643. PUBLIC DISCLOSURE OF INFORMATION.

"(a) OMB RESPONSIBILITY.—The Director or other designated officer to whom authority is delegated under section 642, in carrying out the provisions of such 641, shall establish procedures (covering all employees of the Director or other designated officer) to provide public and agency access to information concerning regulatory review actions, including—

"(1) disclosure to the public on an ongoing basis of information regarding the status of regulatory actions undergoing review;

"(2) disclosure to the public, no later than publication of, or other substantive notice to the public concerning a regulatory action, of—

"(A) all written communications, regardless of form or format, including drafts of all proposals and associated analyses, between the Director or other designated officer and the regulatory agency;

"(B) all written communications, regardless of form or format, between the Director or other designated officer and any person not employed by the executive branch of the Federal Government relating to the substance of a regulatory action;

"(C) a record of all oral communications relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

"(D) a written explanation of any review action and the date of such action; and

"(3) disclosure to the regulatory agency, on a timely basis, of—

"(A) all written communications between the Director or other designated officer and any person who is not employed by the executive branch of the Federal Government;

"(B) a record of all oral communications, and an invitation to participate in meetings, relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

"(C) a written explanation of any review action taken concerning an agency regulatory action.

"(b) AGENCY RESPONSIBILITY.—The head of each agency shall—

"(1) disclose to the public the identification of any regulatory action undergoing review under this section and the date upon which such action was submitted for such review; and

"(2) describe in any applicable rulemaking notice the results of any review under this section, including an explanation of any significant changes made to the regulatory action as a consequence of the review.

On page 66, line 16, strike "643" and insert in lieu thereof "644".

On page 67, line 1, strike "644" and insert in lieu thereof "645".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 9:30 a.m. on Thursday, July 13, 1995, in closed session, to receive a briefing on the recent F-16 shoot-down in Bosnia.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, July 13, 1995, to conduct a hearing on the dollar coin.

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

COMMITTEE ON FINANCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet on Thursday, July 13, 1995, beginning at 9:30 a.m. in room SD-215, to conduct a hearing on Medicaid.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 10 a.m.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, July 13, 1995, beginning at 9:30 a.m., in room 485 of the Russell Senate Office Building on S. 479, a bill to provide for administrative procedures to extend Federal recognition to certain Indian groups.

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

COMMITTEE ON SMALL BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 9:30 a.m., in room 428A Russell Senate Office Building, to conduct a hearing focusing on the Small Business Investment Company Program.

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

committee on small business

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 9:30 a.m., in room 428A Russell Senate Office Building, to conduct a markup on legislation which is pending in the committee.

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

SUBCOMMITTEE ON AGING

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Aging of the Committee on Labor and Human Resources be authorized to meet for a hearing on aging Americans access to medical technology, during the session of the Senate on Thursday, July 13, 1995, at 9:30 a.m.

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

SUBCOMMITTEE ON DRINKING WATER, FISHERIES, AND WILDLIFE

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Drinking Water, Fisheries, and Wildlife be granted permission to conduct a hearing Thursday, July 13, at 9 a.m., on reauthorization of the Endangered Species Act.

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

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Forests and Public Land Management of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, July 13, 1995, for purposes of conducting a subcommittee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to receive testimony on S. 882, to designate certain public lands in the State of Utah as wilderness, and for other purposes.

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

SUBCOMMITTEE ON NEAR EASTERN AND SOUTH
ASIAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Near Eastern and South Asian Affairs Subcommittee of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 2 p.m. to hear testimony on economic development and U.S. assistance in Gaza/Jerico.

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

SUBCOMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Transportation and Infrastructure be granted permission to conduct an oversight hearing Thursday, July 13, at 2 p.m., on pending GSA building prospectuses, GSA Public Buildings Service cost-savings issues, and S. 1005, the Public Buildings Reform Act of 1995.

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

ADDITIONAL STATEMENTS

CIVILIAN RADIO ACTIVE WASTE MANAGEMENT PROGRAM

• Mr. MURKOWSKI. Mr. President, the Secretary of Energy has transmitted to the Senate legislation to amend the Nuclear Waste Policy Act of 1982 to create a new funding approach for the Department of Energy's civilian radioactive waste management program. This program was created to meet the Department's obligation under the NWPA to provide for the disposal of spent civilian nuclear fuel in a permanent geologic repository by 1998.

To fund the program, the NWPA requires DOE to collect a fee of one mill per kilowatt hour on electricity generated by nuclear energy. The fee is collected by utilities from their ratepayers in their monthly bills and placed into a special nuclear waste fund in the Treasury. The fund receives approximately \$600 million per year from collections and interest. To date, approximately \$9 billion in fees and interest has been placed in the fund.

Although the nuclear waste fund has a balance of about \$4.9 billion that was collected from ratepayers for precisely this purpose, the money is considered to be on-budget, and as such, is subject to discretionary spending caps under Gramm-Rudman-Hollings. Thus, any increases over past spending levels will require spending reductions in other DOE programs under the spending cap. As a part of the DOE fiscal year 1995 budget request, DOE proposed that future contributions to the nuclear waste fund be set aside in a special off-budget fund for the program, with one-half of those funds available as a permanent appropriation each year. This proposal,

which would have required legislative action, was not adopted by the Congress. Instead, increased funding for the program was provided under DOE's discretionary spending caps. In its fiscal year 1996 budget request, DOE has proposed again that a mandatory appropriation be established from the nuclear waste fund of \$431.6 million per year. The legislation proposed by DOE would be necessary to effectuate that change.

I believe that this legislation has no chance of success. There is strong opposition to taking the waste fund off budget for a variety of reasons. First in my mind is the limitation on budgetary oversight that would result from such an arrangement. Although DOE will have spent over \$4.2 billion through the first quarter of fiscal year 1995 on the program, DOE has conceded that the 1998 deadline for the acceptance of spent nuclear fuel will not be met. Both the Nuclear Waste Technical Review Board and the General Accounting Office have issued reports that are critical of the management of the Yucca Mountain program. Although DOE has recently made progress in improving the management of the program, in the past, overhead has consumed 56 percent of the funding for site characterization.

What is needed is more oversight and involvement by the Congress, not less. The Committee on Energy and Natural Resources is considering legislation that would alter the structure of the NWPA and DOE's program, with the goal of providing for the more efficient use of the ratepayer's money. Funding and oversight issues will be considered in the context of that legislation. Therefore, although I am not introducing this bill as legislation, I am acknowledging receipt of the administration's proposal and request that it be printed in the RECORD.

The material follows;

PROPOSED LEGISLATION

A bill to provide additional flexibility for the Department of Energy's program for the disposal of spent nuclear fuel and high level radioactive waste, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nuclear Waste Disposal Funding Act".

SEC. 2. NUCLEAR WASTE FUND AVAILABILITY.

Section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) is amended by inserting the following after subsection (e):

"(f) NUCLEAR WASTE FUND AVAILABILITY.—(1) If the condition in subsection (g)(2) is met, the net proceeds from the sale of the U.S. Enrichment Corporation which are deposited in a special fund in the Treasury under subsection (g)(1) may be used by the Department for radioactive waste disposal activities under this Act. No more than the following amounts shall be made available in the fiscal year specified—

"(A) for fiscal year 1996, \$431,600,000;

"(B) for fiscal year 1997, \$540,000,000; and

"(C) for fiscal year 1998, \$627,400,000.

The net proceeds are the revenues derived from the sale of U.S. Enrichment Corpora-

tion stock, based upon its sales price less cash payments to the purchasers and less the value assigned to highly enriched and natural uranium transferred from the Department to U.S. Enrichment Corporation after February 1, 1995, as specified in the stock offering prospectus of the U.S. Enrichment Corporation. In determining net proceeds, the cash and the value of highly enriched uranium shall be prorated in proportion to the amount of stock that is sold to non-Federal entities.

"(2) In addition to the amounts in paragraph (1), amounts deposited in the Nuclear Waste Fund in fiscal years 1996, 1997, and 1998 resulting from any increase in the fee established under this section shall be available to the Department for expenditure for radioactive waste disposal activities under this Act.

"(3) Amounts available under this subsection shall remain available until expended, without further appropriation but within any specific directives and limitations included in appropriations Acts. Amounts for radioactive waste disposal activities shall be included in the annual budget submitted to Congress for Nuclear Waste Disposal Fund activities.

"(g) OFFSETS.—(1) The net proceeds from the sale of all stock of the U.S. Enrichment Corporation shall be deposited in a special fund in the Treasury and be available for the purposes specified in subsection (f).

"(2) If the President so designates, the net proceeds shall be included in the budget baseline required by the Balanced Budget and Emergency Deficit Control Act of 1985 and shall be counted for the purposes of section 252 of that Act as an offset to direct spending, notwithstanding section 257(e) of that Act."•

WHY BALANCE THE FEDERAL BUDGET?

• Mr. SIMON. Mr. President, some may wonder, why is anyone still talking about the budget when the budget has been adopted?

The reality is that until we act on reconciliation and appropriations, we are still a long way from getting our budget problems resolved.

In addition, without a constitutional amendment requiring a balanced budget, I believe the political pressure will mount to cause us to move away from the direction of a balanced budget. That has been our experience in the past. Legislative answers, such as Gramm-Rudman-Hollings, which I voted for, hold up until they become too politically awkward. And any real move on the budget deficit eventually does become politically awkward.

My reason for mentioning all this is that in the midst of the struggle on the budget, I did not get a chance to read carefully the Zero Deficit Plan put out by the Concord Coalition, headed by two of our former colleagues, Senator Warren Rudman and Senator Paul Tsongas.

It is an impressive document. Each of us could probably make some adjustments, but the staff and officers of the Concord Coalition should take great pride in their solid contribution. The executive director of the Concord Coalition is Martha Phillips, formerly on